PHILIPPINE REPORTS

VOL. 882

SEPTEMBER 8, 2020

VOLUME 882

REPORTS ON CASES

DECIDED BY THE

SUPREME COURT

OF THE

PHILIPPINES

FOR THE PERIOD

SEPTEMBER 8, 2020

Prepared
by

The Office of the Reporter
Supreme Court
Manila
2023

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REPORT OF CASES

DETERMINED IN THE

SUPREME COURT OF THE PHILIPPINES

EN BANC

[A.C. No. 5279. September 8, 2020]

ROMEO TELLES, *Complainant, v.* **ATTY. ROGELIO P. DANCEL,** *Respondent*.

SYLLABUS

1. LEGAL ETHICS; ATTORNEYS; DUTIES TO CLIENTS, EXPLAINED; FAILURE TO FILE THE APPELLANT'S BRIEF FOR A CLIENT AMOUNTS TO INEXCUSABLE NEGLIGENCE.— When a lawyer is engaged to represent a client in a case, he bears the responsibility of protecting the latter's interest with utmost diligence. His failure to file a brief for his client amounts to inexcusable negligence. It is a serious lapse in the duty owed by him to his client, as well as to the Court not to delay litigation and to aid in the speedy administration of justice. Atty. Dancel, in failing to file the appellant's brief on behalf of his client, had clearly fallen short of his duties as counsel as set forth in Canon 12 of the Code of Professional Responsibility. According to said Canon, a lawyer shall exert every effort and consider it his duty to assist in the speedy and efficient administration of justice. Rule 12.03 in particular states that a "lawyer shall not, after obtaining extensions of time to file pleadings, memoranda or briefs, let the period lapse without submitting the same or offering an explanation for his failure to do so." Canon 18 further exhorts lawyers to serve their clients with competence and diligence. They shall not neglect legal matters entrusted to them and shall keep their clients informed

of the status of their cases. Atty. Dancel was also duty-bound to inform Telles of the dismissal of their appeal before the CA following Rule 18.04, Canon 18 of the Code of Professional Responsibility which requires that a lawyer shall keep the client informed of the status of his case. x x x [B]oth the trial court and the CA gave him several extensions that would have enabled him to prepare and submit the required pleadings, if he were truly keen in honoring his duty to his client and to the court. A motion for extension of time to file an appellant's brief carries with it the presumption that the lawyer will file the same within the period granted. But Atty. Dancel did not do so. Instead, Atty. Dancel continued to display his obstinate proclivity to shun orders of compliance, even from this Court. As a member of the legal profession, Atty. Dancel owes his client entire devotion to the latter's genuine interest, and warm zeal in the maintenance and defense of his rights. As an attorney, he is expected to exert his best efforts and ability to preserve his client's cause, for the unwavering loyalty displayed to his client, likewise, served the ends of justice.

2. ID.; ID.; LAWYERS' DUTY TO THE COURT, ELUCIDATED; RESPONDENT'S ACTS OF REPEATEDLY PLEADING FOR EXTENSIONS OF TIME AND YET NOT SUBMITTING ANYTHING TO THE COURT CONSTITUTE WILLFUL DISREGARD FOR COURT ORDERS.— As a lawyer, he is required to observe and maintain due respect to the Court and its judicial officers. Atty. Dancel's cavalier attitude in repeatedly ignoring the orders of the Court constitutes utter disrespect to the institution. His conduct indicates a high degree of irresponsibility. The Court's resolutions are not to be construed as mere requests, nor should they be complied with partially, inadequately or selectively. Atty. Dancel's obstinate refusal to comply with the Court's orders not only shows his recalcitrant flaw, in character, it also underscores his disrespect of the Court's lawful orders which is only too deserving of reproof. Lawyers are called upon to obey court orders and processes and any willful disregard thereof will subject the lawyer not only to punishment for contempt, but to disciplinary sanctions as well. Graver responsibility is imposed upon lawyers than any other to uphold the integrity of the courts and to show respect to their processes. A lawyer's blatant disregard of such directives and his consistent refusal to comply with court orders

merit no less than disciplinary action. The present disbarment complaint was filed way back in year 2000. The Court gave no less than eight orders for Atty. Dancel to file his Comment. We gave warnings and even imposed fines. Instead of complying, however, Atty. Dancel repeatedly ignored the Court's directives and even claimed, at one point, not to have any knowledge about the complaint after having filed several motions for extension of time to file Comment. It was only after 15 years that Atty. Dancel filed a one-page Comment, claiming to be afflicted with diabetes, nary a proof to support such claim. The Court simply cannot countenance Atty. Dancel's act of repeatedly pleading for extensions of time and yet not submitting anything to the Court. His repeated non-compliance constitutes willful disregard for Court orders putting in serious question his suitability to discharge his duties and functions as a lawyer. As a lawyer who is made a respondent in a disbarment proceeding, Atty. Dancel should submit an explanation, and should meet the issue and overcome the evidence against him. The reason for this requirement is that an attorney, thus, charged, must prove that he still maintained that degree of morality and integrity expected of him at all times.

3. ID.; ID.; IN VIEW OF RESPONDENT'S RECALCITRANT ATTITUDE TOWARDS THE COURT AND HIS UTTER INDIFFERENCE TOWARDS THE CAUSE OF HIS CLIENT, DISBARMENT IMPOSED.— The determination of whether an attorney should be disbarred or merely suspended for a period of time involves the exercise of sound judicial discretion. The penalties for a lawyer's failure to file a brief or other pleading range from reprimand, warning with fine, suspension, and, in grave cases, disbarment. In this case, Atty. Dancel's propensity for filing motions for extension of time and not filing the required pleading was clearly established. He also did not inform his client of the dismissal of their appeal, obviously to hide his ineptitude and neglect. To prevent any other unknowing client who might engage his services, only to lose their case due to Atty. Dancel's indifference and nonchalant attitude, we find that the imposition of the most severe penalty is in order. Considering the gravity of Atty. Dancel's recalcitrant attitude towards the Court and his utter indifference towards the cause of his client, we find the penalty of disbarment to be appropriate.

CAGUIOA, *J., separate opinion*:

1. LEGAL ETHICS; ATTORNEYS; WHILE RESPONDENT INDEED VIOLATED HIS DUTIES TO HIS CLIENT AND TO THE COURT, FOR WHICH HE MUST BE HELD ACCOUNTABLE, THREE (3) YEARS SUSPENSION FROM THE PRACTICE OF LAW APPEARS MORE APPROPRIATE THAN DISBARMENT.— I express my agreement with the *ponencia* in finding respondent liable for violating Canon 12, Rule 12.03, Canon 18, and Rule 18.04 the Code of Professional Responsibility. Respondent's propensity for filing motions for extension of time to file pleadings and then not filing the same, and his blatant disregard of the lawful orders of the Court warrant a finding of administrative liability against him. Undoubtedly, respondent violated his duties toward his client as well as to the Court, for which he must be held accountable. Be that as it may, the recommended penalty by the OBC of suspension from the practice of law for a period of three (3) years appears more appropriate than disbarment which is too harsh a penalty.

2. ID.; ID.; ID.; DISBARMENT AS A PENALTY, EXPLAINED; ON WHETHER THE SUPREME PENALTY OF DISBARMENT WILL BE IMPOSED, A CLEAR BRIGHT LINE MUST BE DRAWN BETWEEN OFFENSES THAT ARE PATENTLY AND UNASHAMEDLY COMMITTED AND OFFENSES WHICH ARE OSTENSIBLY PALE IN COMPARISON THERETO; RESPONDENT'S TRANSGRESSIONS THOUGH SERIOUS, DO NOT RISE UP TO THE LEVEL WHICH NECESSITATES DISBARMENT.— It has been ruled that "[d]isbarment should never be decreed where any lesser penalty could accomplish the end desired. Undoubtedly, a violation of the high moral standards of the legal profession justifies the imposition of the appropriate penalty, including suspension and disbarment. These penalties are imposed with great caution, because they are the most severe forms of disciplinary action and their consequences are beyond repair." On whether the Court will impose the supreme penalty of disbarment, I am of the position that a clear bright line must be drawn between 1) lawyers who patently and unashamedly commit offenses that are, by themselves, gross because they are also violative of penal laws; and 2) those who

commit offenses which ostensibly pale in comparison with the first. To illustrate, the first category would include such transgressions rising to the level of committing bigamy, siring illegitimate children with multiple women, and shameless continuous philandering. These acts indubitably show a degree of immorality deserving of the ultimate penalty of disbarment, especially considering that bigamy amounts to a crime. In contrast, while respondent's transgressions in the instant case are serious, his acts still fall under the second category; hence, it does not rise up to the level which necessitates his disbarment.

3. ID.; ID.; ID.; SANCTIONING RESPONDENT WITH THE LESS SEVERE PENALTY OF SUSPENSION THAN DISBARMENT ACHIEVES THE ENDS OF DISCIPLINARY PROCEEDINGS WHICH IS TO PENALIZE AN ERRING LAWYER AND TO PRESERVE THE INTEGRITY OF THE LEGAL PROFESSION.— [T]he Court is vested with the authority and discretion to impose either the extreme penalty of disbarment or mere suspension against a lawyer who commits any of the following: (1) deceit; (2) malpractice; (3) gross misconduct; (4) grossly immoral conduct; (5) conviction of a crime involving moral turpitude; (6) violation of the lawyer's oath; (7) willful disobedience of any lawful order of a superior court; or (8) corruptly or willfully appearing as an attorney for a party to a case without authority to do so. Nevertheless, the Court is given leeway to impose the lesser penalty of suspension if it would achieve the "desired [end] of reforming the errant lawyer," based on its appreciation of the facts and circumstances of the case. Thus, the Court may exercise restraint in its imposition of penalties, should the circumstances of the case warrant, especially if the errant lawyer did not willfully commit a misconduct that is tantamount to, if not clearly, a grievous criminal act. As applied to the instant case, I am of the view that sanctioning respondent with the less severe penalty of suspension than disbarment achieves the ends of the disciplinary proceeding which is to penalize an erring lawyer and to preserve the integrity of the legal profession. The period of three years is a very long period already, and suffices, to my mind, to instill in respondent the gravity of his misdeeds.

D E C I S I O N

***Per Curiam*:**

Before the Court is a Complaint for disbarment filed by Romeo Telles (Telles) on June 1, 2000 against respondent Atty. Rogelio P. Dancel (Atty. Dancel) for gross negligence and inefficiency as a lawyer in handling Telles' case.

Atty. Dancel was Telles' legal counsel for an action for Annulment of a Deed of Quitclaim. After losing in the trial court, Telles, through Atty. Dancel elevated the case to the Court of Appeals (CA).

Atty. Dancel filed four motions for extension of time to file appellant's brief, dated August 30, 1999, September 29, 1999, October 15, 1999 and October 29, 1999. Despite the grant of all motions for extension, for a total of 75 days, Atty. Dancel still failed to file the required appellant's brief. Thus, the CA eventually dismissed Telles' appeal. Atty. Dancel also did not inform Telles of the dismissal of the appeal, nor did he offer any explanation for his failure to file the appellant's brief. Telles only learned of the dismissal of his appeal through acquaintances. Telles eventually engaged the services of another lawyer.

Telles also discovered that the trial court denied his Formal Offer of Evidence for having been filed out of time. Atty. Dancel filed the said pleading 88 days after the given period.[1]

On August 2, 2000, the Court required Atty. Dancel to file his Comment to Telles' Complaint.[2]

Atty. Dancel did not comply. Thus, the Court, on August 21, 2000,[3] required Atty. Dancel to show cause why he should

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[1] *Rollo*, p. 92.

[2] Id. at 21.

[3] The Minute Resolution attached in the *rollo* was dated August 21, 2002.

not be disciplinarily dealt with for such failure.[4] To this, Atty. Dancel filed a Motion for Extension of Time to File Answer dated September 11, 2000.[5] This was followed by a Motion for Extension of 15 days to File Answer dated October 11, 2000[6] and another such motion dated October 26, 2000.[7] On November 29, 2000, the Court granted Atty. Dancel's motions.[8]

On August 21, 2002, the Court issued a show cause order to Atty. Dancel, asking him to explain why he should not be disciplinarily dealt with for failure to file the required comment.[9]

On July 14, 2003, the Court resolved to impose on Atty. Dancel a fine of ₱1,000.00 or to suffer imprisonment of 10 days in case he fails to pay, and ordered him to file the required comment, within 10 days from notice.[10]

Still, Atty. Dancel did not comply.

On July 19, 2006, the Court resolved to impose upon him a fine of ₱2,000.00 and reiterate the order for him to file his comment.[11]

On August 17, 2006, Atty. Dancel filed a Motion for Reconsideration stating that it was his first time to know that an administrative case was filed against him by Telles, and that he has not received a copy of the Court's Resolution dated July 14, 2003, since his secretary misplaced the same. He prayed that he be given the chance to submit the required explanation and comment.[12]

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[4] *Rollo*, p. 24.

[5] Id. at 28.

[6] Id. at 29.

[7] Id. at 31.

[8] Id. at 33.

[9] Id. at 34.

[10] Id. at 35.

[11] Id. at 41-42.

[12] Id. at 43-44.

The Court, on November 29, 2006, granted Atty. Dancel's request that he be furnished with copies of the complaint and the Resolution dated July 14, 2003.[13]

Still, Atty. Dancel did not comply with the Court's Orders.

On April 20, 2009, the Court directed the National Bureau of Investigation to arrest and detain him, and directed Atty. Dancel to pay the fine of ₱3,000.00 and file the required Comment.[14]

On August 10, 2009, the Court noted Atty. Dancel's payment of the ₱3,000.00 fine.[15]

On November 19, 2014, the Court required Atty. Dancel to comply with the Resolution dated August 2, 2000 requiring him to comment on the complaint under pain of a more severe sanction, within 10 days from notice.[16]

Finally, on October 15, 2015, Atty. Dancel filed his one-page Comment stating that:

> 2. Briefly, respondent tried his very best in presenting evidence for the defendants in Civil Case No. U-5840. Unfortunately, after the presentation of evidence by the defendants, respondent became seriously ill due to diabetes. He could not anymore handle his cases properly at the time. The defendants, particularly the brother of complainant Manolito Telles [sic].
>
> 3. At any rate, during the pendency of the appeal in said case, the parties arrived at a compromise agreement, wherein the defendants were paid by the prospective buyer [₱]5,000,000.00 for and in consideration of the subject property."[17]

In the meantime, Atty. Dancel submitted to the Court a copy of the Certificate of Death of Telles showing that the latter

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[13] Id. at 47-48.

[14] Id. at 50.

[15] Id. at 59.

[16] Id. at 64.

[17] Id. at 71.

died on August 10, 2000, shortly after filing the instant complaint. Atty. Dancel claims that Telles failed to substantiate the complaint against him.[18]

On June 18, 2018, the Court referred the instant case to the Office of the Bar Confidant (OBC) for investigation, report and recommendation.[19]

On April 30, 2018, Atty. Dancel sent a letter requesting for an early resolution of the case.[20]

OBC's Report and Recommendation

On April 22, 2019, the OBC submitted its Report and Recommendation:

> WHEREFORE, premises considered, for violating [Canon] 11 and [Rules] 12.03 and 18.03 of the Code of Professional Responsibility, it is respectfully recommended that respondent Atty. Rogelio P. Dancel be SUSPENDED from the practice of law for three (3) years, with a stern warning that a repetition of the same or similar acts shall be dealt with more severely.[21]

The OBC noted that Atty. Dancel has ultimately the propensity of filing motions for extension of time to file pleadings, and not filing the same, in violation of Rule 12.03, Canon 12 in connection with Rule 18.03, Canon 18 of the Code of Professional Responsibility. His explanation that it was his diabetes that prevented him from filing Telles' appeal brief did not convince the OBC as it noted that the appellate court gave him a total of 75 days within which to file his pleading. He also did not attach any documentary evidence to support his allegation that he was afflicted with said ailment.

The OBC further held that Telles' death did not absolve Atty. Dancel from administrative liability. Not only was there

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[18] Id. at 84-86.

[19] Id. at 88.

[20] Id. at 90.

[21] Id. at 95.

sufficient documentary proof of Atty. Dancel's negligence, there is also a need to discipline him if only to set an example for other lawyers.

Finally, the OBC stated that not only was Atty. Dancel negligent in handling his client's case, he also blatantly disregarded the lawful orders of the Court, taking him 15 years to comply with the order for him to file a Comment.[22]

The Court's Ruling

We agree with the findings of the OBC. However, we find that a stiffer penalty is in order.

The duties of a lawyer may be classified into four general categories. The duties he owes to the court, to the public, to the bar, and to his client. A transgression by a lawyer of any of his duties makes him administratively liable and subject to the Court's disciplinary authority.[23]

Here, the duties transgressed by Atty. Dancel fall under the duties to his client and to the Court. As correctly observed by the OBC, Atty. Dancel has the propensity for filing motions for extension of time to file pleadings and failing to file the same.

When a lawyer is engaged to represent a client in a case, he bears the responsibility of protecting the latter's interest with utmost diligence. His failure to file a brief for his client amounts to inexcusable negligence. It is a serious lapse in the duty owed by him to his client, as well as to the Court not to delay litigation and to aid in the speedy administration of justice.[24]

Atty. Dancel, in failing to file the appellant's brief on behalf of his client, had clearly fallen short of his duties as counsel as set forth in Canon 12 of the Code of Professional Responsibility.[25] According to said Canon, a lawyer shall exert

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[22] Id. at 93-94.

[23] *Enriquez v. Lavadia, Jr.*, 760 Phil. 1, 9 (2015).

[24] *Figueras v. Jimenez*, 729 Phil. 101, 108 (2014).

[25] Id. at 107.

every effort and consider it his duty to assist in the speedy and efficient administration of justice. Rule 12.03 in particular states that a "lawyer shall not, after obtaining extensions of time to file pleadings, memoranda or briefs, let the period lapse without submitting the same or offering an explanation for his failure to do so."

Canon 18 further exhorts lawyers to serve their clients with competence and diligence. They shall not neglect legal matters entrusted to them and shall keep their clients informed of the status of their cases.[26]

Atty. Dancel was also duty-bound to inform Telles of the dismissal of their appeal before the CA following Rule 18.04, Canon 18 of the Code of Professional Responsibility which requires that a lawyer shall keep the client informed of the status of his case.

Atty. Dancel did not controvert Telles' allegation that he failed to file the appellant's brief before the CA and that he never informed Telles of the dismissal of their appeal as a result thereof. He also did not refute Telles' claim that he failed to timely file the Formal Offer of Evidence before the trial court. The only explanation Atty. Dancel gave was that he became "seriously ill due to diabetes [and] [h]e could not anymore handle his cases properly at the time."

Apart from his bare assertion, however, Atty. Dancel did not present any document to substantiate his claim that he was gravely ill during the period in question. We, therefore, find such excuse flimsy and undeserving of any consideration. If he were truly incapable of properly handling his cases due to his physical condition, he should have excused himself from his client's case. Instead, he even took on filing an appellant's brief before the CA, when he already neglected filing a Formal Offer of Evidence before the trial court.

Even so, both the trial court and the CA gave him several extensions that would have enabled him to prepare and submit

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[26] Code of Professional Responsibility, Rules 18.03 and 18.04.

the required pleadings, if he were truly keen in honoring his duty to his client and to the court. A motion for extension of time to file an appellant's brief carries with it the presumption that the lawyer will file the same within the period granted.[27] But Atty. Dancel did not do so. Instead, Atty. Dancel continued to display his obstinate proclivity to shun orders of compliance, even from this Court.

As a member of the legal profession, Atty. Dancel owes his client entire devotion to the latter's genuine interest, and warm zeal in the maintenance and defense of his rights. As an attorney, he is expected to exert his best efforts and ability to preserve his client's cause, for the unwavering loyalty displayed to his client, likewise, served the ends of justice.[28]

As a lawyer, he is required to observe and maintain due respect to the Court and its judicial officers. Atty. Dancel's cavalier attitude in repeatedly ignoring the orders of the Court constitutes utter disrespect to the institution. His conduct indicates a high degree of irresponsibility. The Court's resolutions are not to be construed as mere requests, nor should they be complied with partially, inadequately or selectively. Atty. Dancel's obstinate refusal to comply with the Court's orders not only shows his recalcitrant flaw in character, it also underscores his disrespect of the Court's lawful orders which is only too deserving of reproof.[29]

Lawyers are called upon to obey court orders and processes and any willful disregard thereof will subject the lawyer not only to punishment for contempt, but to disciplinary sanctions as well. Graver responsibility is imposed upon lawyers than any other to uphold the integrity of the courts and to show respect to their processes.[30] A lawyer's blatant disregard of

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[27] *See Abay v. Montesino*, 462 Phil. 496, 505 (2003).

[28] *Cabuello v. Talaboc*, A.C. No. 10532, November 7, 2017, 844 SCRA 90, 107-108.

[29] *See Enriquez v. Lavadia, Jr.*, 760 Phil. 1, 12 (2015).

[30] Id.

such directives and his consistent refusal to comply with court orders merit no less than disciplinary action.[31]

The present disbarment complaint was filed way back in year 2000. The Court gave no less than eight orders for Atty. Dancel to file his Comment. We gave warnings and even imposed fines. Instead of complying, however, Atty. Dancel repeatedly ignored the Court's directives and even claimed, at one point, not to have any knowledge about the complaint after having filed several motions for extension of time to file Comment.

It was only after 15 years that Atty. Dancel filed a one-page Comment, claiming to be afflicted with diabetes, nary a proof to support such claim.

The Court simply cannot countenance Atty. Dancel's act of repeatedly pleading for extensions of time and yet not submitting anything to the Court. His repeated non-compliance constitutes willful disregard for Court orders putting in serious question his suitability to discharge his duties and functions as a lawyer. As a lawyer who is made a respondent in a disbarment proceeding, Atty. Dancel should submit an explanation, and should meet the issue and overcome the evidence against him. The reason for this requirement is that an attorney, thus, charged, must prove that he still maintained that degree of morality and integrity expected of him at all times.[32]

The practice of law is a special privilege bestowed only upon those who are competent intellectually, academically and morally. Members of the Bar are expected to always uphold the integrity and dignity of the legal profession and refrain from any act or omission which might lessen the trust and confidence of the public.[33]

The practice of law is a privilege, not a right, bestowed by the State on those who show that they possess and continue to

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[31] Id.

[32] *Pesto v. Millo*, 706 Phil. 286, 294 (2013).

[33] *Venterez v. Atty. Cosme*, 561 Phil. 479, 490 (2007).

possess the legal qualifications required for the conferment of such privilege. Lawyers are expected to maintain at all times a high standard of legal proficiency and morality — which includes honesty, integrity and fair dealing. They must perform their four-fold duty to the society, the legal profession, the courts, and their clients in accordance with the values and norms of the legal profession. Any conduct that is wanting in these considerations, whether in their professional or private capacity, shall subject them to disciplinary action.[34]

The fact that Telles died soon after filing the present complaint would not absolve Atty. Dancel from any liability. Disciplinary proceedings against attorneys are unlike civil suits where the complainants are the plaintiffs and the respondent attorneys are the defendants. They neither involve private interests nor afford mere redress for private grievances. Rather, they are undertaken and prosecuted solely for the public welfare, for the purpose of preserving the courts of justice from the official ministration of persons unfit to practice law before them. The complainant or any other person who has brought the attorney's misconduct to the attention of the Court is in no sense a party, and has generally no interest in the outcome except as all good citizens may have in the proper administration of justice.[35]

The determination of whether an attorney should be disbarred or merely suspended for a period of time involves the exercise of sound judicial discretion. The penalties for a lawyer's failure to file a brief or other pleading range from reprimand, warning with fine, suspension, and, in grave cases, disbarment.[36]

In this case, Atty. Dancel's propensity for filing motions for extension of time and not filing the required pleading was clearly established. He also did not inform his client of the dismissal of their appeal, obviously to hide his ineptitude and

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[34] *Abay v. Montesino*, supra note 27, at 503-504.

[35] *Pesto v. Millo*, supra note 32, at 295; *Cabuello v. Talaboc*, supra note 28, at 108, citing *Camara v. Atty. Reyes*, 612 Phil. 1, 7 (2009).

[36] *Figueras v. Jimenez*, supra note 24.

neglect. To prevent any other unknowing client who might engage his services, only to lose their case due to Atty. Dancel's indifference and nonchalant attitude, we find that the imposition of the most severe penalty is in order. Considering the gravity of Atty. Dancel's recalcitrant attitude towards the Court and his utter indifference towards the cause of his client, we find the penalty of disbarment to be appropriate.

WHEREFORE, respondent Atty. Rogelio P. Dancel is hereby **DISBARRED** for violating Rule 12.03, Canon 12 and Rule 18.04, Canon 18 of the Code of Professional Responsibility and his name is **ORDERED STRICKEN OFF** from the Roll of Attorneys.

Let copies of this Decision be furnished the Office of the Bar Confidant to be appended to Atty. Dancel's personal record as a member of the Bar, the Integrated Bar of the Philippines, the Office of the Court Administrator, the Department of Justice and all courts in the country for their information and guidance.

SO ORDERED.

Peralta, C.J., Perlas-Bernabe, Leonen, Gesmundo, Reyes, Jr., Hernando, Carandang, Lazaro-Javier, Inting, Zalameda, Lopez, Delos Santos, and *Gaerlan, JJ.*, concur.

Caguioa, J., see separate opinion.

Baltazar-Padilla, J., on sick leave.

SEPARATE OPINION

CAGUIOA, *J.*:

The *ponencia* adopts the findings of the Office of the Bar Confidant (OBC) but imposes a stiffer penalty against Atty. Rogelio P. Dancel (respondent), ruling as follows:

WHEREFORE, respondent Atty. Rogelio P. Dancel is hereby **DISBARRED** for violating Rule 12.03, Canon 12 and Rule 18.04,

Canon 18 of the Code of Professional Responsibility and his name is **ORDERED STRICKEN OFF** from the Roll of Attorneys.[1]

At the outset, I express my agreement with the *ponencia* in finding respondent liable for violating Canon 12,[2] Rule 12.03,[3] Canon 18,[4] and Rule 18.04[5] the Code of Professional Responsibility. Respondent's propensity for filing motions for extension of time to file pleadings and then not filing the same, and his blatant disregard of the lawful orders of the Court warrant a finding of administrative liability against him.

Undoubtedly, respondent violated his duties toward his client as well as to the Court, for which he must be held accountable. Be that as it may, the recommended penalty by the OBC of suspension from the practice of law for a period of three (3) years appears more appropriate than disbarment which is too harsh a penalty.

It has been ruled that "[d]isbarment should never be decreed where any lesser penalty could accomplish the end desired. Undoubtedly, a violation of the high moral standards of the legal profession justifies the imposition of the appropriate penalty, including suspension and disbarment. These penalties are imposed with great caution, because they are the most severe forms of disciplinary action and their consequences are beyond repair."[6]

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[1] *Ponencia*, pp. 8-9.

[2] CANON 12 — A lawyer shall exert every effort and consider it his duty to assist in the speedy and efficient administration of justice.

[3] RULE 12.03 A lawyer shall not, after obtaining extensions of time to file pleadings, memoranda or briefs, let the period lapse without submitting the same or offering an explanation for his failure to do so.

[4] CANON 18 — A lawyer shall serve his client with competence and diligence.

[5] RULE 18.04 A lawyer shall keep the client informed of the status of his case and shall respond within a reasonable time to the client's request for information.

[6] *Palalan Carp Farmers Multi-Purpose Coop. v. Dela Rosa*, A.C. No. 12008, August 14, 2019, accessed at <https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/65608>.

On whether the Court will impose the supreme penalty of disbarment, I am of the position that a clear bright line must be drawn between 1) lawyers who patently and unashamedly commit offenses that are, by themselves, gross because they are also violative of penal laws; and 2) those who commit offenses which ostensibly pale in comparison with the first. To illustrate, the first category would include such transgressions rising to the level of committing bigamy, siring illegitimate children with multiple women, and shameless continuous philandering. These acts indubitably show a degree of immorality deserving of the ultimate penalty of disbarment, especially considering that bigamy amounts to a crime. In contrast, while respondent's transgressions in the instant case are serious, his acts still fall under the second category; hence, it does not rise up to the level which necessitates his disbarment.

To be sure, the Court is vested with the authority and discretion to impose either the extreme penalty of disbarment or mere suspension against a lawyer who commits any of the following: (1) deceit; (2) malpractice; (3) gross misconduct; (4) grossly immoral conduct; (5) conviction of a crime involving moral turpitude; (6) violation of the lawyer's oath; (7) willful disobedience of any lawful order of a superior court; or (8) corruptly or willfully appearing as an attorney for a party to a case without authority to do so.[7] Nevertheless, the Court is given leeway to impose the lesser penalty of suspension if it would achieve the "desired [end] of reforming the errant lawyer,"[8] based on its appreciation of the facts and circumstances of the case.

Thus, the Court may exercise restraint in its imposition of penalties, should the circumstances of the case warrant, especially if the errant lawyer did not willfully commit a misconduct that is tantamount to, if not clearly, a grievous criminal act.

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[7] *Anacta v. Resurreccion*, A.C. No. 9074, August 14, 2012, 678 SCRA 352, 361.

[8] *Arma v. Montevilla*, A.C. No. 4829, July 21, 2008, 559 SCRA 1, 10.

As applied to the instant case, I am of the view that sanctioning respondent with the less severe penalty of suspension than disbarment achieves the ends of the disciplinary proceeding which is to penalize an erring lawyer and to preserve the integrity of the legal profession. The period of three years is a very long period already, and suffices, to my mind, to instill in respondent the gravity of his misdeeds.

IN VIEW THEREOF, I vote to **SUSPEND** respondent Atty. Rogelio P. Dancel **FROM THE PRACTICE OF LAW FOR A PERIOD OF THREE (3) YEARS** for violating Canon 12, Rule 12.03, and Canon 18, Rule 18.04 of the Code of Professional Responsibility.

EN BANC

[A.C. No. 8700. September 8, 2020]

NENA YBAÑEZ ZERNA, *Complainant, v.* **ATTY. MANOLO M. ZERNA,** *Respondent*.

SYLLABUS

LEGAL ETHICS; ATTORNEYS; LEAVING THE LEGAL WIFE AND THREE CHILDREN TO MAINTAIN AN ILLICIT AFFAIR WITH ANOTHER WOMAN CONSTITUTES GROSS IMMORALITY; RESPONDENT IS DISBARRED.— There can be no doubt that it is morally reprehensible for a married person to maintain intimate relations with another person of the opposite sex other than his or her spouse. All the more reprehensible is respondent's act of leaving his wife and three children to maintain an illicit relationship with another woman with little to no attempt on his part to be discreet about his liaison. Such acts of engaging in illicit relationships with other women during the subsistence of his marriage to the complainant constitutes grossly immoral conduct warranting the imposition [of] appropriate sanctions. With regard to the penalty to be imposed, this Court finds the recommended penalty of suspension from the practice of law for three (3) years too light given the infraction committed by respondent. In numerous occasions, this Court has revoked the licenses of members of the Bar who were proven to have not only failed to retain good moral character in their professional and personal lives, but have also made a mockery of the institution of marriage by maintaining illicit affairs. In *Toledo v. Toledo*, the Court disbarred respondent Jesus B. Toledo for having abandoned his lawful wife and cohabited with another woman who had borne him a child. x x x [R]espondent Manolo M. Zerna is found **GUILTY** of **GROSS IMMORALITY** and is hereby **DISBARRED** from the practice of law.

LEONEN, *J., dissenting opinion*:

1. LEGAL ETHICS; ATTORNEYS; GROSS IMMORALITY, CONCEPT OF.— An act, to constitute gross immorality and

be a ground for disbarment, must be of such extent as to constitute a criminal offense, or it must be so corrupt as to be reprehensible to a high degree. The gravity of the act should be one that diminishes the public's confidence in the rule of law, in line with the long-standing concept that an administrative case against a lawyer is primarily a case that involves the protection of the public good. It is not a private suit that settles or vindicates private rights. Hence, the conduct complained of "must be so gross as to be 'willful, flagrant, or shameless,' so much so that it 'shows a moral indifference to the opinion of the good and respectable members of the community."

2. ID.; ID.; ID.; GROSS IMMORALITY, NOT A CASE OF; THE FACTS AND THE EVIDENCE RELIED ON BY THE *PONENCIA* ARE INSUFFICIENT TO ESTABLISH GROSS IMMORALITY.— The *ponencia* rules that respondent maintained adulterous and illicit affairs with several women during his marriage with the complainant, upholding the Integrated Bar of the Philippines Commissioner's findings[.] x x x These findings place heavy weight on the supposed meaning of the private messages exchanged between respondent and one of the women, Grace. The *ponencia* concludes that the words *"take care of yourself always," "wish you were here,"* and *"looking forward to that day we meet,"* signify an illicit relationship between the two, characterizing these messages as affectionate words that could only be said in the context of a romantic relationship. I disagree. These words on their own, although affectionate, are not sufficient to conclude that there was an illicit relationship between the two. The messages that respondent sent were equivocal and subject to different interpretations. Telling another person to take care of themselves or that they are looking forward to their company does not always mean there is an ongoing romantic relationship between the two. While these words may be considered playful especially considering that respondent is a married man, I do not agree that they are enough to judge a person as grossly immoral. Other pieces of evidence considered involve sworn statements by complainant's witnesses who characterize respondent's conduct towards other women as "romantic," and "could only have been demonstrated by lovers." In my view, this Court cannot simply rely on the observations made by third persons as to the true status of respondent's relationships with other women.

Respondents' words and actions should be evaluated on their own as against an objective criterion to determine whether they may be considered grossly immoral. Otherwise, we run the risk of allowing an arbitrary standard based on third persons' impressions to govern private relations between two individuals. I have previously stated that "an objective criterion of immorality is that which is tantamount to an illegal act." I do not agree that the facts relied on by the *ponencia* are sufficient to meet this standard.

D E C I S I O N

***PER CURIAM*:**

This administrative case stemmed from a Complaint-Affidavit[1] for disbarment dated August 6, 2010 filed by Nena Ybañez Zerna (*complainant*) against her husband, Atty. Manolo M. Zerna (*respondent*), charging the latter with gross immorality.

The facts are as follows.

Complainant and respondent were married on May 6, 1990 at the Mary Immaculate Church in Dumaguete City. Their union produced three daughters: Phoebe Manelle, Kristine Anne, and June Evangel.

In May 1999, respondent took his oath as a member of the Bar.

Complainant alleged that after passing the Bar, respondent stopped extending financial support to their children and started having illicit affairs with women.

In September 1999, complainant discovered that respondent was involved with a *balikbayan* named Grace, whom he met up with in Cebu City, based on their email correspondence. This affair did not last long. By December 1999, respondent was engaged in another illicit relationship with a woman named Judelyn.

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[1] *Rollo*, pp. 3-142.

When complainant found out about this affair, she went to the apartment in Dumaguete City where Judelyn lived and was surprised when it was respondent himself who opened the door. Complainant then had a confrontation with respondent and Judelyn, wherein respondent confessed about the affair and told complainant that between her and Judelyn, he would choose the latter. In spite of her husband's confession, complainant was still able to convince him to go home with her. Judelyn and respondent, however, continued their relationship.

Complainant claimed that because of her husband's extramarital affairs, they started having frequent arguments and fights. On March 14, 2001, respondent mauled complainant after she confronted him about a letter she received which was purportedly sent by Judelyn. She then filed a criminal complaint for Less Serious Physical Injuries against the respondent before the Provincial Prosecutor's Office of Negros Oriental. After the said incident, the complainant decided to leave the respondent as she could no longer take his emotional, psychological, and physical abuse.

The complaint further alleged that apart from Judelyn, respondent maintained romantic relations with another woman named Evelyn Martinez *(Evelyn)*. Complainant said she discovered the affair when she saw the two having a dinner date in a restaurant in Tanjay City. Thereafter, she would see respondent and Evelyn roaming around the city riding either her husband's motorcycle or his car. On July 5, 2009, complainant filed criminal charges against respondent for concubinage,[2] for allegedly openly cohabiting with Evelyn and siring a child with the latter. Complainant claimed that respondent abandoned his financial obligation to his legal family, resulting in severe financial difficulties as well as mental and emotional anguish.[3]

In his Comment,[4] respondent countered that while he and complainant indeed got married on May 6, 1990, he categorically

[2] *Id.* at 128-140.

[3] *Id.* at 17.

[4] *Id.* at 150-164.

denied that he was still legally married to the complainant.[5] Respondent explained that it was only when he took up law several years after they contracted marriage that he realized his union with complainant was void *ab initio* for lack of a valid marriage license, as complainant allegedly forged his signature and obtained a marriage license even without his personal appearance.[6] Respondent said that despite such realization, he did not have their marriage declared void *ab initio* as their children would only suffer further. Respondent added that complainant never supported him either financially or emotionally as a dutiful wife should. He denied the accusation that he failed to give support to his children, and that he abandoned his family.[7] He, likewise, denied complainant's allegations of concubinage, claiming that these were brought about by complainant's misplaced and unfounded jealousy. He claimed that Grace was a mere acquaintance and prospective client; that Judelyn was just a friend; and that Evelyn was just a close family friend.

The matter was referred to the Integrated Bar of the Philippines *(IBP)* for investigation, report, and recommendation.[8] In his Report and Recommendation[9] dated November 15, 2011, Commissioner Oliver A. Cachapero of the IBP-Commission on Bar Discipline found merit in the complaint and recommended that respondent be suspended from the practice of law for a period of one (1) year.

The IBP Commissioner found that there was enough evidence to hold respondent administratively liable for maintaining illicit affairs despite him being married to complainant; that the email messages of respondent to Grace revealed a romantic relationship between the two; that the words used in their email messages

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[5] *Id.* at 150.

[6] *Id.* at 151.

[7] *Id.* at 158.

[8] *Id.* at 176.

[9] *Id.* at 338-341.

i.e., "*take care of yourself always*," "*wish you were here*," "*looking forward to that day we meet*," were suggestive and showed affection and loving concern towards each other; that the same do not point to an exchange of messages not just between a lawyer and a client but between lovers; that as regards Judelyn, the alleged confession about their affair was too compelling an evidence for complainant, given that respondent did not refute the same; that the Affidavits[10] of complainant's witnesses Jeffrey Villegas and Val C. Grapa revealed the romantic conduct of respondent and Judelyn that could only have been demonstrated by lovers; and that as regards Evelyn, respondent's relationship was even more open as their displays of affection in public were done without any inhibition; and that the Affidavits[11] of complainant's witnesses, Joselito Sido and Jovito Cipres were, likewise, revealing as respondent and Evelyn were described as a couple who unabashedly displayed their affection for each other in public.

> In gist, Respondent and his partners showed intimacy when said Respondent possesses a legal impediment to marry and/or openly covet a lover. Thus for his conduct, it is shown that Respondent is wanting in moral character in honesty, probity and good demeanor. To be sure, he conducted himself in an immoral manner.
>
> His claim that his marriage to Complainant is void *ab initio* can never justify the immoral conduct he had shown because no judicial declaration has been made in that regard.[12]

On September 28, 2013, the IBP Board of Governors issued Resolution No. XX-2013-72[13] adopting and approving, with modification, the Report and Recommendation of the IBP Commissioner, and suspending respondent from the practice of law for three (3) years instead of one (1) year.

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[10] *Id.* at 45, 46.

[11] *Id.* at 90, 92.

[12] *Id.* at 340-341.

[13] *Id.* at 337.

On April 18, 2016, the Court resolved to require the complainant to report to the Court within ten (10) days from notice the veracity of the "death" of the respondent, it appearing that the copy of the Court's Resolution dated August 13, 2014 which, among others, noted the Notice of Resolution No. XX-2013-72 dated September 28, 2013 of the IBP Board of Governors suspending respondent from the practice of law was returned unserved, with postal carrier's notation "RTS-addressee deceased" on the envelope.[14]

On December 5, 2018, the Court resolved to deem the April 18, 2016 Resolution served on complainant, it appearing that the copy of the same sent to her was, likewise, returned unserved with postal carrier's notation "RTS-unclaimed" on the envelope.[15]

On January 30, 2019, the Court resolved to direct the IBP and the Office of the Bar Confidant to verify within ten (10) days from notice the veracity of respondent's death.[16]

On May 14, 2019, the IBP National Secretary submitted to the Court its compliance with the Court's January 30, 2019 Resolution, informing the Court that as of that date, the IBP National Office had not officially received any information about the death of respondent Atty. Manolo M. Zerna and was, thus, unable to confirm the same.[17] In view of the foregoing, the Office of the Bar Confidant recommended that the case be resolved by the Court.[18]

After a thorough review of the records, the Court agrees with the finding of the IBP Commission on Bar Discipline and IBP Board of Governors that the complainant has presented enough evidence to substantiate her claim that respondent Atty. Manolo M. Zerna is guilty of gross immorality and may,

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[14] *Id.* at 346.

[15] *Id.* at 354.

[16] *Id.* at 355.

[17] *Id.* at 357.

[18] *Id.* at 358.

therefore, be removed or suspended by the Supreme Court for conduct unbecoming a member of the Bar.[19]

The *Code of Professional Responsibility* mandates all lawyers to possess good moral character at the time of their application for admission to the Bar, and requires them to maintain such character until their retirement from the practice of law.[20] In this regard, the Code states:

> Rule 1.01 — A lawyer shall not engage in unlawful, dishonest, immoral or deceitful conduct.
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> x x x x x x x x x
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> 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.
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> x x x x x x x x x
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> Rule 7.03 — A lawyer shall not engage in conduct that adversely reflects on his fitness to practice law, nor should he, whether in public or private life, behave in a scandalous manner to the discredit of the legal profession.

Time and again, this Court has emphasized that as officers of the court, lawyers must not only, in fact, be of good moral character but must also be seen to be of good moral character in leading lives in accordance with the highest moral standards of the community.[21] More specifically, a member of the Bar and officer of the Court is required not only to refrain from adulterous relationships or keeping mistresses but also to conduct himself as to avoid scandalizing the public by creating the belief that he is flouting those moral standards.[22]

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[19] Rules of Court, Rule 138, Sec. 27.

[20] *Daisy D. Panagsagan v. Atty. Bernie Y. Panagsagan*, A.C. No. 7733, October 1, 2019.

[21] *Barrientos v. Daarol*, 291-A Phil. 33, 44 (1993); *Arnobit v. Atty. Arnobit*, 590 Phil. 270, 276 (2008).

[22] *Advincula v. Atty. Advincula*, 787 Phil. 101, 112 (2016).

In the present case, complainant alleged that respondent carried on a number of adulterous and illicit relations throughout their marriage, eventually abandoning her and their children to openly cohabit with one paramour. Through pieces of documentary evidence in the form of email messages and photos, among others, as well as the corroborating affidavits of her witnesses, complainant was able to establish respondent's illicit relations with other women, particularly Evelyn, through substantial evidence which is necessary to justify the imposition of administrative penalties on a member of the Bar.

On the other hand, respondent's main defense against complainant's asseverations was that his marriage with complainant was void *ab initio*, a defense that is untenable as respondent, a lawyer, should know that Article 40 of *The Family Code*, which was already in effect at the time of respondent's marriage to complainant, states that the absolute nullity of a previous marriage may not be invoked for purposes of remarriage unless there is a final judgment declaring such previous marriage void. Thus, under the law, even if respondent's defense that his marriage to complainant was void *ab initio* because there was no valid marriage license were true, their marriage is still deemed valid unless declared otherwise in a judicial proceeding.

As against complainant's overwhelming and detailed allegations of his marital indiscretions, respondent only offered self-serving denials. Basic is the principle that denials are weak especially if unsupported by evidence.[23] Thus, it bears emphasis that aside from respondent's claim that complainant was not the hapless and pitiful wife she claimed to be[24] and that complainant's allegations of his infidelities were purely brought about by misplaced and unfounded jealousy, respondent did not present countervailing evidence to substantiate his bare allegations.

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[23] *Amalia R. Ceniza v. Atty. Eliseo B. Ceniza, Jr.*, A.C. No. 8335, April 10, 2019.

[24] *Rollo*, p. 158.

While this Court is cognizant that cases such as this usually include self-serving arguments, this Court finds that between the two parties, it was complainant who was able to build her case against respondent. Thus, this Court will not deviate from the findings of the IBP Commission on Bar Discipline that there was enough evidence to support the claims of gross immorality against the respondent.

There can be no doubt that it is morally reprehensible for a married person to maintain intimate relations with another person of the opposite sex other than his or her spouse. All the more reprehensible is respondent's act of leaving his wife and three children to maintain an illicit relationship with another woman with little to no attempt on his part to be discreet about his liaison. Such acts of engaging in illicit relationships with other women during the subsistence of his marriage to the complainant constitutes grossly immoral conduct warranting the imposition of appropriate sanctions.

With regard to the penalty to be imposed, this Court finds the recommended penalty of suspension from the practice of law for three (3) years too light given the infraction committed by respondent. In numerous occasions, this Court has revoked the licenses of members of the Bar who were proven to have not only failed to retain good moral character in their professional and personal lives, but have also made a mockery of the institution of marriage by maintaining illicit affairs.

In *Toledo v. Toledo*,[25] the Court disbarred respondent Jesus B. Toledo for having abandoned his lawful wife and cohabited with another woman who had borne him a child.

In *Narag v. Narag*,[26] respondent Dominador M. Narag was disbarred after he abandoned his family to live with a 22-year-old who was his former student and with whom he begot two (2) children.

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[25] 117 Phil. 768 (1963).

[26] 353 Phil. 643 (1998).

In *Dantes v. Dantes*,[27] the Court imposed the penalty of disbarment on the respondent lawyer Crispin G. Dantes who maintained illicit relationships with two different women during the subsistence of his marriage to the complainant.

The Court need not delve into the question of whether respondent was guilty of concubinage, a matter which is within the jurisdiction of the Regional Trial Court. It is enough that the records of this administrative case established through substantial evidence the findings that indeed respondent, while married to complainant, had been carrying on an illicit affair and living with another woman, a grossly immoral conduct and only indicative of an extremely low regard for the fundamental ethics of his profession.

WHEREFORE, respondent Manolo M. Zerna is found **GUILTY** of **GROSS IMMORALITY** and is hereby **DISBARRED** from the practice of law.

Let respondent's name be stricken off from the Roll of Attorneys immediately, and furnish the Bar Confidant, the Integrated Bar of the Philippines and all courts throughout the country with copies of this Decision.

SO ORDERED.

Peralta, C.J., Perlas-Bernabe, Caguioa, Gesmundo, Reyes, Jr., Hernando, Carandang, Lazaro-Javier, Inting, Zalameda, Lopez, Delos Santos, and *Gaerlan, JJ.*, concur.

Leonen, J., see dissenting opinion.

Baltazar-Padilla, J., on leave.

DISSENTING OPINION

LEONEN, *J.*:

I respectfully disagree with the finding that respondent Atty. Manolo Zerna (Atty. Zerna) should be disbarred. Considering the evidence available, the penalty of suspension should suffice.

[27] 482 Phil. 64 (2004).

This case involves a complaint for disbarment filed by respondent's wife. She charges her husband with gross immorality for having illicit affairs with other women.

I reiterate my position that this Court should be cautious in administrative cases involving gross immorality. For these types of cases, only cases filed by aggrieved parties should be entertained so as not to run the risk of unduly intruding into intimate relationships of couples, which are beyond this Court's powers.[1]

Moreover, a clear, objective, and secular standard should be applied in cases of gross immorality, so that this Court can avoid imposing arbitrary standards of morality as benchmarks for the legal profession.

An act, to constitute gross immorality and be a ground for disbarment, must be of such extent as to constitute a criminal offense, or it must be so corrupt as to be reprehensible to a high degree.[2] The gravity of the act should be one that diminishes the public's confidence in the rule of law,[3] in line with the long-standing concept that an administrative case against a lawyer is primarily a case that involves the protection of the public good.[4] It is not a private suit that settles or vindicates private rights. Hence, the conduct complained of "must be so gross as to be 'willful, flagrant, or shameless,' so much so that it "shows a moral indifference to the opinion of the good and respectable members of the community."[5]

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[1] J. Leonen, Separate Opinion in *Anonymous Complaint v. Dagala*, 814 Phil. 103, 136-156 (2017) [Per Curiam, En Banc].

[2] *Reyes v. Wong*, 159 Phil. 171, 177 (1975) [Per J. Makasiar, First Division]

[3] *Perfecto v. Esidera*, 764 Phil. 384, 399 (2015) [Per J. Leonen, Second Division].

[4] *See Kimteng v. Young*, 765 Phil. 944 (2015) [Per J. Leonen, Second Division].

[5] *Arciga v. Maniwang*, 193 Phil. 730, 735 (1981) [Per J. Aquino, Second Division].

The *ponencia* rules that respondent maintained adulterous and illicit affairs with several women during his marriage with the complainant, upholding the Integrated Bar of the Philippines Commissioner's findings:

> The IBP Commissioner found that there was enough evidence to hold respondent administratively liable for maintaining illicit affairs despite him being married to complainant; that the email messages of respondent to Grace revealed a romantic relationship between the two; that the words used in their email messages *i.e.*, "*take care of yourself always,*" "*wish you were here,*" "*looking forward to that day we meet,*" were suggestive and showed affection and loving concern towards each other; that the same do not point to an exchange of messages not just between a lawyer and a client but between lovers; that as regards Judelyn, the alleged confession about that affair was too compelling an evidence for complainant, given that respondent did not refute the same; that the Affidavits of complainant's witnesses Jeffrey Villegas and Val C. Grapa revealed the romantic conduct of respondent and Judelyn that could only have been demonstrated by lovers; and that as regards Evelyn, respondent's relationship as even more open as their displays of affection in public were done without any inhibition; and that the Affidavits of complainant's witnesses, Joselito Sido and Jovito Cipres were, likewise, revealing as respondent and Evelyn were described as a couple who unabashedly displayed their affection for each other in public.[6]

These findings place heavy weight on the supposed meaning of the private messages exchanged between respondent and one of the women, Grace. The *ponencia* concludes that the words "*take care of yourself always*," "*wish you were here*," and "*looking forward to that day we meet*," signify an illicit relationship between the two, characterizing these messages as affectionate words that could only be said in the context of a romantic relationship.

I disagree. These words on their own, although affectionate, are not sufficient to conclude that there was an illicit relationship between the two. The messages that respondent sent were equivocal and subject to different interpretations. Telling another

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[6] *Ponencia*, pp. 3-4.

person to take care of themselves or that they are looking forward to their company does not always mean there is an ongoing romantic relationship between the two. While these words may be considered playful especially considering that respondent is a married man, I do not agree that they are enough to judge a person as grossly immoral.

Other pieces of evidence considered involve sworn statements by complainant's witnesses who characterize respondent's conduct towards other women as "romantic," and "could only have been demonstrated by lovers." In my view, this Court cannot simply rely on the observations made by third persons as to the true status of respondent's relationships with other women. Respondents' words and actions should be evaluated on their own as against an objective criterion to determine whether they may be considered grossly immoral.[7] Otherwise, we run the risk of allowing an arbitrary standard based on third persons' impressions to govern private relations between two individuals.

I have previously stated that "an objective criterion of immorality is that which is tantamount to an illegal act."[8] I do not agree that the facts relied on by the *ponencia* are sufficient to meet this standard. The *ponencia* rules that respondent is grossly immoral because:

> [I]t is morally reprehensible for a married person to maintain intimate relations with another person of the opposite sex other than his or her spouse. All the more reprehensible is respondent's act of leaving his wife and three children to maintain an illicit relationship with another woman with little to no attempt on his part to be discreet about his liaison.[9]

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[7] *See* J. Leonen, Dissenting Opinion in *Sabillo v. Atty. Lorenzo*, A.C. No. 9392, December 4, 2018, 9 [Per Curiam, En Banc] *citing* J. Leonen, Separate Opinion in *Anonymous Complaint v. Dagala*, 814 Phil. 103 (2017) [Per Curiam, En Banc].

[8] Id.

[9] *Ponencia*, p. 6.

However disagreeable his conduct may be, respondents' actions do not constitute an illegal act for which he can be adjudged as grossly immoral. The *ponencia* refused to delve into the question of whether respondent is guilty of concubinage,[10] saying that this should be heard in a criminal case before the Regional Trial Court.[11] However, the question in an administrative case for gross immorality is not respondent's guilt for committing a crime for which he must suffer a criminal penalty, but whether his acts are tantamount to this crime so as to strip him of his license to practice law. I find that they are not.

Nevertheless, I still find him administratively liable for violation of the Code of Professional Responsibility. In Canon 7, Rule 7.03:

> 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.
>
> . . . . . .
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> 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.

Lawyers are bound at all times to conduct themselves in a manner consistent with the integrity and dignity of the profession. They should be cautious not only in the practice of law but

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[10] REV. PEN. CODE, Art. 334.

ARTICLE 334. *Concubinage*. — Any husband who shall keep a mistress in the conjugal dwelling, or, shall have sexual intercourse, under scandalous circumstances, with a woman who is not his wife, or shall cohabit with her in any other place, shall be punished by *prision correccional* in its minimum and medium periods.

The concubine shall suffer the penalty of *destierro*.

[11] *Ponencia*, p. 7.

also in their personal dealings,[12] as they may be disciplined for "gross misconduct not connected with [their] professional duties, which [show them] to be unfit for the office and unworthy of the privileges which [their] license and the law confer to [them]."[13] Both public and private lives of lawyers must measure up to this standard.

Thus, I find that respondent's conduct, while not grossly immoral, is highly improper and is inconsistent with the truth and honor owing to the office of being an attorney.

ACCORDINGLY, I vote to **SUSPEND** Atty. Manolo M. Zerna from the practice of law for three (3) years.

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[12] *Agno v. Cagatan*, 580 Phil. 1, 17 (2008) [Per J. Leonardo-De Castro, En Banc].

[13] *Enriquez v. De Vera*, 756 Phil. 1, 13 (2015) [Per J. Leonen, Second Division].

EN BANC

[A.C. No. 10713. September 8, 2020]
(Formerly CBD Case No. 15-4731)

BRYCE RUSSEL MITCHELL, *Complainant, v.* **ATTY. JUAN PAOLO F. AMISTOSO,** *Respondent.*

SYLLABUS

1. LEGAL ETHICS; ATTORNEYS; NATURE OF DISCIPLINARY PROCEEDINGS AGAINST LAWYERS, EXPLAINED.— Disciplinary proceedings against lawyers are *sui generis*. Neither purely civil nor purely criminal, they do not involve a trial of an action or a suit, but is rather an investigation by the Court into the conduct of one of its officers. Not being intended to inflict punishment, it is in no sense a criminal prosecution. Accordingly, there is neither a plaintiff nor a prosecutor therein. It may be initiated by the Court *motu proprio*. Public interest is its primary objective, and the real question for determination is whether or not the attorney is still a fit person to be allowed the privileges as such. Hence, in the exercise of its disciplinary powers, the Court merely calls upon a member of the Bar to account for his actuations as an officer of the Court with the end in view of preserving the purity of the legal profession and the proper and honest administration of justice by purging the profession of members who by their misconduct have proved themselves no longer worthy to be entrusted with the duties and responsibilities pertaining to the office of an attorney. Corollary, an administrative proceeding against a lawyer continues despite the desistance of a complainant, or failure of the complainant to prosecute the same, or *as in this case*, the failure of respondent to answer the charges against him despite numerous notices.

2. ID.; ID.; NEGLIGENT DISREGARD OF DUTIES AS A LAWYER AND WANTON BETRAYAL OF A CLIENT'S TRUST CONSTITUTE MALPRACTICE AND GROSS MISCONDUCT; PENALTY.— Atty. Amistoso demonstrated not just a negligent disregard of his duties as a lawyer but a wanton betrayal of the trust of his client, the Court, and the public, in general. His acts constitute malpractice and gross

misconduct in his office as an attorney. Atty. Amistoso's misconduct, and appalling indifference to his duty to his client, the courts and society render him unfit to continue discharging the trust reposed on him. For the injury he caused to the complainant because of his malpractice, he must be made to suffer the commensurate penalty. Thus, we deem a three-year suspension from the practice of law an appropriate penalty for Atty. Amistoso's gross misconduct in his professional dealings with the complainant.

3. ID.; ID.; DUE TO LACK OF EVIDENCE, THE COURT CANNOT ORDER RESPONDENT TO RETURN THE AMOUNT HE ALLEGEDLY RECEIVED AS PROFESSIONAL FEES; NEITHER THE COURT REQUIRE RESPONDENT TO MAKE THE PAYMENT FOR THE AMOUNT HE BORROWED FROM COMPLAINANT WHERE SUCH AMOUNT WAS A SEPARATE AND DISTINCT TRANSACTION AND NOT INTRINSICALLY LINKED TO HIS PROFESSIONAL ENGAGEMENT.— [T]he Court would have required Atty. Amistoso to return the moneys which he received as attorney-in-fact for handling the annulment case of complainant, however, due to lack of evidence, we cannot determine the exact amount Atty. Amistoso received as professional fees. Complainant failed to prove that he has actually paid the amount of ₱800,000.00 as professional fees as the records are devoid of evidence showing any proof of payment. The unsigned engagement proposal, while it contains the proposed professional fee, cannot be raised as evidence to prove that he had actually paid such amount to Atty. Amistoso. As to the amount of ₱65,000.00 which Atty. Amistoso borrowed from complainant due to the former's family's financial difficulties, We, likewise, cannot require Atty. Amistoso to return the same to complainant. In disciplinary proceedings against lawyers, the only issue is whether the officer of the court is still fit to be allowed to continue as a member of the Bar. Thus, the Court is not concerned with the erring lawyer's civil liability for money received from his client in a transaction separate, distinct, and not intrinsically linked to his professional engagement. Accordingly, We cannot order Atty. Amistoso to make the payment for the ₱65,000.00 he borrowed from complainant.

D E C I S I O N

PERALTA, *C.J.*:

Before us is a Complaint-Affidavit[1] filed by Bryce Russel Mitchell *(complainant)* against respondent Atty. Juan Paolo F. Amistoso *(Atty. Amistoso)*, docketed as A.C. No. 10713 for violation of Lawyer's Oath and Code of Professional Responsibility.

The facts are as follows:

Complainant Bryce Russel Mitchell, a citizen of Canada, married, and with residence at 848-F Mayon St., Plaridel 1, Malabanias, Angeles City, Pampanga, alleged that he and Atty. Amistoso had agreed to a professional fee in the amount of Six Hundred Fifty Thousand Pesos (₱650,000.00) for the handling of complainant's annulment case, as indicated in the engagement proposal. The annulment case was thereafter filed and docketed as Civil Case No. 13-13953, entitled "*Bryce Russel Mitchell vs. Mitchie Mae Benerable*," before Branch 113, Regional Trial Court of Pasay City.

During the pendency of the case, complainant alleged that Atty. Amistoso made several cash advances from him, and the total amount he gave to him amounted to ₱800,000.00, which was over and above the agreed professional fee. Complainant further averred that, on March 26, 2014, Atty. Amistoso, due to financial difficulties, also borrowed money from him in the amount of ₱65,000.00, as evidenced by a promissory note marked as Annex "B" of the Complaint-Affidavit.

However, in the course of the annulment case, complainant lamented that Atty. Amistoso vanished completely and failed to return his e-mails and telephone calls. During the scheduled hearings of the case, Atty. Amistoso also failed to appear, as evidenced by Court Orders dated August 28, 2014 and September 25, 2014, respectively.[2] Thus, complainant was constrained to

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[1] *Rollo*, pp. 1-4.

[2] *Id.* at 11 and 12.

hire another lawyer, as collaborating counsel, to handle his annulment case, as evidenced by Formal Entry of Appearance[3] dated November 4, 2014.

On February 23, 2015, the Court resolved to require Atty. Amistoso to Comment on the complaint filed against him for violation of the lawyer's oath and the Code of Professional Responsibility.[4]

In a Resolution[5] dated August 5, 2015, the Court resolved to dispense with the filing of the Comment of Atty. Amistoso, it appearing that the latter has failed to file his Comment on the complaint against him. The Court, thus, resolved to refer the instant complaint to the Integrated Bar of the Philippines *(IBP)* for investigation, report and recommendation within ninety (90) days from receipt.

Before the IBP, a mandatory conference was scheduled on November 26, 2015, but only the complainant appeared. The Commissioner then proceeded to direct the IBP staff to locate the addresses of Atty. Amistoso. Succeeding notices of the conference were sent to Atty. Amistoso's other addresses, but the latter still failed to appear during the scheduled conferences. Thus, on March 9, 2016, the Commissioner ordered the conference terminated and directed the parties to file their respective Position Papers. Both parties, however, failed to file their Position Papers. Thus, the instant case was submitted for report and recommendation.

In its Report and Recommendation[6] dated November 10, 2017, the IBP-Commission on Bar Discipline *(IBP-CBD)* recommended that Atty. Amistoso be suspended from the practice of law for two (2) years for his breach of duties under Canons 17 and 18, and Rule 16.04 of the Code of Professional Responsibility.

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[3] *Id.* at 14.

[4] *Id.* at 17.

[5] *Id.* at 19.

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

In a Resolution[7] dated June 29, 2018, the IBP-Board of Governors adopted and approved, with modification, the IBP-CBD's report and recommendation, and instead recommended that Atty. Amistoso be suspended from the practice of law for two (2) years and fined in the amount of Ten Thousand Pesos (₱10,000.00). It, likewise, recommended that Atty. Amistoso be ordered to return to the complainant the amount of Eight Hundred Sixty-Five Thousand Pesos (₱865,000.00).

RULING

We sustain the findings of the IBP-CBD, except its recommended penalty.

Disciplinary proceedings against lawyers are *sui generis*. Neither purely civil nor purely criminal, they do not involve a trial of an action or a suit, but is rather an investigation by the Court into the conduct of one of its officers. Not being intended to inflict punishment, it is in no sense a criminal prosecution. Accordingly, there is neither a plaintiff nor a prosecutor therein. It may be initiated by the Court *motu proprio*. Public interest is its primary objective, and the real question for determination is whether or not the attorney is still a fit person to be allowed the privileges as such.[8]

Hence, in the exercise of its disciplinary powers, the Court merely calls upon a member of the Bar to account for his actuations as an officer of the Court with the end in view of preserving the purity of the legal profession and the proper and honest administration of justice by purging the profession of members who by their misconduct have proved themselves no longer worthy to be entrusted with the duties and responsibilities pertaining to the office of an attorney.[9] Corollary, an administrative proceeding against a lawyer continues despite the desistance of a complainant, or failure of the complainant

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[7] *Id.* at 35-36.

[8] *Ylaya v. Atty. Gacott*, 702 Phil. 390, 407 (2013).

[9] *Id.*

to prosecute the same, or *as in this case*, the failure of respondent to answer the charges against him despite numerous notices.

Here, the Court has given Atty. Amistoso several opportunities to answer the complaint against him yet no answer came. From the records, the Resolution dated February 23, 2015 sent by the Court to Atty. Amistoso was received by the latter on March 26, 2015 per Court's Registry Return Card No. 23101, yet he failed to comply with the Court's reminders.

The natural instinct of man impels him to resist an unfounded claim or imputation and defend himself. It is totally against our human nature to just remain reticent and say nothing in the face of false accusations. Silence in such cases is almost always construed as implied admission of the truth thereof. Consequently, we are left with no choice but to deduce his implicit admission of the charges levelled against him. *Qui tacet consentive videtur*. Silence gives consent. This instant administrative case will, thus, proceed despite Atty. Amistoso's unwillingness to cooperate in the proceedings.

In the instant case, records show that complainant engaged the services of Atty. Amistoso for the filing of a civil case for annulment of marriage. However, despite such agreement, complainant lamented that Atty. Amistoso failed to comply with his undertakings without giving any valid reason, as shown by his failure to attend the court hearings for the annulment case. He, likewise, failed to communicate with complainant, without any reason, thus, left his client's cause in quandary.

It must be stressed that no lawyer is obliged to advocate for every person who may wish to become his client, but once he agrees to take up the cause of his client, the lawyer owes fidelity to such cause and must be mindful of the trust and confidence reposed in him. Among the fundamental rules of ethics is the principle that an attorney who undertakes an action impliedly stipulates to carry it to its termination, that is, until the case becomes final and executory. A lawyer is not at liberty to abandon his client and withdraw his services without any reasonable

cause and only upon notice appropriate in the circumstances. Any dereliction of duty by a counsel affects the client.[10]

Canon 18, Rule 18.03 requires that a lawyer "shall not neglect a legal matter entrusted to him, and his negligence in connection [therewith] shall render him liable." What amounts to carelessness or negligence in a lawyer's discharge of his duty to his client is incapable of an exact formulation, but the Court has consistently held that the mere failure of a lawyer to perform the obligations due his client is *per se* a violation.[11] Thus, by mere failing to attend court hearings with justifiable reasons, and simply vanishing in thin air, Atty. Amistoso was remiss in the discharge of his responsibility. He, thus, violated the Code of Professional Responsibility.

Further, it likewise appeared that Atty. Amistoso obtained a loan from complainant in the amount of ₱65,000.00, and failed to return the same, as evidenced by the promissory note he issued in favor of the complainant, in violation of Rule 16.04 of the CPR.[12]

We have previously emphasized that it is unethical for a lawyer to obtain loans from complainant during the existence of a lawyer-client relationship between them. The Court has repeatedly emphasized that the relationship between a lawyer and his client is one imbued with trust and confidence. And as true as any natural tendency goes, this "trust and confidence" is prone to abuse. The rule against borrowing of money by a lawyer from his client is intended to prevent the lawyer from taking advantage of his influence over his client. The rule presumes that the client is disadvantaged by the lawyer's ability

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[10] *Venterez v. Atty. Cosme*, 561 Phil. 479, 485 (2007).

[11] *Ylaya v. Atty. Gacott*, *supra* note 8.

[12] Rule 16.04 — A lawyer shall not borrow money from his client unless the client's interests are fully protected by the nature of the case or by independent advice. Neither shall a lawyer lend money to a client except, when in the interest of justice, he has to advance necessary expenses in a legal matter he is handling for the client.

to use all the legal maneuverings to renege on his obligation. Suffice it to say, the borrowing of money or property from a client outside the limits laid down in the CPR is an unethical act that warrants sanction.[13]

Aside from Atty. Amistoso's violation of his duties as a lawyer. We also find deplorable his defiant stance against the IBP and the Court as demonstrated by his repetitive disregard of the IBP's directives, and the Court's orders to file his comment on the complaint. He has missed all scheduled hearings set by the IBP. Due to his non-chalant attitude on the proceedings before the IBP and the Court, this case has dragged on for years. There is, thus, no question that his failure or obstinate refusal without justification or valid reason to comply with the IBP's directives and the Court's orders indicate a lack of respect for rules and procedures.[14]

As an officer of the court, it is a lawyer's duty to uphold the dignity and authority of the court. The highest form of respect for judicial authority is shown by a lawyer's obedience to court orders and processes. Considering Atty. Amistoso's propensity to disregard not only the laws of the land but also the lawful orders of the Court, it only shows him to be wanting in moral character, honesty, probity and good demeanor.

PENALTY

A member of the Bar may be penalized, even disbarred or suspended from his office as an attorney, for violation of the lawyer's oath and/or for breach of the ethics of the legal profession as embodied in the Code of Professional Responsibility. For the practice of law is "a profession, a form of public trust, the performance of which is entrusted to those who are qualified and who possess good moral character." The appropriate penalty for an errant lawyer depends on the exercise of sound judicial discretion based on the surrounding facts.[15]

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[13] *Yu v. Atty. Dela Cruz*, 778 Phil. 557, 564 (2016).

[14] *PO1 Caspe v. Atty. Mejica*, 755 Phil. 312, 321 (2015).

[15] *Jimenez v. Atty. Francisco*, 749 Phil. 551, 574 (2014).

In the instant case, Atty. Amistoso demonstrated not just a negligent disregard of his duties as a lawyer but a wanton betrayal of the trust of his client, the Court, and the public, in general. His acts constitute malpractice and gross misconduct in his office as an attorney. Atty. Amistoso's misconduct, and appalling indifference to his duty to his client, the courts and society render him unfit to continue discharging the trust reposed on him. For the injury he caused to the complainant because of his malpractice, he must be made to suffer the commensurate penalty. Thus, we deem a three-year suspension from the practice of law an appropriate penalty for Atty. Amistoso's gross misconduct in his professional dealings with the complainant.

Further, the Court would have required Atty. Amistoso to return the moneys which he received as attorney-in-fact for handling the annulment case of complainant, however, due to lack of evidence, we cannot determine the exact amount Atty. Amistoso received as professional fees. Complainant failed to prove that he has actually paid the amount of ₱800,000.00 as professional fees as the records are devoid of evidence showing any proof of payment. The unsigned engagement proposal, while it contains the proposed professional fee, cannot be raised as evidence to prove that he had actually paid such amount to Atty. Amistoso.

As to the amount of ₱65,000.00 which Atty. Amistoso borrowed from complainant due to the former's family's financial difficulties, We, likewise, cannot require Atty. Amistoso to return the same to complainant. In disciplinary proceedings against lawyers, the only issue is whether the officer of the court is still fit to be allowed to continue as a member of the Bar. Thus, the Court is not concerned with the erring lawyer's civil liability for money received from his client in a transaction separate, distinct, and not intrinsically linked to his professional engagement.[16] Accordingly, We cannot order Atty. Amistoso to make the payment for the ₱65,000.00 he borrowed from complainant.

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[16] *Yu v. Atty. Dela Cruz, supra* note 13, at 566.

WHEREFORE, the Resolution dated June 29, 2018 of the IBP-Board of Governors, which found respondent Atty. Juan Paolo F. Amistoso **GUILTY** of violation of the Lawyer's Oath and Rule 16.04 of the Code of Professional Responsibility, is **AFFIRMED**. He is **SUSPENDED** for a period of three (3) years from the practice of law, effective upon receipt of this Decision. Atty. Amistoso is **WARNED** that a repetition of the same or similar offense shall be dealt with more severely.

Atty. Juan Paolo F. Amistoso is **DIRECTED** to formally **MANIFEST** to this Court, upon receipt of this Decision, the date of his receipt which shall be the starting point of his suspension. He shall furnish a copy of this Manifestation to all the courts and *quasi*-judicial bodies where he has entered his appearance as counsel.

Let a copy of this Decision be furnished to the Office of the Bar Confidant, to be appended to the personal record of Atty. Amistoso as a member of the Bar; the Integrated Bar of the Philippines; and the Office of the Court Administrator for circulation to all courts in the country for their information and guidance.

This Decision shall be immediately executory.

SO ORDERED.

Perlas-Bernabe, Leonen, Caguioa, Gesmundo, Reyes, Jr., Hernando, Carandang, Lazaro-Javier, Inting, Zalameda, Lopez, Delos Santos, and *Gaerlan, JJ.*, concur.

Baltazar-Padilla, J., on leave.

EN BANC

[A.C. No. 12456. September 8, 2020]

IN RE: ORDER DATED OCTOBER 27, 2016 ISSUED BY BRANCH 137, REGIONAL TRIAL COURT, MAKATI IN CRIMINAL CASE NO. 14-765, *Complainant, v.* ATTY. MARIE FRANCES E. RAMON, *Respondent.*

SYLLABUS

1. LEGAL ETHICS; ATTORNEYS; DISBARMENT; ONCE A LAWYER HAS BEEN DISBARRED THERE IS NO PENALTY THAT COULD BE IMPOSED REGARDING HIS PRIVILEGE TO PRACTICE LAW; NEVERTHELESS THE CORRESPONDING PENALTY SHOULD BE ADJUDGED FOR RECORDING PURPOSES ON THE LAWYER'S PERSONAL FILE IN THE EVENT THAT HE SUBSEQUENTLY FILES A PETITION FOR REINSTATEMENT.— In *Lampas-Peralta v. Ramon*, the Court removed Atty. Ramon's name from the Roll of Attorneys after it was proven that she drafted a fake decision of the CA and exacted exorbitant fees from her clients. On this score, the additional penalty can no longer be imposed upon Atty. Ramon because of her previous disbarment. We do not have double or multiple disbarment in our laws or jurisprudence. Once a lawyer is disbarred, there is no penalty that could be imposed regarding his privilege to practice law. Nevertheless, the corresponding penalty should be adjudged for recording purposes on the lawyer's personal file with the Office of the Bar Confidant, which should be taken into consideration in the event that he subsequently files a petition for reinstatement.

2. ID.; ID.; ID.; THE COURT DOES NOT LOSE ITS EXCLUSIVE JURISDICTION OVER OTHER OFFENSES OF A DISBARRED LAWYER COMMITTED WHILE HE WAS STILL A MEMBER OF THE LEGAL PROFESSION.— Lastly, the Court may impose a fine upon a disbarred lawyer who committed an offense prior to disbarment. The Court does not lose its exclusive jurisdiction over other offenses of a disbarred lawyer committed while he was still a member of the legal profession.

D E C I S I O N

LOPEZ, *J.*:

The penalty of suspension or disbarment can no longer be imposed on a lawyer who had been disbarred except for recording purposes. We observe this rule in this administrative case involving an attorney who practiced law despite her previous suspension.

ANTECEDENTS

On October 27, 2016, the Regional Trial Court Branch 137 of Makati City issued an Order[1] putting on record that Atty. Marie Frances Ramon appeared as private prosecutor in Criminal Case No. 14-765 despite her suspension from the practice of law, thus:

> Let it be made of record, too, that **Atty. Marie Frances E. Ramon again entered her appearance as private prosecutor in this case notwithstanding her suspension from the practice of law for a period of five (5) years** as per the Supreme Court's *en banc* decision in *A.C. No. 11078* dated July 19, 2016. x x x
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> x x x x x x x x x
>
> While the act of Atty. Ramon of continuously appearing in court and practicing law during the period of her five-year suspension may be contemptuous, the court leaves it up to the Office of the Bar Confidant and the Integrated Bar of the Philippines to take necessary action in light of the stern warning embodied in the above-cited decision.[2] (Emphasis supplied.)

Accordingly, the Integrated Bar of the Philippines (IBP) docketed the Order as an administrative complaint against Atty. Ramon.[3] Despite due notice, Atty. Ramon did not file an answer and did not attend the mandatory conference.[4] On March 27,

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[1] *Rollo*, pp. 3-4; penned by Presiding Judge Ethel V. Mercado-Gutay.

[2] *Id*.

[3] *Rollo*, pp. 6-7.

[4] *Id*. at 8-12.

2018, the IBP Commission on Bar Discipline reported that Atty. Ramon violated the suspension order and is guilty of unauthorized practice of law which warrants the penalty of disbarment. The Commission likewise noted that the National Bureau of Investigation arrested Atty. Ramon after she falsified a Decision of the Court of Appeals (CA),[5] *viz*.:

> The rule is clear that when an individual lawyer seeks to circumvent the compelling force of the law, he must be made to answer for that violation.
>
> **In cases where a suspension has been imposed on a lawyer, and yet he continues to practice law, the Supreme Court has been clear x x x that such act constitute[s] malpractice and Gross Misconduct** x x x.
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> x x x x x x x x x
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> A further examination of related incidents relative to the same respondent shows that **she was complicit in an elaborate scheme to sell fake Court of Appeals Decisions. Last March of 2016**, x x x, **she was arrested by the National Bureau of Investigation for allegedly selling fake decisions of the CA** x x x.
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> x x x x x x x x x
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> It appears that the attitude of Respondent Lawyer is aimed at flouting the laws of the land. x x x. This kind of deceitful conduct does not belong to the pristine universe of the law. x x x
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> WHEREFORE, under the attendant circumstances, it is Respectfully RECOMMENDED (sic) corresponding penalty of DISBARMENT from the practice of law be meted against Respondent Lawyer Atty. Marie Frances E. Ramon for her deceitful conduct, disrespect to the IBP and to the Supreme Court of the Philippines, and violation of Canons 1, 1.02 and 11 of the Code of Professional Responsibility.
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> It is likewise recommended that the appropriate investigation into the activities of same lawyer with respect to the illegal sale of fake decisions of the Court of Appeals should also be investigated to prevent any further injury or harm to the public and to the judicial institution.[6]
> (Emphases Supplied)

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

[6] *Id*. at 20-26.

On June 28, 2018, the IBP Board of Governors modified the penalty from disbarment to indefinite suspension from the practice of law, to wit:

> RESOLVED to ADOPT the findings of fact and recommendation of the Investigating Commissioner, **with modification**, recommending instead the imposition upon the Respondent of the penalty of **INDEFINITE SUSPENSION FROM THE PRACTICE OF LAW**, and a **FINE** of Five Thousand Pesos (Php5,000.00) for failure to comply with the directive of the CBD. (Emphasis in the original.)

RULING

The Court adopts the IBP's findings with modification as to the penalty.

It is undisputed that Atty. Ramon was suspended from the practice of law for a period of five years. In *Mercullo v. Ramon*,[7] the Court *en banc* found that Atty. Ramon engaged in dishonest and deceitful conduct. Atty. Ramon obtained substantial amount from her clients and made them believe that she could assist in redeeming the foreclosed property because she is working in the National Home Mortgage Finance Corporation. Yet, Atty. Ramon did not notify her clients that she is no longer connected with such agency. Worse, Atty. Ramon took advantage of her client's full trust and falsely informed them that she had initiated the redemption proceedings. Absent contrary evidence, it is presumed that Atty. Ramon received a copy of the suspension order[8] and must desist from practicing law during such period. Notably, a lawyer's suspension is not automatically lifted. The lawyer must submit the required documents and wait for this Court's order lifting the suspension before resuming the practice of law.[9]

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[7] 790 Phil. 267 (2016).

[8] *Spouses Agner v. BPI Family Savings Bank, Inc.*, 710 Phil. 82 (2013), citing RULES OF COURT, Rule 131, Section 3 (v).

[9] Guidelines for lifting an order suspending a lawyer from the practice of law. See also *Maniago v. De Dios*, 631 Phil. 139, 145-146 (2010).

Here, Atty. Ramon defied the suspension order and appeared as private prosecutor in a criminal case. As such, Atty. Ramon is administratively liable for willfully disobeying the lawful order of a superior court and appearing as an attorney without authority. Apropos is Section 27, Rule 138 of the Rules of Court, thus:

> SECTION 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 wilful disobedience of any lawful order of a superior court**, or for corruptly or **wilfully appearing as an attorney for a party to a case without authority so to do**. The practice of soliciting cases at law for the purpose of gain, either personally or through paid agents or brokers, constitutes malpractice. (Emphases supplied.)

Case law consistently provides an additional suspension of six months on instances involving unauthorized practice of law. In *Molina v. Magat*,[10] *Lingan v. Calubaquib*,[11] *Feliciano v. Bautista-Lozada*,[12] *Ibana-Andrade v. Paita-Moya*,[13] *Paras v. Paras*,[14] and *Valmonte v. Quesada, Jr.*,[15] the respondents were suspended for a period of six months for practicing law despite the previous order of suspension. However, we note that Atty. Ramon had already been disbarred. In *Lampas-Peralta v. Ramon*,[16] the Court removed Atty. Ramon's name from the Roll of Attorneys after it was proven that she drafted a fake decision

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[10] 687 Phil. 1 (2012).

[11] 737 Phil. 191 (2014).

[12] 755 Phil. 349 (2015).

[13] 763 Phil. 687 (2015).

[14] 807 Phil. 153 (2017).

[15] A.C. No. 12487, December 4, 2019.

[16] A.C. No. 12415, March 5, 2019.

of the CA and exacted exorbitant fees from her clients. On this score, the additional penalty can no longer be imposed upon Atty. Ramon because of her previous disbarment. We do not have double or multiple disbarment in our laws or jurisprudence.[17] Once a lawyer is disbarred, there is no penalty that could be imposed regarding his privilege to practice law. Nevertheless, the corresponding penalty should be adjudged for recording purposes on the lawyer's personal file with the Office of the Bar Confidant, which should be taken into consideration in the event that he subsequently files a petition for reinstatement.[18]

Lastly, the Court may impose a fine upon a disbarred lawyer who committed an offense prior to disbarment. The Court does not lose its exclusive jurisdiction over other offenses of a disbarred lawyer committed while he was still a member of the legal profession.[19] In this case, Atty. Ramon disobeyed the orders of the IBP Commission without justifiable reason when she did not file an answer and did not attend the mandatory conference despite due notice. Hence, Atty. Ramon must pay a fine of ₱5,000.00.[20]

FOR THESE REASONS, Atty. Marie Frances E. Ramon is **GUILTY** of unauthorized practice of law in violation of Section 27, Rule 138 of the Rules of Court and is **SUSPENDED** from the practice of law for a period of six months. However, this penalty can no longer be imposed considering that she has already been disbarred. Nevertheless, the penalty should be considered in the event that she should apply for reinstatement.

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[17] *Yuhico v. Gutierrez*, 650 Phil. 225 (2010). See also *Sanchez v. Torres*, 748 Phil. 18 (2014).

[18] *Dumlao, Jr. v. Camacho*, A.C. No. 10498, September 4, 2018, 878 SCRA 595. See also *Rico v. Madrazo, Jr.*, A.C. No. 7231, October 1, 2019.

[19] *Punla v. Maravilla-Ona*, 816 Phil. 776 (2017); *Domingo v. Revilla, Jr.*, A.C. No. 5473, January 23, 2018, 852 SCRA 360; and *Valmonte v. Quesada, Jr.*, *supra*.

[20] *Domingo v. Sacdalan*, A.C. No. 12475, March 26, 2019, citing *Ojales v. Atty. Villahermosa III*, 819 Phil. 1, 2017.

Atty. Marie Frances E. Ramon is also meted a **FINE** in the amount of ₱5,000.00 for disobedience to the orders of the Integrated Bar of the Philippines. These payments shall be made within ten days from notice of this decision.

Let a copy of this Decision be furnished to the Office of the Bar Confidant to be entered into Atty. Marie Frances E. Ramon's records. Copies shall likewise be furnished to the Integrated Bar of the Philippines and the Office of the Court Administrator for circulation to all courts concerned.

SO ORDERED.

Perlas-Bernabe, Leonen, Caguioa, Gesmundo, Reyes, Jr., Carandang, Lazaro-Javier, Inting, Zalameda, Delos Santos, and *Gaerlan, JJ.,* concur.

Peralta, (C.J.) and *Hernando, J.,* no part.

Baltazar-Padilla, J., on leave.

FIRST DIVISION

[A.C. No. 12709. September 8, 2020]

LILIA YUSAY-CORDERO, *Complainant, v.* **ATTY. JUANITO S. AMIHAN, JR.,** *Respondent.*

SYLLABUS

1. LEGAL ETHICS; ATTORNEYS; NOTARIES PUBLIC; NOTARIZATION; EFFECTS THEREOF.— Notarization ensures the authenticity and reliability of a document. It converts a private document into a public one, and renders the document admissible in court without further proof of its authenticity. Courts, administrative agencies and the public at large must be able to rely upon the acknowledgment executed by a notary public and appended to a private instrument. Moreover, notarization is not an empty routine. On the contrary, it engages public interest in a substantial degree and the protection of that interest requires preventing those who are not qualified or authorized to act as a notary public.

2. ID.; ID.; ID.; LAWYER'S OATH; NOTARIZING A DOCUMENT WITHOUT THE REQUIRED COMMISSION IS A VIOLATION OF THE LAWYER'S OATH; CASE AT BAR.— [A] lawyer who notarized a document without the required commission is guilty of violating the Lawyer's Oath and is deemed to engage in deliberate falsehood.

. . .

Here, it is undisputed that Atty. Amihan, Jr. notarized the deed in 2003. However, the office of the clerk of court certified that Atty. Amihan, Jr. was not a commissioned notary public in that year and that no copy of the deed was filed. The investigating commissioner likewise confirmed with the RTC that Atty. Amihan, Jr. has no notarial commission in 2003. In contrast, Atty. Amihan, Jr. presented imprints of his rubber stamps for the year 2003. Yet, they do not contain material information such as his notarial commission number. Atty. Amihan, Jr. also submitted a recommendation letter stating that his appointment as notary public expired on December 31, 2003. Nonetheless, the certification from the clerk of court belied the contents of the letter.

3. REMEDIAL LAW; EVIDENCE; IN AN ADMINISTRATIVE CASE AGAINST A LAWYER, PREPONDERANT EVIDENCE IS NECESSARY WHICH MEANS THAT THE EVIDENCE ADDUCED BY ONE SIDE IS SUPERIOR TO OR HAS GREATER WEIGHT THAN THAT OF THE OTHER.— [I]n an administrative case against a lawyer, preponderant evidence is necessary which means that the evidence adduced by one side is superior to or has greater weight than that of the other. The burden of proof rests upon the complainant. Verily, Lilia proved that Atty. Amihan, Jr. was not a commissioned notary public in 2003.

APPEARANCES OF COUNSEL

Santos Paruñgao Aquino & Santos Law Offices for complainant.

Jerry P. Basiao for respondent.

R E S O L U T I O N

LOPEZ, *J.*:

We determine in this case the administrative liability of a lawyer who notarized a document without a notarial commission.

ANTECEDENTS

In 1976, Spouses Hector Cordero (Hector) and Lilia Yusay-Cordero (Lilia) executed a special power of attorney authorizing Lilia's father, Quirico Yusay Sr. (Quirico, Sr.), to sell and mortgage a land registered under Transfer Certificate of Title No. T-102992.[1] Accordingly, Quirico, Sr. mortgaged the property to the bank and surrendered the certificate of title. On January 22, 2004, Hector passed away. In 2015, Lilia finished paying the loan and received back the certificate of title from the bank. However, Lilia noticed that there is an annotation[2] on the title

[1] *Rollo*, pp. 10-16.

[2] *Id.* at 17.

pertaining to a "Deed of Portion Sale" between her, as seller, represented by her father Quirico Sr., and Quirico Y. Yusay, Jr. and Alberto Y. Yusay, as buyers. The deed was notarized on December 11, 2003 by Atty. Juanito S. Amihan, Jr. (Atty. Amihan, Jr.).[3]

Upon verification, however, Lilia discovered that Atty. Amihan, Jr. is not a commissioned notary public in 2003 and that no copy of the deed was recorded with the Office of the Clerk of Court of the Regional Trial Court (RTC).[4] Accordingly, Lilia filed an administrative complaint[5] against Atty. Amihan, Jr. before the Integrated Bar of the Philippines (IBP) for violation of the Lawyer's Oath and the Canons of Professional Responsibility (CPR). As evidence, Lilia presented the corresponding certifications from the clerk of court. On the other hand, Atty. Amihan, Jr. claimed that he is authorized to notarize documents in 2003. Atty. Amihan, Jr. presented imprints of his rubber stamps indicating the details of his notarial commission for the year 2003,[6] the recommendation letter stating that his appointment expired on December 31, 2003,[7] and the oath of office[8] and appointment as notary public in 2004.[9] Nevertheless, Lilia maintained that the rubber stamps do not establish that Atty. Amihan, Jr. has a valid commission in 2003.[10]

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

[4] *Id.* at 22.

[5] *Id.* at 1-8.

[6] *Id.* at 31. The imprints bear the following information:
JUANITO S. AMIHAN, JR.
NOTARY PUBLIC
UNTIL DECEMBER 31, 2003
PTR NO. 1098595
BACOLOD CITY, 10-04-02
IAN 5520-82044-R

[7] *Id.* at 79.

[8] *Id.* at 80.

[9] *Id.* at 81.

[10] *Id.* at 44-58.

On November 21, 2018, the Commission on Bar Discipline found that Atty. Amihan, Jr. is not a commissioned notary public in 2003, absent a certificate of authority and notarial reports/ register for that year. Moreover, it gave credence to the certification of the clerk of court over the recommendation letter and the rubber stamps which do not prove a valid commission. The investigating commissioner also confirmed with the RTC that Atty. Amihan, Jr. has no notarial commission in 2003. As such, Atty. Amihan, Jr. committed deliberate falsehood in violation of the Lawyer's Oath and Rule 1.01 of the CPR. The Commission recommended a penalty of immediate revocation of notarial commission, disqualification from being commissioned as a notary public for two years, and suspension from practice of law for two years, thus:

> Contrary to his claim, Respondent does not appear that he was commissioned as a notary public for and in the City of Bacolod. **The Respondent, for his part, has been completely unable to submit any kind of proof of his claim that he had a commission as a notary public for and in the City of Bacolod in 2003, or of his submission of notarial reports and notarial register during the said period**. Respondent has only presented the imprints of his rubber stamps indicating his notarial commission details for the year 2003. **He failed to establish that he was certainly commissioned as a notary public nor he wasn't [*sic*] able to produce his Certificate Authority issued by the Executive Judge which evidences the authenticity of his commission**.
>
> Respondent's claim that his authority to notarize documents is conformed thru the Recommendation issued by the Regional Trial Court of Bacolod City does not hold water. **It is the Certificate of Notarial Act and not the Recommendation of the court which authorizes and commission a lawyers as a notary public**.
>
> x x x x x x x x x
>
> Finally, undersigned Commissioner went out of her way to inquire with the Regional Trial Court of Bacolod City if Respondent was indeed issued a notarial commission for 2003. She was [in fact] able to confirm that Respondent had no notarial commission.[11] (Emphases supplied.)

[11] *Id.* at 91-94.

On February 15, 2019, the IBP Board of Governors reduced the penalty of suspension from the practice of law from two years to one year, *viz.*:

> RESOLVED to ADOPT the findings of fact and recommendation of the Investigating Commissioner, with modification, to impose upon the Respondent the penalty of ONE (1) YEAR SUSPENSION FROM THE PRACTICE OF LAW and TWO (2) YEARS DISQUALIFICATION to hold commission as Notary Public, and if currently so engaged, be immediately decommissioned as such.[12]

RULING

The Court adopts the IBP's findings with modification as to the penalty.

Notarization ensures the authenticity and reliability of a document. It converts a private document into a public one, and renders the document admissible in court without further proof of its authenticity. Courts, administrative agencies and the public at large must be able to rely upon the acknowledgment executed by a notary public and appended to a private instrument. Moreover, notarization is not an empty routine. On the contrary, it engages public interest in a substantial degree and the protection of that interest requires preventing those who are not qualified or authorized to act as a notary public.[13] Corollarily, a lawyer who notarized a document without the required commission is guilty of violating the Lawyer's Oath and is deemed to engage in deliberate falsehood. As aptly explained in *Nunga v. Atty. Viray*:[14]

> **Where the notarization of a document is done by a member of the Philippine Bar at a time when he has no authorization or commission to do so, the offender may be subjected to disciplinary action**. For one, performing a notarial without such commission is a

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[12] *Id.* at 87.

[13] *Villaflores-Puza v. Atty. Arellano*, 811 Phil. 313, 315 (2017); *Coronado v. Atty. Felongco*, 398 Phil. 496, 502 (2000); *Talisic v. Atty. Rinen*, 726 Phil. 497, 500 (2014); *Ang v. Atty. Gupana*, 726 Phil. 127, 134-135 (2014).

[14] 366 Phil. 155 (1999).

violation of the lawyer's oath to obey the laws, more specifically, the Notarial Law. Then, too, by making it appear that he is duly commissioned when he is not, he is, for all legal intents and purposes, **indulging in deliberate falsehood, which the lawyer's oath similarly proscribes**. These violations fall squarely within the prohibition of Rule 1.01 of Canon 1 of the Code of Professional Responsibility, which provides: **"A lawyer shall not engage in unlawful, dishonest, immoral or deceitful conduct."**[15] (Emphasis supplied.)

Here, it is undisputed that Atty. Amihan, Jr. notarized the deed in 2003. However, the office of the clerk of court certified that Atty. Amihan, Jr. was not a commissioned notary public in that year and that no copy of the deed was filed. The investigating commissioner likewise confirmed with the RTC that Atty. Amihan, Jr. has no notarial commission in 2003. In contrast, Atty. Amihan, Jr. presented imprints of his rubber stamps for the year 2003. Yet, they do not contain material information such as his notarial commission number. Atty. Amihan, Jr. also submitted a recommendation letter stating that his appointment as notary public expired on December 31, 2003. Nonetheless, the certification from the clerk of court belied the contents of the letter. The prevailing law at the time of notarization in 2003 was the Revised Administrative Code which provides that the oath of office of a notary public and his commission shall be filed and recorded in the Office of the Clerk of Court of the RTC.[16] A certification issued by the clerk of court stating that a lawyer has no notarial commission is sufficient to establish that fact.[17] Indeed, Atty. Amihan, Jr. was unable to submit a copy of his certificate of authority for 2003 and his notarial reports and register for that year. On this point, we stress that in an administrative case against a lawyer, preponderant evidence is necessary which means that the evidence adduced by one side is superior to or has greater weight

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[15] *Id.* at 161.

[16] ADMINISTRATIVE CODE, Sections 236 and 248, as amended by Executive Order No. 41, s. 1945.

[17] *Sps. Frias v. Atty. Abao*, A.C. No. 12467, April 10, 2019.

than that of the other.[18] The burden of proof rests upon the complainant.[19] Verily, Lilia proved that Atty. Amihan, Jr. was not a commissioned notary public in 2003.

In *Cruz-Villanueva v. Atty. Rivera*,[20] the respondent was suspended from the practice of law for one year and barred from being commissioned as notary public for one year for notarizing two documents without a notarial commission. The Court noted that the respondent has no prior administrative record.[21] In *Buensuceso v. Barrera*,[22] the respondent was likewise suspended for one year when he notarized five documents after his commission as notary public expired.[23] Considering that this is Atty. Amihan, Jr.'s first infraction and that the case involved only one document, we deem it proper to impose the penalties of immediate revocation of notarial commission, disqualification from being commissioned as a notary public for one year, and suspension from the practice of law for a period of one year.

FOR THESE REASONS, Atty. Juanito S. Amihan, Jr.'s notarial commission is **IMMEDIATELY REVOKED**. He is also **DISQUALIFIED** from being commissioned as a notary public for a period of one year and **SUSPENDED** from the practice of law for a period of one year. He is likewise **STERNLY WARNED** that a repetition of similar acts will be dealt with more severely.

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 respondent's receipt of this decision. He is **DIRECTED**

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[18] *Aba, et al. v. Attys. De Guzman, Jr., et al.*, 678 Phil. 588, 601 (2011).

[19] *Cruz v. Atty. Centron*, 484 Phil. 671, 675 (2004).

[20] 537 Phil. 409 (2006).

[21] *Id.* at 417-418.

[22] 290-A Phil. 57 (1992).

[23] *Id.* at 62.

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

SO ORDERED.

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

EN BANC

[A.M. No. P-15-3411. September 8, 2020]

CARLITA E. VILLENA-LOPEZ, *Complainant, v.* **RONALDO S. LOPEZ, Junior Process Server, and BUENAFE R. CARASIG, Clerk II, both of the Municipal Trial Court, Paombong, Bulacan,** *Respondents.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; COURT PERSONNEL; NO POSITION EXACTS A GREATER DEMAND FOR MORAL RIGHTEOUSNESS AND UPRIGHTNESS FROM AN INDIVIDUAL THAN IN THE JUIDICIARY.— Although every office in the government service is a public trust, no position exacts a greater demand for moral righteousness and uprightness from an individual than in the judiciary. That is why this Court has firmly laid down exacting standards of morality and decency expected of those in the service of the judiciary. Their conduct, not to mention behavior, is circumscribed with the heavy burden of responsibility, characterized by, among other things, propriety and decorum so as to earn and keep the public's respect and confidence in the judicial service. It must be free from any whiff of impropriety, not only with respect to their duties in the judicial branch but also to their behavior outside the court as private individuals. There is no dichotomy of morality; court employees are also judged by their private morals. Regrettably, in this case, respondents fell short of the exacting standards required of them as employees of the court of justice by engaging in disgraceful and immoral conduct.

2. ID.; ID.; ID.; CESSATION FROM OFFICE BECAUSE OF RESIGNATION DOES NOT WARRANT THE DISMISSAL OF THE ADMINISTRATIVE COMPLAINT FILED WHILE THE PARTY WAS STILL IN SERVICE.— The resignation of respondents from service does not render the administrative case against them moot and academic; neither does it free them from liability. The resignation of a public servant does not

preclude the finding of administrative liability to which he or she shall still be answerable. Cessation from office because of resignation does not warrant the dismissal of the administrative complaint filed while the respondent was still in the service.

3. ID.; ID.; ID.; ID.; ONCE ADMINISTRATIVE CHARGES HAVE BEEN FILED, THIS COURT MAY NOT BE DIVESTED OF ITS JURISDICTION TO INVESTIGATE AND TO ASCERTAIN THE TRUTH.— The OCA acted judiciously in proceeding with the prosecution of the case despite the filing of the affidavit of desistance by complainant. The affidavit of desistance executed by complainant stating that she is no longer interested in further prosecuting the case does not *ipso facto* warrant the dismissal of the case against respondents. Once administrative charges have been filed, this Court may not be divested of its jurisdiction to investigate and to ascertain the truth thereof. For it has an interest in the conduct of those in the service of the Judiciary and in improving the delivery of justice to the people, and its efforts in the direction may not be derailed by complainant's desistance from prosecuting the case she initiated.

D E C I S I O N

DELOS SANTOS, *J.*:

This administrative case stemmed from a Complaint-Affidavit[1] dated 10 May 2013 filed by Carlita E. Villena-Lopez charging Ronaldo S. Lopez, Junior Process Server, and Buenafe R. Carasig, Clerk II, both of the Municipal Trial Court (MTC), Paombong, Bulacan, with disgraceful and immoral conduct.

The Facts of the Case

Carlita E. Villena-Lopez (complainant), a court employee at the Office of the Clerk of Court, Regional Trial Court (RTC), Malolos City, Bulacan, alleged that she and respondent Ronaldo S. Lopez (Lopez) are husband and wife, joined in marriage on 11 February 1995 in a religious ceremony. They are blessed

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

with three children. Their relationship, however, turned sour and they started having problems when Lopez engaged in extra-marital affairs with respondent Buenafe R. Carasig (Carasig). According to complainant, the intimate relationship between respondents was common knowledge in the MTC, Paombong, Bulacan but that it was denied by Lopez when she confronted him.

Sometime in December 2007, Lopez finally left their conjugal home and stayed with his parents. Complainant, nonetheless, kept her silence about her husband's illicit affairs for almost seven years for the sake of their children. However, it was their children who discovered their father's affair when respondents were seen at a family gathering and rode together in their vehicle. When complainant confronted Lopez again, the latter finally admitted his extra-marital relationship with Carasig.

Complainant contended that respondents should be administratively liable for disgraceful and immoral conduct for they have damaged the integrity of the judiciary which name they are bound to protect and preserve as personnel of the court of justice. Complainant added that respondents failed to adhere to the exacting standards of morality and decency, both in the professional and private conduct. Moreover, respondents' open and public display of affection caused psychological, emotional, and spiritual damage not only to complainant but also to her children. Complainant attached to the complaint the photographs gathered from social networks sites showing the intimate relationship between respondents.

In his Comment[2] dated 17 June 2013, Lopez informed the Office of the Court Administrator (OCA) that he had filed his resignation letter dated 27 May 2013 to Judge Rowena H. Rama-Chavez (Judge Rama-Chavez) of MTC, Paombong, Bulacan. He stated that he resigned after 14 years in the service to show his respect for the judiciary and not to avoid any administrative sanctions. He added that he will not file any comment on the

[2] Id. at 16.

complaint and is leaving the matter to the discretion of the Court.

In her Comment[3] dated 18 June 2013, Carasig informed the OCA that she had likewise tendered her resignation letter dated 30 May 2013 to Judge Rama-Chavez and stated in the said letter that she will no longer file any comment on the complaint.

On 25 September 2013, the OCA received the Affidavit of Desistance[4] from complainant stating that she is no longer interested in the prosecution of the case against respondents and accordingly moved for the dismissal of the case.

The OCA's Recommendation

On 14 September, 2015, the OCA reported its findings on the case and recommended as follows —

a. the instant administrative complaint against Ronaldo S. Lopez, Junior Process Server, and Buenafe R. Carasig, Clerk II, both formerly of the Municipal Trial Court, Paombong, Bulacan, be **RE-DOCKETED** as a regular administrative matter;

b. respondents Lopez and Carasig be found **GUILTY** of Disgraceful and Immoral Conduct, and that each of them be **FINED** in the amount of Fifty Thousand Pesos ([₱]50,000.00), to be deducted from the monetary value of their respective leave credits, and the balance, if any, to be paid directly to the Court within thirty (30) days from receipt of notice; and

c. the Finance Management Office be **DIRECTED** to **DEDUCT** the fine of Php50,000.00 imposed against respondents Lopez and Carasig from whatever sums are due to them as accrued leave credits, if sufficient.[5]

Issue

Whether or not respondents are guilty of disgraceful and immoral conduct.

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[3] Id. at 12.

[4] Id. at 21.

[5] Id. at 26. (Emphasis on the original)

The Ruling of the Court

The recommendations of the OCA are well taken.

The image of a court of justice is necessarily mirrored in the conduct, official or otherwise, of the men and women who work thereat, from the judge to the least and lowest of its personnel — hence, it becomes the imperative sacred duty of each and everyone in the court to maintain its good name and standing as a true temple of justice.[6]

Although every office in the government service is a public trust, no position exacts a greater demand for moral righteousness and uprightness from an individual than in the judiciary. That is why this Court has firmly laid down exacting standards of morality and decency expected of those in the service of the judiciary. Their conduct, not to mention behavior, is circumscribed with the heavy burden of responsibility, characterized by, among other things, propriety and decorum so as to earn and keep the public's respect and confidence in the judicial service. It must be free from any whiff of impropriety, not only with respect to their duties in the judicial branch but also to their behavior outside the court as private individuals. There is no dichotomy of morality; court employees are also judged by their private morals.[7] Regrettably, in this case, respondents fell short of the exacting standards required of them as employees of the court of justice by engaging in disgraceful and immoral conduct.

Immorality has been defined to include not only sexual matters but also "conduct inconsistent with rectitude, or indicative of corruption, indecency, depravity, and dissoluteness; or is willful, flagrant or shameless conduct showing moral indifference to opinions of respectable members of the community, and an inconsiderate attitude toward good order and public welfare."[8]

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[6] *Judge Sealana-Abbu v. Laurenciana-Huraño*, 558 Phil. 24, 32 (2007).

[7] *Elape v. Elape*, 574 Phil. 550, 554-555 (2008); citing *Acebedo v. Arquero*, 447 Phil. 76 (2003).

[8] *Gabriel v. Ramos*, 708 Phil. 343, 349 (2013); *Jallorina v. Taneo-Regner*, 686 Phil. 285, 292 (2012); *Judge Sealana-Abbu v. Laurenciana-Huraño*, supra note 6, at 33.

Without question, it is morally reprehensible for a married man to maintain an illicit affair with a woman not his wife, as it is equally disgraceful for a woman to engage in an amorous relationship with a married man. The actions of respondents do not only violate the moral standards expected of employees of the judiciary, but also desecrate the sanctity of the institution of marriage which this Court abhors and punishes.[9]

On several occasions,[10] the Court has held that an illicit affair constitutes disgraceful and immoral conduct and accordingly, subjected the respondent court employees to disciplinary action. The resignation of respondents from service does not render the administrative case against them moot and academic; neither does it free them from liability. The resignation of a public servant does not preclude the finding of administrative liability to which he or she shall still be answerable.[11] Cessation from office because of resignation does not warrant the dismissal of the administrative complaint filed while the respondent was still in the service.[12]

In fact, as aptly ratiocinated by the OCA, the resignation of both respondents when the complaint was filed and their refusal to comment on the complaint and to refute the charges against them strongly manifest their guilt. In administrative proceedings, only substantial evidence, *i.e.*, that amount of relevant evidence that a reasonable mind might accept as adequate to support a conclusion, is required. The standard of substantial evidence is satisfied when there is reasonable ground to believe that the person indicted was responsible for the alleged wrongdoing or misconduct.[13] In this case, substantial evidence weighs against the respondents.

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[9] *Jallorina v. Taneo-Regner*, id.

[10] *Committee on Ethics and Special Concerns v. Naig*, 765 Phil. 1 (2015); *Banaag v. Espeleta*, 677 Phil. 552 (2011); *Elape v. Elape*, supra note 7; *Judge Sealana-Abbu v. Laurenciana-Huraño*, supra note 6.

[11] *Babante-Caples v. Caples*, 649 Phil. 1, 7 (2010).

[12] *Sps. Cabarloc v. Judge Cabusora*, 401 Phil. 376, 385 (2000).

[13] *Babante-Caples v. Caples*, supra note 11, at 5-6.

The OCA acted judiciously in proceeding with the prosecution of the case despite the filing of the affidavit of desistance by complainant. The affidavit of desistance executed by complainant stating that she is no longer interested in further prosecuting the case does not *ipso facto* warrant the dismissal of the case against respondents. Once administrative charges have been filed, this Court may not be divested of its jurisdiction to investigate and to ascertain the truth thereof. For it has an interest in the conduct of those in the service of the Judiciary and in improving the delivery of justice to the people, and its efforts in the direction may not be derailed by complainant's desistance from prosecuting the case she initiated.[14]

Penalty

Under the Uniform Rules on Administrative Cases in the Civil Service Commission,[15] disgraceful and immoral conduct is a grave offense for which the penalty of suspension for six (6) months and one (1) day to one (1) year shall be imposed for the first offense and dismissal for the second.

In *Banaag v. Espeleta*,[16] in view of the resignation of the respondent court interpreter who was found guilty of disgraceful and immoral conduct, a fine in the amount of ₱50,000.00 was instead imposed for her infraction.

In this case, taking into account that respondents have resigned from the service, the imposition by the OCA of a fine in the amount of ₱50,000.00 for each respondent, is proper.

WHEREFORE, respondents Ronaldo S. Lopez and Buenafe R. Carasig are hereby found **GUILTY** of Disgraceful and Immoral Conduct and are each ordered to pay a **FINE** of ₱50,000.00 to be deducted from their respective accrued leave credits, while the balance shall be paid directly to the Court.

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[14] Cf. *Elape v. Elape*, supra note 7.

[15] Section 52 A (15), Uniform Rules on Administrative Cases in the Civil Service.

[16] Supra note 10.

SO ORDERED.

Peralta, C.J., Perlas-Bernabe, Leonen, Caguioa, Gesmundo, Reyes, Jr., Hernando, Carandang, Lazaro-Javier, Inting, Zalameda, Lopez, and *Gaerlan, JJ.*, concur.

Baltazar-Padilla, J., on leave.

FIRST DIVISION

[A.M. No. P-20-4075. September 8, 2020]
(Formerly OCA IPI-18-4786-P)

HON. PAMELA A. BARING-UY, *Complainant, v.* **MELINDA E. SALINAS, Clerk of Court III, and KIM JOVAN L. SOLON, Legal Researcher I, both of Branch 6, Metropolitan Trial Court in Cities, Cebu City, Cebu,** *Respondents*.

SYLLABUS

POLITICAL LAW; ADMINISTRATIVE LAW; COURT PERSONNEL; CLERK OF COURT; THE IMAGE OF THE COURTS AS ADMINISTRATORS AND DISPENSERS OF JUSTICE IS NOT ONLY REFLECTED IN THEIR DECISIONS, RESOLUTIONS, OR ORDERS BUT ALSO MIRRORED IN THE CONDUCT OF THEIR COURT STAFF.— The Code of Conduct for Court Personnel mandates the proper and diligent performance of official duties by court personnel at all times. Every court employee is expected to observe the highest degree of efficiency and competency in his or her assigned tasks. The reason is plain: the image of the courts as the administrators and dispensers of justice is not only reflected in their decisions, resolutions, or orders, but also mirrored in the conduct of their court staff. Hence, a court personnel who falls short of the exacting standards decreed by the Code warrants the imposition of administrative sanctions.

D E C I S I O N

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

In a letter dated January 17, 2017 addressed to Court Administrator Jose Midas P. Marquez, Judge Pamela A. Baring-Uy (Judge Baring-Uy) of the Metropolitan Trial Court in Cities (MTCC), Branch 6, Cebu City alleged that respondents Melinda E. Salinas, Clerk of Court III, and Kim Jovan L. Solon, Legal Researcher I, who was also designated as Criminal Case Clerk-

in-Charge, both of MTCC Branch 6, Cebu City, Cebu committed gross neglect of duty for failure to serve the Order dated June 29, 2016 in Criminal Case No. 154786-R entitled, "*The People of the Philippines vs. Rey Susan Labajo*," a case for violation of Batas Pambansa (BP) Blg. 6.[1]

On August 31, 2016, Judge Baring-Uy received a letter from Jessie Olis Calumpang, Jail Superintendent of the Cebu City Jail (Jail Superintendent Calumpang), inquiring about the status of Criminal Case No. 154786-R and the release order for Rey Suson Labajo (Labajo), the accused therein.

In a Decision[2] dated June 9, 2016, Judge Baring-Uy found Labajo not guilty of violation of BP Blg. 6.

On June 29, 2016, the Decision was promulgated. On the same date, the MTCC issued an Order[3] (subject order) to furnish the Jail Superintendent of the Cebu City Jail with the copy of the said June 9, 2016 Decision, and to release Labajo from detention but only in so far as this case is concerned, unless he is being detained for some other legal causes.

Judge Baring-Uy later learned that the subject order was not served to Jail Superintendent Calumpang. Resultantly, Labajo remained in jail despite his acquittal.

On September 1, 2016, Judge Baring-Uy directed Salinas and Solon to explain in writing their failure to serve the subject order.[4]

In her Letter[5] dated August 23, 2017 addressed to Judge Baring-Uy, Salinas stated that she turned over the case folder of Criminal Case No. 154786-R to Solon after recording it as disposed case in the monthly report. She instructed Solon to

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[1] *Rollo*, p. 59.

[2] Id. at 39-43.

[3] Id. at 50.

[4] Id. at 7.

[5] Id. at 15.

furnish copies of the subject order to the parties. She admitted that she inadvertently failed to verify with Solon whether the subject order was actually transmitted.

For his part, Solon admitted that he inadvertently failed to furnish Jail Superintendent Calumpang with a copy of the subject order. He explained that he "erroneously deemed" that the release of the copy of the June 9, 2016 Decision to Jail Superintendent Calumpang is tantamount to compliance with the June 29, 2016 Order. He apologized to the court and Labajo and emphasized that it was not his intention to delay the administration of justice nor to deprive Labajo of his right to liberty.[6]

On January 4, 2018, the Office of the Court Administrator (OCA) recommended that the Memorandum dated September 1, 2016 issued by Judge Baring-Uy be considered as an administrative complaint for gross neglect of duty against Salinas and Solon and directed them to submit their comments on the charge within ten (10) days from notice.[7]

In her Comment[8] dated March 23, 2018, Salinas referred to her letter dated August 23, 2017 and adopted its contents as part of her submission. She asseverated that she failed to send a copy of the subject order to Jail Superintendent Calumpang in the "sincere yet wrong belief" that Solon already transmitted copies to the parties. She claimed that her failure to inquire about the service of the subject order did not cause grave injury to Labajo's liberty since he has other cases pending before the Regional Trial Court (RTC) of Cebu City for violation of Section 11 of Republic Act (R.A.) No. 9165.[9]

In his Comment[10] dated March 26, 2018, Solon stated that upon receipt of Jail Superintendent Calumpang's letter dated

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[6] Id. at 8.

[7] Id. at 2-4.

[8] Id. at 52-55.

[9] COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002.

[10] *Rollo*, pp. 23-31.

August 31, 2016 asking about the status of Labajo's case, he immediately rectified the error by furnishing Labajo and Jail Superintendent Calumpang, through Jail Officer VR Fernandez, a copy of the subject order. He pointed out that even if it were promptly transmitted to Jail Superintendent Calumpang, Labajo would still remain in detention because of the other pending cases against him warranting his continued confinement. He maintained that the delay in the service of the subject order was not international nor willful and prayed for the dismissal of the complaint against him.

Report and Recommendation of the OCA

In its evaluation and recommendation dated January 22, 2020, the OCA recommended: (1) that the administrative complaint against Salinas and Solon be re-docketed as a regular administrative matter; and (2) that they be found guilty of simple neglect of duty and each of them be ordered to pay a fine of ₱10,000.00 with a stern warning that a repetition of the same or similar acts shall be dealt with more severely.[11]

The OCA declared that Branch Clerk of Court Salinas serves as both custodian of judicial records and administrative officer of the court who is duty-bound to supervise all subordinate personnel to make sure that they perform their duties well. It enunciated that Salinas' failure to closely supervise the transmittal of the subject order reflects her failure to faithfully discharge her functions. Moreover, the OCA stated that when Solon failed to promptly transmit a copy of the subject order, albeit inadvertently, he was remiss in his duty. It noted that as criminal cases clerk-in-charge, the functions of a clerk under the 2002 Revised Manual for Clerks of Court apply to Solon despite the fact that he is occupying the position of a legal researcher. It concluded that the justified incarceration of Labajo cannot alter the fact that Salinas and Solon were remiss in their

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[11] *See* Administrative Matter for Agenda signed by Court Administrator Jose Midas P. Marquez and Deputy Court Administrator Jenny Lind N. Aldecoa-Delorino; id. at 59-64.

sworn duty to perform their respective functions diligently and effectively.

The OCA recommended that a fine in the amount of ₱10,000.00 be imposed on Salinas and Solon as an alternative sanction taking into consideration the fact that this is the first administrative charge against them.

The Court's Ruling

The Court adopts the findings and the recommendation of the OCA except as to the penalty.

The Code of Conduct for Court Personnel mandates the proper and diligent performance of official duties by court personnel at all times. Every court employee is expected to observe the highest degree of efficiency and competency in his or her assigned tasks. The reason is plain: the image of the courts as the administrators and dispensers of justice is not only reflected in their decisions, resolutions, or orders, but also mirrored in the conduct of their court staff. Hence, a court personnel who falls short of the exacting standards decreed by the Code warrants the imposition of administrative sanctions.[12]

Branch Clerk of Court Salinas and Legal Researcher and Criminal Cases Clerk-in-Charge Solon were found administratively liable for simple neglect of duty when they failed to immediately transmit the June 29, 2016 Order to the jail superintendent of the Cebu City Jail.

Jurisprudence defines simple neglect of duty as the failure of an employee or official to provide proper attention to a task expected of him or her, signifying a "disregard of a duty resulting from carelessness or indifference."[13] It is a less grave offense which is punishable by suspension for one month and one day to six months for the first offense, and dismissal from the service for the second offense. Simple neglect of duty presupposes a task expected of an employee.[14]

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[12] *Heirs of Ochea v. Maratas*, 811 Phil. 660 (2017).

[13] *Re: Darwin A. Reci* (Resolution), 805 Phil. 290 (2017).

[14] *Ruñez, Jr. v. Jurado*, A.M. No. 2005-08-SC, December 9, 2005.

Salinas maintained that she handed the case folder of Criminal Case No. 154786-R to Solon with a verbal instruction to furnish the parties with copies of the subject order in accordance with their normal work procedure in managing disposed cases. She acknowledged that she failed to "follow up and check" if copies of the Order were sent to the parties.[15] She, however, stressed that reliance on the regular performance of the task assigned to Solon as officer-in-charge is justified since no return of service is procedurally required as to ensure the actual and proper service of an Order of Release.[16]

As Branch Clerk of Court, Salinas is duty-bound to plan, direct, ***supervise*** and coordinate the activities of all personnel in her branch for effectiveness and efficiency.[17] Her duty to oversee her subordinates imposes upon her greater responsibility in ensuring that they perform their tasks properly, promptly and efficiently. In this case, however, Salinas failed to closely supervise Solon in the performance of his duties. She overly relied on their so-called "normal work procedure" and completely left the task to Solon without taking necessary measures to ensure that the parties timely received a copy of the subject order. Not even an inquiry as to the status of the case was made.

Salinas had been unmindful that even though Solon was the officer-in-charge to look after the criminal cases assigned in the court, at the end of the day, she remains the official custodian of judicial records. She still ***controls and manages all records***, exhibits, documents, properties and supplies of the court pursuant to her non-adjudicatory function.[18] She is chiefly responsible for the shortcomings of subordinates to whom administrative

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[15] *Rollo*, p. 15.

[16] Id. at 54.

[17] Section D (1.3), paragraph 1.3.2.1., Chapter VII of the 2002 Revised Manual for Clerks of Court.

[18] Section D (1.3), paragraph 1.3.2.3., Chapter VII of the 2002 Revised Manual for Clerks of Court.

functions normally pertaining to them are delegated.[19] To the mind of the Court, Salinas must also bear a share of the blame for failure to exercise a higher degree of care and vigilance in supervising her subordinates and managing court records and documents.

Solon does not dispute that it was his task to furnish a copy of the June 29, 2016 Order to Jail Superintendent Calumpang and that he inadvertently failed to promptly perform the same. While the Court accepts the apologies he tendered, Solon must still be held liable for the delay in the performance of his duty. It bears stressing that his failure to discharge his duty with the degree of responsibility and efficiency expected of him could have unduly deprived Labajo of his right to liberty and delayed the administration of justice had Labajo not been detained for some other legal cause. Solon further demonstrated disregard of the significance of his tasks when he admitted that he could no longer remember when and how Salinas gave the case record to him. Neither could he recall that Salinas talked to him about the transmittal of the subject order.

Solon is the Legal Researcher of MTCC Branch 6 of Cebu City. He was designated as Criminal Cases Clerk-in-Charge by Judge Baring-Uy in 2013 in the exigency of the service. When Judge Baring-Uy reported the infraction in 2016, Solon has been acting as clerk-in-charge for three years already. It is thus safe to assume that at that time Solon was already acquainted with the demands of his position and familiar with the duties and responsibilities attached to it. Still, Solon failed to timely transmit the subject order for which he should face disciplinary action.

The Court has consistently impressed upon court officials and employees the heavy burden and responsibility placed on their shoulders, in view of their exalted positions as keepers of the public faith. Any impression of impropriety, misdeed or negligence in the performance of official functions must be

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[19] *Panuncio v. Icaro-Velasco* (Resolution), 357 Phil. 839, 842 (1998).

avoided. Accordingly, we cannot countenance any conduct, act or omission on the part of all those involved in the administration of justice which would violate the norm of public accountability and diminish the faith of the people in the Judiciary.[20]

The Court agrees with the OCA that Salinas and Solon are guilty of simple neglect of duty. But we take into account their admission of fault, expression of apology for their carelessness, the absence of malicious intent for the delay, and the fact that this is their first administrative charge. Hence, the recommended fine of ₱10,000.00 on Salinas is just and appropriate. We, however, are of the view that the recommended fine of ₱10,000.00 may be too burdensome for Solon considering that as Legal Researcher I, he holds a position equivalent to Salary Grade 12 and receives a monthly salary of ₱24,495.00. Thus, the Court deems it proper to reduce the recommended fine on Solon to ₱5,000.00.

WHEREFORE, the Court finds respondents Melinda E. Salinas, Clerk of Court III, and Kim Jovan L. Solon, Legal Researcher I, both of Metropolitan Trial Court in Cities, Branch 6, Cebu City, Cebu, **GUILTY** of Simple Neglect of Duty. The Court imposes a **FINE** on Salinas in the amount of Ten Thousand Pesos (₱10,000.00) and on Solon in the amount of Five Thousand Pesos (₱5,000.00), with **STERN WARNING** that a repetition of the same or similar act in the future will be dealt with more severely.

SO ORDERED.

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

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[20] *Alejandro v. Martin* (Resolution), 556 Phil. 532 (2007).

EN BANC

[A.M. No. RTJ-17-2486. September 8, 2020]
(Formerly A.M. No. 17-02-45-RTC)

RE: INVESTIGATION REPORT ON THE ALLEGED EXTORTION ACTIVITIES OF PRESIDING JUDGE GODOFREDO B. ABUL, JR., BRANCH 4, REGIONAL TRIAL COURT, BUTUAN CITY, AGUSAN DEL NORTE

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; ADMINISTRATIVE CASES; THE DEATH OF A RESPONDENT IN AN ADMINISTRATIVE CASE BEFORE ITS FINAL RESOLUTION IS A CAUSE FOR ITS DISMISSAL.— [I]n criminal cases, the rule is that the death of an accused after conviction but during the pendency of his/her appeal shall result in the dismissal of the criminal case. This dismissal is triggered by the presumption of innocence accorded every accused as well as by his/her right to due process under the Constitution. As the said principles are instrumental to criminal as well as to civil cases, these should likewise be applied to administrative proceedings such as the one at bench. "[Since death of an accused extinguishes personal criminal liability as well as pecuniary penalties arising from the felony when the death occurs before final judgment in criminal cases, the standard for an administrative case should be similar or less punitive[.]" "If this is the standard for criminal cases wherein the quantum [of proof] is beyond reasonable doubt, then a lower standard for administrative proceedings such as the case at bar should be followed, even if the quantum of proof therein is substantial evidence."

Thus, the Court so now holds that the death of a respondent in an administrative case before its final resolution is a cause for its dismissal. Otherwise stated, the non-dismissal of a pending administrative case in view of the death of the respondent public servant is a transgression of his or her Constitutional rights to due process and presumption of

innocence. Simply put, upon the death of the respondent public servant awaiting final judgment, the dismissal of the administrative case against him/her should necessarily follow.

2. **ID.; ID.; ID.; ID.; GROUNDS FOR THE DISMISSAL OF AN INSTANT ADMINISTRATIVE CASE.—** [I]f viewed from the Constitutional lens, particularly that the respondent in the administrative case, similar to the accused in criminal cases, likewise enjoys the rights to presumption of innocence and due process, the Court now deems the dismissal of the instant administrative case proper based on the following grounds: (1) pending final judgment in the administrative case, the respondent enjoys the right to be presumed innocent; (2) the rule in criminal cases that death of an accused extinguishes personal criminal liability as well as pecuniary penalties arising from the felony when the death occurs before final judgment should likewise be applied in administrative cases; (3) the essence of due process necessitates the dismissal of the administrative case; and (4) humanitarian reasons also call for the grant of death and survivorship benefits in favor of the heirs.

3. **ID.; ID.; ID.; ID.; PRESUMPTION OF INNOCENCE; A RESPONDENT IN AN ADMINISTRATIVE CASE SHOULD BE PRESUMED INNOCENT IF HIS/HER DEATH PRECEEDED THE FINALITY OF A JUDGMENT.—** Article 3, Section 14 of the 1987 Constitution provides that "in all criminal prosecutions, the accused shall be presumed innocent until the contrary is proved x x x" Certainly, until an accused is finally adjudged guilty by proof beyond reasonable doubt, there is a presumption of his/her innocence. Thus, considering that only substantial evidence is required in administrative cases, a respondent therein should likewise be presumed innocent if his/her death preceded the finality of a judgment, as in the case of Judge Abul who can no longer submit additional evidence to support his position due to his passing. The presumption of innocence in his favor should stand precisely because his death preceded the promulgation of final judgment.

4. **ID.; ID.; ID.; ID.; ID.; EXTINGUISHMENT OF THE ADMINISTRATIVE LIABILITY UPON RESPONDENT'S DEATH BEFORE FINAL JUDGMENT IS RENDERED. —** Based on the aforementioned provision [Article 89 (1) of the Revised Penal Code], the death of the accused extinguishes his/

her personal criminal liability. Additionally, the pecuniary penalties of the accused will only be extinguished if he/she dies before final judgment is rendered. If the standard for criminal cases wherein the quantum of proof is proof beyond reasonable doubt, then a lower standard for administrative proceedings such as the case at bench should be applied, since the quantum of proof therein is only substantial evidence.

Although the Court previously pronounced in *Gonzales v. Escalona* that an administrative case, which is not strictly personal in nature, is not automatically dismissible upon the death of the respondent because public office is public trust, this public policy should not override the presumption of innocence of an accused. It is illogical to consider that mere public policy can defeat one's constitutionally enshrined substantive right to be presumed innocent, as mentioned earlier. If death extinguishes the criminal and civil liabilities arising from criminal cases, then why should more rigid measures or penalties be imposed in mere administrative cases?

5. ID.; ID.; ID.; ID.; ID.; DUE PROCESS; TO CONTINUE ADJUDICATING AN ADMINISTRATIVE CASE AMIDST THE RESPONDENT'S DEATH IS A DENIAL OF DUE PROCESS.— The instant administrative complaint against the late Judge Abul should be dismissed in view of the Constitutional principle of due process, which is one of the recognized exceptions to the general rule that the death of the respondent does not preclude a finding of administrative liability. . . .

If We were to sustain Our earlier ruling to forfeit all of his retirement benefits, Judge Abul can no longer file any motion or pleading to question the ruling because of his death. Likewise, he can no longer exercise his right to due process, nor can he exhaust other possible remedies available to him. Similarly, he cannot ask for clemency in the future, an option which other respondents who did not meet the same fate can take advantage of if the circumstances permit. In other words, had death not supervened, Judge Abul could have exerted efforts to protect his rights in keeping with the principle of due process. Thus, it is only right to dismiss the administrative case against him, particularly since the spirit of due process encompasses all stages of the case, that is, from the investigation phase until the finality of the decision. . . .

Besides, the Constitution did not limit or qualify as to what kind of case, whether criminal, civil or administrative, should the principle of due process be applied to. To further assume an already deceased respondent to "participate" in the administrative proceedings would be absurd, precisely because he/she already lost the opportunity to be heard. Hence, to continue adjudicating his/her case amidst his/her death would be a denial of due process.

6. ID.; ID.; ID.; ID.; ID.; HUMANITARIAN REASONS; A RESPONDENT'S MISTAKE SHOULD NOT UNDULY PUNISH THE HEIRS. — The other exception is the presence of exceptional circumstances on the ground of equitable and humanitarian reasons. Based on this ground, the instant administrative case should be dismissed and death and survivorship benefits should be released to Judge Abul's heirs, as his passing preceded the rendition of a judgment on his administrative case.

. . . . . .

To emphasize, Judge Abul's mistakes should not unduly punish his heirs, especially if they had no part in or knowledge about the alleged extortions. Judge Abul's liability should be considered personal and extinguished upon his death. Similarly, it should not extend beyond his death, and its effects should not be suffered by his heirs, for to do so would indirectly impose a harsh penalty upon innocent individuals. These same individuals already have to accept the sudden death of a loved one, the breadwinner at that. Such is already more than enough for any family to bear. The non-dismissal of Judge Abul's administrative case and forfeiture of all of his death and survivorship benefits would just unnecessarily add to the grief of his bereaved family. Thus, the Court, faced with this opportunity to reconsider its prior ruling, should finally dismiss the instant complaint considering the aforementioned grounds.

LEONEN, *J., concurring opinion*:

1. POLITICAL LAW; ADMINISTRATIVE LAW; ADMINISTRATIVE CASES; IN ANY DISCIPLINARY PROCEEDING, RESPONDENTS ARE, AT ALL TIMES, GUARANTEED THE FUNDAMENTAL RIGHT TO DUE

PROCESS OF LAW.— The power granted by the Constitution to this Court to discipline members of the Bench and the Bar should always be read alongside the guarantee of any respondent's fundamental rights. In any disciplinary proceeding, respondents are, at all times, guaranteed the fundamental right to due process of law. . . .

2. ID.; ID.; ID.; ID.; THE OPPORTUNITY TO BE HEARD MUST BE OBSERVED UNTIL THE FINALITY OF THE JUDGMENT.— Disciplinary proceedings, being administrative in nature, do not necessarily require the strict procedural rules usually found in civil and criminal cases. It is a generally accepted rule that due process in administrative proceedings does not require that the respondent *must* be heard. It merely requires that the respondent is *given the opportunity* to be heard.

This "lesser" standard, however, is not lost even after judgment is rendered. In administrative cases, the right to due process still grants respondents the opportunity to question any unfavorable judgment rendered against them. . . .

Criminal liability is immediately extinguished if the accused dies before final judgment is rendered. The reason is simple: due process requires that the accused be informed of the evidence and findings against them, and be given the opportunity to appeal the conviction. As the *ponencia* correctly points out, there is no reason why the same principle should not apply in administrative cases where a lower quantum of proof is required.

The opportunity to be heard is not a mere formality, but an intrinsic and substantial part of the constitutional right to due process. Thus, the opportunity to be heard must be present in *all* aspects of the proceeding until the finality of the judgment.

3. ID.; ID.; ID.; THE COURT'S JURISDICTION OVER A DISCIPLINARY CASE OF A COURT OFFICIAL, ONCE ACQUIRED, IS NOT LOST WHEN RESPONDENT CEASED TO HOLD OFFICE DURING THE PENDENCY OF THE CASE; THIS RULE IS NOT APPLICABLE IN CASE OF DEATH.— It is settled that this Court's jurisdiction over a disciplinary case of a court official or employee, once acquired, is not lost simply because the respondent has ceased to hold office during the pendency of the case. Thus, respondents cannot escape liability if they retire or resign from public office.

Death, however, cannot be likened to these types of cessation from public office.

I explained in my previous Dissenting Opinion that the rationale for the rule on the continuation of proceedings, despite cessation from public office, must first take into account the nature of the cessation. . . .

Here, respondent only knew of the conclusions of the judicial audit team before his death. He had no knowledge that the Office of the Court Administrator would adopt the findings of the judicial audit team. He certainly would not have known that this Court would adopt the findings of the Office of the Court Administrator. As was demonstrated by the subsequent events of this case, his widow was the one who filed a Motion for Reconsideration — not to ask for clemency, but rather, to have the case dismissed, because her husband did not know he would be found guilty of the charges against him.

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

1. POLITICAL LAW; ADMINISTRATIVE LAW; ADMINISTRATIVE CASES; EFFECT OF THE DEATH OF THE RESPONDENT; THE DEATH OF RESPONDENT DOES NOT *IPSO FACTO* LEAD TO THE DISMISSAL OF THE ADMINISTRATIVE CASE.— While I welcome the dismissal of the case against Judge Abul [for humanitarian reasons], I disagree with the new jurisprudential ruling being laid down here that the death of a respondent in an administrative case before its final resolution is a cause for its dismissal as its non-dismissal is a transgression of the respondent's constitutional rights to due process and presumption of innocence. I submit that the general rule that the death of the respondent does not *ipso facto* lead to the dismissal of the administrative case should still prevail. This is in consonance with the well-settled rule that jurisdiction, once acquired, continues to exist until final resolution of the case.

2. ID.; ID.; ID.; ID.; THE DISMISSAL OF THE CASE BY REASON OF THE DEATH OF THE ACCUSED IN A CRIMINAL CASE OR OF THE RESPONDENT IN AN ADMINISTRATIVE CASE IS ROOTED ON THE FUNDAMENTAL PRINCIPLE THAT CRIMINAL

RESPONSIBILITY IS PERSONAL.— Indeed, the constitutional precept that an accused in a criminal case enjoys the presumption of innocence has been, in several times, applied in administrative cases as well. I agree that this application is proper owing to the other constitutional guarantee of due process. In my view, however, the dismissal of the case by reason of the death of the accused in a criminal case, or of the respondent in an administrative case, is **not** rooted on the right to be presumed innocent until proven guilty. Rather, it is rooted on the fundamental principle that criminal responsibility is personal. Thus, the Court has consistently held that under Article 89 (1) of the Revised Penal Code, criminal liability on account of the death of the accused before final judgment is totally extinguished "**inasmuch as there is no longer a defendant to stand as the accused**."

3. ID.; ID.; ID.; THE ESSENCE OF PROCEDURAL DUE PROCESS ARE NOTICE AND A REAL OPPORTUNITY TO BE HEARD.— [D]ue process considerations are among the already recognized exceptions to the rule that death does not lead to the dismissal of the administrative case. As such, the opportunity to appreciate or apply this exception has always been available on a case-to-case basis.

Likewise, the concept of due process in administrative proceedings has always been recognized as different with the concept of due process in criminal proceedings. Administrative due process cannot be fully equated with due process in its strict judicial sense, for in the former, a formal or trial-type hearing is not always necessary and technical rules of procedure are not strictly applied.

The essence of procedural due process is embodied in the basic requirement of **notice and a real opportunity to be heard**. In administrative proceedings, procedural due process simply means the **opportunity to explain one's side or the opportunity to seek a reconsideration of the action or ruling complained of**. "To be heard" does not mean only verbal arguments in court; one may also be heard thru pleadings. Where opportunity to be heard, either through oral arguments or pleadings, is accorded, there is no denial of procedural due process. Thus, a respondent must be given notice at all times. This is an absolute requirement. Coupled with this, if a respondent

is given the opportunity to explain his or her side, then his or her right to due process is deemed satisfied. If, on the other hand, a respondent was not originally heard but was eventually heard in a motion for reconsideration, his or her right to due process is still deemed satisfied.

CARANDANG, *J.*, *dissenting opinion*:

1. POLITICAL LAW; ADMINISTRATIVE LAW; ADMINISTRATIVE CASES; EFFECT OF RESPONDENT'S DEATH; THE COURT IS NOT OUSTED OF ITS JURISDICTION OVER AN ADMINISTRATIVE MATTER BY THE FACT THAT RESPONDENT PUBLIC OFFICIAL CEASES TO HOLD OFFICE DURING THE PENDENCY OF THE CASE; EXCEPTIONS.— [T]he prevailing rule is that the Court is not ousted of its jurisdiction over an administrative matter by the mere fact that the respondent public official ceases to hold office during the pendency of respondent's case. Nevertheless, the Court recognizes the following exceptions: (1) if the respondent's right to due process was not observed; (2) in exceptional circumstances on the grounds of equitable and humanitarian reasons; and (3) the kind of penalty imposed would render the proceedings useless.

2. ID.; ID.; ID.; ID.; NOTWITHSTANDING THE DEATH OF RESPONDENT JUDGE, THE COURT MAY IMPOSE THE APPROPRIATE ADMINISTRATIVE PENALTIES AS HE WAS AFFORDED AN OPPORTUNITY TO BE HEARD. — Notwithstanding the death of Judge Abul, the Court may impose the appropriate administrative penalties such as forfeiture of all his benefits, including retirement gratuity, as he was afforded an opportunity to be heard. . . . Judge Abul's death, by itself, is insufficient to justify the dismissal of the administrative case and bar the imposition of the corresponding penalties. The penalties arising from his administrative liability survive his death.

3. ID.; ID.; ID.; ID.; UNLIKE IN A CRIMINAL CASE, THE DEATH OF A RESPONDENT DOES NOT AUTOMATICALLY TERMINATE THE ADMINISTRATIVE CASE.— [T]he Court cannot simply equate the consequences of the death of a respondent during

the pendency of an administrative case to the legal implications of a defendant's demise in a pending criminal or civil case. It is worthy to highlight the marked differences between the nature of these proceedings and their concomitant liabilities as discussed by the Court in Gonzales:

> From another perspective, administrative liability is separate and distinct from criminal and civil liability which are governed by a different set of rules. In *Flecther v. Grinnel Bros., et al*, the United States District Court of Michigan held that whether a cause of action survives the death of the person depends on the substance of the cause of action and not on the form of the proceeding to enforce it. Thus, **unlike in a criminal case where the death of the accused extinguishes his liability arising thereon under Article 89 of the Revised Penal Code, or otherwise relieves him of both criminal and civil liability (arising from the offense) if death occurs before final judgment, the dismissal of an administrative case is not automatically terminated upon the respondent's death. The reason is one of law and public interest; a public office is a public trust that needs to be protected and safeguarded at all cost and even beyond the death of the public officer who has tarnished its integrity.**

APPEARANCES OF COUNSEL

Tristam B. Zoleta for respondent.

R E S O L U T I O N

HERNANDO, *J.*:

In this Motion for Reconsideration, the Court is presented with the opportunity to revisit and re-assess from another perspective its earlier pronouncements that the death of a respondent in an administrative case, which is a form of cessation from public service, pending its final resolution, does not automatically cause the dismissal of the proceeding.

In the assailed September 3, 2019 Decision, the Majority declared that:

> Death of the respondent judge during the pendency of his administrative case shall not terminate the proceedings against him, much less absolve him, or cause the dismissal of the complaint if the investigation was completed prior to his demise. If death intervenes before he has been dismissed from service, the appropriate penalty is forfeiture of all retirement and other benefits, except accrued leaves.[1]

To recap, a complaint was filed against Judge Abul, then Presiding Judge of Branch 4, Regional Trial Court of Butuan City, Agusan Del Norte, alleging that he extorted large amounts of money ranging from ₱200,000.00 to ₱300,000.00 from the detainees of the Provincial Jail of Agusan in exchange for their release from prison or the dismissal of their criminal cases. The Office of the Court Administrator (OCA) conducted an investigation after it received a letter from Rev. Father Antoni A. Saniel exposing Judge Abul's alleged illegal activities. During its investigation, the OCA confirmed that Judge Abul indeed engaged in extortion activities, a grave misconduct constituting a violation of the Code of Judicial Conduct, and recommended that Judge Abul be fined the amount of ₱500,000.00 to be deducted from his retirement gratuity.[2]

However, while the administrative case was pending review by this Court, Judge Abul met an untimely death[3] when he was targeted by an unidentified motorcycle-riding shooter while he was about to depart from his house. Fortunately, his spouse survived the ambush, although she also sustained gunshot wounds.[4]

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[1] *Rollo*, p. 137.

[2] Id. at 104-119.

[3] Died on August 5, 2017 by multiple gunshot wounds at 68 years old; id. at 91, 95-97.

[4] *Rollo*, pp. 95-96.

In a *Per Curiam* Decision[5] dated September 3, 2019, the Court, by a Majority vote,[6] found sufficient grounds to hold Judge Abul administratively liable for Misconduct. Significantly, the Majority found that notwithstanding Judge Abul's death before the resolution of his administrative case, the complaint against him should not be dismissed considering that he was fully afforded due process during the investigation stage and that the Court's jurisdiction over the case survives his death. The Court emphasized that grave misconduct is a serious offense punishable with dismissal from the service, forfeiture of all or part of the benefits, and perpetual disqualification from reappointment or appointment to any public office, including government-owned and controlled corporations, except accrued leave credits. Yet, in view of Judge Abul's passing, the Majority deemed it proper to impose the accessory penalty of forfeiture of all retirement and allied benefits, except accrued leaves, upon him.[7]

The Court is now poised to resolve the Motion for Reconsideration[8] filed by the aggrieved surviving spouse of Judge Abul, Bernadita C. Abul (Bernadita),[9] on the aspect of survivorship benefits and given the fact that Judge Abul "is no longer in the position to assail the findings of the *majority*, finding him GUILTY of Gross Misconduct, and imposing on him the penalty of FORFEITURE of all his benefits including

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[5] Id. at 137-147.

[6] Chief Justice Lucas P. Bersamin, Associate Justices Antonio T. Carpio, Diosdado M. Peralta (now Chief Justice), Estela M. Perlas-Bernabe, Francis H. Jardeleza, Jose C. Reyes, Jr., Rosmari D. Carandang, and Henri Jean Paul B. Inting voted with the majority. The Dissent of Associate Justice Ramon Paul L. Hernando was joined by Associate Justices Alfredo Benjamin S. Caguioa, Andres B. Reyes, Jr., Alexander G. Gesmundo, Amy C. Lazaro-Javier, and Rodil V. Zalameda. Associate Justice Marvic M.V.F. Leonen wrote a strong Separate Opinion.

[7] *Rollo*, pp. 145-146.

[8] Id. at 186-194.

[9] Id. at 186-189.

retirement gratuity, to plead his innocence or to express his remorse[.]"[10]

After much deliberation and careful consideration, the Court resolve to grant the Motion for Reconsideration. To be sure, this resolution is berthed on strong grounds and constitutional precepts, particularly on the individual's rights to presumption of innocence and due process.

It is well to point out at this juncture that in criminal cases, the rule is that the death of an accused after conviction but during the pendency of his/her appeal shall result in the dismissal of the criminal case. This dismissal is triggered by the presumption of innocence accorded every accused as well as by his/her right to due process under the Constitution. As the said principles are instrumental to criminal as well as to civil cases, these should likewise be applied to administrative proceedings such as the one at bench. "[S]ince death of an accused extinguishes personal criminal liability as well as pecuniary penalties arising from the felony when the death occurs before final judgment in criminal cases, the standard for an administrative case should be similar or less punitive[.]"[11] "If this is the standard for criminal cases wherein the quantum [of proof] is beyond reasonable doubt, then a lower standard for administrative proceedings such as the case at bar should be followed, even if the quantum of proof therein is substantial evidence."[12]

Thus, the Court so now holds that the death of a respondent in an administrative case before its final resolution is a cause for its dismissal. Otherwise stated, the non-dismissal of a pending administrative case in view of the death of the respondent public servant is a transgression of his or her Constitutional rights to due process and presumption of innocence. Simply put, upon the death of the respondent public

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[10] Id. at 186.

[11] See Dissenting Opinion of *J.* Hernando, p. 3; id. at 170.

[12] Id. at 4; id. at 171.

servant awaiting final judgment, the dismissal of the administrative case against him/her should necessarily follow.

We explain the reasons for reversing Our previous ruling.

The bundle of precedents had relied on public policy, that is, public office is public trust. Thus, in administrative cases, the death of a respondent public official during its pendency is not a cause for its dismissal except in the following instances: a) the respondent was denied due process; b) there are attendant exceptional circumstances which would merit equitable and humanitarian consideration; and c) depending on the kind of penalty imposed.[13]

However, if viewed from the Constitutional lens, particularly that the respondent in the administrative case, similar to the accused in criminal cases, likewise enjoys the rights to presumption of innocence and due process, the Court now deems the dismissal of the instant administrative case proper based on the following grounds: (1) pending final judgment in the administrative case, the respondent enjoys the right to be presumed innocent; (2) the rule in criminal cases that death of an accused extinguishes personal criminal liability as well as pecuniary penalties arising from the felony when the death occurs before final judgment should likewise be applied in administrative cases; (3) the essence of due process necessitates the dismissal of the administrative case; and (4) humanitarian reasons also call for the grant of death and survivorship benefits in favor of the heirs.

The First Ground: Presumption of Innocence

Article 3, Section 14 of the 1987 Constitution provides that "in all criminal prosecutions, the accused shall be presumed innocent until the contrary is proved x x x"[14] Certainly, until an accused is finally adjudged guilty by proof beyond reasonable doubt, there is a presumption of his/her innocence. Thus, considering that only substantial evidence[15] is required in

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[13] *Gonzales v. Escalona*, 587 Phil. 448, 465 (2008).

[14] 1987 CONSTITUTION, Article 3, §14.

[15] RULES OF COURT, Rule 133, § 5.

administrative cases, a respondent therein should likewise be presumed innocent if his/her death preceded the finality of a judgment, as in the case of Judge Abul who can no longer submit additional evidence to support his position due to his passing. The presumption of innocence in his favor should stand precisely because his death preceded the promulgation of final judgment.

The Second Ground: Extinguishment of Liability Upon Death

With regard to the extinguishment of criminal liability, Article 89 (1) of the Revised Penal Code states:

> Article 89. *How criminal liability is totally extinguished.* — Criminal liability is totally extinguished:
>
> 1. By the death of the convict, as to the personal penalties; and as to pecuniary penalties, liability therefor is extinguished only when the death of the offender occurs before final judgment; xxx[16]

Based on the aforementioned provision, the death of the accused extinguishes his/her personal criminal liability. Additionally, the pecuniary penalties of the accused will only be extinguished if he/she dies before final judgment is rendered. If the standard for criminal cases wherein the quantum of proof is proof beyond reasonable doubt, then a lower standard for administrative proceedings such as the case at bench should be applied, since the quantum of proof therein is only substantial evidence.[17]

Although the Court previously pronounced in *Gonzales v. Escalona*[18] that an administrative case, which is not strictly personal in nature, is not automatically dismissible upon the death of the respondent because public office is public trust, this public policy should not override the presumption of innocence of an accused. It is illogical to consider that mere public policy can defeat one's constitutionally enshrined

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[16] REVISED PENAL CODE, Article 89(1).

[17] That amount of relevant evidence that a reasonable mind might accept as adequate to support a conclusion, *Office of the Court Administrator v. Yu*, 807 Phil. 277, 293 (2017).

[18] *Supra* note 3.

substantive right to be presumed innocent, as mentioned earlier. If death extinguishes the criminal and civil liabilities arising from criminal cases, then why should more rigid measures or penalties be imposed in mere administrative cases?

A revisit of jurisprudence is necessary to demonstrate the Court's rationale in resolving an administrative case despite the death or retirement (another form of cessation from public service) of the respondent before the release of final judgment.

In *Kaw v. Judge Osorio*,[19] the Court held that as it was not substantially proven, the respondent judge may not be held liable for extortion and graft and corruption. Regardless, he was found accountable for violating Canons 2 and 5 of the Code of Judicial Conduct. The Court ordered that a ₱40,000.00 fine should be deducted from his retirement benefits instead since he mandatorily retired before the penalty of dismissal or suspension could be imposed upon him.

In *Re: Evaluation of Administrative Liability of Judge Lubao*,[20] Judge Lubao was only imposed a fine by reason of his retirement despite having committed several serious, less serious, and light offenses[21] while he was still in service which would have merited the penalty of dismissal and forfeiture of all his benefits.

In *Re: Financial Audit on the Accountabilities of Restituto Tabucon, Jr.*,[22] Tabucon failed to remit some Judiciary Development Fund collections because he used the money to sustain his family's needs. He eventually restituted the said amounts after he obtained a loan from a friend. The Court ruled that his infraction constituted gross dishonesty, if not malversation. However, because dismissal from the service is

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[19] 469 Phil. 896 (2004).

[20] 785 Phil. 14 (2016).

[21] Judge Lubao was found guilty of the following offenses: gross misconduct; violation of Supreme Court rules, directives and circulars; undue delay in rendering a decision or order; and undue delay in the submission of monthly reports.

[22] 504 Phil. 512 (2005).

no longer possible due to Tabucon's compulsory retirement, the Court held that forfeiture of all his retirement and other benefits may be too harsh under the circumstances. Since he restituted his shortages, a ₱10,000.00 fine was imposed upon Tabucon instead.

In *Liwanag v. Lustre*,[23] the Court found substantial evidence showing that the respondent judge committed gross misconduct when he sexually molested the complainant. While the OCA recommended his dismissal from the service and forfeiture of all his retirement benefits, the Court modified the penalty by imposing instead a fine because he already retired. It further stated that the OCA's recommendation to forfeit all of the judge's retirement benefits, "while directed at respondent, might adversely affect innocent members of his family, who are dependent on him and his retirement gratuity."[24] Hence, the Court deemed it best to impose a fine in the amount of ₱40,000.00.

In *Geocadin v. Peña*,[25] Judge Peña was adjudged guilty of grave misconduct. Since he was afflicted with serious illnesses, he failed to present his evidence during the investigation. The Court noted that there is a presumption of innocence in his favor and that due to his condition, he deserved compassion and humanitarian consideration. Withal, the Court imposed a penalty of reprimand and forfeiture of three months' worth of salary to be deducted from his retirement benefits.

In *Re: Judicial Audit Conducted in Regional Trial Court, Branch 1, Bangued, Abra*,[26] although Judge Villarta failed to properly perform his duties as revealed during the judicial audit which the OCA confirmed, he was not able to explain his inaction in the cases assigned to him due to his death. Thus, the Court directed the release of his previously withheld retirement benefits to his heirs.

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[23] 365 Phil. 496 (1999).

[24] Id. at 510.

[25] 195 Phil. 344 (1981).

[26] 388 Phil. 60 (2000).

In *Agarao v. Parentela, Jr.*,[27] Judge Parentela was found guilty of immorality, a serious offense penalized with dismissal from the service and forfeiture of all or part of the benefits as the Court may determine. Since the respondent judge passed away before a decision on his case could be rendered, the Court ordered the forfeiture of one half of all of his retirement benefits excluding his accrued leave credits.

In *Loyao, Jr. v. Caube and Quisadio*,[28] the Court pronounced that notwithstanding its jurisdiction over respondent Caube and the finding that he committed malfeasance, his death precluded the imposition of dismissal from the service upon him. Given that he can no longer serve the said penalty, the Court declared the case as closed and terminated.

In *Limliman v. Judge Ulat-Marrero*,[29] the respondent judge was charged with grave misconduct and conduct unbecoming of a judge. Pending a formal investigation, the magistrate passed away. The Court dismissed the administrative case as the judge's death barred the continuance of the investigation, wherein factual issues needed to be resolved which necessitated a formal inquiry and reception of evidence.

In *Sexton v. Casida*,[30] "the respondent, who in the meantime died, was found guilty of act unbecoming a public official and acts prejudicial to the best interest of the service, and fined [the amount of] ₱5,000.00, deductible from his terminal leave pay."

In *Re: Judicial Audit Conducted in the Municipal Trial Court of Tambulig and the 11th Municipal Circuit Trial Court of Mahayag-Dumingag-Josefina, both in Zambaonga del Sur*,[31] the Court found respondent Judge Salvanera guilty of gross

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[27] 421 Phil. 677 (2001).

[28] 450 Phil. 38 (2003).

[29] 443 Phil. 732 (2003).

[30] 508 Phil. 166 (2005).

[31] 509 Phil. 401 (2005).

inefficiency, gross ignorance of the law, and violations of pertinent administrative circulars of the Court. However, the Court dismissed the case in view of his death and even released his full retirement benefits to his heirs.

In *San Buenaventura v. Migriño*,[32] the respondent was found guilty of simple neglect of duty. The Executive Judge who investigated the case recommended the imposition of a fine equivalent to two months' worth of salary. The OCA modified the penalty to a fine equivalent to one-month salary for humanitarian consideration and by reason of the death of the respondent. Upon final determination, the Court adopted the recommendation of the OCA to just impose a fine.

Finally, in *Bayaca v. Ramos*,[33] the Court, although it could have imposed a fine upon Judge Ramos for being negligent in his duties, nonetheless dismissed the administrative case in view of his death before the promulgation of the decision. Furthermore, the Court noted the pronouncements in the following cases:

> In *Baikong Akang Camsa vs. Judge Aurelio Rendon*,[34] this Court, citing previous cases, discussed the different implications and effects of the death of a respondent while an administrative complaint is still pending with the Court, *viz.*:
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> In *Hermosa vs. Paraiso*,[35] the respondent, a branch clerk of court of the then Court of First Instance of Masbate, was charged with irregularities while in office. The matter was referred to an Investigating Judge considering that there were persons mentioned in the complaint who had been questioned. The Investigating Judge, in his report of 18 August 1973, recommended that the respondent be exonerated of the charges for lack of sufficient evidence. On 01 August 1974, while the case was pending before the Court, the respondent died. The Court, nevertheless, resolved the case so that the respondent's heirs might not be deprived of any retirement benefits due to them and ordered the dismissal of the case for lack of substantial evidence.

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[32] 725 Phil. 151 (2014).

[33] 597 Phil. 86 (2009).

[34] 427 Phil. 518 (2002).

[35] 159 Phil. 417 (1975).

In *Mañozca vs. Judge Domagas*,[36] the respondent judge, who was charged with gross ignorance of the law for having erroneously granted a demurrer to evidence, died while the case was being evaluated by the OCA for appropriate action. The Court, on the basis of what appeared on record, no factual matter being in serious dispute that would require a formal investigation, resolved to impose a fine of ₱5,000.00 on the respondent judge, stressing that he had been previously sanctioned by the Court for gross ignorance of the law.

In *Apiag vs. Judge Cantero*,[37] the respondent judge was charged with gross misconduct for allegedly having committed bigamy and falsification of public documents. The case was referred to the Executive Judge of the Regional Trial Court of Toledo City for investigation, report and recommendation. An investigation was imperative considering that factual issues, including the circumstances of the respondent's first marriage to the complainant, were inextricably involved. Upon receipt of the report of the Investigating Judge, who recommended that the respondent judge be suspended for one (1) year without pay, the Court referred the matter to OCA for evaluation, report and recommendation. The OCA, in its memorandum, recommended that the respondent judge be dismissed from the service. The respondent judge died while the case was still being deliberated upon by the Court. The Court there held —

> However, we also cannot just gloss over the fact that he was remiss in attending to the needs of his children of his first marriage — children whose filiation he did not deny. He neglected them and refused to support them until they came up with this administrative charge. For such conduct, this Court would have imposed a penalty. But in view of his death prior to the promulgation of this Decision, dismissal of the case is now in order.[38]

Considering these cases, it is undeniable that in spite of the death or retirement of the respondents while their administrative cases were pending, only the penalty of fine or deduction from

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[36] 318 Phil. 744 (1995).

[37] 335 Phil. 511 (1997).

[38] *Bayaca v. Ramos*, supra note 33 at 99-101. Citations omitted.

their benefits was eventually imposed upon them. More importantly, some complaints were actually dismissed in view of the respondents' deaths. Furthermore, the respondents' retirement or death/survivorship benefits were not at all automatically forfeited. Evidently, the Court exercised its sound discretion in the imposition of penalties based on the prevailing circumstantial landscape.

The Third Ground: Due Process

The instant administrative complaint against the late Judge Abul should be dismissed in view of the Constitutional principle of due process, which is one of the recognized exceptions to the general rule that the death of the respondent does not preclude a finding of administrative liability.[39] To reiterate, *Gonzales v. Escalona*[40] states that the exceptions are: "*first*, the observance of respondent's right to due process;[41] *second*, the presence of exceptional circumstances in the case on the grounds of equitable and humanitarian reasons;[42] and *third*, it may also depend on the kind of penalty imposed."[43]

If We were to sustain Our earlier ruling to forfeit all of his retirement benefits, Judge Abul can no longer file any motion or pleading to question the ruling because of his death. Likewise,

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[39] *Gonzales v. Escalona, supra* note 13, citing *Loyao, Jr. v. Caube*, 450 Phil. 38 (2003).

[40] *Supra* note 13.

[41] *Gonzales v. Escalona, supra* note 13, citing *Limliman v. Judge Ulat-Marrero, supra* note 42, which cited *Camsa v. Judge Rendon*, 427 Phil. 518 (2002) and *Apiag v. Judge Cantero*, 335 Phil. 511(1997).

[42] *Gonzales v. Escalona, supra* note 13, citing *Limliman v. Judge Ulat-Marrero, supra* note 41 which cited *Judicial Audit Report, Branches 21, 32 & 36, et al*, 397 Phil. 476 (2000) and *Hermosa v. Paraiso*, 159 Phil. 417 (1975).

[43] *Gonzales v. Escalona, supra* note 13, citing *Limliman v. Judge Ulat-Marrero, supra* note 41, which cited *Report on the Judicial Audit Conducted in RTC, Br. 1, Bangued, Abra*, 388 Phil. 60 (2000); *Apiag v. Judge Cantero*, 335 Phil. 511 (1997), *Mañozca v. Judge Domagas*, 318 Phil. 744 (1995); and *Loyao, Jr. v. Caube*, 450 Phil. 38 (2003).

he can no longer exercise his right to due process, nor can he exhaust other possible remedies available to him. Similarly, he cannot ask for clemency in the future, an option which other respondents who did not meet the same fate can take advantage of if the circumstances permit. In other words, had death not supervened, Judge Abul could have exerted efforts to protect his rights in keeping with the principle of due process. Thus, it is only right to dismiss the administrative case against him, particularly since the spirit of due process encompasses all stages of the case, that is, from the investigation phase until the finality of the decision. In other words, a respondent public officer should be given the opportunity to be heard throughout the whole proceedings. Indeed, "[t]he essence of due process is simply to be heard, or as applied to administrative proceedings, an opportunity to explain one's side, or an opportunity to seek a reconsideration of the action or ruling complained of."[44]

Besides, the Constitution did not limit or qualify as to what kind of case, whether criminal, civil or administrative, should the principle of due process be applied to. To further assume an already deceased respondent to "participate" in the administrative proceedings would be absurd, precisely because he/she already lost the opportunity to be heard. Hence, to continue adjudicating his/her case amidst his/her death would be a denial of due process.

The Fourth Ground: Humanitarian Reasons

The other exception is the presence of exceptional circumstances on the ground of equitable and humanitarian reasons. Based on this ground, the instant administrative case should be dismissed and death and survivorship benefits should be released to Judge Abul's heirs, as his passing preceded the rendition of a judgment on his administrative case.

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[44] *Ledesma v. Court of Appeals*, 565 Phil. 731 (2007) citing *Libres v. National Labor Relations Commission*, 367 Phil. 181 (1999).

Relevantly, Judge Abul's wife, Bernadita, wrote the Court a letter dated September 13, 2017.[45] She asserted that she is a housemaker with no other source of income and that ever since Judge Abul's preventive suspension from office, their family suffered financial difficulties. She then requested the release of the amount pertaining to Judge Abul's accrued leave benefits and other assistance which could be extended to them in order to help their family meet their daily needs and to fund her son's education in medical school.

It should also be noted that Bernadita's letter dated September 13, 2017 informing the Court of Judge Abul's death preceded the submission of the OCA's Report and Recommendation on February 20, 2018 and the promulgation of the *Per Curiam* Decision on September 3, 2019. Apart from this, it is an undeniable fact that Judge Abul was murdered mere days after he turned 68 years old.[46] He would have already reached the compulsory age of retirement for judges,[47] specifically seventy (70) years old, **prior** to the release of the September 3, 2019 *Per Curiam* Decision, if not for his untimely demise.

To emphasize, Judge Abul's mistakes should not unduly punish his heirs, especially if they had no part in or knowledge about the alleged extortions. Judge Abul's liability should be considered personal and extinguished upon his death. Similarly, it should not extend beyond his death, and its effects should not be suffered by his heirs, for to do so would indirectly impose a harsh penalty upon innocent individuals. These same individuals already have to accept the sudden death of a loved one, the breadwinner at that. Such is already more than enough for any family to bear. The non-dismissal of Judge Abul's administrative case and forfeiture of all of his death and survivorship benefits would just unnecessarily add to the grief

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[45] *Rollo*, p. 91.

[46] Judge Abul's date of birth is on August 1, 1949.

[47] Republic Act No. 9946, An Act Granting Additional Retirement, Survivorship, and Other Benefits to Members of the Judiciary, Amending For the Purpose Republic Act No. 910, As Amended, Providing Funds Therefor and For Other Purposes (2009).

of his bereaved family. Thus, the Court, faced with this opportunity to reconsider its prior ruling, should finally dismiss the instant complaint considering the aforementioned grounds.

In connection with this, pertinent to the death of a member of the Judiciary while still in actual service, Sections 2 to 3-A of Republic Act (RA) No. 9946[48] state that:

'SEC. 2. In case a Justice of the Supreme Court or Court of Appeals, the Sandiganbayan or of the Court of Tax Appeals, or a Judge of the regional trial court, metropolitan trial court, municipal trial court in cities, municipal trial court, municipal circuit trial court, shari'a district court, shari'a circuit court, or any other court hereafter established, dies while in actual service, regardless of his/her age and length of service as required under Section 1 hereof, his/her heirs shall receive a lump sum of five (5) years' gratuity computed on the basis of the highest monthly salary plus the highest monthly aggregate of transportation, representation and other allowances such as personal economic relief allowance (PERA) and additional compensation allowance received by him/her as such Justice or Judge: *Provided, however*, That where the deceased Justice or Judge has rendered at least fifteen (15) years either in the Judiciary or in any other branch of Government, or both, his/her heirs shall instead be entitled to a lump sum of ten (10) years gratuity computed on the same basis as indicated in this provision: *Provided, further*, That the lump sum of ten (10) years gratuity shall be received by the heirs of the Justice or the Judge who was killed because of his/her work as such: *Provided*, That the Justice or Judge has served in Government for at least five (5) years regardless of age at the time of death. When a Justice or Judge is killed intentionally while in service, the presumption is that the death is work-related.

SEC. 3. Upon retirement, a Justice of the Supreme Court or of the Court of Appeals, the Sandiganbayan or of the Court of Tax Appeals, or a Judge of the regional trial court, metropolitan trial court, municipal trial court in cities, municipal trial court, municipal circuit trial court, shari'a district court, shari'a circuit court, or any other court hereafter established shall be automatically entitled to a lump sum of five (5) years' gratuity computed on the basis of the highest monthly salary plus the highest monthly aggregate of transportation, representation

[48] Id.

and other allowances such as personal economic relief allowance (PERA) and additional compensation allowance he/she was receiving on the date of his/her retirement and thereafter upon survival after the expiration of five (5) years, to further annuity payable monthly during the residue of his/her natural life pursuant to Section 1 hereof: *Provided, however*, That if the reason for the retirement be any permanent disability contracted during his/her incumbency in office and prior to the date of retirement, he/she shall receive a gratuity equivalent to ten (10) years' salary and the allowances aforementioned: *Provided, further*, That should the retirement under Section 1(1) hereof be with the attendance of any partial permanent disability contracted during his/her incumbency and prior to the date of retirement, he/she shall receive an additional gratuity equivalent to two (2) years lump sum that he/she is entitled to under this Act; *Provided, furthermore*, That if he/she survives after ten (10) years or seven (7) years, as the case may be, he/she shall continue to receive a monthly annuity as computed under this Act during the residue of his/her natural life pursuant to Section 1 hereof: *Provided, finally*, That those who have retired with the attendance of any partial permanent disability five (5) years prior to the effectivity of this Act shall be entitled to the same benefits provided herein.

Upon the death of a Justice or Judge of any court in the Judiciary, if such Justice or Judge has retired, or was eligible to retire optionally at the time of death, the surviving legitimate spouse shall be entitled to receive all the retirement benefits that the deceased Justice or Judge would have received had the Justice or Judge not died. The surviving spouse shall continue to receive such retirement benefits until the surviving spouse's death or remarriage.'

x x x x x x x x x

'SEC. 3 —A. All pension benefits of retired members of the Judiciary shall be automatically increased whenever there is an increase in the salary of the same position from which he/she retired.'

According to A.M. No. 17-08-01-SC, in case of permanent disability due to death while in actual service, a judge is entitled to the following benefits:

B. 1 Where government service is at least 15 years, regardless of age–

(1) Lump sum gratuity of 10 years, to be received by the heirs

(*Section 2*)[49]

(2) Full survivorship pension benefits (*Section 1*),[50] to be received by the surviving legitimate spouse upon survival of the gratuity period of 10 years (*Section 3, first paragraph*);[51]

(3) Automatic increase of pension benefits (*Section 3-A*).[52]

Provided, The same benefits shall apply in respect to a justice or judge, who, with at least 5 years of government service, was killed due to his/her work as such.

B. 2 Where government service is less than 15 years, regardless of age—

(1) Lump sum gratuity of 5 years, to be received by the heirs (*Section 2*)[53]

(2) Pro-rated pension benefits (*Section 1*),[54] to be received by the surviving legitimate spouse upon survival of the gratuity period of 10 years (Section 3, first paragraph);[55]

(3) Automatic increase of pension benefits (Section 3-A).[56]

x x x x x x x x x

E. Survivorship Pension Benefits

The legitimate surviving spouse of a Justice or Judge who (1) has retired or was eligible to retire optionally at the time of death, and (2) was receiving or would have been entitled to receive a monthly pension, shall be entitled to receive the said benefits that the deceased Justice or Judge would have received had the Justice or Judge not died, ***Provided,*** **That the justice or judge who, regardless of age, died or was killed while in actual service shall be considered as retired due to permanent disability.** ***Provided, further,*** **That the survivorship benefit shall be pro-rated if the deceased justice or**

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[49] Id.

[50] Id.

[51] Id.

[52] Id.

[53] Id.

[54] Id.

[55] Id.

[56] Id.

judge had rendered government service for less than 15 years. The surviving spouse shall continue to receive such retirement benefits until the surviving spouse's death or remarriage.[57]

Based on the foregoing, Judge Abul's heirs should be given death benefits granted under Section 2 of RA No. 9946. If Judge Abul served for at least 15 years, his heirs should receive a lump sum equivalent to ten (10) years. Alternatively, if he served for less than 15 years, the lump sum should be equivalent to five (5) years. Subsequently, after the gratuity period of ten (10) years has passed, his heirs are entitled to survivorship benefits, specifically, full monthly pension (if Judge Abul rendered at least 15 years of service) or pro-rated monthly pension (if he served for less than 15 years).

To recapitulate, these are the salient points for the dismissal of the case at bench: 1) because of Judge Abul's death, the administrative complaint against him should be dismissed in accordance with the Constitutional principles of due process and presumption of innocence; and 2) taking into account the instant Motion for Reconsideration, Judge Abul's heirs should be granted the death benefits and survivorship pension benefits due to his death while in actual service. This is considering that prior to his demise, no definite ruling was rendered and no corresponding penalty was imposed upon him. Equally important is the Court's belief in equitable and humanitarian considerations, especially when the case involves an inevitable occurrence like death.

WHEREFORE, the Motion for Reconsideration is hereby **GRANTED**. The September 3, 2019 Decision is **REVERSED** and **SET ASIDE**. The instant administrative complaint against the late Judge Godofredo B. Abul, Jr. is **DISMISSED**. Accordingly, the corresponding death and survivorship benefits are ordered to be **RELEASED** to the heirs of the late Judge Godofredo B. Abul, Jr.

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[57] A.M. No. 17-08-01-SC, Re: Requests for Survivorship Pension Benefits of Spouses of Justices and Judges Who Died Prior to the Effectivity of Republic Act No. 9946, September 19, 2017.

SO ORDERED.

Gesmundo, Lazaro-Javier, Inting, Zalameda, Lopez, Delos Santos, and *Gaerlan, JJ.*, concur.

Leonen, J., concurs. See separate opinion.

Caguioa, J., see concurring and dissenting opinion.

Peralta, C.J., Perlas-Bernabe, and *Reyes, Jr., JJ.*, join the dissent of *J.* Carandang.

Carandang, J., see dissenting opinion.

Baltazar-Padilla, J., on leave.

CONCURRING OPINION

LEONEN, *J.*:

I concur.

The death of respondent Judge Godofredo B. Abul, Jr., prior to the promulgation and finality of his administrative case, effectively renders the case moot. Proceeding further would be a gross violation of the fundamental right to due process.

Further, imposing any monetary penalty in lieu of dismissal only punishes respondent's wife and heirs: those who are innocent of the charges against respondent. Once a respondent in an administrative case dies, it is simply illogical and impractical for this Court to continue with the proceedings. There would be no one left to punish.

To recall, Rev. Father Antoni A. Saniel, Director of the Prison Ministry of the Diocese of Butuan, filed a complaint alleging that respondent was demanding money ranging from ₱200,000.00 to ₱300,000.00 from detainees of the Provincial Jail of Agusan in exchange for their release or dismissal of their cases.[1] The

[1] *Ponencia,* p. 2.

judicial audit team's investigation report confirmed these allegations.[2]

While the case was pending, or on August 5, 2017, respondent was killed by unidentified motorcycle-riding assailants outside his house.[3]

Nonetheless, the Office of the Court Administrator found respondent guilty of grave misconduct. Since the offense was punishable by dismissal from service, the Office of the Court Administrator instead recommended the penalty of a fine of ₱500,000.00, to be deducted from respondent's retirement gratuity, in view of his death.[4]

In the September 3, 2019 Decision,[5] this Court adopted the findings of the Office of the Court Administrator but modified the recommended penalty to the forfeiture of all benefits, including retirement gratuity, on the ground that the death of a respondent in an administrative case did not oust this Court of its jurisdiction to proceed with the case, or to impose accessory penalties on the respondent.[6]

Respondent's widow, Bernadita C. Abul, then filed a Motion for Reconsideration, arguing that the case should have been rendered moot since her husband was no longer in a position to assail the September 3, 2019 Decision of this Court, to plead his innocence, or to express remorse.[7]

This Court, guided by the able *ponencia* of Associate Justice Ramon Paul L. Hernando, has now seen it fit to: (1) reverse its earlier Decision; (2) grant the Motion for Reconsideration; and (3) dismiss the administrative case against respondent.

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[2] Id.

[3] Id.

[4] Id.

[5] *Re Alleged Extortion Activities of Judge Abul*, A.M. No. RTJ-17-2486, September 3, 2019, <https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/65676> [Per Curiam, En Banc].

[6] Id.

[7] *Ponencia*, p. 3.

The *ponencia* is anchored on four (4) grounds: (1) Judge Abul still enjoyed the right to be presumed innocent, since his death preceded any final judgment on the charges against him; (2) administrative liability, like criminal liability, may be extinguished through death; (3) the imposition of a penalty would violate due process since Judge Abul can no longer exercise any of the remedies that would have been available to him; and (4) Judge Abul's mistakes should not unduly punish his heirs.

I concur.

I

The power granted by the Constitution to this Court to discipline members of the Bench and the Bar should always be read alongside the guarantee of any respondent's fundamental rights. In any disciplinary proceeding, respondents are, at all times, guaranteed the fundamental right to due process of law under Article I, Section 1:

> ARTICLE III
>
> Bill of Rights
>
> SECTION 1. No person shall be deprived of life, liberty, or property without due process of law, nor shall any person be denied the equal protection of the laws.

Disciplinary proceedings, being administrative in nature, do not necessarily require the strict procedural rules usually found in civil and criminal cases. It is a generally accepted rule that due process in administrative proceedings does not require that the respondent *must* be heard. It merely requires that the respondent is *given the opportunity* to be heard.[8]

This "lesser" standard, however, is not lost even after judgment is rendered. In administrative cases, the right to due process still grants respondents the opportunity to question any unfavorable judgment rendered against them. *Lumiqued v. Exevea*[9] explains:

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[8] *Legarda v. Court of Appeals*, 345 Phil. 890, 905 (1997) [Per J. Romero, En Banc].

[9] 346 Phil. 807 (1997) [Per J. Romero, En Banc].

In administrative proceedings, the essence of due process is simply the opportunity to explain one's side. One may be heard, not solely by verbal presentation but also, and perhaps even much more creditably as it is more practicable than oral arguments, through pleadings. An actual hearing is not always an indispensable aspect of due process. As long as a party was given the opportunity to defend his interests in due course, he cannot be said to have been denied due process of law, for this opportunity to be heard is the very essence of due process. Moreover, *this constitutional mandate is deemed satisfied if a person is granted an opportunity to seek reconsideration of the action or ruling complained of.*[10] (Citations omitted, emphasis supplied)

Criminal liability is immediately extinguished if the accused dies before final judgment is rendered.[11] The reason is simple: due process requires that the accused be informed of the evidence and findings against them, and be given the opportunity to appeal the conviction. As the *ponencia* correctly points out,[12] there is no reason why the same principle should not apply in administrative cases where a lower quantum of proof is required.

The opportunity to be heard is not a mere formality, but an intrinsic and substantial part of the constitutional right to due process. Thus, the opportunity to be heard must be present in *all* aspects of the proceeding until the finality of the judgment.

II

It is settled that this Court's jurisdiction over a disciplinary case of a court official or employee, once acquired, is not lost

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[10] Id. at 828 citing *Concerned Officials of MWSS v. Vasquez*, 310 Phil. 549 (1995) [Per J. Vitug, En Banc]; *Mutuc v. Court of Appeals*, 268 Phil. 37 (1990) [Per J. Paras, Second Division]; *Pamantasan ng Lungsod ng Maynila (PLM) v. Civil Service Commission*, 311 Phil. 573 [Per J. Vitug, En Banc]; and *Legarda v. Court of Appeals*, 345 Phil. 890 (1997) [Per J. Romero, En Banc].

[11] *See* REV. PEN. CODE, Art. 89. How criminal liability is totally extinguished. — Criminal liability is totally extinguished:

1. By the death of the convict, as to the personal penalties; and as to pecuniary penalties, liability therefor is extinguished only when the death of the offender occurs before final judgment[.]

[12] *Ponencia*, p. 5.

simply because the respondent has ceased to hold office during the pendency of the case.[13] Thus, respondents cannot escape liability if they retire or resign from public office. Death, however, cannot be likened to these types of cessation from public office.

I explained in my previous Dissenting Opinion that the rationale for the rule on the continuation of proceedings, despite cessation from public office, must first take into account the nature of the cessation:

> Cessation from public office during the pendency of the case may occur in three (3) different ways: (1) resignation; (2) retirement; or (3) death.
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> . . . . . .
>
> Resignation requires intent. It is a *voluntary* cessation from public office. Sometimes, however, respondents in disciplinary proceedings opt to resign to avoid being forcibly dismissed from service. Thus, this Court has stated that resignation "should be used neither as an escape nor as an easy way out to evade administrative liability by a court personnel facing administrative sanction."
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> Therefore, once this Court assumes jurisdiction—that is, after an administrative case has been filed—resignation from public office will not render the case moot. In *Pagano v. Nazarro, Jr.*:
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> . . . . . .
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> > A case becomes moot and academic only when there is no more actual controversy between the parties or no useful purpose can be served in passing upon the merits of the case. The instant case is not moot and academic, despite the petitioner's separation from government service. Even if the most severe of administrative sanctions — that of separation from service - may no longer be imposed on the petitioner, there are other penalties which may be imposed on her if she is later found guilty of administrative offenses charged against her, namely, the disqualification to hold any government office and the forfeiture of benefits.

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[13] *Perez v. Abiera*, 159-A Phil. 575, 580-581 [Per J. Muñoz Palma, En Banc].

> Moreover, this Court views with suspicion the precipitate act of a government employee in effecting his or her separation from service, soon after an administrative case has been initiated against him or her. An employee's act of tendering his or her resignation immediately after the discovery of the anomalous transaction is indicative of his or her guilt as flight in criminal cases.
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> . . . . . .

Retirement, meanwhile, may be optional or compulsory. Optional retirement for government employees may be availed after 20 to 30 years of service, regardless of age. Judges and justices may also opt to retire upon reaching 60 years old as long as they have rendered 15 years of service in the judiciary. Optional retirement, like resignation, is a *voluntary* cessation from public office. Thus, the same rationale is applied to those who avail of optional retirement during the pendency of an administrative case. In *Aquino, Jr. v. Miranda*:

> A public servant whose career is on the line would normally want the investigating body to know his or her whereabouts for purposes of notice. The timing of respondent's application for leave, for optional retirement, and her sudden unexplained disappearance, taken together, leads us to conclude that hers is not a mere case of negligence. Respondent's acts reveal a calculated design to evade or derail the investigation against her. Her silence at the least serves as a tacit waiver of her opportunity to refute the charges made against her.
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> Neither respondent's disappearance nor her retirement precludes the Court from holding her liable. Her disappearance constitutes a waiver of her right to present evidence in her behalf. The Court is not ousted of its jurisdiction over an administrative case by the mere fact that the respondent public official ceases to hold office during the pendency of respondent's case.
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> . . . . . .

Respondents in an administrative case could apply for optional retirement to evade liability. Thus, optional retirement during the pendency of an administrative case, like resignation, will not render the case moot.

Unlike resignation, however, retirement may also be *involuntary*. Retirement from public service is compulsory for government

employees who have reached 65 years old or for judges and justices who have reached 70 years old.

In the leading case of *Perez v. Abiera*, this Court was confronted with the issue of whether an administrative complaint against a judge, was rendered moot when he compulsorily retired while the case was pending. Citing *Diamalon v. Quintillan*,[14] respondent Judge Carlos Abiera argued that he could not be meted the penalty of dismissal since he was no longer in service.

In *Quintillan*, this Court dismissed the complaint against Judge Jesus Quintillan since he had already resigned from service before a judgment could be rendered:

> [T]he petition for dismissal must be granted. There is no need to inquire further into the charge imputed to respondent Judge that his actuation in this particular case failed to satisfy the due process requirement. As an administrative proceeding is predicated on the holding of an office or position in the Government and there being no doubt as to the resignation of respondent Judge having been accepted as of August 31, 1967, there is nothing to stand in the way of the dismissal prayed for.

In *Abiera*, however, this Court clarified that *Quintillan* was not meant to be a precedent to immediately dismiss complaints against judges who resigned or retired while the administrative cases were pending:

> It was not the intent of the Court in the case of *Quintillan* to set down a hard and fast rule that the resignation or retirement of a respondent judge as the case may be renders [sic] moot and academic the administrative case pending against him; nor did the Court mean to divest itself of jurisdiction to impose certain penalties short of dismissal from the government service should there be a finding of guilt on the basis of the evidence. In other words, the jurisdiction that was Ours at the time of the filing of the administrative complaint was not lost by the mere fact that the respondent public official had ceased to be in office during the pendency of his case. The Court retains its jurisdiction either to pronounce the respondent official innocent of the charges or declare him guilty thereof. A contrary rule would be fraught with injustices and pregnant with dreadful and dangerous

[14] 139 Phil. 654 (1969) [Per J. Fernando, En Banc].

> implications. For what remedy would the people have against a judge or any other public official who resorts to wrongful and illegal conduct during his last days in office? What would prevent some corrupt and unscrupulous magistrate from committing abuses and other condemnable acts knowing fully well that he would soon be beyond the pale of the law and immune to all administrative penalties? If only for reasons of public policy, this Court must assert and maintain its jurisdiction over members of the judiciary and other officials under its supervision and control for acts performed in office which are inimical to the service and prejudicial to the interests of litigants and the general public. If innocent, respondent official merits vindication of his name and integrity as he leaves the government which he served well and faithfully, if guilty, he deserves to receive the corresponding censure and a penalty proper and imposable under the situation.

This Court, thus, established that:

> In short, the cessation from office of a respondent Judge either because of resignation, retirement or some other similar cause does not per se warrant the dismissal of an administrative complaint which was filed against him while still in the service. Each case is to be resolved in the context of the circumstances present thereat.

As this doctrine developed, this Court has interpreted "some other similar cause" to include death. Death, however, cannot be placed on the same footing as resignation or retirement. Resignation and optional retirement are *voluntary* modes of cessation. The respondent may avail of them as a way to escape or evade liability. This Court, therefore, should not be ousted of its jurisdiction to continue with the administrative complaint even if the resignation is accepted or the application for retirement is approved.

Death, unless self-inflicted, is *involuntary*. Respondents who die during the pendency of the administrative case against them do not do so with the intent to escape or evade liability. The rationale for proceeding with administrative cases despite resignation or optional retirement, therefore, cannot apply.

It is conceded that compulsory retirement is also involuntary. Respondents or this Court cannot fight against the passage of time.

Abiera, however, had a different rationale for respondents who have reached the compulsory age of retirement:

> A contrary rule would be fraught with injustices and pregnant with dreadful and dangerous implications. For what remedy would the people have against a judge or any other public official who resorts to wrongful and illegal conduct during his last days in office? What would prevent some corrupt and unscrupulous magistrate from committing abuses and other condemnable acts knowing fully well that he would soon be beyond the pale of the law and immune to all administrative penalties? If only for reasons of public policy, this Court must assert and maintain its jurisdiction over members of the judiciary and other officials under its supervision and control for acts performed in office which are inimical to the service and prejudicial to the interests of litigants and the general public.

In formulating the doctrine, this Court was trying to guard against corrupt and unscrupulous magistrates who would commit abuses knowing fully well that after retirement, they could no longer be punished.

It is this *certainty of cessation* that differentiates compulsory retirement from death as a mode of cessation from public service. A respondent judge knows when he or she will compulsorily retire. In contrast, nobody knows when one will die, unless the cause of death is self-inflicted. Even those with terminal illnesses cannot pinpoint the exact day when they will die.

The essence of due process in administrative cases is simply the opportunity to be heard. Respondents must be given the opportunity to be informed of and refute the charges against them in all stages of the proceedings.

Only in resignation and retirement can there be a guarantee that respondents will be given the opportunity to be heard. Even if they resign or retire during the pendency of the administrative case, they can still be aware of the proceedings and actively submit pleadings. Thus, they should not be allowed to evade liability by the simple expediency of separation from public service.

It would be illogical and impractical to treat dead respondents as equal to resigned or retired respondents. Dead respondents are neither aware of the continuation of the proceedings against them, nor are in any position to submit pleadings. Death forecloses any opportunity

to be heard. Continuing with the administrative proceedings even after the respondent's death, therefore, is a violation of the right to due process.[15] (Citations omitted)

Here, respondent only knew of the conclusions of the judicial audit team before his death. He had no knowledge that the Office of the Court Administrator would adopt the findings of the judicial audit team. He certainly would not have known that this Court would adopt the findings of the Office of the Court Administrator. As was demonstrated by the subsequent events of this case, his widow was the one who filed a Motion for Reconsideration—not to ask for clemency, but rather, to have the case dismissed, because her husband did not know he would be found guilty of the charges against him.

At the risk of being repetitive, I must reiterate: death forecloses *any* opportunity to be heard. Resigned or retired respondents should not be treated in the same manner as dead respondents. The reason should be easy enough to comprehend: only respondents who are still alive can speak, and, ultimately, be heard.

III

This Court has already repeatedly been confronted with this issue and has even repeatedly been constrained to dismiss the case due to the sheer impracticability of the punishment.

In *Baikong Akang Camsa vs. Judge Aurelio Rendon*,[16] this Court found it inappropriate to proceed in the investigation of

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[15] Dissenting Opinion of J. Leonen in *Re Alleged Extortion Activities of Judge Abul*, A.M. No. RTJ-17-2486, September 3, 2019, <https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/65676> [Per Curiam, En Banc] *citing Pagano v. Nazarro, Jr.*, 560 Phil. 96, 104-105 (2007) [Per J. Chico-Nazaro, Third Division]; Republic Act 1616(1957), sec. 1; *Re: Requests for survivorship benefits of spouses of justices and judges who died prior to the effectivity of Republic Act (R.A.) No. 9946*, 818 Phil. 344 (2017) [Per J. Martires, En Banc]; *Aquino, Jr. v. Miranda*, 473 Phil. 216, 227 (2004) [Per Curiam, En Banc]; Pres. Decree No. 1146 (1977), sec. 11 (b); Republic Act No. 9946 (2010), sec. 1; *Diamalon v. Quintillan*, 139 Phil. 654, 656-657 (1969) [Per J. Fernando, En Banc]; *Perez v. Abiera*, 159-A Phil. 575, 580-581 (1975) [Per J. Muñoz Palma, En Banc].

[16] 427 Phil. 518 (2003) [Per J. Vitug, First Division].

a judge "who could no longer be in any position to defend himself[,] [which] would be a denial of his right to be heard, our most basic understanding of due process."[17]

In *Apiag v. Cantero*,[18] this Court dismissed the case and allowed the release of his retirement benefits, even if respondent was able to submit his comment before his untimely death:

> [We] cannot just gloss over the fact that he was remiss in attending to the needs of his children of his first marriage — children whose filiation he did not deny. He neglected them and refused to support them until they came up with this administrative charge. For such conduct, this Court would have imposed a penalty. But in view of his death prior to the promulgation of this Decision, dismissal of the case is now in order.[19]

In *Re: Judicial Audit Conducted in the Municipal Trial Court (MTC) of Tambulig and the 11 th Municipal Circuit Trial Court (MCTC) of Mahayag-Dumingag-Josefina, both in Zamboanga del Sur*,[20] this Court found that respondent was constrained to dismiss the case and release his retirement benefits to his heirs despite finding him guilty of gross inefficiency and gross ignorance of the law.

In this Court's September 3, 2019 Decision, the majority held that the death of the respondent in an administrative case did not preclude the finding of liability, citing *Gonzales v. Escalona*,[21] which found:

> Respondent Escalona had already resigned from the service. His resignation, however, does not render this case moot, nor does it free him from liability. In fact, the Court views respondent Escalona's resignation before the investigation as indication of his guilt, in the same way that flight by an accused in a criminal case is indicative of guilt. In short, his resignation will not be a way out of the administrative

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[17] Id. at 525-526.

[18] 335 Phil. 511 (1997) [Per J. Panganiban, Third Division].

[19] Id. at 526.

[20] 509 Phil. 401 (2005) [Per C.J. Davide, Jr., First Division].

[21] 587 Phil. 448 (2008) [Per J. Brion, Second Division].

liability he incurred while in the active service. While we can no longer dismiss him, we can still impose a penalty sufficiently commensurate with the offense he committed.

We treat respondent Superada no differently. While his death intervened after the completion of the investigation, it has been settled that the Court is not ousted of its jurisdiction over an administrative matter by the mere fact that the respondent public official ceases to hold office during the pendency of the respondent's case; jurisdiction once acquired, continues to exist until the final resolution of the case. *In* Loyao, Jr. v. Caube, *we held that the death of the respondent in an administrative case does not preclude a finding of administrative liability*[.][22] (Citations omitted; emphasis supplied)

However, in *Loyao, Jr. v. Caube*,[23] the case that *Gonzales* cites as basis, this Court was constrained to *dismiss the case and consider it closed and terminated, since the penalty could no longer be served*:

To be sure, respondent Caube's death has permanently foreclosed the prosecution of any other actions, be it criminal or civil, against him for his malfeasance in office. We are, however, not precluded from imposing the appropriate administrative sanctions against him. Respondent's misconduct is so grave as to merit his dismissal from the service, were it not for his untimely demise during the pendency of these proceedings. However, since the penalty can no longer be carried out, this case is now declared closed and terminated.[24] (Citations omitted)

Gonzales even discusses several exceptions to the general rule. It stated that the presence of the following circumstances is enough to warrant the dismissal of the case: "first, the observance of respondent's right to due process; second, the presence of exceptional circumstances in the case on the grounds of equitable and humanitarian reasons; and third, it may also depend on the kind of penalty imposed."[25]

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[22] Id. at 462-463.

[23] 450 Phil. 38 (2003) [Per Curiam, En Banc].

[24] Id. at 47.

[25] *Gonzalez v. Escalona*, 587 Phil. 448, 463 (2008) [Per J. Brion, Second Division].

As previously discussed, there can be no due process when one does not have the corporeal presence to speak and be heard. Respondent is no longer in a position to defend himself from the findings of the Office of the Court Administrator. He can no longer be informed of the conclusions of this Court. The recommended penalty can no longer be served. On top of that, he is not in any position to file a motion for reconsideration, to plead his innocence, or to express his remorse.

Equitable and humanitarian reasons must also be taken into account in the imposition of the penalty. The forfeiture of respondent's retirement benefits will only punish his heirs, who had nothing to do with the administrative case filed against respondent.

I harbor no illusion that respondent did not commit any of the allegations meted against him. On the contrary, had respondent not died, his dismissal and all its accessory penalties, including the forfeiture of all benefits, would have been the correct penalty. His heirs, however, were not the ones who committed his infractions. It would be cruel for this Court to make his grieving family bear the burden of his faults.

Death has already removed respondent from our ranks, in a manner more permanent than dismissal. Respondent can no longer betray the public trust. He will no longer be a stain on this Court's reputation.

This Court should be humble enough to accept that there are limits to our disciplinary power that cannot be crossed. Death is one of them.

ACCORDINGLY, I vote to **DISMISS** the complaint against Presiding Judge Godofredo B. Abul, Jr. of Branch 4, Regional Trial Court, Butuan City, Agusan del Norte, in view of his death during the pendency of this case.

CONCURRING AND DISSENTING OPINION

CAGUIOA, *J.*:

I concur in the granting of the Motion for Reconsideration (MR) and the resulting dismissal of the administrative complaint against the late Judge Godofredo B. Abul, Jr. (Judge Abul). Nevertheless, I dissent as to the majority's holding that the death of the respondent in an administrative case before its final resolution should *ipso facto* lead to the dismissal of the case.

To recall, a Complaint was filed against Judge Abul for alleged extortion from detainees in exchange for their release from prison or the dismissal of their criminal cases. After its investigation, the Office of the Court Administrator (OCA) found Judge Abul liable for grave misconduct and recommended that he be fined in the amount of ₱500,000.00 to be deducted from his retirement gratuity. While the administrative case was pending review by the Court, Judge Abul "met an untimely death when he was targeted by an unidentified motorcycle-riding shooter while he was about to depart from his house."[1]

Despite his death, the Court found Judge Abul administratively liable in the September 3, 2019 Decision. He was meted the penalty of forfeiture of all retirement and allied benefits, except accrued leaves. Therein, I joined the Dissenting Opinion of my esteemed colleague, Associate Justice Ramon Paul L. Hernando. Specifically, I agreed with Justice Hernando's appreciation of the humanitarian considerations that should have impelled the Court to mitigate the penalty imposed against Judge Abul. As Justice Hernando noted, Judge Abul was murdered a couple of days after he turned 68. Moreover, Judge Abul's wife, who also sustained gunshot wounds, had written a letter to the Court explaining that she is a housewife who has no work and no source of income and that ever since Judge Abul's preventive suspension from office, their family had faced

[1] *Ponencia,* p. 2.

financial crisis. She therefore entreated the Court to release the accrued leave benefits of Judge Abul as well as such other benefits or assistance which the Court could extend to them in order to help their family sustain their daily needs and to fund her son's education in medical school. I was of the view then that these: considerations should have prompted the Court to dismiss the case. As Justice Hernando stated:

> Given the specific circumstances of Judge Abul's case, it is my view that **his mistakes should not unduly punish his spouse or his heirs, especially if they had no hand in or knowledge about the alleged extortions**. Judge Abul's liability should be considered personal and extinguished by reason of his death, and should not extend beyond the said death only to be shouldered by his spouse or his son. Doing so would indirectly impose a harsh penalty upon innocent individuals who not only have to come to terms with the unjust death of a loved one but also live without one henceforth. **Without a doubt, forfeiture of all of Judge Abul's death and survivorship benefits would add to the grief and hardships that his family is already enduring**. Thus, it is my humble position that assuming that the Court would maintain the non-dismissal rule in administrative cases in case of death of the respondent, the Court should, instead of imposing such a strict and unforgiving punishment even when Judge Abul has already passed away, impose a fine to be deducted from his retirement benefits. This is what the OCA had in fact recommended in the first place.[2] (Emphasis supplied)

It is in light of the foregoing, and only to such extent, that I joined Justice Hernando's dissent in the main Decision.

In the instant Resolution, now penned by Justice Hernando, the Court grants the MR, thereby reversing and setting aside the September 3, 2019 Decision. While I welcome the dismissal of the case against Judge Abul, I disagree with the new jurisprudential ruling being laid down here that the death of a respondent in an administrative case before its final resolution

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[2] J. Hernando, Dissenting Opinion in *Re: Investigation Report on the Alleged Extortion Activities of Presiding Judge Godofredo B. Abul, Jr., Br. 4, RTC, Butuan City, Agusan Del Norte*, A.M. No. RTJ- 17-2486, September 3, 2019, p. 7.

is a cause for its dismissal as its non-dismissal is a transgression of the respondent's constitutional rights to due process and presumption of innocence.[3] I submit that the general rule that the death of the respondent does not *ipso facto* lead to the dismissal of the administrative case should still prevail. This is in consonance with the well-settled rule that jurisdiction, once acquired, continues to exist until final resolution of the case.[4]

In espousing now that the respondent in an administrative case also enjoys the right to be presumed innocent pending final judgment in the administrative case, the majority cites Section 14 of the Bill of Rights under the Constitution, which states that "[i]n all criminal prosecutions, the accused shall be presumed innocent until the contrary is proved.[5]" The majority elaborates that considering criminal cases require a more stringent degree of proof, which is proof beyond reasonable doubt, with more reason should a respondent in an administrative case be presumed innocent until proven guilty as only substantial evidence is required in administrative cases.[6] Thus, since Judge Abul died prior to the Court's decision, the case should be dismissed as he is presumed innocent of the charges against him.

As stated at the outset, I respectfully disagree.

Indeed, the constitutional precept that an accused in a criminal case enjoys the presumption of innocence has been, in several times, applied in administrative cases as well.[7] I agree that this application is proper owing to the other constitutional guarantee of due process.[8] In my view, however, the dismissal of the case

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[3] *Ponencia*, p. 4.

[4] *Gonzales v. Escalona*, A.M. No. P-03-1715, September 19, 2008, 566 SCRA 1, 15.

[5] *Ponencia*, pp. 4-5.

[6] Id. at 4.

[7] See *Ocampo v. Enriquez*, 815 Phil. 1175, 1238-1239 (2017).

[8] See *Enrile v. Sandiganbayan*, 767 Phil. 147 (2015).

by reason of the death of the accused in a criminal case, or of the respondent in an administrative case, is **not** rooted on the right to be presumed innocent until proven guilty. Rather, it is rooted on the fundamental principle that criminal responsibility is personal.[9] Thus, the Court has consistently held that under Article 89 (1) of the Revised Penal Code, criminal liability on account of the death of the accused before final judgment is totally extinguished "**inasmuch as there is no longer a defendant to stand as the accused**."[10]

I submit that the question on whether an administrative case can still proceed despite the death of the respondent finds a similar footing instead with the question in civil cases on the effect on the status of an ongoing action when a party dies during its pendency.

In civil cases, the criteria for determining whether an action survives the death of a party was explained in *Bonilla v. Barcena*[11] as follows:

> xxx The question as to whether an action survives or not depends on the nature of the action and the damage sued for. In the causes of action which survive the wrong complained [of] affects primarily and principally property and property rights, the injuries to the person being merely incidental, while in the causes of action which do not survive the injury complained of is to the person, the property and rights of property affected being incidental. x x x[12]

As gleaned from the foregoing explanation, the action survives when the wrong complained of affects primarily and principally property and property rights with the injury to a person or third

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[9] *Vizconde v. Intermediate Appellate Court*, G.R. No. 74231, April 10, 1987, 149 SCRA 226, 233.

[10] *People v. Culas*, G.R. No. 211166, June 5, 2017, 825 SCRA 552, 554-556; *People v. Paras*, G.R. No. 192912, October 22, 2014, 739 SCRA 179, 183-184, citing *People v. Bayotas*, G.R. No. 102007, September 2, 1994, 236 SCRA 239, 255-256.

[11] No. L-41715, June 18, 1976, 71 SCRA 491.

[12] Id. at 495-496.

party being merely incidental. In administrative cases, the injury to another is incidental. What is involved in administrative cases is principally an offense to the public office, the same being a sacred public trust. Thus, the Court has consistently held that in administrative cases, no investigation shall be interrupted or terminated by reason of desistance, settlement, compromise, restitution, withdrawal of the charges, or failure of the complainant to prosecute the same.[13] The need to maintain the faith and confidence of our people in the government and its agencies and instrumentalities demands that proceedings in administrative cases against public officers and employees should not be made to depend on the whims and caprices of complainants who are, in a real sense, only witnesses.[14]

Particularly, in *Bolivar v. Simbol*,[15] which involved disbarment proceedings against a lawyer, the Court ruled that the exercise by the Court of its power to discipline is not for the purpose of enforcing civil remedies between parties, but to protect the court and the public against an attorney guilty of unworthy practices in his profession.

Arguably, in criminal cases, the private offended party is also commonly relegated as a mere witness for the State, and that the offended party to the action is the People of the Philippines on the ground that the purpose of the criminal action is to determine the penal liability of the accused for having outraged the State with his crime. I submit, however, that notwithstanding this shared sound policy, the element of injury to another spells a material and practical difference between a criminal case and an administrative case. To reiterate, in administrative cases, the injury to another is incidental. On

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[13] *Reyes-Domingo v. Morales*, A.M. No. P-99-1285, October 4, 2000, 342 SCRA 6, 11, citing REVISED RULES OF COURT, Rule 139-B, Sec. 5 and *Tejada v. Hernando*, A.C. No. 2427, May 8, 1992, 208 SCRA 517, 521-522.

[14] Id. at 12, citing *Sy v. Academia*, A.M. No. P-87-72, July 3, 1991, 198 SCRA 705, 715.

[15] A.C. No. 377, April 29, 1966, 16 SCRA 623, 628.

the other hand, while crimes are considered offenses against the State, the injury to a private offended party is **far from being** merely incidental.

Another argument raised in support of the dismissal of the administrative case in view of the death of the respondent is that the essence of due process necessitates such dismissal. The majority opines that had death not supervened, the respondent could still pursue other options in keeping with due process, such as filing a motion for reconsideration or asking for clemency. Thus, the majority concludes that it is only right to dismiss the administrative case against the respondent since the spirit of due process encompasses all stages of the case.[16]

Again, I beg to differ from this sweeping pronouncement.

For one, due process considerations are among the already recognized exceptions to the rule that death does not lead to the dismissal of the administrative case.[17] As such, the opportunity to appreciate or apply this exception has always been available on a case-to-case basis.

Likewise, the concept of due process in administrative proceedings has always been recognized as different with the concept of due process in criminal proceedings. Administrative due process cannot be fully equated with due process in its strict judicial sense, for in the former, a formal or trial-type

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[16] *Ponencia*, pp. 10-11.

[17] In previous cases where the Court upheld the general rule that the death of the respondent does not *ipso facto* lead to the dismissal of the administrative case, the Court had nevertheless recognized certain exceptions to this rule. Thus, the Court held that death of the respondent would necessitate the dismissal of the administrative case upon a consideration of any of the following factors: (1) the observance of respondent's right to due process; (2) the presence of exceptional circumstances in the case on the grounds of equitable and humanitarian reasons; and (3) it may also depend on the kind of penalty imposed. *Gonzales v. Escalona*, supra note 4, at 15-16, citing Limliman v. Ulat-Marrero, A.M. No. RTJ-02-1739, January 22, 2003, 395 SCRA 607.

hearing is not always necessary and technical rules of procedure are not strictly applied.[18]

The essence of procedural due process is embodied in the basic requirement of **notice and a real opportunity to be heard**. In administrative proceedings, procedural due process simply means the **opportunity to explain one's side or the opportunity to seek a reconsideration of the action or ruling complained of.** "To be heard" does not mean only verbal arguments in court; one may also be heard thru pleadings. Where opportunity to be heard, either through oral arguments or pleadings, is accorded, there is no denial of procedural due process.[19] Thus, a respondent must be given notice at all times. This is an absolute requirement. Coupled with this, if a respondent is given the opportunity to explain his or her side, then his or her right to due process is *deemed* satisfied. If, on the other hand, a respondent was not originally heard but was eventually heard in a motion for reconsideration, his or her right to due process is still *deemed* satisfied.

Here, Judge Abul was given notice and a real opportunity to be heard. On February 18, 2017, the Court *En Banc* issued a resolution which placed Judge Abul under preventive suspension and required him to comment on the complaint and the investigative report of the OCA.[20] Judge Abul did, in fact, file his comment/answer, denying all the accusations and insisting that the same were false, baseless, and concocted by an evil and malicious mind for the sole purpose of besmirching his unblemished record of service in the Judiciary.[21] Thus, the

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[18] *Vivo v. Philippine Amusement and Gaming Corporation*, G.R. No. 187854, November 12, 2013, 709 SCRA 276, 281.

[19] *Disciplinary Board, LTO v. Gutierrez*, G.R. No. 224395, July 3, 2017, 828 SCRA 663, 669.

[20] *Per Curiam* Decision in *Re: Investigation Report on the Alleged Extortion Activities of Presiding Judge Godofredo B. Abul, Jr., Br. 4, RTC, Butuan City, Agusan Del Norte*, A.M. No. RTJ-17-2486, September 3, 2019, p. 3.

[21] Id.

Court then held that he was fully afforded due process during the investigation of the OCA.[22]

All told, I find no pressing reason for the Court to now abandon the prevailing rule that the death of the respondent does not *ipso facto* lead to the dismissal of the administrative case. I subscribe to the long-held ratio of the Court in previous cases that a contrary rule would be fraught with injustices and pregnant with dreadful and dangerous implications.[23] If only for reasons of public policy, the Court must assert and maintain its jurisdiction over members of the judiciary and other officials under its supervision and control for acts performed in office which are inimical to the service and prejudicial to the interests of litigants and the general public.[24]

It must be underscored as well that this general rule has its established exceptions. The Court had consistently invoked that the death of the respondent would, however, necessitate the dismissal of the administrative case upon a consideration of any of the following factors: (1) the observance of the respondent's right to due process; (2) the presence of exceptional circumstances in the case on the grounds of equitable and humanitarian reasons; and (3) depending on the kind of penalty imposed.[25] To my mind, these factors are already sufficient to safeguard against any unfairness that may shroud the Court's judgment in ruling against a deceased respondent. Any possibility, too, that another factor or exception may validly be taken into consideration later on by the Court is not foreclosed.

WHEREFORE, I concur in the dismissal of the administrative case against the late Judge Godofredo B. Abul, Jr. in view of the presence of exceptional circumstances in this case that call

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[22] Id. at 9.

[23] *Arabani v. Arabani*, AM Nos. SCC-10-14-P, SCC-10-15-P and SCC-11-17, November 12, 2019, p. 2.

[24] *How v. Ruiz*, A.M. No. P-05-1932, February 15, 2005, 451 SCRA 320, 325.

[25] Supra note 17.

upon the appreciation of humanitarian considerations in his favor.

DISSENTING OPINION

CARANDANG, *J.*:

I dissent.

In the Decision dated September 3, 2019, the Court adopted the findings of the Office of the Court Administrator (OCA) holding Judge Godofredo Abul, Jr. (Judge Abul) guilty for violating Canon 2 (Integrity), Canon 3 (Impartiality), and Canon 4 (Propriety) of the New Code of Judicial Conduct for the Philippine Judiciary (Code of Judicial Conduct) amounting to grave misconduct despite his death on August 5, 2017. However, the recommendation of the OCA was modified. Applying the Court's ruling in *Gonzales v. Escalona*,[1] it was held that Judge Abul's death should not result in the dismissal of the administrative complaint as the Court is not ousted of its jurisdiction by the mere fact that the respondent public official had ceased to hold office.[2] We ruled that death of respondent judge during the pendency of his administrative case shall not terminate the proceedings against him, much less absolve him, or cause the dismissal of the complaint if the investigation was completed prior to his demise. If death intervenes before he has been dismissed from service, the appropriate penalty is forfeiture of all retirement and other benefits, except accrued leaves.[3]

Considering that the Court had previously warned Judge Abul in *Calo v. Judge Abul, Jr.*[4] "to be more circumspect in issuing orders which must truly reflect the actual facts they represent

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[1] 587 Phil. 448 (2008).

[2] A.M. No. RTJ-17-2486, September 3, 2019.

[3] Id.

[4] 528 Phil. 827 (2006).

to obviate engendering views of partiality x x x,"[5] We imposed the stiffer penalty of dismissal from the service, forfeiture of all benefits including retirement gratuity, exclusive of his accrued leaves, which shall be released to his legal heirs.[6]

In the present Motion for Reconsideration, Bernadita Abul (Mrs. Abul), surviving spouse of Judge Abul, points out that Judge Abul's death preceded the release of the judgment finding him guilty of the offense charged against him. Mrs. Abul posits that Judge Abul was already dead when the OCA concluded its investigation on the charge against him and that his death necessitates the dismissal of the administrative case.[7] In the alternative, if the administrative case cannot be dismissed, Mrs. Abul proposes that Judge Abul's retirement benefits should not be forfeited for humanitarian reasons. Instead of forfeiture, Mrs. Abul suggests that a reasonable amount of fine be imposed and deducted from his retirement benefits.[8]

The Motion for Reconsideration should be denied.

This is not the first time that the Court addressed the implications of imposing a penalty on an erring court employee who died during the pendency of an administrative case against him. As early as 1975, a similar issue was raised in *Hermosa v. Paraiso*,[9] where the respondent branch clerk of court died after the Investigating Judge recommended that he be exonerated of the charges for lack of sufficient evidence but while the case remained pending before the Court. The Court resolved the case so that the heirs of the respondent may receive any retirement benefits due to them and ordered the dismissal of the case for lack of substantial evidence.[10]

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[5] Id. at 832.

[6] *Calo v. Judge Abul, Jr.*, supra note 2.

[7] Temporary *rollo* (A.M No. RTJ-17-2486), p. 4.

[8] Id. at 4-5.

[9] 159 Phil. 417 (1975).

[10] Id. at 419.

In *Manozca v. Judge Domagas*,[11] the erring judge charged with gross ignorance of the law died while the case was being evaluated by the OCA for appropriate action. Nonetheless, the Court resolved to impose a fine of ₱5,000.00 based on the record which was not disputed.

In *Baikong Akang Camsa v. Rendon*,[12] the Court deemed the case against the late judge closed and terminated because no investigation had been conducted at the time of his demise. The Court explained that to "allow an investigation to proceed against him who could no longer be in any position to defend himself would be a denial of his right to be heard, our most basic understanding of due process."[13] However, it must be clarified that the Court terminated the case in *Baikong Akong Camsa*,[14] because no investigation at all had been conducted at the time of the demise of the erring court employee. This is not applicable to the present case because an investigation was already concluded at the time of Judge Abul's demise and he was given an opportunity to be heard.

In *Loyao, Jr. v. Caube*,[15] the Court declared that the death or retirement of any judicial officer from service does not preclude the finding of any administrative liability to which he shall still be answerable. In highlighting the necessity of retaining jurisdiction over an erring judicial officer's administrative case beyond his death, the Court quoted its ruling in *Gallo v. Cordero*,[16] to wit:

> [T]he jurisdiction that was ours at the time of the filing of the administrative complaint was not lost by the mere fact that the respondent public official had ceased in office during the pendency

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[11] 318 Phil. 744 (1995).

[12] 448 Phil. 1 (2002).

[13] Id.

[14] Id.

[15] 450 Phil. 38 (2003).

[16] 315 Phil. 210 (1995).

of his case. The Court retains its jurisdiction either to pronounce the respondent public official innocent of the charges or declare him guilty thereof. A contrary rule would be fraught with injustice and pregnant with dreadful and dangerous implications . . . If innocent, respondent public official merits vindication of his name and integrity as he leaves the government which he has served well and faithfully; if guilty, he deserves to receive the corresponding censure and a penalty proper and imposable under the situation.[17]

The Court similarly ruled in *Sexton v. Casida*,[18] *Gonzales v. Escalona*,[19] and *Mercado v. Salcedo*[20] that the death of the respondent in an administrative case does not preclude a finding of administrative liability. In both cases, the Court imposed fines on the erring respondents who died during the pendency of their respective administrative cases.

More recently, in *Agloro v. Burgos*,[21] which was decided *En Banc*, the Court upheld its ruling in *Gonzales* that the death of a respondent does not preclude a finding of administrative liability except for certain exceptional circumstances. To determine the necessity of dismissing the case, the Court recognized the following factors to be considered:

> x x x *[F]irst*, if the respondent's right to due process was not observed; *second*, the presence of exceptional circumstances in the case on the grounds of equitable and humanitarian reasons; and *third*, the kind of penalty imposed.[22] (Italics in the original)

In *Agloro*, the Court did not dismiss the administrative case merely on account of the respondent's death since she was afforded her right to due process when she answered the charges

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[17] Id. at 220.

[18] 508 Phil. 166 (2005).

[19] Supra note 1.

[20] 619 Phil. 3 (2009).

[21] 804 Phil. 621 (2017).

[22] Id. at 635.

against her and was even able to file her comment before the OCA.

Based on the foregoing, the prevailing rule is that the Court is not ousted of its jurisdiction over an administrative matter by the mere fact that the respondent public official ceases to hold office during the pendency of respondent's case.[23] Nevertheless, the Court recognizes the following exceptions: (1) if the respondent's right to due process was not observed; (2) in exceptional circumstances on the grounds of equitable and humanitarian reasons; and (3) the kind of penalty imposed would render the proceedings useless.

Notwithstanding the death of Judge Abul, the Court may impose the appropriate administrative penalties such as forfeiture of all his benefits, including retirement gratuity, as he was afforded an opportunity to be heard. Records reveal that the investigation had already been concluded at the time of his demise. The Investigation Report[24] of the OCA was issued on February 10, 2017. Judge Abul even managed to file his Comment/Answer[25] on April 19, 2017. Judge Abul's death, by itself, is insufficient to justify the dismissal of the administrative case and bar the imposition of the corresponding penalties. The penalties arising from his administrative liability survive his death.

Furthermore, the Court cannot simply equate the consequences of the death of a respondent during the pendency of an administrative case to the legal implications of a defendant's demise in a pending criminal or civil case. It is worthy to highlight the marked differences between the nature of these proceedings and their concomitant liabilities as discussed by the Court in *Gonzales*:

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[23] *Re: Audit Report on Attendance of Court Personnel of RTC, Br. 32, Manila*, 532 Phil. 51 (2006); *Gonzales v. Escalona*, supra note 1.

[24] *Rollo* (A.M. No. RTJ-17-2486), pp. 2-12.

[25] Id. at 61-75.

From another perspective, administrative liability is separate and distinct from criminal and civil liability which are governed by a different set of rules. In *Flecther v. Grinnel Bros., et al.*, the United States District Court of Michigan held that whether a cause of action survives the death of the person depends on the substance of the cause of action and not on the form of the proceeding to enforce it. Thus, **unlike in a criminal case where the death of the accused extinguishes his liability arising thereon under Article 89 of the Revised Penal Code, or otherwise relieves him of both criminal and civil liability (arising from the offense) if death occurs before final judgment, the dismissal of an administrative case is not automatically terminated upon the respondent's death. The reason is one of law and public interest; a public office is a public trust that needs to be protected and safeguarded at all cost and even beyond the death of the public officer who has tarnished its integrity**. Accordingly, we rule that the administrative proceedings is, by its very nature, not strictly personal so that the proceedings can proceed beyond the employee's death, subject to the exceptional considerations we have mentioned above. This, conclusion is bolstered up by *Sexton v. Casida*, where the respondent, who in the meantime died, was found guilty of act unbecoming a public official and acts prejudicial to the best interest of the service, and fined Five Thousand Pesos (₱5,000.00), deductible from his terminal leave pay.[26] (Emphasis and underscoring supplied; citations omitted)

The Court has utmost interest in ensuring that only those who possess and carry out the core values enshrined in the Code of Judicial Conduct are permitted to serve in the judiciary. This paramount concern prevails notwithstanding the death of erring officers of the Court due to the significant responsibilities entrusted to them.

It must be emphasized that Judge Abul had already been previously embroiled in a controversy in the exercise of his judicial functions and reprimanded by the Court. In *Calo v. Judge Abul*,[27] Judge Abul was sternly warned "to be more

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[26] *Gonzales v. Eacalona*, supra note 1 at 464-465.

[27] Supra note 4.

circumspect in issuing orders which must truly reflect the actual facts they represent to obviate engendering views of partiality among others."[28] The gravity and seriousness of the offense of Judge Abul is undeniable. An officer of the Court who continued to defy exacting standards established to preserve the honor and integrity of the judiciary, after having been previously sanctioned, does not deserve the Court's consideration. In my view, Mrs. Abul failed to present any compelling reason to convince Us to exercise discretion on equitable or humanitarian grounds.

Accordingly, I respectfully submit that the Motion for Reconsideration should be denied. The ruling of the Court dated September 3, 2019 finding Judge Abul guilty of grave misconduct and imposing the corresponding penalty should be upheld for the reasons herein explained.

[28] Id. at 832.

EN BANC

[G.R. No. 202481. September 8, 2020]

ALBERT B. DEL ROSARIO, REYNALDO TUGADE, ROLANDO BARRON, GEORGE MACASO, REY I. SANTIAGO, ROBERTO B. DEL CASTILLO, PAUL VIRAY, ISMAEL DABLO, TOMMY ANACTA, ISAGANI TAOATAO, ROLIO ANDREW RAMANO, ARTHUR DUNGOG, EDWIN SAGUN, APOLINAR DEL GRACIA, SENGKLY ESLABRA, ERIC BIGLANG-AWA, REYNALDO CRUZ, CARLO DIONISIO, ERNESTO CRUZ, LORENZO ALANO, CRISANTO PANLUBASAN, ROBERTO SANCHEZ, NELSON LUCAS, and PHILBERT ACHARON, *Petitioners, v.* **ABS-CBN BROADCASTING CORPORATION,** *Respondent.*

[G.R. Nos. 202495 & 202497. September 8, 2020]

ABS-CBN CORPORATION, *Petitioner, v.* **JOURNALIE PAYONAN, ANTONIO MANUEL, JR., MANUEL MENDOZA, JOSEPH R. ONG, RIEL A. TEODORO, RAMON CATAHAN, JR., RONNIE LOZARES, FERDINAND MARQUEZ, FERDINAND SUMERACRUZ, DANTE T. VIDAL, CEZAR ZEA, RICARDO JOY CAJOLES, JR., ALEX R. CARLOS, JHONSCHULTZ CONGSON, LESLIE REY OLPINDO, ARMANDO A. RAMOS, ROMMEL V. VILLANUEVA, ENRICO V. CASTULO, FRANKIE DOMINGO, MANUEL CONDE, ANTONIO IMMANUEL N. CALLE, OLIVER J. CHAVEZ, FRANCIS LUBUGUIN, JEROME B. PRADO, RICHARD T. SISON, RODERICK N. RODRIGUEZ, LAURO CALITISEN, ELMER M. EVARISTO, GILBERT M. OMAPAS, CHRISTOPHER MENDOZA, WILFREDO N. ZALDUA, RUSSEL M. GALIMA, MEDEL GOTEL, OSIAS LOPEZ, JOSEPH**

ELPHIN F. LUMBAD, MARLON MACATANTAN, JOSEPH ARMAND MAMORNO, ALFRED CHRISTIAN NUÑEZ, ALAIN PARDO, ROÑINO SANTIAGO, JUN TANGALIN, JONATHAN C. TORIBIO, JERICO T. ADRIANO, JULIUS T. ADRIANO, MARK ANTHONY AGUSTIN, BENJAMIN C. BENGCO, JR., DANILO R. BLAZA, GINO REGGIE BRIONES, RICKY BULDIA, NICOMEDES CANALES, ALFREDO S. CURAY, ROJAY PAUL DELA ROSA, CHRISTOPHER DE LEON, DIXON DISPO, ANDREW EUGENIO, JEFFREY ALFRED EVANGELISTA, ALLAN V. HERRERA, MICHAEL V. SANTOS, and ROMMEL M. MATALANG, *Respondents*.

[G.R. No. 210165. September 8, 2020]

ISMAEL B. DABLO, ROLANDO S. BARRON, ROBERTO B. DEL CASTILLO, ALBERT B. DEL ROSARIO, GEORGE B. MACASO, REY I. SANTIAGO, REYNALDO L. TUGADE, and PAUL VIRAY, *Petitioners, v.* **ABS-CBN BROADCASTING CORPORATION and/or EUGENIO LOPEZ**, *Respondents*.

[G.R. No. 219125. September 8, 2020]

RICARDO JOY CAJOLES, JR., ANTONIO IMMANUEL CALLE, RICHARD SISON and JOURNALIE PAYONAN, *Petitioners, v.* **ABS-CBN BROADCASTING CORPORATION**, *Respondent*.

[G.R. No. 222057. September 8, 2020]

ABS-CBN CORPORATION, *Petitioner, v.* **JOSEPH R. ONG, FERNANDO LOPEZ, RAYMON REYES and GARRET CAILLES,** *Respondents*.

[G.R. No. 224879. September 8, 2020]

ABS-CBN CORPORATION and EUGENIO LOPEZ III, *Petitioners, v.* **RONNIE B. LOZARES,** *Respondent.*

[G.R. No. 225101. September 8, 2020]

ANTONIO BERNARDO S. PEREZ, JOHN PAUL PANIZALES, FERDINAND CRUZ, CHRISTOPHER MENDOZA, DENNIS REYES, JUN BENOSA, ROLAND KRISTOFFER DE GUZMAN, FREDIERICK GERLAND DIZON, RUSSEL GALIMA, ALFRED CHRISTIAN NUNEZ, ROMMEL VILLANUEVA, JHONSCHULTZ CONGSON, ALEX CARLOS, MICHAEL TOBIAS, GERONIMO BANIQUED, RONALDO SAN PEDRO, and ERIC PAYCANA, *Petitioners, v.* **COURT OF APPEALS-SPECIAL NINTH DIVISION and ABS-CBN BROADCASTING CORPORATION,** *Respondents*.

[G.R. No. 225874. September 8, 2020]

ABS-CBN CORPORATION, *Petitioner, v.* **JOSE ZABALLA III, TAUCER TYCHE BENZONAN and FISCHERBOB CASAJE,** *Respondents*.

SYLLABUS

1. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *CERTIORARI*; THE FILING OF A MOTION FOR RECONSIDERATION IS AN INDISPENSABLE CONDITION FOR FILING A SPECIAL CIVIL ACTION FOR *CERTIORARI*; EXCEPTION; CASE AT BAR.— As a general rule, the filing of a motion for reconsideration is an indispensable condition for filing a special civil action for *certiorari*. The motion for reconsideration is essential to grant the court or tribunal the opportunity to correct its error, if any, before resort to the courts of justice may be had. However, this rule is not iron-clad, and is subject to well-known exceptions,

such as: x x x **Where the questions raised in the *certiorari* proceedings have been duly raised and passed upon by the lower court, or are the same as those raised and passed upon in the lower court**; x x x The issues raised before the NLRC, which pertain to the existence of an employment relationship between ABS-CBN and the workers and the fact of illegal dismissal, were the very same questions raised in the special civil action for *certiorari* before the CA. Certainly, it would be futile to strictly require the filing of a motion for reconsideration when the very issues raised before the CA were exactly similar to those passed upon and resolved by the NLRC.

2. **ID.; CIVIL PROCEDURE; FORUM SHOPPING; FORUM SHOPPING EXISTS WHEN ONE PARTY REPETITIVELY AVAILS OF SEVERAL JUDICIAL REMEDIES IN DIFFERENT COURTS, SIMULTANEOUSLY OR SUCCESSIVELY; NOT PRESENT IN THE CASE AT BAR.** — Forum shopping exists when one party repetitively avails of several judicial remedies in different courts, simultaneously or successively. The remedies stem from the same transactions, are founded on identical facts and circumstances, and raise substantially similar issues, which are either pending in, or have been resolved adversely by another court. Through forum shopping, unscrupulous litigants trifle with court processes by taking advantage of a variety of competent tribunals, repeatedly trying their luck in several different fora until they obtain a favorable result. Because of this, forum shopping is condemned, as it unnecessarily burdens the courts with heavy caseloads, unduly taxes the manpower and financial resources of the judiciary, and permits a mockery of the judicial processes. Absent safeguards against forum shopping, two competent tribunals may render contradictory decisions, thereby disrupting the efficient administration of justice. Here, although it is true that the parties in the regularization and the illegal dismissal cases are identical, the reliefs sought and the causes of action are different. There is no identity of causes of action between the first set of cases and the second set of cases.

3. **LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; EMPLOYER-EMPLOYEE RELATIONSHIP; FOUR-FOLD TEST.—** In ascertaining the existence of an employer-employee relationship, the Court has invariably adhered to the four-fold test, which pertains to: (i) the selection and engagement of the

employee; (ii) the payment of wages; (iii) the power of dismissal; and (iv) the power of control over the employee's conduct, or the so-called "control test."

4. ID.; ID.; KINDS OF EMPLOYMENT.— The Labor Code classifies four (4) kinds of employees, as follows: (i) regular employees, or those who have been engaged to perform activities which are usually necessary or desirable in the usual business or trade of the employer; (ii) project employees, or those 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 employees' engagement; (iii) seasonal employees, or those who perform services which are seasonal in nature, and whose employment lasts during the duration of the season; and (iv) casual employees, or those who are not regular, project, or seasonal employees. Jurisprudence added a fifth kind – fixed-term employees, or those hired only for a definite period of time.

5. ID.; ID.; ID.; REGULAR EMPLOYEE; ESSENTIAL CHARACTERISTIC OF REGULAR EMPLOYMENT.— Notably, an essential characteristic of regular employment as defined in Article 280 of the Labor Code is the performance by the employee of activities considered necessary and desirable to the overall business or trade of the employer. The necessity of the functions performed by the workers and their connection with the main business of an employer shall be ascertained "by considering the nature of the work performed and its relation to the scheme of the particular business or trade in its entirety."

6. ID.; ID.; ID.; PROJECT-BASED EMPLOYEE; REQUISITES.— Essentially, in a project-based employment, the employee is assigned to a particular project or phase, which begins and ends at a determined or determinable time. Consequently, the services of the project employee may be lawfully terminated upon the completion of such project or phase. For employment to be regarded as project-based, it is incumbent upon the employer to prove that (i) the employee was hired to carry out a specific project or undertaking, and (ii) the employee was notified of the duration and scope of the project.

7. ID.; ID.; EMPLOYER AND EMPLOYEE RELATIONSHIP; THE CREATION OF A WORK POOL IS A VALID EXERCISE OF MANAGEMENT PREROGATIVE.— The

creation of a work pool is a valid exercise of management prerogative. It is a privilege inherent in the employer's right to control and manage its enterprise effectively, and freely conduct its business operations to achieve its purpose. However, in order to ensure that the work pool arrangement is not used as a scheme to circumvent the employees' security of tenure, the employer must prove that (i) a work pool in fact exists, and (ii) the members therein are free to leave anytime and offer their services to other employers. These requirements are critical in defining the precise nature of the workers' employment.

8. ID.; ID.; ID.; ID.; MEMBERS OF A WORK POOL ACQUIRE REGULAR EMPLOYMENT STATUS; REQUISITES.— Furthermore, in *Raycor Aircontrol Systems, Inc. v. NLRC,* the Court explained that members of a work pool could either be project employees or regular employees. Specifically, members of a work pool acquire regular employment status if: (i) they were continuously, as opposed to intermittently, re-hired by the same employer for the same tasks or nature of tasks; and (ii) the tasks they perform are vital, necessary and indispensable to the usual business or trade of the employer.

9. ID.; ID.; TERMINATION OF EMPLOYMENT; ILLEGAL DISMISSAL; THE NECESSARY CONSEQUENCE OF A DECLARATION THAT THE WORKERS ARE REGULAR EMPLOYEES IS THE CORRELATIVE RULE THAT THE EMPLOYER SHALL NOT DISMISS THEM EXCEPT FOR JUST OR AUTHORIZED CAUSE.— The necessary consequence of a declaration that the workers are regular employees is the correlative rule that the employer shall not dismiss them except for a just authorized cause provided in the Labor Code. This is the essence of the tenurial security guaranteed by the law: "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 back wages, 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."

10. ID.; ID.; ID.; MONEY CLAIMS; BURDEN OF PROOF FOR PAYMENT OF MONETARY BENEFITS RESTS WITH THE EMPLOYER.— Notably, in determining the employee's entitlement to monetary claims, the burden of proof is shifted

from the employer or the employee, depending on the monetary claim sought. Essentially, in claims for payment of monetary benefits such as holiday pay and 13th month pay, the burden rests on the employer to prove payment. This standard follows the basic rule that in all illegal dismissal cases the burden rests on the defendant to prove payment rather than on the plaintiff to prove non-payment. This, likewise, stems from the fact that all pertinent personnel files, payrolls, records, remittances, and other similar documents – which will show that the differentials, service incentive leave and other claims of workers have been paid – are not in the possession of the worker, but are in the custody and control of the employer.

11. ID.; ID.; ID.; MONEY CLAIMS NOT INCURRED IN THE NORMAL COURSE OF BUSINESS; BURDEN OF PROOF FOR PAYMENT RESTS WITH THE EMPLOYEE.— However, as to the workers' claims for overtime pay, premium pay for holidays and rest days, and night shift differential pay, the burden is shifted on the employee, as these monetary claims are not incurred in the normal course of business.

LEONEN*, J., concurring opinion*:

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; PETITIONS UNDER RULE 45 INVOLVING LABOR CASES; LIMITED TO THE CORRECTNESS OF THE COURT OF APPEALS' FINDINGS ON THE EXISTENCE OF GRAVE ABUSE OF DISCRETION BY THE NATIONAL LABOR RELATIONS COMMISSION.— This Court's power of review over labor cases in a Rule 45 petition is limited to the correctness of the Court of Appeals' findings on the existence, or lack, of grave abuse of discretion committed by the National Labor Relations Commission. x x x There is grave abuse of discretion when a court or tribunal "capriciously acts or whimsically exercises judgment to be 'equivalent to lack of jurisdiction.'"

2. LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; EMPLOYER-EMPLOYEE RELATIONSHIP; FOUR-FOLD TEST.— This Court has developed the "four-fold test" to determine whether an employer-employee relationship exists. These four factors are: "(1) the selection and engagement of

the employee; (2) the payment of wages; (3) the power of dismissal; and (4) the power to control the employees' conduct[.]"

3. **ID.; ID.; ID.; ID.; POWER OF CONTROL; THE RIGHT TO CONTROL NOT ONLY THE END TO BE ACHIEVED, BUT ALSO THE MANNER AND MEANS TO BE USED IN REACHING THAT END.—** Of these four factors, the most important is the employer's power or control over their employee, which means "the right to control not only the end to be achieved, but also the manner and means to be used in reaching that end." x x x The power of control need not be actually exercised by the employer. It is enough that the employer "has a right to wield the power." x x x The employer's right of control over the performance of work determines whether a person is an employee or an independent contractor. x x x When the employer's ostensible power of control over the conduct of work is missing, and the worker's pay depends on the result achieved, the worker must be considered an independent contractor. Notably, a worker who may otherwise be classified as a project employee cannot be an independent contractor, because no employer-employee relationship exists with independent contractors.

4. **ID.; ID.; KINDS OF EMPLOYMENT; REGULAR EMPLOYEE; TEST TO DETERMINE WHETHER A WORKER IS A REGULAR EMPLOYEE.—** The test to determine whether a worker is a regular employee is the existence of a reasonable connection between the activity that the employee performs and the employer's usual business and trade. x x x Thus, the Labor Code provides the two types of regular employment: first, by the nature of work; and second, by the years of service. This is to emphasize the protection of labor from agreements that may keep workers from attaining security of tenure.

APPEARANCES OF COUNSEL

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Ruel E. Asubar for petitioners in G.R. Nos. 202481 & 210165.

Taquio & Associates for respondents Payonan, *et al*. in G.R. Nos. 202495 & 202497.

Pro-labor Legal Assistance Center for petitioners Perez, *et al*. (G.R. No. 225101), respondent Lozares (G.R. No. 224879), respondents Ong, *et al*. (G.R. No. 222057), petitioners Cajoles, Jr., *et al*. (G.R. No. 219125) and respondents Zaballa III, *et al*. (G.R. No. 225874).

D E C I S I O N

CAGUIOA, *J.*:

This involves eight (8) consolidated Petitions for Review on *Certiorari* under Rule 45 of the Revised Rules of Court. The petitions may be divided into two categories — the regularization cases and the illegal dismissal cases.

Regularization Cases

G.R. No. 202481

Del Rosario, et al. v. ABS-CBN Broadcasting Corporation

In *Del Rosario, et al. v. ABS-CBN Broadcasting Corporation* (G.R. No. 202481),[1] petitioners-workers seek the reversal of the Court of Appeals (CA) Decision[2] dated January 27, 2012 and Resolution[3] dated June 26, 2012 in CA-G.R. SP No. 117885, which dismissed their case for regularization.

The dispositive portion of the CA Decision states:

WHEREFORE, premises considered, the Decision dated October 29, 2009 and the Resolution dated October 29, 2010, issued by public respondent NLRC are **REVERSED** and **SET ASIDE**; the Labor Arbiter's Decision dated March 26, 2004 is hereby **REINSTATED**.

SO ORDERED.[4]

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[1] *Rollo* (G.R. No. 202481), Vol. I, pp. 8-52.

[2] Id. at 54-73. Penned by Associate Justice Stephen C. Cruz, with Associate Justices Vicente S.E. Veloso and Amy C. Lazaro-Javier (now a Member of this Court) concurring.

[3] Id. at 89-91.

[4] Id. at 72.

G.R. Nos. 202495 & 202497

ABS-CBN Corporation v. Payonan, et al.

In *ABS-CBN Corporation v. Payonan, et al.* (G.R. Nos. 202495 & 202497),[5] ABS-CBN Corporation (ABS-CBN) seeks the reversal of the CA Decision[6] dated October 28, 2011 and Resolution[7] dated June 27, 2012 in CA-G.R. SP Nos. 108552 and 108976, declaring the workers as regular employees of ABS-CBN.

The dispositive portion of the CA Decision states:

WHEREFORE, upon the foregoing, the petitions are **GRANTED**.

In *CA-G.R. SP No. 108552*, the Resolutions dated 23 October 2008 and 30 January 2009 of the National Labor Relations Commission, Second Division are **ANNULLED AND SET ASIDE**, and a new one rendered declaring petitioners as regular employees of private respondent and accordingly entitled to the benefits and privileges accorded to all other regular employees of private respondent ABS-CBN under the Collective Bargaining Agreement and/or company policy.

In *CA-G.R. SP No. 108976*, the Resolutions dated 18 December 2008 and 23 March 2009 of the National Labor Relations Commission, Third Division are **ANNULLED AND SET ASIDE**, and the Decision of the Labor Arbiter dated 23 June 2008 is reinstated.

SO ORDERED.[8]

Illegal Dismissal Cases

G.R. No. 222057

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[5] *Rollo* (G.R. Nos. 202495 & 202497), Vol. I, pp. 1-248.

[6] *Rollo* (G.R. Nos. 202495 & 202497), Vol. III, pp. 1907-1927. Penned by Associate Justice Manuel M. Barrios, with Associate Justices Mario L. Guariña III and Apolinario D. Bruselas, Jr. concurring.

[7] *Rollo* (G.R. Nos. 202495 & 202497), Vol. IV, pp. 2060-2065. Penned by Associate Justice Manuel M. Barrios, with Associate Justices Apolinario D. Bruselas, Jr. and Danton Q. Bueser concurring.

[8] *Rollo* (G.R. Nos. 202495 & 202497), Vol. III, p. 1926.

ABS-CBN Corporation v. Ong, et al.

In *ABS-CBN Corporation v. Ong, et al.* (G.R. No. 222057),[9] ABS-CBN seeks the reversal of the CA Decision[10] dated February 24, 2015 and Resolution[11] dated December 21, 2015 in CA-G.R. SP No. 122068 where the CA declared that respondents-workers were regular employees of ABS-CBN and were illegally dismissed. Consequently, the CA ordered their immediate reinstatement to their former positions without loss of seniority rights, coupled with the payment of their backwages computed from the time their salaries were withheld up to the time of their actual reinstatement. The CA further awarded 13th month pay plus attorney's fees of ten percent (10%) of the total monetary award.[12]

The dispositive portion of the CA Decision reads:

WHEREFORE, the instant petition is hereby **GRANTED**. ABS-CBN is ordered to immediately reinstate petitioners to their former positions without loss of seniority rights and the payment of [backwages] from the time their salaries were withheld up to the time of actual reinstatement. If reinstatement be not feasible, ABS-CBN is ordered to pay complainant[s] separation pay equivalent to one (1) month pay for every year of service in addition to the payment of [backwages], but, it shall be computed from the time complainant[s'] salary was withheld up to the time of payment thereof. Likewise, respondents are ordered to pay the accrued 13th month pay for the same periods plus attorney's fees equivalent to 10% of all the monetary award[s] to complainant[s]. The other monetary claims and damages claimed by complainant[s] are **DENIED** for failure to substantiate the same. The case is hereby remanded to the Labor Arbiter for the proper

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[9] *Rollo* (G.R. No. 222057), pp. 21-106.

[10] Id. at 700-713. Penned by Associate Justice Elihu A. Ybañez, with Associate Justices Isaias P. Dicdican and Apolinario D. Bruselas, Jr. concurring.

[11] Id. at 772-773. Penned by Associate Justice Elihu A. Ybañez, with Associate Justices Apolinario D. Bruselas, Jr. and Eduardo B. Peralta, Jr. concurring.

[12] Id. at 712.

computation of the monetary awards. The NLRC is hereby **DIRECTED** to notify this Court of the computation twenty (20) days from notice. No pronouncement as to costs.

SO ORDERED.[13]

G.R. No. 224879

ABS-CBN Corporation, et al. v. Lozares

In *ABS-CBN Corporation, et al. v. Lozares* (G.R. No. 224879),[14] ABS-CBN seeks the reversal of the CA Decision[15] dated January 4, 2016 and Resolution[16] dated May 27, 2016 in CA-G.R. SP No. 122824, which reversed the National Labor Relations Commission (NLRC) ruling that dismissed respondents-workers' complaint for illegal dismissal.

The decretal portion of the assailed CA Decision reads:

We **SET ASIDE** the Decision dated 25 August 2011, and the Resolution dated 28 October 2011, issued by the National Labor Relations Commission in the consolidated cases docketed as NLRC NCR Case Numbers 07-10422-10, 08-11773-10, and 08-11664-10, and rule as follows: 1) we **ORDER** ABS-CBN Broadcasting Corporation and Eugenio Lopez III to **REINSTATE** Ronnie B. Lozares to his former position with full backwages, without loss of seniority rights and other employee's benefits, and to **PAY** ₱100,000.00 as moral damages, ₱100,000.00 as exemplary damages, and ₱20,000.00 as attorney's fees; x x x.

IT IS SO ORDERED.[17]

G.R. No. 225874

ABS-CBN Corporation v. Zaballa III, et al.

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[13] Id.

[14] *Rollo* (G.R. No. 224879), pp. 11-62.

[15] Id. at 72-80. Penned by Associate Justice Nina G. Antonio-Valenzuela, with Associate Justices Fernanda Lampas Peralta and Jane Aurora C. Lantion concurring.

[16] Id. at 82-83.

[17] Id. at 79.

In *ABS-CBN Corporation v. Zaballa III, et al.* (G.R. No. 225874),[18] ABS-CBN seeks the reversal of the Decision[19] dated January 12, 2016 and Resolution[20] dated July 15, 2016 rendered by the CA in CA-G.R. SP No. 131576, which affirmed the rulings of the Labor Arbiter (LA) and the NLRC that the workers are in fact employees of ABS-CBN. Consequently, the CA awarded holiday pay, and 13th month pay computed three years back from the filing of the complaint.[21]

The dispositive portion of the CA Decision reads:

WHEREFORE, premises considered, the petition is hereby **DENIED**. The assailed Resolutions of the National Labor Relations Commission, Second Division, dated 27 March 2013 and 14 June 2013, are hereby **AFFIRMED**.

SO ORDERED.[22]

G.R. No. 219125

Cajoles, Jr., et al. v. ABS-CBN Broadcasting Corporation

In *Cajoles, Jr., et al. v. ABS-CBN Broadcasting Corporation* (G.R. No. 219125),[23] petitioners-workers pray for the reversal of the CA Decision[24] dated August 19, 2014 and Resolution[25] dated June 18, 2015 in CA-G.R. SP No. 122424. The CA dismissed petitioners-workers complaint for illegal dismissal,

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[18] *Rollo* (G.R. No. 225874), Vol. I, pp. 10-72.

[19] *Rollo* (G.R. No. 225874), Vol. II, pp. 715-729. Penned by Associate Justice Samuel H. Gaerlan (now a Member of this Court), with Associate Justices Normandie B. Pizarro and Ma. Luisa C. Quijano-Padilla concurring.

[20] Id. at 763-764.

[21] Id. at 727-728.

[22] Id. at 728.

[23] *Rollo* (G.R. No. 219125), Vol. I, pp. 11-45.

[24] *Rollo* (G.R. No. 219125), Vol. II, pp. 1347-1359. Penned by Associate Justice Edwin D. Sorongon, with Associate Justices Rosmari D. Carandang (now a Member of this Court) and Marlene Gonzales-Sison concurring.

[25] Id. at 1376-1377.

finding that they committed forum shopping by filing a case for illegal dismissal notwithstanding the pendency of their complaint for regularization.[26] Thus, the CA dismissed the case without delving into the merits.[27]

The dispositive portion of the CA Decision reads:

> **WHEREFORE**, all the foregoing considered, the petition is **DISMISSED** for utter lack of merit. The assailed decision of the National Labor Relations Commission is **AFFIRMED**. Moreover, petitioners and counsel are strictly admonished for their blatant disregard of the rule against forum-shopping and let this be a warning to them that a commission of the same or similar acts shall be dealt with more severely.
>
> **SO ORDERED**.[28]

G.R. No. 225101

Perez, et al. v. ABS-CBN Broadcasting Corporation

In *Perez, et al. v. ABS-CBN Broadcasting Corporation* (G.R. No. 225101),[29] petitioners-workers seek the reversal of the assailed CA Decision[30] dated January 28, 2016 and Resolution[31] dated May 26, 2016 in CA-G.R. SP No. 125868, declaring that there was no employer-employee relationship between them and ABS-CBN.[32] The CA likewise opined that ABS-CBN did not exercise control over the manner the workers performed their duties[33] because all that ABS-CBN was concerned with

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[26] See id. at 1353 and 1358.

[27] Id. at 1358.

[28] Id.

[29] *Rollo* (G.R. No. 225101), Vol. I, pp. 11-49.

[30] *Rollo* (G.R. No. 225101), Vol. II, pp. 854-869. Penned by Associate Justice Melchor Q.C. Sadang, with Associate Justices Amy C. Lazaro-Javier (now a Member of this Court) and Edwin D. Sorongon concurring.

[31] Id. at 899-900.

[32] See id. at 864-866.

[33] Id. at 867.

was the end result and its conformity with the company's standards.[34]

The dispositive portion of the assailed CA Decision reads:

WHEREFORE, the petition is **DISMISSED** for lack of merit. The Decision dated May 29, 2012 of the National Labor Relations Commission (Special Division) is **AFFIRMED**, save for the dismissal of the appeal by the NLRC (Fifth Division) for non-perfection with respect to petitioners Dizon, Congson, Villanueva and Mendoza.

SO ORDERED.[35]

G.R. No. 210165

Dablo, et al. v. ABS-CBN Broadcasting Corporation, et al.

In *Dablo, et al. v. ABS-CBN Broadcasting Corporation, et al.* (G.R. No. 210165),[36] therein petitioners-workers seek the reversal of the assailed Decision[37] dated April 30, 2013 and Resolution[38] dated November 20, 2013 in CA-G.R. SP No. 122635, which dismissed petitioners-workers' complaint for illegal dismissal. The CA held that petitioners-workers are not regular employees of ABS-CBN. Accordingly, absent any employment relationship between ABS-CBN and the workers, the former may not be held guilty of illegal dismissal.[39]

The dispositive portion of the CA Decision states:

WHEREFORE, the instant petition is hereby **DISMISSED** for lack of merit.

SO ORDERED.[40]

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[34] Id.

[35] Id. at 868.

[36] *Rollo* (G.R. No. 210165), Vol. I, pp. 9-48.

[37] Id. at 55-66. Penned by Associate Justice Magdangal M. De Leon, with Associate Justices Stephen C. Cruz and Myra V. Garcia-Fernandez concurring.

[38] Id. at 85-87.

[39] See id. at 64-65 and 86.

[40] Id. at 65.

The Antecedents

The following facts are common to the eight petitions:

ABS-CBN, formerly known as ABS-CBN Broadcasting Corporation, is a domestic corporation that owns a wide network of television and radio stations. It was granted a franchise to operate as a broadcasting company under Republic Act (R.A.) No. 7966,[41] and was given a license and authority to operate by the National Telecommunications Commission. This franchise, however, expired on May 5, 2020.[42]

On various dates, ABS-CBN hired the services of the following persons (collectively, "workers"):

REGULARIZATION CASES:[43]

G.R. Nos. 202495 & 202497 *(ABS-CBN Corporation v. Payonan, et al.)*	
NAME:	DATE HIRED:
Journalie Payonan	October 1997
Antonio E. Manuel, Jr.	August 1999
Manuel A. Mendoza	March 1999
Joseph R. Ong	September 1999
Riel A. Teodoro	1996
Ramon P. Catahan, Jr.	1998
Ronnie Lozares	1996
Ferdinand L. Marquez	1998
Ferdinand C. Sumeracruz	July 1997
Dante T. Vidal	June 1997
Cezar Z. Zea	1997

[41] AN ACT GRANTING THE ABS-CBN BROADCASTING CORPORATION FRANCHISE TO CONSTRUCT, INSTALL, OPERATE AND MAINTAIN TELEVISION AND RADIO BROADCASTING STATIONS IN THE PHILIPPINES, AND FOR OTHER PURPOSES, March 30, 1995.

[42] *Republic v. ABS-CBN Corporation*, G.R. No. 251358, June 23, 2020 (Resolution).

[43] *Rollo* (G.R. No. 202481), Vol. II, pp. 890-892; *rollo* (G.R. Nos. 202495 & 202497), pp. 3251, 3311-3315; and *rollo* (G.R. No. 210165), Vol. I, pp. 12-13.

Ricardo Joy C. Cajoles, Jr.	December 1999
Alex R. Carlos	May 1999
Johnschultz A. Congson	December 1999
Leslie Rey S. Olpindo	December 1999
Armando A. Ramos	December 1999
Rommel V. Villanueva	April 1999
Enrico V. Castulo	March 1995
Frankie S. Domingo	March 1995
Manuel Conde	February 1997
Antonio Immanuel N. Calle	January 1999
Oliver J. Chavez	December 1999
Francis M. Lubugin	December 1999
Jerome B. Prado	June 2000
Richard T. Sison	September 1996
Roderick N. Rodriguez	August 1997
Elmer M. Evaristo	May 1996
Christopher Mendoza	September 1994
Gilbert M. Omapas	July 1996
Lauro Calitisen	May 1997
Wilfredo Zaldua	April 1999
Russel M. Galima	April 2001
Medel Gotel	June 1998
Osias Lopez	August 1999
Joseph Elphin Lumbad	May 1999
Marlon Macatantan	January 1999
Joseph Armand B. Mamorno	June 1998
Alfred Christian Nuñez	April 1999
Alain Pardo	June 2000
Roniño Santiago	May 1999
Jun Tangalin	August 1999
Jonathan C. Toribio	August 1996
Jerico T. Adriano	November 1993
Julius T. Adriano	May 1993
Mark Anthony Agustin	January 1998
Benjamin C. Bengco, Jr.	June 2000
Danilo R. Blaza	August 1997
Gino Reggie Briones	October 1999
Ricky Beldia	May 1999

Nicomedes Canales, Jr.	August 1999
Alfredo S. Curay	May 1997
Rojay Paul Dela Rosa	November 2000
Christopher De Leon	August 1999
Dixon Dispo	June 1998
Andrew Eugenio	January 1998
Jeffrey Alfred Evangelista	April 1999
Allan V. Herrera	January 2002
Michael V. Santos	November 2001
Rommel M. Matalang	November 2001
G.R. No. 202481 (*Del Rosario, et al. v. ABS-CBN Broadcasting Corporation*)	
Philbert Acharon	September 1999
Lorenzo Alano	September 1996
Tommy Anacta	November 1995
Rolando Barron	August 1999
Eric Biglang-awa	June 1999
Ernesto Cruz	June 1994
Reynaldo Cruz	No date indicated in the records of the case
Ismael Dablo	July 1994
Roberto Del Castillo	September 1995
Albert Del Rosario	July 1994
Apolinar Dela Gracia	March 1995
Carlo Dionisio	March 1997
Arthur Dungog	July 1997
Sengkly Eslabra	March 1997
Nelson Lucas	February 1999
George Macaso	March 1995
Crisanto Panlubasan	February 1996
Rolio Andrew Ramano	1992
Edwin Sagun	October 1996
Roberto Sanchez	April 1997
Rey I. Santiago	May 1997
Isagani Taoatao	October 1995
Reynaldo L. Tugade	July 1994
Paul Viray	July 1997

ILLEGAL DISMISSAL CASES: [44]		
NAME	DATE HIRED	POSITION
G.R. No. 222057 ***(ABS-CBN Corporation v. Ong, et al.)***		
Joseph R. Ong	September 1999	Cameraman
Garett Cailles	June 1998	Cameraman
Raymon Reyes	September 1999	Cameraman
Fernando Lopez	November 2000	Cameraman
G.R. No. 225874 ***(ABS-CBN Corporation v. Zaballa III, et al.)***		
Jose Zabala III	May 2003	Lightman
Fischerbob Casaje	September 2004	Lightman/ Electrician/ Gaffer
Taucer Tyche Benzonan	March 2011	Cameraman
G.R. No. 225101 ***(Perez, et al. v. ABS-CBN Broadcasting Corporation)***		
Antonio Bernardo Perez	January 2002	Senior Video Editor
John Paul Panizales	January 2001	Technical Director/VTR Man
Ferdinand Cruz	January 2001	Video Engineer/ VTR Man
Christopher Mendoza	October 1995	Sound Engineer
Dennis Reyes	November 2001	Sound Engineer
Jun Benosa	November 2001	Sound Engineer
Roland Kristoffer De Guzman	December 2004	VTR Man
Fredierick Gerland Dizon	April 2005	Video Engineer
Russel Galima	April 2000	Sound Engineer
Alfred Christian Nunez	April 1998	Sound Engineer

[44] *Rollo* (G.R. No. 210165), Vol. I, pp. 12-13; *rollo* (G.R. No. 219125), Vol. I, pp. 13-14; *rollo* (G.R. No. 222057), pp. 389, 701; *rollo* (G.R. No. 224879), p. 73; *rollo* (G.R. No. 225101), Vol. III, pp. 1451-1452; *rollo* (G.R. No. 225874), Vol. II, p. 716; and *rollo* (G.R. Nos. 202495 & 202497), Vol. VI, p. 3682.

Rommel Villanueva	January 2000	Video Engineer/ CCU
Jhonschultz Congson	January 2000	Video Engineer/ CCU
Alex Carlos	January 2000	Video Engineer/ CCU
Michael Tobias	April 2004	Video Engineer
Geronimo Baniqued	October 1997	Lighting Director
Ronaldo San Pedro	September 2004	Lightman
Eric Paycana	Year 2003	Moving Lightman Operator
G.R. No. 224879 ***(ABS-CBN Corporation, et al. v. Lozares)***		
Ronnie Lozares	November 1996	Lightman-Electrician
G.R. No. 219125 ***(Cajoles, Jr., et al. v. ABS-CBN Broadcasting Corporation)***		
Ricardo Joy Cajoles, Jr.	December 1999	Video Engineer
Antonio Immanuel Calle	January 1999	VTR/Video Engineer
Richard Sison	September 1996	VTR/Video Engineer
Journalie Payonan	October 1997	LD/Cameraman
G.R. No. 210165 ***(Dablo, et al. v. ABS-CBN Broadcasting Corporation)***		
Ismael Dablo	July 1994	Senior Cameraman
Roberto Del Castillo	September 1995	Senior Cameraman
Rolando Barron	August 1999	Driver/Assistant Cameraman
Albert Del Rosario	July 1994	Cameraman
George Macaso	March 1997	Cameraman
Rey I. Santiago	May 1997	Cameraman
Reynaldo Tugade	July 1994	Cameraman
Paul Viray	July 1997	Cameraman

Upon their engagement, the workers were required to undergo various training seminars and workshops to equip them with the skills and knowledge necessary in their respective fields of assignment.[45] After completing their seminars, they were assigned to render services in the self-produced, co-produced, and live-coverage programs of ABS-CBN.[46] Their presence was strictly required in each program.[47]

Customarily, during the production of shows and the live coverage of events, ABS-CBN hired three different groups of employees to work in such productions. These consisted of the technical crew, production staff, and outside broadcast (OB) van drivers and production assistance (PA) van drivers.[48]

Specifically, the technical crew consisted of the cameramen, audio men, sound engineers, VTR men, light men, and the camera control unit group, who were all under the control and supervision of the technical director, production supervisor, and producer.[49]

Meanwhile, the production staff was in charge of the production of shows or programs, and the workers were subject to the control and supervision of the Executive Producers and Assistant Producers.[50]

Finally, the OB van and PA van drivers were tasked to drive the vans, which served as the studios outside of the ABS-CBN premises.[51] These make-shift studios were used for taping and shooting programs in remote areas.[52]

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[45] *Rollo* (G.R. Nos. 202495 & 202497), Vol. VI, p. 3683; *rollo* (G.R. No. 225874), Vol. II, p. 716.

[46] Id.; *rollo* (G.R. Nos. 202495 & 202497), Vol. IV, p. 2233; *rollo* (G.R. No. 225874), Vol. II, p. 717.

[47] *Rollo* (G.R. No. 225874), Vol. II, p. 717.

[48] *Rollo* (G.R. Nos. 202495 & 202497), Vol. IV, p. 2232.

[49] Id.

[50] Id.

[51] Id.

[52] Id.

All members of the technical crew, production staff, and OB and PA van drivers worked as one team, such that the outcome of the production depended on their combined efforts.[53] Overall, the workers were tasked to perform numerous functions relative to broadcasting, programming, marketing, and production of television shows and programs, actual broadcasting, reporting, showing of daily programs and shows, and live reporting of events. Similarly, the members of the production group were continuously re-hired to film new programs, upon the conclusion of the shows they were initially engaged in.[54]

In exchange for the services they rendered, the workers were paid salaries twice a month, as evidenced by pay slips bearing ABS-CBN's corporate name.[55]

Sometime in 2002, ABS-CBN adopted a system known as the Internal Job Market (IJM) System, a database which provided the user with a list of accredited technical or creative manpower and/or talents who offered their services for a fee. This database indicated the competency rating of the individuals and their corresponding professional fees.[56] The system allowed the producer to easily obtain information on the talent and his availability for projects. Should the producer desire to hire an individual from the system, the latter shall be notified of the particular project for which his/her services are sought, and will be ordered to report on the scheduled shooting date.[57]

According to ABS-CBN, the IJM scheme led to the creation of a work pool of accredited technical or creative manpower who offered their services for a fee.[58] Under this system, the

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[53] Id.

[54] See id. at 2229.

[55] *Rollo* (G.R. No. 225874), Vol. II, p. 717.

[56] *Rollo* (G.R. No. 225101), Vol. I, p. 542.

[57] Id. at 542-543.

[58] *Rollo* (G.R. No. 225101), Vol. II, p. 856.

workers were regarded as independent contractors, not regular employees.[59] An accreditation under the IJM System did not in any way create an employment relationship between the so-called talents and the company.[60] Most importantly, the IJM System eliminated the rigors of recruiting or negotiating with independent contractors.[61]

Due to the creation of the IJM System, the workers were asked to sign a contract that would place them all under the IJM Work Pool. They were included in the pool without their consent or over their vehement objections.[62] Upon the implementation of the IJM System, each of the workers was given an hourly rate.[63] Consequently, beginning January 2002, they were paid based on the actual hours they worked, multiplied by their specified hourly rate.[64] They did not receive overtime pay, premium pay, and holiday pay for the work they rendered during rest days, special holidays, and regular holidays.[65]

Clamoring for better rights, the workers formed the ABS-CBN IJM Workers' Union.[66] Thereafter, they started demanding recognition as regular employees. Thus, in the later part of 2002 up to the first quarter of 2003, the workers filed cases for regularization before the LA.[67] The workers claimed that ABS-CBN compelled them to sign a document denominated as

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[59] Id.

[60] *Rollo* (G.R. No. 225101), Vol. I, p. 543.

[61] *Rollo* (G.R. No. 225101), Vol. II, p. 856.

[62] See *rollo* (G.R. No. 219125), Vol. I, p. 24.

[63] Id.

[64] Id.

[65] Id.

[66] See id. at 16.

[67] *Rollo* (G.R. No. 202481), Vol. I, p. 13.

"Accreditation in the Internal [Job] Market System."[68] With this document, the workers were relegated to mere talents.[69] ABS-CBN maintained that an accreditation under the IJM system did not create an employment relationship between it and the "talent."

Furthermore, in a Memorandum dated April 23, 2003,[70] entitled "Re: Undocumented Personnel," ABS-CBN reclassified the status of its regular employees to mere talents or contractual employees.[71] The Memorandum stated that "all personnel engaged as talents shall execute relevant talent contracts not later than 15 May 2003. After such date, any talent engagement not covered by contracts shall be deemed discontinued and no payments or disbursements shall be authorized by the Finance Manager."[72] Fearful of losing their jobs, the workers signed the said contract.[73]

Ushering in more changes in the employees' status, sometime in 2007, ABS-CBN required the workers in *ABS-CBN Corporation v. Payonan, et al.* to sign an employment contract, which stated that they were "freelance employees."[74] Those who refused to sign were deprived of their benefits. This prompted the workers to file a complaint for regularization and claim benefits due to regular employees.[75]

Meanwhile, the rest of the workers persistently clamored for their recognition as regular employees. Allegedly, this incurred the ire of ABS-CBN.[76] In May 2010, ABS-CBN

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[68] Id. at 59.

[69] *Rollo* (G.R. No. 202481), Vol. I, p. 13.

[70] April 28, 2003 in other parts of the *rollo*.

[71] *Rollo* (G.R. No. 219125), Vol. I, p. 25.

[72] Id.

[73] See id. at 26.

[74] *Rollo* (G.R. Nos. 202495 & 202497), Vol. III, p. 1913.

[75] Id. at 1913-1914.

[76] *Rollo* (G.R. No. 225874), Vol. II, p. 717.

purportedly coerced the union members to sign a contract and waive their claims for regularization.[77]

Because the workers refused to comply, ABS-CBN effected a series of mass dismissals of workers on various dates from June to September 2010. Those who refused to sign the said contract were terminated from their employment.[78] No notice of termination was given to the workers. They were forthwith barred from entering the company premises.[79]

From these series of summary dismissals sprung numerous complaints filed before the LA for illegal dismissal with claims for monetary benefits, ranging from overtime pay, holiday pay, holiday premium, rest day premium, 13th month pay, night shift differential, and payment of moral, exemplary damages and attorney's fees.[80]

Over a span of almost eight years, various rulings have been rendered by the LA, the NLRC, and the CA involving the instant petitions.

In view of the similarity of facts and issues raised in the eight petitions, on February 27, 2019, the Court issued a Resolution[81] ordering the consolidation of all eight petitions.

Issues

The common issues raised in the consolidated petitions consist of procedural and substantive grounds, which may be summarized as follows:

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[77] Id.; *rollo* (G.R. No. 225101), Vol. I, p. 530; and *rollo* (G.R. No. 219125), Vol. I, p. 16.

[78] *Rollo* (G.R. No. 225101), Vol. I, p. 531; *rollo* (G.R. No. 219125), Vol. I, pp. 16-17; *rollo* (G.R. No. 222057), p. 702; *rollo* (G.R. No. 224879), p. 391; and *rollo* (G.R. No. 225874), Vol. II, p. 717.

[79] *Rollo* (G.R. No. 224879), pp. 391-392; and *rollo* (G.R. No. 219125), Vol. I, p. 17.

[80] See *rollo* (G.R. No. 225101), Vol. I, p. 531; and *rollo* (G.R. No. 225874), Vol. I, p. 24.

[81] *Rollo* (G.R. No. 202481), Vol. II, pp. 1429-1430.

1. Whether or not the petitions should be dismissed on procedural grounds due to the failure of the workers to file a motion for reconsideration against the NLRC ruling in G.R. No. 222057 *(ABS-CBN Corporation v. Ong, et al.)*;
2. Whether or not the workers are guilty of forum shopping by instituting the case for illegal dismissal, notwithstanding the pendency of the regularization case;
3. Whether or not the ruling of the Court in *Jalog, et al. v. NLRC*[82] *(Jalog)*, should be applied in resolving the instant petitions due to the similarity of facts and circumstances between the said case and the instant petitions;
4. Whether or not the workers are regular employees of ABS-CBN;
5. Whether or not the workers in G.R. Nos. 202495 & 202497 *(ABS-CBN Corporation v. Payonan, et al.)* and G.R. No. 202481 *(Del Rosario, et al. v. ABS-CBN Broadcasting Corporation)* are entitled to the benefits under the Collective Bargaining Agreement (CBA) with ABS-CBN; and
6. Whether or not the workers in G.R. No. 222057 *(ABS-CBN Corporation v. Ong, et al.)*; G.R. No. 224879 *(ABS-CBN Corporation, et al. v. Lozares)*; G.R. No. 225874 *(ABS-CBN Corporation v. Zaballa III, et al.)*; G.R. No. 219125 *(Cajoles, Jr., et al. v. ABS-CBN Broadcasting Corporation)*; G.R. No. 225101 *(Perez, et al. v. ABS-CBN Broadcasting Corporation)*; and G.R. No. 210165 *(Dablo, et al. v. ABS-CBN Broadcasting Corporation, et al.)* were illegally dismissed by ABS-CBN.

On one side, the workers clamored for their recognition as regular employees of ABS-CBN in view of their performance of work that is necessary and desirable to the latter's business over a period of many years. In addition, the workers point out that they were hired, paid, supervised, controlled, disciplined, and eventually, dismissed by ABS-CBN. They likewise claim that as regular employees, they were illegally dismissed.

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[82] See *rollo* (G.R. Nos. 202495 & 202497), Vol. III, pp. 2027-2028 and *rollo* (G.R. Nos. 202495 & 202497), Vol. IV, pp. 2066-2086.

On the other side, ABS-CBN primarily seeks the dismissal of the petitions on procedural grounds, claiming that the failure of the workers to file a Motion for Reconsideration before the CA, and their commission of forum shopping, render the instant petitions defective; hence, dismissible. Similarly, ABS-CBN claims that the ruling of the Court in *Jalog* should be applied to the workers herein due to the similarity of facts in the said case and the instant petitions.

As for its substantive arguments, ABS-CBN adamantly maintains that the workers were not regular employees, but were actually talents. They were hired due to their distinct skill and artistry. In fact, the workers were not subject to its control and supervision, and were merely given guidelines in the performance of their work. Accordingly, in the absence of an employment relationship between ABS-CBN and the workers, the former cannot be held guilty of illegal dismissal.

Ruling of the Court

Procedural Issues

The failure to file a motion for reconsideration shall not be deemed fatal to the cause of the workers

As a general rule, the filing of a motion for reconsideration is an indispensable condition for filing a special civil action for *certiorari*.[83] The motion for reconsideration is essential to grant the court or tribunal the opportunity to correct its error, if any, before resort to the courts of justice may be had.[84] However, this rule is not iron-clad, and is subject to well-known exceptions, such as:

[1.] Where the order is a patent nullity, as where the court *a quo* has no jurisdiction;

[2.] **Where the questions raised in the *certiorari* proceedings have been duly raised and passed upon by the lower court, or are the same as those raised and passed upon in the lower court**;

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[83] *Olores v. Manila Doctors College*, 731 Phil. 45, 58 (2014).

[84] Id. at 58.

[3.] Where there is an urgent necessity for the resolution of the question and any further delay would prejudice the interests of the Government or of the petitioner or the subject matter of the action is perishable;

[4.] Where, under the circumstances, a motion for reconsideration would be useless;

[5.] Where petitioner was deprived of due process and there is extreme urgency for relief;

[6.] Where, in a criminal case, relief from an order of arrest is urgent and the granting of such relief by the trial court is improbable;

[7.] Where the proceedings in the lower court are a nullity for lack of due process;

[8.] Where the proceeding was *ex parte* or in which the petitioner had no opportunity to object; and

[9.] Where the issue raised is one purely of law or where public interest is involved.[85] (Emphasis in the original)

The second exception applies here. The issues raised before the NLRC, which pertain to the existence of an employment relationship between ABS-CBN and the workers and the fact of illegal dismissal, were the very same questions raised in the special civil action for *certiorari* before the CA.[86] Certainly, it would be futile to strictly require the filing of a motion for reconsideration when the very issues raised before the CA were exactly similar to those passed upon and resolved by the NLRC.[87]

Moreover, in labor cases, rules of procedure shall not be applied in a rigid and technical sense, as they are merely tools designed to facilitate the attainment of justice. Thus, when their strict application would result in the frustration rather than the promotion of substantial justice, technicalities must be avoided.

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[85] Id. at 58-59.

[86] See CA Decision, *rollo* (G.R. No. 222057), pp. 700-713.

[87] See NLRC Decision, id. at 387-399.

Here, considering that the very livelihood of the workers is hanging by a thread, the ends of justice will be better served by ruling on the merits of the case, rather than summarily dismissing the petition on account of a procedural flaw.

The workers are not guilty of forum shopping

ABS-CBN seeks the dismissal of the petitions, claiming that the workers are guilty of forum shopping for filing their complaint for illegal dismissal during the pendency of their regularization case.[88]

The Court is not persuaded.

Forum shopping exists when one party repetitively avails of several judicial remedies in different courts, simultaneously or successively. The remedies stem from the same transactions, are founded on identical facts and circumstances, and raise substantially similar issues, which are either pending in, or have been resolved adversely by another court.[89] Through forum shopping, unscrupulous litigants trifle with court processes by taking advantage of a variety of competent tribunals, repeatedly trying their luck in several different fora until they obtain a favorable result.[90] Because of this, forum shopping is condemned, as it unnecessarily burdens the courts with heavy caseloads, unduly taxes the manpower and financial resources of the judiciary, and permits a mockery of the judicial processes.[91] Absent safeguards against forum shopping, two competent tribunals may render contradictory decisions, thereby disrupting the efficient administration of justice.

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[88] These were the issues raised in the cases of *ABS-CBN Corporation v. Ong, et al.* (G.R. No. 222057) and *Cajoles, Jr., et al. v. ABS-CBN Broadcasting Corporation* (G.R. No. 219125).

[89] *Coca-Cola Bottlers (Phils.), Inc. v. Social Security Commission*, 582 Phil. 686, 699 (2008).

[90] Id. at 697, citing *Guevara v. BPI Securities Corporation*, 530 Phil. 342, 366-367 (2006).

[91] Id. at 696, citing *Spouses Abines v. Bank of the Philippine Islands*, 517 Phil. 609, 616 (2006).

Here, although it is true that the parties in the regularization and the illegal dismissal cases are identical, the reliefs sought and the causes of action are different. There is no identity of causes of action between the first set of cases and the second set of cases.

The test to determine whether the causes of action are identical is to ascertain whether the same evidence would support both actions, or whether there is an identity in the facts essential to the maintenance of the two actions. If the same facts or evidence would support both actions, then they are considered the same; a judgment in the first case would be a bar to the subsequent action.[92] This is absent here. The facts or the pieces of evidence that would determine whether the workers were illegally dismissed are not the same as those that would support their clamor for regularization.

Besides, it must be remembered that the circumstances obtaining at the time the workers filed the regularization cases were different from when they subsequently filed the illegal dismissal cases. Before their illegal dismissal, the workers were simply clamoring for their recognition as regular employees, and their right to receive benefits concomitant with regular employment. However, during the pendency of the regularization cases, the workers were summarily terminated from their employment. This supervening event gave rise to a cause of action for illegal dismissal, distinct from that in the regularization case. This time, the workers were not only praying for regularization, but also for reinstatement by questioning the legality of their dismissal. The issue turned into whether or not ABS-CBN had just or authorized cause to terminate their employment. Clearly, it was ABS-CBN's action of dismissing the workers that gave rise to the illegal dismissal cases. And it is absurd for it to now ask the Court to fault the workers for questioning ABS-CBN's actions, which were done while the regularization cases were pending. The Court cannot allow this.

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[92] *Dela Rosa Liner, Inc. v. Borela*, 765 Phil. 251, 259 (2015).

Simply stated, in a regularization case, the question is whether the employees are entitled to the benefits enjoyed by regular employees even as they are treated as talents by ABS-CBN. On the other hand, in the illegal dismissal case, the workers likewise need to prove the existence of employer-employee relationship, but ABS-CBN must likewise prove the validity of the termination of the employment. Clearly, the evidence that will be submitted in the regularization case will be different from that in the illegal dismissal case.

Having thus settled the procedural matters raised by ABS-CBN, the Court shall now proceed to discuss the merits of the case.

Substantive Issues

Jalog is not binding on the workers

ABS-CBN argues that the ruling in *Jalog* applies. In *Jalog*, the CA Former Seventh Division ruled that the cameramen and the other workers of its Engineering Department are talents and not its regular employees. This ruling was affirmed by the Court through a Minute Resolution[93] dated October 5, 2011.

This contention does not hold water.

Essentially, the phrase *stare decisis et non quieta movere* literally means "stand by the decisions and disturb not what is settled." This legal concept ordains that for the sake of certainty, a conclusion reached in one case should be applied to those that follow, if the facts are substantially the same, even though the parties may be different.[94] Simply stated, like cases ought to be decided alike. Accordingly, "where the same questions relating to the same event have been put forward by the parties similarly situated as in a previous case litigated and decided

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[93] *Rollo* (G.R. Nos. 202495 & 202497), Vol. III, pp. 2027-2028.

[94] *Lazatin v. Hon. Desierto*, 606 Phil. 271, 282 (2009), citing *Chinese Young Men's Christian Association of the Philippine Islands v. Remington Steel Corporation*, 573 Phil. 320, 337 (2008).

by a competent court, the rule of *stare decisis* is a bar to any attempt to relitigate the same issue."[95]

However, the CA's decision in *Jalog* was affirmed by the Court through a minute resolution. The binding nature of a minute resolution and its ability to establish a lasting judicial precedent have already been settled in *Deutsche Bank AG Manila Branch v. Commissioner of Internal Revenue*.[96] There, the Court explained that a minute resolution constitutes *res judicata* only insofar as it involves the "same subject matter and the same issues concerning the same parties."[97] However, it will not set a binding precedent "if other parties or another subject matter (even with the same parties and issues) is involved."[98] Thus, the ruling in *Jalog*, which involves different litigants, may not be applied to the parties in the instant petition.

The workers are employees of ABS-CBN

ABS-CBN further argues that the workers are talents and not its employees. They claim that this is evident from the nature of work they performed and the contracts they signed. ABS-CBN also staunchly maintains that its main business is broadcasting, and not the production of programs. It explains that as a broadcasting company, it avails itself of various options in airing its content and generating revenues. Among these schemes are "block-timing," availment of foreign canned shows and licensed programs, as well as line production, co-production, self-production, and live coverages.[99]

The Court is not persuaded.

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[95] Id. at 282-283, citing *Chinese Young Men's Christian Association of the Philippine Islands v. Remington Steel Corporation*, id. at 337.

[96] 716 Phil. 676 (2013).

[97] Id. at 687. Emphasis omitted.

[98] Id. Emphasis omitted.

[99] See *rollo* (G.R. No. 225874), Vol. I, pp. 13-14; *rollo* (G.R. Nos. 202495 & 202497), Vol. III, p. 1914.

In ascertaining the existence of an employer-employee relationship, the Court has invariably adhered to the four-fold test, which pertains to: (i) the selection and engagement of the employee; (ii) the payment of wages; (iii) the power of dismissal; and (iv) the power of control over the employee's conduct, or the so-called "control test."[100]

This is not the first time the four-fold test is being applied to ABS-CBN workers. The Court has ruled in *Begino v. ABS-CBN Corporation*[101] *(Begino)*, that cameramen/editors and reporters are employees of ABS-CBN following the four-fold test.

Begino involved cameramen/editors and reporters engaged under Talent Contracts, which were regularly renewed over the years. The Court therein ruled that petitioners therein were regular employees, as follows:

> The Court finds that, notwithstanding the nomenclature of their Talent Contracts and/or Project Assignment Forms and the terms and condition[s] embodied therein, petitioners are regular employees of ABS-CBN. Time and again, it has been ruled that the test to determine whether employment is regular or not is the reasonable connection between the activity performed by the employee in relation to the business or trade of the employer. As cameramen/editors and reporters, petitioners were undoubtedly performing functions necessary and essential to ABS-CBN's business of broadcasting television and radio content. It matters little that petitioners' services were engaged for specified periods for TV Patrol Bicol and that they were paid according to the budget allocated therefor. Aside from the fact that said program is a regular weekday fare of the ABS-CBN's Regional Network Group in Naga City, the record shows that, from their initial engagement in the aforesaid capacities, petitioners were continuously re-hired by respondents over the years. To the mind of the Court, respondents' repeated hiring of petitioners for its long-running news program positively indicates that the latter were ABS-CBN's regular employees.

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[100] *South East International Rattan, Inc. v. Coming*, 729 Phil. 298, 306 (2014), citing *Atok Big Wedge Co., Inc. v. Gison*, 670 Phil. 615, 626-627 (2011), further citing *Philippine Global Communications, Inc. v. De Vera*, 498 Phil. 301, 308-309 (2005).

[101] 758 Phil. 467 (2015).

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As cameramen/editors and reporters, it also appears that petitioners were subject to the control and supervision of respondents which, first and foremost, provided them with the equipments *(sic)* essential for the discharge of their functions. Prepared at the instance of respondents, petitioners' Talent Contracts tellingly provided that ABS-CBN retained "all creative, administrative, financial and legal control" of the program to which they were assigned. Aside from having the right to require petitioners "to attend and participate in all promotional or merchandising campaigns, activities or events for the Program," ABS-CBN required the former to perform their functions "at such locations and Performance/Exhibition Schedules" it provided or, subject to prior notice, as it chose[,] determine, modify or change. Even if they were unable to comply with said schedule, petitioners were required to give advance notice, subject to respondents' approval. However obliquely worded, the Court finds the foregoing terms and conditions demonstrative of the control respondents exercised not only over the results of petitioners' work but also the means employed to achieve the same.[102]

The Court's ruling in *Begino* is applicable here. The workers here are employees of ABS-CBN.

The records show that the workers were hired by ABS-CBN through its personnel department. In fact, the workers presented certificates of compensation, payment/tax withheld (BIR Form 2316), Social Security System (SSS), Pag-IBIG Fund documents, and Health Maintenance Cards, which all indicate that they are employed by ABS-CBN.[103]

In the same vein, the workers received their salaries from ABS-CBN twice a month, as proven through the pay slips bearing the latter's corporate name. Their rate of wages was determined solely by ABS-CBN.[104] ABS-CBN likewise withheld taxes and

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[102] Id. at 480-482.

[103] *Rollo* (G.R. No. 219125), Vol. I, p. 15.

[104] *Rollo* (G.R. No. 225874), Vol. II, p. 717; *rollo* (G.R. No. 219125), Vol. I, p. 22; *rollo* (G.R. No. 225101), Vol. I, p. 32.

granted the workers PhilHealth benefits.[105] These clearly show that the workers were salaried personnel of ABS-CBN, not independent contractors.

Likewise, ABS-CBN wielded the power to discipline, and correspondingly dismiss, any errant employee. The workers were continuously under the watch of ABS-CBN and were required to strictly follow company rules and regulations in and out of the company premises.[106]

Finally, consistent with the most important test in determining the existence of an employer-employee relationship, ABS-CBN wielded the power to control the means and methods in the performance of the employees' work. The workers were subject to the constant watch and scrutiny of ABS-CBN, through its production supervisors who strictly monitored their work and ensured that their end results are acceptable and in accordance with the standards set by the company.[107] In fact, the workers were required to comply with ABS-CBN's company policies which entailed the prior approval and evaluation of their performance. They were further mandated to attend seminars and workshops to ensure their optimal performance at work.[108] Likewise, ABS-CBN controlled their schedule and work assignments (and re-assignments).[109] Furthermore, the workers did not have their own equipment to perform their work. ABS-CBN provided them with the needed tools and implements to accomplish their jobs.[110]

And just like in *Begino*, the fact that the workers signed a "Talent Contract and/or Project Assignment Form" does not *ipso facto* make them talents. It is settled that a talent contract

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[105] Id.

[106] See *rollo* (G.R. No. 219125), Vol. I, p. 22.

[107] Id.

[108] See id.

[109] Id.; *rollo* (G.R. No. 225101), Vol. I, p. 532.

[110] *Rollo* (G.R. No. 219125), Vol. I, pp. 22-23.

does not necessarily prevent an employee from acquiring a regular employment status.[111] The nature of the employment does not depend on the will or word of the employer or on the procedure for hiring and the manner of designating the employee, but on the activities performed by the employee in relation to the employer's business.[112]

Besides, it must be remembered that labor contracts are subject to the police power of the State and are placed on a higher plane than ordinary contracts.[113] This means that the Court shall not hesitate to strike down any contract that is designed to circumvent an employee's tenurial security. Accordingly, ABS-CBN's Talent Contract, which deprives the workers of regular employment, cannot stand.

The workers are regular employees

Having established that the workers are employees of ABS-CBN, the Court proceeds to determine the kind of employees they are.

The Labor Code classifies four (4) kinds of employees, as follows: (i) regular employees, or those who have been engaged to perform activities which are usually necessary or desirable in the usual business or trade of the employer; (ii) project employees, or those 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 employees' engagement; (iii) seasonal employees, or those who perform services which are seasonal in nature, and whose employment lasts during the duration of the season; and (iv) casual employees, or those who are not regular, project, or seasonal employees.

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[111] *Begino v. ABS-CBN Corporation*, supra note 101, at 482, citing *Dumpit-Murillo v. CA*, 551 Phil. 725, 735 (2007).

[112] *Universal Robina Sugar Milling Corp. v. Acibo*, 724 Phil. 489, 503-504 (2014).

[113] *Begino v. ABS-CBN Corporation*, supra note 101, at 479.

Jurisprudence added a fifth kind — fixed-term employees, or those hired only for a definite period of time.[114]

As a background, block-timing is a scheme where an external producer, who is known as the block-timer, purchases a fixed number of airtime on certain dates from ABS-CBN. During this time, the block-timer's own shows are aired, and the advertising revenues earned shall belong to the block-timer.

Similarly, in airing foreign canned shows and licensed programs, ABS-CBN merely obtains broadcasting rights from the previous owners of the said programs. Basically, what ABS-CBN does in these cases is to simply avail of distributorship or airing rights in order to play the contents of a program that has been previously produced.

Hence, in this respect, there can be no employer-employee relationship between the production staff of the "block-timers," and owners of the foreign shows and licensed programs, on the one hand, and ABS-CBN, on the other.[115] This is based on the obvious reason that ABS-CBN had no hand in the production of the said shows. However, this same ratiocination does not apply to the workers hired in the self-produced, line-produced, co-produced shows, and live coverages of ABS-CBN.

Notably, an essential characteristic of regular employment as defined in Article 280[116] of the Labor Code is the performance by the employee of activities considered necessary and desirable to the overall business or trade of the employer.[117] The necessity of the functions performed by the workers and their connection with the main business of an employer shall be ascertained "by considering the nature of the work performed and its relation to the scheme of the particular business or trade in its entirety."[118]

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[114] See *GMA Network, Inc. v. Pabriga*, 722 Phil. 161, 169-170 (2013), citing *Brent School, Inc. v. Zamora*, 260 Phil. 747 (1990).

[115] *Rollo* (G.R. No. 225874), Vol. I, p. 14.

[116] Now Art. 294 of the LABOR CODE OF THE PHILIPPINES.

[117] See *Universal Robina Sugar Milling Corporation v. Acibo*, supra note 112, at 500.

[118] *Maraguinot, Jr. v. NLRC*, 348 Phil. 580, 602-603 (1998), citing *De Leon v. NLRC*, 257 Phil. 626, 632 (1989).

Again, this is not the first time the Court has determined that certain workers of ABS-CBN are regular employees given the tasks that they were engaged in. In *ABS-CBN Broadcasting Corporation v. Nazareno*[119] *(Nazareno)*, the workers involved were production assistants who were repeatedly hired but treated as talents. The Court therein ruled that the production assistants were regular employees as follows:

> The principal test 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 this case, it is undisputed that respondents had continuously performed the same activities for an average of five years. Their assigned tasks are necessary or desirable in the usual business or trade of the petitioner. The persisting need for their services is sufficient evidence of the necessity and indispensability of such services to petitioner's business or trade. While length of time may not be a sole controlling test for project employment, it can be a strong factor to determine whether the employee was hired for a specific undertaking or in fact tasked to perform functions which are vital, necessary and indispensable to the usual trade or business of the employer. We note further that petitioner did not report the termination of respondents' employment in the particular "project" to the Department of Labor and Employment Regional Office having jurisdiction over the workplace within 30 days following the date of their separation from work, using the prescribed form on employees' termination/dismissals/ suspensions.
>
> As gleaned from the records of this case, petitioner itself is not certain how to categorize respondents. In its earlier pleadings, petitioner classified respondents as *program employees*, and in later pleadings, *independent contractors*. Program employees, or *project employees*, are different from independent contractors because in the case of the latter, no employer-employee relationship exists.[120]

Nazareno applies here. A scrutiny of the Articles of Incorporation of ABS-CBN shows that its primary purpose is:

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[119] 534 Phil. 306 (2006).

[120] Id. at 333-334.

x x x To carry on the business of television and radio network broadcasting of all kinds and types; to carry on all other businesses incident thereto; and to establish, construct, maintain and operate for commercial purposes and in the public interest, television and radio broadcasting stations within or without the Philippines, using microwave, satellite or whatever means including the use of any new technologies in television and radio systems.[121]

In conjunction therewith, paragraphs 3, 4, and 5 of the same Articles of Incorporation reveal that ABS-CBN is likewise engaged in the business of the production of shows:

3. To engage in any manner, shape or form in the recording and reproduction of the human voice, musical instruments, and sound of every nature, name and description; to engage in any manner, shape or form in the recording and reproduction of moving pictures, visuals and stills of every nature, name and description; and to acquire and operate audio and video recording, magnetic recording, digital recording and electrical transcription exchanges, and to purchase, acquire, sell, rent, lease, operate, exchange or otherwise dispose of any and all kinds of recordings, electrical transcriptions or other devices by which sight and sound may be reproduced.

4. To carry on the business of providing graphic, design, videographic, photographic and cinematographic production services and other creative production services; and to engage in any manner, shape or form in post production mixing, dubbing, overdubbing, audio-video processing, sequence alteration and modification of every nature of all kinds of audio and video productions.

5. To carry on the business of promotion and sale of all kinds of advertising and marketing services and generally to conduct all lines of business allied to and interdependent with that of advertising and marketing services.[122]

Based on the foregoing, the recording and reproduction of moving pictures, visuals, and stills of every nature, name, and description — or simply, the production of shows — are an important component of ABS-CBN's overall business scheme.

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[121] *Rollo* (G.R. No. 222057), p. 110.

[122] Id. at 111.

In fact, ABS-CBN's advertising revenues are likewise derived from the shows it produces.

The workers — who were cameramen, light men, gaffers, lighting directors, audio men, sound engineers, system engineers, VTR men, video engineers, technical directors, and drivers — all played an indispensable role in the production and re-production of shows, as well as post-production services. The workers even played a role in ABS-CBN's business of obtaining commercial revenues. To obtain profits through advertisements, ABS-CBN would also produce and air shows that will attract the majority of the viewing public. The necessary jobs required in the production of such shows were performed by the workers herein.[123]

In fact, a perusal of ABS-CBN's Organizational Structure would show that the workers' positions were included in the *plantilla*, under the Network Engineering Group and Production Engineering Services, and News and Current Affairs Department of ABS-CBN.[124] This serves as clear proof of the importance of the functions performed by the workers to the over-all business of ABS-CBN. In *Fuji Television Network, Inc. v. Espiritu*,[125] the Court emphasized that organization charts and personnel lists, among others, serve as evidence of employee status.[126]

Parenthetically, the main distinction between a talent and a regular employee in the broadcast industry was explained in the landmark case of *Sonza v. ABS-CBN Broadcasting Corp.*[127] *(Sonza)*.

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[123] Id. at 273.

[124] *Rollo* (G.R. No. 202481), Vol. I, p. 20.

[125] 749 Phil. 388 (2014).

[126] Id. at 418, citing *Tenazas v. R. Villegas Taxi Transport*, 731 Phil. 217, 230 (2014), further citing *Meteoro v. Creative Creatures, Inc.*, 610 Phil. 150, 161 (2009).

[127] 475 Phil. 539 (2004).

In *Sonza*, Jose Sonza (Sonza) was a talent who was engaged on the basis of his expertise in his craft.[128] His possession of unique skills and celebrity status gave him the distinct privilege to bargain with ABS-CBN's officials on the terms of his agreement with the latter. These negotiations resulted to a hefty talent fee. Also, the payment of his salaries did not depend on the amount of work he performed or the number of times he reported for duty, but was based solely on the terms of the agreement. More than this, ABS-CBN was duty-bound to continue paying him his talent fees during the lifetime of the agreement, regardless of any business losses it may suffer, and even if it ceased airing his programs.[129]

More importantly, ABS-CBN was bereft of any power to terminate or discipline Sonza, even if the means and methods of the performance of his work did not meet its approval. Similarly, ABS-CBN did not control his work schedule, or regulate the manner in which he "delivered his lines, appeared on television, and sounded on radio,"[130] or had any say over the contents of his script. The only instruction given by ABS-CBN was a simple warning that Sonza should refrain from criticizing ABS-CBN and its interests. In short, Sonza enjoyed an untrammeled artistic creativity on the contents and delivery of his lines and spiels.[131]

In stark contrast, the workers here were hired through ABS-CBN's Human Resources Department. Their engagement did not involve a negotiation with ABS-CBN's high-level officials. They did not possess any peculiar skills or talents or a well-nigh celebrity status that would have given them the power to negotiate the terms of their employment. In fact, their only choice over their engagement was limited to either accepting or rejecting the standard terms of employment prepared by ABS-CBN. In the same manner, they received a basic salary and

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[128] See id. at 565-566.

[129] Id. at 551-554.

[130] Id. at 557-558.

[131] See id. at 557.

were granted benefits such as SSS, Medicare, and 13th month pay benefits customarily given to regular employees.[132]

Equally telling, the workers did not enjoy the same level of impunity granted to Sonza. It bears stressing that an independent contractor is endowed with a certain level of skill and talent that is not available on-the-job.[133] Obviously, the workers do not hold this level of distinction.

ABS-CBN further points out that a particular sense of creativity or artistic flair is needed depending on the type of show that the worker is employed. For instance, the artistry and skill demanded for a television drama or *telenovela* is very different from that required in a variety show or a current events program. According to ABS-CBN, this proves that the workers were hired due to their unique skill in matching the artistic demands of each distinct program.

Strangely, however, a perusal of the list of television shows where each worker was hired reveals that they worked on a diverse range of programs, ranging from formal news programs, lively variety shows, and dramatic *telenovelas*. The ease with which they shuttled from one program to another, regardless of the huge disparity in the genre of the programs, clearly shows that their duties were more routinary and mundane, and not artistic or creative as ABS-CBN strives to portray.

In addition, it is bizarre that the workers, whom ABS-CBN maintains are "talents," were likewise assigned to perform work as property custodians and maintenance personnel.[134] Surely, individuals as "talented" and "skilled" as ABS-CBN claims them to be will not be ordered to perform such banal tasks.

Suffice it to say, talents or "[i]ndependent contractors often present themselves to possess unique skills, expertise or talent

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[132] *Rollo* (G.R. No. 222057), p. 276.

[133] *Sonza v. ABS-CBN Broadcasting Corp.*, supra note 127, at 555, citing *Alberty-Vélez v. Corporación De Puerto Rico Para La Difusión Pública ("WIPR")*, 361 F.3d 1, March 2, 2004.

[134] *Rollo* (G.R. No. 225101), Vol. I, p. 529.

to distinguish them from ordinary employees."[135] Because of this, the employer does not exercise control over the manner and method in which the talent performs his/her work. Simply — the greater the control exercised by the employer, the greater the likelihood that the worker is an employee. "The converse holds true as well — the less control the hirer exercises, the more likely the worker is considered an independent contractor."[136]

Based on all the foregoing, it is absurd to conclude that the employees are similarly situated with Sonza. By no stretch of the imagination may these workers be regarded as independent contractors.

The workers are not program/project employees of ABS-CBN

ABS-CBN argues that, should the Court affirm the existence of an employment relationship between the said company and the workers, the latter should simply be regarded as project employees.

Such argument fails to persuade.

The business of creating and producing television shows is heavily dependent on viewer preference and advancements in modern technology. Given the numerous television programs aired in a network, it is not surprising to find one that would last for many years, and one that is terminated in a short span of months. Indeed, it is economical for the broadcasting networks to maintain shows which earn, and to end those which do not. More so, it is nearly impossible to predict beforehand the success and the lifespan of each program.

In fact, this volatility is recognized in Department of Labor and Employment's Policy Instruction No. 40[137] (Policy

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[135] *Sonza v. ABS-CBN Broadcasting Corp.*, supra note 127, at 552.

[136] Id. at 556.

[137] EMPLOYER-EMPLOYEE RELATIONSHIP, HOURS OF WORK AND DISPUTE SETTLEMENT IN THE BROADCAST INDUSTRY, January 8, 1979.

Instruction No. 40), which affirms that "changes of programs, ratings or formats" affect a broadcasting industry's business or trade. Due to this reality, the Policy Instruction recognizes the existence of two kinds of employees in the broadcast industry.

The first of which are the regular station employees characterized as:

> x x x [T]hose whose services are engaged to discharge functions which are usually necessary and desirable to the operation of the station and whose usefulness is not affected by changes of programs, ratings or formats and who observe normal working hours. This shall include employees whose talents, skills or services are engaged as such by the station without particular reference to any specific program or undertaking, and are not allowed by the station to be engaged or hired by other stations or persons even if such employees do not observe normal working hours.[138]

Based on the definition given, station employees are regular employees as defined under Article 280 of the Labor Code.

The other classification of broadcast employees pertains to the program employees, who are:

> x x x [T]hose whose skills, talents or services are engaged by the station for a particular or specific program or undertaking and who are not required to observe normal working hours such that on some days they work for less than eight (8) hours and on other days beyond the normal work hours observed by station employees and are allowed to enter into employment contracts with other persons, stations, advertising agencies or sponsoring companies. x x x[139]

The above definition shows that program employees are project employees under Article 280 of the Labor Code, since their employment is fixed for a specific project or undertaking, the completion or termination of which has been determined at the time of their engagement. Consequently, program employees shall be under a written contract specifying among other things, the nature of the work to be performed, rates of pay, and the programs in which they will work.

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[138] Policy Instruction No. 40, p. 1.

[139] Id. at 2.

Policy Instruction No. 40 is useful in understanding the classes of employment in the broadcast industry, insofar as it pertains to the regular station employees and the program employees. In *Consolidated Broadcasting System, Inc. v. Oberio*,[140] and *Television and Production Exponents, Inc. v. Servaña*,[141] the Court used the provisions of Policy Instruction No. 40 to determine the workers' employment status and thus, declared that the employer's failure to provide a project employment contract, as mandated by said Policy Instruction, easily proves that the so-called talents or project workers are, in reality, regular employees.

As applied here, the workers are not project/program employees under Policy Instruction No. 40, which mandates that the engagement of program employees shall be under a written contract specifying the nature of their work, rates of pay, and the programs in which they will render services. "The contract shall be duly registered by the station with the Broadcast Media Council within three days from its consummation."[142]

Essentially, in a project-based employment, the employee is assigned to a particular project or phase, which begins and ends at a determined or determinable time. Consequently, the services of the project employee may be lawfully terminated upon the completion of such project or phase.[143] For employment to be regarded as project-based, it is incumbent upon the employer to prove that (i) the employee was hired to carry out a specific project or undertaking, and (ii) the employee was notified of the duration and scope of the project.[144]

Here, ABS-CBN failed to adduce any evidence to establish that the requirements for project employment were complied

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[140] 551 Phil. 802 (2007).

[141] 566 Phil. 564 (2008).

[142] Policy Instruction No. 40.

[143] *Dacles v. Millennium Erectors Corporation*, 763 Phil. 550, 558 (2015), citing *Omni Hauling Services, Inc. v. Bon*, 742 Phil. 335, 343-344 (2014).

[144] Id. at 558.

with. There is nothing in the records that would prove that the employees were notified beforehand of the duration and scope of their projects. Neither was there confirmation of compliance with the contract-registration requirement, or evidence of the submission of a notice of termination or completion of project. It is basic that project or contractual employees shall be apprised of their project under a written contract, specifying *inter alia* the nature of work to be performed and the rates of pay and the program in which they will work. Surely, ABS-CBN was in the best position to present these documents. Its failure to present them is therefore taken against it.

The Court is mindful that, in order to strike a balance between the rights of labor and capital and, more importantly, to contend with the volatility of the broadcasting industry, various employment agreements may be forged between the broadcasting company and the workers. These may range from regular employment, if the employees are continuously hired from one program to another, with their tenure unaffected by any changes in programs, ratings, or formats, to project employment, wherein the employees are assigned to work for a specific project or program, or a particular season within the program, with their tenure coterminous with the said program. This second classification likewise includes employees who are tasked to work on the seasonal specials released by the broadcast network. In the extreme end, workers who possess a distinct level of skill and artistry may be engaged as independent contractors. However, what remains crucial is the network's compliance with the provisions of the Labor Code and its implementing rules and regulations.

In this regard, cameramen may, in special instances, be regarded as talents if they possess a distinct level of artistry and creativity and work under minimal guidelines set by the director or producer. In this instance, the director works simply to coordinate the end result, with the cameramen executing the shots and angles on their own accord and discretion. In this respect, a distinction must be drawn between the cameramen who are talents, versus the cameramen in the instant case, who are regular employees of ABS-CBN.

The IJM System of ABS-CBN is a work pool of regular employees

The final defense raised by ABS-CBN is that the workers belonged to a work pool of independent contractors, who were hired from time to time to work in its television programs. To show proof thereof, ABS-CBN points out that the workers were not exclusively bound to render services for ABS-CBN, but were actually free to offer their services to other employers anytime they wanted to. ABS-CBN is only partly correct.

The Court finds that a work pool indeed existed, but its members, consistent with the rulings in *Begino* and *Nazareno*, were regular employees, and not independent contractors.

Traditionally, work pools have been recognized in the construction, shipping, and security[145] industries. However, in 1998, the Court, in *Maraguinot, Jr. v. NLRC*[146] *(Maraguinot)* affirmed the existence of work pools in the motion picture industry, considering that "the *raison d'etre* of both [construction and film] industries concern projects with a foreseeable suspension of work."[147]

The broadcast industry is a business that is allied with the film industry. Similar to the business of producing and creating films, the production of programs in the broadcast industry likewise involves periods with a foreseeable suspension of work. In fact, the description of a work pool perfectly suits the distinct nature of the broadcast industry:

> A work pool may exist although the workers in the pool do not receive salaries and are free to seek other employment during temporary breaks in the business, provided that the worker shall be available when called to report for a project. Although primarily applicable to regular seasonal workers, this set-up can likewise be applied to project workers insofar as the effect of temporary cessation of work is

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[145] *Exocet Security and Allied Services Corp., et al. v. Serrano*, 744 Phil. 403, 418 (2014).

[146] Supra note 118.

[147] Id. at 605.

concerned. [It is said that this arrangement] is beneficial to both the employer and employee for it prevents the unjust situation of "coddling labor at the expense of capital" and at the same time enables the workers to attain the status of regular employees. [In *Lao*, the Court held that] the continuous rehiring of the same set of employees within the framework of the Lao Group of Companies is strongly indicative that private respondents were an integral part of a work pool from which petitioners drew its workers for its various projects.[148] (Citations omitted)

The creation of a work pool is a valid exercise of management prerogative. It is a privilege inherent in the employer's right to control and manage its enterprise effectively, and freely conduct its business operations to achieve its purpose. However, in order to ensure that the work pool arrangement is not used as a scheme to circumvent the employees' security of tenure, the employer must prove that (i) a work pool in fact exists, and (ii) the members therein are free to leave anytime and offer their services to other employers. These requirements are critical in defining the precise nature of the workers' employment.[149]

Furthermore, in *Raycor Aircontrol Systems, Inc. v. NLRC*,[150] the Court explained that members of a work pool could either be project employees or regular employees.[151] Specifically, members of a work pool acquire regular employment status if: (i) they were continuously, as opposed to intermittently, re-hired by the same employer for the same tasks or nature of tasks; and (ii) the tasks they perform are vital, necessary and indispensable to the usual business or trade of the employer.[152]

In the particular case of ABS-CBN, the IJM System clearly functions as a work pool of employees involved in the production

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[148] Id. at 604, citing *Tomas Lao Construction v. NLRC*, 344 Phil. 268, 280 (1997).

[149] See *Raycor Aircontrol Systems, Inc. v. NLRC*, 330 Phil. 306, 320-322 (1996).

[150] Id.

[151] Id. at 321.

[152] *Maraguinot, Jr. v. NLRC*, supra note 118, at 606.

of programs. A closer scrutiny of the IJM System shows that it is a pool from which ABS-CBN draws its manpower for the creation and production of its television programs. It serves as a "database which provides the user, basically the program producer, a list of accredited technical or creative manpower who offer their services."[153] The database includes information, such as the competency rating of the employee and his/her corresponding professional fees. Should the company wish to hire a person for a particular project, it will notify the latter to report on a set filming date.[154]

Both parties acknowledged the existence of the IJM System work pool and the workers' inclusion therein. On the part of ABS-CBN, it gave the workers an ABS-CBN identification card, placed them under the supervision of its officers and managers, allowed them to use its facilities and equipment, and continuously employed them in the production of television programs. On the part of the workers, they formed the ABS-CBN IJM System Worker's Union, recognizing that they were in fact part of the IJM System work pool.

However, the continuous rehiring of the members of the IJM System work pool from one program to another bestowed upon them regular employment status. As such, they cannot be separated from the service without cause as they are considered regular, at least with respect to the production of the television programs. This holds true notwithstanding the fact that they were allowed to offer their services to other employers.

As in *Tomas Lao Construction v. NLRC*,[155] the Court affirmed that the members of a work pool shall still be regarded as regular employees, even if they are allowed to seek employment elsewhere during lulls in the business.[156] The Court stressed that, during the cessation of work, the employees shall simply

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[153] *Rollo* (G.R. Nos. 202495 & 202497), Vol. III, p. 1915.

[154] Id.

[155] Supra note 148.

[156] Id. at 280-281.

be treated as being on leave of absence without pay until their next project. Correlatively, the employer shall not be obliged to pay the employees during the suspension of operations, *viz.*:

> x x x [T]he cessation construction activities at the end of every project is a foreseeable suspension of work. Of course, no compensation can be demanded from the employer because the stoppage of operations at the end of a project and before the start of a new one is regular and expected by both parties to the labor relations. Similar to the case of regular seasonal employees, the employment relation is not severed by merely being suspended. The employees are, strictly speaking, not separated from services but merely on leave of absence without pay until they are reemployed. Thus we cannot affirm the argument that non-payment of salary or non-inclusion in the payroll and the opportunity to seek other employment denote project employment.[157] (Citations omitted)

By analogy, and as applied to the members of the IJM System work pool, even if they are allowed to offer their services to other employers during the lulls in the production business, they shall still be regarded as regular employees who are simply "on leave" during such periods of suspension in production. On the part of ABS-CBN, it shall not be obliged to pay the employees during such temporary breaks.

It bears stressing that similar to the caveat laid down in *Maraguinot*, the Court wishes to allay any fears that the instant ruling unduly burdens an employer, or that it unreasonably coddles labor at the expense of capital. This decision is simply a "judicial recognition of the employment status of a project or work pool employee in accordance with what is *fait accompli*, *i.e.*, the continuous re-hiring by the employer of project or work pool employees who perform tasks necessary or desirable to the employer's usual business or trade."[158]

Consequently, as regular work pool employees of ABS-CBN, the workers are entitled to the following benefits:

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[157] Id. at 281.

[158] *Maraguinot, Jr. v. NLRC*, supra note 118, at 605.

The workers in the regularization cases are entitled to all the benefits under the CBA

As regular employees of ABS-CBN, the workers in G.R. Nos. 202495 & 202497 *(ABS-CBN Corporation v. Payonan, et al.)*, and G.R. No. 202481 *(Del Rosario, et al. v. ABS-CBN Broadcasting Corporation)* shall be included in the rank-and-file unit of the CBA.[159]

In *Fulache v. ABS-CBN Broadcasting Corp.*[160] and *Nazareno*, the Court categorically declared that the workers, who were production assistants, cameramen, assistant editor/teleprompter operators, video editors, and VTR operators, being regular employees of ABS-CBN, are part of the bargaining unit of ABS-CBN's rank-and-file employees. As such, they are entitled to the CBA benefits as a matter of law and contract.

Here, the CBA states in no uncertain terms that the "appropriate bargaining unit shall [consist of] the regular rank-and-file employees of [ABS-CBN], but shall not include: (a) personnel classified as Supervisor and Confidential employees; (b) personnel who are on 'casual' or 'probationary' status x x x; and (c) [p]ersonnel who are on 'contract' status or who are paid for specified units of work such as writer-producers, talent artists and singers."[161] Clearly, the workers are indeed members of the bargaining unit, as they are regular rank-and-file employees and do not belong to any of the excluded categories.

The workers in the illegal dismissal cases are entitled to reinstatement and backwages and other benefits

The necessary consequence of a declaration that the workers are regular employees is the correlative rule that the employer

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[159] In the petitions for regularization (G.R. Nos. 202481 and 202495 & 202497), the workers likewise beseech the Court for their inclusion in the CBA with ABS-CBN.

[160] 624 Phil. 562 (2010).

[161] *Rollo* (G.R. Nos. 202495 & 202497), Vol. IV, p. 2510.

shall not dismiss them except for a just or authorized cause provided in the Labor Code. This is the essence of the tenurial security guaranteed by the law: "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 back wages, 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."[162]

The facts show that ABS-CBN failed to prove the existence of just or authorized causes for terminating the services of the workers, save for its claim that they are talents. Without any notice or warning, the workers were simply barred from entering the company premises.

Hence, the dismissed workers are entitled to the twin reliefs of reinstatement without loss of seniority rights, and payment of backwages computed from the time their compensation was withheld up to the date of their actual reinstatement.[163]

However, consistent with the finding that the workers are regular work pool employees, then, following *Maraguinot*, the workers are deemed reinstated to the work pool and are entitled to backwages, subject to deductions as stated below, and other benefits.

In the computation of backwages, the Court shall apply the principles of "suspension of work" and "no pay" between the end of one program and the start of a new one. Thus, similar to *Maraguinot*, the period during which the workers' respective production units were not shooting any television programs should be deducted from the computation of their backwages.

In connection therewith, ABS-CBN is directed to provide the LA the necessary data to determine the periods of the

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[162] LABOR CODE OF THE PHILIPPINES, Art. 294.

[163] *ICT Marketing Services, Inc. v. Sales*, 769 Phil. 498, 524 (2015), citing *Reyes v. RP Guardians Security Agency, Inc.*, 708 Phil. 598, 604-605 (2013).

programs for which each worker would have been employed were it not for his/her dismissal. In turn, the LA is directed to deduct the periods between the end of one program and the start of the new one from the computation of the backwages.

In case of ABS-CBN's failure to provide the data above, the workers shall be entitled to backwages from the time of their illegal dismissal until their reinstatement following the finality of this Decision, without any deductions.

In addition to their backwages, the workers are likewise entitled to their monetary benefits consisting of their 13th month pay and holiday pay, pursuant to the applicable labor and tax laws,[164] computed in the same manner provided above, by deducting the amounts corresponding to the periods that they were not engaged in the production of programs. Notably, in determining the employee's entitlement to monetary claims, the burden of proof is shifted from the employer or the employee, depending on the monetary claim sought. Essentially, in claims for payment of monetary benefits such as holiday pay and 13th month pay, the burden rests on the employer to prove payment. This standard follows the basic rule that in all illegal dismissal cases the burden rests on the defendant to prove payment rather than on the plaintiff to prove non-payment. This, likewise, stems from the fact that all pertinent personnel files, payrolls, records, remittances, and other similar documents — which will show that the differentials, service incentive leave and other claims of workers have been paid — are not in the possession of the worker, but are in the custody and control of the employer.[165] ABS-CBN failed to adduce evidence to prove its payment of the aforementioned benefits.

However, as to the workers' claims for overtime pay, premium pay for holidays and rest days, and night shift differential pay,

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[164] Presidential Decree No. 851, REQUIRING ALL EMPLOYERS TO PAY THEIR EMPLOYEES A 13TH MONTH PAY; Revised Guidelines on the Implementation of the 13th Month Pay Law; and R.A. No. 10963 or the "TAX REFORM FOR ACCELERATION AND INCLUSION (TRAIN) LAW," Sec. 9.

[165] *Loon v. Power Master, Inc.*, 723 Phil. 515, 531-532 (2013).

the burden is shifted on the employee, as these monetary claims are not incurred in the normal course of business.[166] Considering that the workers failed to prove that they actually rendered service in excess of the regular eight working hours a day, and that they in fact worked on holidays and rest days,[167] the Court is constrained to deny their claim for these benefits.

As for the workers' prayer for moral and exemplary damages, the Court denies these reliefs for lack of factual and legal basis. Nonetheless, the workers are entitled to attorney's fees equivalent to ten percent (10%) of the total monetary award, since the instant case includes a claim for unlawfully withheld wages, and the workers were forced to litigate to protect their rights.[168] All amounts due shall earn a legal interest of six percent (6%) per annum.[169]

WHEREFORE, in light of the foregoing, the Court renders the following disposition:

1. The petition in *Del Rosario, et al. v. ABS-CBN Broadcasting Corporation* (G.R. No. 202481) is **GRANTED**. The Decision dated January 27, 2012 and the Resolution dated June 26, 2012 of the Court of Appeals in CA-G.R. SP No. 117885 are **REVERSED and SET ASIDE**.

2. The petition in *ABS-CBN Corporation v. Payonan, et al.* (G.R. Nos. 202495 & 202497) is **DENIED**. The Decision dated October 28, 2011 and the Resolution dated June 27, 2012 of the Court of Appeals in CA-G.R. SP Nos. 108552 and 108976 are **AFFIRMED**.

3. The petition in *ABS-CBN Corporation v. Ong, et al.* (G.R. No. 222057) is **DENIED**. Accordingly, the Decision dated February 24, 2015 and the Resolution

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[166] Id. at 532, citing *Lagatic v. NLRC*, 349 Phil. 172, 185-186 (1998).

[167] Id.

[168] LABOR CODE OF THE PHILIPPINES, Art. 111.

[169] *Nacar v. Gallery Frames, et al.*, 716 Phil. 267, 278-279 (2013).

dated December 21, 2015 of the Court of Appeals in CA-G.R. SP No. 122068 are **AFFIRMED**.

4. The petition in *ABS-CBN Corporation, et al. v. Lozares* (G.R. No. 224879) is **DENIED**. The Decision dated January 4, 2016 and the Resolution dated May 27, 2016 of the Court of Appeals in CA-G.R. SP No. 122824 are **AFFIRMED with MODIFICATION by DELETING** the award of moral damages and exemplary damages.

5. The petition in *ABS-CBN Corporation v. Zaballa III, et al.* (G.R. No. 225874) is **DENIED**. The Decision dated January 12, 2016 and the Resolution dated July 15, 2016 of the Court of Appeals in CA-G.R. SP No. 131576 are **AFFIRMED**.

6. The petition in *Cajoles, Jr., et al. v. ABS-CBN Broadcasting Corporation* (G.R. No. 219125) is **GRANTED**. The Decision dated August 19, 2014 and the Resolution dated June 18, 2015 of the Court of Appeals in CA-G.R. SP No. 122424 are **REVERSED and SET ASIDE**.

7. The petition in *Perez, et al. v. ABS-CBN Broadcasting Corporation* (G.R. No. 225101) is **GRANTED**. The Decision dated January 28, 2016 and the Resolution dated May 26, 2016 of the Court of Appeals in CA-G.R. SP No. 125868 are **REVERSED and SET ASIDE**.

8. The petition in *Dablo, et al. v. ABS-CBN Broadcasting Corporation, et al.* (G.R. No. 210165) is **GRANTED**. The Decision dated April 30, 2013 and the Resolution dated November 20, 2013 of the Court of Appeals in CA-G.R. SP No. 122635 are **REVERSED and SET ASIDE**.

The employees who were illegally dismissed shall be deemed reinstated to the work pool. They are likewise entitled to backwages and other benefits from the time of their illegal dismissal up to actual reinstatement, deducting therefrom the

periods corresponding to when ABS-CBN Corporation was not undertaking the production of programs.

Let this case be remanded to the Labor Arbiter for the proper computation of the monetary benefits due to each of the workers in accordance with the guidelines in this Decision. All amounts awarded shall earn a legal interest of six percent (6%) per annum from the date of finality of this Decision until full payment.

ABS-CBN Corporation is hereby ordered to provide the necessary data to assist the Labor Arbiter in computing the amount of backwages due to the employees.

SO ORDERED.

Perlas-Bernabe, Gesmundo, Reyes, Jr., Hernando, Inting, Zalameda, Lopez, and *Delos Santos, JJ.,* concur.

Leonen, J., see concurring opinion.

Peralta, C.J., Carandang, Lazaro-Javier, and *Gaerlan, JJ.,* no part.

Baltazar-Padilla, J., on leave.

CONCURRING OPINION

LEONEN, *J.*:

Before this Court are eight Petitions for Review on Certiorari under Rule 45 of the Rules of Court, consolidated as they all involve common questions of law.

These cases began as complaints for regularization filed before the Labor Arbiter by 135 ABS-CBN Corporation (ABS-CBN) workers, reduced to 95 during the proceedings. The cases ultimately led to two consolidated cases separately resolved by different divisions of the Court of Appeals, in which one set of complainants were declared regular employees, and another set declared independent contractors.

In G.R. No. 202481,[1] 24[2] workers assail the January 27, 2012 Decision[3] and June 26, 2012 Resolution[4] of the Court of Appeals in CA-G.R. SP No. 117885, which dismissed their case for regularization. Meanwhile, in G.R. Nos. 202495-97, ABS-CBN questions the October 28, 2011 Decision[5] and June 27, 2012 Resolution[6] of the Court of Appeals in CA-G.R. SP Nos. 108552 and 108976, where 72 ABS-CBN workers were found to be regular employees.

During the pendency of these regularization cases, 20 of the 99 workers filed complaints for illegal dismissal, among others, before the Labor Arbiter.

The first of these cases was filed by Ismael Dablo, Rolando Barron, Roberto Del Castillo, Albert Del Rosario, George

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[1] *Rollo* (G.R. No. 202481), p. 54.

[2] I note that as stated in footnote no. 3 of the CA Decision in CA-G.R. SP No. 117885 [*rollo* (G.R. No. 202481), pp. 55-56], 34 complainants, including one Tommy Anacta, originally filed the complaint before the Labor Arbiter. However, in the proceedings before the Court of Appeals, only 23 petitioners were impleaded in the title of the case, without Tommy Anacta. Before this Court, he was again impleaded as among the petitioners.

[3] *Rollo* (G.R. No. 202481), pp. 54-72. The January 27, 2012 Decision in CA-G.R. SP No. 117885 was penned by Associate Justice Stephen C. Cruz and concurred in by Associate Justices Vicente S.E. Veloso and Amy C. Lazaro-Javier (now a member of this Court) of the Special Fourteenth Division, Court of Appeals, Manila.

[4] Id. at 89-91. The June 26, 2012 Resolution in CA-G.R. SP No. 117885 was penned by Associate Justice Stephen C. Cruz and concurred in by Associate Justices Vicente S.E. Veloso and Amy C. Lazaro-Javier (now a member of this Court) of the Former Special Fourteenth Division, Court of Appeals, Manila.

[5] *Rollo* (G.R. Nos. 202495-97), pp. 1907-1927. The October 28, 2011 Decision in CA-G.R. No. 108552 and 108976 was penned by Associate Justice Manuel M. Barrios and concurred in by Associate Justices Mario L. Guariña III and Associate Justice Apolinario D. Bruselas, Jr. of the Seventh Division, Court of Appeals, Manila.

[6] Id. at 2060-2065. The June 27, 2012 Resolution in CA-G.R. SP No. 108552 was penned by Associate Justice Manuel M. Barrios and concurred in by Associate Justices Danton Q. Bueser and Apolinario D. Bruselas, Jr. of the Special Former Seventh Division, Court of Appeals, Manila.

Macaso, Rey Santiago, Reynaldo Tugade, and Paul Viray, who would eventually be among the petitioners in G.R. No. 202481. Their complaint for illegal dismissal, reinstatement, payment of backwages, moral and exemplary damages, payment of 13th month pay, service incentive leave, and attorney's fees was ultimately dismissed by the Court of Appeals in its April 30, 2013 Decision[7] and November 20, 2013 Resolution[8] in CA-G.R. SP No. 122635. Relying on the result of CA-G.R. SP No. 117885, the Court of Appeals found that it had no jurisdiction to rule on the workers' employment status, and therefore, the status of their dismissal.[9] Now before this Court, these workers assail the rulings in a Petition for Review docketed as G.R. No. 210165.

Likewise dismissed by the Court of Appeals, on the ground of forum shopping, was the illegal dismissal case filed by Ricardo Joy Cajoles, Jr., Antonio Immanuel Calle, Richard Sison, and Journalie Payonan, who were parties to G.R. Nos. 202495-97. They now question the August 19, 2014 Decision[10] and June 18, 2015 Resolution[11] in CA-G.R. SP No. 122424 through a Petition for Review, docketed as G.R. No. 219125.

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[7] Id. at 55-66. The April 30, 2013 Decision in CA-G.R. SP No. 122635 was penned by Associate Justice Magdangal M. De Leon and concurred in by Associate Justices Stephen C. Cruz and Associate Justice Myra V. Garcia-Fernandez of the Eleventh Division, Court of Appeals, Manila.

[8] Id. at 85-87. The November 20, 2013 Resolution in CA-G.R. SP No. 122635 was penned by Associate Justice Magdangal M. De Leon and concurred in by Associate Justices Stephen C. Cruz and Myra V. Garcia-Fernandez of the Eleventh Division, Court of Appeals, Manila.

[9] *Rollo* (G.R. No. 210165), pp. 64-65.

[10] *Rollo* (G.R. No. 219125), pp. 1347-1359. The August 19, 2014 Decision in CA-G.R. SP No. 122424 was penned by Associate Justice Edwin D. Sorongon and concurred in by Associate Justices Marlene Gonzales-Sison and Rosmari D. Carandang (now a member of this Court), of the Fourth Division, Court of Appeals, Manila.

[11] Id. at 1376-1377. The June 18, 2015 Resolution in CA-G.R. SP No. 122424 was penned by Associate Justice Edwin D. Sorongon and concurred in by Associate Justices Marlene Gonzales-Sison and Rosmari D. Carandang (now a member of this Court), of the Former Fourth Division, Court of Appeals, Manila.

Joseph R. Ong from G.R. Nos. 202495-97 had also filed a complaint for illegal dismissal, money claims, and damages with three other camera operators. This was granted by the Court of Appeals in its February 24, 2015 Decision[12] and December 21, 2015 Resolution[13] in CA-G.R. SP No. 122068. Thus, ABS-CBN now questions the rulings before this Court in G.R. No. 222057.

Likewise, Ronnie Lozares, Jun Tangalin, and Lauro Calitisen, also from G.R. Nos. 202495-97, filed a complaint for illegal dismissal, nonpayment of benefits, and moral and exemplary damages against ABS-CBN, which was consolidated with two other complaints. In its January 4, 2016 Decision[14] and May 27, 2016 Resolution[15] in CA-G.R. SP No. 122824, the Court of Appeals found that, among the three, only Ronnie Lozares proved that he was a regular employee who had been illegally dismissed. ABS-CBN now assails this ruling in G.R. No. 224879.

Christopher Mendoza, Russel Galima, Alfred Christian Nunez, Rommel Villanueva, Jhonschultz Congson, and Alex Carlos from G.R. Nos. 202495-97, along with 11 other workers, also filed cases for illegal dismissal against ABS-CBN. The Court of Appeals in CA-G.R. SP No. 125868 had dismissed their

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[12] *Rollo* (G.R. No. 222057), pp. 700-713. The February 24, 2015 Decision in CA-G.R. SP No. 122068 was penned by Associate Justice Elihu A. Ybañez and concurred in by Associate Justices Isaias P. Dicdican and Apolinario D. Bruselas, Jr. of the Special Ninth Division, Court of Appeals, Manila.

[13] Id. at 772-773. The December 21, 2015 Resolution in CA-G.R. SP No. 122068 was penned by Associate Justice Elihu A. Ybañez and concurred in by Associate Justices Eduardo B. Peralta, Jr. and Associate Justice Apolinario D. Bruselas, Jr. of the Special Former Ninth Division, Court of Appeals, Manila.

[14] *Rollo* (G.R. No. 224879), pp. 72-80. The January 4, 2016 Decision in CA-G.R. SP No. 122824 was penned by Associate Justice Nina G. Antonio-Valenzuela and concurred in by Associate Justices Fernanda Lampas Peralta and Jane Aurora C. Lantion of the Sixth Division, Court of Appeals, Manila.

[15] Id. at 82-83. The May 27, 2016 Resolution in CA-G.R. SP No. 122824 was penned by Associate Justice Nina G. Antonio-Valenzuela and concurred in by Associate Justices Fernanda Lampas Peralta and Jane Aurora C. Lantion of the Sixth Division, Court of Appeals, Manila.

complaint in its January 28, 2016 Decision[16] and May 26, 2016 Resolution.[17] They now question the rulings in G.R. No. 225101.

In G.R. No. 225874, ABS-CBN assails the January 12, 2016 Decision[18] and July 15, 2016 Resolution[19] of the Court of Appeals in CA-G.R. SP No. 131576. There, three ABS-CBN workers not parties to either regularization case had been found to be regular employees.

In sum, 95 workers sought to be regularized by ABS-CBN, with 20 later seeking redress when their employments were terminated by the company, while an additional 19 workers filed their own complaints for illegal dismissal.

These workers occupied different positions, though all involved in television production. They are, variously: camera operators, light technicians, camera control unit operators, OB van drivers, PA van drivers, audio technicians, sound engineers, drivers, system operators, electricians, gaffers, technical directors, VTR operators, video engineers, camera control unit staff, lighting directors, and moving light operators.[20]

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[16] *Rollo* (G.R. No. 225101), pp. 854-869. The January 28, 2016 Decision in CA-G.R. SP No. 125868 was penned by Associate Justice Melchor Q.C. Sadang and concurred in by Associate Justices Amy C. Lazaro-Javier (now a member of this Court) and Edwin D. Sorongon of the Special Ninth Division, Court of Appeals, Manila.

[17] Id. at 899-900. The May 26, 2016 Resolution in CA-G.R. SP No. 125868 was penned by Associate Justice Melchor Q.C. Sadang and concurred in by Associate Justices Amy C. Lazaro-Javier (now a member of this Court) and Associate Justice Edwin D. Sorongon of the Former Special Ninth Division, Court of Appeals, Manila.

[18] *Rollo* (G.R. No. 225874), pp. 715-729. The January 12, 2016 Decision in CA-G.R. SP No. 131576 was penned by Associate Justice Samuel H. Gaerlan (now a member of this Court) and concurred in by Associate Justices Normandie B. Pizarro and Ma. Luisa C. Quijano-Padilla of the Thirteenth Division, Court of Appeals, Manila.

[19] Id. at 763-764. The July 15, 2016 Resolution in CA-G.R. SP No. 131576 was penned by Associate Justice Samuel H. Gaerlan (now a member of this Court) and concurred in by Associate Justices Normandie B. Pizarro and Ma. Luisa C. Quijano-Padilla of the Thirteenth Division, Court of Appeals, Manila.

[20] *Ponencia*, pp. 12-13.

Against their complaints, ABS-CBN raised common defenses:

1. It is principally engaged in broadcasting, not production. Thus, the services rendered by the workers are not usually necessary or desirable in its usual business or trade.[21]
2. The workers are "talents" or independent contractors hired based on unique skills or expertise for particular productions.[22]
3. The workers, as independent contractors, are accredited by ABS-CBN for inclusion in a company database called the "Internal Job Market System." ABS-CBN's program producers use this system for their technical or creative staffing. The workers in the Internal Job Market System are not exclusively bound to render services for ABS-CBN.[23]
4. When a worker is chosen using the Internal Job Market System, they are briefed on the general requirements of the project. However, they proceed independently when operating their equipment, without training or supervision when they perform their tasks.[24]

I

This Court's power of review over labor cases in a Rule 45 petition is limited to the correctness of the Court of Appeals' findings on the existence, or lack, of grave abuse of discretion

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[21] *Rollo* (G.R. No. 202481), p. 63; *rollo* (G.R. Nos. 202495-97), p. 1912; *rollo* (G.R. No. 225101), p. 856; *rollo* (G.R. No. 225874), p. 718.

[22] *Rollo* (G.R. No. 202481), p. 64; *rollo* (G.R. Nos. 202495-97), p. 1912; *rollo* (G.R. No. 219125), p. 1349; *rollo* (G.R. No. 222057), p. 702; *rollo* (G.R. No. 225101), p. 856; *rollo* (G.R. No. 225874), p. 718.

[23] *Rollo* (G.R. No. 202481), p. 71; *rollo* (G.R. Nos. 202495-97), p. 1915; *rollo* (G.R. No. 219125), p. 1349; *rollo* (G.R. No. 225101), p. 856; *rollo* (G.R. No. 225874), pp. 718-719.

[24] *Rollo* (G.R. Nos. 202495-97), p. 1915, *Rollo* (G.R. No. 219125), p. 1349; *rollo* (G.R. No. 225101), p. 856; *rollo* (G.R. No. 225874), pp. 718-719.

committed by the National Labor Relations Commission.[25] In *Montoya v. Transmed Manila Corporation*:[26]

> 1. We review in this **Rule 45 petition** the decision of the CA on a Rule 65 petition filed by Montoya with that court. 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. This is the approach that should be basic in a Rule 45 review of a CA ruling in a labor case. **In question form, the question to ask is: Did the CA correctly determine whether the NLRC committed grave abuse of discretion in ruling on the case?**[27] (Emphasis in the original, citations omitted)

There is grave abuse of discretion when a court or tribunal "capriciously acts or whimsically exercises judgment to be 'equivalent to lack of jurisdiction.'"[28]

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[25] *See Career Philippines Shipmanagement, Inc. v. Serna*, 700 Phil. 1 (2012) [Per J. Brion, Second Division]; *Fuji Television Network, Inc. v. Espiritu*, 749 Phil. 388 (2014) [Per J. Leonen, Second Division]; *E. Ganzon, Inc. v. Ando, Jr.*, 806 Phil. 58 (2017) [Per J. Peralta, Second Division]; *Almagro v. Philippine Airlines, Inc.*, G.R. No. 204803, September 12, 2018, <https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/64594> [Per J. Jardeleza, First Division].

[26] 613 Phil. 696 (2009) [Per J. Brion, Second Division].

[27] *Id.* at 706-707.

[28] *Manggagawa ng Komunikasyon sa Pilipinas v. Philippine Long Distance Telephone Co., Inc.*, 809 Phil. 106, 120 (2017) [Per J. Leonen, Second Division] *citing Hongkong Shanghai Banking Corporation Employees Union v. National Labor Relations Commission*, 421 Phil. 864, 870 (2001) [Per J. Sandoval-Gutierrez, Third Division].

In G.R. No. 210165, the Court of Appeals held that *Fulache v. ABS-CBN Broadcasting Corporation*[29] was inapplicable, because a decision had already been rendered by a different division of the Court of Appeals in the regularization case to which the workers were parties:

> Petitioners' reliance on *Fulache v. ABS-CBN Broadcasting, Corp.* anent the issue of employer-employee relationship is misplaced. Involved in said case were drivers, drivers/cameramen and cameramen/editors, who were also dismissed by private respondent ABS-CBN almost under the same circumstances herein. . . .
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> . . . . . .
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> The *Fulache* ruling cannot be applied herein. This is due to the fact that the then Special Fourteenth Division of this Court already handed down a Decision dated January 27, 2012 in CA-G.R. SP No. 117885 which declared that the parties in the regularization case, including herein petitioners, failed to prove that they are regular employees, thus reversing and setting aside the Decision dated October 29, 2010 rendered by the NLRC.
>
> Evidently, this Court has no jurisdiction to rule on the question of whether petitioners are regular employees, the same having been passed upon by the Special Fourteenth Division.[30] (Citations omitted)

Meanwhile, in G.R. No. 219125, the Court of Appeals dismissed the illegal dismissal case filed by workers who were part of the regularization case in G.R. Nos. 202495-97. In so ruling, it reasoned that the workers committed forum shopping:

> Without a doubt, when petitioners lodged this case before the Labor Arbiter, there was already a pending case, which, as a matter of fact, has already been decided by the labor tribunals, involving significantly the same issues and same parties. Indeed, [in] the filing of the second case for illegal dismissal, petitioners had blatantly defied the rule on forum shopping. Petitioners, having obtained an unfavorable ruling in the *Payonan* case in the proceedings below, deliberately sought another forum in the hope of obtaining a favorable judgment, as it

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[29] 624 Phil. 562 (2010) [Per J. Brion, Second Division].

[30] *Rollo* (G.R. No. 210165), pp. 63-65.

did, since the Court of Appeals reversed the labor tribunals' decisions in the *Payonan* case on October 28, 2011. In fact, as may be gleaned from the pleadings of the petitioners, they obviously took advantage of the ruling in the *Payonan* case by invoking that the same be likewise made applicable to them. By so doing, they themselves acknowledge the fact that they have interest in the *Payonan* case by virtue of their being petitioners also therein.

There is no escaping that the simultaneous remedies availed of by the petitioners are a manifest case of forum shopping. Clearly, in the two cases earlier mentioned and the one under our consideration, petitioners seek to obtain one and the same relief, that is, to declare their dismissal illegal and for the private respondent to declare them as regular employees, before the same tribunal.[31]

It is evident in these rulings that the Court of Appeals gravely abused its discretion.

As noted by the *ponencia*, there is no forum shopping when workers in a regularization case later file cases for illegal dismissal:

Here, although it is true that the parties in the regularization and the illegal dismissal cases are identical, the reliefs sought and the causes of action are different. There is no identity of causes of action between the first set of cases and the second set of cases.

The test to determine whether the causes of action are identical is to ascertain whether the same evidence would support both actions, or whether there is an identity in the facts essential to the maintenance of the two actions. If the same facts or evidence would support both actions, then they are considered the same; a judgment in the first case would be a bar to the subsequent action. This is absent here. The facts or the pieces of evidence that would determine whether the workers were illegally dismissed are not the same as those that would support their clamor for regularization.

Besides, it must be remembered that the circumstances obtaining at the time the workers filed the regularization cases were different from when they subsequently filed the illegal dismissal cases. Before their illegal dismissal, the workers were simply clamoring for their

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[31] *Rollo* (G.R. No. 219125), pp. 1356-1357.

recognition as regular employees, and their right to receive benefits concomitant with regular employment. However, during the pendency of the regularization cases, the workers were summarily terminated from their employment. This supervening event gave rise to a cause of action for illegal dismissal, distinct from that in the regularization case[s]. This time, the workers were not only praying for regularization, but also for reinstatement by questioning the legality of their dismissal. The issue turned into whether or not ABS-CBN had just or authorized cause to terminate their employment. Clearly, it was ABS-CBN's action of dismissing the workers that gave rise to the illegal dismissal cases. And it is absurd for it to now ask the Court to fault the workers for questioning ABS-CBN's actions, which were done while the regularization cases were pending. The Court cannot allow this.[32]

Moreover, the circumstances surrounding the illegal dismissal cases of some of the workers in G.R. Nos. 202495-97 are not new to this Court. In *Fulache*, this Court held that ABS-CBN acted in bad faith when it treated its workers as independent contractors who may be dismissed without cause despite the existence of regularization actions. For failing to recognize this, the Court of Appeals and the labor tribunals were deemed to have committed grave abuse of discretion:

> Lastly, it forgot that there was a standing labor arbiter's decision that, while not yet final because of its own pending appeal, cannot simply be disregarded. By implementing the dismissal action at the time the labor arbiter's ruling was under review, the company unilaterally negated the effects of the labor arbiter's ruling while at the same time appealing the same ruling to the [National Labor Relations Commission]. This unilateral move is a direct affront to the [National Labor Relations Commission]'s authority and an abuse of the appeal process.
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> All these go to show that ABS-CBN acted with patent bad faith. A close parallel we can draw to characterize this bad faith is the prohibition against forum-shopping under the Rules of Court. In forum-shopping, the Rules characterize as bad faith the act of filing similar and repetitive actions for the same cause with the intent of somehow finding a favorable ruling in one of the actions filed. ABS-CBN's actions in the two cases, as described above, are of the same character,

[32] Ponencia, pp. 19-20.

since its obvious intent was to defeat and render useless, in a roundabout way and other than through the appeal it had taken, the labor arbiter's decision in the regularization case. Forum-shopping is penalized by the dismissal of the actions involved. The penalty against ABS-CBN for its bad faith in the present case should be no less.

The errors and omissions do not belong to ABS-CBN alone. The labor arbiter himself who handled both cases did not see the totality of the company's actions for what they were. He appeared to have blindly allowed what he granted the petitioners with his left hand, to be taken away with his right hand, unmindful that the company already exhibited a badge of bad faith in seeking to terminate the services of the petitioners whose regular status had just been recognized. He should have recognized the bad faith from the timing alone of ABS-CBN's conscious and purposeful moves to secure the ultimate aim of avoiding the regularization of its so-called "talents."

The [National Labor Relations Commission], for its part, initially recognized the presence of bad faith where it originally rules that:

> While notice has been made to the employees whose positions were declared redundant, the element of good faith in abolishing the positions of the complainants appear to be wanting. In fact, it remains undisputed that herein complainants were terminated when they refused to sign an employment contract with Able Services which would make them appear as employees of the agency and not of ABS-CBN. Such act by * clearly demonstrated bad faith on the part of the respondent in carrying out the company's redundancy program. . . .

On motion for reconsideration by both parties, the [National Labor Relations Commission] reiterated its "pronouncement that complainants were illegally terminated as extensively discussed in our Joint Decision dated December 15, 2004." Yet in an inexplicable turnaround, it reconsidered its joint decision and reinstated not only the labor arbiter's decision of January 17, 2002 in the regularization case, but also his illegal dismissal decision of April 21, 2003. Thus, the [National Labor Relations Commission] joined the labor arbiter in his error that we cannot but characterize as grave abuse of discretion.

The Court cannot leave unchecked the labor tribunals' patent grave abuse of discretion that resulted, without doubt, in a grave injustice to the petitioners who were claiming regular employment status and were unceremoniously deprived of their employment soon after their

regular status was recognized. Unfortunately, the CA failed to detect the labor tribunals' gross errors in the disposition of the dismissal issue. Thus, the CA itself joined the same errors the labor tribunals committed.[33] (Citations omitted)

The Court of Appeals in G.R. No. 225101 also gravely abused its discretion in taking cognizance of *Jalog v. National Labor Relations Commission*, G.R. No. 198065:

To reiterate, the most important factor in determining the existence of an employer-employee [relationship] is the power of control. As held in *Jalog*, ABS-CBN did not control the manner by which petitioners performed their work. How they operate the pieces of television equipment handed to them was left to their creativity, imagination and artistic inclination. What ABS-CBN was looking out for was only the result of their work and its conformity with company standards. Neither is there merit in petitioners' contention that the pieces of equipment that they used do not belong to them but to ABS-CBN. Ownership of the television equipment is immaterial. What petitioners brought to their jobs were not pieces of equipment but their unique individual talents and skills in operating the equipment. At the hands of a person without talent, the equipment would be useless and would not achieve desired results. Also, it may be true that ABS-CBN provided further training for petitioners; however, it is not disputed that such training was optional and was merely intended to hone their skills which they already had even before they offered their services.[34]

As observed in the *ponencia*, the Court of Appeals Decision in *Jalog* was affirmed by this Court through an October 5, 2011 minute resolution.[35] Jurisprudence has held that while a minute resolution denying a petition for review on certiorari is a judgment on the merits,[36] it cannot bind non-parties thereto:

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[33] *Fulache v. ABS-CBN Broadcasting Corp.*, 624 Phil. 562, 583-585 (2010) [Per J. Brion, Second Division].

[34] *Rollo* (G.R. No. 225101), p. 867.

[35] Ponencia, pp. 20-21.

[36] *See Magdangal v. City of Olongapo*, 259 Phil. 107 (1989) [Per J. Cortes, En Banc].

The CA's reliance on the *Philippine Pizza, Inc.*'s minute resolution is, however, misplaced. Case law instructs that although the Court's dismissal of a case via a minute resolution constitutes a disposition on the merits, the same could not be treated as a binding precedent to cases involving other persons who are not parties to the case, or another subject matter that may or may not have the same parties and issues. In other words, a minute resolution does not necessarily bind non-parties to the action even if it amounts to a final action on a case.

In this case, records do not bear proof that respondents were also parties to the *Philippine Pizza, Inc.*'s case or that they participated or were involved therein. Moreover, there was no showing that the subject matters of the two (2) cases were in some way similar or related to one another, since the minute resolution in the case of *Philippine Pizza, Inc.* did not contain a complete statement of the facts, as well as a discussion of the applicable laws and jurisprudence that became the basis for the Court's minute resolution therein. In this light, the principle of *stare decisis* cannot be invoked to obtain a dismissal of the instant petition.[37]

The Court of Appeals failed to explain why it took cognizance of *Jalog* despite that case not involving any of the petitioners-workers party to G.R. No. 225101, or even showing that they in any way participated in the proceedings therein.

II

This is not the first time that this Court has had to pass upon the employment status of persons working for ABS-CBN.

Sonza v. ABS-CBN Broadcasting Corporation,[38] decided on June 10, 2004, was a case of first impression:

The present controversy is one of first impression. Although Philippine Labor laws and jurisprudence define clearly the elements of an employer-employee relationship, this is the first time that the

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[37] *Philippine Pizza, Inc. v. Porras*, G.R. No. 230030, August 29, 2018, <https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/64546> [Per J. Perlas-Bernabe, Second Division].

[38] 475 Phil. 539 (2004) [Per J. Carpio, First Division].

Court will resolve the nature of the relationship between a television and radio station and one of its "talents." There is no case law stating that a radio and television program host is an employee of the broadcast station.[39]

In *Sonza*, this Court found that a television and radio broadcaster who had executed an exclusive talent agreement with ABS-CBN was an independent contractor. ABS-CBN and petitioner Jose Sonza did not have an employer-employee relationship, as none of the elements that made such a relationship existed in his case.

On June 22, 2005, this Court issued an unsigned resolution in *ABS-CBN Broadcasting Corporation v. Marquez*, G.R. No. 167638. *Marquez* was cited by this Court in two cases, *Dumpit-Murillo v. Court of Appeals*[40] and *Consolidated Broadcasting System, Inc. v. Oberio*,[41] both promulgated on June 8, 2007.

Dumpit-Murillo referenced *Marquez*'s ruling that ABS-CBN "talents" who were production crew members for a certain teleseries, and later rehired or reassigned to subsequent productions, were regular employees.[42] Meanwhile, *Consolidated Broadcasting System*, which concerned drama talents of a radio station, referred to *Marquez*'s discussion on Department of Labor and Employment Policy Instruction No. 40. The decision reads:

In *ABS-CBN v. Marquez*, the Court held that the failure of the employer to produce the contract mandated by Policy Instruction No. 40 is indicative that the so called talents or project workers are in reality, regular employees. Thus —

Policy Instruction No. 40 pertinently provides:

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[39] Id. at 550.

[40] 551 Phil. 725 (2007) [Per J. Acting C.J. Quisumbing, Second Division].

[41] 551 Phil. 802 (2007) [Per J. Ynares-Santiago, Third Division].

[42] 551 Phil. 725, 735 (2007) [Per J. Acting C.J. Quisumbing, Second Division].

> Program employees are those whose skills, talents or services are engaged by the station for a particular or specific program or undertaking and who are not required to observe normal working hours such that on some days they work for less than eight (8) hours and on other days beyond the normal work hours observed by station employees and are allowed to enter into employment contracts with other persons, stations, advertising agencies or sponsoring companies. The **engagement of program employees**, including those hired by advertising or sponsoring companies, shall be under a written contract specifying, among other things, **the nature of the work to be performed, rates of pay, and the programs in which they will work.** The **contract shall be duly registered by the station with the Broadcast Media Council within three days from its consummation.** . . .

Ironically, however, petitioner failed to adduce an iota proof that the requirements for program employment were even complied with by it. It is basic that project or contractual employees are appraised of the project they will work under a written contract, specifying, *inter alia*, the nature of work to be performed and the rates of pay and the program in which they will work. Sadly, however, no such written contract was ever presented by the petitioner. Petitioner is in the best of position to present these documents. And because none was presented, we have every reason to surmise that no such written contract was ever accomplished by the parties, thereby belying petitioner's posture.

Worse, there was no showing of compliance with the requirement that after every engagement or production of a particular television series, the required reports were filed with the proper government agency, as provided no less under the very Policy Instruction invoked by the petitioner, nor under the Omnibus Implementing Rules of the Labor Code for project employees. This alone bolsters respondents' contention that they were indeed petitioner's regular employees since their employment was not only for a particular program.[43] (Emphasis in the original, citation omitted)

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[43] *Consolidated Broadcasting System, Inc. v. Oberio*, 551 Phil. 802, 814-815 (2007) [Per J. Ynares-Santiago, Third Division].

On September 26, 2006, this Court decided *ABS-CBN v. Nazareno*,[44] which involved a complaint for recognition of regular status filed by four production assistants with ABS-CBN. There, this Court found that the production assistants were regular employees because they had performed tasks necessary or desirable in ABS-CBN's usual business or trade for an average of five years.[45] *Sonza* was found inapplicable in that case, where there was an employer-employee relationship between ABS-CBN and the production assistants.[46]

Fulache, decided on January 21, 2010, involved a group of drivers/camera operators, drivers, camera operators/editors, a production assistant/teleprompter operator-editing, and a VTR operator/editor, who filed complaints for regularization, unfair labor practice, and money claims. In it, they alleged that ABS-CBN excluded them from a collective bargaining agreement covering rank-and-file employees.[47] After the Labor Arbiter had found that the workers were regular employees, and pending ABS-CBN's appeal with the National Labor Relations Commission, ABS-CBN dismissed the drivers for allegedly failing to sign employment contracts with a third-party service contractor.[48]

This Court ruled in the workers' favor. First, it found that they were rank-and-file employees entitled to collective bargaining agreement benefits, and second, it held that the drivers were illegally dismissed because ABS-CBN's termination of their employment was tainted with bad faith.[49]

On April 20, 2015, this Court in *Begino v. ABS-CBN Corporation*[50] found that two camera operators/editors and two

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[44] 534 Phil. 306 (2006) [Per J. Callejo, Sr., First Division].

[45] Id. at 333.

[46] Id. at 334-336.

[47] *Fulache v. ABS-CBN Broadcasting Corporation*, 624 Phil. 562, 568-569 (2010) [Per J. Brion, Second Division].

[48] Id. at 570-571.

[49] Id. at 586-587.

[50] 758 Phil. 467 (2015) [Per J. Perez, First Division].

reporters were regular employees of ABS-CBN, despite their continuous employment under "talent contracts."[51] There, this Court likewise declined to apply *Sonza* to determine the employer-employee relationship of the parties:

> In finding that petitioners were regular employees, the [National Labor Relations Commission] further ruled that the exclusivity clause and prohibitions in their Talent Contracts and/or Project Assignment Forms were likewise indicative of respondents' control over them. Brushing aside said finding, however, the CA applied the ruling in *Sonza v. ABS-CBN Broadcasting Corp.* where similar restrictions were considered not necessarily determinative of the existence of an employer-employee relationship. Recognizing that independent contractors can validly provide his exclusive services to the hiring party, said case enunciated that guidelines for the achievement of mutually desired results are not tantamount to control. As correctly pointed out by petitioners, however, parallels cannot be expediently drawn between this case and that of *Sonza* case which involved a well-known television and radio personality who was legitimately considered a talent and amply compensated as such. While possessed of skills for which they were modestly recompensed by respondents, petitioners lay no claim to fame and/or unique talents for which talents like actors and personalities are hired and generally compensated in the broadcast industry.
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> Later echoed in *Dumpit-Murillo v. Court of Appeals*, this Court has rejected the application of the ruling in the *Sonza* case to employees similarly situated as petitioners in *ABS-CBN Broadcasting Corporation v. Nazareno*. The following distinctions were significantly observed between employees like petitioners and television or radio personalities like *Sonza*, to wit:
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> > First. In the selection and engagement of respondents, no peculiar or unique skill, talent or celebrity status was required from them because they were merely hired through petitioner's personnel department just like any ordinary employee.
> >
> > Second. The so-called "talent fees" of respondents correspond to wages given as a result of an employer-employee relationship. Respondents did not have the power to bargain for huge talent

[51] Id. at 480.

> fees, a circumstance negating independent contractual relationship.
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> Third. Petitioner could always discharge respondents should it find their work unsatisfactory, and respondents are highly dependent on the petitioner for continued work.
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> Fourth. The degree of control and supervision exercised by petitioner over respondents through its supervisors negates the allegation that respondents are independent contractors.
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> The presumption is that when the work done is an integral part of the regular business of the employer and when the worker, relative to the employer, does not furnish an independent business or professional service, such work is a regular employment of such employee and not an independent contractor. The Court will peruse beyond any such agreement to examine the facts that typify the parties' actual relationship. . . .

Rather than the project and/or independent contractors respondents claim them to be, it is evident from the foregoing disquisition that petitioners are regular employees of ABS-CBN. This conclusion is borne out by the ineluctable showing that petitioners perform functions necessary and essential to the business of ABS-CBN which repeatedly employed them for a long-running news program of its Regional Network Group in Naga City. In the course of said employment, petitioners were provided the equipment they needed, were required to comply with the Company's policies which entailed prior approval and evaluation of their performance.[52] (Citations omitted)

III

When it is undisputed by the parties that some form of work is performed by a person for another, this Court's first task is to determine whether an employer-employee relationship exists between the parties. Next, we must determine the employment status.[53]

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[52] Id. at 482-484.

[53] *Fuji Television Network, Inc. v. Espiritu*, 749 Phil. 388, 417-418 (2014) [Per J. Leonen, Second Division].

This Court has developed the "four-fold test"[54] to determine whether an employer-employee relationship exists.[55] These four factors are: "(1) the selection and engagement of the employee; (2) the payment of wages; (3) the power of dismissal; and (4) the power to control the employees' conduct[.]"[56]

Of these four factors, the most important is the employer's power of control over their employee, which means "the right to control not only the end to be achieved, but also the manner and means to be used in reaching that end."[57] Yet, not every form of control is considered sufficient to pass this test:

> Not all rules imposed by the hiring party on the hired party indicate that the latter is an employee of the former. Rules which serve as general guidelines towards the achievement of the mutually desired result are not indicative of the power of control. Thus, this Court has explained:
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> > It should, however, be obvious that not every form of control that the hiring party reserves to himself over the conduct of the party hired in relation to services rendered may be accorded the effect of establishing an employer-employee relationship between them in the legal or technical sense of the term. A line must be drawn somewhere, if the recognized distinction between an employee and an individual contractor is not to vanish altogether. Realistically, it would be a rare contract of service that gives untrammeled freedom to the party hired and eschews any intervention whatsoever in his performance of the engagement.
> >
> > Logically, the line should be drawn between rules that merely serve as guidelines towards the achievement of the mutually

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[54] *Sara v. Agarrado*, 248 Phil. 847, 851 (1988) [Per C.J. Fernan, Third Division].

[55] *Zanotte Shoes v. National Labor Relations Commission*, 311 Phil. 272, 276-277 (1995) [Per J. Vitug, Third Division].

[56] *Viaña v. Al-Lagadan*, 99 Phil. 408, 411-412 (1956) [Per J. Concepcion, En Banc].

[57] *Cosmopolitan Funeral Homes, Inc. v. Maalat*, 265 Phil. 111, 115 (1990) [Per J. Gutierrez, Jr., Third Division].

> desired result without dictating the means or methods to be employed in attaining it, and those that control or fix the methodology and bind or restrict the party hired to the use of such means. The first, which aim only to promote the result, create no employer-employee relationship unlike the second, which address both the result and the means used to achieve it.
> . . .

The main determinant therefore is whether the rules set by the employer are meant to control not just the results of the work but also the means and method to be used by the hired party in order to achieve such results. Thus, in this case, we are to examine the factors enumerated by petitioner to see if these are merely guidelines or if they indeed fulfill the requirements of the control test.[58]

The power of control need not be actually exercised by the employer. It is enough that the employer "has a right to wield the power."[59]

But when the complexity of the relationship makes the application of the control test untenable, the economic realities of the employment relations may also be considered. In *Francisco v. National Labor Relations Commission*:[60]

However, in certain cases the control test is not sufficient to give a complete picture of the relationship between the parties, owing to the complexity of such a relationship where several positions have been held by the worker. There are instances when, aside from the employer's power to control the employee with respect to the means and methods by which the work is to be accomplished, economic realities of the employment relations help provide a comprehensive analysis of the true classification of the individual, whether as employee, independent contractor, corporate officer or some other capacity.

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[58] *Orozco v. Fifth Division of the Court of Appeals*, 584 Phil. 35, 49-50 (2008) [Per J. Nachura, Third Division] citing *Insular Life Assurance Co., Ltd. v. National Labor Relations Commission*, 259 Phil. 65 (1989) [Per J. Narvasa, First Division]; *Consulta v. Court of Appeals*, 493 Phil. 842 (2005) [Per J. Carpio, First Division]; and *Manila Electric Company v. Benamira*, 501 Phil. 621 (2005) [Per J. Austria-Martinez, Second Division].

[59] *See Lu v. Enopia*, 806 Phil. 725, 740 (2017) [Per J. Peralta, Second Division].

[60] 532 Phil. 399 (2006) [Per J. Ynares-Santiago, First Division].

The better approach would therefore be to adopt a two-tiered test involving: (1) the putative employer's power to control the employee with respect to the means and methods by which the work is to be accomplished; and (2) the underlying economic realities of the activity or relationship.

This two-tiered test would provide us with a framework of analysis, which would take into consideration the totality of circumstances surrounding the true nature of the relationship between the parties. This is especially appropriate in this case where there is no written agreement or terms of reference to base the relationship on; and due to the complexity of the relationship based on the various positions and responsibilities given to the worker over the period of the latter's employment.

. . . . . .

In *Sevilla v. Court of Appeals*, we observed the need to consider the existing economic conditions prevailing between the parties, in addition to the standard of right-of-control like the inclusion of the employee in the payrolls, to give a clearer picture in determining the existence of an employer-employee relationship based on an analysis of the totality of economic circumstances of the worker.

Thus, the determination of the relationship between employer and employee depends upon the circumstances of the whole economic activity, such as: (1) the extent to which the services performed are an integral part of the employer's business; (2) the extent of the worker's investment in equipment and facilities; (3) the nature and degree of control exercised by the employer; (4) the worker's opportunity for profit and loss; (5) the amount of initiative, skill, judgment or foresight required for the success of the claimed independent enterprise; (6) the permanency and duration of the relationship between the worker and the employer; and (7) the degree of dependency of the worker upon the employer for his continued employment in that line of business.

The proper standard of economic dependence is whether the worker is dependent on the alleged employer for his continued employment in that line of business. In the United States, the touchstone of economic reality in analyzing possible employment relationships for purposes of the Federal Labor Standards Act is dependency. By analogy, the benchmark of economic reality in analyzing possible employment relationships for purposes of the Labor Code ought to be the economic dependence of the worker on his employer.[61] (Citations omitted)

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[61] Id. at 407-409.

An employee stands in contrast with an "independent contractor," a type of service relation recognized in jurisprudence. An independent contractor is different from the job contracting recognized in Article 106 of the Labor Code.[62] Here, the relationship is bilateral because the independent contractors perform the work for the principals themselves, and not through other workers.[63]

These independent contractors work on their own account, are responsible for themselves, and are generally not interfered with by the person who hire them.[64] Notably, Article 1713 of the Civil Code, on contracts for a piece of work, states:

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[62] LABOR CODE, art. 106, which states:

ARTICLE 106. Contractor or Subcontractor. — Whenever an employer enters into a contract with another person for the performance of the former's work, the employees of the contractor and of the latter's subcontractor, if any, shall be paid in accordance with the provisions of this Code.

In the event that the contractor or subcontractor fails to pay the wages of his employees in accordance with this Code, the employer shall be jointly and severally liable with his contractor or subcontractor to such employees to the extent of the work performed under the contract, in the same manner and extent that he is liable to employees directly employed by him.

The Secretary of Labor and Employment may, by appropriate regulations, restrict or prohibit the contracting-out of labor to protect the rights of workers established under this Code. In so prohibiting or restricting, he may make appropriate distinctions between labor-only contracting and job contracting as well as differentiations within these types of contracting and determine who among the parties involved shall be considered the employer for purposes of this Code, to prevent any violation or circumvention of any provision of this Code.

There is "labor-only" contracting where the person supplying workers to an employer does not have substantial capital or investment in the form of tools, equipment, machineries, work premises, among others, and the workers recruited and placed by such person are performing activities which are directly related to the principal business of such employer. In such cases, the person or intermediary shall be considered merely as an agent of the employer who shall be responsible to the workers in the same manner and extent as if the latter were directly employed by him.

[63] *Fuji Television Network, Inc. v. Espiritu,* 749 Phil. 388, 425-426 (2014) [Per J. Leonen, Second Division].

[64] *Maligaya Ship Watchmen Agency v. Associated Watchmen and Security Union*, 103 Phil. 920, 923-925 (1958) [Per J. Labrador, En Banc].

ARTICLE 1713. By the contract for a piece of work the contractor binds himself to execute a piece of work for the employer, in consideration of a certain price or compensation. The contractor may either employ only his labor or skill, or also furnish the material.

In *Investment Planning Corporation of the Philippines v. Social Security System*,[65] this Court found that commission agents selling investment plans were not employees, but independent contractors of a securities firm as they were paid by result and not based on the labor performed. The securities firm did not control the means and methods employed by the agents in the course of their work:

> We have examined the contract form between petitioner and its registered representatives and found nothing therein which would indicate that the latter are under the control of the former in respect of the means and methods they employ in the performance of their work. The fact that for certain specified causes the relationship may be terminated (e.g., failure to meet the annual quota of sales, inability to make any sales production during a six-month period, conduct detrimental to petitioner, etc.) does not mean that such control exists, for the causes of termination thus specified have no relation to the means and methods of work that are ordinarily required of or imposed upon employees.[66]

Similarly, in *Sara v. Agarrado*,[67] a person who sold rice for another, on a commission basis, was deemed an independent contractor paid for the results of the labor performed. The same conclusion was reached in *Encyclopaedia Britannica (Philippines), Inc. v. National Labor Relations Commission*,[68] concerning a sales division manager who was found to have free rein over the means and methods by which he marketed the products sold. A basketball referee exercising "independent judgment" while officiating games was found to be an

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[65] 129 Phil. 143 (1967) [Per J. Makalintal, En Banc].

[66] Id. at 151.

[67] 248 Phil. 847 (1988) [Per C.J. Fernan, Third Division].

[68] 332 Phil. 1 (1996) [Per J. Torres, Jr., Second Division].

independent contractor in *Bernarte v. Philippine Basketball Association*.[69]

The employer's right of control over the performance of work determines whether a person is an employee or an independent contractor.[70] In *Tan v. Lagrama*:[71]

> Of the four elements of the employer-employee relationship, the "control test" is the most important. Compared to an employee, an independent contractor is 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. Hence, while an independent contractor enjoys independence and freedom from the control and supervision of his principal, an employee 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.[72]

When the employer's ostensible power of control over the conduct of work is missing, and the worker's pay depends on the results achieved, the worker must be considered an independent contractor.[73] Notably, a worker who may otherwise be classified as a project employee cannot be an independent contractor, because no employer-employee relationship exists with independent contractors.[74]

The factor of the person's "unique skills, expertise or talent" in their selection or engagement that would make them an independent contractor was first recognized in *Sonza*:

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[69] 673 Phil. 384 (2011) [Per J. Carpio, Second Division].

[70] *Cosmopolitan Funeral Homes, Inc. v. Maalat*, 265 Phil. 111, 116 (1990) [Per J. Gutierrez, Jr., Third Division].

[71] 436 Phil. 190 (2002) [Per J. Mendoza, Second Division].

[72] Id. at 201.

[73] *Consulta v. Court of Appeals*, 493 Phil. 842, 850-851 (2005) [Per J. Carpio, First Division].

[74] *See ABS-CBN v. Nazareno*, 534 Phil. 306 (2006) [Per J. Callejo, Sr., First Division].

A. Selection and Engagement of Employee

ABS-CBN engaged SONZA's services to co-host its television and radio programs because Sonza's peculiar skills, talent and celebrity status. SONZA contends that the "discretion used by respondent in specifically selecting and hiring complainant over other broadcasters of possibly similar experience and qualification as complainant belies respondent's claim of independent contractorship."

Independent contractors often present themselves to possess unique skills, expertise or talent to distinguish them from ordinary employees. The specific selection and hiring of SONZA, *because of his unique skills, talent and celebrity status not possessed by ordinary employees*, is a circumstance indicative, but not conclusive, of an independent contractual relationship. If SONZA did not possess such unique skills, talent and celebrity status, ABS-CBN would not have entered into the Agreement with SONZA but would have hired him through its personnel department just like any other employee.

In any event, the method of selecting and engaging SONZA does not conclusively determine his status. We must consider all the circumstances of the relationship, with the control test being the most important element.[75]

Engagement based on a person's unique skills, expertise, or talent was one of the factors that made this Court consider a newspaper columnist in *Orozco* as an independent contractor.[76] However, in *Nazareno*, four production assistants were found to not have been selected by ABS-CBN based on any "peculiar or unique skills, talent or celebrity status"[77] as they were merely hired through the personnel department.

Notably, the broadcaster in *Sonza* was engaged by ABS-CBN through an agreement executed between ABS-CBN through its corporate officers and petitioner Jose Sonza's management corporation, of which Sonza was the president and general

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[75] *Sonza v. ABS-CBN Broadcasting Corporation*, 475 Phil. 539, 551-552 (2004) [Per J. Carpio, First Division].

[76] *Orozco v. Fifth Division of the Court of Appeals*, 584 Phil. 35, 56 (2008) [Per J. Nachura, Third Division].

[77] 534 Phil. 306, 335 (2006) [Per J. Callejo, Sr., First Division].

manager. This fact was used by this Court when it contrasted *Sonza* with the circumstances surrounding the employment of another broadcaster in *Dumpit-Murillo*:

> In the case at bar, it does not appear that the employer and employee dealt with each other on equal terms. Understandably, the petitioner could not object to the terms of her employment contract because she did not want to lose the job that she loved and the workplace that she had grown accustomed to, which is exactly what happened when she finally manifested her intention to negotiate. Being one of the numerous newscasters/broadcasters of ABC and desiring to keep her job as a broadcasting practitioner, petitioner was left with no choice but to affix her signature of conformity on each renewal of her contract as already prepared by private respondents; otherwise, private respondents would have simply refused to renew her contract. Patently, the petitioner occupied a position of weakness vis-à-vis the employer. Moreover, private respondents' practice of repeatedly extending petitioner's 3-month contract for four years is a circumvention of the acquisition of regular status. Hence, there was no valid fixed-term employment between petitioner and private respondents.[78]

As this Court observed in *Fuji Television Network, Inc. v. Espiritu*:[79]

> 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.
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> 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

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[78] 551 Phil. 725, 740 (2007) [Per Acting C.J. Quisumbing, Second Division].

[79] 749 Phil. 388 (2014) [Per J. Leonen, Second Division].

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.[80] (Citations omitted)

Finally, in *Begino*, this Court warned that expedient parallels drawn with *Sonza* should not be made when the workers involved are not similarly situated. Mere possession of skills and abilities cannot be the basis of a finding that workers are independent contractors.[81]

Based on these, it is patently obvious that any application of *Sonza* must be made with care for the circumstances that begot it. As *Dumpit-Murillo, Fuji Television Network,* and *Begino* demonstrate, it is the totality of the examination of all four factors, from selection and engagement until the power of control wielded by the alleged employer, that determines whether *Sonza* should apply.[82]

IV

Article 295 of the Labor Code distinguishes four classifications of employment: (1) regular; (2) project; (3) seasonal; and (4) casual:

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[80] Id. at 432-433.

[81] *Begino v. ABS-CBN Corporation*, 758 Phil. 467, 483 (2015) [Per J. Perez, First Division].

[82] *See Paragele v. GMA Network, Inc.*, G.R. No. 235315, July 13, 2020, <https://sc.judiciary.gov.ph/14782/> [Per J. Leonen, Third Division].

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.

A fifth classification recognized in jurisprudence is the fixed-term employee. In *Brent School v. Zamora*:[83]

Accordingly, and since the entire purpose behind the development of legislation culminating in the present Article 280 [now Article 295] of the Labor Code clearly appears to have been, as already observed, to prevent circumvention of the employee's right to be secure in his tenure, the clause in said article indiscriminately and completely ruling out all written or oral agreements conflicting with the concept of regular employment as defined therein should be construed to refer to the substantive evil that the Code itself has singled out: agreements entered into precisely to circumvent security of tenure. It should have no application to instances where a fixed period of employment was agreed upon knowingly and voluntarily 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 where it satisfactorily appears that the employer and employee dealt with each other on more or less equal terms with no moral dominance whatever being exercised by the former over the latter. Unless thus limited in its purview, the law would be made to apply to purposes other than those explicitly stated by its framers; it

[83] 260 Phil. 747 (1990) [Per J. Narvasa, En Banc].

thus becomes pointless and arbitrary, unjust in its effects and apt to lead to absurd and unintended consequences.[84]

The test to determine whether a worker is a regular employee is the existence of a reasonable connection between the activity that the employee performs and the employer's usual business and trade. In *De Leon v. National Labor Relations Commission*:[85]

> This provision reinforces the Constitutional mandate to protect the interest of labor. Its language evidently manifests the intent to safeguard the tenurial interest of the worker who may be denied the rights and benefits due a regular employee by virtue of lopsided agreements with the economically powerful employer who can maneuver to keep an employee on a casual status for as long as convenient. Thus, contrary agreements notwithstanding, an employment is deemed regular when the activities performed by the employee are usually necessary or desirable in the usual business or trade of the employer. Not considered regular are the so-called "project employment" the completion or termination of which is more or less determinable at the time of employment, such as those employed in connection with a particular construction project, and seasonal employment which by its nature is only desirable for a limited period of time. However, any employee who has rendered at least one year of service, whether continuous or intermittent, is deemed regular with respect to the activity he performed and while such activity actually exists.
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> *The primary standard, therefore, of determining a regular employment is the reasonable connection between the particular activity performed by the employee in relation to the usual business or trade of the employer. The test is whether the former is usually necessary or desirable in the usual business or trade of the employer.* The connection can be determined by considering the nature of the work performed and its relation to the scheme of the particular business or trade in its entirety. Also, if the employee has been performing the job for at least one year, even if the performance is not continuous or merely intermittent, the law deems the repeated and continuing need for its performance as sufficient evidence of the necessity if not indispensability of that activity to the business. Hence, the employment

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[84] Id. at 763.

[85] 257 Phil. 626 (1989) [Per C.J. Fernan, Third Division].

is also considered regular, but only with respect to such activity and while such activity exists.[86] (Emphasis supplied, citation omitted)

Thus, the Labor Code provides the two types of regular employment: first, by the nature of work; and second, by the years of service.[87] This is to emphasize the protection of labor from agreements that may keep workers from attaining security of tenure.[88]

It must be emphasized that Article 295 of the Labor Code cannot be used to determine the existence of an employer-employee relationship. It merely determines the kinds of employees so that an employee may determine their rights accordingly.[89]

The *ponencia* bases its determination of the usual business or trade of ABS-CBN on an examination of the company's Articles of Incorporation:

Nazareno applies here. A scrutiny of the Articles of Incorporation of ABS-CBN shows that its primary purpose is:

> . . . To carry on the business of television and radio network broadcasting of all kinds and types; to carry on all other businesses incident thereto; and to establish, construct, maintain and operate for commercial purposes and in the public interest, television and radio broadcasting stations within or without the Philippines, using microwave, satellite or whatever means including the use of any new technologies in television and radio systems.

In conjunction therewith, paragraphs 3, 4, and 5 of the same Articles of Incorporation reveal that ABS-CBN is likewise engaged in the business of the production of shows, to wit:

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[86] Id. at 632-633.

[87] *E. Ganzon, Inc. v. National Labor Relations Commission*, 378 Phil. 1048, 1055 (1999) [Per J. Bellosillo, Second Division].

[88] *De Leon v. National Labor Relations Commission*, 257 Phil. 626 (1989) [Per C.J. Fernan, Third Division].

[89] *Singer Sewing Machine Company v. Drilon*, 271 Phil. 282 (1991) [Per J. Gutierrez, Jr., Third Division].

> 3. to engage in any manner, shape or form in the recording and reproduction of the human voice, musical instruments, and sound of every nature, name and description; to engage in any manner, shape or form in the recording and reproduction of moving pictures, visuals and stills of every nature, name, and description; and to acquire and operate audio and video recording, magnetic recording, digital recording and electrical transcription exchanges, and to purchase, acquire, sell, rent, lease, operate, exchange or otherwise dispose of any and all kinds of recordings, electrical transcription or other devices by which sight and sound may be reproduced.
>
> 4. To carry on the business of providing graphic, design, videographic, photographic and cinematographic reproduction services and other creative production services; and to engage in any manner, shape, or form in post-production mixing, dubbing, overdubbing, audio-video processing sequence alteration and modification of every nature of all kinds of audio and video production.
>
> 5. To carry on the business of promotion and sale of all kinds of advertising and marketing services and generally to conduct all lines of business allied to and interdependent with that of advertising and marketing services.

Based on the foregoing, the recording and reproduction of moving pictures, visuals, and stills of every nature, name, and description — or simply, the production of shows — are an important component of ABS-CBN's overall business scheme. In fact, ABS-CBN's advertising revenues are likewise derived from the shows it produces.[90]

Nonetheless, beyond ABS-CBN's Articles of Incorporation, what should also be taken into account is its own admissions concerning its business of broadcasting, as well as the findings of the various divisions of the Court of Appeals.

In G.R. No. 202481:

> [ABS-CBN] is principally engaged in the business of broadcasting television and radio contents in the Philippines that are recognized

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[90] Ponencia, pp. 26-27.

and patronized both locally and internationally. In 1986, [ABS-CBN] started to employ a combination of schemes (like block timing, line production, co-production, self-production, foreign canned shows, live coverages, license programs, etc.) in terms of air content for the further generation of revenues. Volatility in viewer preferences pushed [ABS-CBN] to sidestep and resort to production instead of just broadcasting content particularly when internal resources are not available to it. [ABS-CBN] needed to improvise and provide its clientele different program materials that are attractive to advertisers in order to effectively generate more revenues. Although [ABS-CBN] produces some of the content that it broadcasts, the production of the same is not its principal business. Broadcasting remains its primary concern.[91]

In G.R. Nos. 202495-97:

In response, private respondent ABS-CBN averred that it is engaged in the business of broadcasting television and radio content, and generates revenues through the following schemes, to wit:

Option 1: Block Time — by this scheme, a producer or the block-timer purchases a fixed number of hours wherein it can air any show they desire and the advertising revenues thereof will pertain solely to the block timer.

Option 2: Line Production — by this mode, a producer conceptualizes, implements and creates a particular program, which is in turn bought by a broadcasting company at a fixed price. The advertising revenues earned from the airing of such program is for the account of the broadcasting company.

Option 3: Co-production — by this scheme, the broadcasting company and the producer share the entire cost of the production of a program. Consequently, the advertising revenues [are] similarly shared by the broadcasting company and the producer.

Option 4: The broadcasting company can shoulder the entire cost of producing a particular program, and naturally the advertising revenues or losses incurred shall be for the sole account of the broadcasting company.

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[91] *Rollo* (G.R. No. 202481), pp. 58-59.

Option 5: The broadcasting company purchases foreign canned shows, and the advertising revenues earned from airing the same shall be for the sole account of the broadcasting company.

[ABS-CBN] employed a mix of all schemes although a good number of foreign canned shows were being aired especially at prime time in line with viewer preferences and industry practice. Later, viewer preferences improved such that quality local programs were appreciated over foreign canned shows. However, the prohibitive cost of producing a high quality local program that would appeal to the viewers has deterred producers from making such huge investments. Thus, [ABS-CBN] was constrained to venture into more co-productions and company-produced programs.[92]

In G.R. No. 219125:

[ABS-CBN] contended that since 1986 it already resorted to various schemes to generate revenues such as Block-time, Line Production, Co-production, Self-production, Foreign Canned Shows, Live Coverage, Licensed Programs or combinations thereof depending on the preferences of the viewers, it went into production instead of just plain broadcasting.[93]

ABS-CBN argues that its principal concern is broadcasting, and thus, any worker not involved in broadcasting is not its regular employee. Article 295 of the Labor Code, however, only requires that the employer's business or trade be "usual." The employer's business or trade must be examined in its entirety:

The argument of petitioner that its usual business or trade is softdrink manufacturing and that the work assigned to respondent workers as sales route helpers so involves merely "postproduction activities," one which is not indispensable in the manufacture of its products, scarcely can be persuasive. If, as so argued by petitioner company, only those whose work are directly involved in the production of softdrinks may be held performing functions necessary and desirable in its usual trade or business trade, there would have then been no need for it to even maintain regular truck sales route helpers. The

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[92] *Rollo* (G.R. Nos. 202495-97), pp. 1914-1915.

[93] *Rollo* (G.R. No. 219125), p. 1349.

nature of the work performed must be viewed from a perspective of the business or trade in its entirety and not on a confined scope.[94] (Citation omitted)

Based on ABS-CBN's own descriptions of its business, production of broadcast content is part of its usual trade or business. While not completely indispensable, because of sources of broadcast content available elsewhere, the production of its own content is desirable for ABS-CBN, especially because advertising revenues earned from broadcast of self-produced content is paid out solely to it. As such, persons who perform production work for ABS-CBN may be considered to be providing services necessary or desirable to ABS-CBN.[95]

In this regard, the *ponencia*'s discussion concerning project or program employees and work pools substantially sets forth the correct legal principles. Clearly, ABS-CBN's Internal Job Market System is a form of work pool of workers who are undisputedly its employees:

> In the particular case of ABS-CBN, the [Internal Job Market] System clearly functions as a work pool of employees involved in the production of programs. A closer scrutiny of the IJM System shows that it is a pool from which ABS-CBN draws its manpower for the creation and production of its television programs. It serves as "database which provides the user, basically the program producer, a list of accredited technical or creative manpower who offer their services." The database includes information, such as the competency rating of the employee and his/her corresponding professional fees. Should the company wish to hire a person for a particular project, it will notify the latter to report on a set filming date.[96] (Citations omitted)

Nonetheless, it is inaccurate to state that the distinction must be made here between regular employees and independent contractors within the work pool.[97] Instead, the analysis must

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[94] *Magsalin v. National Organization of Working Men,* 451 Phil. 254 (2003) [Per J. Vitug, First Division].

[95] Ponencia, p. 27.

[96] Id. at 33.

[97] Id.

revolve around whether the employees who are part of the work pool are either regular or project employees.

In *Maraguinot, Jr. v. National Labor Relations Commission*:[98]

> It may not be ignored, however, that private respondents expressly admitted that petitioners were part of a work pool; and, while petitioners were initially hired possibly as project employees, they had attained the status of regular employees in view of VIVA's conduct.
>
> A project employee or a member of a work pool may acquire the status of a regular employee when the following concur:
>
> 1) There is a continuous rehiring of project employees even after cessation of a project; and
>
> 2) The tasks performed by the alleged "project employee" are vital, necessary and indispensable to the usual business or trade of the employer.
>
> However, the length of time during which the employee was continuously re-hired is not controlling, but merely serves as a badge of regular employment.[99]

In Footnote 23 of *Dumpit-Murillo*:[100]

> See *ABS-CBN Broadcasting Corporation v. Marquez*, G.R. No. 167638, June 22, 2005, pp. 5-6 (Unsigned Resolution), where this Court held what ABS-CBN called "talents" as regular employees. The Court declared: "It may be so that respondents were assigned to a particular tele-series. However, petitioner can and did immediately reassign them to a new production upon completion of a previous one. Hence, they were continuously employed, the tele-series being a regular feature in petitioner's network programs. Petitioner's continuous engagement of respondents from one production after another, for more than five years, made the latter part of petitioner's workpool who cannot be separated from the service without cause as they are considered regular. A project employee or a member of a workpool may acquire the status of a regular employee when the following concur: there is continuous rehiring of project employees

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[98] 348 Phil. 580 (1998) [Per J. Davide, Jr., First Division].

[99] Id. at 600-601.

[100] 551 Phil. 725 (2007) [Per Acting C.J. Quisumbing, Second Division].

even after the cessation of the project and the tasks performed by the alleged "project employee" are vital, necessary, and indispensable to the usual business or trade of his employer. It cannot be denied that the services of respondents as members of a crew in the production of a tele-series are undoubtedly connected with the business of the petitioner. This Court has held that the primary standard in determining regular employment is the reasonable connection between the particular activity performed by the employee in relation to the business or trade of his employer. Here, the activity performed by respondents is, without doubt, vital to petitioner's trade or business.[101]

V

The resolution of the questions of law in these cases does not equate to a similar resolution of the questions of fact raised by these petitions.

To reiterate, a Rule 45 petition in a labor case is limited to determining whether the Court of Appeals committed grave abuse of discretion. We do not resolve questions of fact. This Court is not equipped to scrutinize the voluminous records of these cases to determine whether the evidence presented by each worker-claimant substantially proves their claim for regularity of employment, and subsequently, the illegality of their dismissal, based on the guidelines laid down here.

The *ponencia* has made certain factual findings on the basis of some, but not all, of the consolidated cases.

For example, the *ponencia* determined that the workers had been selected and engaged by ABS-CBN:

> The records show that the workers were hired by ABS-CBN through its personnel department. In fact, the workers presented certificates of compensation, payment/tax withheld (BIR Form 2316), Social Security System (SSS), and Pag-IBIG Fund documents, and Health Maintenance Cards, which all indicate that they are employed by ABS-CBN.[102]

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[101] Id. at 735-736, footnote 23.

[102] Ponencia, p. 24.

The only citation to the record was G.R. No. 219125, in which the Labor Arbiter, the National Labor Relations Commission, and the Court of Appeals all found that there was no employer-employee relationship between the workers and ABS-CBN.[103]

G.R. No. 219125 was likewise the only reference to the record when the *ponencia* concluded that ABS-CBN had the power to discipline the workers, that ABS-CBN monitored their work to meet with company standards through production supervisors, and that ABS-CBN provided them with the equipment and tools to perform their jobs.[104] Alongside G.R. No. 219125, G.R. No. 225101 was used to show that ABS-CBN controlled the workers' schedules and work assignments.[105] Records from G.R. Nos. 225874, 219125, and 225101 were used to determine that the workers received wages from ABS-CBN and that ABS-CBN withheld their taxes and paid their PhilHealth benefits.[106] However, the Court of Appeals in G.R. No. 225101 found that the workers-petitioners were not regular employees of ABS-CBN, while in G.R. No. 225874, only one of the three workers who filed the illegal dismissal case was able to prove that there was an employer-employee relationship between ABS-CBN and him:

> In this case, petitioners Jun and Lauro did not adduce any evidence to prove that an employer-employee relationship existed between respondent ABS-CBN and themselves. Petitioners Jun's and Lauro's bare assertions, and reference to related pending cases, were not substantial evidence of the existence of an employer-employee relationship. Hence, petitioners June's and Lauro's action for illegal dismissal must fail.
>
> As for petitioner Ronnie, the evidence adduced proved that there existed an employer-employee relationship between respondent ABS-CBN and petitioner Ronnie.[107]

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[103] Id., footnote 105.

[104] Id., footnotes 106, 107, and 110.

[105] Id., footnote 109.

[106] Id., footnotes 104-105.

[107] *Rollo* (G.R. No. 224879), p. 77.

In fact, the differences in the pieces of evidence presented by the workers in the various proceedings below was pointed out by the Court of Appeals in G.R. No. 202481:

> Here, private respondents submitted evidence allegedly showing employer-employee relationship, however, a scrutiny of the sum-total of evidence shows otherwise, as follows:
>
> **Re: Identification Cards (IDs)**
>
> It is worthy to note that, of the 34 complainants, only 4 of them have presented their IDs; a closer scrutiny of said IDs will show that they do not necessarily show that they are regular employees of the petitioner considering the fact that there is no showing of any employment designation of the person named in the IDs. In fine, said IDs are not considered proofs of an employer-employee relationship as the same do not show that fact. In a business establishment, an identification card is usually provided as a security measure in order to identify the holder thereof if found within the premises of the employer. A scrutiny of the four (4) IDs shows the following:
>
> > This card is a property of ABS-CBN and may be cancelled/ confiscated without prior notice. Use of this card allows bearer access to company premises and constitutes acceptance of the rules and regulations of the company and the policies covering the issuance of this card and all future amendments thereto.
>
> If indeed private respondents are considered regular employees of the petitioner, they should have been issued employment cards bearing the designation of the employee or the specific assignment. In this case, said cards were issued purely as IDs for security purposes, and none has been indicated therein that will show that private respondents are employees of petitioner.
>
> **Re: Certifications**
>
> Certifications were issued to: (1) Cristanto M[.] Panlubasan on January 31, 2003, showed that he was initially engaged by petitioner as program employee in February 1996; (2) Lorenzo Alano, who was initially engaged as Technical Field Assistant in September 1986; and (3) Edwin Sagun, who was initially engaged as Senior Cameraman in October 1996. These certifications *per se* do not show that they are regular employees considering that there was no clear showing that they have been previously engaged by petitioner in its broadcasting business.

Re: Certificates of Attendance

The Certificates of Attendance were issued for having completed the requirements of the Basic Cameraworks given to: Cris Panlubasan, Jonathan Romblon, Romualdo Racelis, Oscar Domingo, George Macaso, Ismael Dablo, Rolando Barron, and Nestor Conato; another set of Certificates of Attendance were issued for having completed the requirements of Photojournalism; they were given to: Ismael Dablo, Crisanto Panlubasan and Rolando Barron; a cursory reading thereof will show that they are not determinative of an employer-employee relationship considering that these only show that the said private respondents had participated in these workshops.

Re: The Pay-Slips

The pay-slips of: George Macaso that were issued for the talent fee period 1/01/2003-1/15/2003, 12/01-15/2002, 12/16/2003-12/31/2002, 1-15-2002, January 16-31, 2002; Edwin Sagun that were issued for the talent fee period Dec. 16-31, 1999, January 1-5, 1999; Nestor Conato that were issued for the talent fee period — Christmas bonus, for the period 1/1/2003 to 1/15/2003; Roberto del Castillo that were issued for the period 7-1-15, 2002, 1995 Christmas Bonus; Crisanto Panlubasan that were issued for the talent period 7-1 to 15, 2002, Feb 16-31 2002; Ismael Pablo that were issued for the period Aug 1-15, 2001, 1/01/2002-11/15/2002, 12/01/2002-12/15/2002; Arthur Dungog that were issued for the period 12/01/2002-12/15/2002 and 12/16/2002-12/31/2002; Sanchez Roberto that were issued for the period 01/01/2003-01/15/2003; Apolinar dela Garcia that were issued for the period 12/01/12/15/2002 and cash [gift]; Tugade, Reynaldo that were issued for the period 11/01/2002-11/15/2002, 12/01/2002-12/15/2002 and 10/01/2002-10/15/2002, and of Rolando Barron that were issued for the period 10/01/2002-10-15-2002, 07/01/2002-07/15/2002, will show that no clear indications are found that they are regular employees of petitioner in its broadcasting business.

It must be noted that these pay-slips, which indicate the phrase "for the period," were issued after the filing of the regularization case against petitioner. This will only show that private respondents were merely accredited by petitioner in its Internal Job Market System. Prior to the mentioned date, they were considered "Talents" receiving talent fees as shown in the payslips abovementioned.[108] (Citations omitted)

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[108] *Rollo* (G.R. No. 202481), pp. 68-71.

Further, of those who have been found to be ABS-CBN employees, it is still a matter of evidence to determine the classification of their employment. It is not enough to merely state that ABS-CBN has produced no proof of project employment for all workers.[109] The *ponencia* should have examined whether there has been a continuous rehiring of each worker even after their first project has ceased, in accordance with *Maraguinot, Jr.*[110] and *Dumpit-Murillo*.[111]

A finding of illegal dismissal is also factual.[112] The employee must first establish the fact of dismissal with substantial evidence. Only then would the burden of proof shift to the employer to show that the dismissal was for just or authorized cause, and with due process observed.[113] It is insufficient to do as what the *ponencia* has done, and merely declare that no valid cause was made for the termination of the workers' services and that the workers were simply barred from entering company premises, without reference to the records of the six illegal dismissal cases under consideration.[114]

Therefore, the disposition of these cases should be tailored to their specific circumstances. We must account for the findings of the various divisions of the Court of Appeals and the labor tribunals when these bodies, more adequately equipped to review evidence presented before them, have already made the necessary factual determinations. Conversely, when the Court of Appeals and the labor tribunals merely dismissed the cases on the grounds of lack of jurisdiction or cause of action, the cases must be remanded to them for further proceedings.

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[109] Ponencia, p. 32.

[110] 348 Phil. 580 (1998) [Per J. Davide, Jr., First Division].

[111] 551 Phil. 725 (2007) [Per J. Acting C.J. Quisumbing, Second Division].

[112] *See Arriola v. Pilipino Star Ngayon, Inc.*, 741 Phil. 171 (2014) [Per J. Leonen, Third Division].

[113] *Fuji Television Network, Inc. v. Espiritu*, 749 Phil. 388 (2014) [Per J. Leonen, Second Division].

[114] Ponencia, p. 37.

In G.R. No. 202481, the Court of Appeals and the Labor Arbiter both erred in finding that petitioners were independent contractors or "talents." Thus, what should be reinstated is the October 29, 2009 Decision of the National Labor Relations Commission, the dispositive portion of which stated:

> WHEREFORE, the appeal is hereby GRANTED and the appealed Decision is hereby REVERSED and SET ASIDE. A new decision is hereby rendered confirming the regular employment status of the herein complainants and ORDERING ABS-CBN Broadcasting Corporation to provide the complainants all their monetary and nonmonetary benefits under the Collective Bargaining Agreement of December 11, 1999 to December 10, 2002 and other CBAs subsequently entered into.
>
> SO ORDERED.[115]

Similarly, as the Court of Appeals in G.R. Nos. 202495-97 had already made sufficient factual findings on respondents' employment status, its Decision and Resolution should be affirmed.

As for G.R. Nos. 210165, 219125, and 225101, a review of the proceedings therein shows that the illegal dismissal cases were dismissed without either the Court of Appeals or the labor tribunals passing upon the facts surrounding the terminations of employments. Thus, these cases should be remanded to the Court of Appeals to make the necessary factual determinations. The exception is Fredierick Gerland Dizon in G.R. No. 225101, whose employment status with ABS-CBN should first be determined, as the Court of Appeals and the labor tribunals did not determine that at the outset. Neither is he a party to either regularization case before this Court.

Among these cases, G.R. No. 224879 is unique because, of its three dismissed workers, only one — Ronnie Lozares — was found by the Court of Appeals to have sufficiently proved his claims of an employer-employee relationship and illegal dismissal. However, as correctly held by the *ponencia*, the Court of Appeals incorrectly awarded him moral and exemplary

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[115] *Rollo* (G.R. No. 202481), pp. 519-520.

damages and attorney's fees, as he has not sufficiently proven that he was entitled to them.[116] The other two workers in this case — Jun Tangalin and Lauro Calitisen — had their claims rejected by the Court of Appeals because of the alleged non-existence of an employer-employee relationship. But since they are both declared regular employees due to G.R. Nos. 202495-97, and because the Court of Appeals had made a finding that ABS-CBN had no valid cause for their dismissal,[117] they should be entitled to either reinstatement or separation pay, as well as payment of their money claims.

Finally, all illegally dismissed workers from these cases should be entitled to an award of attorney's fees. Among the instances when a dismissed worker is entitled to attorney's fees is when "the defendant's act or omission has compelled the plaintiff to litigate with third persons or the plaintiff incurred expenses to protect his interest[.]"[118]

Here, it was ABS-CBN's repeated acts of refusing to recognize its regular employees that forced the workers to litigate for their rights. Some of them even sought redress for a second time when they were terminated from employment while their regularization cases were pending. Moreover, as this Court has already noted in *Fulache*, ABS-CBN exhibited bad faith in attempting to defeat the outcome of the pending regularization cases by dismissing its employees in the interim.

ACCORDINGLY, I vote as follows:

1. The Petition in G.R. No. 202481 is **GRANTED**. The Court of Appeals' January 27, 2012 Decision and June

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[116] Ponencia, pp. 37-38.

[117] *Rollo* (G.R. No. 224879), p. 78. As held by the Court of Appeals in its January 4, 2016 Decision:

"The Records show that respondents did not adduce any evidence to show that the dismissal of petitioners, particularly of petitioner Ronnie, was for valid cause. Respondents' failure to justify petitioner Ronnie's dismissal meant that the dismissal was illegal."

[118] *Alva v. High Capacity Security Force*, 820 Phil. 677, 688 (2017) [Per J. Reyes, Jr., Second Division].

26, 2012 Resolution in CA-G.R. SP No. 117885 are **REVERSED** and **SET ASIDE**. The National Labor Relations Commission's October 29, 2009 Decision confirming petitioners' regular employment status and ordering respondent ABS-CBN to provide all monetary and non-monetary benefits under their Collective Bargaining Agreement is **REINSTATED**.

2. The Petition in G.R. Nos. 202495-97 is **DENIED**. The Court of Appeals' October 28, 2011 Decision and June 27, 2012 Resolution in CA-G.R. SP No. 108552 declaring respondents Journalie Payonan, et al. as regular employees of petitioner ABS-CBN entitled to the benefits and privileges accorded to all its other regular employees under their Collective Bargaining Agreement are **AFFIRMED**. The Court of Appeals' October 28, 2011 Decision and June 27, 2012 Resolution in C.A.-G.R. SP No. 108976, which affirmed the Labor Arbiter Decision recognizing respondents Allan V. Herrera, Michael V. Santos, and Rommel M. Matalang as regular employees of petitioner ABS-CBN, are likewise **AFFIRMED**.

3. The Petition in G.R. No. 210165 is **GRANTED**. The Court of Appeals' April 30, 2013 Decision and November 20, 2013 Resolution are **REVERSED** and **SET ASIDE**. Considering that petitioners are regular employees in view of G.R. No. 202481, the case is **REMANDED** to the Court of Appeals to determine whether petitioners were illegally dismissed, with due and deliberate dispatch.

4. The Petition in G.R. No. 219125 is **GRANTED**. The Court of Appeals' August 19, 2014 Decision and June 18, 2015 Resolution in CA-G.R. SP No. 122424 are **REVERSED** and **SET ASIDE**. Considering that petitioners are regular employees in view of G.R. Nos. 202495-97, the case is **REMANDED** to the Court of Appeals to determine whether petitioners were illegally dismissed, with due and deliberate dispatch.

5. The Petition in G.R. No. 222057 is **DENIED**. The Court of Appeals' February 24, 2015 Decision and December 21, 2015 Resolution in CA-G.R. SP No. 122068 are **AFFIRMED**.

6. The Petition in G.R. No. 224879 is **DENIED**. The Court of Appeals' January 4, 2016 Decision and May 27, 2016 Resolution in CA-G.R. SP No. 122824 are **AFFIRMED WITH MODIFICATION** with respect to respondent Ronnie Lozares. The award of moral damages, exemplary damages, and attorney's fees is **DELETED**.

   Considering that Jun Tangalin and Lauro Calitisen are regular employees in view of G.R. Nos. 202495-97, and petitioner ABS-CBN has offered no just or authorized cause for their dismissal, they are **DECLARED** illegally dismissed. They are entitled to reinstatement to their former positions without loss of seniority rights and the payment of backwages from the time their salaries were withheld up to the time of actual reinstatement. If reinstatement cannot be done, petitioner ABS-CBN is ordered to pay each respondent:

   a. full backwages and other benefits, both based on each respondent's last monthly salary, computed from the date their employment was illegally terminated until the finality of this Decision; and

   b. separation pay based on each respondent's last monthly salary, computed from the date the respondent commenced employment until the finality of this Decision at the rate of one month's salary for every year of service, with a fraction of a year of at least six months being counted as one whole year.

   The case is **REMANDED** to the Labor Arbiter to make a detailed computation of the amounts due to the illegally dismissed employees, which must be paid without delay, and for the immediate execution of this Decision.

7. The Petition in G.R. No. 225101 is **GRANTED**. The Court of Appeals' January 28, 2016 Decision and May 26, 2016 Resolution in C.A.-G.R. SP No. 125868 are **REVERSED** and **SET ASIDE**. The December 29, 2011 Decision of the National Labor Relations Commission (Fifth Division) in NLRC NCR CASE No. 00-06-08496-10 (LAC No. 04-000965-11) is **REINSTATED WITH MODIFICATION**.

   Considering that petitioners Alex Carlos, Alfred Christian Nunez, Russel Galima, Jhonschultz Congson, Rommel Villanueva, and Christopher Mendoza are regular employees in view of G.R. Nos. 202495-97, the case is **REMANDED** to the Court of Appeals to determine whether they were illegally dismissed, with due and deliberate dispatch.

   As for petitioner Fredierick Gerland Dizon, the case is **REMANDED** to the Court of Appeals to determine whether he was a regular employee of respondent ABS-CBN and if he had been illegally dismissed, with due and deliberate dispatch.

8. The Petition in G.R. No. 225874 is **DENIED**. The Court of Appeals' January 12, 2016 Decision and July 15, 2016 Resolution in C.A.-G.R. SP No. 131576 are **AFFIRMED**.

In all instances, the total judgment award per dismissed employee shall be subject to interest at the rate of 6% per annum from the finality of this Decision until their full satisfaction.[119] ABS-CBN is ordered to pay attorney's fees at 10% of each total judgment award and costs of suits in all cases.

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[119] *See Nacar v. Gallery Frames*, 716 Phil. 267 (2013) [Per J. Peralta, En Banc].

FIRST DIVISION

[G.R. No. 204992. September 8, 2020]

AURORA TENSUAN, HEIRS OF DIONISIA TENSUAN, HEIRS OF JOSE TENSUAN, ANITA TENSUAN, HEIRS OF LEYDA TENSUAN, HEIRS OF FRANCISCO TENSUAN, and RICARDO TENSUAN, Represented by AMPARO S. TENSUAN, as Attorney-in-Fact, *Petitioners, v.* **HEIRS OF MA. ISABEL M. VASQUEZ,** *Respondents*.

SYLLABUS

1. CIVIL LAW; QUIETING OF TITLE; REQUISITES; WHERE THE REQUISITES ARE SUFFICIENTLY ALLEGED IN THE COMPLAINT, THE ACTION FOR QUIETING OF TITLE WILL PROSPER ALBEIT CAPTIONED AS ONE FOR ANNULMENT OF TITLE OR *ACCION REIVINDICATORIA*.— The provision [Article 476 of the Civil Code] governs actions for quieting of title. For this action to prosper, two (2) requisites must concur: ***first***, the plaintiff or complainant has a legal or an equitable title to or interest in the real property subject of the action; and ***second,*** the deed, claim, encumbrance, or proceeding claimed to be casting cloud on his or her title must be shown to be in fact invalid or inoperative despite its *prima facie* appearance of validity or legal efficacy.

. . .

[T]he requisites for quieting of title were sufficiently alleged in the complaint, albeit it was captioned as one for ***accion reivindicatoria*** and annulment of title.

First, petitioners indubitably have legal title over the property, having inherited the same from their father Fernando Tensuan. By Extra-Judicial Settlement dated May 19, 1976, they subdivided the property among themselves. This Extra-Judicial Settlement was even annotated on the dorsal portion of TCT No. 16532.

Second. A cloud on a title exists when (1) there is an instrument (deed, or contract) or record or claim or encumbrance or proceeding; (2) which is apparently valid or effective; (3) but

is, in truth invalid, ineffective, voidable, or unenforceable, or extinguished (or terminated) or barred by extinctive prescription; and (4) and may be prejudicial to the title.

Here, respondent Ma. Isabel was issued TCT No. 144017 covering a 5,237.53 square meter property. Although it appears valid and effective, said title, in truth, overlaps with petitioners' TCT No. 16532 to the extent of 1,680.92 square meters. Worse, the remaining portion pertains to portions of the Magdaong River. Thus, as will further be discussed below, TCT No. 144017 is invalid.

[I]t is settled that the nature of the complaint is determined not by its designation or caption but by allegations in the complaint.

2. ID.; ID.; PRESCRIPTION OF ACTION; AN ACTION FOR QUIETING OF TITLE IS IMPRESCRIPTIBLE IF THE PLAINTIFF IS IN POSSESSION OF THE PROPERTY; CASE AT BAR.— [I]n ***Maestrado v. Court of Appeals*** the Court decreed that if the plaintiff in an action for quieting of title is in possession of the property being litigated, such action is imprescriptible. For one who is in actual possession of a land, claiming to be the owner thereof may wait until his or her possession is disturbed or his or her title, attacked before taking steps to vindicate his or her right. Undisturbed possession gives one a continuing right to seek the aid of the courts to ascertain the nature of the adverse claim and its effects on his or her title.

Here, petitioners were able to establish that they were in possession of the property when the complaint was filed. As petitioners correctly pointed out, they need not set foot on every square inch of the property to be considered in possession thereof, it being sufficient that their title to the property covers both the portion they are actually occupying and the portion encroached upon by respondents. In any event, there is no question that petitioners have been residing on the same property, albeit a portion of it was illegally included in the new title issued in respondents' name under suspicious circumstances.

3. ID.; PROPERTY REGISTRATION DECREE (PD NO. 1529); PRIOR REGISTRANTS ENJOY SUPERIOR RIGHTS. — Under the Torrens system, a certificate of title serves as evidence of an indefeasible and incontrovertible title to the property in

favor of the person whose name appears therein. Otherwise stated, the certificate of title is the best proof of ownership of a parcel of land.

A decree of registration is binding and conclusive upon all persons. . . .

. . .

Here, petitioners' TCT No. 16532 was issued on January 7, 1950. As such, third persons were already precluded from registering the same property covered by the title. As it was though, respondent Ma. Isabel was issued TCT No. 144017 on November 25, 1986. There is no dispute that both certificates of title overlap insofar as the 1,680.92 square meters are concerned. Between the two (2) titles, the prior registrant is preferred. For at the time respondent Ma. Isabel registered her alleged property, she was already charged with knowledge that 1,680.92 square meters thereof already belonged to petitioners.

4. ID.; ID.; A SPECIAL WORK ORDER OR CONSTRUCTION PERMIT IS NOT AMONG THE MODES OF ACQUIRING PROPERTY, AND HENCE, A TITLE ISSUED BASED THEREON IS VOID *AB INITIO*.— As borne on the face of TCT No. 144017, Special Work Order 13-000271 dated September 11, 1986 was indicated as basis for its issuance. It was this so-called Special Work Order 13-000271 which supposedly authorized the rip-rapping to be done on Ma. Isabel's property, as a result of which, the Magdaong River changed course. She then had both the abandoned and present river courses, as well as a portion of petitioners' adjacent property titled in her name.

Verily, the presumption of regularity in the issuance of TCT No. 144017 is belied by: ***first,*** the source of this title was the so called Special Work Order 13-000271 which in ordinary parlance was a mere construction permit; ***second,*** the fact that TCT No. 144017 covered 3,556.62 square meters of the abandoned and present course of the Magdaong River which is a property of public dominion under Articles 420 and 502 of the Civil Code. In ***Republic v. Tan,*** the Court decreed that property of public dominion is outside the commerce of man; and ***finally,*** TCT No. 144017 overlapped with 1,680.92 square meter portion of petitioners' own property.

> What exactly is a special work order? It is issued by a surveyor as reference for construction works on surveyed areas. Section 161 of DENR Memorandum Circular No. 013-10 is categorical that a special work order cannot be a subject of title . . . .
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> . . .
>
> Even assuming, therefore, that the so-called Special Work Order 13-000271 was issued authorizing the rip-rapping activity to be done on Ma. Isabel's property, it absolutely cannot become the basis of titling on any property in the name of Ma. Isabel. On its face, therefore, TCT No. 144017 that was issued and sourced out from Special Work Order 13-000271 is void *ab initio*.
>
> And rightly so. For a mere special work order which in ordinary parlance is simply a construction permit is never among the recognized modes of acquiring property under the Civil Code. . . .

5. ID.; OWNERSHIP; BUILDER IN BAD FAITH; RECOURSE OF AN OWNER OF THE LAND ON WHICH ANYTHING HAS BEEN BUILT IN BAD FAITH.— Respondent Ma. Isabel Vasquez was a builder in bad faith because; ***first,*** she caused the issuance of TCT No. 144017 in her name based on a mere construction permit or the so called Special Work Order 13-000271, the existence of which has not even been established; ***second,*** despite notice of the encroachment on petitioners' property, respondent Ma. Isabel simply ignored the same; and ***third,*** she included in her supposed new title portions of the Magdaong River, albeit the same belong to the State and beyond the commerce of man.

> Under Article 450 of the Civil Code, the owner of the land on which anything has been built, planted or sown in bad faith may (1) demand the demolition of the work, or that the planting or sowing be removed, in order to replace things in their former condition at the expense of the person who built, planted or sowed; or (2) compel the builder or planter to pay the price of the land, and the sower the proper rent. The records, however, do not show that petitioners elected to avail any of the enumerated options under Article 450. Thus, petitioners are directed to inform the trial court of the option which they have elected within fifteen (15) days from finality of this decision.

6. ID.; ID.; ACCRETION; REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; PETITION FOR REVIEW ON *CERTIORARI*; THE ISSUE OF ACCRETION, HAVING BEEN BELATEDLY RAISED AND BEING A QUESTION OF FACT, CANNOT BE CONSIDERED BY THE REVIEWING COURT AND MAY NOT BE INVOKED TO COVER LANDS OF PUBLIC DOMAIN.— Respondents also claim that the property described in TCT No. 144017 was a product of accretion, hence, it belongs to them.

The argument must fail.

As the Court of Appeals held in its February 24, 2012 Decision:

> As to the issue of accretion, the same is being raised only for the first time in this appeal . . . and was never alleged in appellee's answer. It was not among the issues joined in the proceedings below. . . . [T]he property for which appellee obtained title was not validly registered, a river being part of public domain and beyond the commerce of man. The RTC also correctly found that the SWO cannot be used to make privately owned property and property of the public dominion, being not among the modes of acquiring ownership. . . .

As a rule, a party who deliberately adopts a certain theory upon which the case is tried and decided by the lower court will not be permitted to change its theory on appeal. Points of law, theories, issues and arguments not brought to the attention of the lower court need not be, and ordinarily will not be, considered by a reviewing court, as these cannot be raised for the first time at such late stage. Basic considerations of due process underlie this rule. It would be unfair to the adverse party who would have no opportunity to present further evidence material to the new theory, which it could have done had it been aware of it at the time of the hearing before the trial court. To permit petitioner in this case to change its theory on appeal would thus be unfair to respondent, and offend the basic rules of fair play, justice and due process.

. . .

Be that as it may, whether accretion took place here is a question of fact beyond the prism of Rule 45. The Court is not a trier of facts.

APPEARANCES OF COUNSEL

Lizardo Carlos & Lizardo III Law Offices for petitioners.
Esguerra & Blanco for respondents.

D E C I S I O N

LAZARO-JAVIER, *J.*:

The Case

Petitioners Aurora Tensuan, Heirs of Dionisia Tensuan, Heirs of Jose Tensuan, Anita Tensuan, Heirs of Leyda Tensuan, Heirs of Francisco Tensuan and Ricardo Tensuan assail the following dispositions of the Court of Appeals in CA-G.R. CV No. 96671 entitled "*Aurora Tensuan, Heirs of Dionisia Tensuan, Heirs of Jose Tensuan, Anita Tensuan, Heirs of Leyda Tensuan, Heirs of Francisco Tensuan, and Ricardo Tensuan, Represented by Amparo S. Tensuan as Attorney-in-Fact v. The Heirs of Maria Isabel M. Vasquez:*"

1. Resolution[1] dated July 4, 2012 which reversed and set aside the February 24, 2012 Decision and affirmed the November 30, 2010 Order of the trial court dismissing the case on ground that petitioners' cause of action had already prescribed; and

2. Resolution[2] dated December 20, 2012 denying reconsideration.

Antecedents

In their Complaint[3] dated October 7, 1997,[4] petitioners sued respondent Ma. Isabel M. Vasquez in Civil Case No. 98-286 for *accion reivindicatoria* and annulment of title. Petitioners essentially alleged:

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[1] *Rollo*, pp. 331-344.

[2] *Id.* at 388-393.

[3] *Id.* at 53-57.

[4] Filed on December 17, 1998.

Fernando Tensuan was the registered owner of a parcel of land with an area of 32,862 square meters, more or less, located in Poblacion, Muntinlupa City, and covered by Transfer Certificate of Title (TCT) 16532 issued on January 7, 1950.[5] Following Fernando's death on May 19, 1976, they (petitioners) as surviving heirs executed an Extra-Judicial Settlement[6] and had it annotated on the dorsal portion of TCT No. 16532.[7]

On the other hand, respondent Ma. Isabel M. Vasquez was the owner of a parcel of land located in Bagbagan, Tunasan, Muntinlupa City which was converted into a subdivision known as the Aguila Village. The Magdaong River served as the boundary between the Tensuan property and the Aguila Village.[8]

Sometime in the 1990s, Ma. Isabel commissioned the rip-rapping of the northern side of her property. This affected the flow of the Magdaong River, causing it to course through the southern portion of their property.[9] Anita Tensuan immediately brought the matter to the attention of City Engineer Roberto Bunyi (Engr. Bunyi) who, in the presence of representatives from both parties,[10] conducted Joint Verification Survey VS-00-00368 from April 22-25, 1995.[11]

Engr. Bunyi discovered that the rip-rapping was done pursuant to Special Work Order 13-000271 supposedly issued by the Muntinlupa Estate, Rizal CLRO No. 19981 in 1986. As it was though, Special Work Order 13-000271 covered not just the contour of the Magdaong River, but also a portion of the Magdaong River itself. More, as a result of the rip-rapping,

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[5] *Rollo*, p. 155.

[6] *Id.* at 11.

[7] *Id.* at 348.

[8] *Id.* at 156.

[9] *Id.* at 155-156.

[10] Engr. Rodrigo Marcelo for petitioners and Engr. Raul Dequina for respondent.

[11] *Rollo*, p. 159.

the Magdaong River changed its course and augmented the original area of Ma. Isabel's property by 5,237.53 square meters. Subsequently, on November 25, 1986,[12] she was issued TCT 144017 covering this additional area.

But out of this new area, 1,680.92 square meters were actually a portion of their property while 3,556.62 square meters were actually a portion of the Magdaong River. Ma. Isabel subsequently caused the subdivision of the entire 5,237.53 square meters.[13] As a result, TCT 144017 produced seven (7) derivative TCTs.[14]

Her illegal act of incorporating a portion of their property into her new title or titles deprived them of their ownership and possession thereof. Too, the rip-rapping created a new course for the Magdaong River and now posed an imminent danger to their lives and property. They, therefore, sought relief to restore their property, declare as void Special Work Order 13-000271, TCT No. 144017 and the seven (7) derivative TCTs, and restore the Magdaong River to the State.[15]

The case was raffled to the Regional Trial Court (RTC)—Branch 256, Muntinlupa.

In her Answer[16] dated March 19, 1999, respondent **Ma. Isabel M. Vasquez** denied encroaching on petitioners' property. She averred that pursuant to Special Work Order 13-000271 approved on September 11, 1986, she commissioned the rip-rapping

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[12] *Id.* at 400.

[13] *Id.* at 457-458.

[14] Transfer Certificate of Title No. 180014 — 3,701 sqms.
Transfer Certificate of Title No. 180015 — 512 sqms.
Transfer Certificate of Title No. 180016 — 100 sqms.
Transfer Certificate of Title No. 180017 — 100 sqms.
Transfer Certificate of Title No. 180018 — 100 sqms.
Transfer Certificate of Title No. 180019 — 100 sqms.
Transfer Certificate of Title No. 180020 — 622 sqms.

[15] *Rollo*, pp. 458-460.

[16] *Id.* at 75-79.

activity on her property to prevent its erosion. The rip-rapping followed the contour of the Magdaong River. Thereafter, TCT No. 144017 was issued in her name on November 25, 1986 based on the same Special Work Order 13-000271.

She further asserted that even granting for the sake of argument that a portion of the Magdaong River was erroneously included in her title, petitioners do not have the legal personality to ask for its reversion because the river is part of the public domain. She claimed moral damages of ₱1,000,000.00,[17] attorney's fees of ₱500,000.00, litigation expenses of ₱20,000.00, and ₱2,000.00 as appearance fee per court attendance.

During the trial, **Amparo Tensuan** testified that she caused Joint Verification Survey VS-00-00368 to be approved by the Chief Regional Survey Division. Through the survey, it was discovered that Ma. Isabel encroached on their property by 1,680.92 square meters. They confirmed this through another survey performed by Engineer Rodrigo Marcelo (Engr. Marcelo) on August 8, 1997. Due to rains, however, the encroachment on their property increased from 1,680.92[18] square meters to 2,165.73 square meters per survey plan dated February 19, 2000.[19] They tried to stop Ma. Isabel's employees' rip-rapping activity but they were subdued by her armed security guards.[20]

Geodetic Engr. Marcelo testified that petitioners engaged his services for the Joint Verification Survey VS-00-00368 done on April 22-25, 1995. During the survey, it was discovered that respondent encroached on petitioners' property by 1,680.92[21] square meters. Respondent's representative Engineer Raul

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[17] On the ground that the complaint was obviously intended to harass and embarrass her, caused her mental anguish, serious anxiety, besmirched reputation and social humiliation.

[18] 1,780.92 per the RTC Decision (*rollo*, p. 158) but 1,680.92 in the Complaint (*id.* at 55).

[19] *Id.* at 158.

[20] *Id.* at 159.

[21] 1,780.92 per the RTC Decision (*id.* at 159).

Dequina (Engr. Dequina) and Engr. Bunyi from the City Engineer's Office of Muntinlupa City were also present during the Joint Verification Survey.

On August 8, 1997, petitioners requested an updated survey on the size of the encroachment. The results confirmed the same 1,680.92 square meter encroachment. On February 19, 2000, petitioners engaged his services anew. This time, the results revealed that the encroachment increased to 2,165.73 square meters.[22] The August 8, 1997 and February 19, 2000 surveys, however, were not approved by the Chief Regional Survey Division.

City Engineer **Bunyi** testified and confirmed that a Joint Verification Survey was conducted and the same was participated in by Engr. Marcelo on behalf of petitioners and Engr. Dequina on behalf of Ma. Isabel.[23] By letter dated June 2, 1995, he referred the matter to Atty. Roqueza de Castro of the Land Management Sector but the same was not acted upon.

For her part, **Ma. Isabel Vasquez** testified on the allegations in her Answer. She also presented **Engineer Nelson Samson**[24] who testified that he had been the Property Manager of the Vasquez Madrigal Group of Companies since 1999. He explained that rip-rapping is the construction or concreting of the river walls to protect the soil from erosion especially along the riverbanks. The Special Work Order, on the other hand, is issued by the surveyor as reference for construction of areas surveyed and served as the basis for rip-rapping.

The following steps should be accomplished before rip-rapping can be done; prepare a plan, secure a survey location and layout of the property, and secure the necessary permit from the City Engineer's Office. Here, Geodetic Engineer Jaime Beniret conducted the survey which was approved by the Regional Director of the Bureau of Lands in 1984. The survey referred

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[22] *Id.*

[23] *Id.* at 160.

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

to the property described in Special Work Order 13-000271 with an area of 5,325 square meters. He tried to secure a certified true copy of Special Work Order 13-000271 from the Bureau of Lands and the Department of Environment and Natural Resources, but to no avail. He then made reference to TCT No. 144017 which was issued on the basis of Special Work Order 13-000271. He emphasized that before a title may be issued, the land must undergo survey and the data must be registered with the Registry of Deeds and Bureau of Lands where it is annotated as PSD or SWO.

Further, the rip-rapping around the Aguila Village was based on a survey, but he was not the one who conducted it nor caused the rip-rapping. It was already finished when he started his employment with the Vasquez Madrigal Group of Companies.

Accounting Clerk **Arnie Digol**[25] from Esguerra and Blanco Law Office testified on the billing statements they sent to Ma. Isabel.

On May 28, 2009, Ma. Isabel died. She was substituted by Dr. Daniel E. Vasquez and Maria Luisa M. Vasquez as respondent.[26]

The Trial Court's Ruling

By Decision[27] dated September 16, 2010, the trial court ruled in petitioners' favor, thus:

WHEREFORE[,] in view of the foregoing, judgment is hereby rendered in favor of the plaintiffs and against the defendants, ordering as follows:

1. Declaring the SWO-13-000271 covering an area of 1,680.92 square meters of plaintiffs' property as null and void and the cancellation of Transfer Certificate of Title No. 144017 in the name of defendant;

2. The restoration of ownership and possession to the plaintiffs of the portion of their parcel of land with an area of 1,680.92 square

[25] *Id.* at 161.

[26] *Id.* at 162.

[27] *Id.* at 155-163.

meters taken by the defendant through SWO-13-000271, Muntinlupa Cadastral Mapping;

3. The defendants to pay plaintiffs the amount of P50,000.00 by way of acceptance fees, P100,000.00 by way of Attorney's fees and P1,500.00 appearance fees;

4. The defendants to pay plaintiffs the amount of Three Hundred Thousand (P300,000.00) Pesos for the damage to or loss of plaintiffs' property as a result of the new course of the river that traversed to their property as actual damages; and

Costs of the suit.

Counterclaim is dismissed.

SO ORDERED.[28]

According to the trial court, the Magdaong River was part of the public dominion, hence, beyond the commerce of man. It could not be registered under the Land Registration Law, let alone covered by a Torrens Title. Special Work Order 13-000271 could not have licensed the taking of property, public or private, nor used to prove the validity of TCT No. 144017 and its derivative titles. Worse, the existence of Special Work Order 13-000271 was not even established during the trial.

Respondents moved for reconsideration[29] on the following grounds:

First. They owned the additional area as a result of accretion. The Magdaong River changed its course and cut into the property of petitioners and increased the land adjoining their property. Contrary to petitioner's claim, the change in course of Magdaong River was gradual and natural. Thus, they were entitled to the accretion which they received from the change of the course of the Magdaong River.

Second. Petitioners failed to prove that the rip-rapping was done in violation of any law or regulation, much less, that the rip-rapping itself caused the change in the course of the

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[28] *Id.* at 163.

[29] *Id.* at 164-175.

Magdaong River. At any rate, petitioners could not assail the accretion because registration does not protect the riparian owner against the diminution of his property through gradual changes in the course of the adjoining stream.

Third. TCT No. 144017 was conclusive evidence that the property no longer belonged to the public domain and that respondents were the owners thereof. More, petitioners failed to controvert Special Work Order 13-000271 approved by the Bureau of Lands. It was of no moment that Special Work Order 13-000271 could not be found in the DENR because the fact remained that TCT No. 144017 was regularly issued.

Fourth. Petitioners' cause of action had already prescribed. TCT No. 144017 was issued on November 25, 1986. Petitioners had one (1) year to question its registration, or four (4) years on ground of fraud, or ten (10) years on ground of implied or constructive trust. As it was, petitioners only filed the case on December 17, 1998 or after more than twelve (12) years from issuance of TCT No. 144017.

Petitioners, on the other hand,[30] asserted that the Magdaong River was part of public dominion, hence, could not be registered under the Land Registration Law. There could be no accretion since respondents' occupation of the portion of Magdaong River was not in conformity with the rules on alluvium. In fact, the additional area was incorporated through the unauthorized process of rip-rapping. The portions incorporated by virtue of the non existent Special Work Order 13-000271, therefore, were unlawfully registered. Lastly, petitioners' cause of action to declare respondents' title void does not prescribe.

By Order[31] dated November 30, 2010, the trial court reversed, *viz.*:

> WHEREFORE[,] premises considered, the motion is hereby granted. Accordingly, the decision of this court dated September 16, 2010 is hereby recalled and set aside. The instant case is hereby dismissed.

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[30] *Id.* at 176-188.

[31] *Id.* at 189-190.

There being lack of proof of malicious prosecution, for lack of merit, the counterclaim is likewise dismissed.

SO ORDERED.[32]

On reconsideration, the trial court held that petitioners' cause of action based on implied trust had already prescribed. TCT No. 144017 was issued on November 26, 1986 but the instant case was filed only on December 17, 1998. Too, while an action to compel reconveyance of titled property does not prescribe if the registered owner was in bad faith, petitioners failed to prove that respondents acquired the property and registered it illegally. Special Work Order 13-000271 was presumed regularly issued and duly approved by the Bureau of Lands.

The Proceedings before the Court of Appeals

On appeal, petitioners[33] faulted the trial court for reversing itself on reconsideration. They insisted that respondents acquired the property through fraud and bad faith. Ma. Isabel's rip-rapping activity on the property was illegal because the Magdaong River is part of the public dominion, hence, not subject to appropriation.

At any rate, the Special Work Order 13-000271 is not among the recognized modes of acquiring ownership under the Civil Code. The trial court likewise erred when it gave credence to the same although its existence was never proven. Too, contrary to the trial court's finding that the case involved implied or constructive trust, this case was an *accion reivindicatoria* and annulment of title based on fraud is imprescriptible where the suitor is in possession of the property. Petitioners pleaded for the reinstatement of the award of damages.

Respondents,[34] on the other hand, countered that petitioners' cause of action had already prescribed; TCT No. 144017 was properly issued and was conclusive evidence of ownership of

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[32] *Id.* at 190.

[33] *Id.* at 193-232.

[34] *Id.* at 234-260.

the property described therein by accretion; and, lastly, rip-rapping *per se* was not illegal, absent evidence of bad faith.

The Court of Appeals' Ruling

By Decision[35] dated February 24, 2012, the Court of Appeals reversed and reinstated with modification the trial court's Decision dated September 16, 2010, thus:

> **WHEREFORE**, the foregoing premises considered, the appeal is **GRANTED** and the appealed Order dated November 30, 2010 of the Regional Trial Court (RTC) of Muntinlupa City, Branch 256, in Civil Case No. 98-286 is hereby **REVERSED** and **SET ASIDE**. The Decision dated September 16, 2010 of the RTC is **REINSTATED**, with the **ADDITIONAL MODIFICATION** that all certificates of title emanating from TCT No. 144017, including the following:
>
> TCT No. 180014 — 3,701 sq. m.
> TCT No. 180015 — 512 sq. m.
> TCT No. 180016 — 100 sq. m.
> TCT No. 180017 — 100 sq. m.
> TCT No. 180018 — 100 sq. m.
> TCT No. 180019 — 100 sq. m.
> TCT No. 180020 — 622 sq. m.
>
> issued by the Register of Deeds of Makati City, and located in Muntinlupa City, are likewise declared **NULL AND VOID** and hereby ordered **CANCELED**. Appellee, her heirs, assigns and persons acting for and in their behalf are **ORDERED** to restore physical possession of the subject property to appellants.
>
> **SO ORDERED**.[36]

The Court of Appeals held, in the main:

First. Prescription had not yet set in because although petitioners' action was denominated as *accion reivindicatoria* and annulment of titles, it was, also in reality a case for quieting

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[35] Penned by Associate Justice Rebecca De Guia-Salvador and concurred in by Associate Justice Normandie B. Pizarro and Associate Justice Rodil V. Zalameda (now a member of this Court), *id.* at 270-290.

[36] *Id.* at 289-290.

of title which does not prescribe. At any rate, even if the case were treated as *accion reivindicatoria*, it was still filed within the ten (10) year prescriptive period because the dispossession occurred only sometime in the mid-1990s when respondents did the rip-rapping. They promptly questioned the same by filing a complaint before the City Engineer's Office which conducted a joint verification survey in 1995. Thereafter, they were constrained to file the present case in December 1998 because respondents refused to honor the result of the joint verification survey done on their respective properties and the Magdaong River in 1995.

Second. Respondents' claim over the property was solely based on Special Work Order 13-000271 which was not even presented in court.

Third. There was no merit in respondents' allegation that petitioners had no legal personality to file the suit because the Magdaong River is part of the public dominion. On the contrary, the complaint alleged that respondents encroached upon petitioners' property as a result of the unauthorized rip-rapping activity.

Fourth, the issue of accretion was never raised in the complaint itself nor during the trial proper.

Respondents moved for reconsideration[37] which the Court of Appeals granted by Resolution[38] dated July 4, 2012, *viz.*:

WHEREFORE, premises considered, the motion for reconsideration is **GRANTED** and our February 24, 2012 Decision is **REVERSED** and **SET ASIDE**. Accordingly, the appeal is **DENIED** for lack of merit and the appealed November 30, 2010 Order is **AFFIRMED** *in toto*.

SO ORDERED.[39]

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[37] *Id.* at 291-305.

[38] *Id.* at 331-344.

[39] *Id.* at 343-344.

The Court of Appeals held that petitioners failed to allege and prove possession of the portion supposedly encroached upon by respondents. Petitioners' cause of action, therefore, was not for quieting of title but one for reconveyance of property based on implied trust which prescribed after ten (10) years from issuance of the assailed title.

TCT No. 144017 was issued based on Special Work Order 13-000271 submitted to the DENR on December 9, 1983 and approved on September 11, 1986. The purported joint verification survey did not bear the signature of respondents' supposed representative Engr. Dequina. Too, the conflicting findings on the alleged size of encroachment (1,680.92 square meters, as revealed in the 1995 survey; 2,165.73 square meters as revealed in the 2000 survey) cast serious doubts on the reliability of Engr. Marcelo's survey reports.

Petitioners' Motion for Reconsideration[40] was denied per Resolution[41] dated December 20, 2012.

The Present Petition

Petitioners[42] now seek affirmative relief from the Court and plead that the assailed Court of Appeals' Resolutions dated July 4, 2012 and December 20, 2012 be reversed and set aside, and its Decision dated February 24, 2012, reinstated.

Petitioners claim to have been in constructive possession of the property since the execution of the Extra-Judicial Settlement on May 19, 1976. The law does not distinguish between actual physical possession, on the one hand, and constructive possession, on the other, in determining the issue of prescription. To be deemed in possession of a parcel of land, the owner is not required to set foot on every square meter thereof.

They further assert that respondents' title was acquired in bad faith. The Court of Appeals erroneously gave credence to

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[40] *Id.* at 345-361.

[41] *Id.* at 388-393.

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

Special Work Order 13-000271 despite the fact that it was not presented in court. The rip-rapping activity was done on the property based on a non-existent Special Work Order. At any rate, a special work order is not among the recognized modes or sources of acquiring ownership under the law.

In their Comment,[43] respondents reiterate their arguments before the trial court. They maintain that petitioners' action below was for reconveyance of title based on implied or constructive trust which had already prescribed. At any rate, their title is indefeasible and incontrovertible. Lastly, petitioners failed to prove actual possession of the property and respondents' supposed encroachment on their property.

Threshold Issues

First. Has petitioners' action prescribed?

Second. Was TCT No. 144017 validly issued in respondent Ma. Isabel's name?

Third. Did accretion augment the size of respondents' property?

Ruling

The petition is meritorious.

Petitioners' cause of action has not prescribed

Article 476 of the Civil Code decrees:

ARTICLE 476. Whenever there is a cloud on title to real property or any interest therein, by reason of any instrument, record, claim, encumbrance or proceeding which is apparently valid or effective but is in truth and in fact invalid, ineffective, voidable, or unenforceable, and may be prejudicial to said title, an action may be brought to remove such cloud or to quiet the title.

An action may also be brought to prevent a cloud from being cast upon title to real property or any interest therein.

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[43] *Id.* at 398-432.

The provision governs actions for quieting of title. For this action to prosper, two (2) requisites must concur: ***first***, the plaintiff or complainant has a legal or an equitable title to or interest in the real property subject of the action; and ***second***, the deed, claim, encumbrance, or proceeding claimed to be casting cloud on his or her title must be shown to be in fact invalid or inoperative despite its *prima facie* appearance of validity or legal efficacy.[44]

Here, petitioners made the following allegations in their complaint below:[45]

1. That, Plaintiffs are of legal ages, Filipinos, and residing at Poblacion, Muntinlupa City, represented by their Attorney-In Fact, AMPARO S. TENSUAN, Filipino, of legal age, and residing at Poblacion, Muntinlupa City, while Defendant is of legal age, Filipino, and residing at 4-C Urdaneta Apts., Ayala Avenue, Makati City, where summons and other court's processes may be served;

2. That, plaintiffs are co-owners of a parcel of land left by their deceased father, FERNANDO TENSUAN, located at Poblacion, Muntinlupa City, known as Lot 1233 with an area of 32,862 Square Meters, more or less and covered by Transfer Certificate of Title No. 16532 of the Register of Deeds for Makati City, Xerox copy of which is attached hereto attached and marked as Annex "A" and forming an integral part of this complaint;

x x x x x x x x x

5. That, herein Plaintiffs, in order to terminate their existing ownership over the parcel of land left by deceased Fernando Tensuan, caused the subdivision of the said parcel of land into Eight lots x x x;

x x x x x x x x x

7. That, as a consequence of that riprapping executed and made by the Defendant through the help of her paid employees working at that time/in the Aguila Village Subdivision, it did not only covered the portion of the Magdaong River separating the parcels of land in question but the said Riprapping overlapped some portions of the properties of the Plaintiffs in the southern part of the land fronting

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[44] See *Eland Phils., Inc. v. Garcia*, 626 Phil. 735, 759 (2010).

[45] *Rollo*, pp. 53-57.

the Magdaong River thereby depriving the Plaintiffs of the use and enjoyment of that portion of their property taken illegally by the Defendant without their conformity and through Riprapping of the Magdaong River;

x x x x x x x x x

14. That, the illegal acts of the Defendant in incorporating that portion of the parcels of land of the Plaintiffs in her parcel of land deprive[d] herein plaintiffs of their ownership and possession which this Honorable Court should promptly act on the matter in order that the portion of that parcel of land subject of this complaint be restored into the ownership and possession of the Plaintiffs;

x x x x x x x x x

WHEREFORE, Premises considered, it is most respectfully prayed of this Honorable Court that, decision be rendered in the following manner:

1. Declaring the SWO-13-000271 covering an area of 5,237.53 under Transfer Certificate of Title No. 144017 as Null and Void;

2. Ordering the cancellation of Transfer Certificate of Title No. 144017 indicating Lot No. 14458, Muntinlupa Cadastral mapping and the succeeding Transfer Certificates taken from TCT No. 144017, as follows:

TCT No. 180014 — 3,701 Sqms.
TCT No. 180015 — 512 "
TCT No. 180016 — 100 "
TCT No. 180017 — 100 "
TCT No. 180018 — 100 "
TCT No. 180019 — 100 "
TCT No. 180020 — 622 "

3. Ordering the restoration of ownership and possession to the plaintiffs that portion of their parcel of land with an area of 1,680.92 Square Meters, more or less, which was taken by the Defendant through SWO-13-00271, Muntinlupa Cadastral Mapping after riprapping her parcel of land in the northern portion going through the Magdaong River and overlapping the portion of the parcel of land of the Plaintiffs;

4. Ordering likewise, the restoration of the Magdaong River which was taken by the Defendant through riprapping thereby affecting the parcel of land of the Plaintiffs;

x x x x x x x x x

Verily, the requisites for quieting of title were sufficiently alleged in the complaint, albeit it was captioned as one for ***accion reivindicatoria*** and annulment of title.

First, petitioners indubitably have legal title over the property, having inherited the same from their father Fernando Tensuan. By Extra-Judicial Settlement dated May 19, 1976, they subdivided the property among themselves. This Extra-Judicial Settlement was even annotated on the dorsal portion of TCT No. 16532.[46]

Second. A cloud on a title exists when (1) there is an instrument (deed, or contract) or record or claim or encumbrance or proceeding; (2) which is apparently valid or effective; (3) but is, in truth invalid, ineffective, voidable, or unenforceable, or extinguished (or terminated) or barred by extinctive prescription; and (4) and may be prejudicial to the title.[47]

Here, respondent Ma. Isabel was issued TCT No. 144017 covering a 5,237.53 square meter property. Although it appears valid and effective, said title, in truth, overlaps with petitioners' TCT No. 16532 to the extent of 1,680.92 square meters. Worse, the remaining portion pertains to portions of the Magdaong River. Thus, as will further be discussed below, TCT No. 144017 is invalid.

Indeed, it is settled that the nature of the complaint is determined not by its designation or caption but by allegations in the complaint. As the Court pronounced in ***Sps. Munsalud v. National Housing Authority***:[48]

> The cause of action in a complaint is not determined by the designation given to it by the parties. The allegations in the body of the complaint define or describe it. The designation or caption is not

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[46] *Id.* at 348.

[47] See *Heirs of Tappa v. Heirs of Bacud*, G.R. No. 187633, April 4, 2016.

[48] 595 Phil. 750 (2008).

controlling more than the allegations in the complaint. It is not even an indispensable part of the complaint.

In any case, it is clear from the allegations and petitioners' prayer that the relief they are seeking are three pronged: for quieting of their title and as a necessary consequence thereof, the reconveyance of subject property to them and annulment of the title or titles that cast cloud on their own title.

Going now to the issue of prescription, in ***Maestrado v. Court of Appeals***[49] the Court decreed that if the plaintiff in an action for quieting of title is in possession of the property being litigated, such action is imprescriptible. For one who is in actual possession of a land, claiming to be the owner thereof may wait until his or her possession is disturbed or his or her title, attacked before taking steps to vindicate his or her right. Undisturbed possession gives one a continuing right to seek the aid of the courts to ascertain the nature of the adverse claim and its effects on his or her title.

Here, petitioners were able to establish that they were in possession of the property when the complaint was filed. As petitioners correctly pointed out, they need not set foot on every square inch of the property to be considered in possession thereof, it being sufficient that their title to the property covers both the portion they are actually occupying and the portion encroached upon by respondents. In any event, there is no question that petitioners have been residing on the same property, albeit a portion of it was illegally included in the new title issued in respondents' name under suspicious circumstances.

At any rate, petitioners did not sleep on their rights when they promptly reported to the proper authorities Ma. Isabel's unauthorized rip-rapping activity and encroachment upon petitioners' property. As it was, Anita Tensuan immediately sought redress before the City Engineer's Office which conducted a joint verification survey on April 22-25, 1995. It was performed by Engr. Bunyi with the participation of representatives from

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[49] 384 Phil. 418 (2000).

both parties. Thereafter, the result of the verification survey was brought to the attention of Atty. Roqueza De Castro of the Land Management Sector through letter dated June 2, 1995, albeit the matter was unfortunately not acted upon.

In fine, the Court of Appeals erred in ruling that petitioners' cause of action had already prescribed.

Petitioners enjoy superior rights being prior registrants

Under the Torrens system, a certificate of title serves as evidence of an indefeasible and incontrovertible title to the property in favor of the person whose name appears therein. Otherwise stated, the certificate of title is the best proof of ownership of a parcel of land.[50]

A decree of registration is binding and conclusive upon all persons.[51] Sections 31 and 52 of the Property Registration Decree provide (PD 1529) provide:

SECTION 31. ***Decree of Registration.*** — Every decree of registration issued by the Commissioner shall bear the date, hour and minute of its entry, and shall be signed by him. It shall state whether the owner is married or unmarried, and if married, the name of the husband or wife: *Provided, however*, that if the land adjudicated by the court is conjugal property, the decree shall be issued in the name of both spouses. If the owner is under disability, it shall state the nature of disability, and if a minor, his age. It shall contain a description of the land as finally determined by the court, and shall set forth the estate of the owner, and also, in such manner as to show their relative priorities, all particular estates, mortgages, easements, liens, attachments, and other encumbrances, including rights of tenant-farmers, if any, to which the land or owner's estate is subject, as well as any other matters properly to be determined in pursuance of this Decree.

The decree of registration shall bind the land and quiet title thereto, subject only to such exceptions or liens as may be provided

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[50] *Abobon v. Abobon*, 692 Phil. 530, 540 (2012).

[51] See *Spouses Laburada v. Land Registration Authority*, 350 Phil. 779, 789 (1998).

by law. It shall be conclusive upon and against all persons, including the National Government and all branches thereof, whether mentioned by name in the application or notice, the same being included in the general description "To all whom it may concern." (emphasis supplied)

SECTION 52. ***Constructive notice upon registration.*** — Every conveyance, mortgage, lease, lien, attachment, order, judgment, instrument or entry affecting registered land shall, if registered, filed or entered in the office of the Register of Deeds for the province or city where the land to which it relates lies, be constructive notice to all persons from the time of such registering, filing or entering.

The Court expounded on the rule on notice in ***Legarda and Prieto v. Saleeby***, thus:

Under the rule of notice, it is presumed that the purchaser has examined every instrument of record affecting the title. Such presumption is irrebutable. **He is charged with notice of every fact shown by the record** and is presumed to know every fact which an examination of the record would have disclosed. This presumption cannot be overcome by proof of innocence or good faith. Otherwise the very purpose and object of the law requiring a record would be destroyed. Such presumption cannot be defeated by proof of want of knowledge of what the record contains any more than one may be permitted to show that he was ignorant of the provisions of the law. The rule that all persons must take notice of the facts which the public record contains is a rule of law. The rule must be absolute. Any variation would lead to endless confusion and useless litigation.[52]

Here, petitioners' TCT No. 16532 was issued on January 7, 1950. As such, third persons were already precluded from registering the same property covered by the title. As it was though, respondent Ma. Isabel was issued TCT No. 144017 on November 25, 1986. There is no dispute that both certificates of title overlap insofar as the 1,680.92 square meters are concerned. Between the two (2) titles, the prior registrant is preferred. For at the time respondent Ma. Isabel registered her alleged property, she was already charged with knowledge that 1,680.92 square meters thereof already belonged to petitioners.

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[52] 31 Phil. 590, 600-601 (1915).

There was no basis for the issuance of TCT No. 144017 in the name of Ma. Isabel M. Vasquez

As borne on the face of TCT No. 144017, Special Work Order 13-000271 dated September 11, 1986 was indicated as basis for its issuance. It was this so-called Special Work Order 13-000271 which supposedly authorized the rip-rapping to be done on Ma. Isabel's property, as a result of which, the Magdaong River changed course. She then had both the abandoned and present river courses, as well as a portion of petitioners' adjacent property titled in her name.

Verily, the presumption of regularity in the issuance of TCT No. 144017 is belied by: ***first***, the source of this title was the so called Special Work Order 13-000271 which in ordinary parlance was a mere construction permit; ***second***, the fact that TCT No. 144017 covered 3,556.62 square meters of the abandoned and present course of the Magdaong River which is a property of public dominion under Articles 420[53] and 502[54] of the Civil Code. In ***Republic v. Tan***,[55] the Court decreed that property of public dominion is outside the commerce of man; and ***finally***, TCT No. 144017 overlapped with 1,680.92 square meter portion of petitioners' own property.

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[53] **ARTICLE 420.** The following things are property of public dominion:

(1) Those intended for public use, such as roads, canals, ***rivers***, torrents, ports and bridges constructed by the State, banks, shores, roadsteads, and others of similar character;

(2) Those which belong to the State, without being for public use, and are intended for some public service or for the development of the national wealth. (339a) (Civil Code of the Philippines, Republic Act No. 386, June 18, 1949).

[54] **ARTICLE 502.** The following are of public dominion:

(1) **Rivers and their natural beds**;

x x x (Civil Code of the Philippines, Republic Act No. 386, June 18, 1949).

[55] See *Republic v. Tan*, 780 Phil. 764 (2016).

What exactly is a special work order? It is issued by a surveyor as reference for construction works on surveyed areas. Section 161 of DENR Memorandum Circular No. 013-10 is categorical that a special work order cannot be a subject of title, *viz.*:

Special Surveys

SECTION 161. Surveys for geographic and scientific investigations, experiments and all other surveys not otherwise mentioned in this Manual shall be made in accordance with special instructions which may be issued for the purpose following the tertiary accuracy of an isolated survey. This shall be designated as "Special Work Order" (SWO) which cannot be a subject of titling and must be clearly stated on the plan.[56]

Even assuming, therefore, that the so-called Special Work Order 13-000271 was issued authorizing the rip-rapping activity to be done on Ma. Isabel's property, it absolutely cannot become the basis of titling on any property in the name of Ma. Isabel. On its face, therefore, TCT No. 144017 that was issued and sourced out from Special Work Order 13-000271 is void *ab initio*.

And rightly so. For a mere special work order which in ordinary parlance is simply a construction permit is never among the recognized modes of acquiring property under the Civil Code, *viz.*:

ARTICLE 712. Ownership is acquired by occupation and by intellectual creation.

Ownership and other real rights over property are acquired and transmitted by law, by donation, by testate and intestate succession, and in consequence of certain contracts, by tradition.

They may also be acquired by means of prescription. (609a)

To be sure, the dubious registration of the area in the name of Ma. Isabel per TCT No. 144017 was void from the very beginning. It should not have been issued at all because to repeat, a mere special work order or in ordinary parlance, a mere

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[56] Adoption of the Manual on Land Survey Procedures, DENR Memorandum Circular No. 013-10, June 23, 2010.

construction permit never vests title or ownership in favor of anyone over any real property.

Respondents' theory of accretion was belatedly raised on motion for reconsideration before the trial court and may not be invoked to cover lands of public domain; but whether accretion exists here is a question of fact which is improper under Rule 45

Respondents also claim that the property described in TCT No. 144017 was a product of accretion, hence, it belongs to them.

The argument must fail.

As the Court of Appeals held in its February 24, 2012 Decision:

> As to the issue of accretion, the same is being raised only for the first time in this appeal (should be on motion for reconsideration before the trial court) and was never alleged in appellee's answer. It was not among the issues joined in the proceedings below. It suffices that We find more convincing and in accord with the record the RTC's finding in its Decision dated September 16, 2010 that the riprapping done by appellee encroached on the Magdaong River and thus, the property for which appellee obtained title was not validly registered, a river being part of public domain and beyond the commerce of man. The RTC also correctly found that the SWO cannot be used to take privately owned property and property of the public dominion, being not among the modes of acquiring ownership. Notably, the existence of the SWO was not even proven during trial, with appellee failing to produce an original copy of it. Therefore, appellee did not acquire lawful ownership of the subject property.[57]

As a rule, a party who deliberately adopts a certain theory upon which the case is tried and decided by the lower court will not be permitted to change its theory on appeal. Points of law, theories, issues and arguments not brought to the attention of the lower court need not be, and ordinarily will not be, considered by a reviewing court, as these cannot be raised for

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[57] *Rollo*, pp. 288-289.

the first time at such late stage. Basic considerations of due process underlie this rule. It would be unfair to the adverse party who would have no opportunity to present further evidence material to the new theory, which it could have done had it been aware of it at the time of the hearing before the trial court. To permit petitioner in this case to change its theory on appeal would thus be unfair to respondent, and offend the basic rules of fair play, justice and due process.[58]

At any rate, we cannot depart from the fact that on its face, TCT No. 144017 is void *ab initio*. It was issued on the basis of a mere special work order or construction permit. We cannot certainly look for and accept another source belatedly offered by Ma. Isabel, *i.e.*, accretion. Surely, a void title is inexistent and beyond any form of cure.

Be that as it may, whether accretion took place here is a question of fact beyond the prism of Rule 45. The Court is not a trier of facts.

All told, petitioners are rightfully entitled to the relief prayed for. Title No. 144107 is declared void *ab initio* and respondents are obliged to surrender and deliver to petitioners the ownership and possession of the latter's 1,680.92 square meters based on the Joint Verification Survey VS-00-00368 conducted by City Engineer Bunyi on April 22-25, 1995, subject to the approval of the Regional Technical Director for Lands.[59]

As for the remaining portion of 3,556.62 square meters, the same belongs to the State and may be the subject of its appropriate action against respondents.

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[58] See *Philippine Ports Authority v. City of Iloilo*, 453 Phil. 927, 934-935 (2003).

[59] SECTION 146. The Regional Technical Director for Lands may issue order to conduct a verification survey whenever any approved survey is reported to be erroneous, or when titled lands are reported to overlap or where occupancy is reported to encroach another property. In the conduct of verification survey, the Geodetic Engineer shall, among others:

a. Ascertain the position and descriptions of the existing survey monument or marker, buildings, fences, walls, and other permanent improvements, which are used to provide evidence of original boundaries;

In its Decision dated September 16, 2010, the trial court correctly awarded ₱50,000.00 by way of acceptance fees, ₱1,500.00 appearance fees, and ₱100,000.00 as attorney's fees. Too, respondents lose whatever was built or planted on the 1,680.92 square meter property of petitioners pursuant to Article 449 of the Civil Code, *viz.*:

ARTICLE 449. He who builds, plants or sows in bad faith on the land of another, loses what is built, planted or sown without right to indemnity.[60]

Respondent Ma. Isabel Vasquez was a builder in bad faith because; ***first***, she caused the issuance of TCT No. 144017 in her name based on a mere construction permit or the so called Special Work Order 13-000271, the existence of which has not even been established; ***second***, despite notice of the encroachment on petitioners' property, respondent Ma. Isabel simply ignored the same; and ***third***, she included in her supposed new title portions of the Magdaong River, albeit the same belong to the State and beyond the commerce of man.

Under Article 450 of the Civil Code, the owner of the land on which anything has been built, planted or sown in bad faith may (1) demand the demolition of the work, or that the planting or sowing be removed, in order to replace things in their former condition at the expense of the person who built, planted or

b. Give primary consideration to original survey marks, except where other evidence, including original measurements, position of improvements, or statements by occupants, suggest that the original markers were incorrectly placed or have been disturbed;

c. Ascertain the position of buildings, fences, walls or other permanent improvements adversely affected by the determination of the boundaries;

d. Inform the parties concerned of the effect of the determination of the boundaries and secure a statement from the parties that they have been informed of these findings; and

e. Include the submission of a narrative report under oath.

The conduct of verification survey on the basis of a court order directing the Geodetic Engineer of the LMS office concerned shall be made with the authority issued by the RTD for Lands specifying therein the name/s of the designated LMS officials/employees. (Adoption of the Manual on Land Survey Procedures, DENR Memorandum Circular No. 013-10, June 23, 2010).

[60] Civil Code of the Philippines, Republic Act No. 386, June 18, 1949.

sowed; or (2) compel the builder or planter to pay the price of the land, and the sower the proper rent.[61] The records, however, do not show that petitioners elected to avail any of the enumerated options under Article 450. Thus, petitioners are directed to inform the trial court of the option which they have elected within fifteen (15) days from finality of this decision.

Finally, the Court finds no basis to award actual damages of ₱300,000.00. To be sure, the trial court failed to specify the facts and evidence which would warrant such award. In any event, the Court, too, notes that petitioners did not seek payment for actual damages in their complaint.

ACCORDINGLY, the petition is **GRANTED**. The Resolutions dated July 4, 2012 and December 20, 2012 of the Court of Appeals in CA-G.R. CV No. 96671 are **REVERSED** and **SET ASIDE**. TCT No. 144017 and its derivative titles are declared void. Respondent Ma. Isabel M. Vasquez and her successors in interest Dr. Daniel E. Vasquez and Maria Luisa M. Vasquez are further **ORDERED** to:

1) **RESTORE** to petitioners ownership and possession of the 1,680.92 square meter portion of their property erroneously incorporated in TCT No. 144017 and its derivative titles;

2) **PAY** petitioners ₱50,000.00 by way of acceptance fees, ₱1,500.00 appearance fees, and ₱100,000.00 Attorney's fees; and

3) **INFORM** the trial court of the option they have elected under Article 450 of the Civil Code within fifteen (15) days from finality of this decision.

These monetary awards shall earn six percent (6%) interest *per annum* from finality of this Decision until fully paid.

SO ORDERED.

Peralta, C.J. (Chairperson), Caguioa, Reyes, Jr., and *Lopez, JJ.,* concur.

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[61] *Id.*

FIRST DIVISION

[G.R. No. 209797. September 8, 2020]

FROILAN L. HONG, *Petitioner*, *v.* **ILUMINADO ARAGON, MA. ELENA ARAGON, SUSAN RAMOS, HENRY TAN, MARILOU VILLAMOR, TERESITA TAN, HAROLD MANLAPAZ, FELIPA ROSOS, ROSITA IGNACIO, EDUARDO MATIAS, ROMEO GREGORIO, RONILO DINO, MINDA GONZALES, RICO VILLA, ELENITA ALVIAR, GUIA CABLE, EDGAR VALENTIN, GENEROSA ZALETA, FEDERICO ZALETA, ROSEMARY VALENTIN, DR. EDGARDO CUADRO, GRACE CUADRO, CARMELA MANALO, FE GRIJALDO, RUBEN RESIDE, ANTONIO ALDEA, CAROLINA SHEY, BERNARDITA SALAZAR, SHERWIN CASTELLTORT and ABRAHAM SANTOS,** *Respondents*.

SYLLABUS

1. REMEDIAL LAW; CRIMINAL LAW; INFORMATION; WHEN AN INFORMATION IS FILED IN COURT, THE COURT ACQUIRES JURISDICTION OVER THE CASE AND HAS THE AUTHORITY TO DETERMINE WHETHER THE CASE SHOULD BE DISMISSED.— When an Information is filed in court, the court acquires jurisdiction over the case and has the authority to determine, among others, whether or not the case should be dismissed. The court is not bound by the findings of the prosecution for to do so would tantamount to a renunciation of power of the Judiciary to the Executive[.] x x x Thus, the court has the duty to assess independently the merits of the motion, and this assessment must be embodied in a written order disposing of the same.

2. ID.; ID.; ID.; IN GRANTING OR DENYING A MOTION TO WITHDRAW AN INFORMATION, THE COURT MUST CONDUCT A CAUTIOUS AND INDEPENDENT EVALUATION OF THE EVIDENCE.— In granting or denying a motion to withdraw an information, the court must

conduct *a cautious and independent evaluation of the evidence* of the prosecution and must be convinced that the merits of the case warrant either the dismissal or continuation of the action. x x x Petitioner's contention that the trial courts "completely ignored" the findings of the public prosecutor is utterly baseless. To highlight, the trial courts are bound to make an *independent* evaluation of the evidence presented. To entirely uphold the findings of the public prosecutor is to surrender the trial courts' discretion, duty, and jurisdiction.

3. POLITICAL LAW; CONSTITUTIONAL LAW; RIGHTS OF THE ACCUSED; RIGHT TO SPEEDY TRIAL AND RIGHT TO SPEEDY DISPOSITION OF A CASE, DISTINGUISHED.— Both constitutionally enshrined rights ensure that delay is averted in the administration of justice. The difference, however, depends as to which body can such right be invoked against. As held in the case of *Cagang v. Sandiganbayan*, the right to speedy trial under Section 14(2) of the 1987 Constitution is invoked against the courts in criminal prosecution while the right to speedy disposition of a case under Section 16 of the 1987 Constitution is invoked against the courts, quasi-judicial or administrative bodies in civil, criminal or administrative case. x x x At any rate, both rights are deemed violated "when the proceeding is attended by vexatious, capricious, and oppressive delays; or when unjustified postponements of the trial are asked for and secured; or when without cause or justifiable motive a long period of time is allowed to elapse without the party having his case tried."

4. ID.; ID.; ID.; RIGHT TO SPEEDY TRIAL AND RIGHT TO SPEEDY DISPOSITION OF A CASE; FACTORS TO BE CONSIDERED IN DETERMINING THE EXISTENCE OF INORDINATE DELAY.— In determining whether a person is denied of his right to speedy trial or right to speedy disposition of a case, the Barker Balancing Test and the judicial pronouncements in *Cagang* find application. Under the Barker Balancing Test, the following factors must be considered in determining the existence of inordinate delay: (1) the length of delay; (2) the reasons for the delay; (3) the assertion or failure to assert such right by the accused; and (4) the prejudice caused by the delay. x x x Notably, these factors would find significance if the fact of delay was already established. This

may be proved by reference to laws which provide for the time periods in the disposition of cases. Only when delay is ascertained would the prosecution be charged with the burden of proving that there was no violation of the right to speedy trial or the right to speedy disposition of cases. Otherwise, the burden of proof lies with the defense.

APPEARANCES OF COUNSEL

Poblador Bautista & Reyes for petitioner.
Teresito D. Abella for respondents.

D E C I S I O N

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

Assailed in this Petition for Review on *Certiorari*[1] are the Decision[2] dated June 27, 2013 and Resolution[3] dated October 30, 2013 of the Court of Appeals (CA) in CA-G.R. SP No. 118660 affirming the Order[4] dated March 22, 2010 of the Regional Trial Court of Quezon City, Branch 215 (RTC-Branch 215) and the Order[5] dated December 20, 2010 of the Regional Trial Court of Quezon City, Branch 105 (RTC-Branch 105).

Relevant Antecedents

The Lord's Flock Catholic Charismatic Community (Lord's Flock), a transparochial community under the hierarchy of the Roman Catholic Church, was formed on April 4, 1986 by Spouses Techie and Bobbie Rodriguez (Spouses Rodriguez), Froilan L. Hong (petitioner), and some Catholic priests. At the top of

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

[2] Penned by Associate Justice Melchor Q.C. Sadang, with Associate Justices Celia C. Librea-Leagogo and Franchito N. Diamante, concurring; id. at 51-62.

[3] Id. at 64-65.

[4] Penned by Judge Ma. Luisa C. Quijano-Padilla; id. at 182-184.

[5] Penned by Judge Rosa Samson-Tatad; id. at 228-230.

the hierarchy is the Council of Directors, Council of Advisors, Council of Coordinators, and Council of Workers.[6]

As founders, spouses Rodriguez were members of the Council of Elders and were joined in said council by Fr. Larry Faraon (Fr. Faraon). Petitioner was named to the Council of Directors as Director of Administration.[7]

Sometime in 1998, there was a falling out between Fr. Faraon and spouses Rodriguez. The former's integrity and morality were questioned, while the latter faced anomalies concerning misuse of funds and incompetent leadership.[8]

In an alleged response to the disagreements among leaders of Lord's Flock, its members namely: Iluminado Aragon, Ma. Elena Aragon, Susan Ramos, Henry Tan, Marilou Villamor, Teresita Tan, Harold Manlapaz, Felipa Rosos, Rosita Ignacio, Eduardo Matias, Romeo Gregorio, Ronilo Dino, Minda Gonzales, Rico Villa, Elenita Alviar, Guia Cable, Edgar Valentin, Generosa Zaleta, Federico Zaleta, Rosemary Valentin, Dr. Edgardo Cuadro, Grace Cuadro, Carmela Manalo, Fe Grijaldo, Ruben Reside, Antonio Aldea, Carolina Shey, Bernardita Salazar, Sherwin Castelltort and Abraham Santos (collectively referred to as respondents) allegedly spread rumors against the Council of Elders; an act contrary to the teachings of Shema, a guidebook that lays down the hierarchical structure of the community and embodies its teachings and the way of life of its members.[9]

Thus, spouses Rodriguez and petitioner appealed to the members to stop gossiping and spreading rumors, but their pleas were unheeded.[10]

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[6] Id. at 52.

[7] Id.

[8] Id.

[9] Id.

[10] Id.

In a letter dated January 12, 2002, petitioner and Apollo Jucaban told Fr. Faraon that they no longer consider him as an authority over the Lord's Flock.[11]

Attacks against the Council of Elders continued, prompting the elders and directors to issue a Notice, imposing disciplinary actions against the 34 members. Posted on a bulletin board, such Notice signed by petitioner states:

21 January 2002

THE FOLLOWING HAVE BEEN CONFIRMED TO BE SPREADING LIES, EVIL NONSENSE AND FALSEHOODS AGAINST SIS. TECHIE AND THE LORD'S FLOCK, CAUSING DIVISION IN THE COMMUNITY; HAVE VIOLATED THE COMMUNITY'S WAY OF LIFE AS STATED IN THE SHEMA; NOT IN GOOD STANDING.

THEY ARE EXPELLED FROM THE CONGREGRATION.

x x x spreading evil nonsense . . . he will not receive the brothers. . .

Expelling them from the church (3 John 9:10)

x x x x x x x x x

CURSE FOR DISOBEDIENCE . . . all these curses shall come upon you and overwhelm you . . . SICKNESS and DEFEAT; OPPRESSION; EXILE; FRUITLESS LABORS; INVASION AND SIEGE; PLAGUES. (Deut. 28:15 & ff)

BRO. FROILAN HONG
Director for Administration[12]

Out of the 34 members, 28 of them filed joint complaint-affidavits for libel against petitioner before the Office of the City Prosecutor of Quezon City, in February 2002.[13]

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[11] Id.

[12] Id. at 53.

[13] Id. at 54.

On April 24, 2002, Petitioner filed a motion for the consolidation of all the cases[14] and thereafter, a Counter-Affidavit.[15]

On August 1, 2008, Prosecutor Rodrigo del Rosario issued a Resolution, finding probable cause against petitioner for the crime of libel. Consequently, an Information was filed with the RTC.[16]

Petitioner filed an Urgent Motion for Reconsideration,[17] alleging that malice cannot be imputed against him as his act was specifically undertaken in accordance with the teachings of their community, among others.

In a Supplement to Motion for Reconsideration[18] dated March 27, 2009, petitioner invoked that his right to due process was violated when he was not afforded the right to present evidence and the right to a full proceeding during the preliminary investigation of the case; and right to speedy disposition of a case when six years had lapsed before the Resolution, finding probable cause, was issued by the prosecutor.

In a Resolution[19] dated August 18, 2009, the Office of the City Prosecutor set aside its earlier Resolution and accordingly directed the prosecutor assigned in the case to file a motion to withdraw the Information. It opined that the words used in the subject notice did not, in any manner, intentionally insult nor defame the reputation of the respondents as the posting thereof is a true report and part of the activities of the organization, which petitioner serves as the Director for Administration, thus:

WHEREFORE, premises considered, it is most respectfully recommended that the resolution of this Office dated August 1, 2008

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[14] Id. at 101-103.

[15] Id.

[16] Id.

[17] Id. at 116-138.

[18] Id. at 120-l38.

[19] Id. at 147-148.

be set aside and in lieu thereof a new one is rendered dismissing the Libel charges against herein respondent Froilan L. Hong. The Trial Prosecutor assigned in these cases is hereby directed to file the necessary Motion to Withdraw Information/s filed before the Regional Trial Court of Quezon City Branch 215.

Correspondingly, a Motion to Withdraw Information[20] dated October 22, 2009 was filed by the prosecution.

To this, respondents filed a Comment/Opposition on the Motion to Withdraw Information,[21] respondents insisted that the prosecutor erred in reversing its Resolution dated August 1, 2008 considering that the elements of libel are present in the case.

In his Reply[22] dated February 15, 2010, petitioner asserted that no reason exists to cause the disturbance of the August 18, 2009 Resolution of the prosecutor as it was not established, based on the records of the case, that the elements for the crime of libel exist; and that the inordinate delay of 6 years from the time the complaints were filed until the issuance of the Resolution violated his right to a speedy disposition of a case.

In an Order[23] dated March 22, 2010, the RTC-Branch 215 denied the motion for lack of merit. In upholding the Information, the RTC maintained that the imputation of "x x x spreading lies, evil nonsense and falsehood against Sis. Techie and the Lord's Flock, x x x" ascribed a vice or defect upon respondents, who were identified. Moreover, said imputations were published when the same was posted on the bulletin board, thus:

WHEREFORE, premises considered, the Motion to Withdraw Information filed by the prosecution is hereby Denied for lack of merit.

SO ORDERED.

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[20] Id. at 149.

[21] Id. at 151-167.

[22] Id. at 166-181.

[23] Supra note 4.

A Motion for Reconsideration was filed by petitioner, which was denied in an Order[24] dated December 20, 2010. The case was transferred to RTC-Branch 105, following the inhibition of the trial judge in RTC-Branch 215. The RTC-Branch 105 reiterated that the elements of the crime of libel are present in this case so as to deny the Motion to Withdraw the Information.

Hence, a Petition for *Certiorari*, ascribing grave abuse of discretion on the part of the RTCs in upholding the Information and in violating his constitutional right to speedy trial, was filed by petitioner.

In a Decision[25] dated June 27, 2013, the CA ruled that RTC-Branch 215 and RTC-Branch 105 acted within their power in denying the motion to withdraw as they found probable cause for libel after conducting an independent assessment of the evidence by the prosecution. By doing so, the CA recognized that the RTCs did not prejudge the case as they were explicit in stating that there is still a need to determine whether the subject notice was made privately or officially as to be considered as privileged under Article 354 of the Revised Penal Code, that is, the presentation of evidence that the acts of petitioner constitute a true report and part of his duties as Director for Administration.

On the violation of petitioner's right to speedy trial, the CA maintained that petitioner failed to prove that other than the fact of delay, that the same was done in a capricious, malicious, or oppressive manner.

The *fallo* thereof provides:

WHEREFORE, the petition is **DENIED**. The December 20, 2010 Order of the Regional Trial Court of Quezon City, Branch 105 which denied the Motion for Reconsideration of the March 22, 2010 Order of the Regional Trial Court of Quezon City, Branch 215, in Criminal Case No. Q-08-154446 is hereby **AFFIRMED**.

SO ORDERED.

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[24] Supra note 5.

[25] Supra note 2.

Undaunted, petitioner filed a Motion for Reconsideration which was denied in a Resolution[26] dated October 30, 2013.

Hence, this petition.

Via a Petition for Review on *Certiorari*, petitioner contends that no probable cause exists to hold him for trial; that his case was already prejudged; and that the delay in the proceedings violated his right to speedy trial and prompt disposition of his case.

In their Comment,[27] respondents insist that the denial of the motion to withdraw was not erroneous as the trial court made an independent assessment of the merits of the motion and that the case was not prejudged as the trial court still required the presentation of evidence to determine the guilt of petitioner. Moreover, respondents belie petitioner's allegation that his rights to speedy trial and speedy disposition of a case were violated, arguing that petitioner in fact never attended a scheduled hearing during the preliminary investigation stage despite notice; that he submitted a prohibited pleading as his Counter-Affidavit which was in the nature of a Motion to Dismiss, was not subscribed and sworn to before a prosecutor; and that it was only after he was arrested that he showed interest in his case when he filed an Urgent Motion for Reconsideration.

The Issue

Summarily, this Court is asked to review the propriety of the denial of the motion to withdraw information and the alleged violation of petitioner's right to speedy trial and prompt disposition of a case.

This Court's Ruling

When an Information is filed in court, the court acquires jurisdiction over the case and has the authority to determine, among others, whether or not the case should be dismissed.[28]

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[26] Supra note 3.

[27] Id. at 296-313.

[28] *Personal Collection Direct Selling, Inc. v. Carandang*, G.R. No. 206958, November 8, 2017.

The court is not bound by the findings of the prosecution for to do so would tantamount to a renunciation of power of the Judiciary to the Executive, to wit:

> In resolving a motion to dismiss a case or to withdraw the information filed by the public prosecutor (on his own initiative or pursuant to the directive of the Secretary of Justice), either for insufficiency of evidence in the possession of the prosecutor or for lack of probable cause, the trial court should not merely rely on the findings of the public prosecutor or of the Secretary of Justice that no crime had been committed or that the evidence in the possession of the public prosecutor is insufficient to support a judgment of conviction of the accused. To do so is to surrender a power constitutionally vested in the Judiciary to the Executive.[29]

Thus, the court has the duty to assess independently the merits of the motion, and this assessment must be embodied in a written order disposing of the same.[30] In granting or denying a motion to withdraw an information, the court must conduct *a cautious and independent evaluation of the evidence* of the prosecution and must be convinced that the merits of the case warrant either the dismissal or continuation of the action.[31]

In this case, the Orders explicitly stated the reasons for denying the motion to withdraw Information. The trial court were categorical in stating that the evidence presented by both parties were reviewed and evaluated. After such assessment, they went on to pronounce that there exists probable cause against the petitioner to hold him for trial. The March 22, 2010 and December 20, 2010 Orders provide, respectively, to wit:

The Order dated March 22, 2010:

x x x x x x x x x

The imputation of "*x x x spreading lies, evil nonsense and falsehood against Sis. Techie and the Lord's Flock, x x x*" allegedly ascribes on Private Complainants a vice or defect. The said imputations of

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[29] *Junio v. Cacatian-Beltran*, 724 Phil. 1, 10-11 (2014).

[30] *Jose v. Suarez*, 714 Phil. 310, 319 (2013).

[31] Supra note 3.

vice or defect were published when they were posted on the bulletin board. The identity of the person defamed were clearly established as the names of the Private Complainants were also posted on the bulletin board. Finally, the Private Complainants added that malice in law is presumed in a defamatory imputation and proof thereof is not required.

There is no question that the imputed defect or vice were libelous, the same were published and the person defamed were categorically identified. x x x

The Order dated December 20, 2010:

x x x x x x x x x

After going over the assailed order, and evaluating the information and the documents attached thereto, this Court maintains the denial of the motion to withdraw information. There is no dispute as to the existence of the three elements of libel to wit: 1) the assailed notice imputes that private complainants committed reprehensible acts of spreading lies, evil nonsense and falsehood against Sis. Techie and the Lord's Flock which tends to dishonor or discredit their persons; 2) the persons defamed were categorically identified; 3) there is publication because the defamatory notice was communicated to third persons, other than persons defamed and to whom the statements refer.

On the basis of the foregoing, this Court is convinced that there is probable cause or sufficient ground to hold the accused for trial to establish the element of malice. The truth or falsity of the claim that the notice was made by the accused in the performance of any legal, moral or social duty need to rest upon positive evidence, both documentary and testimonial, upon which a definite finding may be made. x x x In other words, the prosecution has still to prove each and every element of libel, malice, being one, and for the defense to rebut the presumption of malice.

Petitioner's contention that the trial courts "completely ignored" the findings of the public prosecutor is utterly baseless. To highlight, the trial courts are bound to make an *independent* evaluation of the evidence presented. To entirely uphold the findings of the public prosecutor is to surrender the trial courts' discretion, duty, and jurisdiction.

Likewise, petitioner's argument that the case was prejudged; thus violating his constitutional presumption of innocence, is unmeritorious.

In contending so, petitioner quoted pertinent statements of the RTC-Branch 215 and RTC-Branch 105, to wit:

The Order dated March 22, 2010:

> There is no question that the imputed vice or defect were libelous, the same were published and the person defamed was categorically identified. The only issue for determination is whether the same were made privately or officially as to be qualifiedly privileged under Article 354 of the Revised Penal Code. Evidence must be adduce (sic) to prove that the acts of the accused complained of constitutes a true report and part of his duties and responsibilities as Director for Administration of the Lord's Flock Catholic Ministry. x x x

The Order dated December 20, 2010:

> After going over the assailed order, and evaluating the information and the documents attached thereto, this Court maintains the denial of the motion to withdraw information. There is no dispute as to the existence of the three elements of libel. x x x
>
> Thus, sharing the view of Branch 215, the only issue to determine is whether or not the defamatory statements contained in the notice were made privately or officially that falls within the purview of a qualifiedly privileged communication under Article 354 (No. 1) of the Revised Penal Code, or more importantly, whether or not the defamatory statements were published with malice.

A reading of the above-cited Orders show that the trial courts merely identified that there exists probable cause against petitioner. There was no declaration as to his guilt or innocence. The Orders ultimately reiterate the need to present additional evidence for the proper disposition of the case, underlining the necessity of determining *all* the elements of the crime allegedly committed. Interestingly, the Order dated December 20, 2010 demanded the prosecution to prove each element, to wit:

x x x x x x x x x

In other words, the prosecution has still to prove each and every element of libel, malice, being one, and for the defense to rebut the presumption of malice.

x x x x x x x x x

What the trial courts measured was the *probability* that petitioner committed the crime as charged based on his alleged acts complained of. It does not mean absolute certainty so as to foreclose further review and examination of the case when trial ensues, to wit:

> The term does not mean "actual and positive cause" nor does it import absolute certainty. It is merely based on opinion and reasonable belief. Probable cause does not require an inquiry into whether there is sufficient evidence to procure a conviction. It is enough that it is believed that the act or omission complained of constitutes the offense charged.[32]

Verily, a finding of probable cause needs only to rest on evidence showing that more likely than not a crime has been committed, and that it was committed by the accused.[33] To properly determine such 'likelihood,' it is inescapable that the elements of the crime would be briefly examined.

Besides, the discussion of the trial court merely enunciates the legal presumption under Article 354 of the Revised Penal Code on malice, to wit:

> Art. 354. Requirement for publicity. — Every defamatory imputation is presumed to be malicious, even if it be true, if no good intention and justifiable motive for making it is shown, except in the following cases:
>
> 1. A private communication made by any person to another in the performance of any legal, moral or social duty; and
>
> 2. A fair and true report, made in good faith, without any comments or remarks, of any judicial, legislative or other official proceedings which are not of confidential nature, or of any statement, report or

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[32] *Marasigan v. Fuentes*, 776 Phil. 574 (2016).

[33] *Callo-Claridad v. Esteban*, 707 Phil. 172, 185 (2013).

speech delivered in said proceedings, or of any other act performed by public officers in the exercise of their functions.

On this note, the case of *Disini v. Secretary of Justice*[34] explained the import of this provision in stating that the burden of proof rests upon the accused to overcome the presumption of malice:

> [W]here the offended party is a private individual, the prosecution need not prove the presence of malice. The law explicitly presumes its existence (malice in law) from the defamatory character of the assailed statement. For his defense, the accused must show that he has a justifiable reason for the defamatory statement even if it was in fact true.[35]

On the issue of the alleged violation of petitioner's right to speedy trial and prompt disposition of a case, we chiefly discuss the differences and similarities between them.

Both constitutionally enshrined rights ensure that delay is averted in the administration of justice. The difference, however, depends as to which body can such right be invoked against. As held in the case of *Cagang v. Sandiganbayan*,[36] the right to speedy trial under Section 14 (2)[37] of the 1987 Constitution is

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[34] 727 Phil. 28 (2014).

[35] Id. at 113.

[36] *Cagang v. Sandiganbayan*, G.R. Nos. 206438, 206458, and 210141-42, July 31, 2018.

[37] Section 14.

x x x x x x x x x

(2) In all criminal prosecutions, the accused shall be presumed innocent until the contrary is proved, and shall enjoy the right to be heard by himself and counsel, to be informed of the nature and cause of the accusation against him, to have a speedy, impartial, and public trial, to meet the witnesses face to face, and to have compulsory process to secure the attendance of witnesses and the production of evidence in his behalf. However, after arraignment, trial may proceed notwithstanding the absence of the accused provided that he has been duly notified and his failure to appear is unjustifiable.

x x x x x x x x x

invoked against the courts in criminal prosecution while the right to speedy disposition of a case under Section 16[38] of the 1987 Constitution is invoked against the courts, quasi-judicial or administrative bodies in civil, criminal or administrative case.

In this case, petitioner raised the issue on the alleged violation of his right to speedy disposition of a case when he filed a Supplemental to Motion for Reconsideration, claiming that the lapse of six years from the time of the filing of the complaints until the issuance of the Resolution of the prosecutor justifies the dismissal of his case as such delay constitutes a violation of his constitutional right. However, the RTC failed to resolve the same. When the case, however, was elevated to the CA, petitioner invoked the violation of his right to speedy trial, while however citing Section 16, Article III of the 1987 Constitution, against the prosecutor for the delay in the issuance of the Resolution. In resolving the issue, the CA declared that petitioner's right to speedy trial was not violated, but failed to explain the factual bases for its disposition. Other than maintaining that petitioner failed to prove that the proceeding was attended by vexatious, capricious or oppressive delays, the CA did not provide for sufficient factual bases when it determined that there was no violation of his right.

Remarkably, in this present petition, petitioner invokes the alleged violation of his rights to speedy trial and prompt disposition of the case.

At any rate, both rights are deemed violated "when the proceeding is attended by vexatious, capricious, and oppressive delays; or when unjustified postponements of the trial are asked for and secured; or when without cause or justifiable motive a long period of time is allowed to elapse without the party having his case tried."[39]

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[38] SEC. 16. All persons shall have the right to a speedy disposition of their cases before all judicial, quasi-judicial, or administrative bodies.

[39] *Remulla v. Sandiganbayan*, 808 Phil. 739 (2017).

In determining whether a person is denied of his right to speedy trial or right to speedy disposition of a case, the Barker Balancing Test and the judicial pronouncements in *Cagang* find application.

Under the Barker Balancing Test, the following factors must be considered in determining the existence of inordinate delay: (1) the length of delay; (2) the reasons for the delay; (3) the assertion or failure to assert such right by the accused; and (4) the prejudice caused by the delay.[40]

In *Cagang*, the Court warned that the determination of inordinate delay is not by mathematical computation, as several factors contribute in resolving a case:

> What may constitute a reasonable time to resolve a proceeding is not determined by "mere mathematical reckoning." It requires consideration of a number of factors, including the time required to investigate the complaint, to file the information, to conduct an arraignment, the application for bail, pre-trial, trial proper, and the submission of the case for decision. Unforeseen circumstances, such as unavoidable postponements or force majeure, must also be taken into account.
>
> The complexity of the issues presented by the case must be considered in determining whether the period necessary for its resolution is reasonable. In Mendoza-Ong v. Sandiganbayan this Court found that "the long delay in resolving the preliminary investigation could not be justified on the basis of the records." In Binay v. Sandiganbayan, this Court considered "the complexity of the cases (not run-of-the-mill variety) and the conduct of the parties' lawyers" to determine whether the delay is justifiable. When the case is simple and the evidence is straightforward, it is possible that delay may occur even within the given periods. Defense, however, still has the burden to prove that the case could have been resolved even before the lapse of the period before the delay could be considered inordinate."[41] (citations omitted)

Notably, these factors would find significance if the fact of delay was already established. This may be proved by reference

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[40] Id.

[41] *Cagang v. Sandiganbayan*, supra note 36.

to laws which provide for the time periods in the disposition of cases. Only when delay is ascertained would the prosecution be charged with the burden of proving that there was no violation of the right to speedy trial or the right to speedy disposition of cases. Otherwise, the burden of proof lies with the defense.

In this case, the complaint was filed against petitioner in February 2002. The prosecutor's Resolution finding probable cause, however, was issued only on August 1, 2008 or six years thereafter. Upon receipt of such Resolution, petitioner immediately raised the issue of such undue delay, alleging that the same is in violation of his right to speedy disposition of a case when he filed a Supplemental to the Motion for Reconsideration. Verily, there was no waiver on his part as he exerted efforts in protecting his constitutional right.

In absolute terms, the findings of the prosecutor was issued beyond the limited period provided under Section 3 (f) of Rule 112 of the Rules of Court:

> SEC. 3. Procedure. — The preliminary investigation shall be conducted in the following manner: x x x
>
> (f) Within ten (10) days after the investigation, the investigating officer shall determine whether or not there is sufficient ground to hold the respondent for trial.

It is, thus, clear that the burden is shifted to the prosecution. Following *Cagang*, to discharge the same, the prosecution must demonstrate: "first, that it followed the prescribed procedure in the conduct of preliminary investigation and in the prosecution of the case; second, that the complexity of the issues and the volume of evidence made the delay inevitable; and third, that no prejudice was suffered by the accused as a result of the delay."[42]

To successfully apply the foregoing, it must be established, however, that the accused did not acquiesced to the delay amounting to a waiver of his/her right to invoke the constitutional

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[42] Id.

right. Such waiver may also be appreciated when the accused actively caused the delay by employment of dilatory tactics.

Here, despite such delay, the prosecution failed to offer any justification for the same. There was no showing that delay was caused by unforeseen circumstances or that it was caused by the intricacy of the issues of the case. As to the latter, in fact, it is clear that while there were several complaints against the petitioner, such complaints were rooted on the same set of facts and allegations, that is, the alleged malicious posting of Notice addressed to the members of the Lord's Flock. Moreover, when petitioner asserted the violation of his right to speedy disposition in said Supplemental to the Motion for Reconsideration, the prosecutor instead assigned the complaint to another, ordering the latter to file a Motion to Withdraw Information based on the lack of probable cause.

Verily, the passage of six years is violative of petitioner's right to speedy disposition of cases. Indubitably, the delay not only caused prejudice to the petitioner, but defeated such constitutional right's salutary objective of assuring that an innocent person is freed from anxiety and expense of litigation of having his guilt determined in the shortest time possible compatible with his/her legitimate defenses.[43] The dismissal of the criminal complaint against petitioner is thus in order.

WHEREFORE, the instant petition is **GRANTED**. The Decision dated June 27, 2013 and the Resolution dated October 30, 2013 of the Court of Appeals in CA-G.R. SP No. 118660 are **ANNULLED** and **SET ASIDE**.

The criminal complaint against petitioner FROILAN L. HONG is **DISMISSED** for violation of his constitutional right to speedy disposition of a case.

SO ORDERED.

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

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[43] *See Escobar v. People*, G.R. Nos. 228349, 228353 & 229895-96, September 19, 2018, citing *Coscolluela v. Sandiganbayan*, 714 Phil. 55, 65 (2013).

EN BANC

[G.R. No. 211850. September 8, 2020]

ZUNECA PHARMACEUTICAL, AKRAM ARAIN AND/OR VENUS ARAIN, M.D., AND STYLE OF ZUNECA PHARMACEUTICAL, *Petitioners, v.* **NATRAPHARM, INC.,** *Respondent*.

SYLLABUS

1. MERCANTILE LAW; INTELLECTUAL PROPERTY CODE; TRADEMARKS; TRADEMARK INFRINGEMENT; ELEMENTS THEREOF.— Under the law, the owner of the mark shall have the exclusive right to prevent all third parties not having the owner's consent from using identical or similar marks for identical or similar goods or services where such use would result in a likelihood of confusion.

Further, in *Prosource International, Inc. v. Horphag Research Management SA*, the Court held that, to establish trademark infringement, the following elements must be proven: (1)the trademark being infringed is registered in the IPO; (2) the trademark is reproduced, counterfeited, copied, or colorably imitated by the infringer; (3) the infringing mark is used in connection with the sale, offering for sale, or advertising of any goods, business, or services; or the infringing mark is applied to labels, signs, prints, packages, wrappers, receptacles, or advertisements intended to be used upon or in connection with such goods, business, or services; (4) the use or application of the infringing mark is likely to cause confusion or mistake or to deceive purchasers or others as to the goods or services themselves or as to the source or origin of such goods or services or the identity of such business; and (5) it is without the consent of the trademark owner or the assignee thereof.

2. ID.; ID.; ID.; OWNERSHIP OF TRADEMARK; REGISTRATION OF A TRADEMARK; FIRST-TO-FILE RULE; OWNERSHIP OF TRADEMARK IS ACQUIRED

THROUGH REGISTRATION; A REGISTERED MARK OR A MARK WITH AN EARLIER FILING OR PRIORITY DATE GENERALLY BARS THE FUTURE REGISTRATION AND ACQUISITION OF RIGHTS IN AN IDENTICAL OR A CONFUSINGLY SIMILAR MARK, IN RESPECT OF THE SAME OR CLOSELY-RELATED GOODS OR SERVICES.— [U]pon the effectivity of the [Intellectual Property] IP Code on January 1, 1998, the manner of acquiring ownership of trademarks reverted to registration. This is expressed in Section 122 of the IP Code. . .

Related to this, Section 123. 1(d) of the IP Code expresses the first-to-file rule. . .

To clarify, while it is the fact of registration which confers ownership of the mark and enables the owner thereof to exercise the rights expressed in Section 147 of the IP Code, the first-to-file rule nevertheless prioritizes the first filer of the trademark application and operates to prevent any subsequent applicants from registering marks described under Section 123.1(d) of the IP Code.

Reading together Sections 122 and 123. 1(d) of the IP Code, therefore, a registered mark or a mark with an earlier filing or priority date generally bars the future registration of — and the future acquisition of rights in — an identical or a confusingly similar mark, in respect of the same or closely-related goods or services, if the resemblance will likely deceive or cause confusion.

3. ID.; ID.; ID.; ID.; ID.; USE OF A TRADEMARK; THE ACTUAL USE OF A TRADEMARK IS NO LONGER REQUIRED FOR PURPOSES OF ACQUIRING OWNERSHIP THEREOF; CASE AT BAR.— [A]fter the IP Code became effective starting 1998, use was no longer required in order to acquire or perfect ownership of the mark. In this regard, the Court now rectifies the inaccurate statement in *Berris* that "[t]he ownership of a trademark is acquired by its registration and **its actual use.**" The rectified statement should thus read: "Under the IP Code, the ownership of a trademark is acquired by its registration." Any pronouncement in *Berris* inconsistent herewith should be harmonized accordingly. To clarify, while subsequent use of the mark and proof thereof

are required to prevent the removal or cancellation of a registered mark or the refusal of a pending application under the IP Code, this should not be taken to mean that actual use and proof thereof are necessary before one can own the mark or exercise the rights of a trademark owner.

. . .

In light of the foregoing, Zuneca thus erred in using *Berris* and *E. Y. Industrial Sales, Inc.* as bases for its argument that the prior user is the owner of the mark and its rights prevail over the rights of the first-to-file registrant. To emphasize, for marks that are first used and/or registered after the effectivity of the IP Code, ownership is no longer dependent on the fact of prior use in light of the adoption of the first-to-file rule and the rule that ownership is acquired through registration.

4. ID.; ID.; ID.; ID.; ID.; BAD FAITH AND FRAUD, DEFINED AND EXPLAINED; TRADEMARK REGISTRATIONS DONE IN BAD FAITH IS VOID AND MAY BE CANCELLED AT ANY TIME.— The existence of bad faith in trademark registrations may be a ground for its cancellation at any time by filing a petition for cancellation under Section 151 (b) of the IP Code. . . .

The concepts of bad faith and fraud were defined in *Mustang-Bekleidungswerke GmbH + Co. KG v. Hung Chiu Ming*, a case decided by the Office of the Director General of the IPO under the Trademark Law, as amended, *viz.*:

> What constitutes fraud or bad faith in trademark registration? Bad faith means that the applicant or registrant has knowledge of prior creation, use and/or registration by another of an identical or similar trademark. In other words, it is copying and using somebody else's trademark. Fraud, on the other hand, may be committed by making false claims in connection with the trademark application and registration, particularly, on the issues of origin, ownership, and use of the trademark in question, among other things.

The concept of fraud contemplated above is not a mere inaccurate claim as to the origin, ownership, and use of the

trademark. In civil law, the concept of fraud has been defined as the deliberate intention to cause damage or prejudice. The same principle applies in the context of trademark registrations: fraud is intentionally making false claims to take advantage of another's goodwill thereby causing damage or prejudice to another. Indeed, the concepts of bad faith and fraud go hand-in-hand in this context. There is no distinction between the concepts of bad faith and fraud in trademark registrations because the existence of one necessarily presupposes the existence of the other. . . .

More importantly, however, there is also jurisprudential basis to declare these trademark registrations done in bad faith as void. In the case of *Shangri-La International Hotel Management, Ltd. v. Developers Group of Companies, Inc. (Shangri-la Resolution)*, the Court classified the respondent's registration as **void** due to the existence of bad faith and because it failed to comply with the provisions of the Trademark Law, as amended.

5. ID.; ID.; ID.; ID.; ID.; THE FIRST-TO-FILE REGISTRANT IN GOOD FAITH ALLOWS THE REGISTRANT TO ACQUIRE ALL THE RIGHTS IN A MARK.— [T]he law also protects prior registration and prior use of trademarks in good faith. Being the first-to-file registrant in good faith allows the registrant to acquire all the rights in a mark. This can be seen in Section 122 *vis-a-vis* the cancellation provision in Section 155.1 of the IP Code. Reading these two provisions together, it is clear that when there are no grounds for cancellation – especially the registration being obtained in bad faith or contrary to the provisions of the IP Code, which render the registration void – the first-to-file registrant acquires all the rights in a mark.

6. ID.; ID.; ID.; ID.; ID.; TRADEMARK INFRINGEMENT; PRIOR USERS IN GOOD FAITH ARE NOT LIABLE FOR TRADEMARK INFRINGEMENT.— [P]rior users in good faith are also protected in the sense that they will not be made liable for trademark infringement even if they are using a mark that was subsequently registered by another person.

7. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; PETITION FOR REVIEW ON *CERTIORARI*; FINDING OF GOOD FAITH OR BAD FAITH IS A MATTER OF

FACTUAL DETERMINATION.— [T]he finding of good faith or bad faith is a matter of factual determination. Considering that a petition for review on *certiorari* under Rule 45 should only raise questions of law, it is improper to put into issue at this juncture the existence of bad faith in Natrapharm's registration.

8. ID.; EVIDENCE; CREDIBILITY; THE FACTUAL FINDINGS OF THE TRIAL COURT, ITS CALIBRATION OF THE TESTIMONIES OF THE WITNESSES, AND ITS ASSESSMENT OF THEIR PROBATIVE WEIGHT ARE GIVEN HIGH RESPECT.— [I]t is a well-recognized rule that the factual findings of the RTC, its calibration of the testimonies of the witnesses, and its assessment of their probative weight are given high respect, if not conclusive effect, unless cogent facts and circumstances of substance, which if considered, would alter the outcome of the case, were ignored, misconstrued or misinterpreted.

9. MERCANTILE LAW; INTELLECTUAL PROPERTY CODE; LIMITATIONS TO ACTIONS FOR INFRINGEMENT; A PRIOR USER IN GOOD FAITH MAY CONTINUE TO USE ITS MARK EVEN AFTER THE REGISTRATION OF THE MARK BY THE FIRST-TO-FILE REGISTRANT IN GOOD FAITH.— Section 159.1 of the IP Code clearly contemplates **that a prior user in good faith may continue to use its mark even after the registration of the mark by the first-to-file registrant in good faith,** subject to the condition that any transfer or assignment of the mark by the prior user in good faith should be made together with the enterprise or business or with that part of his enterprise or business in which the mark is used. The mark cannot be transferred independently of the enterprise and business using it.

From the provision itself, it can be gleaned that while the law recognizes the right of the prior user in good faith to the continuous use of its mark for its enterprise or business, it also respects the rights of the registered owner of the mark by preventing any future use by the transferee or assignee that is not in conformity with Section 159.1 of the IP Code. Notably, only the manner of use by the prior user in good faith – that is, the use of its mark tied to its current enterprise or business –

is categorically mentioned as an exception to an action for infringement by the trademark owner. The proviso in Section 159.1 of the IP Code ensures that, despite the transfer or assignment of its mark, the future use by the assignee or transferee will not go beyond the specific confines of such exception. Without the proviso, the prior user in good faith would have the free hand to transfer or assign the "protected use" of its mark for any purpose to a third person who may subsequently use the same in a manner unduly curtailing the rights of the trademark owner. Indeed, this unilateral expansion of the exception by a third person could not have been intended, and is guarded against, by the legislature through the foregoing proviso.

10. ID.; ID.; ID.; ENTITIES THAT NECESSARILY RESULTS FROM THE APPLICATION OF SECTION 159.1; THE IMPOSITION OF PENALTIES HAS NO BASIS WHEN SECTION 159.1 APPLIES; CASE AT BAR.— In any event, the application of Section 159.1 of the IP Code necessarily results in at least two entities – the unregistered prior user in good faith or their assignee or transferee, on one hand; and the first-to-file registrant in good faith on the other – concurrently using identical or confusingly similar marks in the market, *even if there is likelihood of confusion*. While this situation may not be ideal, as eruditely explained in the Concurring Opinion of Justice Perlas-Bernabe, the Court is constrained to apply Section 159.1 of the IP Code as written.

. . .

Because Zuneca is not liable for trademark infringement under Section 159.1 of the IP Code, the Court finds that there is no basis for the above imposition of penalties.

The penalties ordered by the lower courts – that is, the payment of damages, injunction, and destruction of goods of Zuneca – are based on Sections 156 and 157 of the IP Code. . . .

A plain reading of the above provisions reveals that these remedies may only be ordered by the court if there was a finding that a party had committed infringement. Here, because of the application of Section 159.1 of the IP Code, Zuneca is not liable for trademark infringement. Consequently, it follows that the

award of damages, issuance of an injunction, and the disposition and/or destruction of allegedly infringing goods could not be ordered by the court.

Indeed, directing the foregoing remedies despite a finding of the existence of a prior user in good faith would render useless Section 159.1 of the IP Code, which allows the continued use and, in certain situations, the transfer or assignment of its mark by the prior user in good faith after the registration by the first-to-file registrant. To reiterate, Section 159.1 of the IP Code contemplates a situation where the prior user in good faith and the first-to-file registrant in good faith concurrently use identical or confusingly similar marks in the market, even if there is likelihood of confusion.

PERLAS-BERNABE, *J., concurring opinion*:

1. MERCANTILE LAW; REPUBLIC ACT NO. 8293 (INTELLECTUAL PROPERTY CODE); TRADEMARKS; "PRIOR USER IN GOOD FAITH RULE"; THIS RULE APPEARS TO STRAY FROM THE OVERARCHING IMPETUS OF STABILITY AND UNIFORMITY WHICH HAD, IN FACT, PROMPTED THE SHIFT OF OUR TRADEMARK ACQUISITION REGIME FROM BEING BASED ON USE TO BEING BASED ON REGISTRATION; USE DISTINGUISHED FROM REGISTRATION.— I write, however, to express my sentiments regarding the apparent dissonance between the "prior user in good faith rule" and the current trademark registration regime under the IP Code. To my mind, this rule, while indeed provided for under the IP Code, appears to stray from the overarching impetus of stability and uniformity which had in fact, prompted the shift of our trademark acquisition regime from being based on use to being based on registration.

. . .

As I see it, registration, as compared to use, denotes a standardized procedure to determine, on both domestic and international levels, at what point in time has a person acquired ownership of a trademark to the exclusion of others. Because "registration" is a formal, definite, and concrete act that is

processed through official State institutions, whereas "use" is arbitrary individual action that remains subject to evidentiary proof, the protection of trademark rights is therefore more stable and uniform with the former.

2. ID.; ID.; ID.; ID.; RATIONALE FOR THE ABANDONMENT OF THE OLD RULE THAT USE IS A PRE-REQUISITE FOR THE REGISTRATION OF A TRADEMARK; OWNERSHIP ACQUISITION OF TRADEMARK MUST BE RECKONED FROM REGISTRATION.— As may be gleaned from the legislative deliberations, the main reason behind abandoning the old rule that use is a pre-requisite for the registration of a trademark was for the Philippines to comply with its international obligations under the foregoing agreements which introduced a system of trademark registration. Likewise, legislators envisioned that the registration system would actually free the Intellectual Property Office (IPO) from having to adjudicate the circumstances surrounding the creation of the trademark in order to determine its true owner. Accordingly, it may therefore be discerned that the shift to a trademark acquisition regime based on registration is premised on practical considerations of stability and uniformity. Indeed, while it may be true that intellectual property is a creation of the mind and hence, conceptually acquired through use, our present laws recognize that, ***by legal fiction***, ownership acquisition must be reckoned from the more definite and concrete act of registration; otherwise, trademark ownership may always be subject to adverse claims of other parties who insist that they were the first ones who have thought of and used a certain intellectual property and hence, entrench uncertainty, if not chaos, to the regulatory and even commercial aspects of trademark protection.

3. ID.; ID.; ID.; SHIFT FROM THE OLD "USE-BASED" SYSTEM TO A "REGISTRATION-BASED" SYSTEM OF ACQUIRING RIGHTS OVER TRADEMARK DID NOT ENTIRELY TAKE AWAY THE IMPORTANCE OF USE IN THE REALM OF TRADEMARK OWNERSHIP.— [I]t must be clarified that the shift from the old "use-based" system under RA 166, as amended, to a "registration-based" system of acquiring rights over trademark under RA 8293 did not entirely take away the importance of use in the realm of trademark ownership. For instance, under Section 124.2 of RA 8293, the

applicant or registrant of a trademark is required, within three (3) years from the filing date of its application, to file before the IPO a **declaration of actual use** (DAU) of the mark with evidence to that effect. Similarly, Section 145 of the same Code requires the filing of the same declaration within one (1) year from the fifth anniversary of the date of registration of such trademark. Alternatively, the applicant/registrant may file a declaration of non-use (DNU) if there are justifiable circumstances for doing so. Failure to file a DAU/DNU within the prescribed period will result in the automatic refusal of the application or cancellation of registration of the mark, as the applicant/registrant is considered to have abandoned and/or withdrawn any right/s that he/she has over the trademark. In all of these regulatory facets, however, use is relevant to maintain ownership of the trademark, as opposed to its acquisition, which, as mentioned, is reckoned upon good faith registration.

4. ID.; ID.; ID.; A REGISTRATION NOT IN GOOD FAITH IS NO REGISTRATION AT ALL AND, HENCE, NO OWNERSHIP RIGHTS ARE TRANSMITTED.— As applied to trademark registration, one should be considered a registrant in good faith if there is no showing that he knew of any prior creation, use, or registration of another of an identical or similar mark at the time of registration. Otherwise, if he had such knowledge, then he is not considered as a registrant in good faith, which thus negates his ownership over the trademark registered in his name. To reiterate, when a registration is not in good faith, it is not considered as a valid registration and hence, no ownership rights are acquired in the first place. In this regard, the registrant in bad faith is divested of ownership **not because of the oppositor's prior use of the mark**, but rather, because the legal requisite of a registration in good faith was not complied with. Simply put, a registration not in good faith is equivalent to no registration at all and hence, no ownership rights were transmitted.

5. ID.; ID.; ID.; THE CONCEPT OF GOOD FAITH UNDERLYING SECTION 159.1 SHOULD ONLY GO AS FAR AS NEGATING THE CRIMINAL INTENT OF THE PRIOR USER IN GOOD FAITH.— *However, as I have earlier intimated, the "prior user in good faith rule" under Section 159.1 appears to stray from these practical considerations of*

stability and uniformity. As it is currently formulated, Section 159.1 states that "**[n]otwithstanding the provisions of Section 155 hereof**, a registered mark shall have **no effect** against any person who, in good faith, before the filing date or the priority date, was using the mark for the purposes of his business or enterprise." To be sure, Section 155 of the IP Code enumerates all the rights of a registered owner of a trademark. . . .

"No effect" means that the prior user in good faith is not only completely insulated from a criminal prosecution for trademark infringement, it also means that he can continue to use the mark simultaneous with the registered owner's own use. The only condition given to a prior user in good faith is that "his right may only be transferred or assigned together with his enterprise or business or with that part of his enterprise or business in which the mark is used." ***To my mind, the concept of good faith underlying Section 159.1 of the IP Code should only go as far as negating the criminal intent of the prior user in good faith and hence, be considered as a defense in a criminal case for infringement. But because of the sweeping language of the law, i.e., no effect, Section 159.1 appears to create an anomalous situation where a person who never registers his mark is still allowed to propagate, on a commercial level, his rights to the trademark even as against a person who has fully complied with the legally prescribed process of duly registering his rights pursuant to the IP Code.***

6. ID.; ID.; ID.; WHILE SECTION 159.1 OF THE IP CODE CREATES PRECARIOUS SITUATIONS AND FUNCTIONS AS AN EXPRESS EXCEPTION TO TRADEMARK INFRINGEMENT, TO DISREGARD THE SAME WOULD BE TANTAMOUNT TO JUDICIAL LEGISLATION.— Indeed, it would have been enlightening to uncover the intent behind incorporating Section 159.1 but unfortunately, the deliberations are silent on this score. Nevertheless, it is a given fact that Section 159.1 exists and functions as an express exception to trademark infringement. To disregard the same or to attempt to add a further requirement to the law, without any ample textual support, would be clearly tantamount to judicial legislation.

GESMUNDO, *J., separate concurring opinion*:

1. MERCANTILE LAW; REPUBLIC ACT NO. 8293 (INTELLECTUAL PROPERTY CODE); TRADEMARKS; STATUTORY CONSTRUCTION; SECTION 159.1 OF THE IPC STATES WHAT IT INTENDS, THAT A REGISTERED MARK SHALL HAVE NO EFFECT AGAINST ANY PERSON WHO WAS USING THE MARK IN GOOD FAITH BEFORE THE FILING DATE; WHERE THE LAW IS CLEAR AND UNAMBIGUOUS, IT MUST BE TAKEN TO MEAN EXACTLY WHAT IT SAYS, THE COURTS HAVE NO CHOICE BUT TO SEE TO IT THAT THE MANDATE IS OBEYED.— [I]t must be emphasized that the misfortune of this decision is not borne of the Court's subjective interpretation of the law, but brought about by its very letter. Section 159.1 of the Intellectual Property Code *(IPC)* is clear that a registered mark shall have no effect against any person who was using the mark in good faith for his business or enterprise before the filing date. This provision, in turn, appears to have been derived from Article 16(1) of the Agreement on Trade-Related Aspects of Intellectual Property Rights (*TRIPS*), which provides that the rights of a registered trademark owner "shall not prejudice any existing prior rights, nor shall they affect the possibility of Members making rights available on the basis of use." The IPC was enacted in keeping with the country's commitment to international conventions, among which is the TRIPS to which it adhered to in 1995 following its entry into the World Trade Organization. There is thus no gainsaying that the statute states what it intends. The rule is that where the law is clear and unambiguous, it must be taken to mean exactly what it says, and courts have no choice but to see to it that the mandate is obeyed.

2. POLITICAL LAW; CONSTITUTIONAL LAW; 1987 CONSTITUTION; DECLARATION OF PRINCIPLES AND STATE POLICIES; STATE'S MANDATE TO PROTECT AND PROMOTE THE RIGHT TO HEALTH OF THE PEOPLE; ALLOWING CONFUSINGLY SIMILAR MEDICATION NAMES TO BE SOLD IN THE MARKET POSES A SIGNIFICANT THREAT TO CONSUMER'S HEALTH AS WELL AS A DIRECT CHALLENGE TO THE

STATE'S ABILITY TO FULFILL ITS MANDATE.— Alas, the brand names that the law requires the Court to uphold may have benign effects if they pertain to different goods, but not so when they are both prescription drugs. The names "Zynapse" and "Zynaps" are almost absolutely identical; the letter "e" in the former being a negligible element for differentiation. The concurrent availability of these drugs in the market poses a significant threat to consumer health. In fact, respondent Natrapharm pointed out that if a stroke patient who is supposed to take Zynapse *(citicoline)* mistakenly ingests Zynaps *(carbamazepine)* which is an anti-convulsant medication used to control all types of seizure disorders like epilepsy, not only will he not be cured of stroke, he will also be exposed to the risk of suffering Stevens-Johnson syndrome. The latter, a side effect of *carbamazepine*, is a condition where a person suffers serious systemic body-wide allergic reaction with a characteristic rash that attacks and disfigures the mucous membrane.

Medication errors are the most expected outcome in the coexistence of Zynapse and Zynaps in the market. The World Health Organization *(WHO)* adopted the United States Food and Drug Administration *(US FDA)* definition of "medication error" to mean "any preventable event that may cause or lead to inappropriate medication use or patient harm while the medication is in the control of the health-care professional, patient or consumer." In its report entitled, "*The Philippines Health System Review*," the WHO states that among the factors that contribute to medication errors in the Philippines is incorrect interpretation of the prescription or medication chart. Prescribing and dispensing errors, on the other hand, often occurred because of the unreadable handwriting of the doctor. . . .

. . .

It is acknowledged, based on the studies mentioned above, that medication errors are not solely attributable to confusingly similar medication names. However, it is an area that the government can effectively regulate, *vis*-a-*vis* human factors such as poor communication among health providers and physicians' illegible handwriting. Allowing confusingly similar medication names to be sold in the market poses a direct challenge to the State's ability to fulfill its constitutional mandate to protect

and promote the right to health of the people. Hence, government action is imperative. What is lacking in the law should be made up for by further legislation and regulation.

3. ID.; ADMINISTRATIVE AGENCIES; DEPARTMENT OF HEALTH; ADMINISTRATIVE ORDER NO. 2005-0016; R.A. 3720; THE STATE'S POLICY TO PROTECT THE HEALTH OF THE PEOPLE ENCOMPASSES THE MINIMIZATION, IF NOT ELIMINATION, OF MEDICATION ERRORS BORNE BY CONFUSINGLY SIMILAR BRAND NAMES.— It is disconcerting that through A.O. No. 2005-0016, the DOH limited the interpretation of its mandate and responsibility to ***only*** ensuring the "safety, efficacy and good quality of *products* applied for registration," without bearing in mind consumer safety that may be achieved when people are able to access the correct medicine without the element of confusion caused by similar brand names. Note should be taken of the fact that R.A. No. 3720, under which auspices A.O. No. 2005-0016 was created, also declared it the policy of the State "to protect the health of the people." To be sure, this encompasses not only consumers' safety resulting from safe, effective, and good quality pharmaceutical products in the market, but also consumers' safety arising from the minimization, if not elimination, of medication errors borne by confusingly similar drug names. This view gains more significance in light of past experiences where mistakes in the dispensation of medicine brought about by similar names put patients at risk.

4. ID.; ID.; FOOD AND DRUG ADMINISTRATION; REPUBLIC ACT NO. 9711 (THE FOOD AND DRUG ADMINISTRATION ACT OF 2009); POLICIES OF THE STATE.— More than 40 years from the enactment of R.A. No. 3720, R.A. No. 9711 took effect. Otherwise known as "The Food and Drug Administration Act of 2009," the law aimed to strengthen and rationalize the regulatory capacity of the Bureau of Food and Drug, which was renamed as the Food and Drug Administration. . . . Unfortunately, the FDA did not find it necessary to revisit A.O. No. 2005-0016, which is still the regulation currently in place with respect to pharmaceutical brand names subject of registration with the FDA. BFAD Regulation No. 2 would have done a better job in minimizing confusingly similar brand names in the market.

5. ID.; ID.; ID.; A MECHANISM WITHIN THE FDA THAT POLICES DRUG NAMES IS ESSENTIAL.— [T]he underlying consideration should be the very existence of the effort to regulate, since the danger of medical errors brought about by confusingly similar drug names in the market is very real and cannot be ignored. A mechanism within our own FDA that polices drug names sought to be registered by local manufacturers and importers of pharmaceutical products is essential and serves not only to implement the State policy to protect consumers against hazards to health and safety, but also the constitutional mandate for the State to promote the right to health of the people and establish and maintain an effective food and drug regulatory system.

LEONEN, *J., dissenting opinion*:

1. MERCANTILE LAW; REPUBLIC ACT NO. 8293 (INTELLECTUAL PROPERTY CODE [IPC]); TRADEMARKS; TRADEMARK INFRINGEMENT; TRADEMARK INFRINGEMENT MAY BE COMMITTED BY A MANUFACTURER THAT REGISTERS A SIMILAR MARK WHICH WILL TEND TO CAUSE CONFUSION WITH ANOTHER MARK ALREADY IN CIRCULATION.— In essence, a manufacturer may potentially be liable for infringement when it seeks to register a similar mark, which will tend to cause confusion with another mark already in circulation after prior approval by the Food and Drug Administration. For the label of a drug to be properly registered in good faith, it is not the subjective knowledge of the registrant or corporation that should be examined, but what they should have known as a market participant. An analysis of the parties' rights confined only to who registers first with the Intellectual Property Office would seem callous and agnostic to existing provisions both in the Constitution and in our statute.

2. ID.; ID.; ID.; REGISTRATION IN GOOD FAITH SHOULD REFER NOT ONLY TO THE PROVISIONS OF THE IPC, BUT ALSO TO THE RELEVANT REGULATORY LAWS.— [A] registration "made validly in accordance with the provisions of [Republic Act No. 8293]" connotes registration in good faith. With respect to trademarks used on pharmaceutical

goods, such as medicines, registration in good faith should refer not only to the provisions of the Intellectual Property Code, but also to the laws regulating the sale and distribution of pharmaceuticals. Thus, the actual sale and distribution of medicines, and therefore, the right to use the trademark on one's products, should be read as conditioned upon the registrant's compliance with the necessary safety regulations.

3. POLITICAL LAW; 1987 CONSTITUTION; STATE'S DUTY TO REGULATE THE USE OF PROPERTY; STATE'S EXERCISE OF POLICE POWER IN IMPOSING NECESSARY REGULATIONS UPON THE EXERCISE OF PRIVATE PROPERTY RIGHTS.— Article XII, Section 6 of the 1987 Constitution provides for the State's duty to regulate the use of property, in view of its inherent social function and the need for such use to contribute to the common good. . . .

This provision has often been cited as basis for the State's exercise of police power in imposing necessary regulations upon the exercise of private property rights. The same language appears in Republic Act No. 8293, or the Intellectual Property Code, as the reasoning behind regulatory measures imposed by the State on the use of intellectual property. . . .

. . .

This is consistent with the Food and Drug Administration's duty to "(a) protect and promote the right to health of the Filipino people; and (b) help establish and maintain an effective health products regulatory system and undertake appropriate health manpower development and research, responsive to the country's health needs and problems." . . .

Thus, the regulations imposed under the Intellectual Property Code and the Food and Drug Administration Act are underscored by the same Constitutional mandate to ensure that the use of property and the exercise of private rights is done in pursuit of the common good.

4. CIVIL LAW; PROPERTY; EXTENT OF PROTECTION AND BENEFITS ACCORDED TO PROPERTY OWNERS.— [A] consistent determinant of what may be recognized as "property" pertains to the bundle of valuable rights that may be accorded protection by law. While the changing times have transformed

the kinds of assets entitled to legal protection, the extent of protection available to the newly emerging forms of property have remained consistent in according the following benefits to prospective private owners:

> "*Priority*, which ranks competing claims to the same assets; *durability*, which extends priority claims in time; *universality*, which extends them in space; and *convertibility*, which operates as an insurance device that allows holders to convert their ... claims into state money on demand and thereby protect their nominal value[.]"

5. MERCANTILE LAW; REPUBLIC ACT NO. 8293 (INTELLECTUAL PROPERTY CODE); TRADEMARKS; MARK, DEFINED.— In our jurisdiction, Republic Act No. 8293 defines a "mark" as "any visible sign capable of distinguishing the goods (trademark) or services (service mark) of an enterprise[.]" . . .

Thus, a mark serves the primary purpose of distinguishing one's goods and services from another's.

6. ID.; ID.; ID.; IT IS THE ACTUAL USE OF A MARK THAT MAKES IT VALUABLE, AND THE LAW SHOULD SECURE SUCH VALUE TO THE PERSON OR ENTITY WHO CREATED IT, AND THUS, HAS THE RIGHT TO IT.— [T]he law protects the *owner's right to the mark's value*, which is *generated by its actual use in commerce*. Verily, *W Land Holding, Inc. v. Starwood Hotels and Resorts Worldwide, Inc.* recognized that "[t]he *actual use of the mark* representing the goods or services introduced and transacted in commerce over a period of time *creates that goodwill which the law seeks to protect.*" This is consistent with the essence of marks as intellectual property, being "creations of the human mind" that "identify the origin of a product."

. . .

At the very least, prior use should remain a factor in determining who has a better right to the trademark in question for this particular case. As discussed, actual use creates the valuable interest sought to be protected by trademark laws. An

unused trademark generates no value for its holder despite its registration with the Intellectual Property Office. Thus, it fails to produce the valuable interest in the property that ought to be protected. Trademarks become valuable through actual use in commerce when they become identifiers of a product's quality and, thus, create market traction for the advertised product. While registration does not create value in a trademark, it operationalizes the acquisition of rights by providing a formal process for proving actual use, and thus, one's acquisition of the full set of rights over the registered mark. It is the actual use of a mark that makes it valuable, and the law should secure such value to the person or entity who created it, and thus, has the right to it.

7. ID.; ID.; ID.; STATUTORY CONSTRUCTION; RECORDS OF LEGISLATIVE DELIBERATIONS, LIMITATIONS THEREOF; CONTEMPORANEOUS APPROACH TO DOUBTS IN INTERPRETATION OF A LAW'S TEXT ALLOWS FOR MORE OBJECTIVITY.—[T]he majority's interpretation of Republic Act No. 8293's provisions should be reassessed. Particularly, the inherent limitations of deriving legislative intent from the deliberations of the framers has been aptly discussed by this Court in *Civil Liberties Union v. Executive Secretary*:

> While it is permissible in this jurisdiction to *consult the debates and proceedings of the constitutional convention* in order to arrive at the reason and purpose of the resulting Constitution, resort thereto may be had *only when other guides fail as said proceedings are powerless to vary the terms of the Constitution when the meaning is clear*. . . .

The records of legislative deliberations are inherently limited to the opinions of those present, and neither consider the opinions of those who did not or were not able to speak, nor account for changing circumstances. The risk of adopting a very limited interpretation of the law is even greater when relying on the privilege speech of a single senator. However, a contemporaneous approach to doubts in interpretation of a law's text allows for more objectivity. . . .

Thus, recourse to the text of all relevant provisions, and to cases where such provisions were interpreted, should be sufficient

to find consistency between the prior-registration and prior-use regimes.

8. ID.; ID.; ID.; THERE IS NEITHER EXPRESS REPEAL OF THE OLD TRADEMARK LAW'S PROVISIONS REGARDING THE ACQUISITION OF RIGHTS OVER TRADEMARKS NOR INCONSISTENCY THAT SHOULD LEAD TO THE ABANDONMENT OF PRIOR USE.— While Republic Act No. 8293 may have superseded certain portions of the old Trademark Law, there was no express repeal of the latter's provisions regarding the acquisition of rights over trademarks. *Samson v. Daway* discussed the nature of Republic Act No. 8293's repealing clause, as follows:

> Notably, the aforequoted clause *did not expressly repeal R.A. No. 166 in its entirety*, otherwise, it would not have used the phrases "parts of Acts" and "inconsistent herewith;" and it would have simply stated "Republic Act No. 165, as amended; Republic Act No. 166, as amended; and Articles 188 and 189 of the Revised Penal Code; Presidential Decree No. 49, including Presidential Decree No. 285, as amended are hereby repealed." It would have removed all doubts that said specific laws had been rendered without force and effect. *The use of the phrases "parts of Acts" and "inconsistent herewith" only means that the repeal pertains only to provisions which are repugnant or not susceptible of harmonization with R.A. No. 8293[.]*

In view of this implied repeal, there must be a "substantial and irreconcilable conflict" between registration and prior use, for the former to completely exclude the latter as a mode of acquiring rights over trademarks. Since the law's provisions on registration and actual use work together to vest the full set of rights available in a trademark, there is no inconsistency that should lead to the abandonment of prior use.

9. ID.; ID.; ID.; REGISTRATION IN GOOD FAITH; ACQUISITION OF RIGHTS OVER A MARK THROUGH A REGISTRATION CONNOTES REGISTRATION IN GOOD FAITH.— In view of my reservations concerning the source of rights over trademarks, infringement may be committed

by one's use of an unregistered mark, if such use was done with knowledge of another's prior use of the same or confusingly similar mark. The acquisition of rights over a mark through a registration "made validly in accordance with the provisions of [Republic Act No. 8293]" thus connotes registration in good faith.

10. ID.; ID.; ID.; TRADEMARK INFRINGEMENT; ONE'S APPROPRIATION OF A MARK WHICH HAS ALREADY BEEN IN USE BY ANOTHER SHOULD EXPOSE THE USER IN BAD FAITH TO LIABILITY FOR INFRINGEMENT.— Consistent with the foregoing discussions on how the provisions of the current and past trademark laws may be harmonized to accommodate the acquisition of a mark by prior use, one's appropriation of a mark which has already been in use by another, should expose the user in bad faith to liability for infringement. With respect to medicines, compliance with the necessary safety regulations required of prospective sellers and distributors must be considered in assessing whether a registrant acted in good faith in registering a prospective mark with the Intellectual Property Office.

LAZARO-JAVIER*, J., dissenting opinion*:

1. MERCANTILE LAW; TRADEMARKS; REGISTRATION; ACTUAL USE; ONLY REGISTRATION WITH ACTUAL USE MADE IN GOOD FAITH GIVES THE REGISTRANT FULL RIGHTS OF OWNERSHIP.—Registration *and* **actual use** ***together*** **perfect ownership** of a trademark. **Registration** *and* **prior actual use** ***individually*** creates **imperfect ownership** of a trademark. Thus, only registration with actual use made in good faith gives the registrant the **full** rights of ownership attributable to such registration.

I agree with Justice Leonen that our trademark laws are aimed to "protect the owner's right to the mark's value, ***which is generated*** by its actual use in commerce." Too, the factual backdrop of this case and its effects are not limited to the fictions of civil and commercial law, but the reality of public health and safety.

The ***ponencia*** cites Section 122 of RA 8293 and interprets that this provision commands registration as an exclusive mode of acquiring trademark ownership. . . .

Section 122, however, is **silent** on and does not repudiate property in trademark recognized by common law. Thus, "[t]he right of property in a trade mark is recognized by the common law, and does not in any manner depend for its inceptive existence or support upon statutory law, although its exercise may be limited or controlled by statute." . . .

I concur with Justice Leonen that in the **absence of an express repeal or a clear and categorical incompatibility** between RA 8293 and our jurisprudence echoing common law and the provisions of RA 166, there is **no reason** to interpret Section 122 as an *exclusive mode* or a *complete scheme* of acquiring trademark ownership and to jettison **prior actual use** as a means to obtain trademark ownership.

I also posit that while Section 122 mentions that registration acquires trademark ownership, besides **not** stating that registration is the *only* mode, it **does not** declare that **conclusive and full** ownership is vested in the registrant. Further, since registration is indeed a convenient means of establishing means of trademark *imperfect* ownership, ultimately its function is a mechanism "to allocate the burden in the trial of an action for infringement."

2. ID.; ID.; ID.; ID.; A REGISTERED MARK MAY BE CANCELLED ON ACCOUNT OF NON-USE AMOUNTING TO ABANDONMENT.— Evidently, the affidavit of actual use or declaration of continued use presupposes that the owner of the registered mark continues the *bona fide* use of its mark on the goods or services in the course of trade. Failing to satisfy the scrutiny of the respective trademark officers, a registered mark may be cancelled on account of non-use amounting to abandonment. Clearly, the Intellectual Property Law does not reject the fact that prior registration, as indicated under Section 122, actually relies on a claimant's **actual use** of the mark in commerce.

3. ID.; ID.; MEDICINE TRADEMARKS MUST BE VIEWED AS A MATTER OF PUBLIC HEALTH AND SAFETY.— The sale and distribution of medicine are not merely commercial

in nature even if pharmaceutical giants make handsome profits from these endeavors. Rather, our lens should be widened to equally view medicine trademarks also as a matter of public health and safety.

In its closing statements, the *ponencia* admits that *the issue on likelihood of confusion on medicines may pose* ***a significant threat to public health,*** and adds that *there is* ***a need to improve*** *our intellectual property laws and the government's* ***manner of regulation of drug names*** *to* ***prevent*** *the concurrent use in the market of* ***confusingly similar names for medicines***. But why wait when we can already reconcile the existing legal precepts to address this? The 1987 Constitution itself guides us. . . .

As Justice Leonen aptly points out in his Dissenting Opinion, this is the very foundation of regulations behind both the IP Code and the Food and Drug Administration Act. Verily, even with the safeguards of intellectual rights protection and policy in place, and no matter the effectiveness of their enforcement, the truth is that it is human to err. It is not a question of *if* but *when* a person will mistake ZYNAPSE for ZYNAPS and suffer its consequences, if only to strictly interpret a legal provision. This myopic reading of IP laws is inconsistent with the demand of the Constitution for a holistic approach on national economic policies in consideration of their social function and the common good.

APPEARANCES OF COUNSEL

Hechanova Bugay Vilchez & Andaya-Racadio for petitioners.
Federis & Associates Law Offices for respondent.

D E C I S I O N

CAGUIOA, *J.*:

Businesses generally thrive or perish depending on their reputation among customers. Logically, consumers gravitate towards products and services they believe are of a certain quality and provide perceived benefits. Thus, entrepreneurs and

businesses actively seek to set apart their reputation and goodwill from every other enterprise with the goal of being the top-of-mind choice for the consumers. As signs differentiating the wares or services offered by enterprises, trademarks serve this purpose of making the products and services of each business uniquely memorable. Trademarks have several functions: they indicate the origin or ownership of the articles or services in which they are used; they guarantee that the articles or services come up to a certain standard of quality; and they advertise the articles and services they symbolize.[1] Indeed, the goodwill of a business, as symbolized and distinguished by its trademarks, helps ensure that the enterprise stands out, stays afloat, and possibly flourish amidst the sea of commercial activity where the consumers' continued patronage is a lifebuoy that may determine life or death.

Faced with this intrinsic need to survive, enterprises are becoming increasingly aware of the need to protect their goodwill and their brands. The State, too, is interested in the protection of the intellectual property of enterprises and individuals who have exerted effort and money to create beneficial products and services.[2] In line with this, and considering the extent to which intellectual property rights impact on the viability of businesses, a common controversy in the field of intellectual property law is to whom these rights pertain.

In this case of first impression, this is precisely the issue at hand. This case concerns trademarks which are used for different types of medicines but are admitted by both parties to be confusingly similar. Exacerbating this controversy on the issue of ownership, however, are conflicting interpretations on the rules on the acquisition of ownership over trademarks, muddled by jurisprudential precedents which applied principles inconsistent with the current law. Thus, in resolving this issue, the Court needed to examine and ascertain the meaning and intent behind the rules that affect trademark ownership.

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[1] *Mirpuri v. Court of Appeals*, 376 Phil. 628, 645-646 (1999).

[2] CONSTITUTION, Art. XIV, Sec. 13.

Facts

This is a Petition for Review on *Certiorari*[3] (Petition) under Rule 45 with Prayer for Temporary Restraining Order (TRO) and/or Preliminary Injunction filed by petitioners Zuneca Pharmaceutical, Akram Arain and/or Venus Arain, M.D., and Style of Zuneca Pharmaceutical (collectively, Zuneca) assailing the Decision[4] dated October 3, 2013 and Resolution[5] dated March 19, 2014 of the Court of Appeals (CA) in CA-G.R. CV No. 99787. The CA denied Zuneca's appeal and affirmed the Decision[6] dated December 2, 2011 of the Regional Trial Court of Quezon City, Branch 93 (RTC) in Civil Case No. Q-07-61561, which found Zuneca liable for trademark infringement under Sections 155 to 155.2[7] of Republic Act No. (R.A.) 8293,[8]

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[3] *Rollo*, Vol. I, pp. 10-85.

[4] Id. at 87-112A. Penned by Associate Justice Marlene Gonzales-Sison, with Associate Justices Hakim S. Abdulwahid and Edwin D. Sorongon, concurring.

[5] Id. at 114-115.

[6] Id. at 146-156. Penned by Acting Presiding Judge Bernelito R. Fernandez.

[7] SECTION 155. *Remedies; Infringement*. — Any person who shall, without the consent of the owner of the registered mark:

155.1. Use in commerce any reproduction, counterfeit, copy, or colorable imitation of a registered mark or the same container or a dominant feature thereof in connection with the sale, offering for sale, distribution, advertising of any goods or services including other preparatory steps necessary to carry out the sale of any goods or services on or in connection with which such use is likely to cause confusion, or to cause mistake, or to deceive; or

155.2. Reproduce, counterfeit, copy or colorably imitate a registered mark or a dominant feature thereof and apply such reproduction, counterfeit, copy or colorable imitation to labels, signs, prints, packages, wrappers, receptacles or advertisements intended to be used in commerce upon or in connection with the sale, offering for sale, distribution, or advertising of goods or services on or in connection with which such use is likely to cause confusion, or to cause mistake, or to deceive, shall be liable in a civil action for infringement by the registrant for the remedies hereinafter set forth: *Provided*, That the infringement takes place at the moment any of the acts stated in Subsection 155.1 or this subsection are committed regardless of whether there is actual sale of goods or services using the infringing material.

[8] AN ACT PRESCRIBING THE INTELLECTUAL PROPERTY CODE AND

also known as the Intellectual Property Code of the Philippines (IP Code), and awarded damages in favor of respondent Natrapharm, Inc. (Natrapharm).

Petitioner Zuneca Pharmaceutical has been engaged in the importation, marketing, and sale of various kinds of medicines and drugs in the Philippines since 1999.[9] It imports generic drugs from Pakistan and markets them in the Philippines using different brand names.[10] Among the products it has been selling is a drug called *carbamazepine* under the brand name "ZYNAPS," which is an anti-convulsant used to control all types of seizure disorders of varied causes like epilepsy.[11] Petitioner Venus S. Arain, M.D. (Dr. Arain) was the proprietor of Zuneca Pharmaceutical before Zuneca, Inc. was incorporated.[12] Akram Arain, meanwhile, is the husband of Dr. Arain, who later on became the President of Zuneca, Inc.[13]

Natrapharm, on the other hand, is a domestic corporation engaged in the business of manufacturing, marketing, and distribution of pharmaceutical products for human relief.[14] One of the products being manufactured and sold by Natrapharm is *citicoline* under the trademark "ZYNAPSE," which is indicated for the treatment of cerebrovascular disease or stroke.[15] The trademark "ZYNAPSE" was registered with the Intellectual Property Office of the Philippines (IPO) on September 24, 2007[16]

ESTABLISHING THE INTELLECTUAL PROPERTY OFFICE, PROVIDING FOR ITS POWERS AND FUNCTIONS, AND FOR OTHER PURPOSES (1997).

[9] *Rollo*, Vol. I, p. 89.

[10] Id.

[11] Id.

[12] Id.

[13] Id.

[14] Id.

[15] Id.

[16] Id.

and is covered by Certificate of Trademark Registration No. 4-2007-005596.[17]

On November 29, 2007, Natrapharm filed with the RTC a Complaint against Zuneca for Injunction, Trademark Infringement, Damages and Destruction with Prayer for TRO and/or Preliminary Injunction, alleging that Zuneca's "ZYNAPS" is confusingly similar to its registered trademark "ZYNAPSE" and the resulting likelihood of confusion is dangerous because the marks cover medical drugs intended for different types of illnesses.[18] Consequently, Natrapharm sought to enjoin Zuneca from using "ZYNAPS" or other variations thereof, in addition to its demand for Zuneca's payment of Two Million Pesos (₱2,000,000.00) in damages; Five Million Pesos (₱5,000,000.00) in exemplary damages; and Three Hundred Thousand Pesos (₱300,000.00) as attorney's fees, expenses of litigation, and costs of suit.[19] Further, it prayed that all infringing goods, labels, signs, etc. of Zuneca be impounded and destroyed without compensation.[20]

In its Answer (With Compulsory Counterclaim and Prayer for Preliminary Injunction), Zuneca claimed that it has been selling *carbamazepine* under the mark "ZYNAPS" since 2004 after securing a Certificate of Product Registration on April 15, 2003 from the Bureau of Food and Drugs (BFAD, now Food and Drug Administration).[21] It alleged that it was impossible for Natrapharm not to have known the existence of "ZYNAPS" before the latter's registration of "ZYNAPSE" because Natrapharm had promoted its products, such as "Zobrixol" and "Zcure," in the same publications where Zuneca had advertised "ZYNAPS."[22] Further, Zuneca pointed out that both Natrapharm

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[17] Id. at 746.

[18] Id. at 90.

[19] Id.

[20] Id.

[21] Id.

[22] Id.

and Zuneca had advertised their respective products in identical conventions.[23] Despite its knowledge of prior use by Zuneca of "ZYNAPS," Natrapharm had allegedly fraudulently appropriated the "ZYNAPSE" mark by registering the same with the IPO.[24] As the prior user, Zuneca argued that it is the owner of "ZYNAPS" and the continued use by Natrapharm of "ZYNAPSE" causes it grave and irreparable damage.[25]

On the basis of such arguments, Zuneca insisted that it is Natrapharm which should be liable for damages.[26] On this score, Zuneca prayed that its counterclaims against Natrapharm be granted by the RTC,[27] namely, the cancellation of Natrapharm's "ZYNAPSE" registration; the prohibition of Natrapharm from manufacturing, advertising, selling, and distributing "ZYNAPSE" products; the destruction of "ZYNAPSE" products and labels; the payment of Two Million Pesos (₱2,000,000.00), or double such amount, in the discretion of the court, as damages for fraudulent registration; and the payment of Five Million Pesos (₱5,000,000.00) as moral damages, Two Million Pesos (₱2,000,000.00) as exemplary damages, Three Hundred Thousand Pesos (₱300,000.00) as attorney's fees, and Fifty Thousand Pesos (₱50,000.00) as costs of suit.[28]

Subsequently, after a summary hearing, the prayer for TRO was denied.[29] The preliminary injunction and counter preliminary injunction prayed for by the parties were likewise rejected.[30]

As summarized by the CA, the following evidence were presented during the trial:

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[23] Id.

[24] Id. at 90-91.

[25] Id. at 91.

[26] Id.

[27] Id.

[28] Id.

[29] Id.

[30] Id.

First to testify on the part of Natrapharm was Cristina Luna Ravelo who is the vice president for marketing of Natrapharm. According to her, she was the one who conceptualized the name "ZYNAPSE"[,] taking it from "Synapse" which was a publication she sponsored when she was the product manager of [the Philippine] Neurological Association. Further[,] "Synapse" is a neurological term referring to the junction between 2 nerves where nerve signals are transmitted, hence appropriate for a medicine for stroke. Afterward[s], the witness verified using the research tool IMS-PPI, which lists the pharmaceutical products marketed in the Philippines, any other cerebroprotective products (CO4A) that [are] confusingly similar with "ZYNAPSE." Finding none in the list covering the period of the fourth quarter of 2004 up to the first quarter of 2007, the witness proceeded with the registration of "ZYNAPSE" with the IPO. After the IPO issued a [certificate of trademark registration], the BFAD, in turn, released a Certificate of Product Listing for "ZYNAPSE." The witness likewise revealed that she was informed in late September 2007 of the existence of "ZYNAPS" after a sales personnel had informed her of such drug being sold in Visayas and Mindanao. After learning this, the witness brought the matter to Dr. Arain, but no resolution was agreed upon by the parties due to a difference in opinion.

On cross-examination, the witness averred that she did not check with drugstores and other publications for similar brand names as "ZYNAPSE," as she only relied with [the] IMS[-PPI]. Further, the witness explained that the formulation of the drug "ZYNAPSE" is owned by Patriot Pharmaceutical [(Patriot)] and this formulation is marketed by Natrapharm through the brand name "ZYNAPSE."

On re-direct, the witness clarified that she did not conduct any field survey to find if there [we]re similar brand names as "ZYNAPSE," because of the difficulty posed by inquiring from each [of the 3,000 to 4,000 drug stores] nationwide. In addition, it was x x x Natrapharm's strategy to remain quiet about [its] product.

Next to testify was Jeffrey Silang, the Analyst Programmer of Natrapharm. His function [was] to create a system and generate reports for accounting, inventory and sales for Natrapharm. The witness stated that Patriot is a mere supplier of Natrapharm and that Natrapharm has other suppliers. The witness then identified a sales report which indicate[d] that WMMC Hospital bought several quantities of "ZYNAPSE" products from Natrapharm. Also included in said report [was] an entry "non-psyche Patriot" which represent[ed] its supplier.

On cross-examination, the witness reiterated that Patriot supplies the raw materials to Natrapharm. Natrapharm, in turn, repackage[s] these materials to bear the brand "ZYNAPSE." The witness also admitted that he d[id] not know exactly why "ZYNAPSE" is qualified as non-psyche, as he is a mere Information Technology expert.

Last to testify was Atty. Caesar J. Poblador who identified his Judicial Affidavit dated [November 4, 2009] which contain[ed] the several invoices charged by his law firm to Natrapharm in consideration of the law firm's legal service.

On the part of [Zuneca], Dr. Arain took the stand and identified her Supplemental Affidavit dated [February 12, 2010]. On said Affidavit, it [was] stated that Dr. Arain established Zuneca [Pharmaceutical] in 1999. Subsequently, [Zuneca, Inc.] was incorporated on [January 8, 2008] and [it] took over the business of Zuneca Pharmaceutical. Verily, among the products that Zuneca sells is [*carbamazepine*] with the brand name "ZYNAPS" for which Zuneca applied for a Certificate of Product Registration (CPR) from BFAD. On [April 15, 2003], Zuneca was able to obtain a CPR over its [*carbamazepine*] product valid for five (5) years which was [then] renewed for another five (5) years or until [April 15, 2013]. Zuneca then started importing [*carbamazepine*] "ZYNAPS" in December 2003 and began promoting, marketing and selling them in 2004. In order to promote "ZYNAPS," Zuneca advertised it through paid publications such as the (1) Philippine Pharmaceutical Directory or PPD; (2) PPD's Better Pharmacy; and (3) PPD's Philippine Pharmaceutical Directory Review (PPDr). Apparently, said publications also cover[ed] the different products of Natrapharm and its affiliate [Patriot]. Allegedly, the two companies (Natrapharm and Patriot) participated as partners in a medical symposi[um] on [October 22 to 23, 2009].

When asked why she did not register her trademark with the IPO, x x x [Dr.] Arain answered that she could not find the time because of the illness of her father.

On cross-examination, Dr. Arain testified that she remained as an adviser of Zuneca, Inc., after its incorporation. She then told her husband, who became the President of Zuneca, Inc. and the vice president about the dispute with Natrapharm. Further, the witness admitted that she did not secure an advertising page for "ZYNAPS" in the [PPD].

Last to testify was Emmanuel Latin, the president of Medicomm Pacific (Medicomm). The witness attested that Medicomm is engaged in the publication of lists of drugs which it gives to doctors as reference in the preparation of prescriptions for their patients. The witness then enumerated their publications as PPD, PPDr, and PPD's Better Pharmacy which the company publishes annually and distributes to doctors for free. According to the witness, several years ago, Medicomm invited pharmaceutical companies to list with its publications for free. Thereafter, the said pharmaceutical companies started advertising with Medicomm for a fee which then became the source of revenues for Medicomm. The witness also affirmed that Zuneca, Natrapharm and Patriot are advertisers of PPD. However, the witness admitted that "ZYNAPSE" [was] not listed in the PPD.[31]

The RTC Ruling

After trial, the RTC issued its Decision[32] dated December 2, 2011, the dispositive portion of which states:

WHEREFORE, in view of the foregoing, judgment is hereby rendered in favor of [Natrapharm] and against [Zuneca].

[Zuneca], jointly and severally, [is] hereby directed to pay [Natrapharm] the following amounts, to wit:

> One Million Pesos (P1,000,000.00) as damages; One Million Pesos (P1,000,000.00) as exemplary damages; Two Hundred Thousand Pesos (P200,000.00) as attorney's fees; and the Costs.

[Zuneca is] further enjoined from henceforth using ["ZYNAPS"] or any other variations thereto which are confusingly similar to [Natrapharm's "ZYNAPSE."]

It is likewise ordered that all infringing goods, labels, signs, prints, packages, wrappers, receptacles and advertisements in possession of [Zuneca], bearing the registered mark or any reproduction, counterfeit, copy or colourable imitation thereof, all plates, molds, matrices and other means of making the same, implements, machines and other items related to the conduct, and predominantly used, by [Zuneca] in

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[31] Id. at 91-94.

[32] Id. at 146-156.

such infringing activities, be disposed of outside the channels of commerce or destroyed, without compensation.

The counterclaim of [Zuneca] is DISMISSED for lack of merit.

SO ORDERED.[33]

The RTC ruled that the first filer in good faith defeats a first user in good faith who did not file any application for registration.[34] Hence, Natrapharm, as the first registrant, had trademark rights over "ZYNAPSE" and it may prevent others, including Zuneca, from registering an identical or confusingly similar mark.[35] Moreover, the RTC ruled that there was insufficient evidence that Natrapharm had registered the mark "ZYNAPSE" in bad faith.[36] The fact that "ZYNAPS" and Natrapharm's other brands were listed in the Philippine Pharmaceutical Directory (PPD) was not sufficient to show bad faith since Zuneca's own witness admitted to not having complete knowledge of the drugs listed in the PPD.[37] Natrapharm should also therefore be accorded the benefit of the doubt that it did not have complete knowledge of the other brand names listed in the PPD.[38] Further, following the use of the dominancy test, the RTC likewise observed that "ZYNAPS" was confusingly similar to "ZYNAPSE."[39] To protect the public from the disastrous effects of erroneous prescription and mistaken dispensation, the confusion between the two drugs must be eliminated.[40]

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[33] Id. at 156.

[34] Id. at 153.

[35] Id.

[36] Id. at 154.

[37] Id.

[38] Id.

[39] Id. at 155.

[40] See id.

The CA Ruling

Aggrieved, Zuneca appealed the RTC's Decision to the CA, raising the following issues: (1) whether the RTC erred in ruling that the first-to-file trademark registrant in good faith defeats the right of the prior user in good faith, hence, Natrapharm has the right to prevent Zuneca from using or registering the trademark "ZYNAPS" or marks similar or identical thereto; (2) whether the RTC erred in finding that Natrapharm was in good faith when it registered the trademark "ZYNAPSE" for *citicoline*; (3) whether the RTC erred in ruling that Zuneca is liable for trademark infringement and therefore liable for damages and attorney's fees and should be enjoined from the use of the trademark "ZYNAPS" and marks similar thereto, and that Zuneca's goods and materials in connection with the trademark "ZYNAPS" must be disposed outside the channels of trade or destroyed without compensation; and (4) whether the RTC erred in dismissing Zuneca's counterclaims for lack of merit.[41]

In a Decision[42] dated October 3, 2013, the CA denied Zuneca's appeal for lack of merit, the dispositive portion of which states:

> **WHEREFORE**, premises considered, the instant Appeal is **DENIED** for lack of merit, and the assailed decision rendered by the Regional Trial Court of Quezon City, Branch 93 dated [December 2, 2011] is **AFFIRMED**.
>
> **SO ORDERED.**[43]

In affirming the RTC, the CA stated that registration, not prior use, is the mode of acquiring ownership of a trademark.[44] The mark must be registered in order to acquire ownership and

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[41] Id. at 95-96.

[42] Id. at 87-112A.

[43] Id. at 112.

[44] Id. at 97.

the failure to do so renders the non-registering user susceptible to a charge of infringement.[45] Moreover, those who intend to register their mark need not look at the other marks used by other persons but must confine only their search to the marks found in the database of the IPO.[46] If there are no similar or identical marks, the mark should be registered as a matter of course.[47] Hence, as the registered owner of the trademark "ZYNAPSE," Natrapharm has every right to prevent all other parties from using identical or similar marks in their business, as provided in the IP Code.[48] Further, only the registered owner of the trademark may file a civil action against the infringer and seek injunction and damages.[49]

On the issue of good faith, the CA affirmed the findings of the RTC that Natrapharm had no knowledge of the existence of "ZYNAPS" prior to the registration of "ZYNAPSE."[50] The CA also found that the testimony of Natrapharm's witness Cristina Luna Ravelo[51] (Ravelo) showed that Natrapharm was able to register "ZYNAPSE" after it was cleared using the databases of the IPO and the BFAD.[52] The CA ruled that good faith is presumed and it was incumbent on Zuneca to show that Natrapharm was in bad faith when it registered "ZYNAPSE," which Zuneca failed to show.[53] The CA stated that it was not enough that Zuneca and Natrapharm had exhibited in the same convention two years prior to the registration of "ZYNAPSE"

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[45] Id.

[46] Id. at 98.

[47] Id.

[48] Id. at 99.

[49] Id.

[50] Id. at 103.

[51] Also stated as Ma. Cristina Arevalo in the CA Decision; see id. at 104.

[52] *Rollo*, Vol. I, p. 112.

[53] Id.

and ruled that it was unlikely that the participants would remember each and every medicine or drug exhibited during said convention.[54] Besides, Zuneca failed to show that the people who had attended the convention on behalf of Natrapharm were also the ones who were responsible for the creation of "ZYNAPSE" or that they were still connected to Natrapharm at the time the "ZYNAPSE" mark was registered with the IPO in 2007.[55]

In a Resolution[56] dated March 19, 2014, the CA denied Zuneca's motion for reconsideration.

Hence, Zuneca filed the instant Petition.

In compliance with the Court's Resolution[57] dated June 2, 2014, Natrapharm filed its Comment.[58] Zuneca thereafter filed its Reply[59] to Natrapharm's Comment. In a Resolution[60] dated June 6, 2016, the Court required each party to file their respective Memoranda. In compliance with this, Natrapharm filed its Memorandum[61] dated September 6, 2016 and Zuneca filed its Memorandum[62] dated September 16, 2016.

The Issues

As stated by Zuneca, the issues for the Court's resolution are as follows:

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[54] Id.

[55] Id.

[56] Id. at 114-115.

[57] Id. at 359-360.

[58] Id. at 373-426.

[59] Id. at 487-513.

[60] *Rollo*, Vol. II, pp. 656-657.

[61] Id. at 745-817.

[62] Id. at 669-744.

I

WHETHER OR NOT THE [CA] ERRED IN AFFIRMING THE RTC'S RULING THAT THE FIRST-TO-FILE TRADEMARK REGISTRANT IN GOOD FAITH DEFEATS THE RIGHT OF THE PRIOR USER IN GOOD FAITH, HENCE, [NATRAPHARM] HAS THE RIGHT TO PREVENT [ZUNECA] FROM USING/ REGISTERING THE TRADEMARK "ZYNAPS" OR [MARKS] SIMILAR [OR] IDENTICAL THERETO.

II

WHETHER OR NOT THE [CA] ERRED IN AFFIRMING THE RTC'S FINDING THAT [NATRAPHARM] WAS IN GOOD FAITH WHEN IT REGISTERED THE TRADEMARK "ZYNAPSE" FOR [*CITICOLINE*].

III

WHETHER OR NOT THE [CA] ERRED IN AFFIRMING THE RTC'S RULING THAT [ZUNECA IS] LIABLE FOR TRADEMARK INFRINGEMENT AND [IS] THUS LIABLE FOR DAMAGES AND ATTORNEY'S FEES AND [IS] ENJOINED FROM THE USE OF THE TRADEMARK "ZYNAPS" AND MARKS SIMILAR THERETO; AND THAT ALL [OF ZUNECA'S] GOODS AND MATERIALS IN CONNECTION WITH THE TRADEMARK "ZYNAPS" MUST BE DISPOSED OUTSIDE THE CHANNELS OF TRADE OR DESTROYED WITHOUT COMPENSATION.

IV

WHETHER OR NOT THE [CA] ERRED IN AFFIRMING THE RTC'S DISMISSAL OF [ZUNECA'S] COUNTERCLAIMS FOR LACK OF MERIT.

V

WHETHER OR NOT THE [CA] ERRED IN RULING THAT [ZUNECA], FOR FAILURE TO REGISTER "ZYNAPS" AND FOR FAILURE TO OPPOSE [NATRAPHARM'S] APPLICATION FOR "ZYNAPSE"[, IS] BARRED BY LACHES AND [IS] DEEMED TO HAVE ABANDONED [ITS] TRADEMARK.[63]

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[63] Id. at 682.

It bears stressing at this juncture that the confusing similarity of the "ZYNAPS" and "ZYNAPSE" marks was admitted by both parties.[64] The resolution of this controversy necessitates determining who has the right to prevent the other party from using its confusingly similar mark. Thus, the following questions must be answered: (1) How is ownership over a trademark acquired? (2) Assuming that both parties owned their respective marks, do the rights of the first-to-file registrant Natrapharm defeat the rights of the prior user Zuneca, *i.e.*, may Natrapharm prevent Zuneca from using its mark? (3) If so, should Zuneca be held liable for trademark infringement?

The Court's Ruling

Under the law, the owner of the mark shall have the exclusive right to prevent all third parties not having the owner's consent from using identical or similar marks for identical or similar goods or services where such use would result in a likelihood of confusion.[65]

Further, in *Prosource International, Inc. v. Horphag Research Management SA*,[66] the Court held that, to establish trademark infringement, the following elements must be proven: (1) the trademark being infringed is registered in the IPO; (2) the trademark is reproduced, counterfeited, copied, or colorably imitated by the infringer; (3) the infringing mark is used in connection with the sale, offering for sale, or advertising of any goods, business, or services; or the infringing mark is applied to labels, signs, prints, packages, wrappers, receptacles, or advertisements intended to be used upon or in connection with such goods, business, or services; (4) the use or application of the infringing mark is likely to cause confusion or mistake or to deceive purchasers or others as to the goods or services

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[64] Id. at 670 and 765.

[65] See IP Code, Sec. 147.1.

[66] 620 Phil. 539 (2009).

themselves or as to the source or origin of such goods or services or the identity of such business; and (5) it is without the consent of the trademark owner or the assignee thereof.[67]

Thus, to determine the prevailing party in this controversy and the existence of trademark infringement, the Court first has to rule on the issue of acquisition of ownership of marks by both parties.

I. *How trademark ownership is acquired*

The RTC and the CA both ruled that, having been the first to register in good faith, Natrapharm is the owner of the trademark "ZYNAPSE" and it has the right to prevent others, including Zuneca, from registering and/or using a confusingly similar mark.

Zuneca, however, contends that, as the first user, it had already owned the "ZYNAPS" mark prior to Natrapharm's registration and, invoking *Berris Agricultural Co., Inc. v. Abyadang*[68] *(Berris)* and *E.Y. Industrial Sales, Inc., et al. v. Shen Dar Electricity and Machinery Co., Ltd.*[69] *(E.Y. Industrial Sales, Inc.)*, its rights prevail over the rights of Natrapharm, the first registrant of a confusingly similar mark.

The Court holds that Zuneca's argument has no merit because: (i) the language of the IP Code provisions clearly conveys the

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[67] Id. at 549.

[68] 647 Phil. 517 (2010). Penned by Associate Justice Antonio Eduardo B. Nachura, with the following Second Division members concurring: Associate Justices Presbitero J. Velasco, Jr. (additional member in lieu of Associate Justice Antonio T. Carpio), Teresita Leonardo-de Castro (additional member in lieu of Associate Justice Roberto A. Abad), Arturo D. Brion (additional member in lieu of Associate Justice Diosdado M. Peralta), and Jose C. Mendoza.

[69] 648 Phil. 572 (2010). Penned by Associate Justice Presbitero J. Velasco, Jr., with the following First Division members concurring: Chief Justice Renato C. Corona and Associate Justices Teresita Leonardo-de Castro, Mariano C. Del Castillo, and Jose P. Perez.

rule that ownership of a mark is acquired through registration; (ii) the intention of the lawmakers was to abandon the rule that ownership of a mark is acquired through use; and (iii) the rule on ownership used in *Berris* and *E.Y. Industrial Sales, Inc.* is inconsistent with the IP Code regime of acquiring ownership through registration.

i. Under the IP Code, ownership of a mark is acquired through registration

Special laws have historically determined and provided for the acquisition of ownership over marks, and a survey thereof shows that ownership of marks is acquired either through registration or use.

Spanish Royal Decree of October 26, 1888

As early as the Spanish regime, trademarks were already protected in the Philippines. The *Real Decreto de 26 de octubre de 1888*[70] or the Spanish Royal Decree of October 26, 1888 provided for the concession and use of Philippine trademarks as follows:

> *Art. 4. Todo fabricante, comerciante, agricultor ó industrial de otra clase, que individual ó colectivamente desee usar alguna marca para distinguir los productos de una fábrica, los objetos de comercio, las primeras materias agrícolas ú otras cualesquiera, ó la ganadería, y lo mismo los que deseen conservar la propiedad de dibujos y modelos industriales, tendrán que solicitar el certificado de propiedad con arreglo á las prescripciones de este decreto.*
>
> *El que carezca de dicho certifcado, no podrá usar marcas ó distintivo alguno para los productos de su industria, ni evitar que otros empleen sus estampaciones ó dibujos industriales.*
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> x x x x x x x x x

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[70] *Real decreto de 26 de octubre de 1888* found in *Legislación histórica sobre Propiedad Industrial: España (1759-1929)*, J. Patricio Sáiz González, p. 130, accessed on July 27, 2019. Available at <https://books.google.com.ph/books?id=mJy7cGfNrPUC&printsec=frontcover#v=onepage&q&f=false>.

Art. 21. El derecho á la propiedad de las marcas, dibujos, y modelos industriales que esta disposición reconoce, se adquirirá por el certificado y el cumplimiento de las demás disposiciones que la misma determina.

Based on the above provisions, one who wished to own and use a trademark had to request for a certificate of ownership in accordance with the royal decree. The use of unregistered trademarks was prohibited. In other words, because trademarks could not be used without first securing the necessary certificate, the ownership of trademarks under the Spanish Royal Decree of October 26, 1888 was acquired only by means of registration.

Act No. 666

The manner of acquiring ownership over trademarks changed during the American period. In 1903, Act No. 666[71] was enacted, which provided that the ownership of a mark was acquired through actual use thereof. The pertinent provisions of said law are reproduced below:

SECTION 2. Anyone who produces or deals in merchandise of any kind **by actual use thereof** in trade **may appropriate to his exclusive use a trade-mark**, not so appropriated by another, to designate the origin or ownership thereof: *Provided*, That a designation or part of a designation which relates only to the name, quality, or description of the merchandise or geographical place of its production or origin cannot be the subject of a trade-mark.

SECTION 3. **The ownership or possession of a trade-mark, heretofore or hereafter appropriated, as in the foregoing section provided**, shall be recognized and protected in the same manner

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[71] AN ACT DEFINING PROPERTY IN TRADE-MARKS AND IN TRADE-NAMES AND PROVIDING FOR THE PROTECTION OF THE SAME, DEFINING UNFAIR COMPETITION AND PROVIDING REMEDIES AGAINST THE SAME, PROVIDING REGISTRATION FOR TRADE-MARKS AND TRADE-NAMES, AND DEFINING THE EFFECT TO BE GIVEN TO REGISTRATION UNDER THE SPANISH ROYAL DECREE OF EIGHTEEN HUNDRED AND EIGHTY-EIGHT RELATING TO THE REGISTRATION OF TRADE-MARKS, AND THE EFFECT TO BE GIVEN TO REGISTRATION UNDER THIS ACT (1903).

and to the same extent, as are other property rights known to the law. To this end any person entitled to the exclusive use of a trade-mark to designate the origin or ownership of goods he has made or deals in may recover damages in a civil action from any person who has sold goods of a similar kind, bearing such trade-mark, and the measure of the damages suffered, at the option of the complaining party, shall be either the reasonable profit which the complaining party would have made had the defendant not sold the goods with the trade-mark aforesaid, or the profit which the defendant actually made out of the sale of the goods with the trade-mark, and in cases where actual intent to mislead the public or to defraud the owner of the trade-mark shall be shown, in the discretion of the court, the damages may be doubled. The complaining party, upon proper showing, may have a preliminary injunction, restraining the defendant temporarily from use of the trade-mark pending the hearing, to be granted or dissolved in the manner provided in the Code of Civil Procedure, and such injunction upon final hearing, if the complainant's property in the trade-mark and the defendant's violation thereof shall be fully established, in these Islands, nor shall it be necessary to show that the trade-mark shall be made perpetual, and this injunction shall be part of the judgment for damages to be rendered in the same cause as above provided.

SECTION 4. In order to justify recovery for violation of trade-mark rights in the preceding sections defined, it shall **not be necessary to show that the trade-marks have been registered under the royal decree of eighteen hundred and eight-eight**, providing for registration of trade-marks in the Philippine Islands, in force during the Spanish sovereignty in these Islands, **nor shall it be necessary to show that the trade mark has been registered under this Act**. It shall be sufficient to invoke protection of his property in a trade-mark if the party complaining shall prove that he has **used the trade-mark claimed by him upon his goods a sufficient length of time so that the use of the trade-mark by another would be an injury to him and calculated to deceive the public into the belief that the goods of that other were the goods manufactured or dealt in by the complaining party**. (Emphasis and underscoring supplied)

R.A. 166

On June 20, 1947, R.A. 166[72] (Trademark Law) was enacted and approved. It is worth noting that the Trademark Law, as clarified through its subsequent amendment, explicitly stated that actual use was a prerequisite for the ownership of marks.

Section 4 of the Trademark Law stated that the owner of the mark had the right to register the same. Despite not categorically defining who the owner of the mark was, the same section also provided that one could not register a mark that was previously used and not abandoned by another. Consequently, prior use and non-abandonment determined the ownership of the mark because it effectively barred someone else from registering the mark and representing himself[73] to be the owner thereof. In other words, the only person who was entitled to register the mark, and therefore be considered as the owner thereof, was the person who first used and who did not abandon the mark, *viz.*:

SECTION 4. *Registration of Trade-marks, Trade-names and Service-marks.* — **The owner of a trade-mark**, trade-name or service-mark used to distinguish his goods, business or services from the goods, business or services of others **shall have the right to register the same, unless it**:

x x x x x x x x x

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[72] AN ACT TO PROVIDE FOR THE REGISTRATION AND PROTECTION OF TRADE-MARKS, TRADE-NAMES AND SERVICE MARKS, DEFINING UNFAIR COMPETITION AND FALSE MARKING AND PROVIDING REMEDIES AGAINST THE SAME, AND FOR OTHER PURPOSES (1947).

[73] The Trademark Law, Sec. 20 reads:

SECTION 20. *Certificate of Registration Prima Facie Evidence of Validity.* — **A certificate of registration of a mark or trade-name shall be *prima facie* evidence of** the validity of the registration, **the registrant's ownership of the mark** or trade-name, and of the registrant's exclusive right to use the same in connection with the goods, business or services specified in the certificate, subject to any conditions and limitations stated therein. (Emphasis and underscoring supplied)

(d) **Consists of or comprises a** mark or trade-name which so resembles a mark or trade-name registered in the Philippines or a **mark or trade-name previously used in the Philippines by another and not abandoned**, as to be likely, when applied to or used in connection with the goods, business or services of the applicant, to cause confusion or mistake or to deceive purchases[.] (Emphasis and underscoring supplied)

Civil Code

When the Civil Code took effect in 1950, it included the rule that the owner of the trademark was the person, corporation, or firm registering the same, but said rule was made subject to the provisions of special laws. Hence, the manner of acquiring ownership was still through actual use because the special law in effect at that time was the Trademark Law, *viz.*:

CHAPTER 3

TRADEMARKS AND TRADENAMES

ART. 520. A trademark or tradename duly registered in the proper government bureau or office is owned by and pertains to the person, corporation, or firm registering the same, **subject to the provisions of special laws**. (Emphasis supplied)

Amendment to the Trademark Law

In 1951, the Trademark Law was amended by R.A. 638,[74] which added Section 2-A, among others. As previously mentioned, this amendment explicitly provided that ownership over a mark was acquired through actual use, *viz.*:

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[74] AN ACT TO AMEND SECTIONS FOUR AND THIRTY-SEVEN OF, AND TO ADD NEW SECTIONS TWO-A, NINE-A, TEN-A, NINETEEN-A, AND TWENTY-ONE-A, AND NEW CHAPTERS II-A – THE PRINCIPAL REGISTER, AND IV-A – THE SUPPLEMENTAL REGISTER TO REPUBLIC ACT NUMBERED ONE HUNDRED AND SIXTY-SIX, ENTITLED "AN ACT TO PROVIDE FOR THE REGISTRATION AND PROTECTION OF TRADE-MARKS, TRADE-NAMES, AND SERVICE-MARKS, DEFINING UNFAIR COMPETITION AND FALSE MARKING, AND PROVIDING REMEDIES AGAINST THE SAME AND FOR OTHER PURPOSES" (1951).

Sec. 2-A. ***Ownership of trade-marks**, trade-names and service-marks; **how acquired**.* — **Anyone** who lawfully produces or deals in merchandise of any kind or who engages in any lawful business, or who renders any lawful service in commerce, **by actual use thereof in manufacture or trade, in business, and in the service rendered, may appropriate to his exclusive use a trade-mark**, a trade-name, or a service-mark **not so appropriated by another**, to distinguish his merchandise, business or service from the merchandise, business or services of others. The ownership or possession of a trade-mark, trade-name, service-mark, heretofore or hereafter appropriated, as in this section provided, **shall be recognized and protected in the same manner and to the same extent as are other property rights known to the law**. (Emphasis and underscoring supplied)

IP Code

Forty-seven years later, upon the effectivity of the IP Code on January 1, 1998, the manner of acquiring ownership of trademarks reverted to registration. This is expressed in Section 122 of the IP Code, *viz.*:

SECTION 122. *How Marks are Acquired*. — The **rights in a mark shall be acquired through registration made validly in accordance with the provisions of this law**. (Sec. 2-A, R.A. No. 166a) (Emphasis and underscoring supplied)

Related to this, Section 123.1 (d) of the IP Code expresses the first-to-file rule as follows:

SECTION 123. *Registrability*. — 123.1. **A mark cannot be registered if it**:

x x x x x x x x x

(d) Is **identical with a registered mark** belonging to a different proprietor **or** a **mark with an earlier filing or priority date**, in respect of:

(i) The same goods or services, or

(ii) Closely related goods or services, or

(iii) If it nearly resembles such a mark as to be likely to deceive or cause confusion[.] (Emphasis and underscoring supplied)

To clarify, while it is the fact of registration which confers ownership of the mark and enables the owner thereof to exercise the rights expressed in Section 147[75] of the IP Code, the first-to-file rule nevertheless prioritizes the first filer of the trademark application and operates to prevent any subsequent applicants from registering marks described under Section 123.1 (d) of the IP Code.

Reading together Sections 122 and 123.1 (d) of the IP Code, therefore, a registered mark or a mark with an earlier filing or priority date generally bars the future registration of — and the future acquisition of rights in — an identical or a confusingly similar mark, in respect of the same or closely-related goods or services, if the resemblance will likely deceive or cause confusion.

The current rule under the IP Code is thus in stark contrast to the rule on acquisition of ownership under the Trademark Law, as amended. To recall, the Trademark Law, as amended, provided that prior use and non-abandonment of a mark by one person barred the future registration of an identical or a confusingly similar mark by a different proprietor when confusion or deception was likely.[76] It also stated that one acquired ownership over a mark by actual use.[77]

Once the IP Code took effect, however, the general rule on ownership was changed and repealed.[78] At present, as expressed

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[75] SECTION 147. *Rights Conferred*. — 147.1. The owner of a registered mark shall have the exclusive right to prevent all third parties not having the owner's consent from using in the course of trade identical or similar signs or containers for goods or services which are identical or similar to those in respect of which the trademark is registered where such use would result in a likelihood of confusion. In case of the use of an identical sign for identical goods or services, a likelihood of confusion shall be presumed.

[76] See Sec. 4 of the Trademark Law, as amended.

[77] See Sec. 2-A of the Trademark Law, as amended.

[78] SECTION 239. *Repeals*. — 239.1. All Acts and *parts of Acts inconsistent herewith*, more particularly Republic Act No. 165, as amended; *Republic*

in the language of the provisions of the IP Code, prior use no longer determines the acquisition of ownership of a mark in light of the adoption of the rule that ownership of a mark is acquired through registration made validly in accordance with the provisions of the IP Code.[79] Accordingly, the trademark provisions of the IP Code use the term "owner" in relation to registrations.[80] This fact is also apparent when comparing the provisions of the Trademark Law, as amended, and the IP Code, *viz.*:

Tademark law, as amended	**IP Code**
Sec. 4. *Registration of trade-marks, trade-names and service-marks on the principal register*. — There is hereby established a register of trade-mark, trade-names and service-marks which shall be known as the principal register. The owner of a trade-mark, a trade-name or service-mark used to distinguish his goods, business or services from the goods, business or services of others shall have the right to register the same on the principal register, unless it: (a) Consists of or comprises immoral, deceptive or scandalous matter; or matter which may disparage or falsely suggest a connection with	SECTION 123. *Registrability*. — 123.1. A mark cannot be registered if it: (a) Consists of immoral, deceptive or scandalous matter, or matter which may disparage or falsely suggest a connection with persons, living or dead, institutions, beliefs, or national symbols, or bring them into contempt or disrepute; (b) Consists of the flag or coat of arms or other insignia of the Philippines or any of its political subdivisions, or of any foreign nation, or any simulation thereof; (c) Consists of a name, portrait or signature identifying a particular living individual

Act No. 166, as amended; and Articles 188 and 189 of the Revised Penal Code; Presidential Decree No. 49, including Presidential Decree No. 285, as amended, are hereby repealed.

[79] See IP Code, Sec. 122.

[80] See IP Code, Secs. 121.2, 123.1 (f), 131.3, 137, 138, 147, 148, 151 (c), 155, 156, 157, 158, 167.2 (b), 167.3.

persons, living or dead, institutions, beliefs, or national symbols, or bring them into contempt or disrepute;

(b) Consists of or comprises the flag or coat of arms or other insignia of the Philippines or any of its political subdivisions, or of any foreign nation, or any simulation thereof;

(c) Consists of or comprises a name, portrait, or signature identifying a particular living individual except by his written consent, or the name, signature, or portrait of a deceased President of the Philippines, during the life of his widow, if any, except by the written consent of the widow;

(d) Consists of or comprises a mark or trade-name which so resembles a mark or trade-name registered in the Philippines or a mark or trade-name <u>previously used in the Philippines by another and not abandoned</u>, as to be likely, when applied to or used in connection with the goods, business or services of the applicant, to cause confusion or mistake or to deceive purchasers; or xxx xxx xxx (Emphasis supplied)

except by his written consent, or the name, signature, or portrait of a deceased President of the Philippines, during the life of his widow, if any, except by written consent of the widow;

(d) Is identical with a registered mark belonging to a different proprietor or a mark with an earlier filing or priority date, in respect of:

(i) The same goods or services, or

(ii) Closely related goods or services, or

(iii) If it nearly resembles such a mark as to be likely to deceive or cause confusion;

x x x (Sec. 4, R.A. No. 166a) (Emphasis supplied)

Subparagraph (d) of the above provision of the Trademark Law was amended in the IP Code to, among others, remove the phrase "*previously used in the Philippines by another and not abandoned*." Under the Trademark Law, as amended, the

first user of the mark had the right[81] to file a cancellation case against an identical or confusingly mark registered in good faith by another person. However, with the omission in the IP Code provision of the phrase "*previously used in the Philippines by another and not abandoned,*" said right of the first user is no longer available. In effect, based on the language of the provisions of the IP Code, even if the mark was previously used and not abandoned by another person, a good faith applicant may still register the same and thus become the owner thereof, and the prior user cannot ask for the cancellation of the latter's registration. If the lawmakers had wanted to retain the regime of acquiring ownership through use, this phrase should have been retained in order to avoid conflicts in ownership. The removal of such a right unequivocally shows the intent of the lawmakers to abandon the regime of ownership under the Trademark Law, as amended.

On this point, our esteemed colleagues Associate Justices Leonen and Lazaro-Javier have expressed their doubts regarding the abandonment of the ownership regime under the Trademark Law, as amended, because of the continued requirement of actual use under the IP Code and because of the *prima facie* nature

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[81] Trademark Law, as amended. SECTION 17. *Grounds for Cancellation.* — Any person, who believes that he is or will be damaged by the registration of a mark or trade-name, may, upon the payment of the prescribed fee, apply to cancel said registration upon any of the following grounds:

(a) That the registered mark or trade-name becomes the common descriptive name of an article or substance on which the patent has expired;

(b) That it has been abandoned;

(c) That the registration was obtained fraudulently or **contrary to the provisions of section four, Chapter II hereof;**

(d) That the registered mark or trade-name has been assigned, and is being used by, or with the permission of, the assignee so as to misrepresent the source of the goods, business or services in connection with which the mark or trade-name is used; or

(e) That cancellation is authorized by other provisions of this Act. (Emphasis supplied)

of a certificate of registration.[82] In particular, Sections 124.2[83] and 145[84] of the IP Code provide that the applicant/registrant is required to file a Declaration of Actual Use on specified periods, while Section 138[85] provides that a certificate of registration of a mark shall be *prima facie* evidence of the validity of the registration, the registrant's ownership of the mark, and of the registrant's exclusive right to use the same in connection with the goods or services and those that are related thereto specified in the certificate.

Certainly, while the IP Code and the Rules[86] of the IPO mandate that the applicant/registrant must prove continued actual

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[82] Dissenting Opinion of Associate Justice Marvic M.V.F. Leonen, pp. 10-11; Dissenting Opinion of Associate Justice Amy C. Lazaro-Javier, pp. 3-7.

[83] SECTION 124.2. The applicant or the registrant shall file a declaration of actual use of the mark with evidence to that effect, as prescribed by the Regulations within three (3) years from the filing date of the application. Otherwise, the application shall be refused or the mark shall be removed from the Register by the Director.

xxx xxx xxx (Sec. 5, R.A. No. 166a)

[84] SECTION 145. *Duration*. — A certificate of registration shall remain in force for ten (10) years: *Provided*, That the registrant shall file a declaration of actual use and evidence to that effect, or shall show valid reasons based on the existence of obstacles to such use, as prescribed by the Regulations, within one (1) year from the fifth anniversary of the date of the registration of the mark. Otherwise, the mark shall be removed from the Register by the Office. (Sec. 12, R.A. No. 166a)

[85] SECTION 138. *Certificates of Registration*. — A certificate of registration of a mark shall be *prima facie* evidence of the validity of the registration, the registrant's ownership of the mark, and of the registrant's exclusive right to use the same in connection with the goods or services and those that are related thereto specified in the certificate. (Sec. 20, R.A. No. 165)

[86] Rule 204 of IPOPHL Memorandum Circular 17-010 (RULES AND REGULATIONS ON TRADEMARKS, SERVICE MARKS, TRADE NAMES AND MARKED OR STAMPED CONTAINERS OF 2017), which reads:

RULE 204. *Period to File Declaration of Actual Use*. — The Office will not require any proof of use in commerce upon filing of an application. All applicants or registrants shall file a Declaration of Actual Use (DAU)

use of the mark, it is the considered view of the Court that this does not imply that actual use is still a recognized mode of acquisition of ownership under the IP Code. Rather, these must be understood as provisions that require actual use of the mark in order for the registered owner of a mark to **maintain**[87] his ownership.

In the same vein, the *prima facie* nature of the certificate of registration[88] is not indicative of the fact that prior use is still a recognized mode of acquiring ownership under the IP Code. Rather, it is meant to recognize the instances when the certificate of registration is not reflective of ownership of the holder thereof, such as when: [1] the first registrant has acquired ownership of the mark through registration but subsequently lost the same due to non-use[89] or abandonment[90] (*e.g.*, failure to file the Declaration of Actual Use);[91] [2] the registration was done in

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of the mark with evidence to that effect and upon payment of the prescribed fee on the following periods:

(a) Within three (3) years from the filing date of the application;

(b) Within one (1) year from the fifth anniversary of the registration;

(c) Within one (1) year from date of renewal;

(d) Within one (1) year from the fifth anniversary of each renewal;

otherwise, the application shall be refused registration or the registered mark shall be removed from the Register by the Director.

[87] See "How to maintain a registered trademark in the Philippines," <https://www.ipophil.gov.ph/news/how-to-maintain-a-registered-trademark-in-the-philippines/> (last accessed July 25, 2020).

[88] SECTION 138. *Certificates of Registration*. — A certificate of registration of a mark shall be *prima facie* evidence of the validity of the registration, the registrant's ownership of the mark, and of the registrant's exclusive right to use the same in connection with the goods or services and those that are related thereto specified in the certificate.

[89] See IP Code, Sec. 151.1 (c).

[90] See IP Code, Sec. 151.1 (b).

[91] See *Mattel, Inc. v. Francisco*, 582 Phil. 492 (2008) and IP Code, Secs. 124.2 and 145 as well as Rule 204 of IPOPHL Memorandum Circular 17-010, supra note 86.

bad faith;[92] [3] the mark itself becomes generic;[93] [4] the mark was registered contrary to the IP Code (*e.g.*, when a generic mark was successfully registered for some reason);[94] or [5] the registered mark is being used by, or with the permission of, the registrant so as to misrepresent the source of the goods or services on or in connection with which the mark is used.[95]

ii. Legislative intent to abandon the rule that ownership of a mark is acquired through use

The lawmakers' intention to change the system of acquiring rights over a mark is even more evident in the sponsorship speech of the late Senator Raul Roco for the IP Code. The shift to a new system was brought about by the country's adherence to treaties, and Senator Roco specifically stated that the bill abandons the rule that ownership of a mark is acquired through use, thus:

> Part III of the Code is the new law on trademarks.
>
> On September 27, 1965, Mr. President, the Philippines adhered to the Lisbon Act of the Paris Convention for the Protection of Industrial Property [(Paris Convention)]. This obliged the country to introduce a system of registration of marks of nationals of member-countries of the Paris Convention which is based not on use in the Philippines but on foreign registration. This procedure is defective in several aspects: first, it provides to a foreign applicant a procedure which is less cumbersome compared to what is required of local applicants who need to establish prior use as a condition for filing a trademark; and second, it is incompatible with the "based on use" principle which is followed in the present Trademark Law.
>
> Furthermore, Mr. President, our adherence to the Paris Convention binds us to protect well-known marks. Unfortunately, the provisions of 6*bis* of the Paris Convention on this matter are couched in broad terms which are not defined in the Convention. This has given rise

[92] See IP Code, Sec. 151.1 (b).

[93] Id.

[94] Id.

[95] Id.

to litigation between local businessmen using the mark and foreigners who own the well-known marks. The conflicting court decisions on this issue aggravate the situation and they are a compendium of contradictory cases.

The proposed [IP] Code seeks to correct these defects and provides solutions to these problems and make a consistency in ruling for future purposes.

To comply with [the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement)][96] and other international commitments, **this bill no longer requires prior use of the mark as a requirement for filing a trademark application. It also abandons the rule that ownership of a mark is acquired through use by now requiring registration of the mark in the Intellectual Property Office**. Unlike the present law, it establishes one procedure for the registration of marks. This feature will facilitate the registration of marks.

Senate Bill No. 1719 also no longer requires use or registration in the Philippines for the protection of well-known marks. If the mark is registered, such registration can prohibit its use by another in connection with goods or services which are not similar to those with respect to which the registration is applied for. This resolves many of the questions that have remained unanswered by present law and jurisprudence.[97] (Emphasis and underscoring supplied)

The legislative intent to abandon the rule that ownership is acquired through use and to adopt the rule that ownership is acquired through registration is therefore crystal clear. On this score, Justice Leonen prudently cautions against deriving legislative intent from these deliberations, especially since they

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[96] According to the website of the World Trade Organization, the TRIPS Agreement is the most comprehensive multilateral agreement on intellectual property. Available at <https://www.wto.org/english/tratop_e/trips_e/intel2_e.htm>. One of the minimum standards stated in Article 15 (3) of the TRIPS Agreement is that use of a trademark shall not be a condition for filing an application for registration. Said standard was incompatible with the Trademark Law, as amended; World Trade Organization, Trade-Related Aspects of Intellectual Property Rights (unamended version) (1995). Available at <https://www.wto.org/english/docs_e/legal_e/27-trips_01_e.htm#2>.

[97] Record of the Senate, October 8, 1996, Vol. II, No. 29, pp. 131-132; *rollo*, Vol. I, pp. 436-437.

are limited to the opinions of those present, and neither consider the opinions of those who did not or were not able to speak, nor do they account for changing circumstances.[98] While this may be true, the Court is of the considered view that this does not mean that its interpretation of the statute based on such deliberations is inaccurate or wrong, especially in this case because, at the risk of belaboring the point, the provisions of the IP Code and the legislative deliberations are consistent in showing that the regime of ownership under the Trademark Law, as amended, has been abandoned.

iii. Rule on ownership based on prior use in Berris and E.Y. Industrial Sales, Inc. inconsistent with the IP Code regime of ownership through registration

As mentioned, Zuneca argues that as the prior user, following *Berris* and *E.Y. Industrial Sales, Inc.*, it had already owned the "ZYNAPS" mark prior to Natrapharm's registration of its confusingly similar mark, thus, its rights prevail over the rights of Natrapharm.

As will be further explained, however, a closer look at the cases cited by Zuneca reveals that the rule on ownership used in resolving these cases is inconsistent with the rule on acquisition of ownership through registration under the IP Code.

In *Berris*, Norvy Abyadang (Abyadang) filed a trademark application for "NS D-10 PLUS" in 2004. This was opposed by Berris Agricultural Co., Inc. (Berris, Inc.) on the ground that it was confusingly similar to its registered mark, "D-10 80 WP," which was applied for in 2002 and eventually registered in 2004. The marks were indeed found to be confusingly similar. However, in ruling that Berris, Inc. was the rightful owner of the mark, the Court did not just decide based on the fact that Berris, Inc. filed the application and registered the mark prior to Abyadang. Instead, it also contained the following discussion with the conclusion that actual use was required to own a mark:

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[98] Dissenting Opinion of Associate Justice Marvic M.V.F. Leonen, pp. 20-21.

The basic law on trademark, infringement, and unfair competition is [the IP Code], specifically Sections 121 to 170 thereof. It took effect on January 1, 1998. Prior to its effectivity, the applicable law was [the Trademark Law], as amended.

Interestingly, [the IP Code] did not expressly repeal in its entirety [the Trademark Law, as amended], but merely provided in Section 239.1 that [a]cts and parts of [a]cts inconsistent with it were repealed. In other words, only in the instances where a substantial and irreconcilable conflict is found between the provisions of [the IP Code] and of [the Trademark Law, as amended] would the provisions of the latter be deemed repealed.

[The IP Code] defines a "mark" as any visible sign capable of distinguishing the goods (trademark) or services (service mark) of an enterprise and shall include a stamped or marked container of goods. It also defines a "collective mark" as any visible sign designated as such in the application for registration and capable of distinguishing the origin or any other common characteristic, including the quality of goods or services of different enterprises which use the sign under the control of the registered owner of the collective mark.

On the other hand, [the Trademark Law, as amended] defines a "trademark" as any distinctive word, name, symbol, emblem, sign, or device, or any combination thereof, adopted and used by a manufacturer or merchant on his goods to identify and distinguish them from those manufactured, sold, or dealt by another. A trademark, being a special property, is afforded protection by law. But for one to enjoy this legal protection, x x x ownership of the trademark should rightly be established.

The ownership of a trademark is acquired by its registration and its actual use by the manufacturer or distributor of the goods made available to the purchasing public. Section 122 of [the IP Code] provides that the rights in a mark shall be acquired by means of its valid registration with the IPO. A certificate of registration of a mark, once issued, constitutes *prima facie* evidence of the validity of the registration, of the registrant's ownership of the mark, and of the registrant's exclusive right to use the same in connection with the goods or services and those that are related thereto specified in the certificate. [The IP Code], however, requires the applicant for registration or the registrant to file a declaration of actual use (DAU) of the mark, with evidence to that effect, within three (3) years from the filing of the application for registration; otherwise, the application

shall be refused or the mark shall be removed from the register. In other words, the *prima facie* presumption brought about by the registration of a mark may be challenged and overcome, in an appropriate action, by proof of the nullity of the registration or of non-use of the mark, except when excused. **Moreover, the presumption may likewise be defeated by evidence of prior use by another person, *i.e.*, it will controvert a claim of legal appropriation or of ownership based on registration by a subsequent user. This is because a trademark is a creation of use and belongs to one who first used it in trade or commerce.**[99] (Citations omitted; emphasis and underscoring supplied)

In *Berris*, despite the fact that Berris, Inc. was eventually decided to be the owner of the mark consistent with the rule on ownership under the IP Code, the Court mistakenly gave undue weight to the fact of prior use.[100] To be sure, it was unnecessary to also anchor Berris, Inc.'s ownership of the mark on the fact that it was the prior user as this was inconsistent with the express provisions of the IP Code and the legislative intent behind the law. Stated differently, the Court's decision in *Berris* was correct based on the fact that Berris, Inc. was the first to file the application and register the mark.

Significantly, in giving weight to the fact of prior use, the Court cited[101] the author Ruben E. Agpalo who had, in turn, cited jurisprudence decided under the Trademark Law, as amended. As a result, the rule that prior use was determinative of ownership was also used to resolve the issue of ownership in *Berris*. As stated, however, this is contrary to the IP Code.

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[99] *Berris Agricultural Co., Inc. v. Abyadang*, supra note 68, at 524-526.

[100] *N.B.* In disposing the ownership issue, the Court stated: "Therefore, Berris, as prior user and prior registrant, is the owner of the mark 'D-10 80 WP.'" (Underscoring supplied). Id. at 530.

[101] Footnote number 24 in the case of *Berris Agricultural Co., Inc. v. Abyadang*, reads: "Agpalo, R.E., The Law on Trademark, Infringement and Unfair Competition, 1st Ed. (2000), pp. 8-11, citing ***Sterling Products International, Inc. v. Farbenfabriken Bayer Aktiengesellschaft,* 27 SCRA 1214 (1969)** and ***Chung Te v. Ng Kian Giab,* 18 SCRA 747 (1966)**. (Emphasis supplied). Id. at 526.

To repeat, after the IP Code became effective starting 1998, use was no longer required in order to acquire or perfect ownership of the mark. In this regard, the Court now rectifies the inaccurate statement in *Berris* that "[t]he ownership of a trademark is acquired by its registration **and its actual use**."[102] The rectified statement should thus read: "Under the IP Code, the ownership of a trademark is acquired by its registration." Any pronouncement in *Berris* inconsistent herewith should be harmonized accordingly. To clarify, while subsequent use of the mark and proof thereof are required to prevent the removal or cancellation of a registered mark or the refusal of a pending application under the IP Code,[103] this should not be taken to

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[102] *Berris Agricultural Co., Inc. v. Abyadang*, id. at 525. Emphasis supplied.

[103] The pertinent provisions of the IP Code are:

SECTION 124.2. The applicant or the registrant shall file a declaration of actual use of the mark with evidence to that effect, as prescribed by the Regulations within three (3) years from the filing date of the application. **Otherwise, the application shall be refused or the mark shall be removed from the Register by the Director**.

x x x x x x x x x

SECTION 145. *Duration*. — A certificate of registration shall remain in force for ten (10) years: *Provided*, That the registrant shall file a declaration of actual use and evidence to that effect, or shall show valid reasons based on the existence of obstacles to such use, as prescribed by the Regulations, within one (1) year from the fifth anniversary of the date of the registration of the mark. **Otherwise, the mark shall be removed from the Register by the Office**.

x x x x x x x x x

SECTION 151. *Cancellation*. — 151.1. **A petition to cancel a registration of a mark** under this Act **may be filed** with the Bureau of Legal Affairs by any person who believes that he is or will be damaged by the registration of a mark under this Act as follows:

x x x x x x x x x

(b) **At any time, if the registered mark** becomes the generic name for the goods or services, or a portion thereof, for which it is registered, or **has been abandoned**. x x x

(c) **At any time, if the registered owner of the mark without legitimate reason fails to use the mark within the Philippines**, or **to cause it to be used in the Philippines by virtue of a license** during an uninterrupted period of three (3) years or longer. (Emphasis supplied)

mean that actual use and proof thereof are necessary before one can own the mark or exercise the rights of a trademark owner.[104]

Likewise, the rule on acquiring ownership discussed in *E.Y. Industrial Sales, Inc.* is inconsistent with the current rule under the IP Code. In said case, E.Y. Industrial Sales, Inc. (EYIS) imported air compressors from Shen Dar from 1997 to 2004. In 1997, during the effectivity of the Trademark Law, as amended, Shen Dar filed a trademark application for "VESPA, Chinese Characters and Device" for use on air compressors and welding machines. Subsequently, in 1999, or already during the effectivity of the IP Code, EYIS filed a trademark application for "VESPA" for use on air compressors. On January 18, 2004, the IPO issued the certificate of registration for "VESPA" in favor of EYIS. Subsequently, on February 8, 2007, the certificate of registration for "VESPA, Chinese Characters and Device" was issued in favor of Shen Dar.

Claiming to be the owner of the mark, Shen Dar filed a petition to cancel EYIS's certificate of registration. The Bureau of Legal Affairs (BLA) and the Director General of the IPO both ruled that EYIS was the owner of the mark and likewise directed the cancellation of Shen Dar's certificate of registration.

Once the case reached the Court, the dispute was resolved in favor of EYIS. The *ponencia* cited Section 123.1 (d), the first-to-file rule adopted by the IP Code, and likewise included the following discussion in *Shangri-la International Hotel Management, Ltd. v. Developers Group of Companies, Inc.*,[105] *(Shangri-la)* in concluding that the prior user EYIS was the owner of the mark, *viz.*:

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[104] For example, as between a registrant who has not used the mark yet and another person who has actually used an identical or confusingly mark after its registration by the former, the registrant may already exercise its right to prevent the latter's use of the mark.

[105] 520 Phil. 935 (2006). Penned by Associate Justice Cancio C. Garcia, with the following Second Division members concurring: Associate Justices Reynato S. Puno, Angelina Sandoval-Gutierrez, Renato C. Corona, and Adolfo S. Azcuna.

In any event, given the length of time already invested by the parties in the instant case, this Court must write *finis* to the instant controversy by determining, once and for all, the true owner of the mark "VESPA" based on the evidence presented.

[The IP Code] espouses the "first-to-file" rule as stated under Sec. 123.1 (d) which states:

> Section 123. Registrability. — 123.1. A mark cannot be registered if it:
>
> x x x x x x x x x
>
> (d) Is identical with a registered mark belonging to a different proprietor or a mark with an earlier filing or priority date, in respect of:
>
> (i) The same goods or services, or
> (ii) Closely related goods or services, or
> (iii) If it nearly resembles such a mark as to be likely to deceive or cause confusion. x x x

Under this provision, the registration of a mark is prevented with the filing of an earlier application for registration. **This must not, however, be interpreted to mean that ownership should be based upon an earlier filing date. While [the IP Code] removed the previous requirement of proof of actual use prior to the filing of an application for registration of a mark, proof of prior and continuous use is necessary to establish ownership of a mark. Such ownership constitutes sufficient evidence to oppose the registration of a mark.**

Sec. 134 of the IP Code provides that "any person who believes that he would be damaged by the registration of a mark x x x" may file an opposition to the application. The term "any person" encompasses the true owner of the mark — the prior and continuous user.

Notably, the Court has ruled that the prior and continuous use of a mark may even overcome the presumptive ownership of the registrant and be held as the owner of the mark. As aptly stated by the Court in *[Shangri-la]*:

> Registration, without more, does not confer upon the registrant an absolute right to the registered mark. The certificate of registration is merely a *prima facie* proof that the registrant is

> the owner of the registered mark or trade name. Evidence of prior and continuous use of the mark or trade name by another can overcome the presumptive ownership of the registrant and may very well entitle the former to be declared owner in an appropriate case.
>
> x x x x x x x x x
>
> Ownership of a mark or trade name may be acquired not necessarily by registration but by adoption and use in trade or commerce. As between actual use of a mark without registration, and registration of the mark without actual use thereof, the former prevails over the latter. For a rule widely accepted and firmly entrenched, because it has come down through the years, is that actual use in commerce or business is a pre-requisite to the acquisition of the right of ownership.
>
> x x x x x x x x x
>
> By itself, registration is not a mode of acquiring ownership. When the applicant is not the owner of the trademark being applied for, he has no right to apply for registration of the same. Registration merely creates a prima facie presumption of the validity of the registration, of the registrant's ownership of the trademark and of the exclusive right to the use thereof. Such presumption, just like the presumptive regularity in the performance of official functions, is rebuttable and must give way to evidence to the contrary.[106] (Citations omitted and emphasis supplied)

However, a careful reading of *Shangri-la* will unmistakably show that, despite having been promulgated in 2006, the applicable law of the case was the Trademark Law, as amended, considering the following excerpts:

> While the present law on trademarks has dispensed with the requirement of prior actual use at the time of registration, **the law in force at the time of registration[, *i.e.*, the Trademark Law, as amended,] must be applied**, and thereunder it was held that as a condition precedent to registration of trademark, trade name or service

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[106] *E.Y. Industrial Sales, Inc., et al. v. Shen Dar Electricity and Machinery Co., Ltd.*, supra note 69, at 592-594.

mark, the same must have been in actual use in the Philippines before the filing of the application for registration. Trademark is a creation of use and therefore actual use is a pre-requisite to exclusive ownership and its registration with the Philippine Patent Office is a mere administrative confirmation of the existence of such right.

x x x x x x x x x

However, while the Philippines was already a signatory to the *Paris Convention*, **the [IP Code] only took effect on January 1, 19[9]8, and in the absence of a retroactivity clause, [the Trademark Law, as amended] still applies**. x x x[107] (Emphasis and underscoring supplied)

It is worth noting that in *E.Y. Industrial Sales, Inc.*, the Court upheld the factual finding that the first actual use by EYIS was earlier than Shen Dar's. The earliest dates of use by both parties therein were **during the effectivity of the Trademark Law, as amended**. It is also important to reiterate that EYIS had applied and registered the mark under the IP Code, while Shen Dar had applied for the mark under the Trademark Law, as amended, and its registration was obtained after the effectivity of the IP Code.

To be sure, the rule used to resolve the issue of ownership in *E.Y. Industrial Sales, Inc.* and *Shangri-la* should not be made to apply in a situation involving marks which are both used and/or registered after the effectivity of the IP Code. In the case at bar, **both "ZYNAPS" and "ZYNAPSE" have been used and/or registered after the IP Code became effective.** Clearly, the use or citation of Trademark Law jurisprudence to resolve the question on acquisition of ownership of marks in the case at bar or in cases involving marks registered or first used under the IP Code will be irrelevant and inappropriate.

In light of the foregoing, Zuneca thus erred in using *Berris* and *E.Y. Industrial Sales, Inc.* as bases for its argument that the prior user is the owner of the mark and its rights prevail

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[107] *Shangri-la International Hotel Management, Ltd. v. Developers Group of Companies, Inc.*, supra note 105, at 954, 961-962.

over the rights of the first-to-file registrant. To emphasize, for marks that are first used and/or registered after the effectivity of the IP Code, ownership is no longer dependent on the fact of prior use in light of the adoption of the first-to-file rule and the rule that ownership is acquired through registration.

II. *Bad faith and good faith in trademark registration and use*

In a bid to invalidate Natrapharm's rights as first registrant, Zuneca further argues that Natrapharm had registered the mark fraudulently and in bad faith.[108]

The existence of bad faith in trademark registrations may be a ground for its cancellation at any time by filing a petition for cancellation under Section 151 (b) of the IP Code, *viz.*:

SECTION 151. *Cancellation*. — 151.1. **A petition to cancel a registration of a mark under this Act may be filed** with the Bureau of Legal Affairs by any person who believes that he is or will be damaged by the registration of a mark under this Act as follows:

(a) Within five (5) years from the date of the registration of the mark under this Act.

(b) **At any time, if** the registered mark becomes the generic name for the goods or services or a portion thereof, for which it is registered, or has been abandoned, or **its registration was obtained fraudulently** or contrary to the provisions of this Act, or if the registered mark is being used by, or with the permission of, the registrant so as to misrepresent the source of the goods or services on or in connection with which the mark is used. If the registered mark becomes the generic name for less than all of the goods or services for which it is registered, a petition to cancel the registration for only those goods or services may be filed. A registered mark shall not be deemed to be the generic name of goods or services solely because such mark is also used as a name of or to identify a unique product or service. The primary significance of the registered mark to the relevant public rather than purchaser motivation shall be the test for determining whether the registered mark has become the generic name of goods or services on or in connection with which it has been used. (n)

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[108] See *rollo*, Vol. II, p. 718.

(c) At any time, if the registered owner of the mark without legitimate reason fails to use the mark within the Philippines, or to cause it to be used in the Philippines by virtue of a license during an uninterrupted period of three (3) years or longer. (Emphasis supplied)

Notably, this ground for cancelling marks was already present under the Trademark Law, as amended. The table below shows how the language in the IP Code provision mirrors the provision under the Trademark Law, as amended:

Trademark Law, as amended	**IP Code**
CHAPTER IV Cancellation of Registration SECTION 17. *Grounds for Cancellation*. — **Any person, who believes that he is or will be damaged by the registration of a mark or trade-name, may**, upon the payment of the prescribed fee, **apply to cancel said registration upon any of the following grounds**: (a) That the registered mark or trade-name becomes the common descriptive name of an article or substance on which the patent has expired; (b) That it has been abandoned; (c) **That the registration was obtained fraudulently or contrary to the provisions of section four, Chapter II hereof**; (d) That the registered mark or trade-name has been assigned, and is being used by, or with the permission of, the assignee so as to	SECTION 151. *Cancellation.* — 151.1. **A petition to cancel a registration of a mark under this Act may be filed** with the Bureau of Legal Affairs by any person who believes that he is or will be damaged by the registration of a mark under this Act as follows: x x x x (b) At any time, if the registered mark becomes the generic name for the goods or services, or a portion thereof, for which it is registered, or has been abandoned, or its **registration was obtained fraudulently or contrary to the provisions of this Act**, or if the registered mark is being used by, or with the permission of, the registrant so as to misrepresent the source of the goods or services on or in connection with which the mark is used. If the registered mark becomes the generic name for less than all of the goods or services for which it is registered, a petition to cancel the

misrepresent the source of the goods, business or services in connection with which the mark or trade-name is used; or (e) That cancellation is authorized by other provisions of this Act. (Emphasis and underscoring supplied)	registration for only those goods or services may be filed. A registered mark shall not be deemed to be the generic name of goods or services solely because such mark is also used as a name of or to identify a unique product or service. The primary significance of the registered mark to the relevant public rather than purchaser motivation shall be the test for determining whether the registered mark has become the generic name of goods or services on or in connection with which it has been used. (Emphasis and underscoring supplied)

Resultantly — unlike the rule on acquisition of ownership — the pronouncements of the Court relative to registrations obtained in bad faith under the Trademark Law, as amended, still subsist even after the effectivity of the IP Code. Thus, the following cases where the Court defined bad faith and fraud, although decided under the regime of the Trademark Law, as amended, are still applicable.

The concepts of bad faith and fraud were defined in *Mustang-Bekleidungswerke GmbH + Co. KG v. Hung Chiu Ming*,[109] a case decided by the Office of the Director General of the IPO under the Trademark Law, as amended, *viz.*:

> What constitutes fraud or bad faith in trademark registration? Bad faith means that the applicant or registrant has knowledge of prior creation, use and/or registration by another of an identical or similar trademark. In other words, it is copying and using somebody else's trademark. Fraud, on the other hand, may be committed by making false claims in connection with the trademark application and

[109] Appeal No. 14-06-20, August 29, 2007. Available at <http://121.58.254.45/ipcaselibrary/ipcasepdf/IPC140620.pdf>.

registration, particularly, on the issues of origin, ownership, and use of the trademark in question, among other things.[110]

The concept of fraud contemplated above is not a mere inaccurate claim as to the origin, ownership, and use of the trademark. In civil law, the concept of fraud has been defined as the deliberate intention to cause damage or prejudice.[111] The same principle applies in the context of trademark registrations: fraud is intentionally making false claims to take advantage of another's goodwill thereby causing damage or prejudice to another. Indeed, the concepts of bad faith and fraud go hand-in-hand in this context. There is no distinction between the concepts of bad faith and fraud in trademark registrations because the existence of one necessarily presupposes the existence of the other.

Shangri-la supports the definition of bad faith in trademark registrations as knowledge by the registrant of prior creation, use, and/or registration by another of an identical or similar trademark. In said case, since respondent Developers Group of Companies, Inc.'s (DGI) president was a previous guest at one of petitioner's hotels, it was found that DGI was in bad faith when it appropriated and registered the "SHANGRI-LA" mark and the "S" logo, *viz.*:

> The CA itself, in its Decision of May 15, 2003, found that the respondent's president and chairman of the board, **Ramon Syhunliong, had been a guest at the petitioners' hotel before he caused the registration of the mark and logo, and surmised that he must have copied the idea there**[.]
>
> x x x x x x x x x
>
> To jump from a recognition of the fact that the mark and logo must have been copied to a rationalization for the possibility that both the petitioners and the respondent coincidentally chose the same name and logo is not only contradictory, but also manifestly mistaken or absurd. Furthermore, the "S" logo appears nothing like the "Old

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[110] Id.

[111] *International Corporate Bank v. Sps. Gueco*, 404 Phil. 353, 364 (2001).

English" print that the CA makes it out to be, but is obviously a symbol with oriental or Asian overtones. **At any rate, it is ludicrous to believe that the parties would come up with the exact same lettering for the word "*Shangri-La*" and the exact same logo to boot.** As correctly observed by the petitioners, to which we are in full accord:

> x x x **When a trademark copycat adopts the word portion of another's trademark as his own, there may still be some doubt that the adoption is intentional. But if he copies not only the word but also the word's exact font and lettering style and in addition, he copies also the logo portion of the trademark, the slightest doubt vanishes. It is then replaced by the certainty that the adoption was deliberate, malicious and in bad faith.**

It is truly difficult to understand why, of the millions of terms and combination of letters and designs available, the respondent had to choose exactly the same mark and logo as that of the petitioners, if there was no intent to take advantage of the goodwill of petitioners' mark and logo.

One who has imitated the trademark of another cannot bring an action for infringement, particularly against the true owner of the mark, because he would be coming to court with unclean hands. **Priority is of no avail to the bad faith plaintiff. Good faith is required in order to ensure that a second user may not merely take advantage of the goodwill established by the true owner.**[112] (Emphasis supplied)

Pagasa Industrial Corporation v. Court of Appeals[113] likewise supports the definition of bad faith as prior knowledge. In said case, the Court found that Pagasa registered the "YKK" mark in bad faith because it had previously known that there was another person using the mark. Hence, the Court affirmed the cancellation of the mark as decided by the Director of Patents and the CA:

> Pagasa appealed to the [CA] which in its decision dated February 6, 1980 affirmed the cancellation. **It found that prior to 1968 Pagasa**

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[112] *Shangri-la International Hotel Management, Ltd. v. Developers Group of Companies, Inc.*, supra note 105, at 956-957.

[113] 216 Phil. 533 (1984).

knew that Yoshida was the registered owner and user of the YKK trademark which is an acronym of its corporate name.

Tadao Yoshida, the president of Yoshida, and Tsutomu Isaka, the export manager, visited in 1960 (1965) Pagasa's factory which was manufacturing zippers under the *Royal brand*. Anacleto Chi, Pagasa's president, visited in turn Yoshida's factory in Toyoma, Japan.

The Appellate Court concluded that **Pagasa's knowledge that Yoshida was using the YKK trademark** precludes the application of the equitable principle of laches, estoppel and acquiescence. **It noted that Pagasa acted in bad faith. As observed by Yoshida's counsel, Pagasa's registration of YKK as its own trademark was an act of ingratitude**.

x x x x x x x x x

Pagasa cannot rely on equity because he who comes into equity must come with clean hands. Equity refuses to lend its aid in any manner to one seeking its active interposition who has been guilty of unlawful or inequitable conduct in the matter with relation to which he seeks relief (30 C.J.S. 1009).

"Registration is sufficient *prima facie* proof that all acts necessary to entitle the mark to registration were duly performed." (87 C.J.S. 421). Obviously, Yoshida's prior registration is superior and must prevail.[114] (Emphasis and underscoring supplied)

Birkenstock Orthopaedie GmbH and Co. KG v. Phil. Shoe Expo Marketing Corp.[115] also involved a finding that a party was in bad faith because it had known of the existence and use by another person of the mark before said party appropriated and registered the same, *viz.*:

In view of the foregoing circumstances, **the Court finds** the petitioner to be the true and lawful owner of the mark "BIRKENSTOCK" and entitled to its registration, and **that respondent was in bad faith in having it registered in its name**. In this regard, the Court quotes with approval the words of the IPO Director General, *viz.*:

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[114] Id. at 534-535.

[115] 721 Phil. 867 (2013).

> The facts and evidence fail to show that [respondent] was in good faith in using and in registering the mark BIRKENSTOCK. BIRKENSTOCK, obviously of German origin, is a highly distinct and arbitrary mark. It is very remote that two persons did coin the same or identical marks. To come up with a highly distinct and uncommon mark previously appropriated by another, for use in the same line of business, and without any plausible explanation, is incredible. The field from which a person may select a trademark is practically unlimited. As in all other cases of colorable imitations, the unanswered riddle is why, of the millions of terms and combinations of letters and designs available, [respondent] had to come up with a mark identical or so closely similar to the [petitioner's] if there was no intent to take advantage of the goodwill generated by the [petitioner's] mark. **Being on the same line of business, it is highly probable that the [respondent] knew of the existence of BIRKENSTOCK and its use by the [petitioner], before [respondent] appropriated the same mark and had it registered in its name.**[116] (Emphasis supplied)

More importantly, however, there is also jurisprudential basis to declare these trademark registrations done in bad faith as void. In the case of *Shangri-La International Hotel Management, Ltd. v. Developers Group of Companies, Inc.*[117] *(Shangri-la Resolution)*, the Court classified the respondent's registration as **void** due to the existence of bad faith and because it failed to comply[118] with the provisions of the Trademark Law, as amended.

While the Court in the *Shangri-la Resolution* declared the trademark registration as void based on two grounds, *i.e.*, the presence of bad faith **and** the fact that the mark was registered contrary to provisions of the law, either one of these grounds may be used as sufficient basis for the courts or the IPO to declare trademark registrations as void.

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[116] Id. at 882.

[117] 541 Phil. 138 (2007).

[118] That is, the registrant did not comply with the requisite 2-month use prior to filing the application. Id. at 142.

A perusal of the above cancellation provisions in the IP Code and the Trademark Law, as amended, would reveal that these two grounds differ from the others in the sense that, unlike the other grounds for cancellation, they both exist prior to the registration. That is, one can have a registration in bad faith only if he applied for the registration of the mark despite knowing that someone else has created, used, or registered that mark. In the same vein, an unregistrable mark which was mistakenly allowed to be registered was already inherently unregistrable even prior to its registration.[119] Accordingly, because these marks **should not have been registered in the first place**, the presence of either of these grounds renders them void. Thus, even if these marks subsequently became registered, the registrations do not confer upon their owners the rights under Section 147.1[120] of the IP Code because the marks were registered contrary to the provisions of the same law.[121]

To emphasize, the presence of bad faith alone renders void the trademark registrations. Accordingly, it follows as a matter of consequence that a mark registered in bad faith shall be cancelled by the IPO or the courts, as the case may be, after the appropriate proceedings.

This concept of bad faith, however, does not only exist in registrations. To the mind of the Court, the definition of bad faith as knowledge of prior creation, use and/or registration by

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[119] *N.B.* One example of an unregistrable mark is a generic mark (ex. "Coffee" for coffee products). Assuming this mark is registered, the reason why the registration is susceptible to being cancelled had already existed prior to its registration. Even before the registration of the mark, it was already generic.

[120] SECTION 147. *Rights Conferred.* — 147.1. The owner of a registered mark shall have the exclusive right to prevent all third parties not having the owner's consent from using in the course of trade identical or similar signs or containers for goods or services which are identical or similar to those in respect of which the trademark is registered where such use would result in a likelihood of confusion. In case of the use of an identical sign for identical goods or services, a likelihood of confusion shall be presumed.

[121] See IP Code, Sec. 122.

by another of an identical or similar trademark is also applicable in the use of trademarks without the benefit of registration. Accordingly, such bad faith use is also appropriately punished in the IP Code as can be seen in its unfair competition provisions.[122]

It is apparent, therefore, that the law intends to deter registrations and use of trademarks in bad faith.

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[122] SECTION 168. *Unfair Competition, Rights, Regulation and Remedies.* — 168.1. A person who has identified in the mind of the public the goods he manufactures or deals in, his business or services from those of others, whether or not a registered mark is employed, has a property right in the goodwill of the said goods, business or services so identified, which will be protected in the same manner as other property rights.

168.2. Any person who shall employ deception or any other means contrary to good faith by which he shall pass off the goods manufactured by him or in which he deals, or his business, or services for those of the one having established such goodwill, or who shall commit any acts calculated to produce said result, shall be guilty of unfair competition, and shall be subject to an action therefor.

168.3. In particular, and without in any way limiting the scope of protection against unfair competition, the following shall be deemed guilty of unfair competition:

(a) Any person, who is selling his goods and gives them the general appearance of goods of another manufacturer or dealer, either as to the goods themselves or in the wrapping of the packages in which they are contained, or the devices or words thereon, or in any other feature of their appearance, which would be likely to influence purchasers to believe that the goods offered are those of a manufacturer or dealer, other than the actual manufacturer or dealer, or who otherwise clothes the goods with such appearance as shall deceive the public and defraud another of his legitimate trade, or any subsequent vendor of such goods or any agent of any vendor engaged in selling such goods with a like purpose;

(b) Any person who by any artifice, or device, or who employs any other means calculated to induce the false belief that such person is offering the services of another who has identified such services in the mind of the public; or

(c) Any person who shall make any false statement in the course of trade or who shall commit any other act contrary to good faith of a nature calculated to discredit the goods, business or services of another.

Concurrent with these aims, the law also protects prior registration and prior use of trademarks in good faith.

Being the first-to-file registrant in good faith allows the registrant to acquire all the rights in a mark. This can be seen in Section 122 *vis-à-vis* the cancellation provision in Section 155.1 of the IP Code. Reading these two provisions together, it is clear that when there are no grounds for cancellation — especially the registration being obtained in bad faith or contrary to the provisions of the IP Code, which render the registration void — the first-to-file registrant acquires all the rights in a mark, thus:

SECTION 122. *How Marks are Acquired*. — The **rights in a mark shall be acquired through registration made validly in accordance with the provisions of this law**. (Sec. 2-A, R.A. No. 166a)

x x x x x x x x x

SECTION 151. *Cancellation*. — 151.1. A petition to cancel a registration of a mark under this Act may be filed with the Bureau of Legal Affairs by any person who believes that he is or will be damaged by the registration of a mark under this Act as follows:

(a) Within five (5) years from the date of the registration of the mark under this Act.

(b) At any time, if the registered mark becomes the generic name for the goods or services, or a portion thereof, for which it is registered, or has been abandoned, or **its registration was obtained fraudulently or contrary to the provisions of this Act**, or if the registered mark is being used by, or with the permission of, the registrant so as to misrepresent the source of the goods or services on or in connection with which the mark is used. If the registered mark becomes the generic name for less than all of the goods or services for which it is registered, a petition to cancel the registration for only those goods or services may be filed. A registered mark shall not be deemed to be the generic name of goods or services solely because such mark is also used as a name of or to identify a unique product or service. The primary significance of the registered mark to the relevant public rather than purchaser motivation shall be the test for determining whether

the registered mark has become the generic name of goods or services on or in connection with which it has been used. (n)

(c) At any time, if the registered owner of the mark without legitimate reason fails to use the mark within the Philippines, or to cause it to be used in the Philippines by virtue of a license during an uninterrupted period of three (3) years or longer. (Emphasis and underscoring supplied)

In the same vein, prior users in good faith are also protected in the sense that they will not be made liable for trademark infringement even if they are using a mark that was subsequently registered by another person. This is expressed in Section 159.1 of the IP Code, which reads:

SECTION 159. *Limitations to Actions for Infringement*. — Notwithstanding any other provision of this Act, the remedies given to the owner of a right infringed under this Act shall be limited as follows:

159.1. Notwithstanding the provisions of Section 155 hereof, a registered mark shall have no effect against any person who, in good faith, before the filing date or the priority date, was using the mark for the purposes of his business or enterprise: *Provided*, That his right may only be transferred or assigned together with his enterprise or business or with that part of his enterprise or business in which the mark is used. (Underscoring supplied)

III. *The resolution of the controversy*

At this point, it is important to highlight that the following facts were no longer questioned by both parties: (a) Natrapharm is the registrant of the "ZYNAPSE" mark which was registered with the IPO on September 24, 2007;[123] (b) Zuneca has been using the "ZYNAPS" brand as early as 2004;[124] and (c) "ZYNAPSE" and "ZYNAPS" are confusingly similar[125] and both are used for medicines.

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[123] *Rollo*, Vol. I, p. 89.

[124] Id. at 90.

[125] *Rollo*, Vol. II, pp. 670 and 765.

In light of these settled facts, it is clear that Natrapharm is the first-to-file registrant of "ZYNAPSE." Zuneca, on the other hand, is a prior user in good faith of a confusingly similar mark, "ZYNAPS." What remains contentious is Natrapharm's good or bad faith as Zuneca contends that the mark was registered in bad faith by Natrapharm. Indeed, if Zuneca's contention turns out to be true, Natrapharm would not be the owner of "ZYNAPSE" and it would not have the right under Section 147.1 of the IP Code to prevent other entities, including Zuneca, from using confusingly similar marks for identical or similar goods or services. Further, Natrapharm's infringement case would fail because its "ZYNAPSE" registration would then be voided.

To be sure, the finding of good faith or bad faith is a matter of factual determination. Considering that a petition for review on *certiorari* under Rule 45 should only raise questions of law, it is improper to put into issue at this juncture the existence of bad faith in Natrapharm's registration.

Further, it is a well-recognized rule that the factual findings of the RTC, its calibration of the testimonies of the witnesses, and its assessment of their probative weight are given high respect, if not conclusive effect, unless cogent facts and circumstances of substance, which if considered, would alter the outcome of the case, were ignored, misconstrued or misinterpreted.[126]

Assuming, however, that the Court should still review this factual issue, it finds no reason to depart from the findings of facts of the RTC, which findings were affirmed by the CA. In fact, the Court also conducted a review of the testimonies and evidence presented by the parties and finds that the RTC and the CA were correct in their factual findings.

The RTC ruled that there was no sufficient evidence to convince it that Natrapharm had acquired the registration in bad faith.[127] The RTC ruled as follows:

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[126] *Batistis v. People*, 623 Phil. 246, 256 (2009).

[127] *Rollo*, Vol. I, p. 154.

> Apparently claiming an exception to the first-to-register rule, the defendants [Zuneca] insist that the plaintiff [Natrapharm] knew of the existence of ["ZYNAPS"] at the time the plaintiff filed its application for registration. The defendants support this position by presenting a copy of the Philippine Pharmaceutical Directory (PPD) where ["ZYNAPS"] is listed on the same page as the other brand names of the plaintiff.
>
> However, defendant Arain admitted on cross[-]examination that even if ["ZYNAPS"] was listed in the PPD, this does not give her complete knowledge of the brand names of the other pharmaceuticals also listed in the same Directory. [Consistent] with this admission, plaintiff should also be accorded the benefit of the doubt that it could not have complete knowledge of the other brand names listed in the PPD.
>
> Likewise, the defendants claim that in some medical conventions where Patriot, the sister company of the plaintiff, attended, the ["ZYNAPS"] product of the defendants was advertised and displayed.
>
> It was, however, clearly shown that Patriot is not the same company as the plaintiff. It could not be safely concluded that [the plaintiff] knew of ["ZYNAPS"] through Patriot.
>
> In both arguments, this Court finds no sufficient evidence to convince it that there was bad faith in the registration made by the plaintiff.[128]

The CA thereafter upheld the finding of the RTC that Natrapharm was not aware of the existence of "ZYNAPS" prior to the registration of "ZYNAPSE."[129] The CA quoted and affirmed the foregoing findings of the RTC.

The CA added that Natrapharm's good faith was established through the testimony of Natrapharm's witness, Ravelo, whose testimony essentially contained the following points: (a) Natrapharm had used the BFAD and IPO databases and the Philippine Pharmaceutical Index (PPI) — a research tool accepted by the Philippine pharmaceutical industry which contains pharmaceutical products marketed in the Philippines — in determining whether "ZYNAPSE" was confusingly similar to

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[128] Id.

[129] Id. at 103.

an existing brand name in the market;[130] (b) only Ravelo, Mr. Gasgonia, Natrapharm's Chief Operations Officer, and Mrs. Agnes Casiding, Natrapharm's Regulatory Manager, knew about the launch of the new product;[131] (c) she had based the name "ZYNAPSE" from an internal newsletter in the Philippine Neurological Association as well as from the neurological term "synapse" — the junction between two nerves where they transmit nerve signals — which relates to the neurological problem of stroke;[132] (d) she had checked the PPI as far back as fourth quarter of 2004 and found that there was no confusingly similar name;[133] and (e) she had then submitted the name to Natrapharm's trademark lawyers who had it registered with the IPO[134] and then with the BFAD.[135]

The CA thus concluded that Zuneca failed to prove that Natrapharm had registered "ZYNAPSE" in bad faith, *viz.*:

> This Court would also like to add that even if both Zuneca and Natrapharm have interacted with each other through a convention, it does not automatically mean that Natrapharm already acted in bad faith in registering "ZYNAPSE." First, just like the PPD, it is highly unlikely that the participants would remember each and every medicine or drug exhibited during said convention. Secondly, the convention happened two (2) years prior to the registration of "ZYNAPSE" and it is not proven that those who attended the convention on the part of Natrapharm were the same people who were responsible for the creation of "ZYNAPSE" or that they were still connected with Natrapharm in 2007. **As a rule, good faith is always presumed, and upon him who alleges bad faith on the part of a possessor rests the burden of proof. The appellants, however, miserably failed to carry that burden.**[136] (Emphasis supplied)

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[130] Id. at 104-105.

[131] See id. at 106.

[132] Id. at 107.

[133] Id. at 108-110.

[134] Id. at 110.

[135] Id. at 111.

[136] Id. at 112.

The Court affirms the factual findings of the lower courts. Since Zuneca is making the allegations of bad faith, it was incumbent on Zuneca to overcome the evidence that Natrapharm was the owner of the mark "ZYNAPSE" and to show that Natrapharm had registered "ZYNAPSE" in bad faith. However, Zuneca failed to show that the registration was made fraudulently or in bad faith. In contrast, Natrapharm was able to convince the lower courts, as it likewise convinces this Court, that it had acted in good faith when it came up with the name "ZYNAPSE" and that it had no knowledge of Zuneca's use of "ZYNAPS" after it had checked the PPI, BFAD, and IPO databases.

Zuneca's evidence clearly falls short of establishing that Natrapharm had knowledge of the prior creation or use by Zuneca of the "ZYNAPS" mark. Zuneca's evidence only tends to prove that there was a possibility that someone from Natrapharm might have known of Zuneca's use of "ZYNAPS" because Natrapharm and Zuneca attended the same conferences and that Zuneca had listed "ZYNAPS" in the PPD publication.

Such possibility is not, however, sufficient to prove bad faith, especially when weighed against Natrapharm's evidence and explanation on how it coined "ZYNAPSE" and the steps it took to ensure that there were no other marks that were confusingly similar to it. Not only was Natrapharm able to explain the origin of the name, it was also able to show that it had checked the IMS-PPI, IPO, and BFAD databases and found that there was no brand name which was confusingly similar to "ZYNAPSE."

Since Natrapharm was not shown to have been in bad faith, it is thus considered to have acquired all the rights of a trademark owner under the IP Code upon the registration of the "ZYNAPSE" mark.

Consequently, Zuneca's counterclaims against Natrapharm were correctly dismissed by the lower courts. To be sure, Zuneca did not have any right to prevent third parties, including Natrapharm, from using marks confusingly similar to its unregistered "ZYNAPS" mark because it is not an "owner of

a registered mark" contemplated in Section 147.1 of the IP Code.

In any event, while Natrapharm is the owner of the "ZYNAPSE" mark, this does not, however, automatically mean that its complaint against Zuneca for injunction, trademark infringement, damages, and destruction with prayer for TRO and/or preliminary injunction should be granted. The application of Section 159.1 of the IP Code in the case at bar results in Zuneca's exemption from liability for trademark infringement.

On the interpretation of Section 159.1 of the IP Code, Natrapharm argues that the limitation to actions for infringement under this section means that only acts prior to the filing and/or claim of priority of the registered mark are exempted. The good faith prior user's use of the mark subsequent to the filing and/or registration date is, however, no longer exempted and makes the prior user liable for infringement.[137] This echoes the CA which held that:

> Moreover, the supremacy of the prior registrant over the prior user is further elucidated in Section 159.1 of the same law x x x.
>
> x x x x x x x x x
>
> **Based on [said] provision, it is manifest that the prior-registrant** *(sic)* **cannot run after the prior-user** *(sic)* **for any usage before the registration, but not after, as indicated by the helping verb "was" in the phrase "was using the mark for the purposes of his business or enterprise."**[138] (Emphasis supplied)

The Court believes, and so holds, that the above interpretation is erroneous.

If Section 159.1 of the IP Code is only meant to exempt from an action for infringement the use in good faith prior to the filing or priority date of the subsequently registered mark, then this entire provision would be rendered useless and a mere

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[137] *Rollo*, Vol. II, p. 765.

[138] *Rollo*, Vol. I, pp. 98-99.

surplusage. Stated otherwise, there is no point in adding Section 159.1 of the IP Code as an exception under "Limitations to Actions for Infringement" because it merely repeats the general rule that, after the mark has been registered, the registrant may file an infringement case against third parties using an identical or confusingly similar mark in commerce without its consent, when such use results in a likelihood of confusion.[139] Even without Section 159.1 of the IP Code, a third party's prior use of an unregistered mark, if said mark subsequently becomes registered by another, could not be considered as trademark infringement because there was no trademark registration — a requirement for a trademark infringement action to prosper — when the third party was using its mark.

More importantly, the proviso of Section 159.1 of the IP Code states: "[t]hat [the good faith prior user's] right may only be transferred or assigned together with his enterprise or business or with that part of his enterprise or business in which the mark is used." To adhere to the theories of the CA and Natrapharm that the prior user's use of the identical or confusingly similar mark subsequent to the filing or registration date of the registered mark should be considered as trademark infringement renders this proviso useless and nugatory and logically subjects the possible transferee or assignee to inevitable liability for trademark infringement. The lawmakers could not have intended this absurd outcome.

Read as a whole, Section 159.1 of the IP Code clearly contemplates **that a prior user in good faith may continue to use its mark even after the registration of the mark by the first-to-file registrant in good faith**, subject to the condition

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[139] SECTION 155. *Remedies; Infringement*. — Any person who shall, without the consent of the owner of the registered mark:

155.1. Use in commerce any reproduction, counterfeit, copy, or colorable imitation of a registered mark or the same container or a dominant feature thereof in connection with the sale, offering for sale, distribution, advertising of any goods or services including other preparatory steps necessary to carry out the sale of any goods or services on or in connection with which such use is likely to cause confusion, or to cause mistake, or to deceive[.]

that any transfer or assignment of the mark by the prior user in good faith should be made together with the enterprise or business or with that part of its enterprise or business in which the mark is used. The mark cannot be transferred independently of the enterprise and business using it.

From the provision itself, it can be gleaned that while the law recognizes the right of the prior user in good faith to the continuous use of its mark for its enterprise or business, it also respects the rights of the registered owner of the mark by preventing any future use by the transferee or assignee that is not in conformity with Section 159.1 of the IP Code. Notably, only the manner of use by the prior user in good faith — that is, the use of its mark tied to its current enterprise or business — is categorically mentioned as an exception to an action for infringement by the trademark owner. The proviso in Section 159.1 of the IP Code ensures that, despite the transfer or assignment of its mark, the future use by the assignee or transferee will not go beyond the specific confines of such exception. Without the proviso, the prior user in good faith would have the free hand to transfer or assign the "protected use" of its mark for any purpose to a third person who may subsequently use the same in a manner unduly curtailing the rights of the trademark owner. Indeed, this unilateral expansion of the exception by a third person could not have been intended, and is guarded against, by the legislature through the foregoing proviso.

In any event, the application of Section 159.1 of the IP Code necessarily results in at least two entities — the unregistered prior user in good faith or its assignee or transferee, on one hand; and the first-to-file registrant in good faith on the other — concurrently using identical or confusingly similar marks in the market, *even if there is likelihood of confusion*. While this situation may not be ideal, as eruditely explained in the Concurring Opinion of Justice Perlas-Bernabe, the Court is constrained to apply Section 159.1 of the IP Code as written.

To recall, the RTC imposed on Zuneca the following penalties in light of its finding that Zuneca had committed trademark infringement, which penalties were later affirmed by the CA:

Defendants, jointly and severally, are hereby directed to pay the plaintiff the following amounts, to wit:

One Million Pesos (P1,000,000.00) as damages;
One Million Pesos (P1,000,000.00) as exemplary damages;
Two Hundred Thousand Pesos (P200,000.00) as attorney's fees; and the Costs.

Defendants are further enjoined from henceforth using Zynaps or any other variations thereto which are confusingly similar to the plaintiff's Zynapse.

It is likewise ordered that all infringing goods, labels, signs, prints, packages, wrappers, receptacles, and advertisements in possession of the defendants, bearing the registered mark or any reproduction, counterfeit, copy, or colourable imitation thereof, all plates, molds, matrices and other means of making the same, implements, machines, and other items related to the conduct, and predominantly used, by the defendants in such infringing activities, be disposed of outside the channels of commerce or destroyed, without compensation.

The counterclaim of the defendants is DISMISSED for lack of merit.[140]

Because Zuneca is not liable for trademark infringement under Section 159.1 of the IP Code, the Court finds that there is no basis for the above imposition of penalties.

The penalties ordered by the lower courts — that is, the payment of damages, injunction, and destruction of goods of Zuneca — are based on Sections 156 and 157 of the IP Code, which provide:

SECTION 156. ***Actions, and Damages and Injunction for Infringement***. — 156.1. The owner of a registered mark **may recover damages from any person who infringes his rights**, and the measure of the damages suffered shall be either the reasonable profit which the complaining party would have made, had the defendant not infringed his rights, or the profit which the defendant actually made out of the infringement, or in the event such measure of damages cannot be readily ascertained with reasonable certainty, then the court may award as damages a reasonable percentage based upon the amount of gross

[140] *Rollo*, Vol. I, p. 156.

sales of the defendant or the value of the services in connection with which the mark or trade name was used in the infringement of the rights of the complaining party. (Sec. 23, first par., R.A. No. 166a)

156.2. On application of the complainant, the court may impound during the pendency of the action, sales invoices and other documents evidencing sales. (n)

156.3. In cases where actual intent to mislead the public or to defraud the complainant is shown, in the discretion of the court, the damages may be doubled. (Sec. 23, first par., R.A. No. 166)

156.4. The **complainant, upon proper showing, may also be granted injunction**. (Sec. 23, second par., R.A. No. 166a)

SECTION 157. *Power of Court to Order* ***Infringing Material Destroyed.*** — 157.1 In any action arising under this Act, in which a violation of any right of the owner of the registered mark is established, the **court may order that goods found to be infringing be**, without compensation of any sort, **disposed of** outside the channels of commerce in such a manner as to avoid any harm caused to the right holder, **or destroyed**; and all labels, signs, prints, packages, wrappers, receptacles and advertisements in the possession of the defendant, bearing the registered mark or trade name or any reproduction, counterfeit, copy or colorable imitation thereof, all plates, molds, matrices and other means of making the same, shall be delivered up and destroyed. (Emphasis supplied)

A plain reading of the above provisions reveals that these remedies may only be ordered by the court if there was a finding that a party had committed infringement. Here, because of the application of Section 159.1 of the IP Code, Zuneca is not liable for trademark infringement. Consequently, it follows that the award of damages, issuance of an injunction, and the disposition and/or destruction of allegedly infringing goods could not be ordered by the court.

Indeed, directing the foregoing remedies despite a finding of the existence of a prior user in good faith would render useless Section 159.1 of the IP Code, which allows the continued use and, in certain situations, the transfer or assignment of its mark by the prior user in good faith after the registration by the first-to-file registrant. To reiterate, Section 159.1 of the IP Code

contemplates a situation where the prior user in good faith and the first-to-file registrant in good faith concurrently use identical or confusingly similar marks in the market, even if there is likelihood of confusion.

While Section 147.1[141] of the IP Code provides that the owner of a registered mark shall have the exclusive right to prevent third parties' use of identical or similar marks for identical or similar goods where such use would result in a likelihood of confusion, **this provision should be interpreted in harmony with Section 159.1 of the IP Code**, especially the latter's proviso which allows the transfer or assignment of the mark together with the enterprise or business of the prior user in good faith or with that part of his enterprise or business in which the mark is used. The lawmakers intended for the rights of the owner of the registered mark in Section 147.1 to be subject to the rights of a prior user in good faith contemplated under Section 159.1. Essentially, therefore, Section 159.1 is an exception to the rights of the trademark owner in Section 147.1 of the IP Code.

Bearing in mind the current ownership regime based on registration under the IP Code which likewise protects and respects the rights of prior users in good faith, it is thus reasonable to infer that the new system of acquiring ownership effectively protects potential entrants in the market. Consistent with the expressed State policy[142] under the law, the system under the

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[141] SECTION 147. *Rights Conferred.* — 147.1. The owner of a registered mark shall have the exclusive right to prevent all third parties not having the owner's consent from using in the course of trade identical or similar signs or containers for goods or services which are identical or similar to those in respect of which the trademark is registered where such use would result in a likelihood of confusion. In case of the use of an identical sign for identical goods or services, a likelihood of confusion shall be presumed.

[142] IP Code, SECTION 2. *Declaration of State Policy*. — The State recognizes that an **effective intellectual and industrial property system is vital to the development of domestic and creative activity, facilitates transfer of technology, attracts foreign investments, and ensures market access for our products. It shall protect and secure the exclusive rights of scientists, inventors, artists and other gifted citizens to their intellectual**

IP Code encourages potential market entrants who may lack resources to venture into business with the assurance that their intellectual property rights are protected and may be enforced under the law, especially if they register their marks.

By having a uniform, easily-verifiable system of acquiring ownership, potential entrepreneurs have the guarantee that once they avail in good faith of the relatively inexpensive procedure of registration with the IPO, they already have the upper-hand against someone who could make a claim of ownership based on a supposed "prior use" — an issue that may entail expensive and extensive litigation effectively favoring those who have more resources. As explained, due to the change in the language of Section 123.1 of the IP Code, the registered owners in good faith who dutifully maintain their registrations generally do not have to worry that their rights over the registered mark may one day be subject to a cancellation proceeding by someone with claims of prior actual use. This uniform system of ownership also gives a sense of stability to potential foreign entrepreneurs wanting to offer their products and services in the Philippines because, if they register their marks in good faith and diligently maintain said marks, they no longer have to worry about their ownership over the mark being attacked by someone appearing out of the blue claiming to be a local prior user of the mark all along. Such sense of stability given by the current system of acquiring trademark ownership is in consonance with the expressed State policy that describes an effective intellectual and industrial property system as one that "attracts foreign investments."[143]

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property and creations, particularly when beneficial to the people, for such periods as provided in this Act.

The use of intellectual property bears a social function. To this end, the State shall promote the diffusion of knowledge and information for the promotion of national development and progress and the common good.

It is also the policy of the State to **streamline administrative procedures of registering patents, trademarks and copyright, to liberalize the registration on the transfer of technology, and to enhance the enforcement of intellectual property rights in the Philippines**. (n)

[143] Id.

In the same vein, those who do not have the resources to apply for trademark registrations are protected from infringement cases and may exercise certain rights under the law, albeit their rights under the IP Code are more limited compared to the owners of the mark.

Lastly, as additional rationale for initiating the complaint for trademark infringement against Zuneca and presumably to prevent the coexistence of the subject marks in the market, Natrapharm points out the dire consequence of the possibility of medical switching in the case at bar, especially since "ZYNAPSE" and "ZYNAPS" are admitted to be confusingly similar.[144] Allegedly, if a stroke patient who is supposed to take *citicoline* ("ZYNAPSE") mistakenly ingests *carbamazepine* ("ZYNAPS"), said patient will not only be not cured of stroke but also be exposed to the risk of suffering Stevens-Johnson syndrome, a side effect of *carbamazepine*, which is a serious systemic body-wide allergic reaction with a characteristic rash which attacks and disfigures the skin and mucous membrane.[145]

While there is no issue as to the likelihood of confusion between "ZYNAPSE" and "ZYNAPS," the Court believes that the evil of medical switching will likely not arise, considering that the law requires the generic names of drugs to be written in prescriptions.

R.A. 6675[146] (Generics Act of 1988), as amended by R.A. 9502[147] or the Universally Accessible Cheaper and Quality Medicines Act of 2008, reads:

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[144] *Rollo*, Vol. II, pp. 670 and 765.

[145] Id. at 747 and 761.

[146] AN ACT TO PROMOTE, REQUIRE AND ENSURE THE PRODUCTION OF AN ADEQUATE SUPPLY, DISTRIBUTION, USE AND ACCEPTANCE OF DRUGS AND MEDICINES IDENTIFIED BY THEIR GENERIC NAME (1988).

[147] AN ACT PROVIDING FOR CHEAPER AND QUALITY MEDICINES, AMENDING FOR THE PURPOSE REPUBLIC ACT NO. 8293 OR THE INTELLECTUAL PROPERTY CODE, REPUBLIC ACT NO. 6675 OR THE GENERICS ACT OF 1988, AND REPUBLIC ACT NO. 5921 OR THE PHARMACY LAW, AND FOR OTHER PURPOSES (2008).

SEC. 6. *Who Shall Use Generic Terminology*. — (a) All **government health agencies and their personnel as well as other government agencies** shall use **generic terminology or generic names in all transactions related to purchasing, prescribing, dispensing and administering of drugs and medicines**.

(b) All **medical, dental and veterinary practitioners, including private practitioners, shall write prescriptions using the generic name.** The brand name may be included if so desired. (Emphasis supplied)

Pertinently, the said law also provides for the appropriate penalties for failure to comply with these requirements. Section 12 of the Generics Act of 1988, as amended, reads:

SEC. 12. *Penalty*. — (A) Any person who shall violate Section 6(a) or 6(b) of this Act shall suffer the penalty graduated hereunder, *viz.*:

(a) for the first conviction, he shall suffer the penalty of reprimand which shall be officially recorded in the appropriate books of the Professional Regulation Commission.

(b) for the second conviction, the penalty of fine in the amount of not less than Ten thousand pesos (Php10,000.00) but not exceeding Twenty-five thousand pesos (Php25,000.00), at the discretion of the court.

(c) for the third conviction, the penalty of fine in the amount of not less than Twenty-five thousand pesos (Php25,000.00) but not exceeding Fifty thousand pesos (Php50,000.00) and suspension of his license to practice his profession for sixty (60) days at the discretion of the court.

(d) for the fourth and subsequent convictions, the penalty of fine of not less than One hundred thousand pesos (Php100,000.00) and suspension of his license to practice his profession for one (1) year or longer at the discretion of the court.

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(C) The Secretary of Health shall have the authority to impose administrative sanctions such as suspension or cancellation of license to operate or recommend suspension of license to practice profession to the Professional Regulation Commission as the case may be for the violation of this Act.

The administrative sanctions that shall be imposed by the Secretary of the Department of Health shall be in a graduated manner in accordance with Section 12.A.

An administrative case may be instituted independently from the criminal case: Provided, That, the dismissal of the criminal case or the withdrawal of the same shall in no instance be a ground for the dismissal of the administrative case.

Still, even as the Generics Act of 1988, as amended, provides protection to the consumers — and despite the Court's recognition of the respective rights under the IP Code of the first registrant in good faith and the prior user in good faith — the Court is nonetheless mindful of potential switching of medicines. As amply elaborated by Justice Gesmundo in his Concurring Opinion, the issue on likelihood of confusion on medicines may pose a significant threat to public health, hence, there is a need to improve our intellectual property laws and the government's manner of regulation of drug names to prevent the concurrent use in the market of confusingly similar names for medicines.

To further reduce therefore, if not totally eliminate, the likelihood of switching in this case, the Court hereby orders the parties to prominently state on the packaging of their respective products, **in plain language understandable by people with no medical background or training**, the medical conditions that their respective drugs are supposed to treat or alleviate and a warning indicating what "ZYNAPS" is *not* supposed to treat and what "ZYNAPSE" is *not* supposed to treat, given the likelihood of confusion between the two.

As well, by this Decision, the Court furnishes the Food and Drug Administration a copy of this decision, and accordingly directs it to monitor the continuing compliance by the parties of the above directives.

WHEREFORE, premises considered, the petition is **PARTLY GRANTED** and the Court hereby declares petitioners **ZUNECA PHARMACEUTICAL AND/OR AKRAM ARAIN AND/OR VENUS ARAIN, M.D., AND STYLE OF ZUNECA**

PHARMACEUTICAL as the prior users in good faith of the "ZYNAPS" mark and accordingly protected under Section 159.1 of the Intellectual Property Code of the Philippines.

The assailed Decision and Resolution of the Court of Appeals in CA-G.R. CV No. 99787, which affirmed the Decision of the Regional Trial Court of Quezon City, Branch 93 dated December 2, 2011, are **AFFIRMED** insofar as they declared respondent **NATRAPHARM, INC.** as the lawful registrant of the "ZYNAPSE" mark under the Intellectual Property Code of the Philippines, and are **SET ASIDE** insofar as they hold petitioners liable for trademark infringement and damages, directed the destruction of petitioners' goods, and enjoined petitioners from using "ZYNAPS." Petitioners' application for the issuance of a Temporary Restraining Order and/or Preliminary Injunction is **DENIED**.

ZUNECA PHARMACEUTICAL AND/OR AKRAM ARAIN AND/OR VENUS ARAIN, M.D., AND STYLE OF ZUNECA PHARMACEUTICAL and **NATRAPHARM, INC.** are likewise **ORDERED** to: (1) indicate on their respective packaging, in plain language understandable by people with no medical background or training, the medical conditions that their respective drugs are supposed to treat or alleviate and a warning indicating what "ZYNAPS" is *not* supposed to treat and what "ZYNAPSE" is *not* supposed to treat; and (2) submit to the Court a written report showing compliance with this directive within thirty (30) days from receipt of this Decision.

Let a copy of this Decision be furnished the Food and Drug Administration which is, by this Decision, directed to monitor the parties' continuing compliance with the above directives.

Let copies of this Decision likewise be forwarded to the Senate President, the Speaker of the House of Representatives, and the Intellectual Property Office, for their information and guidance.

SO ORDERED.

Peralta, C.J., Reyes, Jr., Carandang, Inting, Zalameda, Lopez, Delos Santos, and *Gaerlan, JJ.*, concur.

Perlas-Bernabe and *Gesmundo, JJ.*, see separate concurring opinions.

Leonen and *Lazaro-Javier, JJ.*, see dissenting opinions.

Hernando, J., no part.

Baltazar-Padilla, J., on leave.

CONCURRING OPINION

PERLAS-BERNABE, *J.*:

I concur. Petitioner Zuneca Pharmaceutical, *et al.* (Zuneca) should be considered as a prior user in good faith of the trademark "ZYNAPS" under the auspices of Section 159.1 (or "prior user in good faith rule") of Republic Act No. (RA) 8293,[1] otherwise known as the "Intellectual Property Code." The provision states:

> SECTION 159. *Limitations to Actions for Infringement.* — Notwithstanding any other provision of this Act, the remedies given to the owner of a right infringed under this Act shall be limited as follows:
>
> 159.1. **Notwithstanding the provisions of Section 155 hereof, a registered mark shall have no effect against any person who, in good faith, before the filing date or the priority date, was using the mark for the purposes of his business or enterprise**: Provided, That his right may only be transferred or assigned together with his enterprise or business or with that part of his enterprise or business in which the mark is used.
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> x x x x x x x x x (Emphasis and underscoring supplied)

As aptly discussed in the *ponencia*, ownership over trademarks under RA 8293 is acquired by registration in good faith and

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[1] Entitled "AN ACT PRESCRIBING THE INTELLECTUAL PROPERTY CODE AND ESTABLISHING THE INTELLECTUAL PROPERTY OFFICE, PROVIDING FOR ITS POWERS AND FUNCTIONS, AND FOR OTHER PURPOSES" (January 1, 1998).

not by use, which, however, is a requirement to maintain ownership.[2] While the general rule is that the registered owner "shall have the exclusive right to prevent all third parties not having the owner's consent from using in the course of trade identical or similar signs or containers for goods or services which are identical or similar to those in respect of which the trademark is registered where such use would result in a likelihood of confusion,"[3] the exception, as per Section 159.1 above, is when the mark has been used in good faith prior to the registration. Thus, Zuneca, being a prior user in good faith, cannot be held liable for trademark infringement nor its use of the said mark be enjoined, notwithstanding the existence of a confusingly similar trademark "ZYNAPSE" which has been duly registered in the name of respondent Natrapharm, Inc. (Natrapharm).

I write, however, to express my sentiments regarding the apparent dissonance between the "prior user in good faith rule" and the current trademark registration regime under the IP Code. To my mind, this rule, while indeed provided for under the IP Code, appears to stray from the overarching impetus of stability and uniformity which had in fact, prompted the shift of our trademark acquisition regime from being based on use to being based on registration.

To recount, under our old "Trademark Law" (RA 166[4]), which was passed on June 20, 1947, and amended by RA 638[5] on

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[2] See *ponencia*, pp. 12-20.

[3] Section 147.1 of the IP Code.

[4] Entitled "AN ACT TO PROVIDE FOR THE REGISTRATION AND PROTECTION OF TRADE-MARKS, TRADE-NAMES AND SERVICE-MARKS, DEFINING UNFAIR COMPETITION AND FALSE MARKING AND PROVIDING REMEDIES AGAINST THE SAME, AND FOR OTHER PURPOSES."

[5] Entitled "AN ACT TO AMEND SECTIONS FOUR AND THIRTY-SEVEN OF, AND TO ADD NEW SECTIONS TWO-A, NINE-A, TEN-A, NINETEEN-A, AND TWENTY-ONE-A,AND NEW CHAPTERS II-A — THE PRINCIPAL REGISTER, AND IV-A — THE SUPPLEMENTAL REGISTER TO REPUBLIC ACT NUMBERED ONE HUNDRED AND SIXTY-SIX, ENTITLED 'AN ACT TO PROVIDE FOR THE REGISTRATION AND PROTECTION OF TRADE-MARKS, TRADE-NAMES AND

June 11, 1951, ownership of trademarks was acquired through actual use:

Sec. 2-A. *Ownership of trade-marks, trade-names and service-marks; how acquired.* — Anyone who lawfully produces or deals in merchandise of any kind or who engages in any lawful business, or who renders any lawful service in commerce, **by actual use thereof in manufacture or trade, in business, and in the service rendered**, may appropriate to his exclusive use a trade-mark, a trade-name, or a service-mark not so appropriated by another, to distinguish his merchandise, business or service from the merchandise, business or services of others. The ownership or possession of a trade-mark, trade-name, service-mark, heretofore or hereafter appropriated, as in this section provided, shall be recognized and protected in the same manner and to the same extent as are other property rights known to the law. (Emphasis supplied)

On August 12, 1965, the Philippines acceded to the Paris Convention for the Protection of Industrial Property (Paris Convention), which entered into force with respect to the Philippines on September 27, 1965.[6] Primarily, the Paris Convention sought to ensure that intellectual works in one's jurisdiction were sufficiently protected in other countries.[7]

SERVICE-MARKS, DEFINING UNFAIR COMPETITION AND FALSE MARKING AND PROVIDING REMEDIES AGAINST THE SAME, AND FOR OTHER PURPOSES.'"

[6] See <http://www.wipo.int/treaties/en/ShowResults.jsp?treaty_id=2>.

[7] <https://www.wipo.int/treaties/en/ip/paris/>; See Article 2 of the Paris Convention:

Article 2

National Treatment for Nationals of Countries of the Union

(1) Nationals of any country of the Union shall, as regards the protection of industrial property, enjoy in all the other countries of the Union the advantages that their respective laws now grant, or may hereafter grant, to nationals; all without prejudice to the rights specially provided for by this Convention. Consequently, they shall have the same protection as the latter, and the same legal remedy against any infringement of their rights, provided that the conditions and formalities imposed upon nationals are complied with.

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Further, **the Paris Convention highlighted registration as a means of ensuring protection of trademarks across member-states**[8] and likewise, mandated the international protection of "well-known marks."[9]

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[8] Article 6 and 6*quinquies* of the Paris Convention read:

Article 6

Marks: Conditions of Registration; Independence of Protection of Same Mark in Different Countries

(1) The conditions for the filing and registration of trademarks shall be determined in each country of the Union by its domestic legislation.

x x x x x x x x x

(3) A mark duly registered in a country of the Union shall be regarded as independent of marks registered in the other countries of the Union, including the country of origin.

x x x x x x x x x

Article 6quinquies

Marks: Protection of Marks Registered in One Country of the Union in the Other Countries of the Union

A.

(1) Every trademark duly registered in the country of origin shall be accepted for filing and protected as is in the other countries of the Union, subject to the reservations indicated in this Article. Such countries may, before proceeding to final registration, require the production of a certificate of registration in the country of origin, issued by the competent authority. No authentication shall be required for this certificate.

(2) Shall be considered the country of origin the country of the Union where the applicant has a real and effective industrial or commercial establishment, or, if he has no such establishment within the Union, the country of the Union where he has his domicile, or, if he has no domicile within the Union but is a national of a country of the Union, the country of which he is a national.

x x x x x x x x x

[9] Article 6*bis* of the Paris Convention reads:

Article 6bis

Marks: Well-Known Marks

(1) The countries of the Union undertake, ex officio if their legislation so permits, or at the request of an interested party, to refuse or to cancel the registration, and to prohibit the use, of a trademark which constitutes a

Later, on April 15, 1994, the Philippines adopted the Agreement on the Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement) in furtherance of the Paris Convention, among other intellectual property treaties.[10] It entered into force with respect to World Trade Organization (WTO) members, including the Philippines, upon the WTO's founding on January 1, 1995. Mainly, the TRIPS Agreement sought **"to reduce distortions and impediments to international trade, x x x taking into account the need to promote effective and adequate protection of intellectual property rights x x x,"**[11] and recognized the need for new rules and disciplines concerning "**adequate standards and principles concerning the availability, scope and use of trade-related intellectual property rights**."[12] Thus, to this end, the TRIPS Agreement pushed for a shift to a "registration system" as a means of acquiring exclusive rights over trademarks.[13]

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reproduction, an imitation, or a translation, liable to create confusion, of a mark considered by the competent authority of the country of registration or use to be well-known in that country as being already the mark of a person entitled to the benefits of this Convention and used for identical or similar goods. These provisions shall also apply when the essential part of the mark constitutes a reproduction of any such well-known mark or an imitation liable to create confusion therewith.

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[10] Articles 2 and 5 of the TRIPS Agreement read:

ARTICLE 2
Intellectual Property Conventions

1. In respect of Parts II, III and IV of this Agreement, Members shall comply with Articles 1 through 12, and Article 19, of the Paris Convention (1967).

x x x x x x x x x

ARTICLE 5
Multilateral Agreements on Acquisition or Maintenance of Protection

The obligations under Articles 3 and 4 do not apply to procedures provided in multilateral agreements concluded under the auspices of WIPO relating to the acquisition or maintenance of intellectual property rights.

[11] See preambular statement of the TRIPS.

[12] Id.

[13] See Articles 15 and 16 (1) of the TRIPS Agreement, which read:

As I see it, registration, as compared to use, denotes a standardized procedure to determine, on both domestic and international levels, at what point in time has a person acquired

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ARTICLE 15

Protectable Subject Matter

1. Any sign, or any combination of signs, capable of distinguishing the goods or services of one undertaking from those of other undertakings, shall be capable of constituting a trademark. Such signs, in particular words including personal names, letters, numerals, figurative elements and combinations of colours as well as any combination of such signs, **shall be eligible for registration as trademarks**. Where signs are not inherently capable of distinguishing the relevant goods or services, Members may make registrability depend on distinctiveness acquired through use. Members may require, as a condition of registration, that signs be visually perceptible.

2. Paragraph 1 shall not be understood to prevent a Member from denying registration of a trademark on other grounds, provided that they do not derogate from the provisions of the Paris Convention (1967).

3. Members may make registrability depend on use. **However, actual use of a trademark shall not be a condition for filing an application for registration**. An application shall not be refused solely on the ground that intended use has not taken place before the expiry of a period of three years from the date of application.

4. The nature of the goods or services to which a trademark is to be applied shall in no case form an obstacle to registration of the trademark.

5. Members shall publish each trademark either before it is registered or promptly after it is registered and shall afford a reasonable opportunity for petitions to cancel the registration. In addition, Members may afford an opportunity for the registration of a trademark to be opposed.

ARTICLE 16

Rights Conferred

1. The **owner of a registered trademark** shall have the **exclusive right** to prevent all third parties not having the owner's consent from using in the course of trade identical or similar signs for goods or services which are identical or similar to those in respect of which the trademark is registered where such use would result in a likelihood of confusion. In case of the use of an identical sign for identical goods or services, a likelihood of confusion shall be presumed. **The rights described above shall not prejudice any existing prior rights, nor shall they affect the possibility of Members making rights available on the basis of use**.

x x x x x x x x x (Emphases and underscoring supplied)

ownership of a trademark to the exclusion of others. Because "registration" is a formal, definite, and concrete act that is processed through official State institutions, whereas "use" is arbitrary individual action that remains subject to evidentiary proof, the protection of trademark rights is therefore more stable and uniform with the former.

On June 6, 1997, RA 8293 was passed. Among others, it provided for the shift from the old "use-based" system under RA 166, as amended, to a "registration-based" system of acquiring rights over of a trademark. The pertinent provision which reflects this is Section 122 of the IP Code:

> Section 122. *How Marks are Acquired*. — The rights in a mark shall be acquired **through registration** made validly in accordance with the provisions of this law.

As may be gleaned from the legislative deliberations, the main reason behind abandoning the old rule that use is a pre-requisite for the registration of a trademark was for the Philippines to comply with its international obligations under the foregoing agreements which introduced a system of trademark registration.[14] Likewise, legislators envisioned that the

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[14] Pertinent portions on the House of Representatives deliberations of House Bill No. 8098, the sponsorship speech of Senator Roco for Senate Bill No. 1719, and the fact sheet attached to the committee report on House Bill No. 8098 respectively read:

Deliberations on House Bill No. 8098

Mr. Gonzales. I was informed, Madam Speaker, that the information of the honorable Gentleman representing the Peasant Sector is not accurate. **The provision of the codified IPR is in compliance with TRIPS Agreement, no more and no less**.

Mr. Montemayor. Yes. Well, the reason I am raising that, Madam Speaker, is the 1991 agreement between the Philippines and the US is an executive agreement to my knowledge, and, therefore, the legislature is not duty bound to accept everything or even to accept anything in that agreement. Now, subsequently in 1994 a TRIPS Agreement was concluded, the Philippines acceded to it. I just wanted to find out if **the provisions in this bill incorporate only that we are duty bound to incorporate under the 1994 TRIPS Agreement**.

registration system would actually free the Intellectual Property Office (IPO) from having to adjudicate the circumstances surrounding the creation of the trademark in order to determine

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Mr. Gonzales. That is correct, Madam Speaker. (emphases supplied)

Sponsorship Speech of Senator Roco for Senate Bill No. 1719

Senator Roco. x x x **To comply with TRIPS and other international commitments, this bill no longer requires prior use of the mark as a requirement for filing a trademark application. It also abandons the rule that ownership of a mark is acquired through use by now requiring registration of the mark in the Intellectual Property Office**. Unlike the present law, it establishes one procedure for the registration of marks. **This feature will facilitate the registration of marks**. (Emphasis supplied)

Fact Sheet attached to Committee Report No. 620 on House Bill No. 8098, submitted by the Committee on Economic Affairs and Committee on Trade and Industry

Part III: The Law on Trademarks, Service Marks and Trade Names. The current law governing trademarks, RA 166, which came into force on June 1947, provides that ownership of trademark is acquired through use. **However, by virtue of the Lisbon Act of the Paris Convention for the Protection of Industrial Property, our country was obliged to introduce a system of registration of marks of nationals of member countries of the Paris Convention which is based no longer on use in the Philippines but on foreign registration**. This procedure is defective in several aspects: first, it provides to a foreign applicant procedure which is less cumbersome compared to that required of local applicants who need to establish prior use as a condition for filing a trademark application; and second, it is incompatible with the "based on use" principle which is followed in RA 166.

Our adherence to the Paris Convention binds us to protect well-known marks. Unfortunately, the provisions of Art. 6bis of the Paris Convention on this matter are couched in broad terms which are not defined in the Convention. This has given rise to litigation between local businessmen using the mark and foreigners who own the well-known marks. The conflicting decisions of our courts on this issue aggravates the situation.

The Bill proposes solutions to these problems by mandating that prior use of the mark is no longer a requirement for filing a trademark application. It also abandons the rule that the ownership of a mark is acquired through use but rather through registration of the mark in the BPTTT. Unlike the current regime, it establishes only one procedure in the registration of marks. **The removal of prior use as a condition for filing the application also facilitates greatly the registration of marks**.

its true owner.[15] Accordingly, it may therefore be discerned that the shift to a trademark acquisition regime based on registration is premised on practical considerations of stability and uniformity. Indeed, while it may be true that intellectual property is a creation of the mind and hence, conceptually acquired through use, our present laws recognize that, ***by legal fiction***, ownership acquisition must be reckoned from the more definite and concrete act of registration; otherwise, trademark ownership may always be subject to adverse claims of other parties who insist that they were the first ones who have thought of and used a certain intellectual property and hence, entrench uncertainty, if not chaos, to the regulatory and even commercial aspects of trademark protection.

Nonetheless, it must be clarified that the shift from the old "use-based" system under RA 166, as amended, to a "registration-based" system of acquiring rights over trademark under RA 8293 did not entirely take away the importance of use in the realm of trademark ownership. For instance, under Section 124.2[16] of RA 8293, the applicant or registrant of a trademark is required, within three (3) years from the filing date of its application, to file before the IPO a **declaration of actual use** (DAU) of the mark with evidence to that effect. Similarly, Section

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Likewise, the Bill provides that use or registration in the Philippines is not a requirement for the protection of well-known marks there, and if registered in the Philippines, the registration can prohibit its use by another in connection with goods or services that are identical or similar with those in respect to which the registration is applied for. This resolves many of the questions that have remained unanswered by existing statute and jurisprudence.

[15] See House of Representatives Deliberations, House Bill No. 8098, November 12, 1996, p. 499.

[16] Item 124.2, Section 124 of RA 8293 reads:

> Section 124. *Requirements of Application.* — x x x
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> x x x x x x x x x
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> 124.2. The applicant or the registrant shall file a declaration of actual use of the mark with evidence to that effect, as prescribed by the Regulations within three (3) years from the filing date of the application. Otherwise, the application shall be refused or the mark shall be removed from the Register by the Director.

145[17] of the same Code requires the filing of the same declaration within one (1) year from the fifth anniversary of the date of registration of such trademark. Alternatively, the applicant/registrant may file a declaration of non-use (DNU) if there are justifiable circumstances for doing so.[18] Failure to file a DAU/DNU within the prescribed period will result in the automatic refusal of the application or cancellation of registration of the mark, as the applicant/registrant is considered to have abandoned and/or withdrawn any right/s that he/she has over the trademark.[19] In all of these regulatory facets, however, use is relevant to maintain ownership of the trademark, as opposed to its acquisition, which, as mentioned, is reckoned upon good faith registration.

At this juncture, it is important to stress that in order to be considered as a valid mode of ownership acquisition, **registration of a trademark under the provisions of RA 8293 must be made in good faith**. The good faith of the registrant is a legal pre-requisite and delimitation, without which registration is not considered to have been validly made and consequently, nullifies the registrant's ownership acquisition.

Generally speaking, "[g]ood faith is an intangible and abstract quality with no technical meaning or statutory definition, and it encompasses, among other things, an honest belief, the absence

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[17] Section 145 of RA 8293 reads:

SECTION 145. *Duration*. — A certificate of registration shall remain in force for ten (10) years: *Provided*, That the registrant shall file a declaration of actual use and evidence to that effect, or shall show valid reasons based on the existence of obstacles to such use, as prescribed by the Regulations, within one (1) year from the fifth anniversary of the date of the registration of the mark. Otherwise, the mark shall be removed from the Register by the Office.

[18] See Dissenting Opinion of Associate Justice Lazaro-Javier, p. 7.

[19] See *Birkenstock Orthopaedie GMBH and Co. KG (formerly Birkenstock Orthopaedie GMBH) v. Philippine Shoe Expo Marketing Corporation*, 721 Phil. 867, 878 (2013). See also *ABS-CBN Publishing, Inc. v. Director of the Bureau of Trademarks*, G.R. No. 217916, June 20, 2018, 867 SCRA 244, 263-264.

of malice and the absence of design to defraud or to seek an unconscionable advantage. It implies honesty of intention, and freedom from knowledge of circumstances which ought to put the holder upon inquiry. The essence of good faith lies in an honest belief in the validity of one's right, ignorance of a superior claim and absence of intention to overreach another."[20]

As applied to trademark registration, one should be considered a registrant in good faith if there is no showing that he knew of any prior creation, use, or registration of another of an identical or similar mark at the time of registration. Otherwise, if he had such knowledge, then he is not considered as a registrant in good faith, which thus negates his ownership over the trademark registered in his name. To reiterate, when a registration is not in good faith, it is not considered as a valid registration and hence, no ownership rights are acquired in the first place. In this regard, the registrant in bad faith is divested of ownership **not because of the oppositor's prior use of the mark**, but rather, because the legal requisite of a registration in good faith was not complied with. Simply put, a registration not in good faith is equivalent to no registration at all and hence, no ownership rights were transmitted.

At the risk of belaboring the point, registration was a move towards a more stable and uniform system of trademark protection based on a standardized procedure that is recognized between and among nationals of the member states privy to the TRIPS and the Paris Convention, among others. The regime of registration is a legal fiction that is based on practical considerations of stability and uniformity. Our policy makers needed to devise a way to address the uncertain scenario where any person can loosely assert ownership of trademarks through intellectual creation and use, and thus, perpetually subject another person's intellectual property to an adverse claim.

However, as I have earlier intimated, the "prior user in good faith rule" under Section 159.1 appears to stray from these practical considerations of stability and uniformity. As it is

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[20] *Ochoa v. Apeta*, 559 Phil. 650, 655-656 (2007).

currently formulated, Section 159.1 states that "**[n]otwithstanding the provisions of Section 155 hereof**, a registered mark shall have **no effect** against any person who, in good faith, before the filing date or the priority date, was using the mark for the purposes of his business or enterprise." To be sure, Section 155 of the IP Code enumerates all the rights of a registered owner of a trademark:

> Section 155. *Remedies; Infringement*. — Any person who shall, without the consent of the owner of the registered mark:
>
> 155.1. Use in commerce any reproduction, counterfeit, copy, or colorable imitation of a registered mark or the same container or a dominant feature thereof in connection with the sale, offering for sale, distribution, advertising of any goods or services including other preparatory steps necessary to carry out the sale of any goods or services on or in connection with which such use is likely to cause confusion, or to cause mistake, or to deceive; or
>
> 155.2. Reproduce, counterfeit, copy or colorably imitate a registered mark or a dominant feature thereof and apply such reproduction, counterfeit, copy or colorable imitation to labels, signs, prints, packages, wrappers, receptacles or advertisements intended to be used in commerce upon or in connection with the sale, offering for sale, distribution, or advertising of goods or services on or in connection with which such use is likely to cause confusion, or to cause mistake, or to deceive, shall be liable in a civil action for infringement by the registrant for the remedies hereinafter set forth: Provided, That the infringement takes place at the moment any of the acts stated in Subsection 155.1 or this subsection are committed regardless of whether there is actual sale of goods or services using the infringing material.

"No effect" means that the prior user in good faith is not only completely insulated from a criminal prosecution for trademark infringement, it also means that he can continue to use the mark simultaneous with the registered owner's own use. The only condition given to a prior user in good faith is that "his right may only be transferred or assigned together with his enterprise or business or with that part of his enterprise or business in which the mark is used."[21] ***To my mind, the concept***

[21] Section 159.1 of the IP Code.

of good faith underlying Section 159.1 of the IP Code should only go as far as negating the criminal intent of the prior user in good faith and hence, be considered as a defense in a criminal case for infringement. But because of the sweeping language of the law, i.e., no effect, Section 159.1 appears to create an anomalous situation where a person who never registers his mark is still allowed to propagate, on a commercial level, his rights to the trademark even as against a person who has fully complied with the legally prescribed process of duly registering his rights pursuant to the IP Code.

Indeed, by having a safe harbor provision that cuts across both criminal and civil aspects of an action for infringement, Section 159.1 therefore, on the one hand, practically incentivizes lackadaisical business owners to simply not register their trademarks by conveniently claiming earlier use. On the other hand, vigilant business owners who have duly complied with the law have to suffer the prejudice of having the goodwill of their registered trademarks diluted because of the existence of other unregistered trademarks regardless of whether they cover goods that compete with their own. Not only that, the public is also faced with the quandary of having two confusingly similar trademarks in the market which, pursuant to Section 159.1, would be legally sanctioned. **This danger of public confusion is, in fact, greatly magnified in this case because two (2) medicines, *i.e.*, Zuneca's *carbamazepine* under the trademark "ZYNAPS" and Natrapharm's *citicoline* under the trademark "ZYNAPSE," are allowed to be publicly sold under confusingly similar trademarks, notwithstanding the difference in their usage, *i.e.*, epilepsy for ZYNAPS and stroke for ZYNAPSE**. Clearly, these precarious situations created by Section 159.1 of the IP Code run anathema to the objectives of stability and uniformity which motivated the Philippines' shift from a regime of use to registration as discussed above.

Notably, the "prior user in good faith rule" was part of both House Bill No. 8098 and Senate Bill No. 1719, which were the

precursor bills of the IP Code.[22] However, it is interesting to note that after a careful scrutiny of the deliberations, there exists no explicit discussion or interpellation regarding the intent behind Section 159.1 of the IP Code. As above-mentioned, part of the thrust in the shift from the "use" system to the "registration" system is to comply with our obligations under international agreements,[23] and to align ourselves with the majority of countries who are signatories thereto.[24] The goal of the shift is to achieve "a uniform, universal standard insofar as the trademark, the patents, and the copyright laws are

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[22] House Bill No. 8098 and Senate Bill No. 1719 provide:

House Bill No. 8098

Section 139. *Limitations to Actions for Infringement*. — Notwithstanding any other provision of this Act, the remedies given to the owner of a right infringed under this Act shall be limited as follows:

(a) Notwithstanding the provisions of Section 135 hereof, a registered mark shall have no effect against any person (prior user) who, in good faith, before the filing date or, where the priority is claimed, the priority date of the application on which the mark is registered, was using the mark for the purposes of his business or enterprise: *Provided*, his right may only be transferred or devolved together with his enterprise or business or with that part of his enterprise or business in which the use of the mark has been made thereof.

x x x x x x x x x

Senate Bill No. 1719

Section 148. *Limitations to Actions for Infringement*. — Notwithstanding any other provision of this Act, the remedies given to the owner of a right infringed under this Act shall be limited as follows:

148.1. Notwithstanding the provisions of Section 144 hereof, a registered mark shall have no effect against any person who, in good faith, before the filing date or the priority date, was using the mark for the purposes of his business or enterprise: *Provided*, That his right may only be transferred or assigned together with his enterprise or business or with that part of his enterprise or business in which the mark is used.

x x x x x x x x x

[23] See Sponsorship Speech of Senator Roco for Senate Bill No. 1719, Senate Records, October 8, 1996, pp. 131-132.

[24] House of Representatives Deliberations, House Bill No. 8098, January 23, 1997, p. 619.

concerned,"[25] and to "reduce distortions and impediments to international trade, and [take] into account the need to promote effective and adequate protection of intellectual property rights x x x."[26] However, the prior user exception under Section 159.1, as it is currently framed, does not appear to further this thrust as its application can actually lead to confusion and the dilution of the rights of the actual registered owner. In contemplation, it would have made sense if Section 159.1 was established as a mere transitory provision to bridge the gap between the former "use-based" system and the new "registration-based" system insofar as protecting vested rights that have already been acquired through use, *sans* registration, under the old law. However, Section 236 of the IP Code,[27] reflecting Article 16, Section 2, Part II of the TRIPS,[28] is the provision which applies to rights acquired in good faith prior to its effectivity. Besides, Section 159.1 makes no mention of prior vested rights as it in fact, condones the continuing and prospective use of the mark priorly used in good faith with the only limitation as follows:

Section 159. *Limitations to Actions for Infringement*. — x x x.

159.1. Notwithstanding the provisions of Section 155 hereof, a registered mark shall have no effect against any person who, in good faith, before the filing date or the priority date, was using the mark

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[25] House of Representatives Deliberations, House Bill No. 8098, March 17, 1997, p. 727.

[26] See preambular statement of the TRIPS.

[27] SECTION 236. *Preservation of Existing Rights*. — Nothing herein shall adversely affect the rights on the enforcement of rights in patents, utility models, industrial designs, marks and works, acquired in good faith prior to the effective date of this Act.

[28] Article 16, Section 2, Part II of the TRIPS pertinently states:

Article 6

Rights Conferred

1. x x x The rights described above shall not prejudice any existing prior rights, nor shall they affect the possibility of Members making rights available on the basis of use.

x x x x x x x x x

for the purposes of his business or enterprise: **Provided, That his right may only be transferred or assigned together with his enterprise or business or with that part of his enterprise or business in which the mark is used**.

x x x x x x x x x (Emphasis and underscoring supplied)

Indeed, it would have been enlightening to uncover the intent behind incorporating Section 159.1 but unfortunately, the deliberations are silent on this score. Nevertheless, it is a given fact that Section 159.1 exists and functions as an express exception to trademark infringement. To disregard the same or to attempt to add a further requirement to the law, without any ample textual support, would be clearly tantamount to judicial legislation. Consequently, the Court is constrained to recognize and apply Section 159.1 in its most ordinary meaning, as the *ponencia* has done so. The remedy to the dilemma of having a system of trademark ownership though registration, whilst at the same time, diminishing the stability and uniformity of this same system by recognizing the rights of a prior user in good faith under Section 159.1 of the IP Code, rests with Congress. Until such time that this matter is addressed through amendatory legislation, the Court must perform its constitutional mandate of upholding the law as it is.

SEPARATE CONCURRING OPINION

GESMUNDO, *J.*:

The State shall protect and promote the right to health of the people and instill health consciousness among them.[1]

The State shall establish and maintain an effective food and drug regulatory system and undertake appropriate health, manpower development, and research, responsive to the country's health needs and problems.[2]

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[1] Article II, Sec. 15, 1987 Constitution.

[2] Article XIII, Sec. 12, 1987 Constitution.

I concur with the *ponencia*. However, I am of the view that for the sake of public interest, the Court should not simply hand a verdict on this occasion, but also express its stand on how the relevant government institutions can move forward. The present decision carries the misfortune of allowing two different drugs with confusingly similar brand names to be sold in the market. This can lead to egregious consequences on public health and safety, as empirical data already show. There is thus a need to amend or supplement existing legislation and regulations to cushion against the decision's harmful effects on our People's wellbeing.

At the onset, it must be emphasized that the misfortune of this decision is not borne of the Court's subjective interpretation of the law, but brought about by its very letter. Section 159.1 of the Intellectual Property Code *(IPC)* is clear that a registered mark shall have no effect against any person who was using the mark in good faith for his business or enterprise before the filing date.[3] This provision, in turn, appears to have been derived from Article 16 (1) of the Agreement on Trade-Related Aspects of Intellectual Property Rights *(TRIPS)*, which provides that the rights of a registered trademark owner "shall not prejudice any existing prior rights, nor shall they affect the possibility of Members making rights available on the basis of use."[4] The

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[3] Sec. 159.1 of the IPC states in full:

159.1. Notwithstanding the provisions of Section 155 hereof, a registered mark shall have no effect against any person who, in good faith, before the filing date or the priority date, was using the mark for the purposes of his business or enterprise: Provided, That his right may only be transferred or assigned together with his enterprise or business or with that part of his enterprise or business in which the mark is used.

[4] Article 16 (1) of the TRIPS states in full:

1. The owner of a registered trademark shall have the exclusive right to prevent all third parties not having the owner's consent from using in the course of trade identical or similar signs for goods or services which are identical or similar to those in respect of which the trademark is registered where such use would result in a likelihood of confusion. In case of the use of an identical sign for identical goods or services, a likelihood of confusion shall be presumed. The rights described above shall not prejudice any existing prior rights, nor shall they affect the possibility of Members making rights available on the basis of use.

IPC was enacted in keeping with the country's commitment to international conventions, among which is the TRIPS to which it adhered to in 1995 following its entry into the World Trade Organization.[5] There is thus no gainsaying that the statute states what it intends. The rule is that where the law is clear and unambiguous, it must be taken to mean exactly what it says, and courts have no choice but to see to it that the mandate is obeyed.[6]

Alas, the brand names that the law requires the Court to uphold may have benign effects if they pertain to different goods, but not so when they are both prescription drugs. The names "Zynapse" and "Zynaps" are almost absolutely identical; the letter "e" in the former being a negligible element for differentiation. The concurrent availability of these drugs in the market poses a significant threat to consumer health. In fact, respondent Natrapharm pointed out that if a stroke patient who is supposed to take Zynapse *(citicoline)* mistakenly ingests Zynaps *(carbamazepine)* which is an anti-convulsant medication used to control all types of seizure disorders like epilepsy,[7] not only will he not be cured of stroke, he will also be exposed to the risk of suffering Stevens-Johnson syndrome. The latter, a side effect of *carbamazepine*, is a condition where a person suffers serious systemic body-wide allergic reaction with a characteristic rash that attacks and disfigures the mucous membrane.[8]

Medication errors are the most expected outcome in the coexistence of Zynapse and Zynaps in the market. The World Health Organization *(WHO)* adopted the United States Food and Drug Administration *(US FDA)* definition of "medication error" to mean "any preventable event that may cause or lead to inappropriate medication use or patient harm while the

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[5] https://www.ipophil.gov.ph/news/the-intellectual-property-system-a-brief-history/ last accessed February 12, 2020.

[6] *Abakada Guro Party List v. Ermita*, 506 Phil. 1, 113 (2005).

[7] Decision, p. 3.

[8] Decision, p. 40.

medication is in the control of the health-care professional, patient or consumer."[9] In its report entitled *The Philippines Health System Review*,[10] the WHO states that among the factors that contribute to medication errors in the Philippines is incorrect interpretation of the prescription or medication chart. Prescribing and dispensing errors, on the other hand, often occurred because of the unreadable handwriting of the doctor. The report shared a study conducted in public and private hospitals in Quezon City which found that 28% of the sampled patients could not read their doctor's prescriptions well, which led to medical consequences such as improper dosage and even death. Notably, another common cause of medication error reported in the Philippines is the existence of look-alike or sound-alike medication names. Some of the examples given were "Mesulid" versus "Mellaril," "Ceporex" versus "Leponex" and "EMB" versus "EMBR."[11]

Moreover, in a 2010 study[12] of a group of nurses at the Philippine Heart Center, it was revealed that medication errors are found in prescribing (90.85%), order processing (55.7%), dispensing (92.5%) and administering (85.4%). These errors were attributable to increased workload, interruptions or distractions, and high patient to nurse ratio. In a 2016 online article,[13] it was also reported that in the Philippines, 79% of

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[9] "The Philippines Health System Review," Health Systems in Transition, Vol. 8, No. 2, page 243, World Health Organization, 2018, http://apps.searo.who.int/PDS_DOCS/B5438.pdf, last accessed February 12, 2020.

[10] Id.

[11] Id.

[12] Carino, Germin Dale, et al., Factors that Contribute to Medication Errors in the Philippine Heart Center (2010), abstract found in https://www.phc.gov.ph/Images/articles/Factors%20that%20Contribute%20to%20Medication%20Errors.pdf. See also Literatus, Zosimo, Medical errors in the Philippines, SunStar Cebu, https://www.sunstar.com.ph/article/1808499, both websites accessed on February 12, 2020.

[13] How Can Patients Prevent Medication Errors, The Philippine Star, December 13, 2016, https://www.pressreader.com/philippines/the-philippine-star/20161213/282600262514343, last accessed February 12, 2020.

patients experience at least one error during their medication period. Some of the identified causes were: (1) poor communication between healthcare providers; (2) when a physician does not make his patient clearly understand the prescribed medication; and (3) medication names and medical abbreviations that sound alike, which cause confusion and incorrect usage.

It is acknowledged, based on the studies mentioned above, that medication errors are not solely attributable to confusingly similar medication names. However, it is an area that the government can effectively regulate, *vis-à-vis* human factors such as poor communication among health providers and physicians' illegible handwriting. Allowing confusingly similar medication names to be sold in the market poses a direct challenge to the State's ability to fulfill its constitutional mandate to protect and promote the right to health of the people.[14] Hence, government action is imperative. What is lacking in the law should be made up for by further legislation and regulation.

A good starting point would be to expand the regulatory powers of the Food and Drug Administration *(FDA)* to cover strict monitoring and registration of medication brand names.

A little bit of history is in order.

In 1963, Republic Act (*R.A.*) No. 3720 was passed, also known as the Food, Drug, and Cosmetic Act. The law declared it the policy of the State "to ensure safe and good quality supply of food, drug and cosmetic, and to regulate the production, sale, and traffic of the same to protect the health of the people." For that purpose, it created the FDA, which was tasked to administer and supervise the implementation of the law and rules and regulations that will be issued pursuant thereto. Later, Executive Order No. 851[15] was signed, reorganizing the then Ministry of

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[14] Art. II, Section 15 of the 1987 Constitution states:

Sec. 15. The State shall protect and promote the right to health of the people and instill health consciousness among them.

[15] Executive Order No. 851, entitled "Reorganizing the Ministry of Health, Integrating the Components of Health Care Delivery into its Field Operations, and for Other Purposes," was signed on December 2, 1982.

Health. It abolished the FDA and created the Bureau of Food and Drugs *(BFAD)* in its stead.

On November 17, 1986, BFAD Regulation No. 2 was issued, having for its subject the "Assignment of Brand Name and/or Generic Names for a Formulation of a Drug of Pharmaceutical Specialty." It provided that BFAD should issue a clearance for a particular brand name before it may be registered. Pertinent provisions of this regulation state:

1. All drugs and/or pharmaceutical specialties, whether imported or locally manufactured, shall be registered with the Bureau of Food and Drugs (BFAD) under their generic and/or brand name prior to local marketing.

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3. A drug manufacturer, toll/contract manufacturer, distributor, drug department or licensee can use a brand name and/or generic name for a given formulation of a drug or pharmaceutical specialty with a single active ingredient; Provided, however, that brand name will not have an identical or similar name with those previously and/or already registered with this Office.

4. No imported drug or pharmaceutical specialty, though patented and/or registered in other countries, will be registered if there exists an identical or similar brand name already registered with BFAD.

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7. Every brand name of a drug or pharmaceutical specialty shall be submitted for name clearance to BFAD prior to registration. The purpose of the name clearance is to prevent similarity of the brand name with other previously registered drug products.

8. The general procedures for clearing brand names are:

   8.1. brand name must not be confusing in speech, in rhyme or in writing with other registered brand names.

   8.2. brand name must not be confusingly similar nor identical with the first syllables unless the middle syllables create distinctive appearance and sounds.

8.3 brand name must be different either in prefix, middle or suffix syllables if applied to the different generic class of drugs or where the drugs have different indications to prevent confusion.

8.4 brand name must not be identical or similar to INN (International Non-proprietary Names).

8.5 brand name must not, in any way, conflict with the established guidelines as outlined in MOH Administrative Order No. 76 dated January 24, 1984.

However, on July 23, 1999, Bureau Circular No. 17, series of 1999 was issued, which dealt with the "Transfer of Processing of Brand Name Clearance for Pharmaceutical Products to the Intellectual Property Office *(IPO)*." The circular reads in full:

To effect a centralized clearing house of all brand names used for consumer products, including foods, drugs, cosmetics and household hazardous substances, the Bureau of Food and Drugs will transfer the function of issuance of certificate of brand name clearance to the Intellectual Property Office (IPO). Such transfer will initially involve pharmaceutical products succeeded by other products generated by the Bureau.

All pharmaceutical companies are therefore advised to secure Certificate of Brand Name Clearance from the said Office to comply with the requirements for registration of branded pharmaceutical products as specified in the Guidelines for the Registration of Pharmaceutical Products issued under Bureau Circular No. 05, s. 1997.

BFAD, therefore, abdicated its authority to approve pharmaceutical brand names in favor of the IPO, and decided to rely on the IPO's issuance of a Certificate of Brand Name Clearance before it registers such name.

It is not clear from the facts whether Zuneca obtained clearance from the IPO before it was granted a Certificate of Product Registration by BFAD for Zynaps on April 15, 2003.[16] Nonetheless, there would not have been an issue, as there appears

[16] Decision, p. 4.

to be no similar-sounding pharmaceutical brand name that was registered with the fledgling IPO[17] at the time.

On June 21, 2005, the Secretary of the Department of Health (DOH), Francisco T. Duque III, issued Administrative Order (*A.O.*) No. 2005-0016, which had for its subject "General Policies and Guidelines Governing Brand Names of Products for Registration with the Bureau of Food and Drugs." Through this A.O., the DOH declared that "it is not the gatekeeper" in the regulation of brand names, as its mandate is *only* to "ensure the safety, efficacy and good quality of products applied for registration." The A.O. stated:

> This Department acknowledges that it is not the gatekeeper in the promotion and regulation of brand names which are often times being used as marketing tools, without any connection or relation whatsoever to the safety, efficacy and quality of the products. In issuing this Order, this Department, through BFAD, hereby reiterates and consistently adopts its mandate and responsibility to only ensure the safety, efficacy and good quality of products applied for registration.

A.O. No. 2005-0016 laid down guidelines that did away with the process of obtaining brand name clearances from the IPO. Instead, BFAD decided to rely on its own listing to determine whether a brand name being applied for is identical to one already registered, and consequently be denied registration. This is the regulation in effect at the time Natrapharm obtained its trademark registration with the IPO in 2007, and later a Certificate of Product Listing from the BFAD. One may wonder how or why BFAD registered Natrapharm's brand name, Zynapse, considering that it had already earlier registered an almost identical brand name, Zynaps, in the same product classification, *i.e.*, drugs.[18]

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[17] The Intellectual Property Code which established the Intellectual Property Office was approved on June 6, 1997, but took effect on January 1, 1998 in accordance with Section 241 thereof.

[18] A.O. 2005-0016 defines "product classification" as "the separate and distinct classification between and among food, cosmetic, drug, veterinary product, device, diagnostic reagents, and household hazardous substance.

The reason may lie in the fact that, consistent with its stand that it is not a "gatekeeper" of brand names, BFAD adopted a laidback approach in its regulation of pharmaceutical brand names. There is none of the traces of a stringent evaluation of a potential brand name *vis-à-vis* those already registered in terms of confusing similarity in speech, rhyme or writing, prefixes and syllables, among others, as was present in BFAD Regulation No. 2. While the latter regulation adopted the parameters "identical or similar," the present regulation settled for "identical" and limited the grounds for rejection of a brand name to the following: 1) names that are identical to those already registered with the BFAD in the same product classification, and 2) names that are offensive, obscene, scandalous or otherwise contrary to public morals and policy.[19] More, A.O. No. 2005-0016 indicates a general deference to "proper authorities" who have a final say in the determination of who has a better right over a brand name.[20] Natrapharm's earlier registration of the Zynapse brand with the IPO may have provided sufficient sway for the BFAD to register the name regardless of its confusingly similarity with another name in its database.

This means that the classification for food, etc. is separate and distinct from the classification for cosmetics and the others."

[19] Section 2, A.O. No. 2005-0016.

[20] See the following provisions of A.O. No. 2005-0016:

Section 4. The acceptance by BFAD of the proposed brand name shall not be interpreted or construed as an approval, endorsement or representation that the applicant has the right or privilege to the use of the brand name so submitted.

Section 5. The applicant shall execute an affidavit of undertaking (a) to change the brand name so submitted should the proper authority decides with finality that he/she/it has no right to appropriate and utilize said brand name; and (b) to acknowledge and agree to indemnify and/or hold BFAD free and harmless against any and all third party claims arising from the acceptance of such brand name of the product for registration with BFAD. x x x

DISPUTES

Section 1. In the event that any interested party notifies BFAD in writing of any alleged prior or existing intellectual property right over the brand

It is disconcerting that through A.O. No. 2005-0016, the DOH limited the interpretation of its mandate and responsibility to ***only*** ensuring the "safety, efficacy and good quality of *products* applied for registration," without bearing in mind consumer safety that may be achieved when people are able to access the correct medicine without the element of confusion caused by similar brand names. Note should be taken of the fact that R.A. No. 3720, under which auspices A.O. No. 2005-0016 was created, also declared it the policy of the State "to protect the health of the people." To be sure, this encompasses not only consumers' safety resulting from safe, effective, and good quality pharmaceutical products in the market, but also consumers' safety arising from the minimization, if not elimination, of medication errors borne by confusingly similar drug names. This view gains more significance in light of past experiences where mistakes in the dispensation of medicine brought about by similar names put patients at risk. For example, the website of the Philippine College of Physicians[21] shared an undated narrative involving the FDA's registration of the same generic name for two (2) different drugs. Thus:

A story of medication error in the hospital.

An oncologist wrote instructions on the hospital chart for the IV administration of the oncolytic drug mesna (brand name Uromitexan), but the nurse mistook it for the respiratory solution also called mesna (brand name Mistabron). The respiratory solution meant for nebulization was injected intravenously for a total of 8 doses over a period of 3 days until the error was discovered.

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name of the product pending registration, BFAD shall immediately respond to said party, in writing, that intellectual property matters are beyond the legal mandate of BFAD and that their proper recourse should be from the IPO or the appropriate courts of competent jurisdiction.

Section 2. Under no circumstance shall the filing of any such notification be the reason or cause to suspend, delay, or otherwise adversely affect the processing of the application for, and the issuance of the CPR/CPL until and unless BFAD is restrained or enjoined by the proper authorities from doing so. In this instance, "proper authority" shall only pertain to the IPO or courts of law with competent jurisdiction over the said subject matter.

[21]https://www.pcp.org.ph/index.php/component/content/article?id=211:chapter-4-, last accessed on February 13, 2020.

Patient was never told of the error by the attending physician and was, in fact, sent home on the same night. Some tests were ordered but these were never carried out. Drug industry help was sought on pharmaceutical physico-chemical information but they could not be contacted over the weekend.

The Philippine FDA was informed of the incident on Monday and they were surprised how they managed to register two drugs sharing same name.

The doctor, in following the Philippine Generics Act of 1988 mandating that the doctor should write the generic name of a prescribed drug, was unclear about his responsibility to indicate the specific product trade name. The nurses (three shifts over three days) did not read the ampoule information prior to administration. The hospital pharmacist sent the ampoules to the floor without an accompanying box or product information leaflet. Patient could not be followed up. (emphasis supplied)

More than 40 years from the enactment of R.A. No. 3720, R.A. No. 9711 took effect. Otherwise known as "The Food and Drug Administration Act of 2009," the law aimed to strengthen and rationalize the regulatory capacity of the Bureau of Food and Drugs, which was renamed as the Food and Drug Administration. The reinforced and more encompassing reach of the FDA's regulatory authority is reflected in Section 3 thereof, which declared it the policy of the State to adopt, support, establish, institutionalize, improve and maintain structures, processes, mechanisms and initiatives that are aimed, directed and designed to: (a) protect and promote the right to health of the Filipino people; and (b) help establish and maintain an effective health products regulatory system,[22] among others. Unfortunately, the FDA did not find it necessary to revisit A.O. No. 2005-0016, which is still the regulation currently in place with respect to pharmaceutical brand names subject of registration with the FDA. BFAD Regulation No. 2 would have done a better job in minimizing confusingly similar brand names in the market.

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[22] Sec. 3, R.A. No. 9711.

At this point, it would be worthwhile to discuss how certain jurisdictions have taken practical measures to minimize medication errors by regulating proposed drug names.

In December 1999, the Institute of Medicine, a group involved in the examination of public health policy and identifying the medical care, research and education issues in the United States, issued a report entitled *To Err is Human: Building a Safer Health System*. It revealed that an estimated 44,000 to 98,000 people die annually from medical errors, more than the deaths that occur as a result of motor vehicle accidents, breast cancer, or AIDS. It recommended, among others, for the US FDA to increase its attention to public safety, and exert effort to eliminate similar-sounding drug names, as well as confusing labels and packaging that foster mistakes.[23] This and similar other reports that came after it, prompted the US government to enact new laws, and the US FDA to review proposed pharmaceutical trademarks more rigorously and issue new regulations.[24]

At present, the US FDA's approval of medication trade names is mandatory and independent from registration with the US Patent and Trade Office *(USPTO)*.[25] The US FDA compares proposed product names only with product names that it had previously approved, and does not consider the USPTO Register. This has led to scenarios where an owner of a valid trademark registration cannot use it because another party with junior trademark rights was first to obtain US FDA approval for the

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[23] Havens, Debra Hardy, et al., "To Err is Human": A Report from the Institute of Medicine, Legislative News, March/April 2000, https://www.jpedhc.org/article/S0891-5245(00)70009-5/pdf, last accessed February 13, 2020.

[24] Pharma: Regulatory Encroachments on Trademark Rights — Is This the Future for Brands? INTABulletin, Vol. 73, No. 2, February 1, 2018, https://www.inta.org/INTABulletin/Pages/Committee_Update_7302.aspx, last accessed February 13, 2020.

[25] Litowitz, Robert, et al., Procedures and Strategies for Pharmaceutical Brands: United States, World Trademark Review, September 6, 2016, https://www.worldtrademarkreview.com/procedures-and-strategies-pharmaceutical-brands-united-states, last accessed on February 13, 2020.

corresponding product name.[26] In the recent guidelines it issued,[27] the US FDA requires applicants to submit, among others, two proposed proprietary names for review, their intended pronunciation and an explanation of the derivation of the proposed proprietary name, if any.[28] The safety evaluation of a proposed proprietary name involves multiple methods to identify possibly problematic ones, including a preliminary screening to identify common errors, an orthographic or phonological similarity assessment, and drug database searches.[29]

Similar regulations may be found in Canada and the European Union.

Since the 1990s, there had been concern in Canada with the growing number of drug names that looked and sounded alike, which could have adverse effects on public health and safety. However, there was doubt whether Canada's Food and Drugs Act and related regulations provide legal authority to enforce prohibitions on the use of look-alike/sound-alike trademarks. In 2014, the Food and Drug Regulations were amended by clarifying that Health Canada[30] had authority to consider brand names and adjudicate the question of whether there is likelihood that the proposed drug will be mistaken for a prescription drug in the market due to resemblance between their brand names.

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[26] Strobos, Jur, et al., Procedures and strategies for pharmaceutical brands: United States, World Trademark Review, March 13, 2018, https://www.worldtrademarkreview.com/anti-counterfeiting/procedures-and-strategies-pharmaceutical-brands-united-states, last accessed February 13, 2020.

[27] See Contents of a Complete Submission for the Evaluation of Proprietary Names — Guidance for Industry, April 2016, https://www.fda.gov/media/72144/download, last accessed February 13, 2020.

[28] Id. at 10.

[29] Id. at 5.

[30] Health Canada is the Federal department responsible for helping Canadians maintain and improve their health. Source: https://www.canada.ca/en/health-canada/corporate/about-health-canada.html, last accessed February 14, 2020.

Health Canada was given authority to refuse to authorize the sale of a drug if it decides that there is likelihood that the proposed brand name will be mistaken for the name of an existing drug.[31]

Lastly, in the European Union, the European Medicines Agency *(EMA)* is responsible for evaluating the safety of medical products. Within this agency, the review of brand names is assessed by the Name Review Group *(NRG)*, which was created in 1999 with the objective of ensuring that all medicines available in the EU market are safe, effective, and of high quality. Thus, the NRG may refuse a name which it believes poses a significant risk of generating confusion with marketed medicines, and even medicine products that have been revoked or withdrawn from the market within the five (5)-year period preceding the application submission.[32]

Literature suggests that the above-discussed regulations are not perfect and may be improved in many respects. But the underlying consideration should be the very existence of the effort to regulate, since the danger of medical errors brought about by confusingly similar drug names in the market is very real and cannot be ignored. A mechanism within our own FDA that polices drug names sought to be registered by local manufacturers and importers of pharmaceutical products is essential and serves not only to implement the State policy to protect consumers against hazards to health and safety,[33] but

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[31] Pharmaceutical Regulatory Encroachments on Trademark Rights — The Canadian Perspective, INTABulletin, Vol. 73, No. 8, May 1, 2018, https://www.inta.org/INTABulletin/Pages/PharmaRegulatoryEncroachmentsonTrademarkRights7308.aspx, last accessed on February 13, 2020.

[32] Pharmaceutical Regulatory Encroachments on Trademark Rights — The European Union Perspective, INTABulletin, Vol. 73, No. 10, June 15, 2018,https://www.inta.org/INTABulletin/Pages/PharmaceuticalRegulatoryEncroachmentsonTrademarkRightsTheEuropeanUnionPerspective7310.aspx, last accessed on February 13, 2020.

[33] Article 2 (a) of R.A. No. 7394, otherwise known as the Consumer Act of the Philippines, states:

ARTICLE 2. Declaration of Basic Policy. — It is the policy of the State to protect the interests of the consumer, promote his general welfare and to

also the constitutional mandate for the State to promote the right to health of the people[34] and establish and maintain an effective food and drug regulatory system.[35]

There is also room for our Intellectual Property Law to be improved in light of the compelling issue of medical errors brought about by similar drug names. The legislature can take a proactive stance by including as parameter for registrability of a pharmaceutical mark its confusing similarity with marks associated with pharmaceutical products already available in the market. A stricter rule in the evaluation of pharmaceutical marks is justified by the serious and disastrous health consequences arising from confusion by both health practitioners and consumers in the prescription, dispensation, and use of similarly named drugs.

Medications are the cornerstone of care provision. The safe use of medications can improve and save the lives of millions, but errors in the use of these substances can lead to equally significant consequences. Apart from harming people physically and psychologically, and in some cases even taking their lives, medication errors also lead to consequences beyond what money can repair. They can seriously damage public confidence and trust in medical services, and they affect the whole of society through lower productivity and decreased levels of population health.[36] It is thus necessary for the government to step up efforts

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establish standards of conduct for business and industry. Towards this end, the State shall implement measures to achieve the following objectives:

a) protection against hazards to health and safety;

[34] Art. II, Sec. 15 of the 1987 Constitution.

[35] Art. XIII, Sec. 12 of the 1987 Constitution states:

Section 12. The State shall establish and maintain an effective food and drug regulatory system and undertake appropriate health, manpower development, and research, responsive to the country's health needs and problems.

[36] Salmasi, Shahrzad, et al., Medication Errors in the Southeast Asian Countries: A Systematic Review, published online September 4, 2015, https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4560405/, last accessed on February 13, 2020.

to identify and minimize, if not eradicate, medication errors through, among others, the regulation of drug names. This may be done by amending legislation and formulating guidelines for the purpose. But since either of this may take time to put in place, the FDA and IPO may start by updating and strengthening their respective databases of registered pharmaceutical products to deter applicants for new drugs from choosing a name similar to one already existing in the market.

Moreover, I agree with the *ponencia's* directive that the parties should print statements in their respective packaging that would inform stakeholders of the function of the medications involved and what they are used for, and for the FDA to monitor the parties' continuing compliance with the directive. This is a necessary consequence of the failure of our laws to address the circumstances at hand. We have held that when the law has gaps which tend to get in the way of achieving its purpose, the Court is allowed to fill the open spaces therein.[37]

R.A. No. 9711 declared it the policy of the State to promote the right to health of the Filipino people and establish an effective health products regulatory system in the country. This will not be achieved with the current FDA practice that prioritizes the availability of "safe, effective, and good quality pharmaceutical products," while overlooking the potentially adverse consequences on consumers' health of confusingly similar drug names. It is on these occasions that the Court may construe a law by issuing resolutions and/or guidelines in applying it. The purpose is to delineate what the law requires, including prudence and circumspection in its enforcement, or to assist a government agency in its implementation.[38]

Finally, in deciding cases, it is settled that the Court does not matter-of-factly apply and interpret laws in a vacuum. Rather,

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[37] *Re: Resolution Granting Automatic Permanent Total Disability Benefits to Heirs of Justices and Judges Who Die in Actual Service*, 486 Phil. 148, 156 (2004). See also *Floresca v. Philex Mining Corporation*, 220 Phil. 533, 559 (1985).

[38] Id. at 156-157.

laws are interpreted always in the context of the peculiar factual situation of each case. All the attendant circumstances are taken in their totality so that justice can be rationally and fairly dispensed, in this case, not only to the parties but also to the Filipino people who are to bear the impact of this decision.[39]

Accordingly, I vote to **PARTLY GRANT** the petition.

DISSENTING OPINION

LEONEN, *J.*:

The majority correctly stated the general rule. However, with due respect, given the facts, this case presents the exception. We have the opportunity to clarify and give life to the Constitutional precept that the use of property bears a social function and such use should be for the common good. I see no reason why registration with the Intellectual Property Office essentially trumps the elaborate requirements of the Food and Drug Administration for purposes of ensuring the safety, efficacy, and consistency of a drug. Ownership in any jurisdiction is not merely a private commercial construct. It should be a legal concept that performs a truly holistic public function.

While trademarks identifying basic commodities like clothing and appliances may be acquired by registration in accordance with the Intellectual Property Code, a trademark registration for use on medicines requires a broader reading of applicable laws regulating public health and safety in the sale and distribution of such products. Together with ensuring an effective system for the protection of intellectual property rights, the State has the duty to ensure that those engaged in the sale of medicines have complied with the necessary regulations.

In essence, a manufacturer may potentially be liable for infringement when it seeks to register a similar mark, which will tend to cause confusion with another mark already in

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[39] *Philippines Today, Inc. v. National Labor Relations Commission*, 334 Phil. 854, 880 (1997).

circulation after prior approval by the Food and Drug Administration. For the label of a drug to be properly registered in good faith, it is not the subjective knowledge of the registrant or corporation that should be examined, but what they should have known as a market participant. An analysis of the parties' rights confined only to who registers first with the Intellectual Property Office would seem callous and agnostic to existing provisions both in the Constitution and in our statute.

We read our laws as a whole. Commercial and civil laws should be read alongside social legislation. In this particular case, the Intellectual Property Code's provisions on trademark ownership should be read in view of the State's Constitutional mandate to ensure that property is used toward the common good. Concurrently, the statutory regulations securing public health and safety must be read together with commercial and civil laws. The right to engage in the business of selling and distributing pharmaceutical products, given the product's social importance, should be qualified by compliance with the necessary safety regulations.

Besides, respondent Natrapharm, Inc. has been proven to have actually known of the existence of petitioner Zuneca Pharmaceutical's drug.

Petitioners Zuneca Pharmaceutical, Akram Arain, and Venus Arain (Zuneca), seek the reversal of the lower courts' rulings that respondent Natrapharm, Inc. (Natrapharm), acquired ownership and all corresponding rights over its "ZYNAPSE" mark by being the first to register it with the Intellectual Property Office of the Philippines.

Zuneca insists that it has been importing generic drugs from Pakistan and marketing them in the Philippines under different brand names since 1999. Among these drugs was *carbamazepine*, an anti-convulsant for regulating seizures.[1] In order to sell *carbamazepine* in the Philippines as "ZYNAPS," Zuneca procured a Certificate of Product Registration from the then

[1] *Ponencia*, p. 3.

Bureau of Food and Drugs (now the Food and Drug Administration) on April 15, 2003. Local sales and marketing for ZYNAPS then began sometime in 2004.[2] However, Zuneca was not able to register their mark with the Intellectual Property Office of the Philippines.[3]

On the other hand, Natrapharm registered the trademark "ZYNAPSE" with the Intellectual Property Office of the Philippines on September 24, 2007, which is covered by Certificate of Trademark Registration No. 4-2007-005596.[4] Natrapharm intended to use "ZYNAPSE" to market its stroke treatment drug, *citicoline*, and conducted a database search for identical or similar "*cerebroprotective* products"[5] prior to registration. Natrapharm's search yielded negative results. After registering its trademark with the Intellectual Property Office of the Philippines, Natrapharm procured a "Certificate of Product Listing" from the Bureau of Food and Drugs.[6]

Through the course of the parties' respective business operations, they advertised their various products in the same pharmaceutical publications, such as the Philippine Pharmaceutical Directory, and in the same conventions.[7] However, witness testimonies established that Natrapharm's "ZYNAPSE" product, in particular, "[was] not listed in the [Philippine Pharmaceutical Directory]" together with Zuneca's "ZYNAPS" product.[8]

When the parties became aware of the similarity in their marks, they attempted to negotiate a compromise but failed.[9]

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[2] Id. at 4.

[3] Id. at 6.

[4] Id. at 3.

[5] Id. at 5.

[6] Id.

[7] Id. at 6.

[8] Id. at 7.

[9] Id. at 5.

Thus, Natrapharm filed a Complaint for trademark infringement against Zuneca.[10] The lower courts recognized Natrapharm's right to prevent Zuneca from using and registering the confusingly similar "ZYNAPS" mark, despite Zuneca offering proof of actual use prior to Natrapharm's registration with the Intellectual Property Office.[11] The trial court found that the "first filer in good faith defeats a first user in good faith who did not file any application for registration."[12]

The Court of Appeals reiterated the trial court's ruling, holding that "registration, not prior use, is the mode of acquiring ownership[.]"[13] Further, both lower courts agreed that the presence of Zuneca's "ZYNAPS" mark in the Philippine Pharmaceutical Directory, and in other marketing materials, did not detract from Natrapharm's registration of its "ZYNAPSE" mark in good faith.[14]

The majority affirms the lower courts' findings that rights over a trademark are conclusively acquired solely by prior registration. It then reasons that legislative developments in our intellectual property laws have shifted the regime for acquiring ownership over trademarks from "first-to-use" to "first-to-file[.]"[15] The majority also refers to a Senate sponsorship speech in determining the legislative intent for this shift.[16]

However, a registration "made validly in accordance with the provisions of [Republic Act No. 8293]"[17] connotes registration in good faith. With respect to trademarks used on

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[10] Id. at 3.

[11] Id. at 10-11.

[12] Id. at 7.

[13] Id. at 8.

[14] Id. at 7-9.

[15] Id. at 17.

[16] Id. at 19-20.

[17] Id. at 17.

pharmaceutical goods, such as medicines, registration in good faith should refer not only to the provisions of the Intellectual Property Code, but also to the laws regulating the sale and distribution of pharmaceuticals. Thus, the actual sale and distribution of medicines, and therefore, the right to use the trademark on one's products, should be read as conditioned upon the registrant's compliance with the necessary safety regulations.

I

Article XII, Section 6 of the 1987 Constitution provides for the State's duty to regulate the use of property, in view of its inherent social function and the need for such use to contribute to the common good:

> SECTION 6. The use of property bears a social function, and all economic agents shall contribute to the common good. Individuals and private groups, including corporations, cooperatives, and similar collective organizations, shall have the right to own, establish, and operate economic enterprises, subject to the duty of the State to promote distributive justice and to intervene when the common good so demands.

This provision has often been cited as basis for the State's exercise of police power in imposing necessary regulations upon the exercise of private property rights. The same language appears in Republic Act No. 8293, or the Intellectual Property Code, as the reasoning behind regulatory measures imposed by the State on the use of intellectual property:

> Section 2. Declaration of State Policy. — The State recognizes that an effective intellectual and industrial property system is vital to the development of domestic and creative activity, facilitates transfer of technology, attracts foreign investments, and ensures market access for our products. *It shall protect and secure the exclusive rights of scientists, inventors, artists and other gifted citizens to their intellectual property and creations, particularly when beneficial to the people, for such periods as provided in this Act.*
>
> *The use of intellectual property bears a social function. To this end, the State shall promote the diffusion of knowledge and information for the promotion of national development and progress and the common good.*

It is also the policy of the State to streamline administrative procedures of registering patents, trademarks and copyright, to liberalize the registration on the transfer of technology, and to enhance the enforcement of intellectual property rights in the Philippines. (Emphasis supplied)

In recent Decisions, this Court has also used Article XII, Section 6 to justify the regulation of the pharmaceutical industry.[18] A related opinion also discusses how this same underlying policy informs the regulatory requirements imposed on those engaged in manufacturing, distribution, and sale of pharmaceutical products in our jurisdiction:

The approval of any drug as food product destined for public use is not a matter only between the applicant and the regulator. It affects public health. Ultimately, it is the consumers who are affected. Thus, the process of certification and re-certification is burdened with severe public interest.[19] (Emphasis supplied)

This is consistent with the Food and Drug Administration's duty to "(a) protect and promote the right to health of the Filipino people; and (b) help establish and maintain an effective health products regulatory system and undertake appropriate health manpower development and research, responsive to the country's health needs and problems."[20] Furthermore:

The Food and Drug Administration was created by Republic Act No. 3720 to regulate food, drug, and cosmetic manufacturers and

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[18] *Drugstores Association of the Philippines, Inc. v. National Council on Disability Affairs*, G.R. No. 194561, September 14, 2016, <https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/62361> [Per J. Peralta, Third Division] (pertaining to the legality of giving discounts to persons with disabilities); *Southern Luzon Drug Corporation v. The Department of Social Welfare and Development*, 809 Phil. 315, 315-398 (2017) [Per J. Reyes, En Banc] (pertaining to the legality of discounts and change of tax treatment for senior citizens under Republic Act No. 9257).

[19] J. Leonen, Separate Concurring Opinion, *Alliance for the Family Foundation, Philippines, Inc. v. Garin*, 809 Phil. 897, 964 (2017) [Per J. Mendoza, Special Second Division].

[20] Republic Act No. 9711, sec. 3.

establishments. In 1982, the Food and Drug Administration was abolished and its functions were assumed by the Bureau of Food and Drugs. In 2009, the Bureau of Food and Drugs was renamed the Food and Drug Administration. *Republic Act No. 9711 outlined the Food and Drug Administration's regulatory capabilities, including the development and issuance of "standards and appropriate authorizations that would cover establishments, facilities and health products."*

Among the authorizations issued by the Food and Drug Administration is the Certificate of Product Registration of all health products or "food, drugs, cosmetics, devices, biologicals, vaccines, in-vitro diagnostic reagents and household/urban hazardous substances and/or a combination of and/or a derivative thereof," *consistent with its mandate to "insure safe and good quality [supplies] of food, drug[s] and cosmetic[s]."*[21] (Citations omitted, emphasis supplied)

Thus, the regulations imposed under the Intellectual Property Code and the Food and Drug Administration Act are underscored by the same Constitutional mandate to ensure that the use of property and the exercise of private rights is done in pursuit of the common good.

There is a need to broaden the scope of the laws being considered in determining the rights presently in dispute, as they involve property bearing an inherent social function, geared as they are in direct service to public health and safety.

In view of the serious public interest that must be secured in the distribution and sale of medicines, the right to engage in such a business is subject not only to the rules apportioning private property rights to their respective owners, but also to the regulations ensuring that the undertaking of such a business would not endanger the consuming public.

II

Discussing the legal regime for determining property rights in trademarks requires considering the fundamental reasons

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[21] J. Leonen, Separate Concurring Opinion, *Alliance for the Family Foundation, Philippines, Inc. v. Garin*, 809 Phil. 897, 936-937 (2017) [Per J. Mendoza, Special Second Division].

for registering trademarks and seeking protection for the property rights therein.

The definition and concept of "property" has proven to be malleable and subject to change based on technological and social innovations. While "property" used to refer to physical and tangible inputs in the process of production, such as land or raw materials, contemporary formulations of "property" have evolved beyond reference to tangible things.[22] The passage of time has seen the creation and protection of private interests ranging from assets previously deemed "outside the law," such as ancestral lands of indigenous peoples, to things that "owe their very existence entirely to the law[,]" such as shares of corporate entities, financial instruments, and intellectual property.[23]

However, a consistent determinant of what may be recognized as "property" pertains to the bundle of valuable rights that may be accorded protection by law.[24] While the changing times have transformed the kinds of assets entitled to legal protection, the extent of protection available to the newly emerging forms of property have remained consistent in according the following benefits to prospective private owners:

> "*Priority*, which ranks competing claims to the same assets; *durability*, which extends priority claims in time; *universality*, which extends them in space; and *convertibility*, which operates as an insurance device that allows holders to convert their . . . claims into state money on demand and thereby protect their nominal value[.]"[25] (Citation omitted, emphasis in the original)

With increasingly globalized markets for goods and services, owners of highly developed intellectual properties sought to

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[22] Remigius N. Nwabueze, Biotechnology and the Challenge of Property, p. 33 (2007).

[23] Katharina Pistor, The Code of Capital, p. 108 (2019).

[24] Remigius N. Nwabueze, Biotechnology and the Challenge of Property, p. 33 (2007).

[25] Katharina Pistor, The Code of Capital, p. 3 (2019).

do business in markets with the same "upgraded" and uniform protections for intellectual property,"[26] in order to preserve their right of priority in foreign markets, and to ensure the durability and universality of their highly valued interests in such property. These larger corporations, particularly those in the United States, have been observed to urge their government to "use the leverage inherent in access to the United States market as a means of stimulating countries to upgrade their level of protection [for intellectual property]."[27]

The Paris Convention and, subsequently, the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement) were the relevant attempts at creating these "upgraded" protections in other markets. In fact, our current law on intellectual property was enacted "not only to amend certain provisions of existing [intellectual property laws] . . . but also to honor the country's commitments under the [TRIPS Agreement]."[28]

However, these uniform regulations often fail to account for the need to develop protections for smaller industries in local markets.[29] In fact, the institutionalization of global free trade, through the World Trade Organization was observed to have "created major carve-outs from the free trade regime for monopolies under the label of intellectual property rights."[30] Simply put, big businesses often seek more expedient ways of

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[26] Michael W. Smith, Bringing Developing Countries' Intellectual Property Laws to TRIPS Standards: Hurdles and Pitfalls Facing Vietnam's Efforts to Normalize an Intellectual Property Regime, 31 Case W. Res. J. Int'l. L. 211, 213 (1999).

[27] *Id.* at 212-213.

[28] *E.I. Dupont De Nemours and Co. v. Emma C. Francisco*, 794 Phil. 97, 127 (2016) [Per J. Leonen, Second Division].

[29] Michael W. Smith, Bringing Developing Countries' Intellectual Property Laws to TRIPS Standards: Hurdles and Pitfalls Facing Vietnam's Efforts to Normalize an Intellectual Property Regime, 31 Case W. Res. J. Int'l. L. 211, 212-213 (1999).

[30] Katharina Pistor, The Code of Capital, p. 123 (2019).

excluding other competitors when entering foreign markets, and a purely registration-based regime of acquiring rights to property is indicative of this trend.[31] This often hampers the creation of a conducive "free trade" environment for the intellectual properties of smaller and often local businesses. These competing objectives are a common pitfall in efforts to create uniform protections for intellectual property,[32] and have been observed as an "inherent limitation" therein.[33]

A perusal of our domestic laws shows there is adequate emphasis on the importance of granting legal protection to actual valuable rights, instead of the value created by prioritized exclusion of prospective competitors.

In our jurisdiction, Republic Act No. 8293 defines a "mark" as "any visible sign capable of distinguishing the goods (trademark) or services (service mark) of an enterprise[.]"[34] This definition was derived from Republic Act No. 166, which previously defined trademarks as follows:

> The term "trade-mark" includes any word, name, symbol, emblem, sign or device or any combination *thereof adopted and used by a manufacturer or merchant to identify his goods and distinguish them* from those manufactured, sold or dealt in by others."[35] (Emphasis supplied)

Thus, a mark serves the primary purpose of distinguishing one's goods and services from another's. *La Chemise Lacoste, S.A. v. Fernandez* provides further clarity:

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[31] Id.

[32] Michael W. Smith, Bringing Developing Countries' Intellectual Property Laws to TRIPS Standards: Hurdles and Pitfalls Facing Vietnam's Efforts to Normalize an Intellectual Property Regime, 31 Case W. Res. J. Int'l. L. 211, 212-213 (1999).

[33] Timothy W. Blakely, Beyond the International Harmonization of Trademark Law: The Community Trade Mark as a Model of Unitary Transnational Trademark Protection, 149 University of Pennsylvania Law Review 309, 311 (1996).

[34] Republic Act No. 8293 (1997), Part III, sec. 121.1.

[35] Republic Act No. 166 (1947), Chapter XII, sec. 38.

The purpose of the law protecting a trademark cannot be overemphasized. They are *to point out distinctly the origin or ownership* of the article to which it is affixed, *to secure to him, who has been instrumental in bringing into market a superior article of merchandise, the fruit of his industry and skill,* and *to prevent fraud and imposition.*

The legislature has enacted *laws to regulate the use of trademarks* and provide for the protection thereof. Modern trade and commerce demands that depredations on legitimate trade marks [sic] of non-nationals including those who have not shown *prior registration* thereof should not be countenanced. The law against such depredations is *not only for the protection of the owner* of the trademark but also, and *more importantly, for the protection of purchasers* from confusion, mistake, or deception as to the goods they are buying.[36] (Citations omitted, emphasis supplied)

Mirpuri v. Court of Appeals also aptly discussed the history behind the development of trademarks as a specific type of property entitled to protection under the law:

A "trademark" is defined under R.A. 166, the Trademark Law, as including "any word, name, symbol, emblem, sign or device or any combination thereof adopted and used by a manufacturer or merchant to identify his goods and distinguish them from those manufactured, sold or dealt in by others." This definition has been simplified in R.A. No. 8293, the Intellectual Property Code of the Philippines, which defines a "trademark" as "any visible sign capable of distinguishing goods." In Philippine jurisprudence, *the function of a trademark is* to point out distinctly the origin or ownership of the goods to which it is affixed; *to secure to him, who has been instrumental in bringing into the market a superior article of merchandise, the fruit of his industry and skill*; to assure the public that they are procuring the genuine article; to prevent fraud and imposition; and to protect the manufacturer against substitution and sale of an inferior and different article as his product.

Modern authorities on trademark law view trademarks as performing *three distinct functions*: (1) they *indicate origin or ownership* of the articles to which they are attached; (2) they *guarantee* that those articles

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[36] *La Chemise Lacoste, S.A. v. Fernandez*, 214 Phil. 332, 355-356 (1984) [Per J. Gutierrez, Jr., First Division].

come up to *a certain standard of quality*; and (3) they *advertise* the articles they symbolize.

Symbols have been used *to identify the ownership or origin of articles* for several centuries. As early as 5,000 B.C., markings on pottery have been found by archaeologists. Cave drawings in southwestern Europe show bison with symbols on their flanks. Archaeological discoveries of ancient Greek and Roman inscriptions on sculptural works, paintings, vases, precious stones, glassworks, bricks, *etc.* reveal some features which are thought to be marks or symbols. These marks were affixed by the creator or maker of the article, or by public authorities as indicators for the payment of tax, for disclosing state monopoly, or devices for the settlement of accounts between an entrepreneur and his workmen.

In the Middle Ages, the use of many kinds of marks on a variety of goods was commonplace. Fifteenth century England saw the compulsory use of identifying marks in certain trades. There were the baker's mark on bread, bottlemaker's marks, smith's marks, tanner's marks, watermarks on paper, *etc.* Every guild had its own mark and every master belonging to it had a special mark of his own. The marks were not trademarks but police marks compulsorily imposed by the sovereign to let the public know that the goods were not "foreign" goods smuggled into an area where the guild had a monopoly, as well as to aid in tracing defective work or poor craftsmanship to the artisan. For a similar reason, merchants also used merchants' marks. Merchants dealt in goods acquired from many sources and the marks enabled them to identify and reclaim their goods upon recovery after shipwreck or piracy.

With constant use, the mark acquired popularity and became voluntarily adopted. It was not intended to create or continue monopoly but to give the customer an index or guarantee of quality. It was in the late 18th century *when the industrial revolution gave rise to mass production and distribution of consumer goods* that *the mark became an important instrumentality of trade and commerce*. By this time, trademarks did not merely identify the goods; they also indicated the goods to be of satisfactory quality, and thereby stimulated further purchases by the consuming public. Eventually, they *came to symbolize the goodwill and business reputation of the owner of the product and became a property right protected by law*. The common law developed the doctrine of trademarks and tradenames "to prevent a person from palming off his goods as another's, from getting another's

business or injuring his reputation by unfair means, and, from defrauding the public." Subsequently, England and the United States enacted national legislation on trademarks as part of the law regulating unfair trade. It became the right of the trademark owner to exclude others from the use of his mark, or of a confusingly similar mark where confusion resulted in diversion of trade or financial injury. At the same time, the trademark served as a warning against the imitation or faking of products to prevent the imposition of fraud upon the public.

Today, *the trademark is not merely a symbol of origin and goodwill; it is often the most effective agent for the actual creation and protection of goodwill*. It imprints upon the public mind an anonymous and impersonal guaranty of satisfaction, creating a desire for further satisfaction. In other words, *the mark actually sells the goods*. The mark has become the "silent salesman," the conduit through which direct contact between the trademark owner and the consumer is assured. It has invaded popular culture in ways never anticipated that it has become a more convincing selling point than even the quality of the article to which it refers. In the last half century, *the unparalleled growth of industry and the rapid development of communications technology have enabled trademarks, tradenames and other distinctive signs of a product to penetrate regions where the owner does not actually manufacture or sell the product itself.* Goodwill is no longer confined to the territory of actual market penetration; it extends to zones where the marked article has been fixed in the public mind through advertising. Whether in the print, broadcast or electronic communications medium, particularly on the Internet, advertising has paved the way for growth and expansion of the product by creating and earning a reputation that crosses over borders, virtually turning the whole world into one vast marketplace.[37] (Citations omitted, emphasis supplied)

From the above, it is clear that the law protects the *owner's right to the mark's value*, which is *generated by its actual use in commerce*. Verily, *W Land Holding, Inc. v. Starwood Hotels and Resorts Worldwide, Inc.* recognized that "[t]he *actual use of the mark* representing the goods or services introduced and

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[37] *Mirpuri v. Court of Appeals*, 376 Phil. 628, 645-649 (1999) [Per J. Puno, First Division].

transacted in commerce over a period of time *creates that goodwill which the law seeks to protect*."[38] This is consistent with the essence of marks as intellectual property, being "creations of the human mind"[39] that "identify the origin of a product."[40]

In view thereof, actual use in commerce remains crucial in actualizing the registrant's rights over a mark. Particularly, Section 138 of the Intellectual Property Code provides that the certificate of registration is only *prima facie* evidence of the registrant's ownership. The *prima facie* nature of registration is clarified by Sections 124.2 and 145, which provide specific limitations on the rights accorded by registration:

> 124.2. The applicant or the registrant shall *file a declaration of actual use* of the mark with evidence to that effect, as prescribed by the Regulations within three (3) years from the filing date of the application. *Otherwise, the application shall be refused or the mark shall be removed from the Register* by the Director.
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> . . . . . .
>
> Section 145. Duration. — A certificate of registration shall remain in force for ten (10) years: *Provided, That the registrant shall file a declaration of actual use and evidence to that effect,* or shall show valid reasons based on the existence of obstacles to such use, as prescribed by the Regulations, within one (1) year from the fifth anniversary of the date of the registration of the mark. *Otherwise, the mark shall be removed from the Register* by the Office. (Sec. 12, R.A. No. 166a) (Emphasis supplied)

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[38] G.R. No. 222366, December 4, 2017, <http://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/63689> [Per J. Perlas-Bernabe, Second Division].

[39] World Intellectual Property Organization, Understanding Industrial Property, p. 5; Available at https://www.wipo.int/edocs/pubdocs/en/wipo_pub_895_2016.pdf, last accessed on January 27, 2020.

[40] Timothy W. Blakely, Beyond the International Harmonization of Trademark Law: The Community Trade Mark as a Model of Unitary Transnational Trademark Protection, 149 University of Pennsylvania Law Review 309, 309 (1996).

Requiring the registrant to prove actual use indicates its continued importance, if not in acquiring, then in maintaining rights over trademarks. Moreover, in the context of pharmaceuticals, the intent to actually use a trademark remains a catalyst for creating the valuable interests sought to be protected under law. This interplay between registration and actual use also reflects our domestic laws' inclination toward protecting the developing local market for intellectual property, while at the same time laying the groundwork for the freer movement of goods and services brought about by globalization.

At the very least, prior use should remain a factor in determining who has a better right to the trademark in question for this particular case. As discussed, actual use creates the valuable interest sought to be protected by trademark laws. An unused trademark generates no value for its holder despite its registration with the Intellectual Property Office. Thus, it fails to produce the valuable interest in the property that ought to be protected. Trademarks become valuable through actual use in commerce when they become identifiers of a product's quality and, thus, create market traction for the advertised product. While registration does not create value in a trademark, it operationalizes the acquisition of rights by providing a formal process for proving actual use, and thus, one's acquisition of the full set of rights over the registered mark. It is the actual use of a mark that makes it valuable, and the law should secure such value to the person or entity who created it, and thus, has the right to it.

Having clarified the valuable interest which ought to be protected by trademark laws, it is worth noting that those engaged in the sale and distribution of medicines must comply with specific public health and safety regulations before they may enter the market. Consequently, sellers and distributors of medicines may be deemed to have acquired the right to market their products only upon adequate regulatory compliance. Without such compliance, trademarks on medicines cannot be used and thus cannot generate the value sought to be protected by our trademark laws. It is therefore important to also consider

the relevant regulations imposed on those engaged in the sale and distribution of medicines and pharmaceutical products.

The competing "ZYNAPS" and "ZYNAPSE" marks are used to market pharmaceutical products, which are regulated by the Food and Drug Administration pursuant to State's policy on the protection of public health.[41] The Food and Drug Authority was created under Republic Act No. 3720, and subsequently amended by Republic Act No. 9711, which provides:

> SECTION 3. It is hereby declared a policy of the State to adopt, support, establish, institutionalize, improve and maintain structures, processes, mechanisms and initiatives that are aimed, directed and designed to: (a) protect and promote the right to health of the Filipino people; and (b) help establish and maintain an effective health products regulatory system and undertake appropriate health manpower development and research, responsive to the country's health needs and problems. Pursuant to this policy, the State must enhance its regulatory capacity and strengthen its capability with regard to the inspection, licensing and monitoring of establishments, and the registration and monitoring of health products.[42]

While the regulator's guidelines on product registration specify that they were issued independently from the rules on ownership of trademarks,[43] the particular circumstances of this dispute require a harmonious reading of all relevant laws. Pharmaceutical drugs serve a purpose imbued with public interest, which cannot be separated from its commercial importance as a marketable product in the parties' respective

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[41] 1987 CONST., Art. II, sec. 15.

[42] Republic Act No. 9711, amending Rep. Act No. 3720.

[43] The Scope and Coverage of the Guidelines Governing Brand Names of Products for Registration with the Bureau of Food and Drugs provides that "This Department acknowledges that it is not the gatekeeper in the promotion and regulation of brand names which are often times being used as marketing tools, without any connection or relation whatsoever to the safety, efficacy and quality of the products. In issuing this Order, this Department, through [BFAD], hereby reiterates and consistently adopts its mandate and responsibility to only ensure the safety, efficacy and good quality of products applied for registration.

businesses. Consequently, a prospective entrant into the pharmaceuticals market will not be allowed to engage in business without first complying with the regulator's requirements. Thus, entities seeking to profit from the sale of pharmaceutical products, and from the growth of the intellectual property attached to their business, are required to follow public safety regulations.

The implementing rules of Republic Act No. 9711 prohibit the "manufacture, importation, exportation, sale, offering for sale, distribution, transfer, non-consumer use, promotion, advertising, or sponsorship of any health product" without certification from the Food and Drug Authority. "Health products" include, but are not limited to the following:

a. Under the [Center for Cosmetics Research and Regulation], all cosmetic products, household/urban hazardous substances (HUHS), including household/urban pesticides, and toys and childcare articles;

b. Under the [Center for Drug Regulation and Research], all drugs, including vaccines, biologics, veterinary medicines and animal health products, medical gases, traditional medicine, and herbal medicines;

c. Under the CDRRHR, all medical devices, radiation-emitting devices, in-vitro diagnostic device and reagents; refurbished medical devices; equipment or devices used for treating sharps, pathological and infectious waste, water treatment devices/systems; and other health-related devices as determined by the FDA; and

d. Under the CFRR, all processed food products, food supplements, raw materials, ingredients and additives for food.

Further inclusion of health products in the list shall be guided by RA 9711 on the definition of health products.[44] (Emphasis supplied)

As such, all entities engaged in the health products business are required to procure a License to Operate from the Food and Drug Administration, together with the applicable product

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[44] Department of Health Administrative Order No. 0017-20, Re: Revised Guidelines on the Unified Licensing Requirements and Procedures of the Food and Drug Administration (May 8, 2020), Part III, par. 1 (a) to (d).

market authorizations, such as the Certificate of Product Registration and the Certificate of Product Notification.[45]

The issuance of a License to Operate requires the submission of the following requirements:

1. The requirements for applying for [License to Operate] shall be as follows:

A. Initial LTO

1) Accomplished e-Application Form with Declaration of Undertaking;
2) Proof of Business Name Registration;
3) Proof of Income (Latest Audited Financial Statement with Balance Sheet); and
4) Payment of Fees.

B. Renewal of LTO

1) Accomplished e-Application Form with Declaration of Undertaking; and
2) Payment of Fees.

C. Variation

1) Accomplished e-Application Form with Declaration of Undertaking;
2) Documentary requirements depending on the variation or circumstances of the establishment or the product as shown in Annex C of this Order; and
3) Payment of Fees.

D. For manufacturers and for establishments applying for LTO or for major variations, as applicable, the following documents shall be presented to the FDA inspector for examination or review, when required:

1) Risk Management Plan (RMP), which shall be required for medium and large food manufacturers, and all drug, cosmetics, HUHS, including household/urban pesticides (HUP) and toys and childcare articles (TCCA), medical device manufacturers, traders, and distributors (importer, exporter and/or wholesaler), among others.

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[45] Id. Part V, par. 1.

> 2. Site Master File (SMF), which shall be required for applicants applying for LTO as manufacturers of drugs (CDRR), cosmetic, household/urban hazardous substances, including household/urban pesticides and toys and childcare articles, (CCRR), medical device manufacturers (CDRRHR), and large and medium food manufacturers (CFRR), among others.[46]

The rules then provide that applications for licenses will be evaluated by the Food and Drug Administration to determine the applicant's technical capacity to undertake the business applied for. Only those entities with a valid License to Operate may apply for a Certificate of Product Registration, which is "the certificate issued to a licensed manufacturer/trader/importer/distributor for the purpose of marketing or free distribution of a product after evaluation for safety, efficacy and quality."[47] A separate opinion discussed the technical procedure for the issuance of a Certificate of Product Registration for the sale and distribution of medicines:

> Considering the highly technical nature of the registration and certification process, the Food and Drug Administration is further subdivided into four (4) research centers: first, the Center for Drug Regulation and Research; second, the Center for Food Regulation and Research; third, the Center for Cosmetic Regulation and Research; and fourth, the Center for Device Regulation, Radiation Health and Research.
>
> Prior to the issuance of a Certificate of Product Registration of an established drug, the Center for Drug Regulation and Research must first review the technical specifications of the drug, in particular:
>
> 1. Application Letter
> 2. Valid License to Operate of manufacturer/trader/distributor/importer/exporter/wholesaler
> 3. Certificate of Brand Name Clearance

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[46] Department of Health Administrative Order No. 0017-20, Chapter IV (1).

[47] Part IV, par. 2, Administrative Order No. 2005-0016 (General Policies and Guidelines Governing Brand Names of Products for Registration with the Bureau of Food and Drugs).

4. Agreement between Manufacturer and Trader or Distributor-Importer/Exporter
5. General Information — product's proprietary or brand name, official chemical name(s) and generic name(s) of active ingredient(s), molecular or chemical formula and structure, amount of active ingredient per unit dose, pharmaceutical form of the drug, indication, recommended dosage, frequency of administration, route and mode of administration, contraindication, warnings and precautions
6. Unit dose and batch formulation

- Must be in full compliance with the latest official monograph (United States Pharmacopeia, British Pharmacopeia, Japanese Pharmacopeia, European Pharmacopeia, International Pharmacopeia); name and edition of the reference may be cited in lieu of submitting a detailed list of limits and tests; when an alternative procedure or limit is used, it shall be equal to or more stringent than the official requirement
- For non-official or unofficial substances, separate list of technical specifications of each ingredient must include the ff.:

  o Name of substance
  o detailed information on physical and chemical properties
  o ID tests
  o Purity tests
  o Assay

7. Technical/Quality Specifications of all Raw Materials including Packaging Materials
8. Certificate of Analysis of Active Ingredient(s)
9. Technical Specifications of the Finished Product

   a) The appearance of the product (colour, shape dimensions, odour, distinguishing features, etc.)
   b) Identification of the active ingredient(s) (must include the specific identity test for the active moiety)
   c) Quantitative determination of active ingredient(s) (*i.e.*, Assay)
   d) Test of impurities
   e) The appropriate tests concerning the pharmaceutical

properties of the dosage form (*e.g.*, pH, content uniformity, dissolution rate, disintegration, etc.)
f) Tests for safety, sterility, pyrogens, histamine, abnormal toxicity, etc. where applicable
g) Technical properties of containers
h) For drug preparations which are subject of an official monograph, the technical/quality specifications of the finished product as stated in the monograph shall be complied with

10. Certificate of Analysis of the Finished Product
11. Pull description of the methods used, the facilities and controls in the manufacture, processing and packaging of the finished product
12. Details of the assay and other test procedures of finished product including data analysis
13. Detailed report of stability studies to justify claimed shelf-life
14. Labeling materials
15. Representative sample
16. For imported products: Duly authenticated Certificate of Free Sale from the country of origin, and Duly authenticated government certificate attesting to the registration status of the manufacturer.

New drugs, on the other hand, require a longer review process before the issuance of a Certificate of Product Registration. The Center for Drug Regulation and Research must first review the following requirements and conduct a series of scientific tests before the issuance of a certification:

1. All requirements for Established Drugs as stated above
2. Certificate of the Medical Director
3. Reference Standard and its corresponding Certificate of Analysis
4. Pre-clinical Data

Before initial human studies are permitted, the full spectrum of pharmacologic properties of the new drug must be extensively investigated in animals. Animal researches are done to provide evidence that the drug has sufficient efficacy and safety to warrant testing in man.

a) Pharmacodynamics
- to identify the primary action of the drug as distinguished from the description of its resultant effects,
- to delineate the details of the chemical interaction between drug and cell or specific receptor site(s), and
- to characterize the full sequence of drug action and effects.

i. Pharmacologic effects — properties relevant to the proposed indication and other effects. Pharmacodynamics data shall demonstrate the primary pharmacologic effect of the drug leading to its development for the intended use(s) or indication(s). It shall also show the particular tissue(s)/organ(s) affected by the drug and any other effect it produces on the various systems of the body.

ii. Mechanism of action including structure-activity relationship (SAR)

b) Pharmacokinetics
Pharmacokinetic data form the basis for prediction of therapeutic doses and suitable dosage regimen.

These data shall demonstrate the following:

i. the rate and extent of absorption of the drug using the intended route of administration;
ii. the distribution pattern including a determination of the tissues or organs where the drug and its metabolites are concentrated immediately after administration and the time course of their loss from this *[sic]* sites;
iii. the metabolic pathway of the drug or its biotransformation and the biological metabolites;
iv. the route of excretion of the drug and its principal metabolites and the amount of unchanged substance and metabolites for each route of excretion;
v. the drug's half-life or the rate that it is eliminated from the blood, plasma or serum.

c) Toxicity data

i. Acute Toxicity

Acute toxicity data shall show the median lethal dose of a drug.

Ideally, the study shall be carried out in at least two (2) species of animals, one (1) rodent and the other non-rodent, using 5 dose levels with the appropriate number of test animals.

ii. Subchronic Toxicity

Subchronic toxicity studies are carried out using repeated daily exposure to the drug over a period of 21-90 days with the purpose of studying the toxic effects on target organs, the reversibility of the effects and the relationship of blood and tissue levels on the test animals.

iii. Chronic Toxicity

Chronic toxicity studies constitute important steps in the analysis of a chemical. The entire lifetime exposure of an individual or animal to the environment or chemical is an on-going process which neither acute nor subchronic toxicity study can provide. The effect on animals when small doses of the drug are given over a long period of time may not be the same as when large doses are given over a short period.

iv. Special Toxicity Studies

v. *[sic]*

a. Reproduction Tests

1. Multigeneration reproduction study provides information on the fertility and pregnancy in parent animals and subsequent generations. The effects of a potentially toxic substance could be determined by the reproductive performance through successive generations such as adverse effects on the formation of gametes and on fertilization and to detect gross genetic mutations which may lead to fetal death, fetal abnormalities or inadequate development or abnormal reproductive capacity in the F1 generation. This study can also reveal adverse drug effects that occur during pregnancy or during lactation.
2. Teratologic study determines the effect of a chemical on the embryonic and fetal viability and development when administered to the pregnant female rodent (rat) or nonrodent (beagle dog or monkey) during the period of organogenesis.
3. Peri-natal and post-natal study determines the effects of drugs or chemical given to the pregnant animal in the final one-third of gestation and continued throughout lactation to weaning of pups.

b. Carcinogenicity

Carcinogenicity tests in animals are required when the drug is likely to be given to humans continuously or in frequent short course periods to determine whether chronic administration can cause tumors in animals. Mice and rats are the rodents of choice while dogs or monkeys are preferred non-rodents. These tests may be designed to be incorporated in the protocol for chronic toxicity studies wherein the animals are exposed to the drug after weaning and continued for a minimum of two years. At least 3 dose levels are used with the highest dose approximating the maximal tolerated dose and the route should be similar to that anticipated in man. Repeated expert observation, palpation and thorough examinations of animals for any lumps or masses are essential. All animals must be thoroughly autopsied and histological examination of all organs should be carried out.

c. Mutagenicity

Mutagenicity tests have the primary objective of determining whether a chemical has the potential to cause genetic damage in humans. Animal model systems, both mammalian and non-mammalian together with microbial systems which may approximate human susceptibility, are used in these tests.

5. Clinical Data

a) Certification of an independent institution review board of approval of clinical protocol and monitoring of clinical trial
b) Clinical Investigation Data

i. Phase I Clinical Drug Trial

Phase I Clinical Drug Trial consists of initial testing of the study drug in humans, usually in normal volunteers but occasionally in actual patients. The number of subjects is small (N=15 to [30]). Safety evaluations are the primary objectives and attempt is made to establish the approximate levels of patient tolerance for acute and multiple dosing. Basic data on rates of absorption, degree of toxicity to organs (heart, kidney, liver, hematopoietic, muscular, nervous, vascular) and other tissue, metabolism data, drug concentrations in serum or blood and excretion patterns are also obtained. Subjects shall be carefully screened. Careful monitoring for adverse or untoward effects and intensive clinical laboratory tests are required. This study shall be conducted by an approved or accredited Clinical Pharmacologist. A written informed consent of subject is necessary.

ii. Phase II Clinical Drug Trial

Phase II Clinical Drug Trials are initial studies designed to evaluate efficacy of the study drug in a small number of selected populations or patient for whom the drug is intended which may be open label or single or double blind. Blood levels at various intervals, adverse experiences, and additional Phase I data may be obtained. Small doses are gradually increased until the minimal effective dose is found. All reactions of the subjects are carefully recorded. Preliminary estimates of the dosage, efficacy and safety in man are made. The second part of Phase II consists of pivotal well controlled studied that usually represent the most rigorous demonstrations of a drug efficacy. Relative safety information is also determined in Phase II studies. A larger number of patients are enrolled into the second part (N=60 to 200 subjects). Phase II studies are conducted by accredited Clinical Pharmacologists. Phase II second part studies may be conducted by well qualified practitioners or clinicians who are familiar with the conditions to be treated, the drug used in these conditions to be treated, the drug used in these conditions and the methods of their evaluation. A written informed consent of patients-participants is needed.

iii. Phase III Clinical Drug Trial

Phase III clinical drug trials are studies conducted in patient populations for which the drug is eventually intended. These studies generate data on both safety and efficacy in relatively large numbers of patients under normal use conditions in both controlled and uncontrolled studies. The number of patients required vary *[sic]* (1,000 to 10,000). These studies provide much of the information that is needed for the package insert and labelling of the drug. This phase may be conducted as a multicentric trial among accredited clinicians. The informed consent of participating subject is preferably in written form.

iv. Biovailability

Bioavailability studies are conducted to determine the rate and extent to which the active substance or therapeutic moiety is absorbed from a pharmaceutical form and becomes available at the site of action.

c) Name of investigator(s) and curriculum vitae

d) Name(s) of center/institution wherein the clinical investigation was undertaken

e) Protocol for local clinical trial[48] (Emphasis in the original)

The foregoing illustrates the necessary care involved in determining a prospective market entrant's ability to supply safe medicines to the public. In view of the importance of actual use in creating the valuable interest sought to be protected by trademark laws, compliance with the Food and Drug Administration's regulatory requirements is a necessary prerequisite to avail of such legal protections. Thus, adequate regulatory compliance with the Food and Drug Administration's requirements should be read as part of the "good faith" required of those seeking to register their pharmaceutical trademarks with the Intellectual Property Office.

III

From a commercial perspective, the TRIPS Agreement states that a mark's registration may be made dependent on use, but the absence of prior use shall not prevent registration.[49] Republic Act No. 8293, Section 122 reiterates this principle, as follows:

SECTION 122. How Marks are Acquired. — The rights in a mark shall be acquired through registration *made validly in accordance with the provisions of this law*. (Emphasis supplied)

Thus, local rules provide that rights in a mark may be acquired by registration, but such registration must conform to the law's relevant provisions on trademark ownership. When read in the context of trademarks used on medicines, prior-registration accords certain rights to the prior registrant, but should not be understood to conclusively grant ownership over the registered mark. Relevant regulatory considerations, together with the nature of the intellectual property sought to be legally protected, should

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[48] J. Leonen, Separate Concurring Opinion, *Alliance for the Family Foundation, Philippines, Inc. v. Garin*, 809 Phil. 897, 937-944 (2017) [Per J. Mendoza, Special Second Division].

[49] TRIPS Agreement, sec. 2, Article 15 (3).

also be taken into account when determining the property rights thereto.

While the majority comprehensively discusses the omissions made in transitioning from the old Trademark Law to the Intellectual Property Code, there is no explicit language granting conclusive ownership to the prior registrant of a trademark. Conversely, such language exists in previous versions of the law, which, barring an express repeal or irreconcilable inconsistency, should be read in consonance with the law's current provisions. If the legislative intent were to conclusively grant ownership to the prior registrant, the text of the law would have reflected it in unequivocal terms.

Proceeding from the discussion above, the majority's interpretation of Republic Act No. 8293's provisions should be reassessed. Particularly, the inherent limitations of deriving legislative intent from the deliberations of the framers[50] has been aptly discussed by this Court in *Civil Liberties Union v. Executive Secretary*:

> While it is permissible in this jurisdiction to *consult the debates and proceedings of the constitutional convention* in order to arrive at the reason and purpose of the resulting Constitution, resort thereto may be had *only when other guides fail as said proceedings are powerless to vary the terms of the Constitution when the meaning is clear*. Debates in the constitutional convention "are of value as showing the views of the individual members, and as indicating the reasons for their votes, but *they give us no light as to the views of the large majority who did not talk, much less of the mass of our fellow citizens whose votes at the polls gave that instrument the force of fundamental law*. We think it *safer to construe the constitution from what appears upon its face*." The proper interpretation therefore depends more on how it was understood by the people adopting it than in the framer's understanding thereof.[51] (Citations omitted, emphasis supplied)

The records of legislative deliberations are inherently limited to the opinions of those present, and neither consider the opinions

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[50] Ponencia, pp. 17-18.

[51] *Civil Liberties Union v. Executive Secretary*, 272 Phil. 147, 169-170 (1991) [Per J. Fernan, En Banc].

of those who did not or were not able to speak, nor account for changing circumstances. The risk of adopting a very limited interpretation of the law is even greater when relying on the privilege speech of a single senator. However, a contemporaneous approach to doubts in interpretation of a law's text allows for more objectivity, as discussed in a prior opinion:

> Discerning constitutional meaning is an exercise in discovering the sovereign's purpose so as to judge the more viable among competing interpretations of the same legal text. *The words as they reside in the whole document should primarily provide the clues.* Secondarily, contemporaneous construction may aid in illumination if *verba legis* fails. Contemporaneous construction may also validate the clear textual or contextual meaning of the Constitution.
>
> Contemporaneous construction is *justified by the idea that the Constitution is not exclusively read by this court.* The theory of a constitutional order founded on democracy is that all organs of government and its People can read the fundamental law. Only differences in reasonable interpretation of the meaning of its relevant text, occasioned by an actual controversy, will be mediated by courts of law to determine which interpretation applies and would be final. The democratic character of reading the Constitution provides the framework for the policy of deference and constitutional avoidance in the exercise of judicial review. Likewise, this is implied in the canonical doctrine that this court cannot render advisory opinions. Refining it further, this court decides only constitutional issues that are as narrowly framed, sufficient to decide an actual case.
>
> *Contemporaneous construction engages jurisprudence and relevant statutes in determining the purpose behind the relevant text.*
>
> In the hierarchy of constitutional interpretation, *discerning purpose through inference of the original intent of those that participated in crafting the draft* Constitution for the People's ratification, *or discerning the original understanding of the past society that actually ratified the basic document, is the weakest approach.*
>
> Not only do these interpretative methodologies allow the greatest subjectivity for this court, it may also be subject to the greatest errors. For instance, *those that were silent during constitutional conventions may have voted for a proposition due to their own reasons different*

from those who took the floor to express their views. It is even possible that the beliefs that inspired the framers were based on erroneous facts.[52] (Citations omitted, emphasis supplied)

Thus, recourse to the text of all relevant provisions, and to cases where such provisions were interpreted, should be sufficient to find consistency between the prior-registration and prior-use regimes. While Republic Act No. 8293 may have superseded certain portions of the old Trademark Law, there was no express repeal of the latter's provisions regarding the acquisition of rights over trademarks. *Samson v. Daway* discussed the nature of Republic Act No. 8293's repealing clause, as follows:

> Notably, the aforequoted clause *did not expressly repeal R.A. No. 166 in its entirety*, otherwise, it would not have used the phrases "parts of Acts" and "inconsistent herewith"; and it would have simply stated "Republic Act No. 165, as amended; Republic Act No. 166, as amended; and Articles 188 and 189 of the Revised Penal Code; Presidential Decree No. 49, including Presidential Decree No. 285, as amended are hereby repealed." It would have removed all doubts that said specific laws had been rendered without force and effect. *The use of the phrases "parts of Acts" and "inconsistent herewith" only means that the repeal pertains only to provisions which are repugnant or not susceptible of harmonization with R.A. No. 8293*[.][53] (Citations omitted, emphasis supplied)

In view of this implied repeal, there must be a "substantial and irreconcilable conflict"[54] between registration and prior use, for the former to completely exclude the latter as a mode of acquiring rights over trademarks. Since the law's provisions on registration and actual use work together to vest the full set

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[52] J. Leonen, Concurring Opinion, *Poe-Llamanzares v. Commission on Elections*, 782 Phil. 292, 696-697 (2016) [Per C.J. Sereno, En Banc].

[53] *Samson v. Daway*, 478 Phil. 784, 790-791 (2004) [Per J. Ynares-Santiago, First Division].

[54] *Berris Agricultural Co., Inc. v. Abyadang*, 647 Phil. 517, 524 (2010) [Per J. Nachura, Second Division].

of rights available in a trademark, there is no inconsistency that should lead to the abandonment of prior use.

As aptly observed by the *ponente*, this interplay between registration and actual use was discussed at length in *Berris Agricultural Co., Inc. v. Abyadang*,[55] and in *E.Y. Industrial Sales, Inc. v. Shen Dar Electricity and Machinery Co. Ltd.*[56]

In *Berris*, this Court determined the parties' right of ownership over the disputed mark in order to resolve the issue of trademark infringement. This Court reasoned that since the provisions of Republic Act No. 8293 require proof of actual use in order to maintain one's rights to the registered mark, the determining factor in acquiring ownership remains actual use of the mark in commerce. Thus, a mark's registration creates a presumption of the "registrant's ownership of the mark," which may be rebutted by proof of another's prior use.[57]

The majority reasons that *Berris* incorrectly applied principles under Republic Act No. 166 to a problem governed solely by Republic Act No. 8239. However, even without the discussion cited by the majority,[58] this Court's *ratio* in *Berris* explained that Republic Act No. 8293's relevant provisions still recognized prior use as a mode of acquiring rights over trademarks. Moreover, the majority's decision to overturn *Berris* may not have considered the possibility that the relevant provisions of Republic Act No. 166 may be read in consonance with those of Republic Act No. 8239.

The same may be true for the majority's assessment of *E.Y. Industrial*'s applicability. In *E.Y. Industrial*, this Court reiterated the importance of "proof of prior and continuous use"[59] in

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[55] 647 Phil. 517 (2010) [Per J. Nachura, Second Division].

[56] 648 Phil. 572 (2010) [Per J. Velasco, Jr., First Division].

[57] *Berris Agricultural Co., Inc. v. Adyadang*, 647 Phil. 517, 525 (2010) [Per J. Nachura, Second Division].

[58] Ponencia, p. 20.

[59] E.Y. Industrial Sales, Inc., et al. v. Shen Dar Electricity and Machinery Co., Ltd., 648 Phil. 572, 593 (2010) [Per J. Velasco, Jr., First Division].

establishing ownership of a trademark. Notably, *E.Y Industrial* recognized that Republic Act No. 8293 removed prior use as a prerequisite for registration, consistent with the requirement under section 3 of the TRIPS Agreement.[60]

While I agree with the *ponente's* astute observation that *E.Y. Industrial* should not have cited *Shangri-la*,[61] *E.Y. Industrial's* issue on ownership was decided primarily by applying the relevant provisions of Republic Act No. 8293:

> RA 8293 espouses the "first-to-file" rule as stated under Sec. 123.1 (d) which states:
>
> Section 123. *Registrability*. — 123.1. A mark cannot be registered if it:
>
> x x x x x x x x x
>
> (d) Is identical with a registered mark belonging to a different proprietor or a mark with an earlier filing or priority date, in respect of:
>
> (i) The same goods or services, or
> (ii) Closely related goods or services, or
> (iii) If it nearly resembles such a mark as to be likely to deceive or cause confusion[.]

Under this provision, the *registration of a mark is prevented with the filing of an earlier application for registration*. This *must not, however, be interpreted to mean that ownership should be based upon an earlier filing date*. While RA 8293 removed the previous requirement of proof of actual use prior to the filing of an application for registration of a mark, *proof of prior and continuous use is necessary to establish ownership of a mark. Such ownership constitutes sufficient evidence to oppose the registration of a mark.*

Sec. 134 of the IP Code provides that "any person who believes that he would be damaged by the registration of a mark . . ." may file an opposition to the application. *The term "any person" encompasses*

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[60] Id.

[61] *Shangri-la v. Developers Group of Companies*, 520 Phil. 935 (2006) [Per J. Garcia, Second Division].

the true owner of the mark — the prior and continuous user.[62] (Citations omitted, emphasis supplied)

Again, Republic Act No. 166's provisions were not expressly repealed,[63] rendering its recognition of prior use as still applicable under Republic Act No. 8293, insofar as it is not substantially in conflict with the latter's provisions. The texts of the two laws are consistent with each other. The presumption of ownership created by prior registration remains dependent on proof of the claimant's actual use of the mark in commerce.

IV

On the issue of bad faith, the majority rejects the Court of Appeals' interpretation of Section 159.1 of Republic Act No. 8293, which provides for limitations to actions for infringement:

> Section 159. Limitations to Actions for Infringement. — Notwithstanding any other provision of this Act, the remedies given to the owner of a right infringed under this Act shall be limited as follows:
>
> 159.1. Notwithstanding the provisions of Section 155 hereof, a registered mark shall have no effect against any person who, in good faith, before the filing date or the priority date, was using the mark for the purposes of his business or enterprise: Provided, That his right may only be transferred or assigned together with his enterprise or business or with that part of his enterprise or business in which the mark is used.

According to the majority, the Court of Appeals misapplied this provision when it held that petitioner's continued use of the mark "ZYNAPS" subsequent to respondent's registration of "ZYNAPSE" may expose petitioner to an action for infringement. The majority held that this reading of Section 159.1 would render the provision useless. It ruled that, "a third

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[62] *E.Y. Industrial Sales, Inc., et al. v. Shen Dar Electricity and Machinery Co., Ltd.*, 648 Phil. 572, 592-593 (2010) [Per J. Velasco, Jr., First Division].

[63] *Samson v. Daway*, 478 Phil. 784, 790-791 (2004) [Per J. Ynares-Santiago, First Division].

party's prior use of an unregistered mark, if said mark subsequently becomes registered by another, could not be considered as trademark infringement *because there was no trademark registration* — a requirement for a trademark infringement action to prosper — *when the third party was using its mark*."[64] This is consistent with its reasoned conclusion that all rights in a mark are acquired solely by registration. Thus, it held that there can be no infringement without a registration creating the rights that would be infringed in the first place.

In view of my reservations concerning the source of rights over trademarks, infringement may be committed by one's use of an unregistered mark, if such use was done with knowledge of another's prior use of the same or confusingly similar mark. The acquisition of rights over a mark through a registration "made validly in accordance with the provisions of [Republic Act No. 8293]"[65] thus connotes registration in good faith.

Consistent with the foregoing discussions on how the provisions of the current and past trademark laws may be harmonized to accommodate the acquisition of a mark by prior use, one's appropriation of a mark which has already been in use by another, should expose the user in bad faith to liability for infringement. With respect to medicines, compliance with the necessary safety regulations required of prospective sellers and distributors must be considered in assessing whether a registrant acted in good faith in registering a prospective mark with the Intellectual Property Office.

Notably, the majority discussed particular interpretations of Republic Act No. 8293, by which all provisions thereof may be given effect. The majority forwards these interpretations in view of its insistence that rights in marks may be acquired *only* by the first registrant thereof, to the exclusion of a prior user. This also results in the abandonment of lines of

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[64] Ponencia, p. 40.

[65] Id. at 2.

jurisprudence previously recognizing the coexistence of both regimes.

However, a textual reading of the provisions, as interpreted by the cases sought to be abandoned, would allow both regimes to coexist and would have the same effect of creating the uniform protections for intellectual property sought by the majority. The particular circumstances of our developing market for intellectual property would be best served by broadening the scope of protection to include those marks which may already be in use without the benefit of registration. It may be the case that prospective entrants into Philippine markets may already be using their own distinctive marks in trade, but have failed to register the same due to lack of technical knowledge or other necessary resources. These disparities should not disadvantage prior users, acting in good faith.

Imposing a purely registration-based system for acquiring ownership over trademarks equates ownership with the mere fact of registration. This cannot be the intent of our domestic laws. This disconnect is particularly stark when examining intellectual property rights involving the sale and distribution of medicines. As property serving an inherent social function in maintaining public health and safety, giving full effect to the State policy of securing the "exclusive rights of scientists, inventors, artists, and other gifted citizens to their intellectual property and creations"[66] while upholding the Constitutionally recognized social function of property requires a broader reading of the applicable laws in determining intellectual property rights.

ACCORDINGLY, I vote to **GRANT** the Petition.

DISSENTING OPINION

LAZARO-JAVIER, *J.*:

The ***ponencia*** essentially states:

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[66] CONST., art. XIV, sec. 13.

– The deletion of Section 2[1] and Section 2a[2] of Republic Act No. 166[3] and the enactment of Section 122[4] of Republic Act No. 8293 show the intent of the lawmakers to **completely and totally abandon *use*** as a mode of acquiring trademark ownership and to **institute *registration* as the exclusive means of acquiring trademark ownership**;

– As a result, *actual use* is no longer necessary to acquire or perfect ownership of a mark. Rather, *actual use* of a

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[1] Section 2. What are registrable. — Trademarks, tradenames, and service marks owned by persons, corporations, partnerships or associations domiciled in the Philippines and by persons, corporations, partnerships or associations domiciled in any foreign country may be registered in accordance with provisions of this Act: Provided, That said trademarks, tradenames, and service marks are actually in use in commerce and services not less than two months in the Philippines before the time the applications for registrations are filed: And, Provided further, That the country of which the applicant for registration is a citizen grants by law substantially same privileges to citizens of the Philippines, and such fact is officially certified, with a certified true copy of the foreign law translated into the English language, by the government of the foreign country to the Government of the Republic of the Philippines.

[2] Section 2-A. Ownership of trade-marks, trade-names and service-marks; how acquired. — Anyone who lawfully produces or deals in merchandise of any kind or who engages in any lawful business, or who renders any lawful service in commerce, by actual use thereof in manufacture or trade, in business, and in the service rendered, may appropriate to his exclusive use a trade-mark, a trade-name, or a service-mark not so appropriated by another, to distinguish his merchandise, business or service from the merchandise, business or services of others. The ownership or possession of a trade-mark, trade-name, service-mark, heretofore or hereafter appropriated, as in this section provided, shall be recognized and protected in the same manner and to the same extent as are other property rights known to the law.

[3] AN ACT TO PROVIDE FOR THE REGISTRATION AND PROTECTION OF TRADE-MARKS, TRADE-NAMES AND SERVICE-MARKS, DEFINING UNFAIR COMPETITION AND FALSE MARKING AND PROVIDING REMEDIES AGAINST THE SAME, AND FOR OTHER PURPOSES.

[4] Section 122. How Marks are Acquired. — The rights in a mark shall be acquired through registration made validly in accordance with the provisions of this law. (Sec. 2-A, R.A. No. 166a).

trademark is only meant to underscore that a registered owner of a trademark must *actually use* the mark to maintain his or her ownership thereof. In other words, first registrants **do not have to demonstrate prior actual use** of the trademark, **but they may subsequently lose ownership of their trademarks** if they fail to prove actual use of the trademark in commerce after specified periods in RA 8293;

–There can be no infringement of an unregistered mark. This is not merely a consequence of the abandonment of the old *first-to-use* regime, but is in fact a pre-requisite under the law for filing an infringement case under RA 8293; and

–The *first user* of an unregistered trademark has remedies though the first use does **not** vest trademark ownership. The *first user* has the option of enforcing his or her rights administratively by **filing an opposition** against the trademark application of a bad faith applicant or **request for the cancellation** of a trademark registered in bad faith.

Foremost, the ***ponencia*** holds that registration exclusively vests trademark ownership. Hence, the element of actual use as a mode of acquiring ownership rights should be totally dismissed.

I dissent.

Registration *and* **actual use** ***together*** **perfect ownership** of a trademark. **Registration** *and* **prior actual use** ***individually*** creates **imperfect ownership** of a trademark. Thus, only registration with actual use made in good faith gives the registrant the **full** rights of ownership attributable to such registration.

I agree with Justice Leonen that our trademark laws are aimed to "protect the owner's right to the mark's value, ***which is generated*** by its actual use in commerce."[5] Too, the factual backdrop of this case and its effects are not limited to the fictions of civil and commercial law, but the reality of public health and safety.

[5] Page 10 of Justice Leonen's Reflections.

The ***ponencia*** cites Section 122 of RA 8293 and interprets that this provision commands registration as an exclusive mode of acquiring trademark ownership, thus:

> SECTION 122. How Marks are Acquired. — The rights in a mark shall be acquired through registration made validly in accordance with the provisions of this law. (Sec. 2-A, R.A. No. 166a)

Section 122, however, is **silent** on and does not repudiate property in trademark recognized by common law. Thus, "[t]he right of property in a trade mark is recognized by the common law, and does not in any manner depend for its inceptive existence or support upon statutory law, although its exercise may be limited or controlled by statute."[6] As further held in this opinion:

> Does not the Act of 1863, instead of constituting a "complete scheme" for the acquisition and protection of property in trade marks, rather proceed on the theory that this species of property did exist, and might thereafter be acquired, under the rules of the common law, and provide that those securing such right according to the provisions of the act, might have a further or more efficient protection than those who failed to avail themselves of the statute, and relied upon the common law remedies?
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> x x x x x x x x x
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> At common law, the remedies for invasions of trade mark property were an action at law for the recovery of damages, and an injunction, in which case pecuniary compensation might be incidentally awarded. Several of the States have, by statute, added a criminal prosecution as a further remedy or protection. **The remedies at common law are still left by our statute in those cases where the trade mark has not been registered according to the act**, for not only is **the right of property recognized and affirmed as it existed at common law, and the common law remedies are not taken away**, but the protection afforded by suits at law and bills for injunctions is expressly conceded. Those provisions add nothing to the rights previously possessed by the owner of the trade mark, and are only in affirmance of the common law. But he does not have the aid of a criminal prosecution for his protection.

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[6] *Derringer v. Plate*, 29 Cal. 293, 294, 1865 Cal. LEXIS 244, *1 (Cal. October 1, 1865).

On the other hand, those owning trademarks, who have filed their claims and affidavits, and paid the fees, have the protection accorded to the other class of cases, and have also that arising from the criminal prosecutions, with penalties, upon conviction, of more than usual severity.

We do not fully agree with counsel for either party in his construction of the act in respect to its relation to and effect upon the common law remedies. The remedies provided by the act, at least those applicable to registered trademarks, are not cumulative to those possessed at common law, but in that respect provision is made by the act for a new case; **nor do we think the act forms a "complete scheme" of itself**, in the sense that counsel regards it, **as requiring all trademarks to be registered under the act, to entitle them to protection; though it may be regarded as a "complete scheme" in the respect that it grants certain remedies in cases of registered trademarks**, and **expressly reserves to the owners in other cases the usual remedies enjoyed at common law**.[7]

I concur with Justice Leonen that in the **absence of an express repeal or a clear and categorical incompatibility** between RA 8293 and our jurisprudence echoing common law and the provisions of RA 166, there is **no reason** to interpret Section 122 as an *exclusive mode* or a *complete scheme* of acquiring trademark ownership and to jettison **prior actual use** as a means to obtain trademark ownership.

I also posit that while Section 122 mentions that registration acquires trademark ownership, besides **not** stating that registration is the *only* mode, it **does not** declare that **conclusive and full** ownership is vested in the registrant. Further, since registration is indeed a convenient means of establishing trademark *imperfect* ownership, ultimately its function is a mechanism "to allocate the burden in the trial of an action for infringement."[8]

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[7] *Derringer v. Plate*, 29 Cal. 293, 298-299, 1865 Cal. LEXIS 244, *11-13 (Cal. October 1, 1865).

[8] *Excell Consumer Prods. v. Smart Candle LLC*, 2013 U.S. Dist. LEXIS 129257, *60, 2013 WL 4828581 (S.D.N.Y. September 10, 2013).

Surely, **actual use** remains to be a complementing scheme for perfecting ownership under RA 8293. If actual use is crucial in **maintaining** trademark ownership, I cannot justify dismissing **prior actual use** as **another mode** of attaining trademark ownership.

Too, Section 124.2 of the IP Code requires that a declaration of actual use with evidence to that effect must be filed within three (3) years from the filing date of the application, *viz.*:[9]

> The applicant or the registrant shall file a declaration of actual use of the mark with evidence to that effect, as prescribed by the Regulations within three (3) years from the filing date of the application. Otherwise, the application shall be refused or the mark shall be removed from the Register by the Director.

After the declaration of **actual use** is filed, the Intellectual Property Office shall issue the registration certificate covering only the particular goods on which the mark is in **actual use** in the Philippines as disclosed in the declaration.

More, Section 145,[10] provides that the declaration of actual use is an essential requisite in *maintaining* trademark rights, thus:

> SECTION 145. Duration. — A certificate of registration shall remain in force for ten (10) years: Provided, That the registrant shall file a declaration of actual use and evidence to that effect, or shall show valid reasons based on the existence of obstacles to such use, as prescribed by the Regulations, within one (1) year from the fifth anniversary of the date of the registration of the mark. Otherwise, the mark shall be removed from the Register by the Office. (Sec. 12, R.A. No. 166a)

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[9] Intellectual Property Code. 124.2. The applicant or the registrant shall file a declaration of actual use of the mark with evidence to that effect, as prescribed by the Regulations within three (3) years from the filing date of the application. Otherwise, the application shall be refused or the mark shall be removed from the Register by the Director.

[10] Intellectual Property Code. SECTION 145. Duration.

Meanwhile, the Intellectual Property Office issued Office Order No. 056-13[11] amending Rule 205[12] of the Trademark Regulations for the purpose of streamlining administrative procedures in registering trademarks and also to address the need to clarify what will be accepted as **proof of use**,[13] *viz.*:

RULE 205. ***Contents of the Declaration and Evidence of Actual Use. —***

(a) The declaration shall be under oath and filed by the applicant or registrant (or the authorized officer in case of a juridical entity) or the attorney or authorized representative of the applicant or registrant. The declaration must refer to only one application or registration, shall contain the name and address of the applicant or registrant declaring that the mark is in actual use in the Philippines, the list of goods or services where the mark is used, the name/s of the establishment and address where the products are being sold or where the services are being rendered. If the goods or services are available only by online purchase, the website must be indicated on the form

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[11] Amendment of the Provisions on Declaration of Actual Use of the Trademark Regulations <https://www.federislaw.com.ph/wp-content/themes/federis/files/Office%20Order%20No%20%2013-056,%20Series%20of%202013.pdf; last accessed July 10, 2020.>

[12] RULE 205. *Contents of the Declaration and Evidence of Actual Use*. —

(a) The declaration shall be under oath and filed by the applicant or registrant (or the authorized officer in case of a juridical entity) or the attorney or authorized representative of the applicant or registrant. The declaration must refer to only one application or registration, shall contain the name and address of the applicant or registrant declaring that the mark is in actual use in the Philippines, the list of goods or services where the mark is used, the name/s of the establishment and address where the products are being sold or where the services are being rendered. If the goods or services are available only by online purchase, the website must be indicated on the form in lieu of name or address of the establishment or outlet. The applicant or registrant may include other facts to show that the mark described in the application or registration is actually being used in the Philippines. The date of first use shall not be required.

x x x x x x x x x (Emphasis supplied)

[13] See *W Land Holdings, Inc. v. Starwood Hotels and Resorts Worldwide, Inc.*, 822 Phil. 23, 40 (2017).

in lieu of name or address of the establishment or outlet. The applicant or registrant may include other facts to show that the mark described in the application or registration is actually being used in the Philippines. The date of first use shall not be required.

(b) Actual use for some of the goods and services in the same class shall constitute use for the entire class of goods and services. Actual use for one class shall be considered use for related classes. In the event that some classes are not covered in the declaration, a subsequent declaration of actual use may be filed for the other classes of goods or services not included in the first declaration, provided that the subsequent declaration is filed within the three year period or the extension period, in case an extension of time to file the declaration was timely made. In the event that no subsequent declaration of actual use for the other classes of goods and services is filed within the prescribed period, the classes shall be automatically dropped from the application or registration without need of notice to the applicant or registrant.

(c) **The following shall be accepted as proof of actual use of the mark: (1) labels of the mark as these are used; (2) downloaded pages from the website of the applicant or registrant clearly showing that the goods are being sold or the services are being rendered in the Philippines; (3) photographs (including digital photographs printed on ordinary paper) of goods bearing the marks as these are actually used or of the stamped or marked container of goods and of the establishment/s where the services are being rendered; (4) brochures or advertising materials showing the actual use of the mark on the goods being sold or services being rendered in the Philippines; (5) for online sale, receipts of sale of the goods or services rendered or other similar evidence of use, showing that the goods are placed on the market or the services are available in the Philippines or that the transaction took place in the Philippines; (6) copies of contracts for services showing the use of the mark. Computer printouts of the drawing or reproduction of marks will not be accepted as evidence of use.**

(d) **The Director may, from time to time, issue a list of acceptable evidence of use and those that will not be accepted by the Office.** (Emphases and underscoring supplied)

The Intellectual Property Office propounded the significance of requiring **actual use** to perfect trademark ownership which

bolsters the fact that registration is not the sole mode of acquiring trademark rights, thus:

Imagine trademark protection as a **similar process to how the human brain works in adopting new skills** or knowledge.

The more a person **uses and practices** a skill or knowledge, the likelier it will be **retained in his brain's functions** over time, especially as a person ages.

Protection for a registered trademark works in the same vein; A trademark gives its owner particular rights but to keep enjoying those rights, the trademark **has to keep being used**.

A business owner with a trademark has the **exclusive right to make use** of his mark, and prevent others from using the same or similar marks, on identical or related goods or services.

If he fails to maintain his trademark, that is, file a Declaration of Actual Use, he loses those rights, and his trademark is removed from the Intellectual Property Office of the Philippines (IPOPHL) Register.

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In requiring DAU, the IPOPHL is **filtering trademark-owners who just stockpile marks without genuinely using them**, and may just be cutting in the financial gain from owners of identical/confusingly similar trademarks.

The DAU requirement, then works as tool to deter the 'trademark squatting' — when a party registers a trademark in bad faith. This occurs when a party registers another's trademark as his own in a jurisdiction where the original trademark owner has yet to register.

In countries where the trademark system is 'first-to-file,' this is problematic as the 'squatter' essentially blocks the registration of the original brand-owner, and may extract benefits from him just so he can register.

Additionally, in the name of competition, removal of marks because of non-compliance with DAU will free up the same marks to other potential trademark registrants.

A trademark registration is in force for 10 years but, to maintain it, the DECLARATION OF ACTUAL USE of the mark, with

accompanying evidence of its use, must be filed with the Intellectual Property Office of the Philippines according to the following schedule:

- DAU filed within three (3) years from the filing date of the trademark application;
- DAU filed within one (1) year from the fifth anniversary of the registration/within one (1) year from the fifth anniversary of the renewal of registration; and
- DAU to be filed within one (1) year from the date of renewal of registration (*This additional requirement applies to all marks due for renewal on 1 January 2017 and onwards, regardless of the filing date of the request for renewal).

A single extension of six months can be requested to file for the 3rd Year DAU, provided the request was made before the three-year period expired, and upon payment of the necessary fees.

But, if a registrant has valid reasons which prohibit him from using the mark, a Declaration of Non-Use may be filed instead of the DAUs. However, the non-use of a mark may only be excused in the following circumstances:

- the registered owner is prevented from using it as a requirement imposed by another government agency,
- an existing restraining order or injunction issued by a court, the IPO or other quasi-judicial bodies prevents the use or,
- the mark is the subject of an opposition or cancellation case.[14]

Evidently, the affidavit of actual use or declaration of continued use presupposes that the owner of the registered mark continues the *bona fide* use of its mark on the goods or services in the course of trade. Failing to satisfy the scrutiny of the respective trademark officers, a registered mark may be cancelled on account of non-use amounting to abandonment. Clearly, the Intellectual Property Law does not reject the fact that prior registration, as indicated under Section 122, actually relies on a claimant's **actual use** of the mark in commerce.

Section 159.1[15] also recognizes **rights to prior actual users** of a trademark later on registered, thus:

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[14] How to Maintain a Registered Trademark in the Philippines, at https: //www.ipophil.gov.ph/news/how-to-maintain-a-registered-trademark-in-the-philippines/ (last accessed June 23, 2020).

[15] Intellectual Property Code. Section 159.1.

Notwithstanding the provisions of Section 155 hereof, a registered mark **shall have no effect against any person who, in good faith, before the filing date or the priority date, was using the mark for the purposes of his business or enterprise**: Provided, That his right may only be transferred or assigned together with his enterprise or business or with that part of his enterprise or business in which the mark is used. (Emphasis supplied)

RA 8293, therefore, does not eliminate prior actual use as a foundation for trademark ownership. Just as Section 122 is **not a complete scheme** for trademark ownership, Section 159.1 cannot also be interpreted as the *only right* given to prior actual users.

While Section 138[16] provides that a certificate of registration is a *prima facie* evidence of the registrant's ownership of the mark, jurisprudence dictates that registration does not confer upon the registrant an **absolute** right to the registered mark.[17]

The Court in ***UFC Philippines, Inc. v. Barrio Fiesta Manufacturing Corporation***[18] clarified that *prima facie* presumption brought about by the registration of a mark may be challenged and overcome, in an appropriate action, by proof of the nullity of the registration or of non-use of the mark, except when excused.

Corollary thereto, ***W Land Holdings, Inc. v. Starwood Hotels and Resorts Worldwide, Inc.***[19] ordained that the actual use of

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[16] Intellectual Property Code. Section 138.

Certificates of Registration. — A certificate of registration of a mark shall be *prima facie* evidence of validity of the registration, the registrant's ownership of the mark, and of the registrant's exclusive right to use the same in connection with the goods or services and those that are related thereto specified in the certificate. x x x.

[17] See *Phillip Morris, Inc. v. Fortune Tobacco Corp.*, 526 Phil. 300, 317 (2006).

[18] See 778 Phil. 763, 790 (2016), citing *Berris Agricultural Co., Inc. v. Abyadang*, 647 Phil. 517, 525-533 (2010).

[19] Supra note 13.

the mark representing the goods or services introduced and transacted in commerce over a period of time creates that goodwill which the law seeks to protect.

Both ***UFC and W Land Holdings, Inc.*** (among other jurisprudence) cited ***Berris*** which emphasized the important factor of prior actual use in one's claim of trademark ownership which the *ponencia* wishes to overturn.

Indubitably, **actual use** cannot be downplayed as an essential element in protecting trademark laws. To be sure, the **real value** of a trademark lies in its actual use. Trademark is important to commerce, and commerce is about **execution** and not about abstract and academic steps or procedures.

The trademark dispute here involves not just any other commercial good. The products here relate to the general population's health and safety. Thus, our concern should focus how trademark laws can be better harmonized in the context of determining the rights accorded in the sale and distribution of these medical products bearing specific trademarks. For the protection of trademarks as intellectual property is intended not only to preserve the goodwill and reputation of the business established on the goods bearing the mark through actual use over a period of time, but more importantly, to safeguard the public as consumers.[20]

We have to consider the long history articulating the ownership rights of prior actual users. This shall subsist in the absence of its express repudiation and express good commercial reasons for discarding it.

A final word. The sale and distribution of medicine are not merely commercial in nature even if pharmaceutical giants make handsome profits from these endeavors. Rather, our lens should be widened to equally view medicine trademarks also as a matter of public health and safety.

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[20] See *UFC Philippines, Inc. v. Barrio Fiesta Manufacturing Corporation*, supra.

In its closing statements, the *ponencia* admits that *the issue on likelihood of confusion on medicines may pose* ***a significant threat to public health***, and adds that *there is* ***a need to improve*** *our intellectual property laws and the government's* ***manner of regulation of drug names*** *to* ***prevent*** *the concurrent use in the market of* ***confusingly similar names for medicines***.[21] But why wait when we can already reconcile the existing legal precepts to address this? The 1987 Constitution itself guides us, thus:

> Article XII, Section 6. The use of property **bears a social function**, and all economic agents **shall contribute to the common good**. Individuals and private groups, including corporations, cooperatives, and similar collective organizations, shall have the right to own, establish, and operate economic enterprises, subject to the duty of the State to promote distributive justice and to intervene when the common good so demands.

As Justice Leonen aptly points out in his Dissenting Opinion, this is the very foundation of regulations behind both the IP Code and the Food and Drug Administration Act.[22] Verily, even with the safeguards of intellectual rights protection and policy in place, and no matter the effectiveness of their enforcement, the truth is that it is human to err. It is not a question of *if*, but *when* a person will mistake ZYNAPSE for ZYNAPS and suffer its consequences, if only to strictly interpret a legal provision. This myopic reading of IP laws is inconsistent with the demand of the Constitution[23] for a holistic approach on national economic policies in consideration of their social function and the common good.

ACCORDINGLY, I vote to **GRANT** the petition.

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[21] *Ponencia*, p. 43.

[22] J. Leonen *Reflections*, p. 5.

[23] 1987 Constitution, Article XII, Section 6.

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[G.R. No. 215585. September 8, 2020]

IN THE MATTER OF THE PETITION FOR WRIT OF HABEAS CORPUS/DATA AND AMPARO IN FAVOR OF AMIN IMAM BORATONG, MEMIE SULTAN BORATONG, *Petitioner*, *v.* **HON. LEILA M. DE LIMA in her capacity as Secretary of Justice, HON. VIRGILIO MENDEZ in his capacity as Director of the National Bureau of Investigation, and HON. FRANKLIN JESUS B. BUCAYU in his capacity as Director of the Bureau of Corrections,** *Respondents*.

[G.R. No. 215768. September 8, 2020]

ANTHONY R. BOMBEO, on behalf of HERBERT R. COLANGGO, *Petitioner, v.* **HON. LEILA M. DE LIMA, DIRECTOR FRANKLIN B. BUCAYU, DIRECTOR VIRGILIO L. MENDEZ, DEPARTMENT OF JUSTICE, BUREAU OF CORRECTIONS, and NATIONAL BUREAU OF INVESTIGATION,** *Respondents*.

SYLLABUS

1. REMEDIAL LAW; ACTIONS; MOOT AND ACADEMIC CASES; COURTS GENERALLY DECLINE JURISDICTION OVER A MOOT AND ACADEMIC CASE OR DISMISS IT ON GROUND OF MOOTNESS; EXCEPTIONS.— At first glance, the Petitions appear to have already been rendered moot. Petitioners' relatives had already been returned to the National Bilibid Prison facility in Building 14 and the grant of visitation rights had also been restored. In *David v. Macapagal-Arroyo*:

> A moot and academic case is one that ceases to present a justiciable controversy by virtue of supervening events, so that a declaration thereon would be of no practical use or value. Generally, courts decline jurisdiction over such case or dismiss it on ground of mootness.

This Court, however, is not precluded from deciding cases otherwise moot if "*first*, there is a grave violation of the Constitution; *second*, the exceptional character of the situation and the paramount public interest are involved; *third*, when the constitutional issue raised requires formulation of controlling principles to guide the bench, the bar, and the public; and *fourth*, the case is capable of repetition yet evading review." In this case, this Court takes the occasion to discuss a few points raised by the parties.

. . .

Thus, this Court may still pass upon actions for habeas corpus even when the alleged illegal detention has ceased if the action is one that is capable of repetition yet evading review.

Here, the national inmates had been returned to their actual detention facilities. There is, however, a lingering question of whether the Department of Justice is authorized to transfer them to another facility without a court order, which could happen at any time. . . . While this transfer has not been questioned before this Court, there is still no definitive ruling on whether the Department of Justice has the authority to transfer national inmates. Thus, this Court takes the opportunity in this case despite the mootness of the reliefs sought.

2. ID.; SPECIAL PROCEEDINGS; WRIT OF *HABEAS CORPUS*; A PETITION FOR A WRIT OF HABEAS CORPUS CAN ONLY BE FILED BY A PERSON ILLEGALLY DEPRIVED OF LIBERTY; EXCEPTIONS.— "The writ of habeas corpus was devised and exists as a speedy and effectual remedy to relieve persons from unlawful restraint, and as the best and only sufficient defense of personal freedom." Its primary purpose "is to determine the legality of the restraint under which a person is held." The writ may be applied to any manner of restraint as "[a]ny restraint which will preclude freedom of action is sufficient."

Rule 102, Section 1 of the Rules of Court states that "the writ of habeas corpus shall extend to all cases of illegal confinement or detention by which any person is deprived of his liberty, or by which the rightful custody of any person is withheld from the person entitled thereto." Thus, the general

rule is that a petition for a writ of habeas corpus can only be filed by a person illegally deprived of liberty. . . .

. . .

This general rule, however, has certain exceptions. Considering that the remedy is available for any form of illegal restraint, the nature of the restraint need not be related to any offense. The writ may still be availed of as a post-conviction remedy or where there has been a violation of the liberty of abode.

. . .

The remedy may also be availed of even when the deprivation of liberty has already been "judicially ordained." . . .

. . .

Feria v. Court of Appeals summarizes that the writ may still be availed of even after a valid legal process if "(a) there has been a deprivation of a constitutional right resulting in the restraint of a person, (b) the court had no jurisdiction to impose the sentence, or (c) an excessive penalty has been imposed."

3. ID.; ID.; WRIT OF HABEAS DATA; DEFINITION AND PURPOSE THEREOF; SUCH WRIT WAS CONCEPTUALIZED AS A JUDICIAL REMEDY ENFORCING THE RIGHT TO PRIVACY, MOST ESPECIALLY THE RIGHT TO INFORMATIONAL PRIVACY OF INDIVIDUALS.— The writ of habeas data "is a remedy available to any person whose right to privacy in life, liberty or security is violated or threatened by an unlawful act or omission of a public official or employee, or of a private individual or entity engaged in the gathering, collecting or storing of data or information regarding the person, family, home and correspondence of the aggrieved party." In particular:

> The writ of habeas data was conceptualized as a judicial remedy enforcing the right to privacy, most especially the right to informational privacy of individuals. The writ operates to protect a person's right to control information regarding himself, particularly in the instances where such information is being collected through unlawful means in order to achieve unlawful ends.

4. ID.; ID.; ID.; ALLEGATIONS REQUIRED IN A PETITION FOR A WRIT OF HABEAS DATA.— Section 6 of the Rule on the Writ of Habeas Data requires that the petition for the writ must contain the following allegations:

(a) The personal circumstances of the petitioner and the respondent;
(b) The manner the right to privacy is violated or threatened and how it affects the right to life, liberty or security of the aggrieved party;
(c) The actions and recourses taken by the petitioner to secure the data or information;
(d) The location of the files, registers or databases, the government office, and the person in charge, in possession or in control of the data or information, if known;
(e) The reliefs prayed for, which may include the updating, rectification, suppression or destruction of the database or information or files kept by the respondent.

In case of threats, the relief may include a prayer for an order enjoining the act complained of; and

(f) Such other relevant reliefs as are just and equitable.

5. ID.; ID.; ID.; THE RIGHT TO PRIVACY OF A CONVICTED NATIONAL INMATE IS RESTRICTED BY VIRTUE OF HIS CONVICTION.— Here, the writ is being sought to compel the Department of Justice to produce documents to justify Boratong's transfer from the National Bilibid Prison in Muntinlupa City to the National Bilibid Prison Extension Facility in Manila City. This allegation, however, bears no relation to his right to privacy, which has since been restricted by virtue of his conviction, or how it affects his life, liberty, or security. There is no allegation that government agents are gathering, collecting, or storing data or information regarding his person, family, home and correspondence. There were no other allegations in support of the prayer for the writ. . . .

The right of a convicted national inmate to his or her privacy runs counter to the state interest of preserving order and security inside our prison systems. There is no longer any reasonable expectation of privacy when one is being monitored and guarded at all hours of the day. Unless there is compelling evidence that a public employee engaged in the gathering, collecting or

storing of data or information on the convicted national inmate has committed an unlawful act which threatens the life of the inmate, a petition for the writ of habeas data cannot prosper. Thus, there is no compelling reason for this Court to issue the writ.

6. ID.; ID.; WRIT OF AMPARO; A WRIT OF AMPARO MAY BE AVAILABLE EVEN TO CONVICTED NATIONAL INMATES IN CASES OF ENFORCED DISAPPEARANCES; CHARACTERISTICS OF ENFORCED DISAPPEARANCES.— Section 1 of the Rule on the Writ of Amparo provides that the remedy of the writ of amparo is available to "any person whose right to life, liberty and security is violated or threatened with violation by an unlawful act or omission of a public official or employee, or of a private individual or entity," including "enforced disappearances or threats thereof." The allegations in the Petition of incommunicado detention, if substantiated, present characteristics of an enforced disappearance. In *Secretary of Defense v. Manalo*:

> "[E]nforced disappearances" are "attended by the following characteristics: an arrest, detention or abduction of a person by a government official or organized groups or private individuals acting with the direct or indirect acquiescence of the government; the refusal of the State to disclose the fate or whereabouts of the person concerned or a refusal to acknowledge the deprivation of liberty which places such persons outside the protection of law."

Considering that the definition of enforced disappearances does not make a distinction between abduction of private citizens or abduction of convicted national inmates, the remedy of the writ of amparo may be available even to convicted national inmates, as long as the alleged abduction was made for the purpose of placing the national inmate outside the protection of the law.

7. POLITICAL LAW; REPUBLIC ACT NO. 10575 (THE BUREAU OF CORRECTIONS ACT OF 2013); SAFEKEEPING OF NATIONAL INMATES; SAFEKEEPING, DEFINED.— Under Republic Act No. 10575, or the Bureau of Corrections Act of 2013, "[i]t is the policy of the State to promote the general welfare and safeguard the basic rights of every prisoner incarcerated in our national penitentiary." To this end, the Bureau

of Corrections is charged with the safekeeping of national inmates. "Safekeeping" is defined under the law as:

> [T]he act that ensures the public (including families of inmates and their victims) that national inmates are provided with their basic needs, completely incapacitated from further committing criminal acts, and have been totally cut off from their criminal networks (or contacts in the free society) while serving sentence inside the premises of the national penitentiary. This act also includes protection against illegal organized armed groups which have the capacity of launching an attack on any prison camp of the national penitentiary to rescue their convicted comrade or to forcibly amass firearms issued to prison guards.

8. ID.; ID.; ID.; IMPLEMENTING RULES AND REGULATIONS; NELSON MANDELA RULES, PURPOSE THEREOF.—The Revised Implementing Rules and Regulations [of Republic Act No. 10575] make mention of the United Nations Standard Minimum Rules for Treatment of Prisoners or the Nelson Mandela Rules. The Nelson Mandela Rules was not meant to specify a model penal system. Rather, it aimed to "set out what is generally accepted as being good principles and practice in the treatment of prisoners and prison management."

9. ID.; ID.; ID.; ID.; ID.; NATIONAL INMATES OF THE BILIBID PRISONS CAN ONLY BE TRANSFERRED OUTSIDE THE PENAL INSTITUTION THROUGH A COURT ORDER.—The controversy in this case arose from the transfer of "high profile" national inmates from the National Bilibid Prison in Muntinlupa City to the National Bilibid Prison Extension Facility in the National Bureau of Investigation Compound in Manila City, for the purpose of conducting a raid or inspection of their *kubol*.

Republic Act No. 10575 and its Revised Implementing Rules and Regulations allows the Department of Justice, through its adjunct agency the Bureau of Corrections, to completely "[incapacitate national inmates] from further committing criminal acts and to be "totally cut off from their criminal networks (or contacts in the free society) while serving sentence inside the premises of the national penitentiary." . . .

While the method by which "safekeeping" can be achieved is not specified, the procedures must be counterbalanced by

other existing policies on the matter. The Nelson Mandela Rules provides for the isolation or segregation of inmates, whether as a disciplinary sanction or for the maintenance of order and security, subject to "authorization by law or by the regulation of the competent administrative authority." Rule 114, Section 3 of the Rules of Court provides:

> SECTION 3. *No release or transfer except on court order or bail*. — No person under detention by legal process shall be released or transferred except upon order of the court or when he is admitted to bail.

Supreme Court Administrative Circular No. 6 dated December 5, 1977 further provides:

> . . .[N]o prisoner sentenced to death or life imprisonment or detained upon legal process for the commission of any offense punishable by death or life imprisonment confined in the New Bilibid Prisons is allowed to be brought outside the said penal institution for appearance or attendance in any court except when the Supreme Court authorizes the Judge, upon proper application, to effect the transfer of the said prisoner.

Under existing rules, national inmates of the New Bilibid Prisons can only be transferred "outside the said penal institution" through a court order. Conversely stated, however, this means that transfers *inside* the penal institution do not require any court authorization.

10. ID.; ID.; BOTH BUREAU OF CORRECTIONS AND THE DEPARTMENT OF JUSTICE HAVE THE AUTHORITY TO DETERMINE THE MOVEMENT OF NATIONAL INMATES WITHIN THE PENAL INSTITUTIONS.— The Bureau of Corrections is . . . authorized under Republic Act No. 10575 to "propose additional penal farms as may be necessary as possible, aside from its existing seven (7) prison and penal farms to decongest existing penal institutions and accommodate the increasing number of inmates committed to the agency." This means that there may be other facilities that could be established where national inmates can serve their sentence, provided that these facilities are under the control and supervision of the Bureau of Corrections.

Hence, the Bureau of Corrections had authority under the law and existing rules and regulations to determine the movement of national inmates, provided that these are done *within* the penal institutions. Any movement outside the penal institution, such as court appearances, must have prior court authorization. Since the Department of Justice exercises administrative supervision over the Bureau of Corrections, with the power to "review, reverse, revise or modify the decisions of the [Bureau of Corrections]," it stands to reason that the Secretary of Justice has the same authority to determine the movement of national inmates *within* the penal institutions.

11. ID.; ID.; THE CONTROL AND SUPERVISION OF NATIONAL INMATES IN AN EXTENSION FACILITY REMAINS WITH THE BUREAU OF CORRECTIONS, THROUGH THE SECRETARY OF JUSTICE.— [T]he national inmates in this case were transferred from the New Bilibid Prison in Muntinlupa City to the New Bilibid Prison Extension Facility in the National Bureau of Investigation Compound in Manila City. Neither the law nor its Revised Implementing Rules and Regulations define what an "extension facility" is or how one is established. However, as an extension facility, the control and supervision of these national inmates remained with the Bureau of Corrections, through the Secretary of Justice. Thus, the movement of the national inmates from New Bilibid Prison to its extension facility was within the authority of the Secretary of Justice.

As the competent authority with supervisory administration over the Bureau of Corrections, the Secretary of Justice was authorized to order the inspection of the living quarters of the national inmates.

12. ID.; ID.; SAFEKEEPING OF NATIONAL INMATES; THE HUMANE AND ETHICAL TREATMENT OF DETAINED PERSONS MUST BE BALANCED WITH THE PUBLIC INTEREST TO NOT DULY HAMPER THE EFFICIENT PRISON MANAGEMENT.— The inspection and subsequent movement of the inmates from one penal facility to another also did not appear to have violated the national inmates' basic rights under the Nelson Mandela Rules. On December 27, 2014, the Chair of the Commission on Human Rights was able to visit the national inmates and she reported that "they had no complaints

about food, shelter and treatment of authorities." There was likewise no merit to the allegation that the national inmates were being held incommunicado.

Detained persons, whether deprived of liberty or convicted by final order, are still deserving of humane and ethical treatment under detention. However, this must be balanced with the public interest to not unduly hamper effective and efficient penal management.

APPEARANCES OF COUNSEL

Paul C. Laguatan for petitioner in G.R. No. 215585.

Custodio Cruz & Puno Law Offices for petitioner in G.R. No. 215678.

The Solicitor General for respondents.

Teddy Esteban F. Rigoroso for respondent Sec. Leila De Lima.

D E C I S I O N

LEONEN, *J.*:

A case has become moot and academic when, by virtue of subsequent events, any of the reliefs sought can no longer be granted.

This is a Petition for Writ of Amparo and Petition for Writ of Habeas Corpus/Data (With Prayers for Production and Inspection of Place)[1] and a Petition for the Issuance of a Writ of Amparo[2] assailing the sudden transfer of national inmates from the National Bilibid Prisons in Muntinlupa City to the National Bureau of Corrections in Manila City for the purpose of conducting an inspection on their living quarters.

In a December 12, 2014 Memorandum, captioned "SECRET,"[3] then Secretary Leila M. De Lima (Secretary De Lima) directed

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[1] *Rollo* (G.R. No. 215585), pp. 3-12.

[2] *Rollo* (G.R. No. 215768), pp. 3-17.

[3] *Rollo* (G.R. No. 215585), p. 240, Annex 8 of the Consolidated Comment.

then Bureau of Corrections Director Franklin Jesus B. Bucayu and then National Bureau of Investigation Director Virgilio L. Mendez (Director Mendez):

1. To transfer the following inmates from the New Bilibid Prison to a temporary NBP extension facility at the NBI, Taft Avenue, Manila:

   a. German Agojo y Luna
   b. Jojo Baligad y Rondal
   c. Amin Boratong y Imam
   d. Joel Capones y Duro
   e. Rommel Capones y Duro
   f. Chua Chi y Li
   g. Eugene Chua y Ho
   h. Tom Chua y Ruiz
   i. Willy Chua y Rosal
   j. Herbert Colangco y Romarante (@Ampang/@Bert)
   k. Clarence Dongail y Domingo
   l. Shi Jian y Hui (@Jacky Sy King)
   m. Benjamin Marcelo y Tubay
   n. Noel Martinez y Golloso
   o. Michael Ong y Chan
   p. George Sy y Riñoza
   q. Vicente Sy y Madlangbayan
   r. Willy Sy y Yu
   s. Wu Tuan y Yuan (@Peter Co)
   t. Xu You y Kwang (@Jhonny Co/@Tony Co)

2. To conduct search on the abovementioned inmates' quarters, which are suspected to contain illegal drug precursors and paraphernalia, illegal drugs (methamphetamine hydrochloride), firearms and other weapons, cash, mobile phones, laptops, other communication gadgets, and other miscellaneous contrabands, and to forthwith seize and confiscate any illegal and/or prohibited items.

3. To undertake intensive investigation and case build-up towards the end of filing appropriate cases, as may be warranted by the results of the foregoing operations, against inmates and BuCor officials or employees who may be found involved or liable.

Coordination with the Philippine National Police (PNP), Philippine Drug Enforcement Agency (PDEA) and the Presidential Anti-Organized Crime Commission (PAOCC) shall be made in the final staging of the above major operations.[4]

This activity was conducted as a result of several months of intelligence reports investigating the alleged conduct of illegal activities by some inmates inside the New Bilibid Prison. The alleged illegal activities "included the operation of a narcotics trade through mobile phones, laptops, and internet equipment illegally brought inside the [New Bilibid Prison], enabling incarcerated [New Bilibid Prison] inmates to communicate with their contacts (i.e., couriers and buyers)."[5]

On December 15, 2014, members of the Department of Justice, National Bureau of Investigation, Bureau of Corrections, Presidential Anti-Organized Crime Commission, Philippine Drug Enforcement Agency, National Capital Region Police Office, Special Action Force, and Muntinlupa Police conducted a surprise raid on the living quarters *(kubol)* of 20 inmates of the New Bilibid Prison classified as High-Risk/High Profile.[6]

As a result of the surprise raid, several illegal and contraband items were recovered from the inmates, listed in a Memorandum[7] dated December 16, 2014 from the Deputy Director for Intelligence Service of the National Bureau of Investigation:

PETER CO –

Items recovered during the body search:
1. Cash — P169,000
   2,600 US dollars

Items recovered from his kubol:
1. Cash — P1,400,000
2. Five (5) sachets of suspected SHABU substance

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[4] Id. at 240-241.

[5] *Rollo* (G.R. No. 215768), p. 359, OSG Memorandum.

[6] Id. at 359-360. The December 12, 2014 Memorandum actually mentions 20 inmates but only 19 inmates were transferred.

[7] *Rollo* (G.R. No. 215585), pp. 290-296.

3. Two (2) canisters of suspected SHABU substance
4. One (1) sachet of brown substance of suspected ILLEGAL DRUGS
5. Nine (9) improvised tooters
6. Two (2) used aluminum foils
7. One (1) Walther PPK FIREARM
8. One (1) Browning 9mm FIREARM
9. One (1) Taurus PT111 9mm FIREARM
10. One (1) Jerico 441B FIREARM
11. One (1) Versa caliber 380 FIREARM
12. One (1) Bushmaster 5.56 caliber ASSAULT RIFLE
13. Two (2) M16 fully loaded magazines
14. Four (4) PT111 fully loaded magazines
15. Three (3) fully loaded magazines for caliber .22
16. Two (2) fully loaded magazines for caliber 380
17. Two (2) fully loaded Jerico magazines
18. Forty-One (41) caliber .38 ammunitions
19. Money counter

HERBERT ROMARANTE COLANGCO [sic] –

Items recovered during body search:
1. Cash — P21,650

Items recovered from his kubol:
1. Cash — P221,000
2. Five (5) ROLEX watches
3. One (1) CATIER [sic] watch
4. One (1) PATEK PHILIPPE watch
5. One (1) PANERAI watch
6. One (1) gold NECKLACE
7. One (1) jade NECKLACE
8. One (1) HERMES belt
9. One (1) HERMES wallet
10. One (1) PRADA wallet
11. Two (2) LOUIS VUITTON wallet

JOJO RONDAL BALIGAD –

Items recovered during body search:
1. Cash — P84,000

Items recovered from his kubol:
1. Cash — P497,500
2. Two (2) plastic packs of suspected SHABU substance

3. Two (2) Check booklets
4. Four (4) sim cards
5. Two (2) cellphones
6. Suspected drug paraphernalia
7. One (1) RCBC Passbook
8. One (1) RING
9. One (1) BRACELET

CLARENCE DOMINGO DONGAIL –

Items recovered during body search:
NONE

Items recovered from his kubol:
1. Cash — P333,150
2. Eight (8) sachets of suspected SHABU substance
3. Seven (7) Syringes
4. One (1) Record Book
5. Two (2) knives
6. One (1) Switchblade

NOEL GOLLOSO MARTINEZ –

Items recovered during body search:
NONE

Items recovered from his kubol:
1. Cash — P22,287
2. One (1) Saw Magic
3. Two (2) Nokia cellphones
4. Two (2) .45 caliber FIREARMS

EUGENE CHUA –

Items recovered during body search:
1. Cash — P39,700

Items recovered from his kubol:
1. Cash — P534,850
2. Two (2) notebooks
3. One (1) Vault/Safe (Sentry)

VICENTE SY –

Items recovered during body search:
1. Cash — P98,500

Items recovered from his kubol:
1. One (1) Flat Screen TV
2. One (1) Clock with hidden Camera
3. One (1) Digital Video Recorder
4. One (1) Remote Control
5. One (1) AC/DC adapter
6. One (1) Vibrator (Silicon Jack Rabbit)
7. One (1) Massager (Biological Electromagnetic Wave)
8. One (1) set doorbell and switch

JACKY KING –

Items recovered during body search:
1. Cash — P126,150
   1 US dollar
   100 yen
2. One (1) NECKLACE

Items recovered from his kubol:
1. Cash — P412,250
2. Three (3) blank Security Bank Checks
3. One (1) USB

MICHAEL ONG –

Items recovered during body search:
1. Cash — P9,400

Items recovered from his kubol:
1. Cash — P1,700
2. One (1) sim card
3. Seven (7) knives
4. Four (4) screwdrivers
5. Five (5) scissors
6. Three (3) empty plastic sachets
7. One (1) dozen forks

WILLY CHUA –

Items recovered during body search:
1. Cash — P9,400

Items recovered from his kubol:
1. Cash — P11,450

TOM CHUA –

Items recovered during body search:
1. Cash — P30,200

Items recovered from his kubol:
1. One (1) Nokia 6120 cellphone with SIM
2. Two (2) micro sim card (Smart)
3. One (1) micro sim (Globe)

SAM LI CHUA –

Items recovered during body search:
1. Cash — P87,000

Items recovered from his kubol:
1. Cash — P681,578
2. One (1) flat screen TV
3. One (1) bag assorted chargers and cords
4. One (1) bag pornographic DVD's
5. Three (3) logbooks

WILLY SY –

Items recovered during body search:
NONE

Items recovered from his kubol:
1. Cash — P50,520

ROMMEL DORO CAPONES –

Items recovered during body search:
1. Cash — P69,000

Items recovered from his kubol:
NONE

JOEL DORO CAPONES –

Items recovered during body search:
1. Cash — P33,250
   1 US dollar
   5 Malaysian Ringgits
   1 Qatar Riyal
   P20 (old demonetized bill)

Items recovered from his kubol:
1. Cash — P30,000

GERMAN LUNA AGOJO –

Items recovered during body search:
1. Cash — P83,000
2. One (1) ROLEX watch

Items recovered from his kubol:
1. One (1) SONY Bravia flat screen TV
2. One (1) Condura air conditioner
3. One (1) SONY DVD player
4. One (1) Play Station 3
5. One (1) Arrow video recorder
6. One (1) BOSS speaker system
7. Five (5) satellite amplifiers
8. Two (2) tennis rackets
9. One (1) TECHNOMARINE watch
10. One (1) G SHOCK watch
11. One (1) BERING watch
12. One (1) EMPORIO ARMANI watch
13. One (1) gold ring with diamonds
14. One (1) RADIO RECEIVER
15. One (1) RADIO HANDSET
16. One (1) safe/vault
17. Three (3) pairs assorted signature shoes
18. Five (5) pairs assorted signature slippers
19. One (1) stainless necklace
20. One (1) BULGARI handbag
21. Two (2) Rayban eyeglasses
22. Two (2) Sony 3D eyeglasses
23. Twelve (12) imported perfumes
24. One (1) power bank
25. One (1) vibrator
26. One (1) pack assorted ladies' accessories

AMIN IMAM BURATONG –

Items recovered during body search:
1. Cash — P20,100

Items recovered from his kubol:
NONE

TONY CO –

Items recovered during body search:
1. Cash — P42,000

Items recovered from his kubol:
NONE

GEORGE SY –

Items recovered during body search:
1. Cash — P17,820

Items recovered from his kubol:
(Not subjected to a search since his dormitory was reported to have been moved to another location)[8]

The 19 inmates were subsequently transferred to the New Bilibid Prison Extension Facility in the National Bureau of Investigation compound in Taft Avenue, Manila while their living quarters were dismantled.[9]

On December 19, 2014, Memie Sultan Boratong (Boratong), the wife of inmate Amin Imam Boratong, filed a Petition for Writ of Amparo and Petition for Writ of Habeas Corpus/Data (With Prayers for Production and Inspection of Place)[10] with this Court, docketed as G.R. No. 215585.

Amin Imam Boratong was convicted by the Pasig Regional Trial Court, Branch 154 in 2006 for violation of Republic Act No. 9165 for allegedly operating a *"shabu tiangge"* in Pasig City.[11] Before the surprise raid, he was serving his sentence, pending appeal with the Court of Appeals, in New Bilibid Prison.[12]

Another Petition for the Issuance of a Writ of Amparo[13] docketed as G.R. No. 215768 was filed by Anthony R. Bombeo

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[8] Id. at 291-296.

[9] *Rollo* (G.R. No. 215768), p. 361, OSG Memorandum.

[10] *Rollo* (G.R. No. 215585), pp. 3-12.

[11] Tarra Quismundo, *'Shabu tiangge' king loses appeal*, PHILIPPINE DAILY INQUIRER, January 30, 2015, <http://newsinfo.inquirer.net/669010/shabu-tiangge-king-loses-appeal> (last accessed on September 8, 2020).

[12] Id.

[13] *Rollo* (G.R. No. 215768), pp. 3-17.

(Bombeo), first degree cousin of inmate Herbert R. Colanggo (Colanggo). The Petition alleged that Colanggo was kept incommunicado from his counsel and relatives during his transfer.[14]

Colanggo is said to be the leader of the Ozamis Holdup Gang, believed to have been responsible for a 2009 bank robbery that left 10 people dead.[15] On October 18, 2010, Colanggo was convicted by the Regional Trial Court of Las Piñas, Branch 201 and sentenced to imprisonment of 12 years *prision mayor* maximum as minimum to 15 years and 6 months of *reclusion temporal* medium as maximum and was ordered to be detained at the New Bilibid Prison. His appeal is pending before the Court of Appeals. He also has cases pending before the trial courts of Pampanga and Quezon City.[16]

Colanggo is also known as the Filipino music artist "Herbert C." He has his own YouTube channel, which shows a music video allegedly shot and produced in his music studio within his *kubol*.[17] On September 14, 2014, he was awarded by the Philippine Movie Press Club as its Star Awards Best New Male Recording Artist for 2014.[18] His platinum award-winning album

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[14] Id. at 5.

[15] Gerry Lirio, *Inside Bilibid*, ABS-CBN NEWS ONLINE, November 17, 2014, <http://news.abs-cbn.com/focus/11/17/14/inside-bilibid> and Lindsay Murdoch, *Life of luxury in Manila prison: sauna, stripper bar, air-conditioning*, THE SYDNEY MORNING HERALD, December 30, 2014, <http://www.smh.com.au/world/life-of-luxury-in-manila-prison-sauna-stripper-bar-airconditioning-20141229-12fdor.html> (last accessed on September 8, 2020).

[16] *Rollo* (G.R. No. 215768), p. 4.

[17] Joel Locsin, *Convict produces music video right inside Bilibid studios*, GMA NEWS ONLINE, December 16, 2014, <https://www.gmanetwork.com/news/news/metro/392847/watch-convict-produces-music-video-right-inside-bilibid-studios/story/> (last accessed on September 8, 2020).

[18] Rose-An Jessica Dioquino, *Convict who turned Bilibid unit into 'studio' won awards for his music*, GMA NEWS ONLINE, December 19, 2014, <https://www.gmanetwork.com/news/news/metro/392956/convict-who-turned-bilibid-unit-into-studio-won-awards-for-his-music/story/> (last accessed on September 8, 2020).

"Kinabukasan" is available for download in Apple iTunes for US $3.99.[19]

On January 13, 2015, this Court consolidated G.R. No. 215585 with G.R. No. 215768 and dismissed Boratong's petition for writs of amparo and habeas data. Respondents were also directed to comment on Boratong's petition for habeas corpus and Bombeo's petition for amparo.[20]

In a January 14, 2015 Memorandum,[21] then Director Mendez of the National Bureau of Investigation issued guidelines for the visitation of the 19 inmates. These guidelines were approved by then Secretary De Lima on January 23, 2015.[22]

The Office of the Solicitor General submitted its Consolidated Comment[23] on March 9, 2015 reporting that several petitions for amparo have been filed in the Court of Appeals by the relatives of the remaining 17 inmates.[24] After the filing of petitioners' respective Replies,[25] the parties were directed to submit their Memoranda.[26]

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[19] Lindsay Murdoch, *Life of luxury in Manila prison: sauna, stripper bar, air-conditioning*, THE SYDNEY MORNING HERALD, December 30, 2014, <http://www.smh.com.au/world/life-of-luxury-in-manila-prison-sauna-stripper-bar-airconditioning-20141229-12fdor.html> (last accessed on September 8, 2020).

[20] *Rollo* (G.R. No. 215585), pp. 19-20 and *rollo* (G.R. No. 215768), pp. 19-A-20.

[21] *Rollo* (G.R. No. 215585), p. 243.

[22] Id.

[23] Id. at 125-171.

[24] Id. at 127-128.

[25] Id. at 328-349 and 350-362.

[26] Id. at 326-G-326-H. Only petitioner Boratong and respondents submitted their Memoranda. Petitioner Bombeo submitted a Manifestation stating that he was adopting his Petition as his Memorandum. The Office of the Solicitor General submitted its Memorandum on October 6, 2015 (*rollo* (G.R. No. 215768), pp. 355-400).

Petitioner Boratong alleged that when the Petition was filed, Amin Imam Boratong was denied access to his counsel and visitation from his relatives.[27] She also insists that there was no reason to transfer her husband from the National Bilibid Prison to the National Bureau of Investigation since his conviction was still pending appeal.[28] His summary transfer to "a place where armed authorities are ubiquitous" and incommunicado status, she argues, were equivalent to an enforced disappearance, which should have justified the issuance of a writ of amparo.[29]

Petitioner Boratong further insists that when her husband "was unceremoniously handcuffed and transferred to the NBI without any reason afforded to him and without authority of the courts," he was "in effect abducted from the facility where he should be incarcerated."[30] Petitioner Boratong claims that the threat to her husband's life and security was still pervasive despite the subsequent grant of visitation rights since the grant was only to be given upon approval of request, implying that consent to visitation could be withheld at any time.[31] She also pointed out that visitation hours only provided for eight hours a day for two days to be divided among the visitors of 19 inmates.[32]

Petitioner Boratong claims that a writ of habeas data should have been issued, arguing that no documents were given identifying her husband as "high risk" that would justify his transfer to the National Bureau of Investigation and subsequently to Building 14, the National Bilibid Prison facility for holding high risk inmates.[33] She further claims that there was no information given as to her husband's involvement in the alleged

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[27] *Rollo* (G.R. No. 215768), p. 326.

[28] Id. at 327.

[29] Id.

[30] Id. at 332.

[31] Id. at 333-334.

[32] Id. at 334.

[33] Id. at 335.

illegal activities inside New Bilibid Prison since no luxury items were found in his *kubol* during the surprise raid.[34] She points out that it was also doubtful that the Secretary of Justice can transfer any inmate without a valid court order.[35] Petitioner Boratong concludes that a petition for a writ of habeas corpus is a challenge on the legal basis of detention. Thus, she questions the legality of Amin Imam Boratong's continued confinement in Building 14 as he was "allowed unhampered access to counsel and a more indulgent visitation rights" in his previous *kubol*.[36]

Petitioner Bombeo, on the other hand, argues that Colanggo's "incommunicado detention" is identical to an enforced disappearance or at least a threat of enforced disappearance.[37] He posits that "a person under detention, totally cut off from society, cut off from any communication from his counsel and people concerned for his safety, whereabouts, status and health, is a victim of an enforced or voluntary disappearance."[38] He insists that Colanggo's constitutional right to counsel "cannot be denied by the public officer or the government agency having custody of the detainee."[39] He asserts that respondents' reasoning that "there was a need for Mr. Colanggo to be restrained from his 'criminal network'" was an insult to his counsel since respondent assumed that his counsel had ties to this alleged criminal network.[40]

The Office of the Solicitor General, meanwhile, argues that the Petitions should be dismissed for being moot.[41] It points out that the inmates had already been returned to the National

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[34] Id. at 336.

[35] Id.

[36] Id. at 337.

[37] Rollo (G.R. No. 215768), p. 8.

[38] Id.

[39] Id. at 10.

[40] Id. at 9.

[41] Id. at 364.

Bilibid Prison facility in Building 14.[42] It also notes that the reliefs sought by petitioners, that is, the grant of visitation rights and the return of the inmates to the National Bilibid Prison, has already been granted by subsequent events.[43]

Nonetheless, the Office of the Solicitor General argues that the writ of amparo is only available to threats of extralegal killings and enforced disappearances, none of which petitioners suffer from. It asserts that the Rule on Amparo requires respondents to state the steps or actions taken to determine the fate and whereabouts of the aggrieved party in the return, which respondent in this case cannot comply with since the location of the inmates is known to all individuals, including their counsels.[44] It likewise points out that visitation rights is not a relief available in a writ of amparo.[45] It argues that no threat to the right to security was present since the transfers were made to address the alleged illegal activities inside the Maximum Security Compound, and none of the inmates were maltreated during their detention in the National Bureau of Investigation.[46]

The Office of the Solicitor General likewise contends that the writ of habeas corpus was an improper remedy since it was shown that the restraint of liberty is by virtue of a valid legal process.[47] It asserts that under Republic Act No. 10575, the Secretary of Justice had administrative supervision over the Bureau of Corrections, and thus, had the authority to transfer inmates.[48] It also pointed out that the same law gives the Bureau of Corrections Director General authority over the safekeeping

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[42] Id. at 365. It reported, however, that inmate George Sy died on July 1, 2015 at the Jose Memorial Center while inmate German Agojo was admitted at the Philippine General Hospital.

[43] Id. at 365-366.

[44] Id. at 369-371.

[45] Id. at 371-372.

[46] Id. at 375-377.

[47] Id. at 378-379.

[48] Id. at 384-385.

of the inmates.[49] It argues that it was necessary to restrict the inmates' visitation privileges in order to prevent the continuation of illegal activities inside the prison compound.[50] It maintains that petitioners were not held incommunicado since the restriction was only temporary, and they were not prohibited from speaking with other inmates, prison guards, or any person permitted by respondents.[51] Finally, it submits that petitioners were not deprived of the right to counsel since the right is only available in custodial investigations and criminal proceedings, not in the transfer of national inmates who have already been convicted.[52]

While the Petitions present several compelling substantial issues, whether these could be passed upon or not depends on the primary procedural issue of whether the Petitions have already been mooted by the subsequent events.

I

At first glance, the Petitions appear to have already been rendered moot. Petitioners' relatives had already been returned to the National Bilibid Prison facility in Building 14[53] and the grant of visitation rights had also been restored.[54] In *David v. Macapagal-Arroyo*:[55]

> A moot and academic case is one that ceases to present a justiciable controversy by virtue of supervening events, so that a declaration thereon would be of no practical use or value. Generally, courts decline jurisdiction over such case or dismiss it on ground of mootness.[56]

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[49] Id. at 385.

[50] Id. at 387.

[51] Id. at 389-391.

[52] Id. at 392-396.

[53] It reported, however, that inmate George Sy died on July 1, 2015 at the Jose Memorial Center while inmate German Agojo was admitted at the Philippine General Hospital (OSG Memorandum, p. 11).

[54] *Rollo* (G.R. No. 215768), pp. 365-366.

[55] 522 Phil. 705 (2006) [Per J. Sandoval-Gutierrez, En Banc].

[56] Id. at 753-754 citing *Province of Batangas v. Romulo*, 473 Phil. 806 (2004) [Per J. Callejo, Sr., En Banc]; *Banco Filipino Savings and Mortgage*

This Court, however, is not precluded from deciding cases otherwise moot if "*first*, there is a grave violation of the Constitution; *second*, the exceptional character of the situation and the paramount public interest are involved; *third*, when the constitutional issue raised requires formulation of controlling principles to guide the bench, the bar, and the public; and *fourth*, the case is capable of repetition yet evading review."[57] In this case, this Court takes the occasion to discuss a few points raised by the parties.

In *Toyoto v. Ramos*,[58] Gerry Toyoto, Eddie Gonzales and Dominador Gabiana were arrested and charged for conducting a rally along Navotas on October 23, 1983 in violation of the Anti-Subversion Act. They moved to dismiss the case, which the trial court granted, for lack of evidence. Despite the order of dismissal, they were not released from detention on the ground that a Preventive Detention Action had been issued against them. Thus, they filed an application for the issuance of a writ of habeas corpus. When the writ was returned, respondents alleged that the petition was already moot since petitioners had been released from detention. This Court, however, in granting the petition, held that the action can only be moot if petitioners can no longer be re-arrested:

> Ordinarily, a petition for habeas corpus becomes moot and academic when the restraint on the liberty of the petitioners is lifted either temporarily or permanently. We have so held in a number of cases. But the instant case presents a different situation. The question to be resolved is whether the State can reserve the power to re-arrest a person for an offense after a court of competent jurisdiction has

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Bank v. Tuazon, Jr., 469 Phil. 79 (2004) [Per J. Austria-Martinez, Second Division]; *Vda. De Dabao v. Court of Appeals*, 469 Phil. 938 (2004) [Per J. Austria-Martinez, Second Division]; and *Paloma v. Court of Appeals*, 461 Phil. 270 (2003) [Per J. Quisumbing, Second]; *Royal Cargo Corporation v. Civil Aeronautics Board*, 465 Phil. 719 (2004) [Per J. Callejo, Sr., Second Division]; and *Lacson v. Perez*, 410 Phil. 78 (2001) [Per J. Melo, En Banc].

[57] *Belgica v. Ochoa*, 721 Phil. 416, 522 (2013) [Per J. Perlas-Bernabe, En Banc].

[58] 223 Phil. 528 (1985) [Per J. Abad Santos, En Banc].

absolved him of the offense. An affirmative answer is the one suggested by the respondents because the release of the petitioners being merely "temporary" it follows that they can be re-arrested at any time despite their acquittal by a court of competent jurisdiction. We hold that such a reservation is repugnant to the government of laws and not of men principle. Under this principle the moment a person is acquitted on a criminal charge he can no longer be detained or re-arrested for the same offense. This concept is so basic and elementary that it needs no elaboration.[59]

In *Moncupa v. Enrile*,[60] Efren C. Moncupa was arrested and detained on April 22, 1982 on the allegation that he was a member of the National Democratic Front. After two separate investigations, it was found that he was not a member of any subversive group. The investigating fiscal, however, recommended that Moncupa be charged with illegal possession of firearms and illegal possession of subversive documents. While information for these charges were filed, he had not been arraigned and no further proceedings ensued. His motions for bail were likewise denied. Thus, he filed a petition for application of a writ of habeas corpus. Respondents in that case, however, countered that his petition had already become moot as he had already been temporarily released from detention upon order of the Minister of National Defense with the approval of the President. This Court, in granting the Petition, reiterated the ratio in *Toyoto* and explained that the action, while moot, was one capable of repetition:

A release that renders a petition for a writ of habeas corpus moot and academic must be one which is free from involuntary restraints. Where a person continues to be unlawfully denied one or more of his constitutional freedoms, where there is present a denial of due process, where the restraints are not merely involuntary but appear to be unnecessary, and where a deprivation of freedom originally valid has, in the light of subsequent developments, become arbitrary, the person concerned or those applying in his behalf may still avail themselves of the privilege of the writ.[61]

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[59] Id. at 532.

[60] 225 Phil. 191 (1986) [Per J. Gutierrez, Jr., En Banc].

[61] Id. at 197.

Thus, this Court may still pass upon actions for habeas corpus even when the alleged illegal detention has ceased if the action is one that is capable of repetition yet evading review.

Here, the national inmates had been returned to their actual detention facilities. There is, however, a lingering question of whether the Department of Justice is authorized to transfer them to another facility without a court order, which could happen at any time. Its capability of being repeated had already been demonstrated when on June 10, 2019, President Duterte, through Secretary of Justice Menardo Guevarra, ordered the transfer of 10 "high profile" inmates from the New Bilibid Prisons in Muntinlupa City to the Marines Barracks Rudiardo Brown in Taguig City.[62] While this transfer has not been questioned before this Court, there is still no definitive ruling on whether the Department of Justice has the authority to transfer national inmates. Thus, this Court takes the opportunity in this case despite the mootness of the reliefs sought.

II

Petitioner Boratong filed a Petition for Writ of Amparo and Petition for Writ of Habeas Corpus/Data (With Prayers for Production and Inspection of Place)[63] while petitioner Bombeo filed a Petition for the Issuance of a Writ of Amparo.[64]

"The writ of habeas corpus was devised and exists as a speedy and effectual remedy to relieve persons from unlawful restraint, and as the best and only sufficient defense of personal freedom."[65] Its primary purpose "is to determine the legality of the restraint

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[62] Mike Navallo, *DOJ chief: President has power to order prisoner transfers*, ABS-CBN NEWS ONLINE, September 7, 2019 <https://news.abs-cbn.com/news/09/07/19/doj-chief-president-has-power-to-order-prisoner-transfers> (last accessed on September 8, 2020).

[63] *Rollo* (G.R. No. 215585), pp. 3-12.

[64] *Rollo* (G.R. No. 215768), pp. 3-17.

[65] *Villavicencio v. Lukban*, 39 Phil. 778, 788 (1919) [Per J. Malcolm, En Banc].

under which a person is held."[66] The writ may be applied to any manner of restraint as "[a]ny restraint which will preclude freedom of action is sufficient."[67]

Rule 102, Section 1 of the Rules of Court states that "the writ of habeas corpus shall extend to all cases of illegal confinement or detention by which any person is deprived of his liberty, or by which the rightful custody of any person is withheld from the person entitled thereto." Thus, the general rule is that a petition for a writ of habeas corpus can only be filed by a person illegally deprived of liberty. Rule 102, Section 4 provides:

SECTION 4. *When writ not allowed or discharge authorized*. — If it appears that the person alleged to be restrained of his liberty is in the custody of an officer under process issued by a court or judge or by virtue of a judgment or order of a court of record, and that the court or judge had jurisdiction to issue the process, render the judgment, or make the order, the writ shall not be allowed; or if the jurisdiction appears after the writ is allowed, the person shall not be discharged by reason of any informality or defect in the process, judgment, or order. Not shall anything in this rule be held to authorize the discharge of a person charged with or convicted of an offense in the Philippines, or of a person suffering imprisonment under lawful judgment.

In *Re: The Writ of Habeas Corpus for Reynaldo De Villa (Detained at the New Bilibid Prisons, Muntinlupa City)*:[68]

The extraordinary writ of habeas corpus has long been a haven of relief for those seeking liberty from any unwarranted denial of freedom of movement. Very broadly, the writ applies "to all cases of illegal confinement or detention by which a person has been deprived of his liberty, or by which the rightful custody of any person has been withheld from the person entitled thereto." Issuance of the writ

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[66] *Mangila v. Pangilinan*, 714 Phil. 204, 210 (2013) [Per J. Bersamin, First Division].

[67] *Villavicencio v. Lukban*, 39 Phil. 778, 790 (1919) [Per J. Malcolm, En Banc].

[68] 485 Phil. 368 (2004) [Per J. Ynares-Santiago, En Banc].

necessitates that a person be illegally deprived of his liberty. In the celebrated case of *Villavicencio v. Lukban*, we stated that "[a]ny restraint which will preclude freedom of action is sufficient."

The most basic criterion for the issuance of the writ, therefore, is that the individual seeking such relief be illegally deprived of his freedom of movement or placed under some form of illegal restraint. If an individual's liberty is restrained via some legal process, the writ of habeas corpus is unavailing. Concomitant to this principle, the writ of habeas corpus cannot be used to directly assail a judgment rendered by a competent court or tribunal which, having duly acquired jurisdiction, was not deprived or ousted of this jurisdiction through some anomaly in the conduct of the proceedings.[69]

This general rule, however, has certain exceptions. Considering that the remedy is available for any form of illegal restraint, the nature of the restraint need not be related to any offense. The writ may still be availed of as a post-conviction remedy[70] or where there has been a violation of the liberty of abode.[71]

In *Rubi v. Provincial Board of Mindoro*,[72] the Provincial Board of Mindoro issued Resolution No. 25, ordering Mangyans to reside in the reservation established in Tigbao, Najuan Lake, deeming it necessary to advance the education and advancement of the "non-Christian tribes." Those in violation of the order would be imprisoned for not more than 60 days. Petitioners, who were Mangyans, applied for a writ of habeas corpus, alleging that they were being held against their will in the Tigbao reservation. This Court held that the writ may be applied for,

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[69] *Re: The Writ of Habeas Corpus for Reynaldo De Villa (Detained at the New Bilibid Prisons, Muntinlupa City*, 485 Phil. 368, 381 (2004) [Per J. Ynares-Santiago, En Banc] citing RULES OF COURT, Rule 102, sec. 1 and *Villavicencio v. Lukban*, 39 Phil. 778, 790 (1919) [Per J. Malcolm, En Banc].

[70] *See Gumabon v. Director of Prisons*, 147 Phil. 362 (1971) [Per J. Fernando, En Banc].

[71] *See Villavicencio v. Lukban*, 39 Phil. 778, 790 (1919) [Per J. Malcolm, En Banc].

[72] 39 Phil. 660 (1919) [Per J. Malcolm, En Banc].

since the act complained of involved a restriction on the freedom of movement.

In *Villavicencio v. Lukban*,[73] the Mayor of Manila, with the assistance of the Chief of Police, "hustled" some 170 "women of ill repute" from their homes on the midnight of October 25, 1918, and placed them on steamers bound for Davao, to be employed as laborers. The relatives and friends of these women filed an application for a writ of habeas corpus, alleging that these women were illegally deprived of their liberty. In granting the writ, this Court held that the remedy of the writ of habeas corpus may be available where there has been a violation of the right to liberty of abode or the freedom of locomotion:

> A prime specification of an application for a writ of habeas corpus is restraint of liberty. The essential object and purpose of the writ of habeas corpus is to inquire into all manner of involuntary restraint as distinguished from voluntary, and to relieve a person therefrom if such restraint is illegal. Any restraint which will preclude freedom of action is sufficient. The forcible taking of these women from Manila by officials of that city, who handed them over to other parties, who deposited them in a distant region, deprived these women of freedom of locomotion just as effectively as if they had been imprisoned. Placed in Davao without either money or personal belongings, they were prevented from exercising the liberty of going when and where they pleased. The restraint of liberty which began in Manila continued until the aggrieved parties were returned to Manila and released or until they freely and truly waived his right.
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> Consider for a moment what an agreement with such a defense would mean. The chief executive of any municipality in the Philippines could forcibly and illegally take a private citizen and place him beyond the boundaries of the municipality, and then, when called upon to defend his official action, could calmly fold his hands and claim that the person was under no restraint and that he, the official, had no jurisdiction over this other municipality. We believe the true principle should be that, if the respondent is within the jurisdiction of the court and has it in his power to obey the order of the court and thus to undo the wrong that he has inflicted, he should be compelled

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[73] 39 Phil. 778 (1919) [Per J. Malcolm, En Banc].

to do so. Even if the party to whom the writ is addressed has illegally parted with the custody of a person before the application for the writ is no reason why the writ should not issue. If the mayor and the chief of police, acting under no authority of law, could deport these women from the city of Manila to Davao, the same officials must necessarily have the same means to return them from Davao to Manila. The respondents, within the reach of process, may not be permitted to restrain a fellow citizen of her liberty by forcing her to change her domicile and to avow the act with impunity in the courts, while the person who has lost her birthright of liberty has no effective recourse. The great writ of liberty may not thus be easily evaded.[74]

The remedy may also be availed of even when the deprivation of liberty has already been "judicially ordained."[75] In *Gumabon v. Director of Prisons*,[76] petitioners were charged and convicted of the complex crime of rebellion with murder, robbery, arson, and kidnapping. After serving for more than 13 years, this Court promulgated the *Hernandez* doctrine, which held that rebellion was a single offense and cannot be made into a complex crime. Invoking the *Hernandez*[77] doctrine, petitioners applied for a writ of habeas corpus despite the finality of their conviction, arguing that they were deprived of their constitutional right to equal protection.

In granting the writ, this Court held that the retroactive application of the *Hernandez* doctrine would effectively render the penalty excessive, since petitioners had already served the maximum sentence of 12 years. It took note that petitioners, who were mere followers, were sentenced prior to the leaders of the rebellion, who had already been released as they were able to benefit from the doctrine. It held that the writ must be issued in order to avoid inequity, stating that:

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[74] *Villavicencio v. Lukban*, 39 Phil. 778, 790-791 (1919) [Per J. Malcolm, En Banc].

[75] *Gumabon v. Director of Prisons*, 147 Phil. 362 (1971) [Per J. Fernando, En Banc].

[76] 147 Phil. 362 (1971) [Per J. Fernando, En Banc].

[77] *People v. Hernandez*, 99 Phil. 515 (1956) [Per J. Concepcion, En Banc].

There is the fundamental exception though, that must ever be kept in mind. Once a deprivation of a constitutional right is shown to exist, the court that rendered the judgment is deemed ousted of jurisdiction and habeas corpus is the appropriate remedy to assail the legality of the detention.[78]

In *Re: Salibo v. Warden of the Quezon City Jail Annex*,[79] petitioner Datukan Malang Salibo applied for a writ of habeas corpus before the trial court after he was arrested on suspicion that he was Butukan S. Malang, one of the 197 accused in the 2009 Maguindanao Massacre.[80] The trial court granted his petition, after finding that petitioner was not Butukan S. Malang, and that he was in Saudi Arabia when the crime was committed. On appeal, the Court of Appeals reversed the decision, stating that despite there being a case of mistaken identity, petitioner was arrested by virtue of a valid information and warrant of arrest. It held that the proper remedy was not an application for a writ of habeas corpus, but rather, a motion to quash the information or the warrant of arrest.[81]

This Court, however, held that a writ of *habeas corpus* is the proper remedy for a person deprived of liberty through mistaken identity since the information and warrant of arrest against Butukan S. Malang, while valid, were not applicable to petitioner, who was not Butukan S. Malang. As there was no valid information or warrant of arrest against petitioner Datukan Malang Salibo, the restraint on his liberty was, thus, illegal.[82]

Feria v. Court of Appeals[83] summarizes that the writ may still be availed of even after a valid legal process if "(a) there

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[78] *Gumabon v. Director of Prisons*, 147 Phil. 362, 369 (1971) [Per J. Fernando, En Banc].

[79] 757 Phil. 630 (2015) [Per J. Leonen, Second Division].

[80] Id. at 634-636.

[81] Id. at 636-639.

[82] Id. at 654-659.

[83] 382 Phil. 412 (2000) [Per J. Quisumbing, Second Division].

has been a deprivation of a constitutional right resulting in the restraint of a person, (b) the court had no jurisdiction to impose the sentence, or (c) an excessive penalty has been imposed."[84]

Here, Amin Imam Boratong has already been deprived of his liberty through a valid legal process by a court of competent jurisdiction, that is, his conviction by the Pasig City Regional Trial Court in 2006. When he was transferred to the New Bilibid Prisons Extension Facility, however, Boratong's counsels alleged that he was kept incommunicado by respondents and that they had no information as to his present condition or his exact whereabouts during his transfer. In the letter dated December 16, 2014 addressed to Secretary De Lima, they wrote:

> Efforts have been exerted by us the whole day trying to get through our client and to speak with him but we were not allowed to do so by the personnel at the NBI on their excuse that it was your order that no one is allowed to talk with and visit the inmates, including our client. We were further informed that we need to write to your office and seek clearance so we can see and talk with our client.[85]

Petitioner Bombeo, on the other hand, similarly alleged:

> [T]he undersigned counsel, after several attempts to visit or communicate with Mr. Colanggo, made a request in writing to respondent De Lima. There was a need by the undersigned counsel to visit him not only to check on his physical and mental well-being but also to discuss important and pressing matters involving his pending cases in court. Unfortunately, respondent De Lima unjustifiably denied their request on the ground that an investigation was being conducted and that there was a need for Mr. Colanggo to be restrained from his "criminal network."[86]

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[84] *Feria v. Court of Appeals*, 382 Phil. 412, 420-421 (2000) [Per J. Quisumbing, Second Division].

[85] *Rollo*, (G.R. No. 215585), p. 16.

[86] *Rollo*, (G.R. No. 215678), p. 9.

Detention incommunicado, regardless of whether the detention was by virtue of a valid legal process, is specifically prohibited by Article III, Section 12 of the Constitution, which states:

> SECTION 12. (1) Any person under investigation for the commission of an offense shall have the right to be informed of his right to remain silent and to have competent and independent counsel preferably of his own choice. If the person cannot afford the services of counsel, he must be provided with one. These rights cannot be waived except in writing and in the presence of counsel.
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> (2) No torture, force, violence, threat, intimidation, or any other means which vitiate the free will shall be used against him. *Secret detention places, solitary, incommunicado, or other similar forms of detention are prohibited.*
>
> (3) Any confession or admission obtained in violation of this or Section 17 hereof shall be inadmissible in evidence against him.
>
> (4) The law shall provide for penal and civil sanctions for violations of this section as well as compensation to and rehabilitation of victims of torture or similar practices, and their families. (Emphasis supplied)

Petitioners' allegations, if proven, are sufficient to clothe the party with standing to file an application for a writ of habeas corpus, provided that they invoke a violation of a fundamental right granted to all citizens, regardless of whether they are incarcerated or not.

The evidence, however, completely upends petitioners' allegations. The National Bureau of Investigation Memorandum[87] dated January 14, 2015 shows that the inmates' counsels and immediate family were allowed access to the inmates within reasonable guidelines. In a confidential memorandum[88] dated January 3, 2015 by Special Investigator Ramon Alba addressed to Director Mendez, it was reported that a follow-up inspection was conducted on the temporary detention cell of Boratong and Colanggo on December 29, 2014. The follow-up inspection yielded two (2) mobile phones as well as Canadian $475.00

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[87] *Rollo* (G.R. No. 215585), p. 243.

[88] Id. at 320.

and ₱659,550.00 in cash.[89] The raid was conducted during the period alleged by petitioners that Boratong and Colanggo were incommunicado. *Re: Abellana v. Paredes*[90] cautions that "[m]ere allegation of a violation of one's constitutional right is not enough. The violation of constitutional right must be sufficient to void the entire proceedings."[91] Hence, there is no compelling reason for this Court to grant the writ of habeas corpus.

III

The writ of habeas data "is a remedy available to any person whose right to privacy in life, liberty or security is violated or threatened by an unlawful act or omission of a public official or employee, or of a private individual or entity engaged in the gathering, collecting or storing of data or information regarding the person, family, home and correspondence of the aggrieved party."[92] In particular:

> The writ of habeas data was conceptualized as a judicial remedy enforcing the right to privacy, most especially the right to informational privacy of individuals. The writ operates to protect a person's right to control information regarding himself, particularly in the instances where such information is being collected through unlawful means in order to achieve unlawful ends.[93]

Section 6 of the Rule on the Writ of Habeas Data requires that the petition for the writ must contain the following allegations:

(a) The personal circumstances of the petitioner and the respondent;

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[89] Id. at 322.

[90] G.R. No. 232006, July 10, 2019 [Per J. Caguioa, Second Division].

[91] *In re: Abellana v. Paredes*, G.R. No. 232006, July 10, 2019, <https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/65524> [Per J. Caguioa, Second Division].

[92] HABEAS DATA WRIT RULE, sec. 1.

[93] *Roxas v. Arroyo*, 644 Phil. 480, 509 (2010) [Per J. Perez, En Banc], *citing* Annotation to HABEAS DATA WRIT RULE (pamphlet released by the Supreme Court), p. 23.

(b) The manner the right to privacy is violated or threatened and how it affects the right to life, liberty or security of the aggrieved party;

(c) The actions and recourses taken by the petitioner to secure the data or information;

(d) The location of the files, registers or databases, the government office, and the person in charge, in possession or in control of the data or information, if known;

(e) The reliefs prayed for, which may include the updating, rectification, suppression or destruction of the database or information or files kept by the respondent.

In case of threats, the relief may include a prayer for an order enjoining the act complained of; and

(f) Such other relevant reliefs as are just and equitable.

Here, the writ is being sought to compel the Department of Justice to produce documents to justify Boratong's transfer from the National Bilibid Prison in Muntinlupa City to the National Bilibid Prison Extension Facility in Manila City.[94] This allegation, however, bears no relation to his right to privacy, which has since been restricted by virtue of his conviction, or how it affects his life, liberty, or security. There is no allegation that government agents are gathering, collecting, or storing data or information regarding his person, family, home and correspondence. There were no other allegations in support of the prayer for the writ. In any case, *Alejano v. Cabuay*[95] has stated that:

That a law is required before an executive officer could intrude on a citizen's privacy rights is a guarantee that is available only to the public at large but not to persons who are detained or imprisoned. The right to privacy of those detained is subject to Section 4 of RA 7438, as well as to the limitations inherent in lawful detention or imprisonment. By the very fact of their detention, pre-trial detainees

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[94] *Rollo* (G.R. No. 215585), p. 7.

[95] 505 Phil. 298 (2005) [Per J. Carpio, En Banc].

and convicted prisoners have a diminished expectation of privacy rights.[96]

The right of a convicted national inmate to his or her privacy runs counter to the state interest of preserving order and security inside our prison systems. There is no longer any reasonable expectation of privacy when one is being monitored and guarded at all hours of the day. Unless there is compelling evidence that a public employee engaged in the gathering, collecting or storing of data or information on the convicted national inmate has committed an unlawful act which threatens the life of the inmate, a petition for the writ of habeas data cannot prosper. Thus, there is no compelling reason for this Court to issue the writ.

IV

Section 1 of the Rule on the Writ of Amparo provides that the remedy of the writ of amparo is available to "any person whose right to life, liberty and security is violated or threatened with violation by an unlawful act or omission of a public official or employee, or of a private individual or entity," including "enforced disappearances or threats thereof."[97] The allegations in the Petition of incommunicado detention, if substantiated, present characteristics of an enforced disappearance. In *Secretary of Defense v. Manalo*:[98]

> "[E]nforced disappearances" are "attended by the following characteristics: an arrest, detention or abduction of a person by a government official or organized groups or private individuals acting with the direct or indirect acquiescence of the government; the refusal of the State to disclose the fate or whereabouts of the person concerned or a refusal to acknowledge the deprivation of liberty which places such persons outside the protection of law."[99]

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[96] Id. at 322.

[97] AMPARO WRIT RULE, sec. 1.

[98] 589 Phil. 1 (2008) [Per CJ. Puno, En Banc].

[99] Id. at 37-38 *citing* AMPARO WRIT RULE: Annotation, p. 48 and Declaration on the Protection of All Persons from Enforced Disappearances.

Considering that the definition of enforced disappearances does not make a distinction between abduction of private citizens or abduction of convicted national inmates, the remedy of the writ of amparo may be available even to convicted national inmates, as long as the alleged abduction was made for the purpose of placing the national inmate outside the protection of the law.

Under Republic Act No. 10575, or the Bureau of Corrections Act of 2013, "[i]t is the policy of the State to promote the general welfare and safeguard the basic rights of every prisoner incarcerated in our national penitentiary."[100] To this end, the Bureau of Corrections is charged with the safekeeping of national inmates. "Safekeeping" is defined under the law as:

> [T]he act that ensures the public (including families of inmates and their victims) that national inmates are provided with their basic needs, completely incapacitated from further committing criminal acts, and have been totally cut off from their criminal networks (or contacts in the free society) while serving sentence inside the premises of the national penitentiary. This act also includes protection against illegal organized armed groups which have the capacity of launching an attack on any prison camp of the national penitentiary to rescue their convicted comrade or to forcibly amass firearms issued to prison guards.[101]

The definition is further expanded in the Revised Implementing Rules and Regulations of Republic Act No. 10575 as:

> ee. Safekeeping — refers to the custodial mandate of the BuCor's present corrections system, and shall refer to the act that ensures the public (including families of inmates and their victims) that national inmates are provided with their basic needs. The safekeeping of inmates shall moreover comprise decent provision for their basic needs, which include habitable quarters, food, water, clothing, and medical care, in compliance with the established [United Nations Standard Minimum Rules for Treatment of Prisoners], and consistent with restoring the

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[100] Republic Act No. 10575 (2013), sec. 2.

[101] Republic Act No. 10575 (2013), sec. 3.

dignity of every inmate and guaranteeing full respect for human rights. The complementary component of Safekeeping in custodial function is Security which ensures that inmates are completely incapacitated from further committing criminal acts, and have been totally cut off from their criminal networks (or contacts in the free society) while serving sentence inside the premises of the national penitentiary. Security also includes protection against illegal organized armed groups which have the capacity of launching an attack on any prison camp of the national penitentiary to rescue their convicted comrade or to forcibly amass firearms issued to corrections officers.[102]

The Revised Implementing Rules and Regulations make mention of the United Nations Standard Minimum Rules for Treatment of Prisoners or the Nelson Mandela Rules.[103] The Nelson Mandela Rules was not meant to specify a model penal system. Rather, it aimed to "set out what is generally accepted as being good principles and practice in the treatment of prisoners and prison management."[104] In particular, it provides:

Rule 1

All prisoners shall be treated with the respect due to their inherent dignity and value as human beings. No prisoner shall be subjected to, and all prisoners shall be protected from, torture and other cruel, inhuman or degrading treatment or punishment, for which no circumstances whatsoever may be invoked as a justification. The safety and security of prisoners, staff, service providers and visitors shall be ensured at all times.

. . . . . .

Rule 3

Imprisonment and other measures that result in cutting off persons from the outside world are afflictive by the very fact of taking from

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[102] REVISED IMPLEMENTING RULES AND REGULATIONS OF REPUBLIC ACT NO. 10575 (2016), sec. 3 (ee).

[103] The United Nations Standard Minimum Rules for Treatment of Prisoners, December 17, 2015 <https://www.unodc.org/documents/justice-and-prison-reform/Nelson_Mandela_Rules-E-ebook. pdf>.

[104] *United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules)*, A/RES/70/175 (2015), Preliminary Observation 1.

these persons the right of self-determination by depriving them of their liberty. Therefore the prison system shall not, except as incidental to justifiable separation or the maintenance of discipline, aggravate the suffering inherent in such a situation.

. . . . . .

Rule 37

The following shall always be subject to authorization by law or by the regulation of the competent administrative authority:

. . . . . .

(d) Any form of involuntary separation from the general prison population, such as solitary confinement, isolation, segregation, special care units or restricted housing, whether as a disciplinary sanction or for the maintenance of order and security, including promulgating policies and procedures governing the use and review of, admission to and release from any form of involuntary separation.

. . . . . .

Rule 50

The laws and regulations governing searches of prisoners and cells shall be in accordance with obligations under international law and shall take into account international standards and norms, keeping in mind the need to ensure security in the prison. Searches shall be conducted in a manner that is respectful of the inherent human dignity and privacy of the individual being searched, as well as the principles of proportionality, legality and necessity.

. . . . . .

Rule 58

1. Prisoners shall be allowed, under necessary supervision, to communicate with their family and friends at regular intervals:

(a) By corresponding in writing and using, where available, telecommunication, electronic, digital and other means; and

(b) By receiving visits.

. . . . . .

Rule 61

1. Prisoners shall be provided with adequate opportunity, time and facilities to be visited by and to communicate and consult with a legal adviser of their own choice or a legal aid provider, without delay, interception or censorship and in full confidentiality, on any legal matter, in conformity with applicable domestic law. Consultations may be within sight, but not within hearing, of prison staff.

2. In cases in which prisoners do not speak the local language, the prison administration shall facilitate access to the services of an independent competent interpreter.

3. Prisoners should have access to effective legal aid.

. . . . . .

Rule 68

Every prisoner shall have the right, and shall be given the ability and means, to inform immediately his or her family, or any other person designated as a contact person, about his or her imprisonment, about his or her transfer to another institution and about any serious illness or injury. The sharing of prisoners' personal information shall be subject to domestic legislation.[105]

The controversy in this case arose from the transfer of "high profile" national inmates from the National Bilibid Prison in Muntinlupa City to the National Bilibid Prison Extension Facility in the National Bureau of Investigation Compound in Manila City, for the purpose of conducting a raid or inspection of their *kubol*.

Republic Act No. 10575 and its Revised Implementing Rules and Regulations allows the Department of Justice, through its adjunct agency the Bureau of Corrections, to completely "[incapacitate national inmates] from further committing criminal acts and to be "totally cut off from their criminal networks (or contacts in the free society) while serving sentence inside the

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[105] *United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules)*, A/RES/70/175 (2015), Rules 1, 3, 37, 50, 58, 61 and 67.

premises of the national penitentiary."[106] This was the import of the Secretary of Justice's letter to Boratong's counsel:

> As for the legal basis on the transfer of your client from the NBP to the NBI detention facilities, may we refer you to the provisions of RA 10575 (BuCor Act of 2013) on the BuCor's mandate, specifically on the safekeeping of prisoners, to wit: "ensure the public (including the families of inmates and their victims) that national inmates are provided with their basic needs, **completely incapacitated from further committing criminal acts, and have been totally cut off from their criminal networks (or contacts from free society)** while serving sentence inside the premises of the national penitentiary."[107] (Emphasis and underscoring in the original)

While the method by which "safekeeping" can be achieved is not specified, the procedures must be counterbalanced by other existing policies on the matter. The Nelson Mandela Rules provides for the isolation or segregation of inmates, whether as a disciplinary sanction or for the maintenance of order and security, subject to "authorization by law or by the regulation of the competent administrative authority."[108] Rule 114, Section 3 of the Rules of Court provides:

> SECTION 3. *No release or transfer except on court order or bail.* — No person under detention by legal process shall be released or transferred except upon order of the court or when he is admitted to bail.

Supreme Court Administrative Circular No. 6 dated December 5, 1977 further provides:

> [P]ursuant to Administrative Circular No. 2 dated December 2, 1976, no prisoner sentenced to death or life imprisonment or detained upon

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[106] *See* Republic Act No. 10575 (2013), sec. 3 and REVISED IMPLEMENTING RULES AND REGULATIONS OF REPUBLIC ACT NO. 10575 (2016), sec. 3 (ee).

[107] *Rollo* (G.R. No. 215585), p. 313.

[108] *United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules),* A/RES/70/175 (2015), Rule 37 (d).

legal process for the commission of any offense punishable by death or life imprisonment confined in the New Bilibid Prisons is allowed to be brought outside the said penal institution for appearance or attendance in any court except when the Supreme Court authorizes the Judge, upon proper application, to effect the transfer of the said prisoner. In addition, the said Circular directs every Judge in Metro Manila and the Provinces of Rizal, Bulacan, Cavite and Laguna who requires the appearance or attendance of any of the aforestated prisoners confined in the New Bilibid Prisons in any judicial proceeding to conduct such proceeding within the premises of the said penal institution.[109]

Under existing rules, national inmates of the New Bilibid Prisons can only be transferred "outside the said penal institution" through a court order. Conversely stated, however, this means that transfers *inside* the penal institution do not require any court authorization. The Revised Implementing Rules and Regulations of Republic Act No. 10575 defines "prison" as:

SECTION 3. *Definition of Terms.* — For purposes of this IRR, the following terms or words and phrases shall mean or be understood as follows:

. . . . . .

x) Prison — refers to a government establishment where national inmates/prisoners serve their sentence. Philippine prisons are also known as penal colonies or Prison and Penal Farms. There are a total of seven (7) penal colonies presently under the control and supervision of the Bureau of Corrections.[110]

The Bureau of Corrections is likewise authorized under Republic Act No. 10575 to "propose additional penal farms as may be necessary as possible, aside from its existing seven (7) prison and penal farms to decongest existing penal institutions and accommodate the increasing number of inmates committed

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[109] *Re: Issuance of Subpoena to Prisoner Nicanor De Guzman*, 343 Phil. 530, 533-534 (1997) [Per J. Kapunan, En Banc].

[110] REVISED IMPLEMENTING RULES AND REGULATIONS OF REPUBLIC ACT NO. 10575 (2016), sec. 3 (x).

to the agency."[111] This means that there may be other facilities that could be established where national inmates can serve their sentence, provided that these facilities are under the control and supervision of the Bureau of Corrections.

Hence, the Bureau of Corrections had authority under the law and existing rules and regulations to determine the movement of national inmates, provided that these are done *within* the penal institutions. Any movement outside the penal institution, such as court appearances, must have prior court authorization. Since the Department of Justice exercises administrative supervision over the Bureau of Corrections, with the power to "review, reverse, revise or modify the decisions of the [Bureau of Corrections],"[112] it stands to reason that the Secretary of Justice has the same authority to determine the movement of national inmates *within* the penal institutions.

According to respondents, the national inmates in this case were transferred from the New Bilibid Prison in Muntinlupa City to the New Bilibid Prison Extension Facility in the National Bureau of Investigation Compound in Manila City. Neither the law nor its Revised Implementing Rules and Regulations define what an "extension facility" is or how one is established. However, as an extension facility, the control and supervision of these national inmates remained with the Bureau of Corrections, through the Secretary of Justice. Thus, the movement of the national inmates from New Bilibid Prison to its extension facility was within the authority of the Secretary of Justice.

As the competent authority with supervisory administration over the Bureau of Corrections, the Secretary of Justice was authorized to order the inspection of the living quarters of the national inmates. As stated in the Department of Justice Memorandum[113] dated December 16, 2014, several illegal and contraband items were recovered from the *kubol* of these national

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[111] Republic Act No. 10575 (2013), sec. 6 (c).

[112] Republic Act No. 10575 (2013), sec. 8.

[113] *Rollo* (G.R. No. 215585), pp. 290-296.

inmates. The inspection and subsequent movement of the inmates from one penal facility to another also did not appear to have violated the national inmates' basic rights under the Nelson Mandela Rules. On December 27, 2014, the Chair of the Commission on Human Rights was able to visit the national inmates and she reported that "they had no complaints about food, shelter and treatment of authorities."[114] There was likewise no merit to the allegation that the national inmates were being held incommunicado.

Detained persons, whether deprived of liberty or convicted by final order, are still deserving of humane and ethical treatment under detention. However, this must be balanced with the public interest to not unduly hamper effective and efficient penal management. In *Hudson v. Palmer*,[115] as quoted in *Alejano v. Cabuay*:[116]

> However, while persons imprisoned for crime enjoy many protections of the Constitution, it is also clear that imprisonment carries with it the circumscription or loss of many significant rights. These constraints on inmates, and in some cases the complete withdrawal of certain rights, are "justified by the considerations underlying our penal system." The curtailment of certain rights is necessary, as a practical matter, to accommodate a myriad of "institutional needs and objectives" of prison facilities, chief among which is internal security. Of course, these restrictions or retractions also serve, incidentally, as reminders that, under our system of justice, deterrence and retribution are factors in addition to correction.[117]

Here, there was an urgent need to remove the national inmates from their place of confinement and to transfer them to another

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[114] Reynaldo Santos, Jr., *CHR: Uphold VIP inmates' right to counsel, family visits but . . .*, RAPPLER, December 30, 2014, <http://www.rappler.com/nation/79352-chr-rights-vip-inmates-public-safety> (last visited on September 8, 2020).

[115] 468 U.S. 517 (1984).

[116] 505 Phil. 298 (2005) [Per J. Carpio, En Banc].

[117] Id. at 320 citing *Hudson v. Palmer*, 468 U.S. 517 (1984).

detention facility. Considering that the Secretary of Justice has the authority to determine the movement of national inmates between penal facilities, there is no compelling reason for this Court to grant these Petitions.

WHEREFORE, the Petitions are **DENIED.**

SO ORDERED.

Peralta, C.J., Perlas-Bernabe, Caguioa, Gesmundo, Reyes, Jr., Hernando, Carandang, Lazaro-Javier, Inting, Zalameda, Lopez, Delos Santos, and *Gaerlan, JJ.,* concur.

Baltazar-Padilla, J., on leave.

FIRST DIVISION

[G.R. No. 216642. September 8, 2020]

PO2 BERNARDINO CRUZ y BASCO, *Petitioner*, *v.* **PEOPLE OF THE PHILIPPINES,** *Respondent*.

SYLLABUS

1. **REMEDIAL LAW; CRIMINAL PROCEDURE; APPEALS; AN APPEAL IN CRIMINAL CASES THROWS THE ENTIRE CASE WIDE OPEN FOR REVIEW.—** An appeal by the accused in criminal cases throws the entire case wide open for review and the reviewing tribunal can correct errors, though unassigned in the appealed judgment, or even reverse the trial court's decision based on grounds other than those that the parties raised as errors. The appeal confers the appellate court full jurisdiction over the case and renders such court competent to examine records, revise the judgment appealed from, increase the penalty, and cite the proper provision of the penal law.

2. **CRIMINAL LAW; JUSTIFYING CIRCUMSTANCES; SELF-DEFENSE; ELEMENTS THEREOF; UNLAWFUL AGGRESSION; TEST FOR THE PRESENCE OF UNLAWFUL AGGRESSION; CASE AT BAR.—** In self-defense, the accused bears the burden of proving by clear and convincing evidence the concurrence of the following elements: (1) unlawful aggression; (2) reasonable necessity of the means employed to prevent or repel the unlawful aggression; and (3) lack of sufficient provocation on the part of the person defending himself. Of these three elements, the existence of unlawful aggression on the part of the victim is the most important. The test for the presence of unlawful aggression is whether aggression from the victim put in real peril the life or personal safety of the person defending himself, and such peril must not be an imagined or imaginary threat. Accordingly, (a) there must be a physical or material attack or assault; (b) the attack or assault must be actual, or, at least, imminent; and (c) the attack or assault must be unlawful.

As found by the RTC and the CA, Cruz failed to prove by clear and convincing evidence that it was Bernardo who first drew a gun. Thus, in the absence of unlawful aggression on the part of Bernardo, the plea of self-defense must necessarily fail.

3. ID.; ID.; ACTING IN FULFILLMENT OF DUTY; ELEMENTS THEREOF; CASE AT BAR.— There is also no merit in Cruz's claim that he was acting in the fulfillment of his duties as a police officer at the time of the shooting incident. To successfully invoke this justifying circumstance, an accused must prove that: (1) he acted in the performance of a duty; and (2) the injury inflicted or offense committed is the necessary consequence of the due performance or lawful exercise of such duty. It has already been established – by the consistent factual findings of the RTC and CA, which gave more credence to the facts as narrated by the prosecution – that Cruz's act of shooting Bernardo was without any justifiable cause. Consequently, there is no basis to conclude that Cruz's actions were committed in furtherance of his police duties. Moreover, the fact that he reported for duty on the day of the incident, does not necessarily prove that he was, at that time, acting by reason of and in the fulfillment of his duty as a police officer. Clearly, the justifying circumstance of fulfillment of duty has no application in this case.

4. ID.; CRIMINAL LIABILITY; PRINCIPLE OF *ABERRATIO ICTUS*; ELEMENTS THEREOF; THE AUTHOR OF THE FELONY SHALL BE CRIMINALLY LIABLE FOR THE DIRECT, NATURAL AND LOGICAL CONSEQUENCE THEREOF, WHETHER INTENDED OR NOT; CASE AT BAR.— Under Article 4, criminal liability is incurred "by any person committing a felony (*delito*) although the wrongful act done be different from that which he intended." Accordingly, the author of the felony shall be criminally liable for the direct, natural and logical consequence thereof, whether intended or not. For this provision to apply, it must be shown, however, (a) that an intentional felony has been committed, and (b) that the wrong done to the aggrieved party be the direct, natural and logical consequence of the felony committed by the offender. The Court finds these elements present in this case.

It has already been established that Cruz committed an intentional felony when he fired multiple shots at Bernardo. The death of Torralba, who was hit by one of those bullets intended for Bernardo, is a direct, natural, and logical

consequence of said intentional felony. The death of Torralba is an example of *aberratio ictus*.

5. ID.; CRIMINAL NEGLIGENCE; RECKLESS IMPRUDENCE, DEFINED; A FINDING OF *DOLO* OR MALICE IS INCOMPATIBLE WITH CRIMINAL NEGLIGENCE; CASE AT BAR.—[A] finding of *dolo* or malice on the part of Cruz is simply incompatible with criminal negligence under Article 365 of the RPC which defines reckless imprudence as that which "x x x consists in voluntary, **but without malice**, doing or failing to do an act from which material damage results by reason of inexcusable lack of precaution on the part of the person performing or failing to perform such act, taking into consideration his employment or occupation, degree of intelligence, physical condition and other circumstances regarding persons, time and place. x x x" Thus, it was erroneous to characterize Torralba's death as one resulting from reckless imprudence.

6. ID.; MITIGATING CIRCUMSTANCES; VOLUNTARY SURRENDER; ELEMENTS THEREOF; CASE AT BAR.— While Cruz is guilty of frustrated homicide and homicide, he is entitled to the mitigating circumstance of voluntary surrender under Article 13, paragraph 7, of the RPC which requires "[t]hat the offender had voluntarily surrendered himself to a person in authority or his agents. x x x"

For this mitigating circumstance to be appreciated, the following elements must be present: 1) the offender has not been actually arrested; 2) the offender surrendered himself to a person in authority or the latter's agent; and 3) the surrender was voluntary. All three elements are present in this case. As shown by the records, Cruz surrendered his person and service firearm to his superior immediately after the shooting incident.

7. ID.; ID.; SUFFICIENT PROVOCATION; A SHORT VERBAL ALTERCATION DOES NOT AMOUNT TO SUFFICIENT PROVOCATION; CASE AT BAR.— Under Article 13, paragraph 4, of the RPC, the criminal liability of the accused shall be mitigated if "x x x sufficient provocation or threat on the part of the offended party immediately preceded the act" of the accused. Sufficient provocation refers to "any unjust or improper conduct or act of the victim adequate enough to excite a person to commit a wrong, which is accordingly proportionate

in gravity." In order to be mitigating, provocation on the part of the victim must be sufficient and should immediately precede the act of the offender.

The evidence shows that it was Cruz who first drew and fired his gun. While his firing was preceded by a short verbal altercation, this still does not amount to sufficient provocation. The short exchange of words between Bernardo and Cruz, though heated, is not adequate to elicit such grave reaction as the firing of a gun. Thus, the mitigating circumstance of sufficient provocation cannot be appreciated in favor of Cruz.

8. ID.; HOMICIDE AND FRUSTRATED HOMICIDE; PROPER PENALTIES IN CASE AT BAR.— Given the Court's findings that the death of Torralba amounts to homicide, and that Cruz is entitled to the mitigating circumstance of voluntary surrender, the penalties imposed upon him shall be modified accordingly.

The penalty prescribed for homicide is *reclusion perpetua*, while the penalty prescribed for frustrated homicide is *prision mayor*. Applying the Indeterminate Sentence Law and considering the fact that Cruz is entitled to one mitigating circumstance, the imposable penalty is any period within the range of the penalty that is one a degree lower than that prescribed by law, as the minimum, and the minimum period of the penalty prescribed by law, as the maximum. Accordingly, the Court imposes upon Cruz the penalty of: (a) eight years and one day of *prision mayor*, as minimum, to 12 years and one day of *reclusion temporal*, as maximum, for his crime of homicide; and, (b) two years, two months and one day of *prision correccional*, as minimum to six years and one day of *prision mayor*, as maximum, for his crime of frustrated homicide.

9. ID.; AWARD OF DAMAGES IN CRIMINAL CASES; CASE AT BAR.— For Homicide, the court shall award civil indemnity *ex delicto* in the amount of ₱50,000.00, and moral damages in the amount of ₱50,000.00. The heirs of the victim are also entitled to burial or funeral expenses in the amount of ₱50,000.00 in the absence of any documentary evidence showing the amount actually spent. In case of Frustrated Homicide, the victim is entitled to civil indemnity *ex delicto* in the amount of ₱30,000.00, and moral damages in the amount of ₱30,000.00. In both cases, the award of actual damages is also proper, but only in the amount supported by evidence.

Thus, in this case, the heirs of Torralba are entitled to ₱50,000.00 civil indemnity *ex delicto*, ₱50,000.00 moral damages, ₱6,140.00 actual damages for Torralba's last medical expenses, and ₱50,000.00 as burial and funeral expenses.

On the other hand, Bernardo is entitled to ₱30,000.00 civil indemnity *ex delicto*, ₱30,000.00 moral damages, and ₱35,573.15 actual damages for his medical expenses.

APPEARANCES OF COUNSEL

Francisco A. Sanchez III for petitioner.
The Solicitor General for respondent.

D E C I S I O N

CAGUIOA, *J.*:

This is an appeal[1] filed under Rule 45 of the Rules of Court from the Decision[2] dated June 23, 2014 and Resolution[3] dated January 21, 2015 of the Court of Appeals, Special Fourth Division (CA), in CA-G.R. CR No. 35225, which affirmed *in toto* the Decision[4] dated July 12, 2012 of the Regional Trial Court of Manila, Branch 5 (RTC) in Criminal Case Nos. 08-263728 and 08-263729, finding petitioner PO2 Bernardino Cruz y Basco (Cruz) guilty beyond reasonable doubt of reckless imprudence resulting in homicide and frustrated homicide.

Facts of the Case

Cruz was charged with homicide under the following Information:

x x x x x x x x x

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[1] *Rollo*, pp. 9-22.

[2] Id. at 23-35. Penned by Associate Justice Amelita G. Tolentino and concurred in by Associate Justices Leoncia R. Dimagiba and Melchor Quirino C. Sadang.

[3] Id. at 36-37.

[4] Id. at 38-48.

That on or about September 9, 2008, in the City of Manila, Philippines, the said accused did then and there willfully, unlawfully and feloniously, with intent to kill, attack, assault and use personal violence upon the person of one GERWIN TORRALBA Y FERNANDEZ, 9 years old, a minor, by then and there firing and hitting the latter's head with a gun, thereby inflicting upon the said GERWIN TORRALBA Y FERNANDEZ mortal gunshot wounds which were the direct and immediate cause of his death thereafter.

Contrary to law.[5]

He was also charged with frustrated homicide under the following Information:

x x x x x x x x x

That on or about September 9, 2008, in the City of Manila, Philippines, the said accused did then and there willfully, unlawfully and feloniously, with intent to kill, attack, assault and use personal violence upon the person of one ARCHIBALD BERNARDO Y DAVID, by then and there firing and hitting the latter on the right wrist and left shoulder with a gun, thereby inflicting upon the said ARCHIBALD BERNARDO Y DAVID physical injuries which were necessarily fatal and mortal thus performing all the acts of execution which should have produced the crime of homicide as a consequence, but which nevertheless did not produce it by reason or causes independent of the will of the said ARCHIBALD BERNARDO Y DAVID, which prevented his death.

Contrary to law.[6]

When Cruz was arraigned on November 16, 2009, he pleaded not guilty to both charges.[7] Thereafter, trial ensued.[8]

Version of the Prosecution

On September 9, 2008, private complainant Archibald Bernardo y David (Bernardo) was manning his liquified

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[5] Records, p. 2. Emphasis omitted.

[6] Id. at 43.

[7] *Rollo*, p. 24.

[8] Id. at 26.

petroleum gas (LPG) business when he received a call from a customer complaining that the LPG gas tank delivered earlier was leaking.[9] Bernardo decided to attend to it personally and, using his own motorcycle, proceeded to the customer.[10]

While cruising along Paulino Street and before reaching the intersection of Nepa and Alfonso Streets, Bernardo chanced upon Cruz who was also on a motorcycle in front of Balut Bakery.[11] Earlier, one Petronillo Herero (Herero) noticed that Cruz was traversing Paulino Street slowly while looking from side to side as if in search of someone.[12]

Bernardo overtook Cruz but the latter tried to flag him down.[13] When Bernardo looked back and their eyes met, Cruz placed his right hand on the gun tucked in his waist and then, in a challenging voice, shouted *"Ano?"* at Bernardo.[14] Bernardo responded with *"Ano rin."*[15] Immediately, Cruz drew his gun from his waist and fired successive shots at Bernardo, who sped off with his motorcycle to flee.[16]

Before reaching the corner of Balasan Street, Bernardo stopped and got off his motorcycle.[17] By then, he was already hit twice at the back of his left arm.[18] He only realized this when he saw blood dripping from his arm.[19] He also lost grip in his left arm, which forced him to stop the motorcycle and leave it behind.[20]

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[9] Id.

[10] Id. at 26-27.

[11] Id. at 27.

[12] Id.

[13] Id.

[14] Id.

[15] Id.

[16] Id.

[17] Id.

[18] Id.

[19] Id.

[20] Id.

Bernardo tried to draw and cock his gun to retaliate but was unable to do so due to the injuries that he sustained.[21] Meanwhile, Cruz continued firing his gun at Bernardo until he hit the latter again on his right wrist.[22]

In the meantime, Gerwin F. Torralba (Torralba) was flying a kite in the area at that time.[23] Torralba fell to the ground upon being hit by one of the bullets fired by Cruz.[24] Upon seeing Torralba sprawled on the ground, Cruz stopped, left his motorcycle, and ran towards Nepa Street.[25]

Meanwhile, Bernardo fled on foot and reached the Barangay Hall.[26] He then hailed a pedicab and asked the driver to bring him and the wounded Torralba to the hospital.[27] They were brought to Tondo Medical Center.[28] Bernardo survived due to prompt medical treatment.[29] Unfortunately, Torralba, who was transferred to Jose R. Reyes Memorial Medical Center, expired upon arrival thereat.[30]

Version of the Defense

Cruz, a regular member of the Philippine National Police (PNP), was then assigned at Police Station 1 (PS-1) of the Manila Police District, located at Tondo, Manila City.[31]

On September 9, 2008, Cruz was on a day shift duty (7:00 a.m. to 7:00 p.m.).[32] Using his own motorcycle, he conducted

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[21] Id.

[22] Id.

[23] Id.

[24] Id.

[25] Id.

[26] Id.

[27] Id.

[28] Id.

[29] Id.

[30] Records, p. 425.

[31] *Rollo*, p. 28.

[32] Id.

a roving patrol along Paulino Street up to the vicinity of San Rafael Street, within the area and jurisdiction of PS-1.[33] On his way back to PS-1, while traversing Paulino Street between the corners of Nepa and Batasan Streets, Bernardo, who was also on a motorcycle, suddenly overtook him, blocked his path and nearly collided with his motorcycle.[34]

Cruz then asked Bernardo, *"Ano ba?"*[35] It was then that he recognized that the person who overtook him was Bernardo, son of a former Barangay Chairman who was defeated by his mother in the recent election.[36] Bernardo shouted back, *"Ano rin!"*[37] At the same time, Bernardo drew his gun from his waist and pointed it at Cruz, while also moving away slowly on board his motorcycle.[38] Faced with imminent danger to his own life, Cruz, a policeman, acted swiftly to prevent the aggression by drawing his service firearm and firing at the arms of Bernardo.[39]

Although wounded, Bernardo tried to load and cock his handgun.[40] Thus, Cruz had no other recourse but to fire at Bernardo again to repel the imminent danger.[41]

Cruz was about to approach Bernardo to bring him to the hospital but hesitated when he saw several persons coming from the area where Bernardo resides.[42] He was compelled to leave his motorcycle behind and leave the area on foot.[43]

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[33] Id.

[34] Id.

[35] Id.

[36] Id.

[37] Id.

[38] Id.

[39] Id.

[40] Id.

[41] Id.

[42] Id.

[43] Id.

Thereafter, Cruz surrendered to his superior and turned-over his service firearms, and subsequently submitted himself for investigation.[44] It was only then that he learned that during the incident, Torralba, a child who was playing, was accidentally hit and had died.[45]

RTC Ruling

In a Decision dated July 12, 2012, the RTC found Cruz guilty beyond reasonable doubt of frustrated homicide with respect to the shooting of Bernardo. On the other hand, with respect to the death of Torralba, the RTC held that Cruz is only guilty of reckless imprudence resulting in homicide because of the lack of criminal intent. The dispositive portion of the RTC Decision reads as follows:

> WHEREFORE, premises considered, the Court rules as follows:
>
> 1. In Criminal Case No. 08-263728, accused PO2 BERNARDINO CRUZ Y BASCO @ "BONG CRUZ" is GUILTY beyond reasonable doubt of Reckless Imprudence resulting in Homicide defined and penalized under Art. 365 in relation to Art. 249 of the Revised Penal Code and is hereby sentenced to suffer an indeterminate penalty of FOUR (4) MONTHS and ONE (1) DAY of [*arresto mayor*], as minimum to FOUR (4) YEARS and TWO (2) MONTHS of [*prision correccional*], as maximum. In addition, accused is ordered to pay the heirs of Gerwin Torralba y Fernandez civil indemnity [*ex-delicto*] in the amount of P70,000.00, actual damages in the amount of P50,000.00, P24,000.00 for funeral and burial expenses, and P100,000.00 as moral damages and compensatory damages without subsidiary imprisonment in case of insolvency and to pay the costs of suit.
>
> 2. In Criminal Case No. 08-263729, accused PO2 BERNARDINO CRUZ Y BASCO @ "BONG CRUZ" is GUILTY beyond reasonable doubt of the crime charged and is hereby sentenced to suffer the penalty of FOUR (4) YEARS, TWO (2) MONTHS and ONE (1) DAY as minimum to SIX

[44] Id. at 28-29.

[45] Id. at 29.

> (6) YEARS and ONE (1) DAY as maximum and to indemnify Archibald Bernardo y David the amount of P50,000.00 as actual damages and P20,000.00 as moral damages without subsidiary imprisonment in case of insolvency and to pay the costs.
>
> SO ORDERED.[46]

CA Ruling

On June 23, 2014, the CA promulgated the assailed Decision which affirmed *in toto* the RTC Decision. The CA upheld the sufficiency of the evidence presented by the prosecution and rejected Cruz's version of the events as lacking in credibility and for inconsistencies in the testimonies of the defense's witnesses. However, the CA no longer discussed Cruz's invocation of the justifying circumstance of fulfillment of duty, and the mitigating circumstances of voluntary surrender and/or sufficient provocation.

The dispositive portion of the CA Decision reads as follows:

> ***WHEREFORE***, premises considered, the decision of the court *a quo* in Criminal Case No. 08-263728 finding the accused-appellant guilty beyond reasonable doubt of the crime of reckless imprudence resulting in homicide as well as in Criminal Case No. 08-263729 finding the accused-appellant guilty beyond reasonable doubt of the crime of frustrated homicide is **AFFIRMED** *in toto*.[47]

Aggrieved, Cruz sought reconsideration of the above Decision but was denied by the CA in a Resolution dated January 21, 2015.

Hence, this appeal.

Cruz argues that the justifying circumstances of self-defense and lawful performance of duty should be appreciated in his favor.[48] Alternatively, he maintains that his criminal liability

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[46] Id. at 47-48.

[47] Id. at 34.

[48] Id. at 147-168.

should be mitigated given the sufficient provocation on the part of Bernardo, and by his voluntary surrender.[49]

The Office of the Solicitor General (OSG) counters that the justifying and mitigating circumstances raised by Cruz are not supported by evidence on record.[50] Additionally, the OSG argues, as it did before the CA, that with respect to the death of Torralba, Cruz should be held guilty of homicide instead of just reckless imprudence resulting in homicide because Torralba's death was brought about by the same felonious act of shooting at Bernardo.[51]

Issue

The parties submit the following issues for resolution of the Court:

1. Whether the CA committed a reversible error in ruling that Cruz was not acting in self defense or fulfillment of duty at the time of the shooting incident;

2. Whether the CA committed a reversible error in not appreciating the mitigating circumstances of sufficient provocation and voluntary surrender in favor of Cruz; and

3. Whether the CA committed a reversible error when it upheld the RTC ruling that, with respect to the death of Torralba, Cruz is guilty only of reckless imprudence resulting in homicide instead of homicide.

The Court's Ruling

An appeal by the accused in criminal cases throws the entire case wide open for review and the reviewing tribunal can correct errors, though unassigned in the appealed judgment, or even reverse the trial court's decision based on grounds other than those that the parties raised as errors.[52] The appeal confers the appellate court full jurisdiction over the case and renders such

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[49] Id. at 163-164.

[50] Id. at 120.

[51] Id. at 132-133.

[52] *Casilac v. People*, G.R. No. 238436, February 17, 2020.

court competent to examine records, revise the judgment appealed from, increase the penalty, and cite the proper provision of the penal law.[53]

After a judicious review of the records of the case at bar, the Court finds that a modification of the assailed CA Decision is in order.

Cruz was not acting in self-defense or fulfillment of duty

Cruz argues that he should not be held criminally liable for the death of Torralba and the injuries sustained by Bernardo because he was acting in self-defense and in the performance of his duty as a police officer. The Court finds no merit in his position.

On the matter of self-defense, the Court concurs with the findings of both the RTC and the CA that Cruz's act of shooting was not precipitated by any unlawful aggression on the part of Bernardo. In self-defense, the accused bears the burden of proving by clear and convincing evidence the concurrence of the following elements: (1) unlawful aggression; (2) reasonable necessity of the means employed to prevent or repel the unlawful aggression; and (3) lack of sufficient provocation on the part of the person defending himself.[54] Of these three elements, the existence of unlawful aggression on the part of the victim is the most important.[55] The test for the presence of unlawful aggression is whether aggression from the victim put in real peril the life or personal safety of the person defending himself, and such peril must not be an imagined or imaginary threat.[56] Accordingly, (a) there must be a physical or material attack or assault; (b) the attack or assault must be actual, or, at least, imminent; and (c) the attack or assault must be unlawful.[57]

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[53] Id.

[54] *People v. Dulin*, G.R. No. 171284, June 29, 2015, 760 SCRA 413, 425.

[55] Id.

[56] *People v. Nugas*, G.R. No. 172606, November 23, 2011, 661 SCRA 159, 167.

[57] Id. at 168.

As found by the RTC and the CA, Cruz failed to prove by clear and convincing evidence that it was Bernardo who first drew a gun. Thus, in the absence of unlawful aggression on the part of Bernardo, the plea of self-defense must necessarily fail.

There is also no merit in Cruz's claim that he was acting in the fulfillment of his duties as a police officer at the time of the shooting incident. To successfully invoke this justifying circumstance, an accused must prove that: (1) he acted in the performance of a duty; and (2) the injury inflicted or offense committed is the necessary consequence of the due performance or lawful exercise of such duty.[58] It has already been established — by the consistent factual findings of the RTC and CA, which gave more credence to the facts as narrated by the prosecution — that Cruz's act of shooting Bernardo was without any justifiable cause. Consequently, there is no basis to conclude that Cruz's actions were committed in furtherance of his police duties. Moreover, the fact that he reported for duty on the day of the incident,[59] does not necessarily prove that he was, at that time, acting by reason of and in the fulfillment of his duty as a police officer. Clearly, the justifying circumstance of fulfillment of duty has no application in this case.

Having pleaded self-defense, Cruz essentially admitted to the felonious act of shooting Bernardo and inflicting fatal injuries upon the latter. On this score, the Court concurs with the findings of the RTC and CA that Cruz is guilty of frustrated homicide.

The death of Torralba amounts to homicide

Considering that the death of Torralba was caused by the same felonious act of shooting at Bernardo, the OSG is correct when it argues that Cruz should be held guilty of homicide as originally charged.

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[58] *Mamangun v. People*, G.R. No. 149152, February 2, 2007, 514 SCRA 44, 51.

[59] Records, pp. 459-460.

Torralba, an eight-year old boy, was at the wrong place and time during the shooting incident. While Cruz did not intend to end the life of this child, the latter's death is a crime of homicide in accordance with Article 4 of the Revised Penal Code (RPC) and prevailing jurisprudence.

Under Article 4, criminal liability is incurred "by any person committing a felony (*delito*) although the wrongful act done be different from that which he intended." Accordingly, the author of the felony shall be criminally liable for the direct, natural and logical consequence thereof, whether intended or not. For this provision to apply, it must be shown, however, (a) that an intentional felony has been committed, and (b) that the wrong done to the aggrieved party be the direct, natural and logical consequence of the felony committed by the offender.[60] The Court finds these elements present in this case.

It has already been established that Cruz committed an intentional felony when he fired multiple shots at Bernardo. The death of Torralba, who was hit by one of those bullets intended for Bernardo, is a direct, natural, and logical consequence of said intentional felony. The death of Torralba is an example of *aberratio ictus*.

In *People v. Adriano y Samson*,[61] a case where one of the victims was a mere by-stander hit by a stray bullet, the Court explained the principle of *aberratio ictus* under Article 4 of the RPC, *viz.*:

> We refer back to the settled facts of the case. Bulanan, who was merely a bystander, was killed by a stray bullet. He was at the wrong place at the wrong time.
>
> Stray bullets, obviously, kill indiscriminately and often without warning, precluding the unknowing victim from repelling the attack or defending himself. At the outset, Adriano had no intention to kill Bulanan, much less, employ any particular means of attack. Logically,

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[60] *People v. Iligan*, G.R. No. 75369, November 26, 1990, 191 SCRA 643, 651.

[61] G.R. No. 205228, July 15, 2015, 763 SCRA 70.

Bulanan's death was random and unintentional and the method used to kill her, as she was killed by a stray a bullet, was, by no means, deliberate. Nonetheless, Adriano is guilty of the death of Bulanan under Article 4 of the Revised Penal Code, pursuant to the doctrine of *aberratio ictus*, which imposes criminal liability for the acts committed in violation of law and for all the natural and logical consequences resulting therefrom. While it may not have been Adriano's intention to shoot Bulanan, this fact will not exculpate him. Bulanan's death caused by the bullet fired by Adriano was the natural and direct consequence of Adriano's felonious deadly assault against Cabiedes.

x x x x x x x x x

As we already held in *People v. Herrera* citing *People v. Hilario*, "[t]he fact that accused killed a person other than their intended victim is of no moment." Evidently, Adriano's original intent was to kill Cabiedes. However, during the commission of the crime of murder, a stray bullet hit and killed Bulanan. Adriano is responsible for the consequences of his act of shooting Cabiedes. This is the import of Article 4 of the Revised Penal Code. As held in *People v. Herrera* citing *People v. Ural*:

> Criminal liability is incurred by any person committing a felony although the wrongful act be different from that which is intended. One who commits an intentional felony is responsible for all the consequences which may naturally or logically result therefrom, whether foreseen or intended or not. The rationale of the rule is found in the doctrine, ["*el que es causa de la causa es causa del mal causado*"], or he who is the cause of the cause is the cause of the evil caused.[62]

Moreover, a finding of *dolo* or malice on the part of Cruz is simply incompatible with criminal negligence under Article 365 of the RPC which defines reckless imprudence as that which "x x x consists in voluntary, **but without malice**, doing or failing to do an act from which material damage results by reason of inexcusable lack of precaution on the part of the person performing or failing to perform such act, taking into consideration his employment or occupation, degree of intelligence, physical condition and other circumstances

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[62] Id. at 83-84. Citations omitted.

regarding persons, time and place. x x x"[63] Thus, it was erroneous to characterize Torralba's death as one resulting from reckless imprudence.

Cruz is only entitled to the mitigating circumstance of voluntary surrender

While Cruz is guilty of frustrated homicide and homicide, he is entitled to the mitigating circumstance of voluntary surrender under Article 13, paragraph 7, of the RPC which requires "[t]hat the offender had voluntarily surrendered himself to a person in authority or his agents. x x x"

For this mitigating circumstance to be appreciated, the following elements must be present: 1) the offender has not been actually arrested; 2) the offender surrendered himself to a person in authority or the latter's agent; and 3) the surrender was voluntary.[64] All three elements are present in this case. As shown by the records, Cruz surrendered his person and service firearm to his superior immediately after the shooting incident.

Cruz declared in his Memorandum[65] dated September 9, 2008 addressed to his station commander that:

> After the incident the undersigned police officer immediately surrendered to his superior as well as his service firearm and turned over to the General Assignment Section (MPD-GAS) for investigation. x x x"[66]

It is also indicated in the Booking Sheet and Arrest Report[67] dated September 10, 2008 that Cruz was "Apprehended By: Voluntary Surrender."[68] Likewise, it is stated in the Crime

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[63] Emphasis supplied.

[64] *De Vera v. De Vera*, G.R. No. 172832, April 7, 2009, 584 SCRA 506, 515.

[65] Records, p. 15.

[66] Id. at 15.

[67] Id. at 4.

[68] Id.

Report[69] dated September 10, 2008 that after the incident, Cruz "x x x fled the scene and surrender[ed] himself to his Station Commander P/SUPT. ROLANDO MIRANDA of [PS-1] [Manila Police] District x x x."[70]

The Booking Sheet and Arrest Report as well as the Crime Report were admitted by and offered in evidence by the prosecution.[71] These pieces of evidence clearly and convincingly establish the fact that Cruz had not been actually arrested, but had instead immediately and voluntarily surrendered himself and his service firearm to a person in authority. Thus, he is entitled to the mitigating circumstance of voluntary surrender.

The same, however, cannot be said with respect to his claim of sufficient provocation on the part of the Bernardo.

Under Article 13, paragraph 4, of the RPC, the criminal liability of the accused shall be mitigated if "x x x sufficient provocation or threat on the part of the offended party immediately preceded the act" of the accused. Sufficient provocation refers to "any unjust or improper conduct or act of the victim adequate enough to excite a person to commit a wrong, which is accordingly proportionate in gravity."[72] In order to be mitigating, provocation on the part of the victim must be sufficient and should immediately precede the act of the offender.[73]

Cruz argues that Bernardo's acts of suddenly overtaking him, blocking his path and almost colliding with his motorcycle, as well as his acts of shouting, drawing and aiming a gun at Cruz, amount to sufficient provocation. The evidence on record, however, does not support this.

As mentioned earlier, Cruz failed to prove that it was Bernardo who first drew a gun. Both the RTC and CA gave more credence

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[69] Id. at 9-14.

[70] Id. at 12.

[71] Id. at 279-435.

[72] *Miranda v. People*, G.R. No. 234528, January 23, 2019.

[73] Id.

to the consistent testimonies of the prosecution witnesses who testified that Cruz drew his gun and fired at Bernardo immediately after their short but heated exchange of words, as corroborated by the medical observation with respect to the trajectory of the bullet that hit Bernardo.[74]

The evidence shows that it was Cruz who first drew and fired his gun. While his firing was preceded by a short verbal altercation, this still does not amount to sufficient provocation. The short exchange of words between Bernardo and Cruz, though heated, is not adequate to elicit such grave reaction as the firing of a gun. Thus, the mitigating circumstance of sufficient provocation cannot be appreciated in favor of Cruz.

Penalties and Damages

Given the Court's findings that the death of Torralba amounts to homicide, and that Cruz is entitled to the mitigating circumstance of voluntary surrender, the penalties imposed upon him shall be modified accordingly.

The penalty prescribed for homicide is *reclusion perpetua*,[75] while the penalty prescribed for frustrated homicide is *prision mayor*.[76] Applying the Indeterminate Sentence Law and considering the fact that Cruz is entitled to one mitigating circumstance, the imposable penalty is any period within the range of the penalty that is one a degree lower than that prescribed by law, as the minimum, and the minimum period of the penalty prescribed by law, as the maximum. Accordingly, the Court imposes upon Cruz the penalty of: (a) eight years and one day of *prision mayor*, as minimum, to 12 years and one day of *reclusion temporal*, as maximum, for his crime of homicide; and, (b) two years, two months and one day of *prision correccional*, as minimum to six years and one day of *prision mayor*, as maximum, for his crime of frustrated homicide.

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[74] Supra notes 2 and 4.

[75] Art. 249, REVISED PENAL CODE.

[76] Art. 50, REVISED PENAL CODE.

The Court also deems it proper to modify the award of damages to conform with prevailing jurisprudence. In *People v. Jugueta*,[77] the Court provided guidelines with respect to the award of damages in criminal cases.

For Homicide, the court shall award civil indemnity *ex delicto* in the amount of ₱50,000.00, and moral damages in the amount of ₱50,000.00.[78] The heirs of the victim are also entitled to burial or funeral expenses in the amount of ₱50,000.00 in the absence of any documentary evidence showing the amount actually spent.[79] In case of Frustrated Homicide, the victim is entitled to civil indemnity *ex delicto* in the amount of ₱30,000.00, and moral damages in the amount of ₱30,000.00.[80] In both cases, the award of actual damages is also proper, but only in the amount supported by evidence.[81]

Thus, in this case, the heirs of Torralba are entitled to ₱50,000.00 civil indemnity *ex delicto*, ₱50,000.00 moral damages, ₱6,140.00 actual damages for Torralba's last medical expenses,[82] and ₱50,000.00 as burial and funeral expenses.

On the other hand, Bernardo is entitled to ₱30,000.00 civil indemnity *ex delicto*, ₱30,000.00 moral damages, and ₱35,573.15 actual damages for his medical expenses.[83]

WHEREFORE, in view of the foregoing, the appeal is hereby **PARTLY GRANTED**. The Decision dated June 23, 2014 of the Court of Appeals, Special Fourth Division, in CA-G.R. CR No. 35225, is hereby **AFFIRMED** with the following **MODIFICATIONS**:

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[77] G.R. No. 202124, April 5, 2016, 788 SCRA 331.

[78] Id. at 380, 386.

[79] Id. at 380-381, 388.

[80] Id. at 387.

[81] Id. at 367.

[82] *Rollo*, pp. 420, 422 and 424.

[83] Id. at 345-417.

(1) In Criminal Case No. 08-263728, petitioner PO2 Bernardino Cruz y Basco @ "Bong Cruz" is **GUILTY** beyond reasonable doubt of Homicide as defined and penalized under Article 249 of the Revised Penal Code, and is hereby sentenced to suffer an indeterminate penalty of eight (8) years and one (1) day as minimum to twelve (12) years and one (1) day as maximum. In addition, Cruz is **ORDERED TO PAY** the heirs of Gerwin Torralba y Fernandez ₱50,000.00 civil indemnity *ex delicto*, ₱50,000.00 moral damages, ₱6,140.00 actual damages, and ₱50,000.00 as burial and funeral expenses; and

(2) In Criminal Case No. 08-263729, petitioner PO2 Bernardino Cruz y Basco @ "Bong Cruz" is **GUILTY** beyond reasonable doubt of Frustrated Homicide as defined and penalized under Article 249, in relation to Article 6, of the Revised Penal Code, and is hereby sentenced to suffer an indeterminate penalty of two (2) years, two (2) months and one (1) day as minimum to six (6) years and one (1) day as maximum. In addition, Cruz is **ORDERED TO PAY** Archibald Bernardo y David ₱30,000.00 civil indemnity *ex delicto*, ₱30,000.00 moral damages, and ₱35,573.15 actual damages.

(3) Cruz is also **ORDERED TO PAY** interest at the rate of six percent (6%) *per annum* on the civil indemnity, moral damages, actual damages and funeral and burial expenses from the time of the finality of this decision until full payment.

SO ORDERED.

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

EN BANC

[G.R. No. 232579. September 8, 2020]

DR. NIXON L. TREYES, *Petitioner*, *v.* **ANTONIO L. LARLAR, REV. FR. EMILIO L. LARLAR, HEDDY L. LARLAR, ET AL.,** *Respondents*.

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; MOTIONS, OMNIBUS MOTION RULE; WHEN THE GROUNDS FOR THE DISMISSAL OF A COMPLAINT UNDER RULE 16, SECTION 1 OF THE RULES ARE NOT RAISED IN A MOTION TO DISMISS, SUCH GROUNDS ARE DEEMED WAIVED; EXCEPTIONS.— According to Rule 9, Section 1 of the Rules, defenses and objections not pleaded either in a motion to dismiss or in the answer are deemed waived, except with respect to the grounds of (1) lack of jurisdiction over the subject matter; (2) *litis pendentia*; (3) *res judicata*; and (4) prescription of the action. In turn, Rule 15, Section 8 states that a motion attacking a pleading, order, judgment, or proceeding shall include all objections then available, and all objections not so included shall be deemed waived. Hence, under the Omnibus Motion Rule, when the grounds for the dismissal of a Complaint under Rule 16, Section 1 are not raised in a motion to dismiss, such grounds, except the grounds of lack of jurisdiction over the subject matter, *litis pendentia*, *res judicata*, and prescription, are deemed waived.

2. CIVIL LAW; TRUST; EXPRESS AND IMPLIED TRUST, DISTINGUISHED.— [T]he Civil Code identifies two kinds of trusts, *i.e.*, express and implied. Express trusts are created by the intention of the trustor or of the parties while implied trusts come into being by operation of law. As explained by recognized Civil Law Commentator, former CA Justice Eduardo P. Caguioa, "[e]xpress and implied trusts differ chiefly in that express trusts are created by the acts of the parties, while implied trusts are raised by operation of law, either to carry a presumed intention of the parties or to satisfy the demands of justice or protect against fraud." An implied trust is further divided into

two types, *i.e.*, resulting and constructive trusts. A resulting trust exists when a person makes or causes to be made a disposition of property under circumstances which raise an inference that he/she does not intend that the person taking or holding the property should have the beneficial interest in the property. On the other hand, a constructive trust exists when a person holding title to property is subject to an equitable duty to convey it to another on the ground that he/she would be unjustly enriched if he/she were permitted to retain it. The duty to convey the property arises because it was acquired through fraud, duress, undue influence, mistake, through a breach of a fiduciary duty, or through the wrongful disposition of another's property.

3. ID.; ID.; CONSTRUCTIVE TRUST; IF PROPERTY IS ACQUIRED THROUGH MISTAKE OR FRAUD, THE PERSON OBTAINING IT IS, BY FORCE OF LAW, CONSIDERED A TRUSTEE OF AN IMPLIED TRUST FOR THE BENEFIT OF THE PERSON FROM WHOM THE PROPERTY COMES; CASE AT BAR.— An example of a constructive trust is found in Article 1456 of the Civil Code, which states that "[i]f property is acquired through mistake or fraud, the person obtaining it is, by force of law, considered a trustee of an implied trust for the benefit of the person from whom the property comes." In *Marquez v. Court of Appeals*, the Court held that in a situation where an heir misrepresents in an affidavit of self-adjudication that he is the sole heir of his wife when in fact there are other legal heirs, and thereafter manages to secure a certificate of title under his name, then "a constructive trust under Article 1456 [i]s established. Constructive trusts are created in equity in order to prevent unjust enrichment." This is precisely the situation in the instant case.

4. REMEDIAL LAW; CIVIL PROCEDURE; ACTIONS; RECONVEYANCE; AN ACTION FOR RECONVEYANCE BASED ON AN IMPLIED OR CONSTRUCTIVE TRUST PRESCRIBES IN TEN (10) YEARS FROM THE ISSUANCE OF THE TORRENS TITLE IN THE NAME OF THE TRUSTEE OVER THE PROPERTY. — In this situation, it has been settled in a long line of cases that "an action for reconveyance based on an implied or constructive trust prescribes in [10] years from the issuance of the Torrens

title [in the name of the trustee] over the property." The 10-year prescriptive period finds basis in Article 1144 of the Civil Code, which states that an action involving an obligation created by law must be brought within 10 years from the time the right of action accrues. In cases wherein fraud was alleged to have been attendant in the trustee's registration of the subject property in his/her own name, the prescriptive period is 10 years reckoned from the date of the issuance of the original certificate of title or TCT since such issuance operates as a constructive notice to the whole world, the discovery of the fraud being deemed to have taken place at that time.

5. ID.; ID.; ORDINARY CIVIL ACTION AND SPECIAL PROCEEDING, DISTINGUISHED.— Hence, the main point of differentiation between a civil action and a special proceeding is that in the former, a party sues another for the enforcement or protection of a right which the party claims he/she is entitled to, such as when a party-litigant seeks to recover property from another, while in the latter, a party merely seeks to have a right established in his/her favor.

6. ID.; ID.; ACTIONS; ORDINARY CIVIL ACTION; A PARTY IN AN ACTION FOR THE CANCELLATION OF A DEED OR INSTRUMENT AND RECONVEYANCE OF PROPERTY ON THE BASIS OF RELATIONSHIP WITH THE DECEDENT SEEKS THE ENFORCEMENT OF HIS/HER RIGHT BROUGHT ABOUT BY HIS/HER BEING AN HEIR BY OPERATION OF LAW.— Applying the foregoing to ordinary civil actions for the cancellation of a deed or instrument and reconveyance of property on the basis of relationship with the decedent, *i.e.*, compulsory or intestate succession, the plaintiff does not really seek to establish his/her right as an heir. **In truth, the plaintiff seeks the enforcement of his/her right brought about by his/her being an heir by operation of law**. Restated, the party does not seek to establish his/her right as an heir **because the law itself already establishes that status**. What he/she aims to do is to merely call for the nullification of a deed, instrument, or conveyance as an enforcement or protection of that right which he/she already possesses **by virtue of law**.

7. ID.; ID.; ID.; *IN PERSONAM*; ORDINARY CIVIL ACTIONS FOR DECLARATION OF NULLITY OF A DOCUMENT,

NULLITY OF TITLE, RECOVERY OF OWNERSHIP OF REAL PROPERTY, OR RECONVEYANCE ARE ACTIONS *IN PERSONAM*.— Moreover, it is likewise noted that ordinary civil actions for declaration of nullity of a document, nullity of title, recovery of ownership of real property, or reconveyance are actions *in personam*. And thus, they only bind particular individuals although they concern rights to tangible things. **Any judgment therein is binding only upon the parties properly impleaded. Hence, any decision in the private respondents' ordinary civil action would not prejudice non-parties. To emphasize, any holding by the trial court in the ordinary civil action initiated by the private respondents shall only be in relation to the cause of action, *i.e.*, the annulment of the Affidavits of Self-Adjudication executed by petitioner Treyes and reconveyance of the subject properties, and shall only be binding among the parties therein.**

8. CIVIL LAW; SUCCESSION; SUCCESSIONAL RIGHTS; THE TRANSMISSION BY SUCCESSION OCCURS AT THE PRECISE MOMENT OF DEATH, AND, THEREFORE, THE HEIR IS LEGALLY DEEMED TO HAVE ACQUIRED OWNERSHIP OF HIS/HER SHARE IN THE INHERITANCE AT THAT VERY MOMENT AND NOT AT THE TIME OF DECLARATION OF HEIRS, OR PARTITION, OR DISTRIBUTION.— The operation of Article 777 occurs at the very moment of the decedent's death – the transmission by succession occurs at the precise moment of death and, therefore, the heir is legally deemed to have acquired ownership of his/her share in the inheritance at that very moment, "and not at the time of declaration of heirs, or partition, or distribution." Hence, the Court has held that the "[t]itle or rights to a deceased person's property are immediately passed to his or her heirs upon death. The heirs' rights become vested without need for them to be declared 'heirs.'"

9. REMEDIAL LAW; COURTS; SUPREME COURT; DECISION; NO DOCTRINE OR PRINCIPLE OF LAW LAID DOWN BY THE COURT IN A DECISION RENDERED *EN BANC* MAY BE MODIFIED OR REVERSED EXCEPT BY THE COURT SITTING *EN BANC*.— It must be noted that the Court's pronouncement in *De Vera*, citing *Hernandez, et al. v. Padua, et al.*, *Uy Coque, et al. v. Sioca, et al.*, *Mendoza Vda. De Bonnevie v. Cecilio*

Vda. De Pardo, and *Government of the Philippine Islands v. Serafica*, is a decision of the Court *En Banc* which cannot be overturned by a ruling of a Division of the Court. The Constitution provides that no doctrine or principle of law laid down by the Court in a decision rendered *En Banc* may be modified or reversed except by the Court sitting *En Banc*. x x x *Ypon, Yaptinchay, Portugal,* and *Reyes,* ***which are all decisions of the Court's Divisions***, in so far as they hold that a prior special proceeding for declaration of heirship is a prerequisite for the assertion by an heir of his/her ownership rights acquired by virtue of succession in an ordinary civil action, did not, as they could not, overturn the Court *En Banc*'s holdings in *De Vera, Cabuyao, Atun*, and *Marabilles* that heirs should be able to assert their successional rights without the necessity of a previous judicial declaration of heirship.

10. ID.; EVIDENCE; DISPUTABLE PRESUMPTIONS; A BIRTH CERTIFICATE, BEING A PUBLIC DOCUMENT, OFFERS *PRIMA FACIE* EVIDENCE OF FILIATION AND A HIGH DEGREE OF PROOF IS NEEDED TO OVERTHROW THE PRESUMPTION OF TRUTH CONTAINED IN SUCH PUBLIC DOCUMENT.— Rule 132, Section 23 of the Rules states that documents consisting of entries in public records made in the performance of a duty by a public officer are *prima facie* evidence of the facts therein stated. The Court has held that a birth certificate, being a public document, offers *prima facie* evidence of filiation and a high degree of proof is needed to overthrow the presumption of truth contained in such public document. This is pursuant to the rule that entries in official records made in the performance of his duty by a public officer are *prima facie* evidence of the facts therein stated.

11. ID.; CIVIL PROCEDURE; PLEADINGS; ACTIONABLE DOCUMENTS; CONSIDERING THAT THE PARTIES' ACTION IS FOUNDED ON THEIR BIRTH CERTIFICATES, THE GENUINENESS AND DUE EXECUTION OF THE BIRTH CERTIFICATES SHALL BE DEEMED ADMITTED UNLESS THE ADVERSE PARTY, UNDER OATH, SPECIFICALLY DENIES THEM, AND SETS FORTH WHAT HE CLAIMS TO BE THE FACTS.— In relation to the foregoing, considering that the private respondents' action is founded on their birth certificates, the genuineness and due execution of the birth certificates shall

be deemed admitted unless the adverse party, under oath, specifically denies them, and sets forth what he claims to be the facts. In the instant case, the records show that there was no specific denial under oath on the part of petitioner Treyes contesting the birth certificates. Therefore, the genuineness and due execution of the subject birth certificates are deemed admitted.

12. ID.; CIVIL PROCEDURE; ACTIONS; ORDINARY CIVIL ACTION; THE LEGAL HEIRS OF A DECEDENT ARE THE PARTIES IN INTEREST TO COMMENCE ORDINARY CIVIL ACTIONS ARISING OUT OF THEIR RIGHTS OF SUCCESSION WITHOUT THE NEED FOR A SEPARATE PRIOR JUDICIAL DECLARATION OF THEIR HEIRSHIP, PROVIDED ONLY THAT THERE IS NO PENDING SPECIAL PROCEEDING FOR THE SETTLEMENT OF THE DECEDENT'S ESTATE.— Hence, despite the promulgation of *Ypon, Yaptinchay, Portugal, Reyes*, and other cases upholding the rule that a prior determination of heirship in a special proceeding is a prerequisite to an ordinary civil action involving heirs, such rule has not been consistently upheld and is far from being considered a doctrine. **To the contrary, a plurality of decisions promulgated by both the Court *En Banc* and its Divisions firmly hold that the legal heirs of a decedent are the parties in interest to commence ordinary civil actions arising out of their rights of succession, without the need for a separate prior judicial declaration of their heirship, provided only that there is no pending special proceeding for the settlement of the decedent's estate.**

13. ID.; RULES OF COURT; CONSTRUCTION; THE RULES ARE NOT MEANT TO SUBVERT OR OVERRIDE SUBSTANTIVE LAW; PROCEDURAL RULES ARE MEANT TO OPERATIONALIZE AND EFFECTUATE SUBSTANTIVE LAW.— By this Decision now, the Court so holds, and firmly clarifies, that the latter formulation is the doctrine which is more in line with substantive law, *i.e.*, Article 777 of the Civil Code is clear and unmistakable in stating that the rights of the succession are transmitted from the moment of the death of the decedent even prior to any judicial determination of heirship. As a substantive law, its breadth and coverage cannot be restricted or diminished by a simple rule in the Rules. To be sure, the Court stresses anew that rules of procedure **must always**

yield to substantive law. The Rules are not meant to subvert or override substantive law. On the contrary, procedural rules are meant to operationalize and effectuate substantive law.

PERLAS-BERNABE, *J., separate concurring opinion*:

1. **REMEDIAL LAW; CIVIL PROCEDURE; ACTIONS; ORDINARY CIVIL ACTION; A PRIOR DECLARATION OF HEIRSHIP IN A SPECIAL PROCEEDING SHOULD NOT BE REQUIRED BEFORE AN HEIR MAY ASSERT SUCCESSIONAL RIGHTS IN AN ORDINARY CIVIL ACTION AIMED ONLY TO PROTECT HIS OR HER INTERESTS IN THE ESTATE.—** As edified in the above cases, a prior declaration of heirship in a special proceeding **should not** be required before an heir may assert successional rights in an ordinary civil action **aimed only to protect his or her interests in the estate**. Indeed, the legal heirs of a decedent should not be rendered helpless to rightfully protect their interests in the estate while there is yet no special proceeding. This requirement, to my mind, substantively modifies the essence of Article 777 of the Civil Code which provides that "[t]he rights to the succession are transmitted from the moment of the death of the decedent."

2. **ID.; ID.; ID.; ID.; ANY DISCUSSION THAT TOUCHES UPON THE ISSUE OF HEIRSHIP SHOULD BE MADE ONLY IN RELATION TO THE CAUSE OF ACTION OF THE ORDINARY CIVIL ACTION.—** At this point, it is well to recognize that in these **ordinary civil actions aimed merely to protect the interest of the heirs so that the properties in dispute may properly revert to the estate**, the court (unlike in this case where heirship is not at issue) might have to tackle the issue of heirship so as to determine whether or not: (*a*) the plaintiff/defendant-heirs are real parties-in-interest to the suit; and (*b*) they are entitled to the reliefs sought. The court is competent to pass upon these matters but it must be stressed that **any discussion that touches upon the issue of heirship should be made only "in relation to the cause of action of the ordinary civil action" and for the limited purpose of resolving the issue/s therein, and such finding would not operate to bar the parties from raising the same issue of heirship in the appropriate forum, *i.e.*, special proceedings**.

As such, any declaration of heirship made in an ordinary civil action to recover property should only be deemed as ***provisional*** to the extent that it is necessary to determine who between the parties has the better right to possess/own the same.

3. ID.; ID.; ID.; ID.; IN ORDINARY CIVIL ACTIONS, THE RULING OF THE COURT, WHEN FAVORABLE TO THE HEIRS, SHOULD BE LIMITED TO THE REVERSION OF THE PROPERTY/IES IN LITIGATION BACK TO THE ESTATE OF THE DECEDENT.— Furthermore, and at the risk of belaboring the point, in such ordinary civil actions, the court's ruling, if in favor of the heirs, should be limited to the **reversion of the property/ies in litigation back to the estate of the decedent**. Verily, as the courts *a quo* have herein recognized, the court cannot, as a general rule, order the partition of the property/ies of the decedent and distribute it/them among the heirs, because the court simply has no jurisdiction to do so in this ordinary civil action. In this relation, a special proceeding for the settlement of estate is necessary to not only definitively determine who are the true and lawful heirs to which specific portions of the estate may be distributed, but also, even prior thereto, to first pay off the claims against the estate, which is essential to ascertain the net estate to be distributed.

ZALAMEDA, J., concurring opinion:

1. REMEDIAL LAW; CIVIL PROCEDURE; ACTIONS; ORDINARY CIVIL ACTION; THE PUTATIVE OR ALLEGED HEIRS ARE TO BE CONSIDERED REAL PARTIES-IN-INTEREST TO FILE THE ORDINARY CIVIL ACTIONS FOR CANCELLATION OF A DEED OR INSTRUMENT AND RECONVEYANCE OF PROPERTY DESPITE LACK OF A PREVIOUS JUDICIAL DECLARATION OF HEIRSHIP IN AN APPROPRIATE CIVIL PROCEEDING, FOR AS LONG AS THEY CAN SHOW PREPONDERANT PROOF OF THEIR RELATIONSHIP OR FILIATION TO THE DECEASED.— Following long-settled precedents, the *ponencia* correctly held that the legal heirs, like herein respondents, are authorized, by operation of law and from the moment of the decedent's death, to fully protect their successional rights, without having to first go through the rigors of proving their filiation or relation to the

decedent in a separate special proceeding for that purpose. There is indeed clearly no judicial declaration of heirship necessary for an heir to assert his or her right to the property of the deceased, as what the Court emphasized in the fairly recent case of *Capablanca v. Heirs of Bas (Capablanca)*. The putative or alleged heirs are to be considered real parties-in-interest to file the ordinary civil actions for cancellation of a deed or instrument and reconveyance of property, despite lack of a previous judicial declaration of heirship in an appropriate civil proceeding, for as long as they can show preponderant proof of their relationship or filiation to the deceased. This is because they are merely asserting their successional rights on the property, which are transmitted to them from the moment of death of the decedent, in accordance with Article 777 of the New Civil Code.

2. ID.; SPECIAL PROCEEDINGS; THE DETERMINATION OF WHO THE LEGAL HEIRS OF THE DECEASED ARE MUST BE MADE IN THE PROPER SPECIAL PROCEEDINGS IN COURT, AND NOT IN AN ORDINARY SUIT FOR RECOVERY OF OWNERSHIP AND POSSESSION OF PROPERTY.— It is an equally long-standing rule that the determination of who the legal heirs of the deceased are must be made in the proper special proceedings in court, and not in an ordinary suit for recovery of ownership and possession of property. x x x The rationale for the doctrine that the declaration of heirship must be made in a special proceeding, and not in an independent civil action, cannot be disregarded. A prior special proceeding must, in some cases, be instituted for the declaration of heir precisely because it seeks to **establish the parties' right or status as an heir.** This cannot be done in an ordinary civil action considering that it serves a different purpose, *i.e.*, the **enforcement or protection of rights.**

GESMUNDO, *J., concurring and dissenting opinion*:

1. CIVIL LAW; SUCCESSION; SUCCESSIONAL RIGHTS; TRANSMISSION OF SUCCESSIONAL RIGHTS; REQUISITES.— Although death marks the precise moment when the transmission of successional rights takes place, it is not the only factor for effective transmission of the decedent's property to the successors. In order for there to be effective transmission, the following are the requisites: (1) death of

decedent which produces the opening of succession; (2) the express will of the testator calling certain persons to succeed him or in default thereof, the provision of law prescribing the successor; (3) **existence and capacity of the successor**; and (4) acceptance of the inheritance by the successor.

2. **ID.; ID.; ID.; THERE IS A NEED FOR DECLARATION OF HEIRSHIP BE IT EITHER JUDICIAL OR EXTRAJUDICIAL AS THE CASE MAY BE, TO DETERMINE THE EXISTENCE AND CAPACITY OF THE SUCCESSOR.— Death opens the door for succession. But settlement proceedings, which entail the determination of the heirs entitled to the transfer of properties from the decedent, the determination of respective shares by way of partition or by way of testamentary disposition and ultimately the distribution of their respective shares in the decedent's property, closes the door of succession so to speak.** Evidently, there is a need for declaration of heirship be it either judicial or extrajudicial, as the case may be, to determine the existence and capacity of the successor.

3. **REMEDIAL LAW; SPECIAL PROCEEDINGS; SETTLEMENT OF ESTATE; THE JUDICIAL DECLARATION OF HEIRSHIP CAN BE MADE ONLY IN A SPECIAL PROCEEDING INASMUCH AS THE PARTY THEREIN IS SEEKING THE ESTABLISHMENT OF A STATUS OR RIGHT AS AN HEIR.—** The judicial declaration of heirship can be made only in a special proceeding inasmuch as the petitioners therein are seeking the establishment of a status or right as an heir. Under Section 1, Rule 73 of the Rules of Court, the court where the special proceeding is filed for the declaration of heirship shall exercise jurisdiction to the exclusion of all other courts. x x x [A] special proceeding for the declaration of heirs should be instituted, precisely, to establish the rights and status of the heirs. An ordinary civil action is not the proper remedy because the establishment of the status of the heirs is not within its purpose.

4. **ID.; ID.; ID.; ID.; EXCEPTIONS.—** As jurisprudence evolved, several exceptions to the general rule on the judicial declaration of heirs were formulated. An ordinary civil action involving the declaration of the heirs may be instituted, without a prior or separate special proceeding, in the following instances: 1. When the parties in the civil case had voluntarily submitted

the issue to the trial court and already represented their evidence regarding the issue of heirship; 2. When a special proceeding had been instituted but had been finally closed and terminated, and hence, cannot be re-opened.

5. ID.; ID.; ID.; ID.; ID.; RATIONALE.— The first exception was formulated due to practicality. When the parties have already voluntarily presented evidence regarding their rights as heirs in the ordinary civil action, it would be impractical to compel them to institute a separate special proceeding to determine the same issue. x x x Thus, for the sake of expediency, the Court allows the parties to institute an ordinary civil action regarding the rights of an heir even without a special proceeding for the declaration of heirs. To rule otherwise would result to unnecessary litigation because the pieces of evidence on the issue of heirship were already voluntarily presented by both parties and to dismiss the ordinary civil action would further delay the proceeding since a separate special proceeding for the declaration of heirs would tackle the same issue and evidence. In said instance, an ordinary civil action which considers the issue on the declaration of heirship, is justified. The second exception was formulated in order to give an opportunity to the rightful heirs, who were not able to participate in the special proceeding that was already closed and terminated, to assert their successional rights even in an ordinary civil action. x x x Consequently, this second exception was established so that the rights of the heirs are still recognized despite the termination of the special proceeding for the declaration of heirs.

6. ID.; CIVIL PROCEDURE; PLEADINGS; COMPLAINT; ALLEGATIONS; THE NATURE OF A COMPLAINT IS DETERMINED NOT BY THE CAPTION OF THE SAME BUT BY THE ALLEGATIONS THEREIN AND RELIEF PRAYED FOR.— [T]he nature of a complaint is determined, not by the caption of the same, but by the allegations therein and relief prayed for[.] x x x Thus, because the ultimate relief sought by private respondents was the partition of the decedent's properties, as indicated in the third relief sought, then the complaint should be treated as an action for partition. The first and second reliefs sought, which are the annulment of petitioner's Affidavits of Self-Adjudication and the reconveyance of the properties, are simply consequences of the third relief – the partition of the properties.

7. ID.; SPECIAL CIVIL ACTIONS; PARTITION; NATURE. — For actions for partition, the subject matter is two-phased. In *Bagayas v. Bagayas*, the Court ruled that partition is at once an action for: (1) declaration of co-ownership; and (2) segregation and conveyance of a determinate portion of the properties involved. Thus, in a complaint for partition, the plaintiff seeks, first, a declaration that he/she is a co-owner of the subject properties, and second, the conveyance of his/her lawful share. Further, it was explained by the Court in *Heirs of Feliciano Yambao v. Heirs of Hermogenes Yambao*, that an action for partition cannot be considered a collateral attack on the certificates of title of the heir that excluded the other heirs in the extrajudicial settlement of the estate; rather, it is a proper action because the excluded heirs are seeking to enforce their rights as co-owners of the inherited properties[.]

LEONEN, *J., dissenting opinion*:

1. REMEDIAL LAW; SPECIAL PROCEEDINGS; SETTLEMENT OF ESTATE; INSTANCES WHERE ONE MAY ESTABLISH HEIRSHIP.— Thus, I do not agree that it is no longer necessary to go through a special proceeding to declare one's status as an heir, even if such declaration is merely incidental to the purpose of the ordinary civil action. There are only three (3) ways in which one may establish heirship, namely: (1) an extrajudicial settlement under Rule 74, Section 4 of the Rules of Court; (2) a judicial summary settlement; and (3) a settlement of estate through testate or intestate. If none of these remedies are utilized, there could be no declaration of heirs.

2. ID.; ID.; ID.; ID.; EXCEPTIONS; NOT PRESENT IN THE CASE AT BAR.— [T]he majority highlights the exceptions to the rule that a determination of heirship in a special proceeding is a prerequisite to an ordinary civil action involving heirs, namely: (1) "when the parties in the civil case had voluntarily submitted the issue to the trial court and already presented their evidence regarding the issue of heirship"; and (2) when a special proceeding had been instituted but had been finally closed and terminated, and hence, cannot be re-opened." Evidently, neither of the exceptions applies.

3. ID.; ID.; ID.; SPECIAL PROCEEDINGS ARE EQUIPPED WITH DIFFERENT PROCEDURES THAT WOULD

MAKE ITS DECISION CONCLUSIVE TO ALL AND NOT JUST TO THE PARTIES INVOLVED; THIS ENSURES THAT THE PARTITION OF THE DECEDENT'S ESTATE WOULD REACH A FINALITY.— The rule that heirship must first be declared in a special proceeding is not merely so a probate court is given precedence over a regular court in estate proceedings. Instead, what is being prevented is the lack of notice an ordinary civil action has to the entire world as opposed to that of a special proceeding. If parties institute any ordinary civil action that essentially declares heirship, anyone outside of this action can simply contest the ruling, as this is not an action *in rem*. On the contrary, special proceedings are equipped with different procedures that would make its decision conclusive to all, and not just to the parties involved. This ensures that the partition of the decedent's estate would reach a finality. Contrary to the majority's assertion, to allow the determination of heirship in an ordinary civil action would in no way contribute to judicial economy.

APPEARANCES OF COUNSEL

Escudero Marasigan Vallente & E.H. Villareal for petitioner.
Hermosisima, Hermosisima & Hermosisima for respondents.

D E C I S I O N

CAGUIOA, *J.*:

Under the Civil Code, when the brothers and sisters of a deceased married sister survive with her widower, the latter shall be entitled by law to one-half of the inheritance and the brothers and sisters to the other half.[1] *The Civil Code likewise states that this successional right of the legal heirs is vested in them from the very moment of the decedent's death.*[2]

Given that successional rights are conferred by the Civil Code, a substantive law, the question to be resolved here by

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[1] Art. 1001, CIVIL CODE.

[2] Art. 777, CIVIL CODE.

the Court is whether a prior determination of the status as a legal or compulsory heir in a separate special proceeding is a prerequisite to an ordinary civil action seeking for the protection and enforcement of ownership rights given by the law of succession. The Court now definitively settles this question once and for all.

Before the Court is a petition for review on *certiorari*[3] (Petition) under Rule 45 of the Rules of Court (Rules) filed by petitioner Dr. Nixon L. Treyes (petitioner Treyes) assailing the Decision[4] dated August 18, 2016 (assailed Decision) and Resolution[5] dated June 1, 2017 (assailed Resolution) promulgated by the Court of Appeals, Cebu City (CA)[6] in CA-G.R. SP Case No. 08813, which affirmed the Resolution[7] dated July 15, 2014 and Order[8] dated August 27, 2014 issued by public respondent Hon. Kathrine A. Go (Go), in her capacity as presiding judge of the Regional Trial Court of San Carlos City, Branch 59 (RTC) in favor of private respondents Antonio L. Larlar (Antonio), Rev. Fr. Emilio L. Larlar (Emilio), Heddy L. Larlar (Heddy), Rene L. Larlar (Rene), Celeste L. Larlar (Celeste), Judy L. Larlar (Judy), and Yvonne L. Larlar (Yvonne) (collectively, the private respondents).

The Facts and Antecedent Proceedings

As culled from the records, the essential facts and antecedent proceedings are as follows:

On May 1, 2008, Rosie Larlar Treyes (Rosie),the wife of petitioner Treyes, passed away.[9] Rosie, who did not bear any

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[3] *Rollo*, pp. 15-55.

[4] Id. at 214-219. Penned by Associate Justice Edward B. Contreras and concurred in by Associate Justices Edgardo L. Delos Santos (now a Member of this Court) and Geraldine C. Fiel-Macaraig.

[5] Id. at 223-225.

[6] Nineteenth Division.

[7] Rollo, pp. 288-290.

[8] Id. at 317.

[9] Id. at 19; *see* Certificate of Death dated May 2, 2008, id. at 253.

children with petitioner Treyes, died without any will.[10] Rosie also left behind seven siblings, *i.e.*, the private respondents Antonio, Emilio, Heddy, Rene, Celeste, Judy, and Yvonne.

At the time of her death, Rosie left behind 14 real estate properties,[11] situated in various locations in the Philippines, which she owned together with petitioner Treyes as their conjugal properties (subject properties).

Subsequently, petitioner Treyes executed two Affidavits of Self-Adjudication dated September 2, 2008[12] and May 19, 2011.[13] The first Affidavit of Self-Adjudication was registered by petitioner Treyes with the Register of Deeds (RD) of Marikina City on March 24, 2011, while the second Affidavit of Self-Adjudication was registered with the RD of San Carlos City, Negros Occidental on June 5, 2011. In these two Affidavits of Self-Adjudication, petitioner Treyes transferred the estate of Rosie unto himself, claiming that he was the sole heir of his deceased spouse, Rosie.[14]

As alleged by the private respondents, they sent a letter dated February 13, 2012 to petitioner Treyes requesting for a conference to discuss the settlement of the estate of their deceased sister, Rosie. The private respondents maintain that they never heard from petitioner Treyes regarding their request.[15] Undaunted, the private respondents again wrote to petitioner Treyes on April 3, 2012, requesting for the settlement of their sister's estate, but this request fell on deaf ears.[16]

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[10] Id.

[11] Covered by Transfer Certificates of Title (TCT) Nos. T-249139, T-554522, M-43623, T-18709, T-18698, T-18699, T-18700, T-18701, T-18757, T-18758, T-18759, T-18760, T-18761, and T-627723; id. at 90-93.

[12] Id. at 270-280.

[13] Id. at 282-287.

[14] Id. at 278, 286.

[15] Id. at 235.

[16] Id.

The private respondents then alleged that sometime during the latter part of 2012, they discovered to their shock and dismay that the TCTs previously registered in the name of their sister and petitioner Treyes had already been cancelled, except TCT No. M-43623 situated in Tanay, Rizal and TCT No. T-627723 situated in Cabuyao, Laguna. New titles had been issued in the name of petitioner Treyes on the basis of the two Affidavits of Self-Adjudication.[17]

Hence, the private respondents filed before the RTC a Complaint[18] dated July 12, 2013 (Complaint) for annulment of the Affidavits of Self-Adjudication, cancellation of TCTs, reconveyance of ownership and possession, partition, and damages against petitioner Treyes, the RD of Marikina, the RD of the Province of Rizal, and the RD of the City of San Carlos, Negros Occidental. The case was docketed as Civil Case No. RTC-1226.

In their Complaint, the private respondents alleged that petitioner Treyes fraudulently caused the transfer of the subject properties to himself by executing the two Affidavits of Self-Adjudication and refused to reconvey the shares of the private respondents who, being the brothers and sisters of Rosie, are legal heirs of the deceased. Aside from asking for the declaration of the nullity of the Affidavits of Self-Adjudication, the private respondents also prayed for the cancellation of all the TCTs issued in favor of petitioner Treyes, the reconveyance to the private respondents of their successional share in the estate of Rosie, the partition of the estate of Rosie, as well as moral damages, exemplary damages, attorney's fees, and other litigation expenses.[19]

As alleged by petitioner Treyes, his household helper, Elizabeth Barientos (Barientos),was supposedly aggressively approached on October 18, 2013 by two persons who demanded

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[17] Id.

[18] Id. at 228-241.

[19] Id. at 238-239.

that she receive a letter for and on behalf of petitioner Treyes. Barientos refused. As it turned out, the said letter was the summons issued by the RTC addressed to petitioner Treyes in relation to the Complaint filed by the private respondents.[20]

Petitioner Treyes, through counsel, then filed an Entry of Special Appearance and Motion to Dismiss dated October 25, 2013 (first Motion to Dismiss),asking for the dismissal of the Complaint due to lack of jurisdiction over the person of petitioner Treyes.[21] Eventually, however, a re-service of summons was ordered by the RTC in its Order dated May 12, 2014.[22] On June 5, 2014, petitioner Treyes was personally served with another Summons[23] dated May 12, 2014 together with a copy of the Complaint.[24]

Petitioner Treyes then filed another Motion to Dismiss[25] dated June 20, 2014 (second Motion to Dismiss),arguing that the private respondents' Complaint should be dismissed on the following grounds: (1) improper venue; (2) prescription; and (3) lack of jurisdiction over the subject matter.

In its Resolution[26] dated July 15, 2014, the RTC denied for lack of merit petitioner Treyes' second Motion to Dismiss. Nevertheless, the RTC held that it did not acquire jurisdiction over the Complaint's third cause of action, *i.e.*, partition:

> x x x A perusal of the Complaint shows that the causes of action are 1) the Annulment of the Affidavit of Self-Adjudication; 2) Reconveyance; (3) Partition; and 4) Damages. **Hence, the Court has jurisdiction over the first, second and fourth causes of action**

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[20] Supra note 9.

[21] Id. at 19-20.

[22] Id. at 20.

[23] Id. at 227.

[24] Id. at 20.

[25] Id. at 242-252.

[26] Supra note 7.

but no jurisdiction over the third cause of action of Partition and the said cause of action should be dropped from the case.[27]

Unsatisfied with the aforesaid Resolution of the RTC, petitioner Treyes filed an Omnibus Motion[28] dated July 28, 2014 (1) to reconsider the Resolution dated August 15, 2014 and (2) to defer filing of Answer.

In response, private respondents filed their Opposition[29] dated August 19, 2014 to the Omnibus Motion of petitioner Treyes dated July 28, 2014, to which petitioner Treyes responded with his Reply[30] with leave dated August 27, 2014.

In its Order[31] dated August 27, 2014, the RTC denied the Omnibus Motion and directed petitioner Treyes to file his responsive pleading within 15 days from receipt of the Order.

Petitioner Treyes then filed before the CA a petition for *certiorari*[32] dated October 28, 2014 under Rule 65 with urgent prayer for the immediate issuance of a temporary restraining order and/or writ of preliminary injunction, asserting that the RTC's denial of his second Motion to Dismiss was committed with grave abuse of discretion amounting to lack or excess of jurisdiction.

The Ruling of the CA

In its assailed Decision, the CA denied petitioner Treyes' petition for *certiorari*.The dispositive portion of the assailed Decision of the CA reads:

WHEREFORE, the petition is DENIED. The Order dated dated *(sic)* August 27, 2014, and the Resolution dated July 15, 2014 are AFFIRMED.

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[27] Id. at 289. Emphasis supplied.

[28] Id. at 291-305.

[29] Id. at 306-309.

[30] Id. at 310-316.

[31] Supra note 8.

[32] Id. at 56-82.

SO ORDERED.[33]

The CA held that the RTC did not commit grave abuse of discretion in denying petitioner Treyes' second Motion to Dismiss. Since the Complaint primarily seeks to annul petitioner Treyes' Affidavits of Self-Adjudication, which partakes the nature of an ordinary civil action, the CA found that the RTC had jurisdiction to hear and decide the private respondents' Complaint. Further, the CA held that since the case was an ordinary civil action, the proper venue is San Carlos City, Negros Occidental. Lastly, the CA held that the action of the private respondents is not barred by prescription.

Petitioner Treyes filed a Motion for Reconsideration[34] dated September 26, 2016, which was subsequently denied by the CA in its assailed Resolution.[35]

Hence, the instant Petition.

The private respondents filed their Comment[36] dated May 16, 2018 to the Petition, to which petitioner Treyes responded with his Reply[37] dated September 17, 2018.

The Issue

The central question to be resolved by the Court is whether or not the CA was correct in ruling that the RTC did not commit grave abuse of discretion amounting to lack or excess of jurisdiction when it denied petitioner Treyes' second Motion to Dismiss.

The Court's Ruling

In the instant case, petitioner Treyes maintains that the RTC committed grave abuse of discretion amounting to lack or excess

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[33] Id. at 218.

[34] Id. at 318-334.

[35] Supra note 5.

[36] Id. at 342-358.

[37] Id. at 389-404.

of jurisdiction in denying its second Motion to Dismiss, arguing, in the main, that the RTC should have dismissed the private respondents' Complaint on the basis of three grounds: a) improper venue, b) prescription, and c) lack of jurisdiction over the subject matter and, corrolarily, lack of real parties in interest. The Court discusses these grounds *ad seriatim*.

I. *Improper Venue*

Citing Rule 73, Section 1 of the Rules,[38] petitioner Treyes posits that the correct venue for the settlement of a decedent's estate is the residence of the decedent at the time of her death, which was at No. 1-C, Guatemala Street, Loyola Grand Villas, Loyola Heights, Katipunan Avenue, Quezon City. Hence, petitioner Treyes maintains that the settlement of her estate should have been filed with the RTC of Quezon City, and not at San Carlos City, Negros Occidental.

The Court finds and holds that the Complaint cannot be dismissed on the ground of improper venue on the basis of Rule 73 because such Rule refers exclusively to the special proceeding of settlement of estates and NOT to ordinary civil actions. Invoking Rule 73 to allege improper venue is entirely inconsistent with petitioner Treyes' assertion in the instant Petition[39] that the Complaint is not a special proceeding but an ordinary civil action.

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[38] **SECTION 1.** *Where estate of deceased person settled.*— If the decedent is an inhabitant of the Philippines at the time of his death, whether a citizen or an alien, his will shall be proved, or letters of administration granted, and his estate settled, in the Court of First Instance in the province in which he resides at the time of his death, and if he is an inhabitant of a foreign country, the Court of First Instance of any province in which he had estate. The court first taking cognizance of the settlement of the estate of a decedent, shall exercise jurisdiction to the exclusion of all other courts. The jurisdiction assumed by a court, so far as it depends on the place of residence of the decedent, or of the location of his estate, shall not be contested in a suit or proceeding, except in an appeal from that court, in the original case, or when the want of jurisdiction appears on the record.

[39] *Rollo*, p. 16.

Moreover, the Court finds that improper venue as a ground for the dismissal of the Complaint was already deemed waived in accordance with the Omnibus Motion Rule.

According to Rule 9, Section 1 of the Rules, defenses and objections not pleaded either in a motion to dismiss or in the answer are deemed waived, except with respect to the grounds of (1) lack of jurisdiction over the subject matter; (2) *litis pendentia*;(3) *res judicata*; and (4) prescription of the action. In turn, Rule 15, Section 8 states that a motion attacking a pleading, order, judgment, or proceeding shall include all objections then available, and all objections not so included shall be deemed waived.

Hence, under the Omnibus Motion Rule, when the grounds for the dismissal of a Complaint under Rule 16, Section 1[40] are not raised in a motion to dismiss, such grounds, except the grounds of lack of jurisdiction over the subject matter, *litis pendentia*, *res judicata*, and prescription, are deemed waived.

In the instant case, prior to the filing of the second Motion to Dismiss, the first Motion to Dismiss was already filed by petitioner Treyes asking for the dismissal of the Complaint

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[40] **SECTION 1.** *Grounds*.— Within the time for but before filing the answer to the complaint or pleading asserting a claim, a motion to dismiss may be made on any of the following grounds:

(a) That the court has no jurisdiction over the person of the defending party;

(b) That the court has no jurisdiction over the subject matter of the claim;

(c) That venue is improperly laid;

(d) That the plaintiff has no legal capacity to sue;

(e) That there is another action pending between the same parties for the same cause;

(f) That the cause of action is barred by a prior judgment or by the statute of limitations;

(g) That the pleading asserting the claim states no cause of action;

(h) That the claim or demand set forth in the plaintiff's pleading has been paid, waived, abandoned, or otherwise extinguished;

(i) That the claim on which the action is founded is enforceable under the provisions of the statute of frauds; and

(j) That a condition precedent for filing the claim has not been complied with. (1a)

solely on the ground of lack of jurisdiction over the person of petitioner Treyes.[41] The defense of improper venue was already very much available to petitioner Treyes at the time of the filing of the first Motion to Dismiss. Under the Rules, raising the ground of improper venue would not have been prejudicial to petitioner Treyes' cause as raising such defense could not have been deemed a voluntary appearance.[42] Hence, there was no valid reason to justify the failure to invoke the ground of improper venue in the first Motion to Dismiss. Stated differently, as the issue of improper venue was not raised in the first Motion to Dismiss, then this ground is deemed already waived and could no longer be raised in the second Motion to Dismiss.[43]

II. *Prescription*

Petitioner Treyes also argues that the RTC committed grave abuse of discretion in not dismissing the Complaint since the period for the filing of the Complaint had already supposedly prescribed.

The Court likewise finds this argument to be without merit.

The basis of petitioner Treyes in arguing that the Complaint is already barred by prescription is Rule 74, Section 4 of the Rules,[44] which states that an heir or other persons unduly deprived

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[41] Supra note 21.

[42] Rule 14, Sec. 20, RULES OF COURT, provides:

SEC. 20. *Voluntary appearance*.— The defendant's voluntary appearance in the action shall be equivalent to service of summons. The inclusion in a motion to dismiss of other grounds aside from lack of jurisdiction over the person of the defendant shall not be deemed a voluntary appearance. (23a)

[43] *Ernesto Oppen, Inc. v. Compas*, G.R. No. 203969, October 21, 2015, 773 SCRA 546, 557.

[44] **SEC. 4.** *Liability of distributees and estate*.— If it shall appear at any time within two (2) years after the settlement and distribution of an estate in accordance with the provisions of either of the first two sections of this rule, that an heir or other person has been unduly deprived of his lawful participation in the estate, such heir or such other person may compel the settlement of the estate in the courts in the manner hereinafter provided for

of lawful participation in the estate may compel the settlement of the estate in the courts at any time within two years after the settlement and distribution of an estate.

The Court stresses that Rule 74 pertains exclusively to the settlement of estates, which is a special proceeding and NOT an ordinary civil action.[45]

As well, this argument of petitioner Treyes invoking prescription on the basis of Rule 74 is again wholly inconsistent with his main theory that the instant Complaint is not a special proceeding but an ordinary civil action for annulment of the Affidavits of Self-Adjudication, cancellation of TCTs, reconveyance of ownership and possession, and damages.[46]

Moreover, as clarified by the Court in *Sampilo, et al. v. Court of Appeals, et al.*,[47] the provisions of Rule 74, Section 4 barring distributees or heirs from objecting to an extrajudicial partition after the expiration of two years from such extrajudicial partition is applicable only: (1) to persons who have participated or taken part or had notice of the extrajudicial partition, and (2) when the provisions of Section 1 of Rule 74 have been strictly complied with, *i.e.*, that all the persons or heirs of the decedent have

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the purpose of satisfying such lawful participation. And if within the same time of two (2) years, it shall appear that there are debts outstanding against the estate which have not been paid, or that an heir or other person has been unduly deprived of his lawful participation payable in money, the court having jurisdiction of the estate may, by order for that purpose, after hearing, settle the amount of such debts or lawful participation and order how much and in what manner each distributee shall contribute in the payment thereof, and may issue execution, if circumstances require, against the bond provided in the preceding section or against the real estate belonging to the deceased, or both. Such bond and such real estate shall remain charged with a liability to creditors, heirs, or other persons for the full period of two (2) years after such distribution, notwithstanding any transfers of real estate that may have been made.

[45] See Rule 72, Sec. 1, RULES OF COURT.

[46] Supra note 5.

[47] 104 Phil. 70 (1958).

taken part in the extrajudicial settlement or are represented by themselves or through guardians.

Both requirements are absent here as it is evident that not all the legal heirs of Rosie participated in the extrajudicial settlement of her estate as indeed, it was only petitioner Treyes who executed the Affidavits of Self-Adjudication.

In this regard, it is well to note that it is the prescriptive period pertaining to constructive trusts which finds application in the instant case.

To digress, the Civil Code identifies two kinds of trusts, *i.e.*,express and implied. Express trusts are created by the intention of the trustor or of the parties while implied trusts come into being by operation of law.[48] As explained by recognized Civil Law Commentator, former CA Justice Eduardo P. Caguioa, "[e]xpress and implied trusts differ chiefly in that express trusts are created by the acts of the parties, while implied trusts are raised by operation of law, either to carry a presumed intention of the parties or to satisfy the demands of justice or protect against fraud."[49]

An implied trust is further divided into two types, *i.e.*, resulting and constructive trusts.[50] A resulting trust exists when a person makes or causes to be made a disposition of property under circumstances which raise an inference that he/she does not intend that the person taking or holding the property should have the beneficial interest in the property.[51]

On the other hand, a constructive trust exists when a person holding title to property is subject to an equitable duty to convey it to another on the ground that he/she would be unjustly enriched

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[48] Art. 1441, CIVIL CODE.

[49] Eduardo P. Caguioa, COMMENTS AND CASES ON CIVIL LAW, CIVIL CODE OF THE PHILIPPINES, Revised 2nd ed., 1983, Vol. IV, p. 673.

[50] Id. at 674.

[51] Id.

if he/she were permitted to retain it.[52] The duty to convey the property arises because it was acquired through fraud, duress, undue influence, mistake, through a breach of a fiduciary duty, or through the wrongful disposition of another's property.[53]

An example of a constructive trust is found in Article 1456 of the Civil Code,[54] which states that "[i]f property is acquired through mistake or fraud, the person obtaining it is, by force of law, considered a trustee of an implied trust for the benefit of the person from whom the property comes." In *Marquez v. Court of Appeals*,[55] the Court held that in a situation where an heir misrepresents in an affidavit of self-adjudication that he is the sole heir of his wife when in fact there are other legal heirs, and thereafter manages to secure a certificate of title under his name, then "a constructive trust under Article 1456 [i]s established. Constructive trusts are created in equity in order to prevent unjust enrichment."[56] This is precisely the situation in the instant case.

In this situation, it has been settled in a long line of cases that "an action for reconveyance based on an implied or constructive trust prescribes in [10] years from the issuance of the Torrens title [in the name of the trustee] over the property."[57] The 10-year prescriptive period finds basis in Article 1144 of the Civil Code, which states that an action involving an obligation created by law must be brought within 10 years from the time the right of action accrues.

In cases wherein fraud was alleged to have been attendant in the trustee's registration of the subject property in his/her own name, the prescriptive period is 10 years reckoned from

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[52] Id.

[53] Id.

[54] See *Philippine National Bank v. Court of Appeals*, G.R. No. 97995, January 21, 1993, 217 SCRA 347.

[55] G.R. No. 125715, December 29, 1998, 300 SCRA 653.

[56] Id. at 658.

[57] Id. Emphasis and underscoring supplied.

the date of the issuance of the original certificate of title or TCT since such issuance operates as a constructive notice to the whole world, the discovery of the fraud being deemed to have taken place at that time.[58]

Accordingly, it is clear here that prescription has not set in as the private respondents still have until 2021 to file an action for reconveyance, given that the certificates of title were issued in the name of petitioner Treyes only in 2011.

Therefore, considering the foregoing discussion, the ground of prescription raised by petitioner Treyes is unmeritorious.

III. *The Necessity of a Prior Determination of Heirship in a Separate Special Proceeding*

The Court now proceeds to discuss the centerpiece of petitioner Treyes' Petition — that the RTC has no jurisdiction to hear, try, and decide the subject matter of the private respondents' Complaint because the determination of the status of the legal heirs in a separate special proceeding is a prerequisite to an ordinary suit for recovery of ownership and possession of property instituted by the legal heirs.

Jurisdiction over the subject matter of a case is conferred by law and determined by the allegations in the complaint which comprise a concise statement of the ultimate facts constituting the plaintiff's cause of action.[59]

In the instant case, it is readily apparent from the allegations in the Complaint filed by the private respondents that the action was not instituted for the determination of their status as heirs, as it was their position that their status as heirs was already established *ipso jure* without the need of any judicial confirmation. Instead, what the Complaint alleges is that the

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[58] *Lopez v. Court of Appeals*, G.R. No. 157784, December 16, 2008, 574 SCRA 26, 39.

[59] *Gomez v. Montalban*, G.R. No. 174414, March 14, 2008, 548 SCRA 693, 705.

private respondents' rights over the subject properties, by virtue of their being siblings of the deceased, must be enforced by annulling the Affidavits of Self-Adjudication and ordering the reconveyance of the subject properties.

Hence, as correctly held by the RTC in its Resolution[60] dated July 15, 2014, the RTC has jurisdiction over the subject matter of the Complaint, considering that the law confers upon the RTC jurisdiction over civil actions which involve the title to, or possession of, real property, or any interest therein, where the assessed value of the property involved exceeds ₱20,000.00 for civil actions outside Metro Manila, or where the assessed value exceeds ₱50,000.00 for civil actions in Metro Manila.[61]

The Case of Heirs of Magdaleno Ypon v. Ricaforte, et al. and Preceding Cases

Petitioner Treyes cited *Heirs of Magdaleno Ypon v. Ricaforte, et al.*[62] *(Ypon)*, as well as the cases that preceded it, *i.e.*, *Heirs of Guido and Isabel Yaptinchay v. Del Rosario*[63] *(Yaptinchay)*, *Portugal v. Portugal-Beltran*[64] *(Portugal)*, and *Reyes v. Enriquez*[65] *(Reyes)* to buttress his main argument that since the private respondents have yet to establish in a special proceeding their status as legal heirs of Rosie, then the ordinary civil action they instituted must be dismissed for lack of jurisdiction.

In *Ypon*, which contains analogous factual circumstances as the instant case, the therein petitioners filed a complaint for Cancellation of Title and Reconveyance with Damages against the therein respondent. The therein petitioners alleged that, with

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[60] Supra note 7.

[61] Section 19, Batas Pambansa Blg. 129 (The Judiciary Reorganization Act of 1980).

[62] G.R. No. 198680, July 8, 2013, 700 SCRA 778.

[63] G.R. No. 124320, March 2, 1999, 304 SCRA 18.

[64] G.R. No. 155555, August 16, 2005, 467 SCRA 184.

[65] G.R. No. 162956, April 10, 2008, 551 SCRA 86.

the decedent having died intestate and childless, and with the existence of other legal heirs, the therein respondent invalidly executed an Affidavit of Self-Adjudication and caused the transfer of the certificates of title covering the properties of the decedent to himself. The RTC dismissed the complaint holding that it failed to state a cause of action since the therein petitioners had yet to establish their status as heirs.

In sustaining the RTC's dismissal of the complaint, the Court in *Ypon* held that:

> As stated in the subject complaint, petitioners, who were among the plaintiffs therein, alleged that they are the lawful heirs of Magdaleno and based on the same, prayed that the Affidavit of Self-Adjudication executed by Gaudioso be declared null and void and that the transfer certificates of title issued in the latter's favor be cancelled. While the foregoing allegations, if admitted to be true, would consequently warrant the reliefs sought for in the said complaint, the rule that the determination of a decedent's lawful heirs should be made in the corresponding special proceeding precludes the RTC, in an ordinary action for cancellation of title and reconveyance, from granting the same. In the case of *Heirs of Teofilo Gabatan v. CA*, the Court, citing several other precedents, held that the determination of who are the decedent's lawful heirs must be made in the proper special proceeding for such purpose, and not in an ordinary suit for recovery of ownership and/or possession, as in this case:
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> > Jurisprudence dictates that the determination of who are the legal heirs of the deceased must be made in the proper special proceedings in court, and not in an ordinary suit for recovery of ownership and possession of property. This must take precedence over the action for recovery of possession and ownership. The Court has consistently ruled that the trial court cannot make a declaration of heirship in the civil action for the reason that such a declaration can only be made in a special proceeding. Under Section 3, Rule 1 of the 1997 Revised Rules of Court, a civil action is defined as one by which a party sues another for the enforcement or protection of a right, or the prevention or redress of a wrong while a special proceeding is a remedy by which a party seeks to establish a status, a right, or a particular fact. It is then decisively clear that the declaration of heirship can be made only in a special proceeding inasmuch

> as the petitioners here are seeking the establishment of a status or right.
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> In the early case of *Litam, et al. v. Rivera*, this Court ruled that the declaration of heirship must be made in a special proceeding, and not in an independent civil action. This doctrine was reiterated in *Solivio v. Court of Appeals* x x x[.]
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> In the more recent case of *Milagros Joaquino v. Lourdes Reyes*,the Court reiterated its ruling that matters relating to the rights of filiation and heirship must be ventilated in the proper probate court in a special proceeding instituted precisely for the purpose of determining such rights. Citing the case of *Agapay v. Palang*,this Court held that the status of an illegitimate child who claimed to be an heir to a decedent's estate could not be adjudicated in an ordinary civil action which, as in this case, was for the recovery of property.[66]

Nevertheless, the Court likewise added in *Ypon* that there are circumstances wherein a determination of heirship in a special proceeding is not a precondition for the institution of an ordinary civil action for the sake of practicality, *i.e.*, (1) when the parties in the civil case had voluntarily submitted the issue to the trial court and already presented their evidence regarding the issue of heirship, and (2) when a special proceeding had been instituted but had been finally terminated and cannot be re-opened:

> By way of exception, the need to institute a separate special proceeding for the determination of heirship may be dispensed with for the sake of practicality, as when the parties in the civil case had voluntarily submitted the issue to the trial court and already presented their evidence regarding the issue of heirship, and the RTC had consequently rendered judgment thereon, or when a special proceeding had been instituted but had been finally closed and terminated, and hence, cannot be re-opened.[67]

Ordinary Civil Actions vis-à-vis Special Proceedings

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[66] *Heirs of Ypon v. Ricaforte*, supra note 62 at 784-785. Emphasis, underscoring, and citations omitted.

[67] Id. at 786.

In the main, *Ypon*, citing certain earlier jurisprudence, held that the determination of a decedent's lawful heirs should be made in the corresponding special proceeding, precluding the RTC in an ordinary action for cancellation of title and reconveyance from making the same.

According to Rule 1, Section 3 (c) of the Rules, the purpose of a special proceeding is to establish a status, right, or particular fact. As held early on in *Hagans v. Wislizenus*,[68] a "special proceeding" may be defined as "an application or proceeding to establish the status or right of a party, or a particular fact."[69] In special proceedings, the remedy is granted generally upon an application or motion.[70]

In *Pacific Banking Corp. Employees Organization v. Court of Appeals*,[71] the Court made the crucial distinction between an ordinary action and a special proceeding:

> Action is the act by which one sues another in a court of justice for the enforcement or protection of a right, or the prevention or redress of a wrong while special proceeding is the act by which one seeks to establish the status or right of a party, or a particular fact. Hence, action is distinguished from special proceeding in that the former is a formal demand of a right by one against another, while the latter is but a petition for a declaration of a status, right or fact. Where a party-litigant seeks to recover property from another, his remedy is to file an action. Where his purpose is to seek the appointment of a guardian for an insane, his remedy is a special proceeding to establish the fact or status of insanity calling for an appointment of guardianship.[72]

Hence, the main point of differentiation between a civil action and a special proceeding is that in the former, a party sues another for the enforcement or protection of a right which the

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[68] 42 Phil. 880 (1920).

[69] Id. at 882.

[70] Id.

[71] G.R. Nos. 109373 & 112991, March 20, 1995, 242 SCRA 492.

[72] Id. at 503.

party claims he/she is entitled to,[73] such as when a party-litigant seeks to recover property from another,[74] while in the latter, a party merely seeks to have a right established in his/her favor.

Applying the foregoing to ordinary civil actions for the cancellation of a deed or instrument and reconveyance of property on the basis of relationship with the decedent, *i.e.*, compulsory or intestate succession, the plaintiff does not really seek to establish his/her right as an heir. **In truth, the plaintiff seeks the enforcement of his/her right brought about by his/her being an heir by operation of law**.

Restated, the party does not seek to establish his/her right as an heir **because the law itself already establishes that status**.What he/she aims to do is to merely call for the nullification of a deed, instrument, or conveyance as an enforcement or protection of that right which he/she already possesses **by virtue of law**.

Moreover, it is likewise noted that ordinary civil actions for declaration of nullity of a document, nullity of title, recovery of ownership of real property, or reconveyance are actions *in personam*.[75] And thus, they only bind particular individuals although they concern rights to tangible things.[76] **Any judgment therein is binding only upon the parties properly impleaded.**[77] **Hence, any decision in the private respondents' ordinary civil action would not prejudice non-parties**.

To emphasize, any holding by the trial court in the ordinary civil action initiated by the private respondents shall only be in relation to the cause of action, *i.e.*, the

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[73] Rule 1, Sec. 3(a), RULES OF COURT.

[74] *Pacific Banking Corp. Employees Organization v. Court of Appeals*, supra note 71 at 503.

[75] *Muñoz v. Yabut, Jr.*, G.R. Nos. 142676 & 146718, June 6, 2011, 650 SCRA 344, 367.

[76] Id.

[77] Id.

annulment of the Affidavits of Self-Adjudication executed by petitioner Treyes and reconveyance of the subject properties, and shall only be binding among the parties therein.

At this juncture, the Court now deems it proper and opportune to revisit existing jurisprudence on the requisite of establishing one's heirship in a prior special proceeding before invoking such heirship in an ordinary civil action.

The Transmission of the Rights of Heirs at the Precise Moment of Death of the Decedent under the Civil Code

That the private respondents do not really seek in their Complaint the establishment of their rights as intestate heirs but, rather, the enforcement of their rights already granted by law as intestate heirs finds basis in Article 777 of the Civil Code, which states that **the rights of succession are transmitted from the moment of the death of the decedent**.

The operation of Article 777 occurs at the very moment of the decedent's death — the transmission by succession occurs at the precise moment of death and, therefore, the heir is legally deemed to have acquired ownership of his/her share in the inheritance at that very moment, "and not at the time of declaration of heirs, or partition, or distribution."[78]

Hence, the Court has held that the "[t]itle or rights to a deceased person's property are immediately passed to his or her heirs upon death. The heirs' rights become vested without need for them to be declared 'heirs.'"[79]

In *Bonilla, et al. v. Barcena, et al.*,[80] the Court held that:

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[78] Ruben F. Balane, JOTTINGS AND JURISPRUDENCE IN CIVIL LAW (SUCCESSION), 2010 ed., p. 35.

[79] *Heirs of Gregorio Lopez v. Development Bank of the Philippines*, G.R. No. 193551, November 19, 2014, 741 SCRA 153, 163 citing *Bonilla, et al. v. Barcena, et al.*,G.R. No. L-41715, June 18, 1976, 71 SCRA 491.

[80] *Bonilla, et al. v. Barcena, et al.*, supra note 79.

"[F]rom the moment of the death of the decedent, the heirs become the absolute owners of his property, subject to the rights and obligations of the decedent, x x x **[t]he right of the heirs to the property of the deceased vests in them <u>even before judicial declaration of their being heirs</u> in the testate or intestate proceedings**."[81]

In fact, in partition cases, even before the property is judicially partitioned, the heirs are already deemed co-owners of the property. Thus, in partition cases, the heirs are deemed real parties in interest without a prior separate judicial determination of their heirship.[82] Similarly, in the summary settlement of estates, the heirs may undertake the extrajudicial settlement of the estate of the decedent amongst themselves through the execution of a public instrument even without a prior declaration in a separate judicial proceeding that they are the heirs of the decedent.[83] If there is only one legal heir, the document usually executed is an affidavit of self-adjudication even without a prior judicial declaration of heirship.

The Civil Code identifies certain relatives who are deemed compulsory heirs and intestate heirs. They refer to relatives that become heirs by virtue of compulsory succession or intestate succession, as the case may be, by operation of law.

In the instant case, Article 1001 states that brothers and sisters, or their children, who survive with the widow or widower, shall be entitled to one-half of the inheritance, while the surviving spouse shall be entitled to the other half:

> Art. 1001. Should brothers and sisters or their children survive with the widow or widower, the latter shall be entitled to one-half of the inheritance and the brothers and sisters or their children to the other half. (953-837a).

Hence, subject to the required proof, **<u>without any need of prior judicial determination</u>**, the private respondents siblings

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[81] Id. at 495. Emphasis and underscoring supplied.

[82] *Heirs of Gregorio Lopez v. Development Bank of the Philippines*, supra note 79 at 163.

[83] Rule 74, Sec. 1, RULES OF COURT.

of Rosie, **by operation of law**, are entitled to one-half of the inheritance of the decedent. Thus, in filing their Complaint, they do not seek to have their right as intestate heirs established, for the simple reason that it is the law that already establishes that right. What they seek is the enforcement and protection of the right granted to them under Article 1001 in relation to Article 777 of the Civil Code by asking for the nullification of the Affidavits of Self-Adjudication that disregard and violate their right as intestate heirs.

As correctly explained by Senior Associate Justice Estela M. Perlas-Bernabe (Justice Bernabe) in her Separate Opinion, "a prior declaration of heirship in a special proceeding should not be required before an heir may assert successional rights in an ordinary civil action aimed only to protect his or her interests in the estate. Indeed, the legal heirs of a decedent should not be rendered helpless to rightfully protect their interests in the estate while there is yet no special proceeding."[84]

To stress once more, the successional rights of the legal heirs of Rosie are not merely contingent or expectant — they vest upon the death of the decedent. By being legal heirs, they are entitled to institute an action to protect their ownership rights acquired by virtue of succession and are thus real parties in interest in the instant case. To delay the enforcement of such rights until heirship is determined with finality in a separate special proceeding would run counter to Article 777 of the Civil Code which recognizes the vesting of such rights immediately — without a moment's interruption — upon the death of the decedent.

The Originating Case of Litam, et al. v. Espiritu, et al.

The doctrine relied upon by petitioner Treyes, laid down in *Ypon*, *Yaptinchay*, *Portugal*,and *Reyes*,traces its origin to the 1956 case of ***Litam, et al. v. Espiritu, et al.***[85] *(Litam)*.

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[84] Separate Opinion of Justice Bernabe, p. 7.

[85] 100 Phil. 364 (1956).

It then behooves the Court to closely examine this originating case to see whether the development of jurisprudence, finding its current reincarnation in *Ypon*,is faithful to the Court's ruling in *Litam*.

In *Litam*, a special proceeding, *i.e.*, Special Proceeding No. 1537, for the settlement of the Intestate Estate of the deceased Rafael Litam (Rafael), was instituted by one of the supposed sons of the latter, *i.e.*, Gregorio Dy Tam (Gregorio). It was alleged that the children of Rafael, Gregorio and his siblings, were begotten "by a marriage celebrated in China in 1911 with Sia Khin [(Khin)], now deceased" and that Rafael "contracted in 1922 in the Philippines another marriage with Marcosa Rivera [(Marcosa)], Filipino citizen." In Special Proceeding No. 1537, Marcosa denied the alleged marriage of Rafael to Khin and the alleged filiation of Gregorio and his siblings, and prayed that her nephew, Arminio Rivera (Arminio), be appointed administrator of the intestate estate of Rafael. In due course, the court issued the letters of administration to Arminio, who assumed his duties as such, and, later, submitted an inventory of the alleged estate of Rafael.

During the subsistence of the special proceeding, Gregorio and his siblings filed an ordinary civil action complaint, *i.e.*, Civil Case No. 2071, against Marcosa and Arminio in the same court hearing the special proceeding for the settlement of the intestate estate of the decedent, praying for the delivery of the decedent's properties possessed by Marcosa and Arminio to the administrator of the estate of Rafael, as well as damages.

After trial, the Court of First Instance (CFI) issued its judgment dismissing Civil Case No. 2071 and declaring the properties in question to be the exclusive, separate and paraphernal properties of Marcosa. The CFI further declared that Gregorio and his siblings "are not the children of the deceased Rafael Litam, and that his only heir is his surviving wife, Marcosa Rivera."[86]

[86] Id. at 360.

It must be noted that the Court, in upholding the aforementioned judgment of the CFI, did not call for the dismissal of Civil Case No. 2071 because it corollarily involved the issue of heirship in an ordinary civil action. **The CFI did not hold whatsoever that Gregorio and his siblings were not real parties in interest and that their complaint failed to state a cause of action** because their complaint invoked the issue of heirship.

In fact, it must be noted that the Court even affirmed the CFI's judgment in the ordinary civil action, and discussed at length and pronounced its findings as to the status of Gregorio and his siblings as heirs, holding that they "have utterly failed to prove their alleged status as children of Rafael Litam by a marriage with Sia Khin." In plain terms, the Court, in upholding the CFI Decision, affirmed the dismissal of the ordinary civil action, not because it touched upon the issue of heirship, but because the petitioners failed to present sufficient evidence proving their heirship and that the evidence on record actually proved that they were not heirs of Rafael.

The Court found issue with the CFI's Decision only insofar as it made a categorical pronouncement in its dispositive portion that Marcosa was the "only" heir of the decedent, ordering a slight modification in the CFI's Decision:

> Likewise, we are of the opinion that the lower court should not have declared, in the decision appealed from, that Marcosa Rivera is the only heir of the decedent, for such declaration is improper in Civil Case No. 2071, it being within the exclusive competence of the court in Special Proceeding No. 1537, in which it is not as yet, in issue, and, will not be, ordinarily, in issue until the presentation of the project of partition.[87]

What is thus apparent from the Court's Decision in *Litam* is that the CFI was not found to be at fault in appreciating evidence and examining the issue of the alleged heirship of the petitioners in resolving the ordinary civil action. To reiterate, the Court even concurred with the CFI's appreciation of evidence on the

[87] Id. at 378.

heirship of the petitioners therein that were presented during trial. **The Court made no pronouncement whatsoever that since Gregorio and his siblings had not previously obtained a declaration of heirship in a special proceeding, then they should not be considered real parties in interest**. The Court could not have made such pronouncement because Gregorio and his siblings had utterly failed to prove that they were the heirs of Rafael.

What the Court only held was that it was improper for the CFI to have included in the dispositive portion of its Decision a definite and categorical judgment as to Marcosa's status as being the "only" heir as it was not the object and purpose of the ordinary civil action, which prayed in the main for the reconveyance of the subject properties therein, **and wherein a separate special proceeding, *i.e.*, Special Proceeding No. 1537, was already pending** that focused precisely on the contentious issue of whether or not there was an earlier marriage of Rafael to Khin, and whether Gregorio, *et al.*,were the issue of said marriage.

Thus, the Court's ruling in *Litam* was that in an ordinary civil action for reconveyance of property, the invocation of the status of the parties as heirs in the complaint does not preclude the determination of the merits of the said ordinary civil action despite the pendency of the special proceeding for the settlement of the intestate estate of Rafael. What was held to be improper by the Court in *Litam* was the making by the RTC of a conclusive, definite, and categorical declaration in the ordinary civil action regarding Marcosa being the "only" heir of the decedent **when there was already pending before it a special proceeding tackling the contending issues of heirship posed by Gregorio, *et al.***

Hence, a closer look at *Litam* reveals that the underlying foundation of the doctrine invoked by the petitioners is inapt.

Jurisprudential Support on the Institution of an Ordinary Civil Action by Legal Heirs arising out of a Right based on Succession

without the Necessity of a Previous Judicial Declaration of Heirship

To be sure, even prior to the promulgation of *Litam* which, as already explained, does not actually support the doctrine that a determination of heirship in a prior special proceeding is a prerequisite for the resolution of an ordinary civil action, the Court had already pronounced that the legal heirs may commence an ordinary civil action arising out of a right based on succession **without the necessity of a previous and separate judicial declaration of their status as such**.

As early as 1939, the Court *En Banc*, in *De Vera, et al. v. Galauran*[88] *(De Vera)*, held that:

> Arsenio de Vera, as surviving spouse of the deceased Isabel Domingo, acting for himself and as guardian *ad litem* of six minors heirs, instituted an action against Cleotilde Galauran in the Court of First Instance of Rizal **for the annulment of a deed of sale of a registered parcel of land**. It is alleged in the complaint that Arsenio de Vera and his wife Isabel Domingo, now deceased, have mortgaged their property to the defendant to secure a loan received from him, but said defendant illegally made them sign a deed which they then believed to be of mortgage and which turned out later to be of *pacto de retro* sale; and that the six minor children named in the complaint are the legitimate children and legitimate heirs of the deceased Isabel Domingo. **A demurrer was interposed by the defendant alleging that the plaintiffs have no cause of action, for they have not been declared legal heirs in a special proceeding. The demurrer was sustained, and, on failure of plaintiffs to amend, the action was dismissed**.Wherefore, this appeal.
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> **Unless there is pending a special proceeding for the settlement of the estate of a deceased person, the legal heirs may commence an ordinary action arising out of a right belonging to the ancestor, without the necessity of a previous and separate judicial declaration of their status as such.**[89]

It must be noted that the Court's pronouncement in *De Vera*, citing *Hernandez, et al. v. Padua, et al.*,[90] *Uy Coque, et al. v.*

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[88] 67 Phil. 213 (1939).

[89] Id. at 213-214. Emphasis and underscoring supplied.

[90] 14 Phil. 194 (1909).

Sioca, et al.,[91] *Mendoza Vda. de Bonnevie v. Cecilio Vda. de Pardo*,[92] and *Government of the Philippine Islands v. Serafica*,[93] is a decision of the Court *En Banc* which cannot be overturned by a ruling of a Division of the Court. The Constitution provides that no doctrine or principle of law laid down by the Court in a decision rendered *En Banc* may be modified or reversed except by the Court sitting *En Banc*.[94]

Subsequently, in 1954, the Court *En Banc* promulgated its Decision in *Cabuyao v. Caagbay, et al.*[95] *(Cabuyao)*. In the said case, the lower court dismissed a case filed by an alleged lone compulsory heir of the decedent for quieting of title covering the property inherited by the plaintiff from the decedent. The lower court dismissed the aforesaid complaint because "'no action can be maintained until a judicial declaration of heirship has been legally secured.'"[96]

In **reversing** the order of the lower court, the Court *En Banc* noted that "as early as 1904, this Court entertained, in the case of [*Mijares v. Nery*] (3 Phil. 195), the action of an acknowledged natural child to recover property belonging to his deceased father — who had not been survived by any legitimate descendant — **notwithstanding the absence of a previous declaration of heirship in favor of the plaintiff** x x x"[97] and held that "**[t]he right to assert a cause of action as an alleged heir, although he has not been judicially declared to be so, has been acknowledged in a number of subsequent cases**."[98]

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[91] 45 Phil. 430 (1923).

[92] 59 Phil. 486 (1934).

[93] 63 Phil. 93 (1934).

[94] Article VIII, Section 4 (3), 1987 CONSTITUTION.

[95] 95 Phil. 614 (1954).

[96] Id. at 616.

[97] Id. at 620. Emphasis supplied.

[98] Id. Emphasis supplied.

In 1955, the Court *En Banc* reiterated the foregoing holding in *Atun, et al. v. Nuñez, et al.*,[99] *(Atun)* holding that "[t]he rule is settled that the legal heirs of a deceased may file an action arising out of a right belonging to their ancestor, without a separate judicial declaration of their status as such[.]"[100]

Similarly, in *Marabilles, et al. v. Sps. Quito*[101] *(Marabilles)* which was also decided by the Court *En Banc* a month before *Litam* and involves a factual milieu comparable to the instant case, the petitioners therein filed an ordinary civil action for the recovery of a parcel of land on the basis of their being heirs. The lower court dismissed the action on the ground that the petitioners therein did not have legal capacity to sue because "judicial declaration of heirship is necessary in order that an heir may have legal capacity to bring the action to recover a property belonging to the deceased."[102]

The Court *En Banc* reversed the lower court's dismissal of the action and unequivocally held that **as an heir may assert his right to the property of a deceased, no previous judicial declaration of heirship is necessary**:

> Another ground on which the dismissal is predicted is that the complaint states no cause of action because while it appears in the complaint that the land was transferred to one Guadalupe Saralde, deceased wife of Defendant Alejandro Quito, **there is no allegation that said Alejandro Quito and his daughter Aida, a co-Defendant, had been [judicially] declared heirs or administrators of the estate of the deceased. Because of this legal deficiency, the court has concluded that Plaintiffs have no cause of action against Defendants because there is no legal bond by which the latter may be linked with the property**.
>
> **This conclusion is also <u>erroneous</u>.** The rule is that, to determine the sufficiency of a cause of action on a motion to dismiss, only the facts alleged in the complaint should be considered, and considering

[99] 97 Phil. 762 (1955).

[100] Id. at 765.

[101] 100 Phil. 64 (1956).

[102] Id. at 65.

the facts herein alleged, there is enough ground to proceed with the case. **Thus, it appears in the complaint that Guadalupe Saralde is the wife of Alejandro Quito, the Defendant, and as said Guadalupe has already died, under the law, the husband and his daughter Aida are the legal heirs. We have already said that in order that an heir may assert his right to the property of a deceased, no previous judicial declaration of heirship is necessary. It was therefore a mistake to dismiss the complaint on this ground.**[103]

To reiterate, once again, the Court's holdings in *Cabuyao* and *Marabilles* that an heir may assert his/her right to the property of the decedent without the necessity of a previous judicial declaration of heirship are decisions of the Court *En Banc* that cannot be reversed by a ruling of a Division of the Court. *Ypon*, *Yaptinchay*, *Portugal*, and *Reyes*, ***which are all decisions of the Court's Divisions***, in so far as they hold that a prior special proceeding for declaration of heirship is a prerequisite for the assertion by an heir of his/her ownership rights acquired by virtue of succession in an ordinary civil action, did not, as they could not, overturn the Court *En Banc*'s holdings in *De Vera*, *Cabuyao*, *Atun*, and *Marabilles* that heirs should be able to assert their successional rights without the necessity of a previous judicial declaration of heirship.

Similarly, in *Morales, et al. v. Yañez*,[104] which involved an ordinary civil action for the recovery of certain parcels of land, the Court held that the enforcement or protection of rights of heirs from encroachments made or attempted may be undertaken even before their judicial declaration as heirs is made in a special proceeding:

> Appellants contend, however, that for Defendant to acquire a vested right to Eugeniano's property, he must first commence proceedings to settle Eugeniano's estate — which he had not done. There is no merit to the contention. **This Court has repeatedly held that the right of heirs to the property of the deceased is vested from the moment of death. Of course the formal declaration or recognition**

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[103] Id. at 66-67. Emphasis and underscoring supplied.

[104] 98 Phil. 677 (1956).

or enforcement of such right needs judicial confirmation in proper proceedings. But we have often enforced or protected such rights from encroachments made or attempted before the judicial declaration. Which can only mean that the heir acquired hereditary rights even before judicial declaration in testate or intestate proceedings.[105]

In *Gayon v. Gayon*,[106] in denying the argument posed by the defendants therein that they cannot be made defendants in a suit filed against the decedent because "heirs cannot represent the dead defendant, unless there is a declaration of heirship,"[107] the Court held that the heirs may be sued even without a prior declaration of heirship made in a special proceeding:

> Inasmuch, however, as succession takes place, by operation of law, "from the moment of the death of the decedent" and "(t)he inheritance includes all the property, rights and obligations of a person which are not extinguished by his death," it follows that if his heirs were included as defendants in this case, they would be sued, not as "representatives" of the decedent, but as *owners* of an aliquot interest in the property in question, even if the precise extent of their interest may still be undetermined and they have derived it from the decent. Hence, they may be sued without a previous declaration of heirship x x x.[108]

In *Bonilla, et al. v. Barcena, et al.*,[109] an ordinary civil action was instituted by a surviving spouse to quiet title over certain parcels of land. When the surviving spouse passed away during the pendency of the action, the lower court immediately dismissed the case on the ground that a dead person cannot be a real party in interest and has no legal personality to sue. The Court reversed the lower court's ruling, holding that **the right of the heirs to the property of the deceased vests in them even**

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[105] Id. at 678-679. Emphasis and underscoring supplied.

[106] G.R. No. L-28394, November 26, 1970, 36 SCRA 104.

[107] Id. at 107.

[108] Id. at 107-108.

[109] Supra note 79.

before judicial declaration of heirship in a special proceeding.Thus, the lower court should have allowed the substitution by the heirs of the deceased even without any prior judicial determination of their status as heirs:

> The respondent Court, however, instead of allowing the substitution, dismissed the complaint on the ground that a dead person has no legal personality to sue. This is a grave error. Article 777 of the Civil Code provides "that the rights to the succession are transmitted from the moment of the death of the decedent." From the moment of the death of the decedent, the heirs become the absolute owners of his property, subject to the rights and obligations of the decedent, and they cannot be deprived of their rights thereto except by the methods provided for by law. The moment of death is the determining factor when the heirs acquire a definite right to the inheritance whether such right be pure or contingent. **The right of the heirs to the property of the deceased vests in them even before judicial declaration of their being heirs in the testate or intestate proceedings.** When Fortunata Barcena, therefore, died her claim or right to the parcels of land in litigation in Civil Case No. 856, was not extinguished by her death but was transmitted to her heirs upon her death. **Her heirs have thus acquired interest in the properties in litigation and became parties in interest in the case. There is, therefore, no reason for the respondent Court not to allow their substitution as parties in interest for the deceased plaintiff.**[110]

Subsequently, the Court dealt with the same issue in *Baranda, et al. v. Baranda, et al.*,[111] wherein the therein petitioners, claiming to be the legitimate heirs of the decedent, filed a complaint against the therein respondents for the annulment of the sale and the reconveyance of the subject lots. While the lower court initially ruled in favor of the therein petitioners, the appellate court reversed the lower court's ruling because, among other reasons, the therein petitioners are not real parties in interest, having failed to establish in a prior special proceeding their status as heirs.

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[110] Id. at 495. Emphasis and underscoring supplied.

[111] G.R. No. 73275, May 20, 1987, 150 SCRA 59.

The Court **reversed** the appellate court's ruling and held that the legal heirs of a decedent are the parties in interest to commence ordinary actions arising out of the rights belonging to the deceased, without separate judicial declaration as to their being heirs of said decedent, provided only that there is no pending special proceeding for the settlement of the decedent's estate:

> There is also the issue of the capacity to sue of the petitioners who, it is claimed by the private respondents, are not the proper parties to question the validity of the deed of sale. The reason given is that they are not the legitimate and compulsory heirs of Paulina Baranda nor were they parties to the challenged transactions.
>
> It is not disputed that Paulina Baranda died intestate without leaving any direct descendants or ascendants, or compulsory heirs. She was survived, however, by two brothers, namely, Pedro and Teodoro, and several nephews and nieces, including the private respondents, as well as petitioners Flocerfina Baranda, Salvacion Baranda, and Alipio Baranda Villarte, children of two deceased brothers and a sister. The above-named persons, together with Pedro Baranda, who was not joined as a petitioner because he is the father of the private respondents, and the children of another deceased sister, are the legitimate intestate heirs of Paulina Baranda.
>
> The applicable provisions of the Civil Code are the following:
>
> []Art. 1003. If there are no descendants, ascendants, illegitimate children, or a surviving spouse, the collateral relatives shall succeed to the entire estate of the deceased in accordance with the following articles.
>
> []Art. 1005. Should brothers and sisters survive together with nephews and nieces, who are the children of the descendant's brothers and sisters of the full blood, the former shall inherit per capita, and the latter per stirpes.
>
> []Art. 972. The right of representation takes place in the direct descending line, but never in the ascending.
>
> []In the collateral line it takes place only in favor of the children or brothers or sisters, whether they be of the full or half blood.[]

As heirs, the petitioners have legal standing to challenge the deeds of sale purportedly signed by Paulina Baranda for otherwise

property claimed to belong to her estate will be excluded therefrom to their prejudice. Their claims are not merely contingent or expectant, as argued by the private respondents, but are deemed to have vested in them upon Paulina Baranda's death in 1982, as, under Article 777 of the Civil Code, "the rights to the succession are transmitted from the moment of the death of the decedent." While they are not compulsory heirs, they are nonetheless legitimate heirs and so, since they "stand to be benefited or injured by the judgment or suit," are entitled to protect their share of successional rights.

This Court has repeatedly held that "the legal heirs of a decedent are the parties in interest to commence ordinary actions arising out of the rights belonging to the deceased, without separate judicial declaration as to their being heirs of said decedent, provided that there is no pending special proceeding for the settlement of the decedent's estate."[112]

In *Marquez v. Court of Appeals*,[113] the therein petitioners filed a complaint for reconveyance and partition with damages, alleging that both the Affidavit of Adjudication and Deed of Donation *Inter Vivos* executed by the therein private respondents were invalid as the other heirs of the decedent were excluded in the execution of the said instruments. While the issue on real party in interest was not made an issue in the said case, the ruling of the lower court was upheld by the Court, declaring that both the Affidavit of Adjudication and the Donation *Inter Vivos* did not produce any legal effect and did not confer any right whatsoever despite the lack of any determination in a special proceeding as to the heirship of the therein petitioners.

In the 2013 case of *Pacaña-Contreras and Pacaña v. Rovila Water Supply, Inc., et al.*,[114] which was decided around five months after *Ypon*, the therein petitioner heirs filed an action for accounting and damages against the therein respondents. The latter filed a motion to dismiss, alleging that the therein petitioners are not real parties in interest to institute and prosecute

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[112] Id. Emphasis and underscoring supplied.

[113] Supra note 55.

[114] G.R. No. 168979, December 2, 2013, 711 SCRA 219.

the case, just as what is alleged in the instant case. While the lower court denied the motion to dismiss, the appellate court, citing *Litam* and *Yaptinchay*, reversed the lower court and dismissed the case because "the (therein) petitioners should first be declared as heirs before they can be considered as the real parties in interest. This cannot be done in the present ordinary civil case but in a special proceeding for that purpose."[115] Arguing that their declaration as heirs in a special proceeding is not necessary pursuant to the Court's ruling in *Marabilles*, the therein petitioners' petition was granted by the Court which reversed and set aside the appellate court's ruling.

In 2014, the Court, through Senior Associate Justice Marvic M.V.F. Leonen (Justice Leonen), promulgated its Decision in *Heirs of Gregorio Lopez v. Development Bank of the Philippines*,[116] wherein the therein petitioners discovered that one of the heirs executed an affidavit of self-adjudication declaring himself to be the decedent's only surviving heir. The therein petitioners instituted an ordinary civil action for the nullification of the affidavit of self-adjudication. In upholding the nullification of the affidavit of self-adjudication, the Court held that the rights to a deceased person's property are immediately passed to his or her heirs upon death. The heirs' rights become vested without need for them to be declared "heirs":

> Title or rights to a deceased person's property are immediately passed to his or her heirs upon death. The heirs' rights become vested without need for them to be declared "heirs". Before the property is partitioned, the heirs are co-owners of the property.
>
> In this case, the rights to Gregoria Lopez's property were automatically passed to her sons — Teodoro, Francisco, and Carlos — when she died in 1922. Since only Teodoro was survived by children, the rights to the property ultimately passed to them when Gregoria Lopez's sons died. The children entitled to the property were Gregorio, Simplicio, Severino, and Enrique.

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[115] Id. at 227.

[116] Supra note 79.

Gregorio, Simplicio, Severino, and Enrique became co-owners of the property, with each of them entitled to an undivided portion of only a quarter of the property. Upon their deaths, their children became the co-owners of the property, who were entitled to their respective shares, such that the heirs of Gregorio became entitled to Gregorio's one-fourth share, and Simplicio's and Severino's respective heirs became entitled to their corresponding one-fourth shares in the property. The heirs cannot alienate the shares that do not belong to them.[117]

In 2017, the Court promulgated *Capablanca v. Heirs of Pedro Bas, et al.*[118] In the said case, the decedent Norberto Bas (Norberto) purchased a piece of land and took possession. Similar to the instant case, Norberto died without a will and was succeeded by a collateral relative, *i.e.*, his niece and only heir, Lolita Bas Capablanca (Lolita). Subsequently, Lolita learned that a TCT had been issued in the names of the therein respondents on the basis of a reconstituted Deed of Conveyance. Hence, just as in the instant case, a collateral relative, *i.e.*, Lolita, filed a complaint before the RTC of Cebu City for the cancellation of the titles covering the property once owned by the decedent. While the RTC ruled in favor of Lolita, the appellate court reversed the RTC's ruling. The appellate court, citing the case of *Yaptinchay*, held that there is a need for a separate proceeding for a declaration of heirship in order to resolve petitioner's action for cancellation of titles of the property.

In reversing the ruling of the appellate court, the Court, again through Justice Leonen, emphatically held that **no judicial declaration of heirship is necessary in order that an heir may assert his or her right to the property of the deceased**:

The dispute in this case is not about the heirship of petitioner to Norberto but the validity of the sale of the property in 1939 from Pedro to Faustina, from which followed a series of transfer transactions that culminated in the sale of the property to Norberto. For with Pedro's sale of the property in 1939, it follows that there would be no more ownership or right to property that would have been transmitted to his heirs.

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[117] Id. at 163-164.

[118] G.R. No. 224144, June 28, 2017, 828 SCRA 482. Emphasis and underscoring supplied.

x x x What petitioner is pursuing is Norberto's right of ownership over the property which was passed to her upon the latter's death.

This Court has stated that **no judicial declaration of heirship is necessary in order that an heir may assert his or her right to the property of the deceased**. In *Marabilles v. Quito*:

> *The right to assert a cause of action as an heir, although he has not been judicially declared to be so, if duly proven, is well settled in this jurisdiction. This is upon the theory that the property of a deceased person, both real and personal, becomes the property of the heir by the mere fact of death of his predecessor in interest, and as such he can deal with it in precisely the same way in which the deceased could have dealt, subject only to the limitations which by law or by contract may be imposed upon the deceased himself.* Thus, it has been held that "[t]here is no legal precept or established rule which imposes the necessity of a previous legal declaration regarding their status as heirs to an intestate on those who, being of age and with legal capacity, consider themselves the legal heirs of a person, in order that they may maintain an action arising out of a right which belonged to their ancestor" [x x x] A recent case wherein this principle was maintained is *Cabuyao vs. [C]aagbay*.[119] (Emphasis supplied)

Similar to the above-stated case, the private respondents in the instant case did not file their Complaint to establish their filiation with Rosie or apply for the determination of their right as intestate heirs, considering that the law already vested in them, as siblings of the decedent, their status as intestate heirs of Rosie. Rather, the private respondents sought to enforce their already established right over the property which had been allegedly violated by the fraudulent acts of petitioner Treyes.

In the instant Petition, petitioner Treyes argues that the cases of *Marquez v. Court of Appeals, Baranda, et al. v. Baranda, et al.*, and *Heirs of Gregorio Lopez v. Development Bank of the Philippines* find no application in the instant case because the parties in the aforesaid cases were able to present evidence as to their status as heirs and that the determination of their status as heirs was not contested.

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[119] Id. at 492-493. Underscoring supplied; emphasis in the original.

This argument is not well taken.

In the instant case, the Court notes that in substantiating the fact that the private respondents are siblings of Rosie, and thus intestate heirs of the latter by operation of law, **they attached their respective birth certificates proving that they are indeed siblings of Rosie**.[120]

Rule 132, Section 23 of the Rules states that documents consisting of entries in public records made in the performance of a duty by a public officer are *prima facie* evidence of the facts therein stated.

The Court has held that a birth certificate, being a public document, offers *prima facie* evidence of filiation and a high degree of proof is needed to overthrow the presumption of truth contained in such public document. This is pursuant to the rule that entries in official records made in the performance of his duty by a public officer are *prima facie* evidence of the facts therein stated.[121]

To be sure, upon meticulous perusal of the petitioner Treyes' pleadings, it is clear that the status of the private respondents as siblings of Rosie was not even seriously refuted by him. He also does not make any allegation that the birth certificates of the private respondents are fake, spurious, or manufactured. All he says is that there must first be a declaration of the private respondents' heirship in a special proceeding. Clearly, therefore, it cannot be said in the instant case that the private respondents were not able to present evidence as to their status as heirs and that the determination of their status as heirs was seriously contested by petitioner Treyes.

In relation to the foregoing, considering that the private respondents' action is founded on their birth certificates, the genuineness and due execution of the birth certificates shall be deemed admitted unless the adverse party, under oath, specifically denies them, and sets forth what he claims to be

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

[121] *Sayson, et al. v. Court of Appeals, et al.*, G.R. Nos. 89224-25, January 23, 1992, 205 SCRA 321, 328.

the facts.[122] In the instant case, the records show that there was no specific denial under oath on the part of petitioner Treyes contesting the birth certificates. Therefore, the genuineness and due execution of the subject birth certificates are deemed admitted.

Hence, despite the promulgation of *Ypon*, *Yaptinchay*, *Portugal*, *Reyes*, and other cases upholding the rule that a prior determination of heirship in a special proceeding is a prerequisite to an ordinary civil action involving heirs, such rule has not been consistently upheld and is far from being considered a doctrine. **To the contrary, a plurality of decisions promulgated by both the Court *En Banc*[123] and its Divisions[124] firmly hold that the legal heirs of a decedent are the parties in interest to commence ordinary civil actions arising out of their rights of succession, without the need for a separate prior judicial declaration of their heirship, provided only that there is no pending special proceeding for the settlement of the decedent's estate.**

As similarly viewed by Justice Bernabe, the "more recent strand of jurisprudence correctly recognize the legal effects of Article 777 of the Civil Code, and thus, adequately provide for remedies for the heirs to protect their successional rights over the estate of the decedent ***even prior to the institution of a special proceeding for its settlement***."[125]

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[122] Rule 8, Sec. 8, RULES OF COURT.

[123] See *De Vera, et al. v. Galauran*, supra note 88; *Cabuyao v. Caagbay, et al.*, supra note 95; *Atun, et al. v. Nuñez*, supra note 99; and *Marabilles, et al. v. Sps. Quito*, supra note 101.

[124] See *Morales, et al. v. Yañez*, supra note 104; *Gayon v. Gayon*, supra note 106; *Bonilla, et al. v. Barcena, et al.*, supra note 79; *Baranda, et al. v. Baranda, et al.*, supra note 111; *Marquez v. Court of Appeals*, supra note 55; *Pacaña-Contreras and Pacaña v. Rovila Water Supply, Inc., et al.*, supra note 114.; *Heirs of Gregorio Lopez v. Development Bank of the Philippines*, supra note 79; and *Capablanca v. Heirs of Pedro Bas, et al.*, supra note at 118.

[125] Separate Opinion of Justice Bernabe, p. 7. Emphasis and italics in the original.

By this Decision now, the Court so holds, and firmly clarifies, that the latter formulation is the doctrine which is more in line with substantive law, *i.e.*, Article 777 of the Civil Code is clear and unmistakable in stating that the rights of the succession are transmitted from the moment of the death of the decedent even prior to any judicial determination of heirship. As a substantive law, its breadth and coverage cannot be restricted or diminished by a simple rule in the Rules.

To be sure, the Court stresses anew that rules of procedure **must always yield** to substantive law.[126] The Rules are not meant to subvert or override substantive law. On the contrary, procedural rules are meant to operationalize and effectuate substantive law.

Hence, even assuming *arguendo* that the Rules strictly provide that a separate judicial determination of heirship in a special proceeding is a precondition in an ordinary civil action wherein heirship is already established by compulsory succession or intestacy and is only sought to be enforced, which, as already discussed at length, is not the case, the Rules must still yield to the specific provisions of the Civil Code that certain relatives of the decedent attain their status as either compulsory or intestate heirs and that their successional rights are transmitted and enforceable at the very moment of death without the need of such separate judicial determination.

Indeed, the Rules shall always be construed in order to promote their objective of securing a just, speedy, and inexpensive disposition of every action and proceeding.[127]

Hence, it would be highly inimical to the very purpose of the Rules to dispose of matters without the unnecessary and circuitous procedures created by a misreading of the requirements of said Rules, *i.e.*, they still require a separate and lengthy special proceeding for the solitary purpose of establishing the private

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[126] *Padunan v. Department of Agrarian Reform Adjudication Board*, G.R. No. 132163, January 28, 2003, 396 SCRA 196, 204.

[127] Rule 1, Sec. 6, RULES OF COURT.

respondents' status as legal heirs of Rosie, when their heirship has already been deemed established by virtue of civil law, with petitioner Treyes not seriously and substantially refuting that the private respondents are siblings of the decedent. If the Court will subscribe to petitioner Treyes' arguments and grant the instant Petition, it would sanction superfluity and redundancy in procedure. To accept petitioner Treyes' stance will necessarily mean that, moving forward, heirs will not even be able to extra-judicially and summarily settle the estate of a decedent without a prior judicial declaration of heirship in a special proceeding. Ironically, even petitioner Treyes' Affidavits of Self-Adjudication would be legally baseless as he himself has not previously established in a prior special proceeding his status as the husband and heir of Rosie.

Recapitulation

Given the clear dictates of the Civil Code that the rights of the heirs to the inheritance vest immediately at the precise moment of the decedent's death even without judicial declaration of heirship, and the various Court *En Banc* and Division decisions holding that no prior judicial declaration of heirship is necessary before an heir can file an ordinary civil action to enforce ownership rights acquired by virtue of succession through the nullification of deeds divesting property or properties forming part of the estate and reconveyance thereof to the estate or for the common benefit of the heirs of the decedent, the Court hereby resolves to clarify the prevailing doctrine.

Accordingly, the rule laid down in *Ypon*, *Yaptinchay*, *Portugal*, *Reyes*, *Heirs of Gabatan v. Court of Appeals*, and other similar cases, which requires a prior determination of heirship in a separate special proceeding as a prerequisite before one can file an ordinary civil action to enforce ownership rights acquired by virtue of succession, is **abandoned**.

Henceforth, the rule is: **unless there is a pending special proceeding for the settlement of the decedent's estate or for the determination of heirship, the compulsory or intestate heirs may commence an ordinary civil action to declare the**

nullity of a deed or instrument, and for recovery of property, or any other action in the enforcement of their ownership rights acquired by virtue of succession, without the necessity of a prior and separate judicial declaration of their status as such. The ruling of the trial court shall only be in relation to the cause of action of the ordinary civil action, *i.e.*,the nullification of a deed or instrument, and recovery or reconveyance of property, which ruling is binding only between and among the parties.

Therefore, the Court is in total agreement with the CA that the RTC did not commit grave abuse of discretion amounting to lack or excess of jurisdiction in denying petitioner Treyes' second Motion to Dismiss.

WHEREFORE, premises considered, the instant Petition for Review on *Certiorari* under Rule 45 is hereby **DENIED**. The Decision dated August 18, 2016 and Resolution dated June 1, 2017 promulgated by the Court of Appeals, Cebu City, Nineteenth Division in CA-G.R. SP Case No. 08813 are hereby **AFFIRMED.**

SO ORDERED.

Reyes, Jr., Carandang, Lazaro-Javier, Inting, Lopez, and *Gaerlan, JJ.*, concur.

Perlas-Bernabe and *Zalameda, JJ.*, see separate concurring opinions.

Gesmundo, J., see concurring and dissenting opinion.

Peralta, C.J. and *Hernando, J.*, join the concurring and dissenting opinion of *J.* Gesmundo.

Leonen, J., see dissenting opinion.

Delos Santos, J., no part.

Baltazar-Padilla, J., on leave.

SEPARATE CONCURRING OPINION

PERLAS-BERNABE, *J.*:

I concur. The Regional Trial Court of San Carlos City, Branch 59 (RTC) did not gravely abuse its discretion in denying the ***second*** motion to dismiss filed by petitioner Dr. Nixon L. Treyes (petitioner). Hence, the Court of Appeals (CA) correctly denied the petition for *certiorari*[1] filed by petitioner before it.

This case stemmed from a Complaint[2] filed before the RTC by respondents Antonio L. Larlar, *et al.* (respondents) against petitioner. The nature of the action/s may be seen from the four (4) reliefs prayed for in the Complaint as follows:

FIRST ITEM OF RELIEF
(Annulment of Affidavits of Self-Adjudication and Cancellation of Transfer Certificates of Title issued pursuant thereto)

SECOND ITEM OF RELIEF
(Reconveyance)

THIRD ITEM OF RELIEF
(Partition)

FOURTH ITEM OF RELIEF
(Damages)[3]

In their Complaint, respondents alleged that: *(a)* petitioner is the surviving spouse of the decedent, Rosie Larlar Treyes (Rosie),while respondents are the siblings of the latter; *(b)* in gross bad faith and with malicious intent, petitioner executed Affidavits of Self-Adjudication arrogating upon himself Rosie's properties as her "sole" heir, thereby obtaining certificates of title thereto; and *(c)* petitioner's execution of such documents prejudiced respondents, considering that under Article 1001[4]

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[1] *Rollo*, pp. 15-55.

[2] Id. at 228-241.

[3] See *ponencia*, p. 3.

[4] Article 1001 of the CIVIL CODE reads:

of the Civil Code, they are also considered heirs of Rosie, and as such, are legally entitled to share in her estate. Hence, respondents prayed for the following:

> WHEREFORE, premises considered, it is most respectfully prayed of this Honorable Court that, after due notice and hearing, judgment be rendered as follows:
>
> a) Declaring the Affidavits of Self-Adjudication dated September 2, 2008 *(Annex "X")* and May 19, 2011 *(Annex "Y")* as null and void and illegal and ordering the cancellation of all Transfer Certificates of Titles issued pursuant thereto;
>
> b) Ordering the defendant to reconvey the plaintiffs' successional share in the estate of the late ROSIE LARLAR TREYES;
>
> c) Ordering the partition of the estate of ROSIE LARLAR TREYES among the parties hereto who are also the heirs of the latter;
>
> d) Ordering the defendant to pay plaintiffs moral damages of not less than ₱500,000.00 and exemplary damages of not less than ₱500,000.00[; and]
>
> e) Ordering the defendant to pay plaintiffs attorney's fees of ₱200,000.00 and litigation expenses of not less than ₱150,000.00.
>
> Other reliefs as may be just and equitable under the premises are also prayed for.[5]

Initially, petitioner moved for the dismissal of the case (first motion to dismiss) on the ground of *lack of jurisdiction over his person*. After due proceedings, the RTC corrected such defect by re-issuing summons together with the complaint which was duly served on petitioner. Thereafter, petitioner filed another Motion to Dismiss[6] (**second** motion to dismiss), this time,

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Article 1001. Should brothers and sisters or their children survive with the widow or widower, the latter shall be entitled to one-half of the inheritance and the brothers and sisters or their children to the other half.

[5] *Rollo*, pp. 238-239.

[6] Dated June 20, 2014. Id. at 102-112.

specifically invoking *three (3) grounds*, namely, **lack of jurisdiction over the subject matter of the claim**; **improper venue**; and **prescription**. In a Resolution[7] dated July 15, 2014, the RTC denied the motion for lack of merit, but nonetheless recognized that it had no jurisdiction over the third cause of action in the Complaint which is partition:

> To rebut these contentions of the defendant, plaintiffs cite the case of *Ricardo F. Marquez, et al. vs. Court of Appeals* which in essence settles the issues now raised by the defendant.
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> In that case, a father executed an Affidavit of Self-Adjudication unilaterally adjudicating unto himself the property owned by his deceased wife to the exclusion of his children. A civil case was brought by his children for the reconveyance of the said property. The Supreme Court held:
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> > As such, when Rafael Marquez, Sr., for one reason or another, misrepresented in his unilateral affidavit that he was the only heir of his wife when in fact their children were still alive, and managed to secure a transfer certificate of title under his name, a constructive trust under Article 1456 was established. Constructive trusts are created in equity in order to prevent unjust enrichment. They arise contrary to intention against one who, by fraud, duress, or abuse of confidence obtains or holds the legal right to property which he ought not, in equity and good conscience, to hold. Prescinding from the foregoing discussion, did the action for reconveyance prescribe, as held by the Court of Appeals?
> >
> > In this regard, it is settled that an action for reconveyance based on an implied or constructive trust prescribes in ten years from the issuance of the Torrens title over the property.
>
> The factual antecedents in the cited case and in the case at bar are on all points. A perusal of the Complaint shows that the causes of action are 1) the Annulment of the Affidavit of Self-Adjudication; 2) Reconveyance; 3) Partition; and 4) Damages. **Hence, the Court has jurisdiction over the first, second and fourth causes of action but no jurisdiction over the third cause of action of Partition and the said cause of action should be dropped from the case.**

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[7] Id. at 83-85. Penned by Presiding Judge Katherine A. Go.

Lastly, venue is properly laid as it appears from the allegations of the Complaint that majority of the parcels of land object of this case is situated in San Carlos City. As this is an action involving title to real property then the action can be filed in any jurisdiction where the property or a portion thereof is located.

WHEREFORE, in view of the foregoing, the Court hereby resolves to DENY the "Motion to Dismiss" for lack of merit.[8] (Emphasis and underscoring supplied)

Petitioner moved for reconsideration[9] which was denied in an Order[10] dated August 27, 2014. Aggrieved, petitioner filed a petition for *certiorari* before the CA. In a Decision[11] dated August 18, 2016, the CA affirmed the questioned RTC issuances, holding, among others, that:

The Supreme Court has repeatedly held that the legal heirs of a decedent are the parties in interest to commence ordinary actions arising out of the rights belonging to the deceased, without separate judicial declaration as to their being heirs of said decedent, provided that there is no pending special proceeding for the settlement of the decedent's estate. There being no pending special proceeding for the settlement of Mrs. Treyes' estate, Private Respondents, **as her intestate heirs, had the right to sue for the reconveyance of the disputed properties, not to them, but to the estate itself, for distribution later in accordance with law**.

Moreover, Public Respondent admitted that it only has jurisdiction over the Annulment of the Affidavit of Self-Adjudication, Reconveyance, and Damages, while specifically stating that it had no jurisdiction over Partition. Clearly, Public Respondent did not commit grave abuse of discretion.[12]

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[8] Id. at 83-84.

[9] See Omnibus Motion to Reconsider Resolution dated 15 July 2014 and to Defer Filing of Answer dated July 28, 2014; id. at 147-161.

[10] Id. at 86.

[11] Id. at 214-219. Penned by Associate Justice Edward B. Contreras, with Associate Justices Edgardo L. Delos Santos (now a member of the Court) and Geraldine C. Fiel-Macaraig, concurring.

[12] Id. at 217.

As stated above, the CA held that respondents, "as [Rosie's] intestate heirs, had the right to sue for the reconveyance of the disputed properties, not to them, **but to the estate itself, for distribution later in accordance with law**." This hews with the RTC's own recognition that it cannot in an ordinary civil action, yet distribute specific portions of the estate absent a special proceeding for the purpose. **Hence, the RTC's own statement that it has no jurisdiction over the third cause of action, *i.e.*, partition.**

Undaunted, petitioner filed a motion for reconsideration. In a Resolution[13] dated June 1, 2017, the CA denied the motion, holding, *inter alia*, that "[p]rivate [r]espondents were automatically vested with the right to inherit **from Mrs. Treyes the moment she died without a will**. Title or rights to a deceased person's property are immediately passed to his or her heirs upon death. The heirs' rights become vested without need for them to be declared 'heirs.'"[14]

Notably, as earlier mentioned, *the CA did not, in any way, order the actual distribution of the properties forming part of the decedent estate, recognizing that the right to sue for reconveyance is only limited to the disposition that the properties in dispute would revert to the estate itself but for distribution later "in accordance with law."* This phrase "in accordance with law" can only mean a special proceeding.

Unsatisfied still, petitioner filed the instant petition.[15]

After a judicious study of the case, I submit that the CA did not commit any reversible error in holding that the RTC did not gravely abuse its discretion in denying petitioner's **second** motion to dismiss based on the grounds stated therein.

Anent the ground of improper venue, the RTC correctly ruled that venue was properly laid as the properties under litigation are located in San Carlos City, Negros Occidental, and hence,

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[13] Id. at 223-225.

[14] Id. at 224.

[15] Id. at 15-52.

within the territorial jurisdiction of the RTC.[16] Besides, as the *ponencia* pointed out,[17] the ground of improper venue (unlike the excepted grounds of prescription, lack of jurisdiction, *res judicata* and *litis pendentia*[18]) was already deemed waived since petitioner failed to raise the same in his first motion to dismiss pursuant to the Omnibus Motion Rule.

As to the ground of prescription, the RTC's ruling was silent on the matter. Nevertheless, the *ponencia* properly observed that prescription has not yet set in since the present action was practically one for reconvenyance based on an implied/ constructive trust that prescribes in ten (10)-years from the time the Torrens certificate of title was issued. Thus, since the certificate of title was issued in the name of petitioner in 2011, respondents have until 2021 to file their claim.[19]

The final ground raised in the second motion to dismiss is **lack of jurisdiction over the subject matter**. In this regard, petitioner contends that respondents' primary goal in filing the complaint is to have them declared as Rosie's legal heirs, a subject matter which must be properly threshed out in a special proceeding and not in an ordinary civil action such as respondents' complaint.[20] In support of such contention, petitioner cites the cases of *Litam v. Rivera*,[21] *Heirs of Yaptinchay v. Del Rosario*,[22] *Portugal v. Portugal-Beltran*,[23] *Reyes v. Enriquez*,[24] and *Heirs of Ypon v. Ricaforte*[25] *(Ypon)* all of which essentially

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[16] Id. at 84.

[17] See *ponencia*, pp. 6-7.

[18] Section 1, Rule 9, RULES OF COURT.

[19] See *ponencia*, pp. 8-10.

[20] See *rollo*, p. 216.

[21] 100 Phil. 364, 378 (1956).

[22] 363 Phil. 393 (1999).

[23] 504 Phil. 456 (2005).

[24] 574 Phil. 245 (2008).

[25] 713 Phil. 570 (2013).

essentially instruct that "the status of a [person] who claim[s] to be an heir to a decedent's estate could not be adjudicated in an ordinary civil action"[26] and that the "[d]etermination of who are the legal heirs of the deceased must be made in the proper special proceedings in court, and not in an ordinary suit for recovery of ownership and possession of property."[27] Given the foregoing, petitioner asserts that since an ordinary court has no power to declare as to who are the true heirs of a decedent, then the RTC should have dismissed the case on the ground of lack of jurisdiction over the subject matter.[28] Corollary thereto, petitioner further argues that absent a formal declaration of heirship in favor of respondents, they have no legal standing to file the instant suit. He, thus, posits, that it is only after respondents obtain such a declaration in their favor that they can file the instant case in pursuance of their successional shares in Rosie's estate.[29]

Opposing petitioner's contentions, respondents maintain that they did not institute the instant case to have themselves declared as heirs, as they themselves recognize that such is a matter that is properly ventilated in a special proceeding. Rather, they are merely asserting their successional rights in order to nullify the Affidavits of Self-Adjudication executed by petitioner. According to them, a suit for the annulment of said documents partake the nature of an **ordinary civil action** over which the RTC has jurisdiction.[30]

Respondents' assertions are meritorious.

While petitioner invokes *Ypon*, as well as other similar cases wherein it was effectively held that heirs need to first secure a prior declaration of heirship in a special proceeding before

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[26] *Heirs of Gabatan v. CA*, 600 Phil. 112, 125 (2009), citing *Agapay v. Palang*, 342 Phil. 302, 313 (1997).

[27] *Ypon*, supra at 576.

[28] See *rollo*, pp. 24-38.

[29] See id. at 38-39.

[30] See id. at 347.

protecting or defending their interests in the estate, this doctrine appears to have already been *abandoned* in more recent jurisprudence — such as *Heirs of Lopez v. Development Bank of the Philippines*[31] and *Capablanca v. Heirs of Bas*[32] — **wherein the Court has already settled that an heir may assert his right to the property of the deceased, notwithstanding the absence of a prior judicial declaration of heirship made in a special proceeding**.

As edified in the above cases, a prior declaration of heirship in a special proceeding **should not** be required before an heir may assert successional rights in an ordinary civil action **aimed only to protect his or her interests in the estate**. Indeed, the legal heirs of a decedent should not be rendered helpless to rightfully protect their interests in the estate while there is yet no special proceeding. This requirement, to my mind, substantively modifies the essence of Article 777 of the Civil Code which provides that "[t]he rights to the succession are transmitted from the moment of the death of the decedent."[33]

For better perspective, these more recent cases echo case law which instructs that "[p]ending the filing of administration proceedings, **the heirs without doubt have legal personality to bring suit in behalf of the estate of the decedent in accordance with the provision of Article 777 of the [Civil Code]** x x x [; which] in turn is the foundation of the principle that the property, rights and obligations to the extent and value of the inheritance of a person are **transmitted through his death to another or others by his will or by operation of law**."[34] As I see it, this more recent strand of jurisprudence correctly recognizes the legal effects of Article 777 of the Civil Code, and thus, adequately provides for remedies for the heirs to protect their successional rights over the estate of the decedent ***even prior to the institution of a special proceeding for its***

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[31] 747 Phil. 427 (2014).

[32] 811 Phil. 861 (2017).

[33] See *ponencia*, p. 28.

[34] *Rioferio v. Court of Appeals*, 464 Phil. 67 (2004).

settlement. Thus, despite the absence of said special proceeding, an ordinary civil action for the purpose of protecting their legal interest in the estate may be availed of by the putative heirs. In this regard, they are merely asserting their successional rights, which are transmitted to them from the moment of the decedent's death.

However, it must be reiterated that the ordinary civil action would not amount to the actual distribution of the properties forming part of the decedent's estate. As the CA in this case correctly recognized, the right to sue for reconveyance is only limited to the disposition that the properties in dispute **would revert to the estate itself** but for distribution later "in accordance with law," *i.e.*, a special proceeding. It is also in this regard that the RTC itself voluntarily recognized the limits of its own jurisdiction by stating that it had no jurisdiction over the cause of action of partition. Thus, to quote from the CA ruling:

> There being no pending special proceeding for the settlement of Mrs. Treyes' estate, Private Respondents, **as her intestate heirs, had the right to sue for the reconveyance of the disputed properties, not to them, but to the estate itself, for distribution later in accordance with law**.
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> Moreover, [the RTC] admitted that it only has jurisdiction over the Annulment of the Affidavit of Self-Adjudication, Reconveyance, and Damages, **while specifically stating that it had no jurisdiction over Partition. Clearly, Public Respondent did not commit grave abuse of discretion**.[35] (Emphases and underscoring supplied)

At this point, it is well to recognize that in these **ordinary civil actions aimed merely to protect the interest of the heirs so that the properties in dispute may properly revert to the estate**, the court (unlike in this case where heirship is not at issue) might have to tackle the issue of heirship so as to determine whether or not: *(a)* the plaintiff/defendant-heirs are real parties-in-interest to the suit; and *(b)* they are entitled to the reliefs sought. The court is competent to pass upon these matters but it must be stressed that **any discussion that touches upon the**

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[35] *Rollo*, p. 217.

issue of heirship should be made only "in relation to the cause of action of the ordinary civil action"[36] **and for the limited purpose of resolving the issue/s therein, and such finding would not operate to bar the parties from raising the same issue of heirship in the appropriate forum, *i.e.*, special proceedings**. As such, any declaration of heirship made in an ordinary civil action to recover property should only be deemed as ***provisional*** to the extent that it is necessary to determine who between the parties has the better right to possess/own the same. This provisional approach is similarly observed in ejectment cases where the issue of ownership may be passed upon for the limited purpose of resolving who has the right to possess the property.[37]

Furthermore, and at the risk of belaboring the point, in such ordinary civil actions, the court's ruling, if in favor of the heirs, should be limited to the **reversion of the property/ies in litigation back to the estate of the decedent**. Verily, as the courts *a quo* have herein recognized, the court cannot, as a general rule, order the partition of the property/ies of the decedent and distribute it/them among the heirs, because the court simply has no jurisdiction to do so in this ordinary civil action. In this relation, a special proceeding for the settlement of estate is necessary to not only definitively determine who are the true and lawful heirs to which specific portions of the estate may be distributed, but also, even prior thereto, to first pay off the claims against the estate, which is essential to ascertain the net estate to be distributed. Note, however, that, as an exception, the heirs may avail of an "ordinary action for partition" but only pursuant to the special conditions under Section 1, Rule 74[38]

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[36] *Ponencia*, p. 30; emphasis supplied.

[37] See *Spouses Marcos R. Esmaquel and Victoria Sordevilla v. Coprada*, 653 Phil. 96 (2010).

[38] Section 1, Rule 74 of the RULES OF COURT reads:

Section 1. *Extrajudicial settlement by agreement between heirs.*— If the decedent **left no will and no debts** and **the heirs are all of age, or the minors are represented by their judicial or legal representatives duly authorized for the purpose**, the parties may without securing letters of

of the Rules of Court, namely, that: *(a)* the decedent left no will and no debts; *(b)* the heirs are all of age or the minor heirs are represented by their respective guardians; *(c)* the agreement or adjudication is made by means of a public instrument duly filed with the Register of Deeds; *(d)* the parties thereto shall, simultaneously with and as a condition precedent to the filing of the public instrument, file a bond; and *(e)* the fact of settlement shall be published in a newspaper of general circulation.

In this case, respondents, in asking for the nullification of petitioner's Affidavits of Self-Adjudication and consequent reconveyance of the properties covered therein back to Rosie's estate, are only asserting their successional interests over such estate which they obtained at the exact moment of Rosie's death, and which they may do so by filing an ordinary civil action for such purpose. While respondents erroneously also prayed for the partition of Rosie's estate — a matter which should be properly threshed out in a special proceeding for the settlement of such estate — the RTC already remedied the situation by correctly recognizing that it has no jurisdiction over the same,

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administration, **divide the estate among themselves as they see fit by means of a public instrument filed in the office of the register of deeds, and should they disagree, they may do so in an ordinary action of partition**. If there is only one heir, he may adjudicate to himself the entire estate by means of an affidavit filed in the office of the register of deeds. The parties to an extrajudicial settlement, whether by public instrument **or by stipulation in a pending action for partition**, or the sole heir who adjudicates the entire estate to himself by means of an affidavit **shall file, simultaneously with and as a condition precedent to the filing of the public instrument, or stipulation in the action for partition**, or of the affidavit **in the office of the register of deeds, a bond with the said register of deeds**, in an amount equivalent to the value of the personal property involved as certified to under oath by the parties concerned and conditioned upon the payment of any just claim that may be filed under section 4 of this rule. It shall be presumed that the decedent left no debts if no creditor files a petition for letters of administration within two (2) years after the death of the decedent.

The fact of the extrajudicial settlement or administration shall be published in a newspaper of general circulation in the manner provided in the next succeeding section; but no extrajudicial settlement shall be binding upon any person who has not participated therein or had no notice thereof. (Emphases and underscoring supplied)

and accordingly, ordering such cause of action to be dropped from the case. To reiterate, the pertinent portion of the RTC's Resolution dated July 15, 2014 reads:

> A perusal of the Complaint shows that the causes of action are 1) the Annulment of the Affidavit of Self-Adjudication; 2) Reconveyance; (3) Partition; and 4) Damages. Hence, the Court has jurisdiction over the first, second and fourth causes of action but no jurisdiction over the third cause of action of Partition and the said cause of action should be dropped from the case.[39]

The RTC's own extrication of this separate and distinct third cause of action for partition may already serve to assuage any fear that the present case would result into the final distribution of the estate. Stated otherwise, because partition has been dropped as an issue, in no way will the case culminate in the distribution of specific portions of the estate. To be sure, this distribution can only happen in the proper special proceeding for the purpose, which is the proper procedure to not only definitively declare who the heirs are, but also to resolve the claims against the estate. Only then may the **free portion of the estate** be distributed through the actual partition of the specific portions (and not mere aliquot interests) of the estate. Notably, it also deserves pointing out that in this case, no finding on heirship is necessary since the status of the parties as heirs is undisputed.

All things considered, the RTC did **not** gravely abuse its discretion in denying petitioner's **second** motion to dismiss, considering that: *(a)* venue was properly laid; *(b)* the action has yet to prescribe; and *(c)* it has jurisdiction over the causes of action for annulment of petitioner's Affidavits of Self-Adjudication, reconveyance of the properties in litigation back to Rosie's estate, and damages.

ACCORDINGLY, I vote to **DENY** the petition.

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[39] *Rollo*, p. 84.

CONCURRING OPINION

ZALAMEDA, *J.*:

Petitioner filed the instant petition before this Court, adamant that the regular court is without jurisdiction over the complaint filed by the respondents for lack of a prior determination of heirship by a special court. In denying the petition, the *ponencia*, citing Article 777 of the New Civil Code and a myriad of jurisprudence, debunked petitioner's view. It concluded that the legal heirs, like herein respondents, have the right to file the instant suit arising out of their right of succession, without the need for a separate prior judicial declaration of heirship, provided only that there is no pending special proceeding for the settlement of the decedent's estate.[1]

Contrary to petitioner's posture, a prior determination of heirship in a special proceeding is not a condition *sine qua non* in the institution of an ordinary civil proceeding involving heirs. This jurisprudence is not novel. The ponencia pointed that the Court *en banc* made it clear, as early as the 1939 case of *De Vera v. Galauran*,[2] that "unless there is a pending special proceeding for the settlement of the estate of the deceased person, the legal heirs may commence an ordinary action arising out of a right belonging to the ancestor, without the necessity of a previous and separate judicial declaration of their status as such."[3]

Following long-settled precedents, the *ponencia* correctly held that the legal heirs, like herein respondents, are authorized, by operation of law and from the moment of the decedent's death, to fully protect their successional rights, without having to first go through the rigors of proving their filiation or relation to the decedent in a separate special proceeding for that purpose.

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[1] *Ponencia,* p. 28.

[2] G.R. No. L-45170, 10 April 1939.

[3] *Id.*

There is indeed clearly no judicial declaration of heirship necessary for an heir to assert his or her right to the property of the deceased, as what the Court emphasized in the fairly recent case of *Capablanca v. Heirs of Bas (Capablanca)*.[4] The putative or alleged heirs are to be considered real parties-in-interest to file the ordinary civil actions for cancellation of a deed or instrument and reconveyance of property, despite lack of a previous judicial declaration of heirship in an appropriate civil proceeding, for as long as they can show preponderant proof of their relationship or filiation to the deceased. This is because they are merely asserting their successional rights on the property, which are transmitted to them from the moment of death of the decedent, in accordance with Article 777 of the New Civil Code.

Although said rule may have endured the test of time, the same is still not firmly cast in stone. Indeed, this rule has not been immune to attack. There have been a number of cases where the ordinary civil actions filed by the putative heirs were ultimately dismissed for lack of a prior declaration of heirship in a special proceeding. These conflicting rulings of the Court on this issue became the anchor of petitioner's steadfast stance for the dismissal of the complaint below. As the confusion brought to fore is capable of repetition if left unresolved, the *ponente* is thus right to use this opportunity to rid the jurisprudence of such obscurity, once and for all.

It is an equally long-standing rule that the determination of who the legal heirs of the deceased are must be made in the proper special proceedings in court, and not in an ordinary suit for recovery of ownership and possession of property.[5] And it is for good reasons. As elucidated by the Court in *Intestate Estate of Wolfson v. Testate Estate of Wolfson*[6]:

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[4] G.R. No. 224144, 28 June 2017.

[5] *Heirs of Gabatan v. Hon. Court of Appeals, et al.*, G.R. No. 150206, 13 March 2009.

[6] G.R. No. L-28054, 15 June 1972.

Paraphrasing the jurisprudence on this score, the salutary purpose of the rule is to prevent confusion and delay. It is not inserted in the law for the benefit of the parties litigant but in the public interest for the better administration of justice, for which reason the parties have no control over it. Consequently, every challenge to the validity of the will, any objection to its authentication, every demand or claim by any heir, legatee or party in interest in intestate or testate succession **must be acted upon and decided within the same special proceedings, not in a separate action, and the same judge having jurisdiction in the administration of the estate should take cognizance of the question raised**, for he will be called upon to distribute or adjudicate the property to the interested parties. WE stressed that the main function of a probate court is to settle and liquidate the estates of the deceased either summarily or through the process of administration; and towards this end the probate court has to determine who the heirs are and their respective shares in the net assets of the estate. Section 1 of Rule 73, speaking as it does of "settlement of the estates of the deceased," applies equally to both testate and intestate proceedings. And the conversion of an intestate proceedings into a testate one is "entirely a matter of form and lies within the sound discretion of the court. (Emphasis supplied.)

The rationale for the doctrine that the declaration of heirship must be made in a special proceeding, and not in an independent civil action,[7] cannot be disregarded. A prior special proceeding must, in some cases, be instituted for the declaration of heir precisely because it seeks to **establish the parties' right or status as an heir**. This cannot be done in an ordinary civil action considering that it serves a different purpose, *i.e.*, the **enforcement or protection of rights**.

While the rights of succession are transmitted from the moment of death of the decedent, there must still be some factual determination as to who the actual heirs of the decedent are, and their particular shares as provided by law. This orderly procedure should be followed to determine all the heirs of the decedent before the latter's properties may be rightfully

[7] *Heirs of Gabatan v. Hon. Court of Appeals, et al.*, G.R. No. 150206, 13 March 2009.

distributed. Disregarding this orderly procedure may create confusion and disorder as this allows any heir to institute separate ordinary civil actions in different courts, which may eventually lead to inconsistent findings regarding the rights of the heirs. Indeed, while the rights of the heirs are transmitted from the moment of death of the decedent, pursuant to the provision of the Civil Code, the said transmission is still subject to the claims of administration and the inherited properties may still be subjected to the payment of debts, expenses, and obligations incurred by the decedent or the estate.[7]

Indeed, even if the right to assert a cause of action by an alleged heir, although he has not been judicially declared to be so, has been acknowledged in a number of subsequent cases,[8] the Court may still ultimately order the dismissal of a pertinent complaint if the heirs' claim of filiation turns out to be dubious or heavily in dispute. For instance, in the case of *Heirs of Yaptinchay v. Hon. Del Rosario, et al. (Yaptinchay)*,[9] cited by petitioner, the plaintiffs claimed to be the legal heirs of the deceased, but had not shown any proof of filiation or even a semblance of it — except the allegations that they were the legal heirs of the deceased. In affirming the dismissal of the complaint by the regular court, the Court emphasized that the trial court cannot make a declaration of heirship in the civil action for the reason that such a declaration can only be made in a special proceeding. The Court added that the determination of who the legal heirs of the deceased are must be made in the proper special proceedings in court, and not in an ordinary suit for reconveyance of property. This must take precedence over the action for reconveyance.

The same notwithstanding, the Court has had a few occasions to make an exception to the rule that a declaration of heirship must be made in a special proceeding, such as when: (1) the parties in the civil case had voluntarily submitted the issue to

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[8] *Cabuyao v. Caagbay, et al.*, G.R. No. L-6636, 02 August 1954.

[9] G.R. No. 124320, 2 March 1999.

the trial court, presented their evidence regarding the issue of heirship, and the RTC had consequently rendered judgment thereon; or (2) when a special proceeding had been instituted, but had been finally closed and terminated; hence, it cannot be re-opened.

In the case of *Portugal v. Portugal-Beltran*,[10] the Court allowed the proceeding for annulment of title to determine the status of the party therein as heirs even without a separate action for declaration of heirship, *viz.*:

> It appearing, however, that in the present case the only property of the intestate estate of Portugal is the Caloocan parcel of land, to still subject it, under the circumstances of the case, to a special proceeding which could be long, hence, not expeditious, just to establish the status of petitioners as heirs is not only impractical; it is burdensome to the estate with the costs and expenses of an administration proceeding. And it is superfluous in light of the fact that the parties to the civil case — subject of the present case, could and had already in fact presented evidence before the trial court which assumed jurisdiction over the case upon the issues it defined during pre-trial.
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> In fine, under the circumstances of the present case, there being no compelling reason to still subject Portugal's estate to administration proceedings since a determination of petitioners' status as heirs could be achieved in the civil case filed by petitioners (*Vide Pereira v. Court of Appeals*, 174 SCRA 154 [1989]; Intestate Estate of Mercado v. Magtibay, 96 Phil. 383 [1955]), the trial court should proceed to evaluate the evidence presented by the parties during the trial and render a decision thereon upon the issues it defined during pre-trial
> x x x

In the same vein, the Court allowed the exception to be applied in *Rebusquillo v. Sps. Gualvez, et al.*[11]:

> Similar to Portugal, in the present case, there appears to be only one parcel of land being claimed by the contending parties as the

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[10] G.R. No. 155555, 504 Phil. 456 (2005).

[11] G.R. No. 204029, 4 June 2014.

inheritance from Eulalio. It would be more practical, as Portugal teaches, to dispense with a separate special proceeding for the determination of the status of petitioner Avelina as sole heir of Eulalio, especially in light of the fact that respondents spouses Gualvez admitted in court that they knew for a fact that petitioner Avelina was not the sole heir of Eulalio and that petitioner Salvador was one of the other living heirs with rights over the subject land. As confirmed by the RTC in its Decision, respondents have stipulated and have thereby admitted the veracity of the following facts during the pre-trial x x x

Also, in *Heirs of Basbas v. Basbas*,[12] an ordinary civil action for annulment of title and reconveyance with damages was instituted by the petitioners, who were among the heirs of Severo Basbas. They alleged that therein respondents fraudulently executed an extrajudicial settlement of estate without including all the heirs so as to acquire and register the parcel of land of the decedent for themselves. The trial court granted the ordinary civil action based on its findings that respondents failed to include all the heirs in the extrajudicial settlement. However, the CA reversed the trial court, and ruled that the determination of filiation or heirship is only made in a special proceeding before a probate court. Upon appeal, the Court reinstated the findings of the trial court, holding that **a separate special proceeding for declaration of heirship is no longer necessary in view of the uncontroverted evidence presented during trial in the ordinary civil action that the petitioners are the heirs of the decedent**. The issue of heirship having been established, a special proceeding for such purpose would be superfluous.

More recently, in *Heirs of Fabillar v. Paller*,[13] the Court applied the exception stated in *Heirs of Ypon v. Ricaforte (Ypon)*[14] and ruled that a special proceeding for declaration of heirship was not necessary in said case, considering the parties had voluntarily submitted the issue of heirship before the trial court. The Court recognized that recourse to administration proceedings to determine the heirs is sanctioned only if there are good and

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[12] G.R. No. 188773, 742 Phil. 658 (2014).

[13] G.R. No. 231459, 21 January 2019.

[14] G.R. No. 198680, 08 July 2013.

compelling reasons; otherwise, the special proceeding may be dispensed with for the sake of practicality.

It should be stressed, however, that regular courts were allowed to dispose the issue of heirship in those cases only in the interest of justice, pragmatism, and expediency in view of the existence of the peculiar circumstances therein. I find analogous here is the situation in a testate or intestate proceedings where the question of ownership or title to the property generally cannot be passed upon by the special court **unless** there be compelling reason to do so. The Court was faced with such compelling reason in the case of *Coca v. Borromeo,*[15] and disposed the issue with a practical approach, thus:

> The appellant contend that the lower court, as a probate court, has no jurisdiction to decide the ownership of the twelve-hectare portion of Lot No. 1112. On the other hand, the appellees or the heirs of Francisco Pangilinan counter that the lower court did not decide the ownership of the twelve hectares when it ordered their exclusion from the project of partition. So, the problem is how the title to the twelve hectares should be decided, whether in a separate action or in the intestate proceeding.
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> It should be clarified that whether a particular matter should be resolved by the Court of First Instance in the exercise of its general jurisdiction or of its limited probate jurisdiction is in reality not a jurisdictional question. In essence, it is a procedural question involving a mode of practice 'which may be waived' (*Cunanan vs. Amparo*, 80 Phil. 227, 232. Cf. Reyes vs. Diaz, 73 Phil. 484 re jurisdiction over the issue).
>
> As a general rule, the question as to title to property should not be passed upon in the estate or intestate proceeding. That question should be ventilated in a separate action. (*Lachenal vs. Salas*, L-42257, June 14, 1976, 71 SCRA 262, 266).That general rule has qualifications or exceptions justified by expediency and convenience.
>
> Thus, the probate court may provisionally pass upon in an intestate or testate proceeding the question of inclusion in, or exclusion from, the inventory of a piece of property without prejudice to its final determination in a separate action (Lachenal vs. Salas, supra).

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[15] G.R. No. L-29545 and G.R. No. L-27082, 31 January 1978.

Although generally, a probate court may not decide a question of title or ownership, yet if the interested parties are all heirs or the question is one of collation or advancement, or the parties consent to the assumption of jurisdiction by the probate court and the rights of third parties are not impaired, then the probate court is competent to decide the question of ownership (*Pascual vs. Pascual*, 73 Phil. 561; *Alvarez vs. Espiritu*, L-18833, August 14, 1965, 14 SCRA 892; *Cunanan vs. Amparo,* supra; 3 Morans Comments on the Rules of Court, 1970 Ed., p. 4731).

We hold that the instant case may be treated as an exception to the general rule that questions of title should be ventilated in a separate action.

Here, the probate court had already received evidence on the ownership of the twelve-hectare portion during the hearing of the motion for its exclusion from title inventory. The only interested parties are the heirs who have all appeared in the intestate proceeding.

As pointed out by the appellees, they belong to the poor stratum of society. They should not be forced to incur additional expenses (such as filing fees) by bringing a separate action to determine the ownership of the twelve-hectare portion.

With all the foregoing being said, the varying rulings on the matter should now be reconciled, harmonized, and clarified to avoid further confusions and disagreements. There should be no question by now that **absent an exceptional reason to do so, it would be an excess of jurisdiction for the regular court to nonchalantly thresh out the issue of heirship in an ordinary civil action**.

The purpose of an ordinary civil action is the enforcement or protection of a right, or the prevention or redress of a wrong.[16] The ultimate aim of such ordinary civil action is only to recover the ownership and possession of the property of the decedent, for the benefit of the estate and subsequent distribution thereof in accordance with law, or to declare the nullity of deeds, instruments and conveyances. Since the regular court's authority is

[16] *See Reyes v. Enriquez*, G.R. No. 162956, 10 April 2008.

confined only to the resolution of the rights and liabilities of the parties, it can only declare who the rightful owner is, not who the heirs are. As Justice Marvic Leonen fittingly expressed, the mere fact that one is declared the rightful owner by the regular court does not necessarily come with it the declaration of heirship, the same being proper only in a special proceeding.[17]

To be sure, **a regular court must refrain from delving into the issue of heirship for any purpose other than to determine the legal standing of the putative heirs to file the civil action, and the result of which should not be a bar to a subsequent appropriate proceeding on the ascertainment of the heirs between or among the parties**.The *ponencia* noted that this determination shall only be in relation to the appropriate cause or causes of action in the ordinary civil action initiated by the putative heirs.[18] However, **when a compelling reason exists for the regular court to dispose the issue of heirship**, as in *Capablanca* and similar jurisprudence, **the trial court should proceed to evaluate the evidence presented by the parties during the trial and render a decision thereon,**[19] **which shall be binding only upon the parties properly impleaded.**[20]

And as comprehensively argued in the *ponencia*, it should be clear at this juncture that **unless there is already a pending special proceeding for the settlement of the decedent's estate or for the determination of heirship, the heirs, subject to the presentation of sufficient proof of their filiation to the decedent, have legal standing, by virtue of their successional rights, to commence and prosecute an ordinary civil action, even without a prior judicial declaration of heirship**, so they may assert their right to the estate of the decedent.

ACCORDINGLY, I vote to DENY the Petition.

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[17] J. Leonen's Reflection, p. 8.

[18] *Ponencia*, p. 15.

[19] *See Capablanca v. Heirs of Bas*, G.R. No. 224144, 28 June 2017.

[20] *Ponencia*, p. 15.

CONCURRING AND DISSENTING OPINION

GESMUNDO, *J.*:

I concur with the *ponencia* that the petition must be denied. However, I respectfully dissent on the pronouncement in the *ponencia* that the established rule on declaration of heirs in "*Ypon, Yaptinchay, Portugal, Reyes, Heirs of Gabatan v. Court of Appeals*, and other similar cases, which requires a prior determination of heirship in a separate special proceeding as a prerequisite before one can file an ordinary civil action to enforce ownership rights acquired by virtue of succession should be abandoned."[1]

On May 1, 2008, Rosie Larlar Treyes *(Rosie)*, the wife of Dr. Nixon Treyes *(petitioner)*, died intestate. Rosie did not have any children and had seven (7) siblings, *i.e.*, the private respondents Antonio, Emilio, Heddy, Rene, Celeste, Judy, and Yvonne. At the time of her death, Rosie left behind as conjugal properties fourteen (14) real estates.

Petitioner executed two (2) Affidavits of Self-Adjudication dated September 2, 2008 and May 19, 2011, which were registered with the Register of Deeds of Marikina City on March 24, 2011, and with the Register of Deeds of San Carlos City, Negros Occidental on June 5, 2011, respectively. He adjudicated the estate of Rosie unto himself, claiming that he was the sole heir of his deceased spouse, which effectively deprived the private respondents of their share in the estate of the decedent. New transfer certificates of title were registered in the name of petitioner covering the land of Rosie.

Hence, private respondents filed a Complaint for Annulment of Affidavit of Self-Adjudication, Cancellation of Transfer Certificates of Title, Reconveyance of Ownership and Possession, Partition, and Damages before the Regional Trial Court of San Carlos City, Branch 59 *(RTC)* against petitioner, among others.

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[1] *Majority Opinion*, p. 29.

In said complaint, private respondents alleged that they are all brothers and sisters while petitioner is their brother-in-law. The copies of the birth certificates of private respondents and Rosie were attached as Annexes "A to H" of their complaint to prove the said assertion.[2] They alleged that petitioner, in gross bad faith and with malicious intent, falsely and fraudulently caused the properties of Rosie to be transferred to his own name to the exclusion of private respondents by the execution of those two (2) Affidavits of Self-Adjudication.[3]

Private respondents assert that it is an irrefutable fact that they are co-heirs with petitioner and are collectively entitled to a share consisting of one-half (1/2) of the estate. Thus, the Affidavits of Self-Adjudication of petitioner must be annulled and declared to be of no legal effect.[4] Private respondents also claimed that they are indubitably co-owners of the properties of Rosie by virtue of being co-heirs. Accordingly, there is a need to delineate the specific shares of each of the co-owners of the properties of Rosie's estate to avoid further conflict as to the use and disposition of the same and the specific shares of the co-heirs must be determined and partitioned.[5]

Private respondents prayed for the following reliefs:

WHEREFORE, premises considered, it is most respectfully prayed of this Honorable Court that, after due notice and hearing, judgment be rendered as follows:

a.) Declaring the Affidavit of Self-Adjudication dated September 2, 2008 *(Annex X")* and May 19, 2011 *(Annex "Y")* as null and void and illegal and ordering the cancellation of all Transfer Certificates of Titles issued pursuant thereto;

b.) Ordering the defendant to reconvey the plaintiffs' successional share in the estate of the late ROSIE LARLAR TREYES;

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

[3] Id. at 94.

[4] Id. at 96.

[5] Id. at 97.

c.) Ordering the partition of the estate of ROSIE LARLAR TREYES among the parties hereto who are also the heirs of the latter;

d.) Ordering the defendant to pay plaintiffs moral damages of not less than ₱500,000.00 and exemplary damages of not less than ₱500,000.00.

e.) Ordering the defendant to pay plaintiffs attorney's fees of ₱200,000.00 and litigation expenses of not less than ₱150,000.00.

Other reliefs as may be just and equitable under the premises are also prayed for.[6] (emphasis supplied)

Initially, petitioner filed a first Motion to Dismiss dated October 25, 2013, asking for the dismissal of the complaint due to lack of jurisdiction over his person. However, the proper re-service of summons was effected, thus, the first Motion to Dismiss was rendered moot.

Petitioner then filed a second Motion to Dismiss raising the following grounds: (1) improper venue; (2) prescription; and (3) lack of jurisdiction over the subject matter. The said motion was denied by the RTC.

Aggrieved, petitioner filed a Petition for *Certiorari* before the Court of Appeals *(CA)* arguing that the RTC committed grave abuse of discretion in denying his second Motion to Dismiss.

In its August 18, 2016 Decision, the CA dismissed the petition. It held that since the complaint primarily seeks to annul petitioner's Affidavits of Self-Adjudication, which partakes the nature of an ordinary civil action, the RTC had jurisdiction to hear and decide the private respondents' Complaint.

Petitioner filed a Motion for Reconsideration but it was denied by the CA in its June 1, 2017 Resolution. Hence, this petition.

Petitioner argues, among others, that the RTC did not have jurisdiction over the complaint because there is yet to be

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[6] Id. at 98-99.

determination in a special proceeding that private respondents are legal heirs of the decedent, hence, they are not real parties in interest. He cited the cases of *Heirs of Magdaleno Ypon v. Ricaforte (Ypon)*.[7] *Reyes v. Enriquez (Reyes)*,[8] *Heirs of Guido and Isabel Yaptinchay v. Del Rosario (Yaptinchay)*,[9] and *Portugal v. Portugal-Beltran (Portugal)*,[10] which held that the issue on the lack of a previous determination of heirship in a special proceeding was characterized as a failure to state a cause of action when a case is instituted by parties who are not real parties in interest. Since private respondents have yet to establish in a special proceeding their status as legal heirs of Rosie, then the ordinary civil action they instituted must be dismissed.

The *ponencia* held that the argument lacks merit. It held that the rule laid down in *Ypon*, *Yaptinchay*, *Portugal*, *Reyes*, and other similar cases, which requires a prior determination of heirship in a separate special proceeding before one can invoke his or her status as a legal heir for the purpose of enforcing or protecting a right in an ordinary civil action, must be abandoned. Instead, the *ponencia* proposes a new rule: unless there is a pending special proceeding for the settlement of the decedent's estate or for the determination of heirship, the compulsory or intestate heirs may commence an ordinary civil action to declare the nullity of a deed, instrument, or conveyance of property, or any other action in the enforcement of their successional rights, without the necessity of a prior and separate judicial declaration of their status as such.

With respect to such view, I disagree. The Court should not abandon the existing doctrines with respect to declaration of heirs.

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[7] 713 Phil. 570 (2013).

[8] 574 Phil. 245 (2008).

[9] 363 Phil. 393 (1999).

[10] 504 Phil. 456 (2005).

Succession as mode of acquiring ownership; Art. 777 obviates a vacuum in ownership but does not do away the declaration of heirship

The *ponencia* would like to set aside the established rules on the declaration of heirship based on Article 777 of the Civil Code that the property of the decedent transfers from the moment of death; hence, a declaration of heirship is not indispensable. However, it is my humble view that the established rules on the declaration of heirship under the Rules of Court must be maintained because there should be a separate proceeding to appropriately determine who the heirs of the decedent are.

The Civil Code provides:

> Art. 777. The rights to the succession are transmitted from the moment of the death of the decedent.

Succession as mode of acquiring ownership[11] does not start and end at the moment of the death of the decedent owning properties.

"What happens is that the death of a person consolidates and renders immutable, in a certain sense, rights which up to that moment were nothing but mere expectancy. These rights arise from the express will of the testator or from the provisions of the law, but they do not acquire any solidity and effectiveness except from the moment of death. Before this event, the law may change, the will of the testator may vary, and even circumstances may be modified to such an extent that he who have expected to receive property may be deprived of it; but once death supervenes, the will of the testator becomes

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[11] **Article 712.** Ownership is acquired by occupation and by intellectual creation.

Ownership and other real rights over property are acquired and transmitted by law, by donation, by testate and intestate succession, and in consequence of certain contracts, by tradition.

They may also be acquired by means of prescription.

immutable, the law as to the succession can no longer be changed, disinheritance cannot be effected, and the rights to the succession acquire a character of marked permanence. In other words, what the article really means is that the succession is opened by the death of the person from whom the inheritance comes."[12]

"This view maintains that there are two (2) things to consider, each being useless without the other. One is the origin of the existence of the right, which may be the will of the testator or the provisions of the law; and the other is what makes the right effective, which is the death of the person whose succession is in question. The provision should therefore be understood as meaning that 'the rights to the succession of a person are transmitted from the moment of his death, and by virtue of prior manifestations of his will or of causes predetermined by law.'"[13]

"Whatever terminology is used by the law, however, it is clear that the moment of death is the determining point when the heirs acquire a definite right to the inheritance, whether such right be pure or conditional. The right of the heirs to the property of the deceased vests in them even before judicial declaration of their being heirs in the testate or intestate proceedings. It is immaterial whether a short or long period of time elapses between the death of the predecessor and the entry in the possession of the properties of the inheritance, because the right is always deemed to retroact to the moment of death. Thus, the right of the State to collect the inheritance tax accrues at the moment of death, notwithstanding the postponement of the actual possession and enjoyment of the estate by the heir, and the tax is based on the value of the property at that time, regardless of any subsequent appreciation or depreciation."[14]

Although death marks the precise moment when the transmission of successional rights takes place, it is not the

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[12] Tolentino, Civil Code of the Philippines, Volume III, p. 15.

[13] Tolentino, Civil Code of the Philippines, Volume III, pp. 15-16.

[14] Tolentino, Civil Code of the Philippines, Volume III, p. 16.

only factor for effective transmission of the decedent's property to the successors. In order for there to be effective transmission, the following are the requisites: (1) death of decedent which produces the opening of succession; (2) the express will of the testator calling certain persons to succeed him or in default thereof, the provision of law prescribing the successor; (3) **existence and capacity of the successor**; and (4) acceptance of the inheritance by the successor.[15]

Death opens the door for succession. But settlement proceedings, which entail the determination of the heirs entitled to the transfer of properties from the decedent, the determination of respective shares by way of partition or by way of testamentary disposition and ultimately the distribution of their respective shares in the decedent's property, closes the door of succession so to speak. Evidently, there is a need for declaration of heirship be it either judicial or extrajudicial, as the case may be, to determine the existence and capacity of the successor.

Art. 777 is intended to provide the reckoning point when succession takes place to obviate a vacuum in the ownership but it is not intended to do away with judicial or extrajudicial proceedings for declaration of heirship. To adopt as a general rule that declaration of heirship may be dispensed with relying on the provision of Art. 777 would be to disregard the existing substantive law and procedural rules on settlement of estate of a decedent fraught with unintended consequences.

Art. 777 provides that the reckoning timeline as to effectivity of the rights of heirs to the property of the decedent is consistent with the doctrine that "law like nature abhors vacuum"[16] in ownership. That the right of the heirs to the property vest in the heirs prior to declaration of heirship, intends to preclude a controversy on what the reckoning date is when the heirs,

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[15] Caguioa, Comments and Cases on Civil Law, 1970 Third Edition, Volume III, pp. 21-22.

[16] *Rivera v. Court of Appeals*, 257 Phil. 174, 180 (1989).

ultimately receiving the property from the decedent, should enjoy the attributes of ownership.

The relationship between Art. 777 and Article 428[17] of the Civil Code shows why ownership of property acquired through succession is made to take effect at the moment of death of the decedent. The economic life of organized society would be impaired, public peace and order would be disturbed, and chaos would prevail if ownership of property could not be transmitted upon the death of the owner; the property would become *res nullius*, and serious conflicts and public disturbances would arise in the course of efforts of others to acquire such property by occupation.[18]

"Is death the cause of succession? According to some authors the wording of the law is erroneous since death does not transmit but merely opens succession. Manresa, however, believes that since succession is one of the modes of acquiring ownership and through it there is transfer to the heirs of all the rights of the deceased by virtue of his death, there exists, therefore, a true transmission from one person to another. It is believed, however, that the cause of succession will depend on whether it is testate or intestate succession. In case of testate succession, the cause is the law in the case of legitimes and the will of the deceased in the case of the free portion. In intestate succession the cause is the law. **Death under this view merely furnishes the condition or the moment when the cause will operate or become effective.**"[19]

The Civil Code also provides:

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[17] **Art. 428.** The owner has the right to enjoy and dispose of a thing, without other limitations than those established by law.

The owner has also a right of action against the holder and possessor of the thing in order to recover it.

[18] Tolentino, Civil Code of the Philippines, Succession, Vol. III, p. 2.

[19] Caguioa, Comment and Cases on Civil Law 1970 Third Edition, Sec. 17, p. 2.

> Art. 774. Succession is a mode of acquisition by virtue of which the property, rights and obligations to the extent of the value of the inheritance, of a person are transmitted through his death to another or others either by his will or by operation of law.

The word "succession" may be understood in either of two (2) concepts. In one sense, it means the *transmission of the property, rights and obligations of a person*; and in another sense, it means the *universality or entirety* of the property, rights and obligations transmitted by any of the forms of succession admitted in law.[20] Article 712 of the Civil Code states:

> Art. 712. Ownership is acquired by occupation and by intellectual creation.
>
> Ownership and other real rights over property are acquired and transmitted by law, by donation, by testate and intestate succession, and in consequence of certain contracts by tradition.
>
> They may also be acquired by means of prescription."

Succession is a derivative mode of acquiring ownership. "Derivative modes are those based on a right previously held by another person, and therefore subject to the same characteristics as when held by the preceding owner.[21] In succession, there was an original owner of property but the same is transferred to those entitled to receive it by testate or intestate. But the actual transfers of property might not be immediate. After the decedent dies, during the hiatus between the time of the death of the decedent and the time when the residual property of the estate is distributed to those who are entitled to receive it, there is no gap in the ownership of the property. It prevents the property from being *res nullus* from the moment of death of the decedent to the time that title is vested in the heirs of the decedent.

Indeed, death of the decedent is not the sole determining factor affecting the transmission of properties, rights, and

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[20] Tolentino, Civil Code of the Philippines, Succession, Vol. III, p. 9.

[21] Tolentino, Civil Code of the Philippines, Property, Vol. II, p. 452.

obligation to the heirs; rather, the prior manifestations of the will, in case of testate succession, and the causes pre-determined by law, in case of intestate succession, should be considered. **Again, the death of the decedent under Art. 777 of the Civil Code does not provide an unbridled license to do away with the declaration of heirship under the Rules of Court. Rather, the death of the decedent is a derivate mode of acquiring title to obviate a vacuum in the ownership and to prevent the said properties from becoming *res nullus*. Nevertheless, to enforce the manner or mode by which the properties of the decedent are transferred, there must still be a declaration of heirship to determine the existence and capacity of the successors, who are lawfully entitled to the decedent's property.**

Substantive law is that part of the law which creates, defines and regulates rights, or which regulates the rights and duties which give rise to a cause of action; that part of the law which courts are established to administer; as opposed to adjective or remedial law, which prescribes the method of enforcing rights or obtains redress for their invasion.[22]

Verily, the Civil Code recognizes that the manner and method of the transfer of the rights, properties, and obligations of the decedent from the moment of death to the heirs shall be subject to the provisions of the Rules of Court.[23] To reiterate, death under Art. 777 of the Civil Code cannot by itself be the sole

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[22] *Bustos v. Lucero*, 81 Phil. 640, 650 (1948).

[23] **Art. 496.** Partition may be made by agreement between the parties or by judicial proceedings. Partition shall be governed by the Rules of Court insofar as they are consistent with this Code.

Art. 830. No will shall be revoked except in the following cases:

(1) By implication of law; or

(2) By some will, codicil, or other writing executed as provided in case of wills; or

(3) By burning, tearing, cancelling, or obliterating the will with the intention of revoking it, by the testator himself, or by some other person in his presence, and by his express direction. If burned, torn, cancelled, or obliterated by

basis for the recognition of the rights of succession because the law itself recognizes the applicability of the Rules of Court, with respect to the enforcement of such rights.

An asserted right or claim to ownership or a real right over a thing arising from a juridical act, however justified, is not *per se* sufficient to give rise to ownership over a *res*. That right or title must be completed by fulfilling certain conditions imposed by law. Hence, ownership and real rights are acquired only pursuant to a legal mode or process. While title is the juridical justification, mode is the actual process of acquisition transfer of ownership over a thing in question.[24] In *Acap v. CA*,[25] the

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some other person, without the express direction of the testator, the will may still be established, and the estate distributed in accordance therewith, if its contents, and due execution, and the fact of its unauthorized destruction, cancellation, or obliteration are established according to the Rules of Court;

Art. 838. No will shall pass either real or personal property unless it is proved and allowed in accordance with the Rules of Court.

The testator himself may, during his lifetime, petition the court having jurisdiction for the allowance of his will. In such case, the pertinent provisions of the Rules of Court for the allowance of wills after the testator's death shall govern.

The Supreme Court shall formulate such additional Rules of Court as may be necessary for the allowance of wills on petition of the testator.

Subject to the right of appeal, the allowance of the will, either during the lifetime of the testator or after his death, shall be conclusive as to its due execution;

Art. 881. The appointment of the administrator of the estate mentioned in the preceding article, as well as the manner of the administration and the rights and obligations of the administrator shall be governed by the Rules of Court;

Art. 1057. Within thirty days after the court has issued an order for the distribution of the estate in accordance with the Rules of Court, the heirs, devisees and legatees shall signify to the court having jurisdiction whether they accept or repudiate the inheritance.

If they do not do so within that time, they are deemed to have accepted the inheritance;

Art. 1058. All matters relating to the appointment, powers and duties of executors and administrators and concerning the administration of estates of deceased persons shall be governed by the Rules of Court.

[24] *Acap v. Court of Appeals*, 321 Phil. 381, 390 (1995).

[25] Id.

Court held that any juridical act, such as a declaration of heirs, must be in accordance with the mode of transmission, *i.e.*, succession upon the death of the decedent, and the fulfillment of the conditions imposed by law.

For instance, when a decedent dies intestate, the heir cannot simply proceed to the Register of Deeds and present his or her birth certificate and the decedent's death certificate to prove the rights as an heir and to have the properties of the decedent registered under his or her name. Rather, the heir must comply with the manner or method provided under the Rules of Court for the enforcement of his or her successional rights.

Declaration of heirship;
General rule

The Rules of Court provide for several methods for the enforcement of successional rights: testate, intestate or a mixture of testate and intestate succession. In testate succession, the Civil Code requires that the will first be proved and allowed in accordance with the Rules of Court before it passes either real or personal property.[26] Thus, when there is testate succession, a special proceeding under Rule 76[27] of the Rules of Court must be instituted for the allowance or disallowance of a will. After the allowance of the will by the probate court, there will be a settlement proceeding to determine the claims against the estate and, eventually, order the distribution of the estate to the heirs, devisees, and legatees. Nevertheless, even in testate succession, a summary settlement of estate of a small value is recognized. Under Section 2, Rule 74[28] of the Rules of Court, whenever

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[26] Rules of Court, Art. 838.

[27] **Rule 76.** Allowance or Disallowance of Will.

[28] **Rule 74.** Summary Settlement of Estate.

Section 2. *Summary settlement of estate of small value.*— Whenever the gross value of the estate of a deceased person, whether he died testate or intestate, does not exceed ten thousand pesos, and that fact is made to appear to the Court of First Instance having jurisdiction of the estate by the petition of an interested person and upon hearing, which shall be held not

the gross value of the estate of a deceased person, whether he died testate or intestate, does not exceed ₱10,000.00, a petition for summary settlement of the estate maybe availed of.

In intestate succession, the general rule is that when a person dies leaving property, the same should be judicially administered and the competent court should appoint a qualified administrator, in the order established in Section 6, Rule 78,[29] whether the

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less than one (1) month nor more than three (3) months from the date of the last publication of a notice which shall be published once a week for three (3) consecutive weeks in a newspaper of general circulation in the province, and after such other notice to interest persons as the court may direct, the court may proceed summarily, without the appointment of an executor or administrator, and without delay, to grant, if proper, allowance of the will, if any there be, to determine who are the persons legally entitled to participate in the estate, and to apportion and divide it among them after the payment of such debts of the estate as the court shall then find to be due; and such persons, in their own right, if they are of lawful age and legal capacity, or by their guardians or trustees legally appointed and qualified, if otherwise, shall thereupon be entitled to receive and enter into the possession of the portions of the estate so awarded to them respectively. The court shall make such order as may be just respecting the costs of the proceedings, and all orders and judgments made or rendered in the course thereof shall be recorded in the office of the clerk, and the order of partition or award, if it involves real estate, shall be recorded in the proper register's office.

[29] **Rule 78.** Letters Testamentary and of Administration, When and to Whom Issued.

Section 6. *When and to whom letters of administration granted*.— If no executor is named in the will, or the executor or executors are incompetent, refuse the trust, or fail to give bond, or a person dies intestate, administration shall be granted:

(a) To the surviving husband or wife, as the case may be, or next of kin, or both, in the discretion of the court, or to such person as such surviving husband or wife, or next of kin, requests to have appointed, if competent and willing to serve;

(b) If such surviving husband or wife, as the case may be, or next of kin, or the person selected by them, be incompetent or unwilling, or if the husband or widow, or next of kin, neglects for thirty (30) days after the death of the person to apply for administration or to request that administration be granted to some other person, it may be granted to one or more of the principal creditors, if competent and willing to serve;

(c) If there is no such creditor competent and willing to serve, it may be granted to such other person as the court may select.

deceased left a will or not, should he fail to name an executor therein. An exception to this rule is established by Section 1, Rule 74 when there can be an extrajudicial settlement of estate. Under this exception, when all the heirs are of lawful age and there are no debts due from the estate, they may agree in writing to partition the property without instituting the judicial administration or applying for the appointment of an administrator.

Declaration of heirship is a process in a testate or intestate succession by which the heirs of the decedent are legally acknowledged. It is an indispensable process because it determines who the rightful heirs are to whom the properties, rights or obligations of the decedent are transferred to from the moment of death.

The procedure for the declaration of heirship dates back to the Spanish procedural laws. Spanish procedural law provided an action for the declaration of heirship *(declaracion de herederos)* whereby one claiming the status of heir could have his right thereto judicially declared, and this judicial declaration of heirship unless and until set aside or modified in a proper judicial proceeding, was evidence of the fact of heirship which the officials charged with the keeping of the public records, including the land registry, were bound to accept as a sufficient basis for the formal entry, in the name of the heir, of ownership of the property of the deceased.[30] Thus, in the old procedural laws, only a judicial declaration of heirship was allowed. If the declaration of heirship does not undergo the judicial process, then the public offices shall not recognize such.

As decades passed, the procedural laws were amended, jurisprudence developed, and the process of the declaration of heirs significantly changed. Under the present Rules of Court, a declaration of heirs is allowed extrajudicially in certain instances. When the heirs agree among themselves that they are all recognized heirs of the decedent who died intestate, and

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[30] *Suiliong & Co. v. Chio-Taysan*,12 Phil. 13, 19-20 (1908).

the estate of decedent complies with the requisites under Section 1, Rule 74,[31] the heirs may simply execute an Extrajudicial Settlement of Estate wherein they will declare that they are the rightful heirs of the decedent. Similarly, under the Civil Code, the recognized heirs may also voluntarily execute an Extrajudicial Partition Agreement where they will partition the co-owned property of the decedent among themselves.[32] These extrajudicial processes are effective when the heirs uniformly agree among themselves on the said declaration of heirs and their respective shares.

The problem arises when there is no agreement among themselves as to who the rightful heirs are and the respective

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[31] **Rule 74.** Summary of Settlement of Estate

Section 1. *Extrajudicial settlement by agreement between heirs*.— If the decedent left no will and no debts and the heirs are all of age, or the minors are represented by their judicial or legal representatives duly authorized for the purpose, the parties may without securing letters of administration, divide the estate among themselves as they see fit by means of a public instrument filed in the office of the register of deeds, and should they disagree, they may do so in an ordinary action of partition. If there is only one heir, he may adjudicate to himself the entire estate by means of an affidavit filed in the office of the register of deeds. The parties to an extrajudicial settlement, whether by public instrument or by stipulation in a pending action for partition, or the sole heir who adjudicates the entire estate to himself by means of an affidavit shall file, simultaneously with and as a condition precedent to the filing of the public instrument, or stipulation in the action for partition, or of the affidavit in the office of the register of deeds, a bond with the said register of deeds, in an amount equivalent to the value of the personal property involved as certified to under oath by the parties concerned and conditioned upon the payment of any just claim that may be filed under section 4 of this rule. It shall be presumed that the decedent left no debts if no creditor files a petition for letters of administration within two (2) years after the death of the decedent.

The fact of the extrajudicial settlement or administration shall be published in a newspaper of general circulation in the manner provided in the next succeeding section; but no extrajudicial settlement shall be binding upon any person who has not participated therein or had no notice thereof.

[32] **Art. 496.** Partition may be made by agreement between the parties or by judicial proceedings. Partition shall be governed by the Rules of Court insofar as they are consistent with this Code.

shares they should receive, or when some of the heirs are left out of the Extrajudicial Settlement of Estate or Extrajudicial Partition Agreement. In that situation, they must resort to a judicial declaration of heirs before the court to resolve the conflict and once and for all determine who the rightful heirs are.

The Rules of Court and jurisprudence have provided a clear set of rules on how to undertake the judicial declaration of heirs. As a general rule, a judicial declaration of heirship can only be made in a special proceeding; it cannot be undertaken in an ordinary civil action. The rationale for this rule can be explained by the very definition of a special proceeding and an ordinary civil action. Under Section 3, Rule 1[33] of the Rules of Court, a civil action is defined as "one by which a party sues another for the enforcement or protection of a right, or the prevention or redress of a wrong," while a special proceeding is defined as "a remedy by which a party seeks to establish a status, a right, or a particular fact." The judicial declaration of heirship can be made only in a special proceeding inasmuch as the petitioners therein are seeking the establishment of a status or right as an heir.[34] Under Section 1, Rule 73[35] of the Rules of Court, the court where the special proceeding is filed for the

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[33] **Rule 1.** General Provisions

Section 3. *Cases governed*. — These Rules shall govern the procedure to be observed in actions, civil or criminal and special proceedings.

(a) A civil action is one by which a party sues another for the enforcement or protection of a right, or the prevention or redress of a wrong,

A civil action may either be ordinary or special. Both are governed by the rules for ordinary civil actions, subject to the specific rules prescribed for a special civil action.

(b) A criminal action is one by which the State prosecutes a person for an act or omission punishable by law,

(c) A special proceeding is a remedy by which a party seeks to establish a status, a right or a particular fact.

[34] *Heirs of Yaptinchay v. Del Rosario*, supra note 9, at 398-399.

[35] **Rule 73.** Venue and Process

Section 1. *Where estate of deceased persons settled*.— If the decedents is an inhabitant of the Philippines at the time of his death, whether a citizen or an alien, his will shall be proved, or letters of administration granted,

declaration of heirship shall exercise jurisdiction to the exclusion of all other courts.[36]

As early as 1905, the Court explained the justification for this general rule in *Pimentel v. Palanca (Pimentel)*:[37]

> The will of Margarita Jose was made and she died after the present Code of Civil Procedure went into effect in these Islands. Her will was duly proved and allowed under the provisions of that Code. An administrator was duly appointed and he is now engaged in settling the affairs of the estate. The important question in this case is, Can an ordinary action at law be maintained under these circumstances by a person claiming to be an heir of the deceased against other persons, also claiming to be such heirs, for the purpose of having their rights in the estate determined? We think that such an action is inconsistent with the provisions of the new code, and that it can not be maintained. Section 600 of the present Code of Civil Procedure provides that the will of an inhabitant of the Philippine Islands shall be proved and his estate settled in the Court of First Instance in which he resided at the time of his death. By section 641 when a will is proved it is obligatory upon the court to appoint an executor or administrator. By virtue of other provisions of the code this executor or administrator has, under the direction of the court, the full administration and control of the deceased's property, real and personal, until a final decree is made in accordance with section 753. During the period of administration the heirs, devisees, and legatees have no right to interfere with the administrator of executor in the discharge of his duties. They have no right, without his consent, to the possession of any part of the estate, real or personal. **The theory of the present system is that the property is all in the hands of the court, and**

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and his estate settled, in the Court of First Instance in the province in which he resides at the time of his death, and if he is an inhabitant of a foreign country, the Court of First Instance of any province in which he had estate. The court first taking cognizance of the settlement of the estate of a decedent, shall exercise jurisdiction to the exclusion of all other courts. The jurisdiction assumed by a court, so far as it depends on the place of residence of the decedent, or of the location of his estate, shall not be contested in a suit or proceeding, except in an appeal from that court, in the original case, or when the want of jurisdiction appears on the record.

[36] Id.

[37] 5 Phil. 436 (1905).

must stay there until the affairs of the deceased are adjusted and liquidated, and then the net balance is turned over to the persons by law entitled to it. For the purpose of such administration and distribution there is only one proceeding in the Court of First Instance. That proceeding is not an action at law, but falls under Part II of the Code of Civil Procedure, and is a special proceeding. After the estate is fully settled, and all the debts and expenses of administration are paid, the law contemplates that there shall be a hearing or trial in this proceeding in the Court of First Instance for the purpose of determining who the parties are that are entitled to the estate in the hands of the executor or administrator for distribution, and after such hearing or trial it is made the duty of the court to enter a decree of final judgment, in which decree, according to section 753, the court "shall assign the residue of the estate to the persons entitled to the same, and in its order the court shall name the persons and proportions or parts to which each is entitled." (See also sec. 782 of the Code of Civil Procedure.) By section 704 it is expressly provided that no action shall be maintained by an heir or devisee against an executor or administrator for the recovery of the possession or ownership of lands until there is a decree of the court assigning such lands to such heir or devisee, or until the time allowed for paying debts has expired.

It seems clear from these provisions of the law that while the estate is being settled in the Court of First Instance in a special proceeding, no ordinary action can be maintained in that court, or in any other court, by a person claiming to be the heir, against the executor or against other persons claiming to be heirs, for the purpose of having the rights of the plaintiff in the estate determined. The very purpose of the trial or hearing provided for in section 753 is to settle and determine those questions, and until they are settled and determined in that proceeding and under that section no action such as the present one can be maintained.

An examination of the prayer of the amended complaint above quoted will show that to grant it would be to prevent the settlement of the estate of a deceased person in one proceeding in the Court of First Instance. It would require, in the first place, the revocation of the judgment probating the will. This relief can not be obtained in an ordinary action. The plaintiff not having appealed from the order admitting the will to probate, as she had a right to do, that order is final and conclusive. It does not, however, as the court below held, determine that the plaintiff is not entitled to any part of the estate.

The effect of such a decree was stated in the case of *Castañeda v. Alemany* (2 Off. Gaz., 366). The statements there made need not be repeated here. The plaintiff in her amended complaint asks also that the appointment of Engracio Palanca be annulled. This relief can not be granted in an ordinary action. The plaintiff had a right to appeal from the order of the court appointing the administrator in this case, and not having exercised that right such order is final and conclusive against her. The plaintiff also asks that the administrator be required to render an account to her of his administration, and deposit in court the money which he has in his possession. To grant this relief in an ordinary action between parties would be to take away from the court having in charge the settlement of the estate the express powers conferred upon it by law. To grant that part of the prayer of the amended complaint which asks that the plaintiff be declared to be entitled to three fourths of the property of the estate, would be to take away from the court administering the estate the power expressly given to it by section 753 to determine that question in the proceeding relating to the estate.[38] (emphases and underscoring supplied)

In other words, a special proceeding for the declaration of heirs should be instituted, precisely, to establish the rights and status of the heirs. An ordinary civil action is not the proper remedy because the establishment of the status of the heirs is not within its purpose.

While the rights of succession are transmitted from the moment of the death of the decedent, *Pimentel* explained that the properties inherited by the heirs are still subject to the controversies, disagreements, existing debts, expenses, and liabilities of the decedent's estate. Hence, a special proceeding for the declaration of heirs is necessary to determine who are truly entitled to the properties of decedent, which shall also be liable to existing obligations of the estate. Indeed, whatever debts, liabilities, or obligations survive the death of the decedent, who shall be carried over to the inherited properties. Precisely, a special proceeding for the declaration of heirship is necessary to orderly determine the heirs, who shall be bound by such existing obligations.

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[38] Id. at 439-441.

Accordingly, when there is an Extrajudicial Settlement of Heirs in intestate succession under Section 1 of Rule 74[39] or an extrajudicial partition is undertaken and a disputed issue regarding the validity of the heirship arises, the general rule for judicial declaration should still be applied to conclusively resolve such conflict. A special proceeding must be instituted to finally settle the issues surrounding the declaration of heirship.

Further, the issue on the declaration of heirs in a special proceeding is within the exclusive jurisdiction of the settlement court. Under the Rules of Court Section 1 of Rule 73, the court first taking cognizance of the settlement of the estates of the deceased shall exercise jurisdiction to the exclusion of all other courts.[40] The reason for this provision of the law is obvious.

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[39] **Rule 74.** Summary Settlement of Estate

Section 1. *Extrajudicial settlement by agreement between heirs.*— If the decedent left no will and no debts and the heirs are all of age, or the minors are represented by their judicial or legal representatives duly authorized for the purpose, the parties may without securing letters of administration, divide the estate among themselves as they see fit by means of a public instrument filed in the office of the register of deeds, and should they disagree, they may do so in an ordinary action of partition. If there is only one heir, he may adjudicate to himself the entire estate by means of an affidavit filed in the office of the register of deeds. The parties to an extrajudicial settlement, whether by public instrument or by stipulation in a pending action for partition, or the sole heir who adjudicates the entire estate to himself by means of an affidavit shall file, simultaneously with and as a condition precedent to the filing of the public instrument, or stipulation in the action for partition, or of the affidavit in the office of the register of deeds, a bond with the said register of deeds, in an amount equivalent to the value of the personal property involved as certified to under oath by the parties concerned and conditioned upon the payment of any just claim that may be filed under section 4 of this rule. It shall be presumed that the decedent left no debts if no creditor files a petition for letters of administration within two (2) years after the death of the decedent.

The fact of the extrajudicial settlement or administration shall be published in a newspaper of general circulation in the manner provided in the next succeeding section; but no extrajudicial settlement shall be binding upon any person who has not participated therein or had no notice thereof.

[40] *Gianan v. Imperial*, 154 Phil. 705, 712-713 (1974).

The settlement of the estate of a deceased person in court constitutes but one proceeding. For the successful administration of that estate it is necessary that there should be but one responsible entity, one court, which should have exclusive control of every part of such administration. To entrust it to two or more courts, each independent of the other, would result in confusion and delay.[41]

Likewise, the declaration of heirs is indispensable in the special proceeding because in the distribution stage of the settlement proceeding, the court determines who are entitled to inherit after all the debts and charges against the estate are completed. This is the express provision of Section 1 of Rule 91, so that the submission of evidence in the special proceeding to determine the persons entitled to share in the residue of the estate, for the purpose of including them in what is known as the Order of Declaration of Heirs, is towards the last stage of the distribution proceedings, after the debts, charges and expenses of administration, have been paid.[42] Without such declaration of heirs in a special proceeding for the settlement of the estate, the court would not be able to determine whom the estate shall be distributed. If there is a controversy before the court as to who the lawful heirs of the deceased person are or as to the distributive shares to which each person is entitled under the law, the controversy shall be heard and decided as in ordinary cases.[43] Again, this is in accordance with the very definition of a special proceeding: a remedy by which a party seeks to establish a status, a right, or a particular fact. In this case, the party seeks to establish the right as an heir so that his or her share in the inheritance is judicially recognized.

In his book, Vicente J. Francisco stated that if there is a controversy before the court as to who the lawful heirs of the deceased person are, or as to the distributive share to which each person is entitled under the law, the court shall determine

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[41] *Macias v. Kim*, 150-A Phil. 603, 611 (1972).

[42] *Reyes v. Ysip*, 97 Phil. 11, 13 (1955).

[43] Section 1, Rule 90.

the controversy after the testimony as to such controversy has been taken in writing by the judge, under oath.[44] Indeed, a special proceeding for the judicial declaration of heirship is necessary when there is a disputed controversy as to whom the rightful heirs of the decedent are.

Similarly, in *Aliasas v. Alcantara*,[45] the Court explained that while the rights to a person's succession are transmitted from the moment of his death, and thus the heirs of the deceased, by the mere fact of his death, succeed to all his rights and obligations, **only a division legally made of hereditary property can confer upon each heir the exclusive ownership of the property which may have been awarded to him.** Therefore, a special proceeding is necessary to declare the rightful heirs, settle the claims against the estate, and then finally distribute the estate in accordance with the order of distribution.

Judicial determination of heirship is indispensable

Judicial determination of heirships cannot be dispensed with both in terms of substantial and procedural laws and is best illustrated in case of escheat, a special proceeding. The Civil Code provides:

"Article 1011. In default of persons entitled to succeed in accordance with the provisions of the preceding Sections, the State shall inherit the whole estate."

The last in the order of intestacy is the State. It should be noted that the State is an intestate heir and gets the property as an heir.[46] Further, Article 1012 of the Civil Code provides:

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[44] V. Francisco, The Revised Rules of Court in the Philippines, V-B, 359 (1970).

[45] 16 Phil. 489 (1910).

[46] Caguioa, Comments and Cases on Civil Law, Civil Code of the Philippines, 1970 Third Edition, Volume III, p. 406.

Art. 1012. In order that the State may take possession of the property mentioned in the preceding article, the pertinent provisions of the Rules of Court[47] must be observed.

"**The State, therefore, does not *ipso facto* become the owner of the estate left without heir. Its right to claim must be based upon a court's decree allowing it to have the estate, and after compliance with the procedure laid down by the Rules of Court.** When this procedure has neither been followed nor complied with, a court does not acquire jurisdiction either to take cognizance of the escheat case or to promulgate an order adjudicating to a municipality property to which there is no apparent heir."[48] In other words, it is mandatory that there be a judicial declaration that the decedent left no heirs entitled to his/her property before the state as an intestate heir can escheat the property in its favor.

By way of example as to how Art. 777 of the Civil Code relates to the time of reckoning when ownership is vested in the heirs is in an escheat proceeding: If the state is successful in escheating a property that generates income from rentals of a commercial building, the State can demand rentals, *(jus fruiendi)* from the tenants without controversy as to the reckoning date because Art. 777 fixed it from the moment of the death of the decedent.

Consequently, the premise of the *ponencia* — that judicial declaration of heirship may be set aside, especially in intestate succession, due to Art. 777 of the Civil Code since the property is transmitted from the moment of death of the said decedent — is contradicted by Articles 1011 and 1012 of the Civil Code and under the Rules of Court.

Again, when a person dies intestate and there is no claiming heir over the estate, the State must first file a petition for escheat, a special proceeding, to judicially determine whether the deceased truly did not have any heir.[49] In that case, even if the

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[47] Rule 91, Rules of Court.

[48] Tolentino, Civil Code of the Philippines, Volume III, pp. 504-505.

[49] Section 1, Rule 91 of the Rules of Court states:

decedent died intestate, the State, as an intestate heir, cannot immediately enforce its rights over the properties thereof from the moment of the decedent's death. There must first be a judicial determination of heirship to ensure that the deceased did not have any heir pursuant to Art. 1012 of the Civil Code. Only when the court is convinced in the special proceeding, upon satisfactory proof, that the decedent left no heir in the intestate succession, may the properties be escheated in favor of the State.[50]

Exception when ordinary civil action may be instituted; established rule on declaration of heirship

As jurisprudence evolved, several exceptions to the general rule on the judicial declaration of heirs were formulated. An

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Section 1. *When and by whom petition filed*.— When a person dies intestate, seized of real property in the Philippines, leaving no heir or person by law entitled to the same, the Solicitor General or his representative in behalf of the Republic of the Philippines, may file a petition in the Court of First Instance of the province where the deceased last resided or in which he had estate, if he resided out of the Philippines, setting forth the facts, and praying that the estate of the deceased be declared escheated.

[50] Section 3, Rule 91 of the Rules of Court states:

Section 3. *Hearing and judgment*.— Upon satisfactory proof in open court on the date fixed in the order that such order has been published as directed and that the person died intestate, seized of real or personal property in the Philippines, leaving no heir or person entitled to the same, and no sufficient cause being shown to the contrary, the court shall adjudge that the estate of the deceased in the Philippines, after the payment of just debts and charges, shall escheat; and shall, pursuant to law, assign the personal estate to the municipality or city where he last resided in the Philippines, and the real estate to the municipalities or cities, respectively, in which the same is situated. If the deceased never resided in the Philippines, the whole estate may be assigned to the respective municipalities or cities where the same is located. Such estate shall be for the benefit of public schools, and public charitable institutions and centers in said municipalities or cities.

The court, at the instance of an interested party, or on its own motion, may order the establishment of a permanent trust, so that the only income from the property shall be used.

ordinary civil action involving the declaration of the heirs may be instituted, without a prior or separate special proceeding, in the following instances:

1. When the parties in the civil case had voluntarily submitted the issue to the trial court and already presented their evidence regarding the issue of heirship;[51]
2. When a special proceeding had been instituted but had been finally closed and terminated, and hence, cannot be re-opened.[52]

The first exception was formulated due to practicality. When the parties have already voluntarily presented evidence regarding their rights as heirs in the ordinary civil action, it would be impractical to compel them to institute a separate special proceeding to determine the same issue.[53] In that instance, the parties do not anymore dispute the fact of heirship because they already presented evidence to establish such in the ordinary civil action. As a result, a separate special proceeding would be impractical, inconsequential, and unnecessary. This is also applied when the estate of the decedent only consists of one property and the parties already presented evidence regarding their heirship in the ordinary civil action.[54] Thus, for the sake of expediency, the Court allows the parties to institute an ordinary civil action regarding the rights of an heir even without a special proceeding for the declaration of heirs. To rule otherwise would result to unnecessary litigation because the pieces of evidence on the issue of heirship were already voluntarily presented by both parties and to dismiss the ordinary civil action would further delay the proceeding since a separate special proceeding for the declaration of heirs would tackle the same issue and evidence. In said instance, an ordinary civil action which considers the issue on the declaration of heirship, is justified.

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[51] *Heirs of Gabatan v. Court of Appeals*, 600 Phil. 112, 126 (2009).

[52] *Portugal v. Portugal-Beltran*, 504 Phil. 456, 469 (2005).

[53] *See Heirs of Fabillar v. Paller*, G.R. No. 231459, January 21, 2019.

[54] *See Portugal v. Portugal-Beltran*, supra note 10.

The second exception was formulated in order to give an opportunity to the rightful heirs, who were not able to participate in the special proceeding that was already closed and terminated, to assert their successional rights even in an ordinary civil action. Under the Rules of Court, once a settlement proceeding has been closed and terminated with finality, it cannot be re-opened. In that situation, the heir who was not able to participate in the said proceeding is allowed to institute an ordinary civil action to assert his or her status as an heir even though the earlier special proceeding had already been closed. Consequently, this second exception was established so that the rights of the heirs are still recognized despite the termination of the special proceeding for the declaration of heirs.

In sum, the current rules on declaration of heirship are as follows:

Established Rule

General Rule: A declaration of heirship can only be made in a special proceeding; it cannot be undertaken in an ordinary civil action.

Exceptions: An ordinary civil action involving the declaration of heirs, even without a special proceeding for such purpose, may be instituted:

1. When the parties in the civil case had voluntarily submitted the issue to the trial court and already presented their evidence regarding the issue of heirship;
2. When a special proceeding had been instituted but had been finally closed and terminated, and hence, cannot be re-opened.

However, the *ponencia* proposes that the established rule should be modified as follows:

Proposed Rule

> Unless there is a pending special proceeding for the settlement of the decedent's estate or for the determination of heirship, the compulsory or intestate heirs may

> commence an ordinary civil action to declare the nullity of a deed, instrument, or conveyance of property, or any other action in the enforcement of their successional rights, without the necessity of a prior and separate judicial declaration of their status as such.[55]

In other words, an ordinary civil action for the determination of heirship may be instituted by compulsory or intestate heir even without instituting a special proceeding. It practically sets aside the general rule as stated above.

It is my opinion that the **Established Rule** should be preserved because it has been consistently applied by jurisprudence, it has sufficient basis under the law and the Rules of Court, and it provides an orderly and stable process to determine the heirs.

Jurisprudence consistently applied the Established Rule

The *ponencia* cited several jurisprudence to support the **Proposed Rule** wherein the Court unequivocally allowed ordinary civil action involving the declaration of heirs without instituting a special proceeding. However, a review of the cited jurisprudence reveals that the Court consistently applied the **Established Rule**, hence, it is not necessary to abrogate or modify such rule. I will discuss the cases cited by the *ponencia*.

A. General Rule

In *Litam v. Rivera (Litam)*,[56] there was a pending special proceeding for the settlement of the intestate estate of the deceased Rafael Litam. The petitioners therein filed a separate ordinary civil action, claiming that they were the children of the deceased by a previous marriage to a Chinese woman, and that they were entitled to inherit his one-half (1/2) share of the conjugal properties acquired during his marriage to Marcosa Rivera. The trial court in the ordinary civil action declared,

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[55] *Majority Opinion*, p. 18.

[56] 100 Phil. 364 (1956).

among others, that the petitioners were not children of the deceased and that Marcosa was his only heir. On appeal, this Court ruled that such declaration — that Marcosa was the only heir of the decedent — was improper in the ordinary civil action because the determination of such issue was within the exclusive competence of the court in the special proceedings.

Evidently, the Court applied the general rule in the **Established Rule** that the declaration of heirs shall be conducted in the special proceeding because it seeks to establish a right, status, or particular fact. The first exception to the established rule was not applied because it cannot be gainsaid that the parties voluntarily presented evidence to establish the heirship; in fact, the evidence regarding the said heirship was disputed. The second exception to the established rule was also inapplicable because the special proceeding for the declaration of heirs was still pending and open before the settlement court.

In *Solivio v. Court of Appeals (Solivio)*,[57] the deceased Esteban Javellana, Jr. was survived by Celedonia Solivio *(Celedonia)*, his maternal aunt, and Concordia Javellana-Villanueva *(Concordia)*, his paternal aunt. Celedonia filed the intestate proceedings and had herself declared as sole heir and administratrix of the estate of the decedent to facilitate the implementation of the latter's wish to place his estate in a foundation named after his mother. While the probate proceeding was pending, Concordia filed a separate ordinary civil action of partition, recovery of possession, ownership, and damages, where she sought to be declared as co-heir and for partition of the estate. This Court held that the "separate action was improperly filed for it is the probate court that has exclusive jurisdiction to make a just and legal distribution of the estate." This Court further held that "in the interest of orderly procedure and to avoid confusing and conflicting dispositions of a decedent's estate, a court should not interfere with probate proceedings pending in a co-equal court." Again, the general rule in the **Established Rule**, that there must be a special

[57] 261 Phil. 231 (1990).

proceeding for the declaration of heirs was applied because the exceptions to such rule were not present in that case.

In the 1905 case of *Pimentel*, the decedent died testate. While the settlement proceeding was pending, the mother of the decedent filed a separate original civil action for declaration of heirship and that she be entitled to the properties of her daughter. The Court declared said original civil action shall not prosper because there was still a pending special proceeding for the declaration of heirs. It underscored the importance of having a single special proceeding for the declaration of heirs and the settlement of the estate so that all the debts and claims against the estate could be consolidated and applied and, afterwards, the estate can be distributed and partitioned to the heirs, legatees, and devisees in an orderly manner. Thus, the general rule in the **Established Rule** was still applied.

In *Ypon*, the petitioners filed an ordinary civil action for cancellation of title and reconveyance with damages. They alleged that Magdaleno Ypon died intestate and that respondent wrongly executed an affidavit of self-adjudication because they were actually the collateral relatives and successors-in-interest of Magdaleno. The respondent then filed an answer, attaching evidence that he was the only son and sole heir of Magdaleno. The lower court dismissed the complaint because the declaration of heirs should be made in a special proceeding and not in an ordinary civil action. On appeal, the Court affirmed the dismissal because a special proceeding must indeed be filed for the declaration of heirs. Once more, the general rule in the **Established Rule** was applied.

The Court also discussed the exceptions to the **Established Rule** in *Ypon*; however, those exceptions were not applicable in that particular case. Indeed, the first exception was not applicable because both parties did not voluntarily present evidence regarding the issue of declaration of heirship in the ordinary civil action. Petitioners only claimed being the collateral relatives and successors-in-interest of the decedent but did not present any evidence regarding such claim. In other words, the allegation regarding the heirship was completely

unsubstantiated. On the contrary, the respondent was able to present evidence that he was the son and sole heir of the decedent. This greatly contradicted the claim of heirship of the petitioners. Stated differently, as there was a dispute regarding the issue of heirship between the parties, the Court found it best to first resort to a special proceeding for the judicial declaration of heirship and resolve who the lawful heirs of the decedent are.

Similarly, in *Yaptinchay*, the petitioners filed an ordinary civil action for annulment of title alleging that they were the legal heirs of decedent Yaptinchay, who died intestate, and that respondents wrongfully registered the properties of the latter. The trial court dismissed the complaint reasoning that they must first file a special proceeding for the declaration of heirship. The Court affirmed the dismissal of the complaint. Evidently, the Court applied the general rule in the **Established Rule** that a special proceeding is required for a declaration of heirship to establish the right, status, and fact that they are heirs of the decedent.

The Court in *Yaptinchay* did not apply the first exception of the **Established Rule** because the parties did not voluntarily present evidence before the trial court regarding the issue of the declaration of heirship. Notably, the trial court observed that the petitioners "have not shown any proof or even a semblance [of the heirship] — except the allegations that they are the legal heirs of the above-named Yaptinchays — that they have been declared the legal heirs of the deceased couple."[58] As the fact of heirship was not proven because no evidence was presented to establish such claim in the ordinary civil action, the proper recourse was to institute a special proceeding to precisely settle the issue on declaration of heirship.

In *Reyes*, the respondents filed an ordinary civil action for annulment of title alleging that they were the legal heirs of Anacleto Cabrera *(Cabrera)*, who died intestate, and that petitioners wrongfully registered the land belonging to Cabrera. The trial court dismissed the complaint because the declaration

[58] Supra note 9.

of heirs must be instituted in a special proceeding. On appeal, the Court affirmed the dismissal and applied the general rule in the **Established Rule** that there must be special proceeding to establish the status of respondents as heirs of Cabrera. The Court did not apply the first exception to the Established Rule because the parties had yet to present any evidence to establish such declaration of heirship in the ordinary civil action, to wit:

> In the same manner, the respondents herein, except for their allegations, have yet to substantiate their claim as the legal heirs of Anacleto Cabrera who are, thus, entitled to the subject property. Neither is there anything in the records of this case which would show that a special proceeding to have themselves declared as heirs of Anacleto Cabrera had been instituted. As such, the trial court correctly dismissed the case for there is a lack of cause of action when a case is instituted by parties who are not real parties in interest. While a declaration of heirship was not prayed for in the complaint, it is clear from the allegations therein that the right the respondents sought to protect or enforce is that of an heir of one of the registered co-owners of the property prior to the issuance of the new transfer certificates of title that they seek to cancel. Thus, there is a need to establish their status as such heirs in the proper forum.
>
> Furthermore, in *Portugal*, the Court held that it would be superfluous to still subject the estate to administration proceedings since a determination of the parties' status as heirs could be achieved in the ordinary civil case filed because it appeared from the records of the case that the only property left by the decedent was the subject matter of the case and that the parties have already presented evidence to establish their right as heirs of the decedent. **In the present case, however, nothing in the records of this case shows that the only property left by the deceased Anacleto Cabrera is the subject lot, and neither had respondents Peter and Deborah Ann presented any evidence to establish their rights as heirs**, considering especially that it appears that there are other heirs of Anacleto Cabrera who are not parties in this case that had signed one of the questioned documents. Hence, under the circumstances in this case, this Court finds that a determination of the rights of respondents Peter and Deborah Ann as heirs of Anacleto Cabrera in a special proceeding is necessary.[59] (emphasis supplied)

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[59] Supra note 8 at 253-254.

Accordingly, a special proceeding is necessary as the fact of heirship was not duly proven by evidence in the ordinary civil action and there was a dispute of whether respondents were the rightful heirs of the decedent. Thus, the trial court properly ruled that the respondents therein were not real parties in interest in the said ordinary civil action as they must institute a special proceeding for the declaration of heirship.

B. First Exception to the Rule

In *Cabuyao v. Caagbay*[60] *(Cabuyao)*, the plaintiff filed an action for quieting of titles against the defendants who refused to vacate the land he inherited from his parents who died intestate. In his complaint, plaintiff attached several pieces of evidence, such as the death certificate of his parents and his baptismal certificate to prove that he was an heir. The defendants moved for the dismissal of the complaint because there should first be a special proceeding to declare heirship; and not an ordinary civil action. The Court held that the plaintiff may institute the ordinary civil action even though there was no judicial declaration of heirship. It was underscored therein that it was not denied by the parties that the plaintiff was the heir and lone legitimate child of the deceased, thus, he may institute an ordinary civil action although he had not been judicially declared as an heir.

Evidently, the Court applied the first exception to the **Established Rule** wherein an ordinary civil action may be instituted involving the declaration of heirs when the parties voluntarily submitted the issue to the trial court and already presented their evidence regarding the issue of heirship. As discussed above, the plaintiff in *Cabuyao* presented evidence regarding his heirship in the ordinary civil action and it was neither denied nor disputed by defendants; thus, it was allowed by the Court despite the lack of a special proceeding on the declaration of heirship.

In *De Vera v. Galauran (De Vera)*,[61] the plaintiffs therein also instituted an ordinary civil action for annulment of deed

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[60] 95 Phil. 614 (1954).

[61] 67 Phil. 213 (1939).

of sale which was instituted by the heir of the deceased. They alleged in their complaint that they were the legitimate heirs and children of the deceased who inherited from the deceased. The defendant then filed a demurrer, which is presumed to have been filed after the plaintiffs presented their evidence, alleging that the plaintiffs had no cause of action because they have not been declared legal heirs in a special proceeding. The Court sided with the plaintiffs that they may institute an ordinary civil action to assert their rights as heirs. Patently, the Court again applied the first exception to the **Established Rule** because there was no dispute as to the fact that the plaintiffs were indeed heirs of the decedent, which was duly established. Hence, a separate special proceeding was not required.

In *Morales v. Yañez (Morales)*,[62] the plaintiffs instituted an ordinary civil action for the recovery of the possession of three (3) parcels of land, which formed part of their inheritance from the decedent. In said case, there was no dispute that the lands belonged to the decedent, who died intestate, and that the plaintiffs were the surviving illegitimate children of the decedent. The defendant argued that there must first be a separate special proceeding to settle the estate of the decedent and have a judicial declaration of heirs. The Court, however, disagreed with the argument because while a formal declaration or recognition or enforcement of such right needs judicial confirmation in proper proceedings, it has often enforced or protected such rights from encroachments made or attempted before the judicial declaration. Which can only mean that the heir acquired hereditary rights before judicial declaration in testate or intestate proceedings.

Verily, the Court applied the first exception of the **Established Rule** and allowed the ordinary civil action to have a declaration of heirs because it is an undisputed fact, as established by evidence, that the plaintiffs were indeed the heirs of the decedent. To require a separate special proceeding for the declaration of heirs would be inconsequential because it will only reiterate the fact of heirship earlier established in the ordinary civil action.

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[62] 98 Phil. 677 (1956).

Similarly, in *Bonilla v. Barcena (Bonilla)*,[63] the Court allowed the substitution of the children of the decedent, as the heirs of the latter, in an ordinary civil action since there was no dispute that they are indeed the children of the decedent. To require a special proceeding for that purpose would be unnecessary.

In *Baranda v. Baranda (Baranda)*,[64] the petitioners therein, as heirs of the decedent, filed an ordinary civil action for the annulment of sale and reconveyance of lots. However, no special proceeding for the settlement of the decedent's estate was instituted. The Court held that it was not disputed that the decedent died intestate without any direct descendants or ascendants and that petitioners were the children of the deceased siblings of the decedent. Accordingly, they were the legitimate intestate heirs of the decedent. As no special proceeding for the settlement of the decedent's estate was instituted, the same declaration of heirs may be made in the ordinary civil action as their fact of heirship was undisputed by the evidence presented. Hence, the Court again applied the first exception of the **Established Rule** and held that petitioners had legal standing in the ordinary civil action.

Likewise, in *Pacaña-Contreras v. Rovila Water Supply, Inc. (Pacaña)*,[65] and *Heirs of Gregorio Lopez v. Development Bank of the Philippines (Lopez)*,[66] the parties voluntarily presented evidence regarding the declaration of heirship in the ordinary civil action and such fact was not disputed. In effect, the Court applied the first exception in the **Established Rule** that the declaration of heirship may be made in the ordinary civil action for the purpose of practicality.

In *Capablanca v. Heirs of Pedro Bas (Capablanca)*,[67] the petitioner was the heir of Norberto Bas, who was the transferee

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[63] 163 Phil. 516 (1976).

[64] 234 Phil. 64 (1987).

[65] 722 Phil. 460 (2013).

[66] 747 Phil. 427 (2014).

[67] 811 Phil. 861 (2017).

of a parcel of land that originated from the land of Pedro Bas. Petitioner filed an ordinary civil action for cancellation of title because her lot, which was inherited from Norberto Bas, was wrongfully claimed and registered by the heirs of Pedro Bas. The respondents therein argued that petitioner cannot institute an ordinary civil action because there must first be a special proceeding to establish that petitioner was also an heir of Pedro Bas. The Court ruled that:

> In this case, there is no necessity for a separate special proceeding and to require it would be superfluous considering that **petitioner had already presented evidence to establish her filiation and heirship to Norberto, which respondents never disputed**.[68] (emphasis supplied)

Fittingly, since the petitioner therein already presented evidence in the ordinary civil action that she was the heir of Norberto Bas, not Pedro Bas, and such fact was not disputed, a special proceeding for declaration of heirship would be superfluous.

In *Portugal v. Portugal-Beltran* (*Portugal*), petitioners filed an ordinary civil action for annulment of title because they claimed to be the lawful heirs of decedent Portugal while respondent was not related to the said decedent. The parties presented their evidence with the trial court regarding the issue on the declaration of heirship. The trial court initially dismissed the complaint because a special proceeding for the declaration of heirship was not filed by petitioners. On appeal, the Court held that the ordinary civil action can tackle the issue on declaration of heirship. It discussed the **Established Rule** on declaration of heirship and stated that the first exception to the said rule should have been applied, hence, the said issue can be undertaken in the ordinary civil action, to wit:

> It appearing, however, that in the present case the only property of the intestate estate of Portugal is the Caloocan parcel of land, to still subject it, under the circumstances of the case, to a special proceeding which could be long, hence, not expeditious, just to establish

[68] Id. at 875-876.

the status of petitioners as heirs is not only impractical; it is burdensome to the estate with the costs and expenses of an administration proceeding. And it is superfluous in light of the fact that the parties to the civil case — subject of the present case, could and had already in fact presented evidence before the trial court which assumed jurisdiction over the case upon the issues it defined during pre-trial.[69]

Aptly, a special proceeding for the declaration of heirs was not anymore required because the parties already presented their evidence regarding the issue of heirship as early as the pre-trial in the ordinary civil action. Further, a special proceeding would simply be impractical as the case only involves one parcel of land. Indeed, the Court correctly applied the first exception in the **Established Rule**.

C. Second Exception to the Rule

In *Quion v. Claridad (Quion)*,[70] the petitioners were the children of the decedent from his first marriage. Upon the death of the decedent intestate, the petitioners instituted intestate proceedings for the settlement and distribution of the estate. However, they concealed to the trial court the fact that the decedent had a second marriage from whom he had two (2) children. The proceedings were terminated and the properties were adjudicated to the petitioners. More than two (2) years later, the respondents, children of the second marriage, filed an ordinary civil action to be declared entitled to one-half (1/2) of the properties of the decedent. The Court allowed the respondents to file the ordinary civil action even though the intestate proceeding had already been terminated. It applied the second exception to the **Established Rule** that an ordinary civil action involving the declaration of heirship can be instituted when the special proceeding for such had been closed and terminated. The Court underscored that the children in the second marriage of the decedent were co-owners of the properties, hence, they may institute the ordinary civil action even as the special proceeding for declaration of heirs was already terminated.

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[69] Supra note 10, at 470.

[70] 74 Phil. 100 (1943).

In *Guilas v. Judge of the Court of First Instance of Pampanga (Guilas)*,[71] the decedent died with a will but did not include her adopted daughter, the petitioner therein, as one of the heirs. The special proceeding for the probate of the will and settlement of the estate was instituted. Upon the payment of the claims against the estate and issuance of the project of partition, the trial court declared that the testate proceedings were closed and terminated. Four (4) years later, the petitioner instituted an ordinary civil action for annulment of the partition, arguing that she was a lawful heir of the decedent. The Court held that petitioner could have filed a motion in the testate proceeding even though it was closed and terminated, to wit:

> The probate court loses jurisdiction of an estate under administration only after the payment of all the debts and the remaining estate delivered to the heirs entitled to receive the same. The finality of the approval of the project of partition by itself alone does not terminate the probate proceeding (Timbol vs. Cano,1 SCRA 1271, 1276, L-15445, April 29, 1961; Siguiong vs. Tecson, 89 Phil. pp. 28-30). As long as the order of the distribution of the estate has not been complied with, the probate proceedings cannot be deemed closed and terminated (Siguiong vs. Tecson, supra.);because a judicial partition is not final and conclusive and does not prevent the heir from bringing an action to obtain his share, provided the prescriptive period therefor has not elapsed (Mari vs. Bonilla, 83 Phil. 137). The better practice, however, for the heir who has not received his share, is to demand his share through a proper motion in the same probate or administration proceedings, or for re-opening of the probate or administrative proceedings if it had already been closed, and not through an independent action, which would be tried by another court or Judge which may thus reverse a decision or order of the probate on intestate court already final and executed and re-shuffle properties long ago distributed and disposed of (Ramos vs. Ortuzar, 89 Phil. 730, 741-742; Timbol vs. Cano, supra.; Jingco vs. Daluz, L-5107, April 24, 1953, 92 Phil. 1082; Roman Catholic vs. Agustines, L-14710, March 29, 1960, 107 Phil. 445, 460-461).[72]

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[71] 150 Phil. 138 (1972).

[72] Id. at 144-145.

Nevertheless, the Court allowed the continuance of the ordinary civil action considering that petitioner was indeed a lawful heir of the decedent and, as such, can assert her rights as an heir in the said ordinary civil action.

Established Rule consistently applied by the court

As extensively discussed above, the Court has consistently applied the **Established Rule**. In *Litam*, *Solivio*, *Pimentel*, *Ypon*, *Yaptinchay*, and *Reyes*, the Court applied the general rule that there must be a declaration of heirs in a special proceeding to establish right or status as an heir. It did not allow an ordinary civil action for the same because the exceptions to the rule were not present. Either there was still a pending special proceeding for declaration of heirs or the parties did not voluntarily present evidence regarding the issue of heirship; thus, the said issue was disputed. Hence, there was a necessity to institute a special proceeding and not merely an ordinary civil action for declaration of heirship.

On the other hand, in *Cabuyao*, *De Vera*, *Morales*, *Bonilla*, *Baranda*, *Pacaña*, *Lopez*, *Capablanca* and *Portugal*, the declaration of heirs was allowed in an ordinary civil action because the first exception to the **Established Rule** was present. The parties in those cases voluntarily presented evidence regarding the declaration of heirs in the ordinary civil action and there was no dispute as to who the heirs of the decedent are. For the purpose of practicality and expediency, an ordinary civil action will suffice for the declaration of heirs because instituting a separate special proceeding will only prolong litigation, which will tackle the same evidence and issue.

In cases which applied the first exception of the **Established Rule**, the plaintiffs were the rightful heirs of the decedent. However, for one reason or another, a third party fraudulently takes the decedent's property to the prejudice of the heir. When an heir institutes an ordinary civil action which tackles the declaration of heirs, the parties may be allowed to voluntarily present evidence to establish the said declaration. The trial

courts allow an heir to prove the status of heirship in the ordinary civil action, instead of filing a separate special proceeding, because he or she must be immediately allowed to protect and enforce rights against fraudulent third persons who attempt to take his or her inherited property. In that instance, a special proceeding is not the practical and timely solution anymore; rather, an ordinary civil action is allowed to resolve the issue of declaration of heirs. If the issue is resolved harmoniously, then the declaration of heirship in the ordinary civil action is upheld; otherwise, when the issue regarding the declaration of heirship is greatly contested and disputed, then a separate special proceeding must be instituted.

Notably, in the cases of *Cabuyao*, *De Vera*, *Morales*, *Bonilla*, *Baranda*, *Pacaña*, *Lopez*, *Capablanca* and *Portugal*, the plaintiffs were the heirs of the decedent and they filed ordinary civil actions against defendants who were not heirs of the decedent, or third parties who wrongfully claimed the decedent's property. In my view, the Court recognized the determination of heirship in the ordinary civil action to protect the estate against wrongful claims before the estate is lawfully distributed. Stated differently, the ordinary civil actions therein were allowed in order to preserve the estate of the decedent in favor of the rightful heirs.

However, these cases do not declare that the general rule — a declaration of heirship shall be established in a special proceeding — is abrogated. Despite allowing the issue of heirship in an ordinary civil action, they did not forestall the institution of a special proceeding for the very purpose of the declaration of heirship. Verily, the issue of heirship in these ordinary civil actions is without prejudice to the institution of a separate special proceeding for the rightful purpose of resolving the declaration of heirship.[73] Again, the issue of heirship in these ordinary civil cases were allowed in favor of the plaintiff-heirs so that they

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[73] See *Acap v. Court of Appeals*, supra note 24, where it was held that in spite of the dismissal of the ordinary civil action, which tackled the issue of extrajudicial declaration of heirship, such dismissal is without prejudice to the filing of the proper case to establish the legal mode by which he claims to have acquired ownership of the land in question.

would be able to preserve the estate of decedent against the wrongful claims of third parties until such time that the declaration of heirs is finally and conclusively settled in a separate special proceeding.

Finally, in *Quion*, the Court applied the second exception in the **Established Rule**.The special proceeding for the declaration of heirs in those cases were already closed and terminated. Nevertheless, the Court allowed the parties to institute an ordinary civil action involving the declaration of heirs and to assert their lawful rights as heirs of the decedent. In that manner, the rights of the heirs which were transmitted from the moment of death of the decedent are respected even in an ordinary civil action.

Verily, the **Established Rule** is well-encompassing and rational. It imposes the general rule that a special proceeding must be instituted for the declaration of heirship. At the same time, it allows an exception that an ordinary civil action may be instituted for the declaration of heirship, without a corresponding special proceeding, for the sake of practicality when both parties voluntarily present evidence regarding heirship and there is no longer dispute as to who the heirs of the decedent are. Further, when the special proceeding has been closed and terminated, an ordinary civil action may be instituted involving the declaration of heirs.

Indeed, the **Established Rule** is in accordance with substantive law that successional rights, properties and obligations are transmitted to the heirs from the moment of the death of the decedent and that remedial law governs the manner or method by which the transmission of these rights are enforced. It is flexible and accommodating because it enforces the provisions of the Rules of Court requiring a special proceeding for the declaration of heirs and, at the same time, allows exceptions when ordinary civil action may be instituted involving the same issue.

It is my view that the **Established Rule** regarding the declaration of heirs is balanced and satisfactory. Thus, I see no practical necessity for setting aside or modifying such rule.

Problems arising from the Proposed Rule

On the other hand, the **Proposed Rule** by the *ponencia* significantly modifies the said established rule. Instead of having a general rule with exceptions, the *ponencia* proposes that there should only be one rule: "Unless there is a pending special proceeding for the settlement of the decedent's estate or for the determination of heirship, the compulsory or intestate heirs may commence an ordinary civil action to declare the nullity of a deed, instrument, or conveyance of property, or any other action in the enforcement of their successional rights, without the necessity of a prior and separate judicial declaration of their status as such."[74]

It practically sets aside the general rule in the **Established Rule** that there must be a special proceeding for the declaration of heirs. Rather, it mandates that such special proceeding shall be voluntary or discretionary on the part of the compulsory and intestate heirs. Only when the parties file a special proceeding for such purpose will the court acknowledge such declaration of heirs in special proceedings. In all other case, the heirs are free to institute any and all ordinary civil action and they can raise whatever issue regarding the declaration of heirship in said ordinary civil action.

I believe that if the Court adopts this **Proposed Rule**, heirs in intestate succession will not anymore file any special proceeding for the declaration of heirs as they are free, without any restriction, to file ordinary civil actions to establish the declaration of heirs. Ordinary civil actions are undemanding, do not require publication, and may be instituted in several trial courts depending on the venue. Indeed, intestate heirs will be disincentivized to file any special proceeding for the declaration of heirs because they are uninhibited to resort to ordinary civil action, regardless whether or not the issue on heirship is highly disputed. The provisions on intestate proceeding under the Rules of Court will virtually become useless

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[74] *Majority Opinion*, p. 19.

because intestate heirs are not obligated anymore to file a special proceeding; instead, they shall resort to unconstrained institution of ordinary civil actions seeking for the declaration of heirship, irrespective of the complexity, disagreement, and misunderstanding regarding such issue of heirship by the parties.

The problem with the unrestricted filing of ordinary civil action for the declaration of heirs, due to its nature, would be the development of inconsistent decisions of the trial courts.[75] As discussed above, several ordinary civil actions may be instituted in different trial courts, provided they do not violate the rule against forum shopping. There is nothing in the Rules of Court that prevent the heirs from instituting several and simultaneous ordinary civil actions, especially if said actions refer to different venues.

For example, a decedent dies intestate and he leaves several real properties in Manila, Makati, and Taguig City. Some of the intestate heirs may execute an extrajudicial affidavit of settlement, which exclude other intestate heirs. As a result, the certificates of title of the properties of the decedent are transferred to said heirs. If we follow the **Proposed Rule**, one of the excluded heirs may simply file an ordinary civil action, such as action for reconveyance, in the RTC of Manila City, where the property is located. The other excluded heir may also file an ordinary civil action for annulment of title in the RTC of Makati City, where he resides, which includes a declaration of heirs. Finally, a third excluded heir may file an ordinary civil action for partition in the RTC of Taguig City, where one of the properties of the decedent is located, which also involves the issue of declaration of heirs. These three (3) ordinary civil actions are allowed because they involve different subject matters, *i.e.*, the properties are located in different localities. The conundrum arises when the RTC of Manila,

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[75] In *Spouses Maraño v. Pryce Gases, Inc.*, 757 Phil. 425, 430 (2015), the Court emphasized that the rendering conflicting decisions should be avoided for the orderly administration of justice.

Makati and Taguig City, regardless of the highly disputed issue of heirship, promulgates conflicting decisions regarding the ordinary civil actions.

Despite the complexity of the issue of heirship and the disputed nature of such issue in the above example, the ordinary civil actions will be allowed in the **Proposed Rule**,which may result into contradictory decisions; instead of having only one special proceeding for the declaration of heirship to resolve the disputed issue on heirship. While judgment in the ordinary civil action only binds the parties in the case, the conflicting decisions, once final and executory, will constitute *res judicata* and will lead to more confusion as to who the rightful heirs of the decedent are.

On the other hand, if we follow the **Established Rule**, a special proceeding for the declaration of heirship shall still be the general rule, which will uniformly thresh out such disputed issue. A special proceeding involving the declaration of heirs, particularly, the settlement of an estate, is filed only in one trial court, to the exclusion of all others. The reason for this provision of the law is obvious. The settlement of the estate of a deceased person in court constitutes but one proceeding. For the successful administration of that estate, it is necessary that there should be but one responsible entity, one court, which should have exclusive control of every part of such administration. To entrust it to two or more courts, each independent of the other, would result in confusion and delay.[76] This is precisely why the general rule states that the declaration of heirs should be instituted in a special proceeding — to have uniformity on the ruling with respect to the declaration of heirs and to avoid conflicting decisions.

Nevertheless, as stated above, the **Established Rule** still allows ordinary civil action for declaration of heirship on the basis of practicality — when both parties voluntarily present evidence regarding the declaration of heirship and there is no dispute regarding such issue. Again, this rule strikes a balance

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[76] *Macias v. Uy Kim*, supra note 41, at 611.

between substantive law and remedial: by mandating a special proceeding for declaration of heirs and allowing, in exceptional circumstances, an ordinary civil action regarding the same issue.

For the purpose of uniformity, orderliness, and stability, I submit that the **Established Rule** must be upheld.

Application of the Established Rule in this case; action for partition

The *ponencia* states:

> In its Resolution dated July 15, 2014, the RTC denied for lack of merit petitioner [Treyes]' second Motion to Dismiss. Nevertheless, the RTC held that it did not acquire jurisdiction over the Complaint's third cause of action, *i.e.*, partition:
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> > x x x A perusal of the Complaint shows that the causes of action are 1) the Annulment of the Affidavit of Self-Adjudication; 2) Reconveyance; (3) Partition; and 4) Damages. **Hence, the Court has jurisdiction over the first, second and fourth causes of action but no jurisdiction over the third cause of action of Partition and the said cause of action should be dropped from the case.**[77]

The trial court erred in its ruling that it had no jurisdiction over the action for partition. As aptly pointed out in the *ponencia* —

> Hence, as correctly held by the RTC in its Resolution dated August 15, 2014, the RTC has jurisdiction over the subject matter of the Complaint considering that the law confers upon the RTC jurisdiction over civil actions[78] which involve the title to, or possession of, real property or any interest therein, where the assessed value of the property

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[77] *Majority Opinion*, p. 4.

[78] Rule 1, Section 3 (a) of the Revised Rules of Court provides: *Cases governed*. — These Rules shall govern the procedure to be observed in actions, civil or criminal and special proceedings.

(a) A civil action is one by which a party sues another for the enforcement or protection of a right, or the prevention or redress of a wrong, (1a, R2)

involved exceeds P20,000.00 for civil actions outside Metro Manila, or where the assessed value exceeds P50,000.00 for civil actions in Metro Manila.[79]

Private respondents' complaint should have been treated as a special civil action for partition. The said action for partition is a mode for the settlement of the estate of the decedent and where a declaration of heirship may be determined.[80] They alleged that they are all brothers and sisters while petitioner is their brother-in-law. The copies of the birth certificates of private respondents and Rosie were attached as Annexes "A to H" of their complaint to prove the said assertion.[81] They alleged that petitioner, in gross bad faith and with malicious intent, falsely and fraudulently caused the properties of Rosie to be transferred to his own name to the exclusion of private respondents by executing two (2) affidavits of self-adjudication.[82]

Clearly, private respondents presented proof regarding the declaration of heirship in the pending action, particularly their birth certificates, to prove that they are the siblings of the decedent. Rule 132, Section 23 of the Rules of Court states that documents consisting of entries in public records made in the performance of a duty by a public officer are *prima facie* evidence of the facts therein stated. Entries in official records made in the performance of his duty by a public officer are *prima facie* evidence of the facts therein stated. The evidentiary

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A civil action may either be ordinary or special. Both are governed by the rules for ordinary civil actions, subject to the specific rules prescribed for a special civil action. (n)

[79] *Majority Opinion*, p. 11.

[80] **Rule 69, Section 1.** *Complaint in action for partition of real estate.* — A person having the right to compel the partition of real estate may do so as provided in this Rule, setting forth in his complaint the nature and extent of his title and an adequate description of the real estate of which partition is demanded and joining as defendants all other persons interested in the property.

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

[82] Id. at 94.

nature of such document must, therefore, be sustained in the absence of strong, complete and conclusive proof of its falsity or nullity.[83]

As aptly discussed by the *ponencia*, petitioner never dispute the fact that private respondents are indeed the brothers and sisters of the decedent, and are legal heirs, *viz.*:

> To be sure, upon meticulous perusal of the petitioner's pleadings, it is clear that the status of the private respondents as siblings of Rosie was not even seriously refuted by petitioner Treyes. He also does not make any allegation that the birth certificates of the private respondents are fake, spurious, or manufactured. All he says is that there must first be a declaration in a special proceeding. Clearly, therefore, it cannot be said in the instant case that the private respondents were not able to present evidence as to their status as heirs and that the determination of their status as heirs was seriously contested by the petitioner.[84]

As the parties voluntarily presented evidence regarding the declaration of heirs and such issue is not disputed anymore, then the first exception of the **Established Rule** is applicable. An ordinary civil action may be instituted for the declaration of heirs, despite the lack of a special proceeding, for the sake of practicality. To require private respondents to institute a separate special proceeding for the declaration of heirs would be a superfluity because they have already presented the same evidence and resolved the same issue regarding the heirship in this present ordinary civil action.

Hence, applying the **Established Rule**, the same result espoused by the *ponencia* would be achieved because the RTC properly denied petitioner's second motion to dismiss the civil action; as a result, the declaration of heirship should be allowed in the present case.

More importantly, a reading of the complaint would show that the ultimate objective sought by the private respondents

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[83] *Ombudsman v. Peliño*, 575 Phil. 221, 247 (2008); citation omitted.

[84] *Majority Opinion*, pp. 27-28.

was not the annulment of the extrajudicial affidavit of settlement; rather, they sought for the partition of the inherited property pursuant to their successional rights. Allegations 1, 7, 8 and 9 in the complaint supports the claim that there is co-ownership in the subject properties and private respondents seek the partition thereof. Thus, the complaint cannot be treated as an action for annulment of title; instead, it must be treated as an action for partition.

As stated in the complaint, private respondents claimed that they are indubitably co-owners of the properties of Rosie by virtue of being co-heirs. Accordingly, it is necessary to delineate the specific shares of each of the co-owners of the properties of Rosie's estate to avoid further conflict as to the use and disposition of the same and the specific shares of the co-heirs must be determined and partitioned.[85] Private respondents prayed for the following reliefs:

WHEREFORE, premises considered, it is most respectfully prayed of this Honorable Court that, after due notice and hearing, judgment be rendered as follows:

a.) Declaring the Affidavit of Self-Adjudicated dated September 2, 2008 *(Annex "X")* and May 19, 2011 *(Annex "Y")* as null and void and illegal and ordering the cancellation of all Transfer Certificates of Titles issued pursuant thereto;

b.) Ordering the defendant to reconvey the plaintiffs' successional share in the estate of the late ROSIE LARLAR TREYES;

c.) Ordering the partition of the estate of ROSIE LARLAR TREYES among the parties hereto who are also the heirs of the latter;

d.) Ordering the defendant to pay plaintiffs moral damages of not less than ₱500,000.00 and exemplary damages of not less than ₱500,000.00.

e.) Ordering the defendant to pay plaintiffs attorney's fees of ₱200,000.00 and litigation expenses of not less than ₱150,000.00.

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[85] *Rollo*, p. 97.

Other reliefs as may be just and equitable under the premises are also prayed for.[86] (emphasis supplied)

As stated in *Montero v. Montero, Jr.*,[87] the nature of a complaint is determined, not by the caption of the same, but by the allegations therein and relief prayed for, *viz.*:

> Hence, the Court has held that even if the action is supposedly one for annulment of a deed, the nature of an action is not determined by what is stated in the caption of the complaint but by the allegations of the complaint and the reliefs prayed for. Where the ultimate objective of the plaintiffs is to obtain title to real property, it should be filed in the proper court having jurisdiction over the assessed value of the property subject thereof.

Thus, because the ultimate relief sought by private respondents was the partition of the decedent's properties, as indicated in the third relief sought, then the complaint should be treated as an action for partition. The first and second reliefs sought, which are the annulment of petitioner's Affidavits of Self-Adjudication and the reconveyance of the properties, are simply consequences of the third relief — the partition of the properties. Article 496 of the Civil Code states that "Partition may be made by agreement between the parties or by judicial proceedings. Partition shall be governed by the Rules of Court insofar as they are consistent with this Code."

For actions for partition, the subject matter is two-phased. In *Bagayas v. Bagayas*,[88] the Court ruled that partition is at once an action for: (1) declaration of co-ownership; and (2) segregation and conveyance of a determinate portion of the properties involved. Thus, in a complaint for partition, the plaintiff seeks, first, a declaration that he/she is a co-owner of the subject properties, and second, the conveyance of his/her lawful share.[89]

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[86] Id. at 98-99.

[87] G.R. No. 217755, September 18, 2019.

[88] 718 Phil. 91 (2013).

[89] *Agarrado v. Librando-Agarrado*, G.R. No. 212413, June 6, 2018, 864 SCRA 582, 592.

Further, it was explained by the Court in *Heirs of Feliciano Yambao v. Heirs of Hermogenes Yambao*,[90] that an action for partition cannot be considered a collateral attack on the certificates of title of the heir that excluded the other heirs in the extrajudicial settlement of the estate; rather, it is a proper action because the excluded heirs are seeking to enforce their rights as co-owners of the inherited properties, to wit:

> There is likewise no merit to the claim that the action for partition filed by the heirs of Hermogenes amounted to a collateral attack on the validity of OCT No. P-10737. The complaint for partition filed by the heirs of Hermogenes seeks first, a declaration that they are a co-owners of the subject property, and second, the conveyance of their lawful shares. The heirs of Hermogenes do not attack the title of Feliciano; they alleged no fraud, mistake, or any other irregularity that would justify a review of the registration decree in their favor. Their theory is that although the subject property was registered solely in Feliciano's name, they are co-owners of the property and as such is entitled to the conveyance of their shares. **On the premise that they are co-owners, they can validly seek the partition of the property in co-ownership and the conveyance to them of their respective shares.**[91] (emphasis supplied; citation omitted)

Evidently, as an action for partition seeks the declaration of co-ownership, the issue on the declaration of heirship will indubitably be raised in the said action. Thus, it was proper for private respondents to raise the issue of declaration of heirship in the ordinary civil action because it is precisely the issue to be determined in the said action for partition. As petitioner did not contest such evidence regarding the declaration of heirship, then such fact is deemed admitted. Section 11, Rule 8 of the Revised Rules of Civil Procedure states:

> **Section 11.** *Allegations not specifically denied deemed admitted.*— Material averment in the complaint, other than those as to the amount of unliquidated damages, shall be deemed admitted when not specifically denied. Allegations of usury in a complaint to recover usurious interest are deemed admitted if not denied under oath.

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[90] 784 Phil. 538 (2016).

[91] Id. at 544-545.

Manifestly, the declaration of heirship is deemed admitted and undisputed in this action; a separate special proceeding is not required anymore. The annulment of petitioner's title over the properties and the reconveyance of the same are ventilated in the action for partition. Accordingly, the action for partition shall determine whether private respondents, as legal heirs of Rosie, are entitled to one-half (1/2) of the portion of the decedent's estate.

WHEREFORE, I concur with the *ponencia* to **DENY** the petition. However, I dissent that the Established Rule cited in *Ypon*, *Yaptinchay*, *Portugal*, and *Reyes* should be abandoned in lieu of the *ponencia's* Proposed Rule.

DISSENTING OPINION

LEONEN, *J.*:

It is well established that special proceedings have different procedural requirements from those of ordinary civil actions. Ordinary civil actions, whether they be actions *in personam* or *quasi in rem*, are binding only upon the parties. On the other hand, special proceedings, such as the settlement of a decedent's estate, are actions *in rem* — they entail a binding effect on the whole world.

Estate settlements and declarations of heirship, to be binding on the whole world, must undergo any of these: (1) an extrajudicial settlement pursuant to Rule 74, Section 4 of the Rules of Court; (2) a judicial summary settlement; or (3) testate or intestate settlement of estate. If none of these remedies are utilized, there could be no declaration of heirs. This rule is long entrenched in jurisprudence, and must likewise govern here.

This case centers on the estate of Rosie Larlar Treyes (Rosie), whose death left her husband, petitioner Nixon L. Treyes, and her siblings (private respondents) embroiled over the heirship to her 14 properties. Petitioner executed two Affidavits of Self-Adjudication, transferring the entire estate to himself as Rosie's

sole heir — one that Rosie's siblings contested as they, too, claim to be compulsory heirs.

For the majority, the Court of Appeals correctly held that the Regional Trial Court did not gravely abuse its discretion in denying petitioner's second Motion to Dismiss private respondents' Complaint, where he cited the following grounds: (a) improper venue; (b) prescription; and (c) lack of jurisdiction over the subject matter. The majority maintained that none of these grounds were proper.

I dissent.

I

Under the Omnibus Motion Rule, as provided in Rule 15, Section 8 of the Rules of Court, every motion that attacks a pleading, judgment, order, or proceeding shall include all grounds then available. All objections not included shall be deemed waived, unless the grounds are the lack of jurisdiction over the subject matter, *litis pendentia*, *res judicata*, and prescription.

Since petitioner failed to raise the ground of improper venue in his first Motion to Dismiss, he could not have raised the ground of improper venue in his second Motion to Dismiss, as that has been deemed waived. Nevertheless, the grounds of prescription and lack of jurisdiction over the subject matter may still be belatedly presented.

In asserting that private respondents' action had already prescribed, petitioner depended on Rule 74, Section 4 of the Rules of Court. The provision states that an heir or other persons unduly deprived of lawful participation in the estate "may compel the settlement of the estate in the courts" within two years after the estate settlement and distribution.

However, the majority states that Rule 74 applies only to special proceedings. Since private respondents' Complaint is an ordinary civil action and not a special proceeding, petitioner's assertion on the prescriptive period will not apply.[1]

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[1] *Ponencia*, p. 8.

The case being a civil action, the majority likewise believes that the ground of lack of jurisdiction is misplaced. Refuting petitioner's claim, it states that jurisdiction over the subject matter is conferred by law and determined by the allegations in a complaint. The law, it continues, confers jurisdiction on the Regional Trial Court for civil actions involving title or possession of real property, or any interest therein, where the property's assessed value exceeds ₱20,000.00 or, for civil actions in Metro Manila, ₱50,000.00; and if the action is not for forcible entry or unlawful detainer.[2] Since private respondents sought to annul the Affidavits of Self-Adjudication, the majority held that the trial court correctly assumed jurisdiction over the case.[3]

It is true that jurisdiction over the subject matter is conferred by law and determined by the allegations made in the complaint. In *Morta, Sr. v. Occidental*:[4]

> It is axiomatic that what determines the nature of an action as well as which court has jurisdiction over it, are the allegations in the complaint and the character of the relief sought. "Jurisdiction over the subject matter is determined upon the allegations made in the complaint, irrespective of whether the plaintiff is entitled to recover upon a claim asserted therein — a matter resolved only after and as a result of the trial. Neither can the jurisdiction of the court be made to depend upon the defenses made by the defendant in his answer or motion to dismiss. If such were the rule, the question of jurisdiction would depend almost entirely upon the defendant."[5] (Citations omitted)

A review of the Complaint's allegations reveals that private respondents unambiguously claim to be entitled to half of Rosie's estate as compulsory heirs under Article 1001 of the Civil Code.Thus, they pray that the Affidavits of Self-Adjudication be annulled and the estate be distributed and partitioned. They further assert that petitioner fraudulently excluded them from

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[2] Batas Pambansa Bilang 129 (The Judiciary Reorganization Act of 1980).

[3] Ponencia, p. 10.

[4] 367 Phil. 438 (1999) [Per J. Panganiban, First Division].

[5] Id. at 445.

the extrajudicial settlement to take hold of their conjugal properties for himself. They state:

> 1.6. Plaintiff's sister, ROSIE LARLAR TREYES, died without leaving any will. She also did not bear any children with the defendant TREYES.
>
> 1.7. Accordingly, the estate of ROSIE LARLAR TREYES, which consists of her one-half (1/2) share in the conjugal properties that she owns with her husband (defendant TREYES), became subject to the operation of the law on intestate succession.
>
> 1.8. In particular, Article 1001 of the Civil Code of the Philippines provides that where there are brothers and sisters who survive together with the widow or widower of the deceased, one-half (1/2) of the decedent's estate shall belong to the widow or widower, while the other half shall belong to the surviving brothers and sister. Thus:
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> . . . . . .
>
> 1.9. In effect, plaintiffs are legally the co-heirs of the estate of ROSIE LARLAR TREYES together with the defendant and are entitled to a share in the same.
>
> 1.10. However, in gross bad faith and with malicious intent, defendant TREYES falsely and fraudulently caused the above-described properties to be transferred in his own name to the exclusion of the herein plaintiffs by executing two (2) Affidavits of Self-Adjudication, the first one dated September 2, 2008 (copy attached as Annex "X"), while the second one is dated May 19, 2011 (copy hereto attached as Annex "Y").The contents of both Affidavits of Self-Adjudication are practically identical, and only the dates appear to vary.[6]

From their allegations, it is evident that the annulment of petitioner's Affidavits of Self-Adjudication, the cancellation of the Transfer Certificates of Title, may only be had if private respondents would be established as heirs. Only after being declared heirs can they be entitled to a portion of Rosie's estate.

Estate settlements are special proceedings cognizable by a probate court of limited jurisdiction, while the annulment of affidavits of adjudication and transfer certificates of title are

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[6] Complaint, p. 12.

ordinary civil actions cognizable by a court of general jurisdiction. It only follows that the trial court would be exceeding its jurisdiction if it entertained the issue of heirship. The subject matter and relief sought should have been threshed out in a special proceeding, and not in an ordinary civil action.

Yet, the majority emphasizes that the Complaint was not to establish heirship, but to annul the Affidavits of Self-Adjudication and Transfer Certificates of Title due to fraud. Thus, it rules that both Motions to Dismiss of petitioner were rightly struck down.

I disagree. Certain clarifications regarding the declaration of heirship in special proceedings as opposed to in ordinary civil actions must be made so as not to espouse confusion.

In *Heirs of Ypon v. Ricaforte*,[7] this Court laid down the distinction between an ordinary civil action and a special proceeding. It categorically stated that the determination of a decedent's lawful heirs should be made in a special proceeding:

> In the case of *Heirs of Teofilo Gabatan v. CA*, the Court, citing several other precedents, held that the determination of who are the decedent's lawful heirs must be made in the proper special proceeding for such purpose, and not in an ordinary suit for recovery of ownership and/or possession, as in this case:
>
> > **Jurisprudence dictates that the determination of who are the legal heirs of the deceased must be made in the proper special proceedings in court, and not in an ordinary suit for recovery of ownership and possession of property.** This must take precedence over the action for recovery of possession and ownership. The Court has consistently ruled that the trial court cannot make a declaration of heirship in the civil action for the reason that **such a declaration can only be made in a special proceeding**. Under Section 3, Rule 1 of the 1997 Revised Rules of Court, a civil action is defined as *one by which a party sues another for the enforcement or protection of a right, or the prevention or redress of a wrong while a special proceeding is a remedy by which a party seeks to establish a status, a right, or a particular fact*. It is then decisively clear that the declaration

[7] 713 Phil. 570 (2013) [Per J. Perlas-Bernabe, Second Division].

> of heirship can be made only in a special proceeding inasmuch as the petitioners here are seeking the establishment of a status or right.[8] (Emphasis in the original, citation omitted)

The majority is correct in saying that the main difference between an ordinary civil action and a special proceeding is that in an ordinary civil action, parties sue for the enforcement or protection of a right to which they claim entitlement, while in a special proceeding, parties merely seek to have a right established in their favor. However, this is not the only distinction between the two.

Special proceedings have different procedural requirements from ordinary civil actions. Necessarily, a question made for a special proceeding cannot be threshed out in a civil action, since a judgment from a special proceeding would have a different effect from that of an ordinary civil action.

In *Natcher v. Court of Appeals*,[9] widow Graciano Del Rosario (Del Rosario) married Patricia Natcher (Natcher) and transferred one of his lots to her through a sale. Upon Del Rosario's death, his children from his first marriage sought to annul the Deed of Sale in Natcher's favor on the ground of fraud. The trial court held the sale to be illegal; nevertheless, it considered the lot as part of Natcher's advanced inheritance as a compulsory heir of Del Rosario's estate.

This Court reversed the trial court's ruling, holding that matters of settlement and distribution of the decedent's estate fall within the exclusive province of the probate court, in its limited jurisdiction, and may not be concluded in an ordinary civil action. Thus:

> As could be gleaned from the foregoing, there lies a marked distinction between an action and a special proceeding. An action is a formal demand of one's right in a court of justice in the manner prescribed by the court or by the law. It is the method of applying

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[8] Id. at 575-576 citing *Heirs of Teofilo Gabatan v. CA*, 600 Phil. 112 (2009) [Per J. Leonardo-de Castro, First Division].

[9] 418 Phil. 669 (2001) [Per J. Buena, Second Division].

legal remedies according to definite established rules. The term "special proceeding" may be defined as an application or proceeding to establish the status or right of a party, or a particular fact. Usually, in special proceedings, no formal pleadings are required unless the statute expressly so provides. In special proceedings, the remedy is granted generally upon an application or motion."

Citing American Jurisprudence, a noted authority in Remedial Law expounds further:

> "It may accordingly be stated generally that actions include those proceedings which are instituted and prosecuted according to the ordinary rules and provisions relating to actions at law or suits in equity, and that special proceedings include those proceedings which are not ordinary in this sense, but is instituted and prosecuted according to some special mode as in the case of proceedings commenced without summons and prosecuted without regular pleadings, which are characteristics of ordinary actions. . . . A special proceeding must therefore be in the nature of a distinct and independent proceeding for particular relief, such as may be instituted independently of a pending action, by petition or motion upon notice."

Applying these principles, an action for reconveyance and annulment of title with damages is a civil action, whereas matters relating to settlement of the estate of a deceased person such as advancement of property made by the decedent, partake of the nature of a special proceeding, which concomitantly requires the application of specific rules as provided for in the Rules of Court.

Clearly, matters which involve settlement and distribution of the estate of the decedent fall within the exclusive province of the probate court in the exercise of its limited jurisdiction.

Thus, under Section 2, Rule 90 of the Rules of Court, questions as to advancement made or alleged to have been made by the deceased to any heir may be heard and determined by the *court having jurisdiction of the estate proceedings*; and the final order of the court thereon shall be binding on the person raising the questions and on the heir.

While it may be true that the Rules used the word "may", it is nevertheless clear that the same provision contemplates a probate court when it speaks of the "court having jurisdiction of the estate proceedings".

Corollarily, the Regional Trial Court in the instant case, acting in its general jurisdiction, is devoid of authority to render an adjudication and resolve the issue of advancement of the real property in favor of herein petitioner Natcher, inasmuch as Civil Case No. 71075 for reconveyance and annulment of title with damages is not, to our mind, the proper vehicle to thresh out said question. Moreover, under the present circumstances, the RTC of Manila, Branch 55 was not properly constituted as a probate court so as to validly pass upon the question of advancement made by the decedent Graciano Del Rosario to his wife, herein petitioner Natcher.[10] (Emphasis supplied, citations omitted)

More important, ordinary civil actions are proceedings *quasi in rem*, which means they are binding only to the parties involved. Meanwhile, special proceedings, including estate settlement, are proceedings *in rem*, binding the whole world. This was enunciated in *Leriou v. Longa*[11] thus:

The Court in *Pilapil* adjudged:

> While it is true that since the CFI was not informed that Maximino still had surviving siblings and **so the court was not able to order that these siblings be given personal notices of the intestate proceedings, it should be borne in mind that the settlement of estate, whether testate or intestate, is a proceeding *in rem*, and that the publication in the newspapers of the filing of the application and of the date set for the hearing of the same, in the manner prescribed by law, is a notice to the whole world of the existence of the proceedings and of the hearing on the date and time indicated in the publication. The publication requirement of the notice in newspapers is precisely for the purpose of informing all interested parties in the estate of the deceased of the existence of the settlement proceedings, most especially those who were not named as heirs or creditors in the petition,**

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[10] Id. at 676-678.

[11] *Leriou v. Longa*, G.R. No. 203923, October 8, 2018, <https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/64687> [Per J. Leonardo-de Castro, First Division].

regardless of whether such omission was voluntarily or involuntarily made. . . .[12] (Emphasis in the original)

An action *in rem* was further explained in *De Pedro v. Romasan Development Corporation*[13] vis-à-vis *quasi in rem* and *in personam* actions:

In actions *in personam*, the judgment is for or against a person directly. Jurisdiction over the parties is required in actions *in personam* because they seek to impose personal responsibility or liability upon a person.

Courts need not acquire jurisdiction over parties on this basis in *in rem* and *quasi in rem* actions. Actions *in rem* or *quasi in rem* are not directed against the person based on his or her personal liability.

Actions in rem are actions against the thing itself. They are binding upon the whole world. *Quasi in rem* actions are actions involving the status of a property over which a party has interest. *Quasi in rem* actions are not binding upon the whole world. They affect only the interests of the particular parties.

However, to satisfy the requirements of due process, jurisdiction over the parties in *in rem* and *quasi in rem* actions is required.

The phrase, "against the thing," to describe in rem actions is a metaphor. It is not the "thing" that is the party to an in rem action; only legal or natural persons may be parties even in in rem actions. "Against the thing" means that resolution of the case affects interests of others whether direct or indirect. It also assumes that the interests — in the form of rights and duties — attach to the thing which is the subject matter of litigation. In actions in rem, our procedure assumes an active vinculum over those with interests to the thing subject of litigation.[14] (Emphasis supplied, citations omitted)

To illustrate: if an *in rem* action such as a succession proceeding were to declare heirship, this would be binding on

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[12] Id. citing *Pilapil v. Heirs of Maximino R. Briones*, 519 Phil. 292 (2006) [Per J. Chico-Nazario, First Division].

[13] 748 Phil. 706 (2014) [Per J. Leonen, Second Division].

[14] Id. at 725-726.

the whole world, and would generally bar any third party from questioning such declaration. However, if an ordinary civil action — which is binding only on the parties involved — resolves causes of action that incidentally determine the question of heirship, any third party may simply assail that determination later on.

Thus, I do not agree that it is no longer necessary to go through a special proceeding to declare one's status as an heir, even if such declaration is merely incidental to the purpose of the ordinary civil action. There are only three (3) ways in which one may establish heirship, namely: (1) an extrajudicial settlement under Rule 74, Section 4[15] of the Rules of Court; (2) a judicial summary settlement; and (3) a settlement of estate through testate or intestate. If none of these remedies are utilized, there could be no declaration of heirs.

Granted, private respondents may be Rosie's heirs pursuant to Article 777 of the Civil Code, but this does not give the Regional Trial Court, in its ordinary jurisdiction, the authority to declare them as heirs.

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[15] SECTION 4. *Liability of distributees and estate*.— If it shall appear at any time within two (2) years after the settlement and distribution of an estate in accordance with the provisions of either of the first two sections of this rule, *that an heir or other person has been unduly deprived of his lawful participation in the estate, such heir or such other person may compel the settlement of the estate in the courts in the manner hereinafter provided for the purpose of satisfying such lawful participation*. And if within the same time of two (2) years, it shall appear that there are debts outstanding against the estate which have not been paid, or that an heir or other person has been unduly deprived of his lawful participation payable in money, the court having jurisdiction of the estate may, by order for that purpose, after hearing, settle the amount of such debts or lawful participation and order how much and in what manner each distributee shall contribute in the payment thereof, and may issue execution, if circumstances require, against the bond provided in the preceding section or against the real estate belonging to the deceased, or both. Such bond and such real estate shall remain charged with a liability to creditors, heirs, or other persons for the full period of two (2) years after such distribution, notwithstanding any transfers of real estate that may have been made. (Emphasis supplied)

Still, the majority highlights the exceptions to the rule that a determination of heirship in a special proceeding is a prerequisite to an ordinary civil action involving heirs, namely: (1) "when the parties in the civil case had voluntarily submitted the issue to the trial court and already presented their evidence regarding the issue of heirship"; and (2) "when a special proceeding had been instituted but had been finally closed and terminated, and hence, cannot be re-opened."[16] Evidently, neither of the exceptions applies.

In *Rebusquillo v. Spouses Gualvez*,[17] where an affidavit of adjudication was likewise questioned in an ordinary civil action for not including all the heirs, this Court said that the declaration of heirship must be made in a special proceeding, but allowed room for exceptions. Citing *Portugal v. Portugal-Beltran*,[18] it said:

> It has indeed been ruled that the declaration of heirship must be made in a special proceeding, not in an independent civil action. However, this Court had likewise held that recourse to administration proceedings to determine who heirs are is sanctioned only if there is a good and compelling reason for such recourse. Hence, the Court had allowed exceptions to the rule requiring administration proceedings as when the parties in the civil case already presented their evidence regarding the issue of heirship, and the RTC had consequently rendered judgment upon the issues it defined during the pre-trial. In *Portugal v. Portugal-Beltran*, this Court held:
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> > In the case at bar, respondent, believing rightly or wrongly that she was the sole heir to Portugal's estate, executed on February 15, 1988 the questioned Affidavit of Adjudication under the second sentence of Rule 74, Section 1 of the Revised Rules of Court. Said rule is an exception to the general rule that when a person dies leaving a property, it should be judicially administered and the competent court should appoint a qualified administrator, in the order established in Sec. 6, Rule 78 in

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[16] *Heirs of Ypon*, 713 Phil. 570, 576-577 (2013) [Per J. Perlas-Bernabe, Second Division] as cited in ponencia, p. 12.

[17] 735 Phil. 434 (2014) [Per J. Velasco, Jr., Third Division].

[18] 504 Phil. 456 (2005) [Per J. Carpio Morales, Third Division].

> case the deceased left no will, or in case he did, he failed to name an executor therein.
>
> Petitioners claim, however, to be the exclusive heirs of Portugal. *A probate or intestate court, no doubt, has jurisdiction to declare who are the heirs of a deceased*.
>
> It appearing, however, that in the present case the only property of the intestate estate of Portugal is the Caloocan parcel of land to still subject it, under the circumstances of the case, to a special proceeding which could be long, hence, not expeditious, just to establish the status of petitioners as heirs is not only impractical; it is burdensome to the estate with the costs and expenses of an administration proceeding. And it is superfluous in light of the fact that the parties to the civil case — subject of the present case, could and had already in fact presented evidence before the trial court which assumed jurisdiction over the case upon the issues it defined during pre-trial.
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> . . . . . .
>
> Similar to *Portugal*, in the present case, there appears to be only one parcel of land being claimed by the contending parties as the inheritance from Eulalio. It would be more practical, as *Portugal* teaches, to dispense with a separate special proceeding for the determination of the status of petitioner Avelina as sole heir of Eulalio, especially in light of the fact that respondents spouses Gualvez admitted in court that they knew for a fact that petitioner Avelina was not the sole heir of Eulalio and that petitioner Salvador was one of the other living heirs with rights over the subject land.[19] (Emphasis supplied, citations omitted)

In *Rebusquillo* and *Portugal*, this Court allowed the determination of heirship in an ordinary civil action since both cases involved only one property. Moreover, the parties there had already presented sufficient evidence before the court on their status as heirs, which was admitted by the opposing parties.

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[19] *Rebusquillo v. Spouses Gualvez*, 735 Phil. 434, 441-443 (2014) [Per J. Velasco, Jr., Third Division].

The same cannot be said in this case. Here, 14 conjugal properties of petitioner and the decedent are involved. In addition, the only evidence presented in court were photocopies of private respondents' birth certificates attached to the Complaint. Consequently, the exception allowing the trial court to assume jurisdiction over the case will not lie.

II

The majority went into an exhaustive explanation that ultimately concluded that private respondents are indeed heirs of Rosie. In arriving at this, it reviewed a flurry of cases that led it to abandon the long-established rule that a prior determination of heirship in a separate special proceeding is required before one can invoke their status and rights as a legal heir in an ordinary civil action.

However, the majority spoke of a line of cases that do not fall squarely upon this case.

In *Litam v. Espiritu*,[20] this Court unequivocally stated that the Regional Trial Court erred when it declared that the party involved was not an heir of the deceased. It stated:

> Likewise, we are of the opinion that the lower court should not have declared, in the decision appealed from, that Marcosa Rivera is the only heir of the decedent, such declaration is improper in Civil Case No. 2071, it being within the exclusive competence of the court in Special Proceeding No. 1537, in which it is not as yet, in issue, and will not be, ordinarily, in issue until the presentation of the project of partition.[21]

Despite this clear pronouncement, the majority believes that a definite declaration of who the heirs are may be correctly made in an ordinary civil action as long as there is no special proceeding yet.

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[20] 100 Phil. 364 (1956) [J. Concepcion, En Banc].

[21] Id. at 378.

It is true that in the earlier cases of *De Vera v. Galauran*,[22] *Cabuyao v. Caagbay*,[23] and *Marabilles v. Spouses Quito*,[24] this Court held that heirs may assert their rights to the decedent's property without a previous judicial declaration of heirship. However, such pronouncement does not necessarily declare one's status as an heir in the same proceeding. Nor does it mean that a special proceeding can be dispensed with.

In *Morales v. Yañez*,[25] this Court held that while a hereditary right may be protected, its formal declaration must still undergo special proceedings:

> It is clear that His Honor read the law correctly. Appellants contend, however, that for defendant to acquire a vested right to Eugeniano's property, he must first commence proceedings to settle Eugeniano's estate — which he had not done. There is no merit to the contention. This Court has repeatedly held that the right of heirs to the property of the deceased is vested from the moment of death. Of course the formal declaration or recognition or enforcement of such right needs judicial confirmation in proper proceedings. But we have often enforced or protected such rights from encroachments made or attempted before the judicial declaration. Which can only mean that the heir acquired hereditary rights even before judicial declaration in testate or intestate proceedings.[26]

Stated differently, even if one has not been declared an heir in a special proceeding, courts may still protect them from anyone who may encroach on the decedent's property. Based on the evidence presented in a particular case, the ordinary civil action may prosper, and whether one is the owner of a certain property may be determined. The court then decides on ownership, not heirship. Whether one is deemed the rightful owner does not make one an heir. That determination is only proper in a special proceeding.

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[22] 67 Phil. 213 (1939) [Per J. Morean, En Banc].

[23] 95 Phil. 614 (1954) [Per J. Concepcion, En Banc].

[24] 100 Phil. 64 (1956) [Per J. Bautista-Angelo, En Banc].

[25] 98 Phil. 677 (1956) [Per J. Bengzon, First Division].

[26] Id. at 678-679.

The majority likewise used *Bonilla v. Barcena*[27] to support its theory. In that case, this Court reversed the lower court's ruling and held that the heirs' rights to the decedent's property vests in them even before a judicial declaration of heirship in a special proceeding. In that case, however, this Court did not dispense with the declaration of heirs in a separate special proceeding. Instead, it simply allowed the substitution of the decedent's children as plaintiff in the pending case, them having the legal standing to protect the decedent's rights to the property involved.

The same principle was reiterated in *Baranda v. Baranda*,[28] where it was held that heirs of a decedent may institute an ordinary civil action, there being no pending special proceeding, since this is to protect the rights of the decedent. Thus:

> As heirs, the petitioners have legal standing to challenge the deeds of sale purportedly signed by Paulina Baranda for otherwise property claimed to belong to her estate will be excluded therefrom to their prejudice. Their claims are not merely contingent or expectant, as argued by the private respondents, but are deemed to have vested in them upon Paulina Baranda's death in 1982, as, under Article 777 of the Civil Code, "the rights to the succession are transmitted from the moment of the death of the decedent." While they are not compulsory heirs, they are nonetheless legitimate heirs and so, since they "stand to be benefited or injured by the judgment or suit," are entitled to protect their share of successional rights.
>
> This Court has repeatedly held that "the legal heirs of a decedent are the parties in interest to commence ordinary actions arising out of the rights belonging to the deceased, without separate judicial declaration as to their being heirs of said decedent, provided that there is no pending special proceeding for the settlement of the decedent's estate."
>
> *There being no pending special proceeding for the settlement of Paulina Baranda's estate, the petitioners, as her intestate heirs, had the right to sue for the reconveyance of the disputed properties, not*

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[27] 163 Phil. 156 (1976) [Per J. Martin, First Division].

[28] 234 Phil. 64 (1987) [Per J. Cruz, First Division].

to them, but to the estate itself of the decedent, for distribution later in accordance with law. Otherwise, no one else could question the simulated sales and the subjects thereof would remain in the name of the alleged vendees, who would thus have been permitted to benefit from their deception. In fact, even if it were assumed that those suing through attorneys-in-fact were not properly represented, the remaining petitioners would still have sufficed to impugn the validity of the deeds of sale.[29] (Emphasis supplied)

Notably, in enforcing the rights of the plaintiffs in *Baranda*, this Court ordered the reinstatement of the trial court's decision, which made no declaration on the status of the heirs but instead directed that all the lots in question be transferred to the decedent's estate.

Likewise, in *Marquez v. Court of Appeals*,[30] this Court reinstated the trial court's ruling, which deemed an affidavit of adjudication and donation inter vivos void for excluding the decedent's other heirs in its execution, without making an outright declaration as to who the heirs were. A similar conclusion was held in *Pacaña-Contreras v. Rovila Water Supply, Inc.*,[31] where this Court allowed the decedent's heirs to be impleaded in an action for accounting and damages to protect the rights of the deceased.

In *Heirs of Gregorio Lopez v. Development Bank of the Philippines*,[32] this Court reinstated the trial court's decision nullifying an affidavit of self-adjudication simply because it did not reflect the interests of all the heirs. As with the other cases, this Court also made no declaration on heirship, opting to have it threshed out in a separate special proceeding. It only ruled insofar as to protect the decedent's rights and estate.

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[29] Id. at 74-75.

[30] 360 Phil. 843 (1998) [Per J. Romero, Third Division].

[31] 722 Phil. 460 (2013) [Per J. Brion, Second Division].

[32] 747 Phil. 427 (2014) [Per J. Leonen, Second Division].

Lastly, in *Capablanca v. Heirs of Bas*,[33] this Court held that a judicial declaration of heirship is not necessary in order that heirs may assert their right to the property of the deceased. However, in the same case, it was made clear that the action filed by the plaintiff was one of protecting the right of the ancestor and not as right as an heir:

> Contrary to the erroneous conclusion of the Court of Appeals, this Court finds no need for a separate proceeding for a declaration of heirship in order to resolve petitioner's action for cancellation of titles of the property.
>
> The dispute in this case is not about the heirship of petitioner to Norberto but the validity of the sale of the property in 1939 from Pedro to Faustina, from which followed a series of transfer transactions that culminated in the sale of the property to Norberto. For with Pedro's sale of the property in 1939, it follows that there would be no more ownership or right to property that would have been transmitted to his heirs.
>
> Petitioner's claim is anchored on a sale of the property to her predecessor-in-interest and not on any filiation with the original owner. What petitioner is pursuing is Norberto's right of ownership over the property which was passed to her upon the latter's death.
>
> This Court has stated that no judicial declaration of heirship is necessary in order that an heir may assert his or her right to the property of the deceased. In *Marabilles v. Quito*:
>
> > *The right to assert a cause of action as an heir, although he has not been judicially declared to be so, if duly proven, is well settled in this jurisdiction. This is upon the theory that the property of a deceased person, both real and personal, becomes the property of the heir by the mere fact of death of his predecessor in interest, and as such he can deal with it in precisely the same way in which the deceased could have dealt, subject only to the limitations which by law or by contract may be imposed upon the deceased himself.* Thus, it has been held that "[t]here is no legal precept or established rule which imposes the necessity of a previous legal declaration regarding their status as heirs to an intestate on those who, being of age and

[33] 811 Phil. 861 (2017) [Per J. Leonen, Second Division].

> with legal capacity, consider themselves the legal heirs of a person, in order that they may maintain an action arising out of a right which belonged to their ancestor"[.][34] (Emphasis in the original, citations omitted)

Like the other cases, this Court in *Capablanca* reinstated the trial court's ruling, which once again made no declaration on heirship but simply canceled the transfer certificates of title.

This case is markedly different. Here, based on their claim as compulsory heirs, private respondents seek not only the annulment of the Affidavits of Self-Adjudication, *but also the partition of the estate of Rosie*. In so doing, they are not protecting the right of the decedent. Instead, they are attempting to protect their own claim to the estate as heirs through an ordinary civil action.

III

Here, petitioner, whether in good or bad faith, executed Affidavits of Self-Adjudication stating that he was the sole heir of Rosie's estate under Rule 74, Section 1[35] of the Rules of

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[34] Id. at 870-871.

[35] RULES OF COURT, Rule 74, Sec. 1 (1) provides:

SECTION 1. *Extrajudicial settlement by agreement between heirs*.— If the decedent left no will and no debts and the heirs are all of age, or the minors are represented by their judicial or legal representatives duly authorized for the purpose, the parties may without securing letters of administration, divide the estate among themselves as they see fit by means of a public instrument filed in the office of the register of deeds, and should they disagree, they may do so in an ordinary action of partition. If there is only one heir, he may adjudicate to himself the entire estate by means of an affidavit filed in the office of the register of deeds. The parties to an extrajudicial settlement, whether by public instrument or by stipulation in a pending action for partition, or the sole heir who adjudicates the entire estate to himself by means of an affidavit shall file, simultaneously with and as a condition precedent to the filing of the public instrument, or stipulation in the action for partition, or of the affidavit in the office of the register of deeds, a bond with the said register of deeds, in an amount equivalent to the value of the personal property involved as certified to under oath by the parties concerned and conditioned upon the payment of any just claim that may be filed under section 4 of this rule. It shall be presumed that the decedent left no debts if no creditor files a petition for letters of administration within two (2) years after the death of the decedent.

Court. On the other hand, private respondents, being the deceased's siblings, claim that they are compulsory heirs. Although they seek to annul the affidavits and cancel the Transfer Certificates of Title, the main issues of their Complaint depends on the determination of whether they are indeed heirs. As such, what they filed was a special proceeding camouflaged as an ordinary civil action.

Even if the Complaint were deemed an ordinary civil action, all the trial court may declare is whether petitioner fraudulently executed the Affidavits of Self-Adjudication. If the trial court were to determine who Rosie's heirs are, it would be in excess of its jurisdiction for, undeniably, it is only a probate or intestate court that has that kind of jurisdiction.

True, this Court has held several times that parties in interest may commence ordinary civil actions arising out of their rights of succession without the need for a separate judicial declaration of heirship. However, the rulings in those cases would only affect the specific cause of action presented. It will not extend to other proceedings that may involve the heirs or properties of the deceased.

The rule that heirship must first be declared in a special proceeding is not merely so a probate court is given precedence over a regular court in estate proceedings. Instead, what is being prevented is the lack of notice an ordinary civil action has to the entire world as opposed to that of a special proceeding. If parties institute any ordinary civil action that essentially declares heirship, anyone outside of this action can simply contest the ruling, as this is not an action *in rem*. On the contrary, special proceedings are equipped with different procedures that would make its decision conclusive to all, and not just to the parties involved. This ensures that the partition of the decedent's estate would reach a finality.

Contrary to the majority's assertion, to allow the determination of heirship in an ordinary civil action would in no way contribute to judicial economy. Rather, it may potentially begin circuitous proceedings where, after a trial court declares a decedent's heirs in an ordinary civil action, other interested third parties will

contest the decision and eventually elevate the matter to this Court — only to remand the case to a trial court sitting as a probate or intestate court to finally settle the question of heirship and estate of the deceased.

Thus, it is necessary to follow the rule that the issue of heirship must first be settled in an estate proceeding before it is declared in an ordinary proceeding. In *Natcher*:

> Of equal importance is that before any conclusion about the legal share due to a compulsory heir may be reached, it is necessary that certain steps be taken first. The net estate of the decedent must be ascertained, by deducting all payable obligations and charges from the value of the property owned by the deceased at the time of his death; then, all donations subject to collation would be added to it. With the partible estate thus determined, the legitime of the compulsory heir or heirs can be established; and only thereafter can it be ascertained whether or not a donation had prejudiced the legitimes.
>
> A perusal of the records, specifically the antecedents and proceedings in the present case, reveals that the trial court failed to observe established rules of procedure governing the settlement of the estate of Graciano Del Rosario. This Court sees no cogent reason to sanction the non-observance of these well-entrenched rules and hereby holds that under the prevailing circumstances, a probate court, in the exercise of its limited jurisdiction, is indeed the best forum to ventilate and adjudge the issue of advancement as well as other related matters involving the settlement of Graciano Del Rosario's estate.[36] (Citations omitted)

This rule is one of procedure that does not contradict substantive law, particularly, Article 777 of the Civil Code. Remedial or procedural laws are designed precisely to facilitate the effective adjudication of cases. They "do not create new or take away vested rights, but only operate in furtherance of the remedy or confirmation of such rights."[37] Thus, compliance

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[36] *Natcher v. Court of Appeals*, 418 Phil. 669, 679-680 (2001) [Per J. Buena, Second Division].

[37] *Tan, Jr. v. Court of Appeals*, 424 Phil. 556 (2002) [Per J. Puno, First Division].

with procedural rules is the general rule. Abandoning them should only be done in the most exceptional circumstances.[38]

Though the Regional Trial Court may act on the annulment of the Affidavits of Self-Adjudication, this does not vest in it the authority to determine whether private respondents are heirs for the estate settlement, be it for convenience or practicality. Since the determination of private respondents as heirs is precisely what is being asked in this case, it follows that the Regional Trial Court cannot assume jurisdiction over the subject matter.

Ultimately, I cannot agree that a preliminary determination of heirship can be attained in an ordinary civil action, even if it is only regarding the cause of action. All that can be determined is whether the Affidavits of Self-Adjudication were invalid given the presence of fraud. More important, I do not agree that private respondents' Complaint was an ordinary civil action. The relief they ask pertains to the determination of their heirship. What they filed was a special proceeding disguised as an ordinary civil action — one beyond the Regional Trial Court's jurisdiction.

ACCORDINGLY, I vote to dismiss the Petition without prejudice to the refiling of the proper proceeding to adjudicate their rights as heirs if warranted.

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[38] *Pilapil v. Heirs of Briones*, 543 Phil. 184 (2007) [Per J. Chico-Nazario, Third Division].

FIRST DIVISION

[G.R. No. 235016. September 8, 2020]

PEOPLE OF THE PHILIPPINES, *Plaintiff-Appellee, v.* **NESTOR BENDECIO y VIEJO ALIAS "TAN",** *Accused-Appellant.*

SYLLABUS

1. CRIMINAL LAW; MURDER; ELEMENTS THEREOF.— Article 248 of the RPC defines and penalizes murder. . . .

It requires the following elements: (1) a person was killed; (2) the accused killed him; (3) the killing was attended by any of the qualifying circumstances mentioned in Article 248 of the RPC; and (4) the killing is not parricide or infanticide.

2. ID.; ATTEMPTED FELONIES; ATTEMPTED MURDER OR ATTEMPTED HOMICIDE IS COMMITTED WHEN THE ACCUSED INTENDED TO KILL THE VICTIM, AS MANIFESTED BY THE USE OF DEADLY WEAPON IN THE ASSAULT, AND THE WOUND/S SUSTAINED BY THE VICTIM WAS/WERE NOT FATAL.— Article 6 of the RPC states that there is an attempt to commit a felony when the offender directly commences its commission by overt acts but was unable to perform all the acts of execution which should have produced the felony by reason of some cause or accident other than his or her own spontaneous desistance. In ***Palaganas v. People***, the Court held that attempted murder or attempted homicide is committed when the accused intended to kill the victim, as manifested by the use of a deadly weapon in the assault, and the wound/s sustained by the victim was/were not fatal.

3. ID.; AGGRAVATING CIRCUMSTANCES; TREACHERY; ELEMENTS AND ESSENCE THEREOF; CASE AT BAR.— There is treachery when two (2) elements concur: (1) the employment of means, methods, or manner of execution which would ensure the offender's safety from any defense or retaliatory act on the part of the offended party; and (2) such means, method, or manner of execution was deliberately or consciously chosen by the offender. The essence of treachery consists of the sudden

and unexpected attack on an unguarded and unsuspecting victim without any ounce of provocation on his or her part.

. . .

The qualifying circumstance of treachery attended the attempted killing of Gerry. In ***People v. Amora***, the Court held that the qualifying circumstance of treachery does not require that the perpetrator attack his or her victim from behind. Even a frontal attack could be treacherous when unexpected and on an unarmed victim who would be in no position to repel the attack or avoid it. This is the case for Gerry. As shown, appellant commenced the commission of murder by suddenly firing his gun towards Gerry who was then unarmed and was not in a position to defend himself. Gerry, however, did not die as a result because appellant simply missed.

4. ID.; CRIMINAL LIABILITY; DOCTRINE OF *ABERRATIO ICTUS*; CRIMINAL LIABILITY IS IMPOSED FOR THE ACTS COMMITTED IN VIOLATION OF LAW AND FOR ALL THE NATURAL AND LOGICAL CONSEQUENCES RESULTING THEREFROM; CASE AT BAR.— As for Jonabel's death, what happened to this seven (7)-year-old was a clear case of *aberratio ictus* or mistake in the blow. Under the doctrine of *aberratio ictus*, as embodied in Article 4 of the RPC, criminal liability is imposed for the acts committed in violation of law and for all the natural and logical consequences resulting therefrom. Thus, while it may not have been appellant's intention to shoot Jonabel, this fact alone will not exculpate him of his criminal liability. Jonabel's death was unquestionably the natural and direct consequence of appellant's felonious deadly assault against Gerry.

5. ID.; ID.; ID.; TREACHERY; TREACHERY MAY BE APPRECIATED IN *ABERRATIO ICTUS*.— Notably, the qualifying circumstance of treachery attended Jonabel's killing. As pointed out by Justice Mario V. Lopez during the deliberation, although appellant did not intend to kill Jonabel, treachery may still be appreciated in *aberratio ictus*, pursuant to the Court's ruling in ***People v. Flora***. There, the accused fired his gun at his target, but missed, and hit two (2) other persons. The Court appreciated treachery as a qualifying circumstance and convicted the accused for murder and attempted murder because even if the death and injury of the two (2) other persons resulted from

accused's poor aim, accused's act of suddenly firing upon his victims rendered the latter helpless to defend themselves. This is applicable here. Just because Jonabel was not the intended victim does not make appellant's sudden attack any less treacherous.

6. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; GENERALLY, THE COURT WILL NOT DISTURB THE TRIAL COURT'S FACTUAL FINDINGS THEREON, ESPECIALLY WHEN AFFIRMED BY THE COURT OF APPEALS.— When the credibility of witnesses is put in issue, the Court will generally not disturb the trial court's factual findings thereon, especially when affirmed by the Court of Appeals, as in this case. Indeed, the trial court was in a better position to decide the question of credibility as it heard the witnesses themselves and observed their deportment and the manner by which they testified during the trial.

7. ID.; ID.; ID.; DENIAL; ALIBI; DENIAL AND ALIBI CANNOT PREVAIL OVER THE POSITIVE AND CREDIBLE TESTIMONIES OF THE PROSECUTION WITNESSES.— Against the testimonies of Gerry and Princess, appellant's denial and alibi must crumble. We have held time and again that denial and alibi are inherently weak defenses which cannot prevail over the positive and credible testimonies of the prosecution witnesses that it was appellant who committed the crime charged. Hence, as between a categorical testimony which has a ring of truth on one hand, and a mere denial on the other, the former is generally held to prevail.

8. CRIMINAL LAW; COMPLEX CRIME; WHEN A SINGLE ACT CONSTITUTES TWO (2) OR MORE GRAVE OR LESS GRAVE FELONIES, THE PENALTY FOR THE MOST SERIOUS CRIME SHALL BE IMPOSED AND TO BE APPLIED IN ITS MAXIMUM PERIOD.— Article 48 of the RPC states that there is a complex crime when a single act constitutes two (2) or more grave or less grave felonies. Here, appellant's single act of firing his gun constituted the crime of attempted murder, with respect to Gerry, and the crime of murder, as regards Jonabel. Article 48 of the RPC likewise provides that the penalty for the most serious crime shall be imposed, the same to be applied in its maximum period. Here, the most serious crime is murder. Hence, the imposable penalty

is that of murder in its maximum period. Under Article 248 of the Revised Penal Code, murder is punishable by *reclusion perpetua* to death. Due to Republic Act No. 9346 (RA 9346), however, the penalty to be imposed is *reclusion perpetua*. More, in accordance with A.M. No. 15-08-02, the qualification of "without eligibility for parole" shall be used in order to emphasize that the accused should have been sentenced to suffer the death penalty had it not been for RA 9346.

9. ID.; ID.; MONETARY AWARDS IN COMPLEX CRIMES; CASE AT BAR.— As for the monetary award, ***People v. Jugueta*** teaches that civil indemnity, moral damages, and exemplary damages must be awarded for each component of the complex crime. Prevailing jurisprudence sets the award of ₱100,000.00 as civil indemnity, ₱100,000.00 as moral damages, and ₱100,000.00 as exemplary damages in murder cases where the imposable penalty is death but due to the prohibition to impose the same, the actual penalty imposed is *reclusion perpetua*. An award of ₱50,000.00 as temperate damages is likewise proper. With respect to the crime of attempted murder, an award of ₱25,000.00 as civil indemnity, ₱25,000.00 as moral damages, and ₱25,000.00 as exemplary damages is fitting.

APPEARANCES OF COUNSEL

The Solicitor General for plaintiff-appellee.
Public Attorney's Office for accused-appellant.

D E C I S I O N

LAZARO-JAVIER, *J.*:

The Case

This appeal assails the Decision[1] dated August 17, 2017 of the Court of Appeals in CA-G.R. CR No. 39046 affirming the verdict of conviction against appellant Nestor Bendecio y Viejo

[1] Penned by Associate Justice Celia C. Librea-Leagogo with Associate Justices Maria Elisa Sempio Diy and Pablito A. Perez concurring; *rollo*, pp. 2-24.

alias "Tan" for the complex crime of attempted murder with murder.

Antecedents

The Charge

Appellant Nestor Bendecio y Viejo alias "Tan" was charged with the complex crime of attempted murder with murder, *viz.*:

> That on or about the 24th day of December, 2011, in the City of Muntinlupa, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, with intent to kill armed with a hand gun with treachery suddenly attacked one GERRY MARASIGAN Y CAMPIT, when he did then and there willfully, unlawfully and feloniously fire a shot with his revolver at the latter without warning, which means was consciously adopted by the accused to ensure impunity, thus commencing the commission of the crime of murder, directly by overt acts but nevertheless did not perform all the acts of execution which should have produced the crime of murder by reason of cause or causes other than his own spontaneous desistance, that is, the accused missed his aim and hit instead another victim JONABELLE MARASIGAN a seven (7) year old minor, born on November 1, 2004 whose minority is equivalent to employing treachery on the part of the herein accused, thereby inflicting upon the latter fatal wounds which directly caused her death, to the damage and prejudice of her surviving heirs.
>
> Contrary to law.[2]

On arraignment, appellant pleaded not guilty.[3] Trial ensued.

During the trial, Gerry Marasigan and Princess Marasigan testified for the prosecution. On the other hand, appellant was the lone witness for the defense.

Prosecution's Version

Gerry Marasigan testified that on December 24, 2011, around midnight, a friend invited him to a drinking spree at the latter's home. He obliged and joined the drinking spree until his wife

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[2] *Rollo*, p. 3.

[3] *Id.* at 4.

came to fetch him. On their way out, he bumped into appellant whom he recognized as his mother's neighbor. Appellant asked him *"Anong problema?"* He replied: *"Kuya Nestor, asawa ko 'to, hindi mo na ba ako nakikilala?"* Appellant rebuffed *"Hindi, bastos ka eh."*

He no longer paid attention to appellant and proceeded to walk home with his wife. Back in their home, he was closing the front door when he noticed appellant standing right outside the doorway. He was a mere arm's length away from appellant when suddenly, the latter drew a gun, aimed at him, and fired. But it was not he who got hit, instead it was his seven (7)-year-old daughter Jonabel and his sister Princess. Jonabel was fatally hit. He immediately brought Jonabel to the hospital but she died the following day.

He was not a friend, but a mere acquaintance of appellant. They never had any prior altercation.[4]

Princess Marasigan, Gerry's sister, testified that on the day of the incident, she and her niece Jonabel were inside Gerry's house in Alabang, Muntinlupa. Around 11 o'clock in the evening, Gerry and his wife hurriedly went inside their house. She stood up and, to her surprise, saw appellant holding a gun and firing it in Gerry's direction. She clearly saw appellant with a gun in hand because of the light by the front door.

When they heard the shot, she and her niece Jonabel hid inside the bathroom. Only then did she realize that they were both bleeding. Appellant only fired once, albeit the single bullet pierced Jonabel's chest before hitting her in the leg.[5] She filed a separate criminal case against appellant for her injury.

Defense's Version

Appellant testified that he was in Samat, Samar on the date of the alleged shooting incident. He only knew Gerry because his sister's *paupahan* was next to Gerry's house. He did not

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

[5] *Id.* at 6-7.

know of any reason why Gerry would implicate him in the purported shooting incident involving his daughter.[6]

The Trial Court's Ruling

By Decision dated July 19, 2016, the Regional Trial Court-Branch 207, Muntinlupa City found appellant guilty of the complex crime of attempted murder with homicide; *viz.*:

> WHEREFORE, the Court finds accused Nestor Bendecio y Viejo guilty beyond reasonable doubt of the complex crime of attempted murder with homicide and is sentenced to an indeterminate penalty of twelve years of prision mayor in its maximum as the minimum period to twenty years of reclusion temporal in its maximum as the maximum period, and is ordered to pay the heirs of Jonabelle Marasigan the amount of ₱75,000.00 as and for civil indemnity, ₱75,000.00 as and for moral damages, ₱30,000.00 as and for temperate damages, and ₱75,000.00 as and for exemplary damages, all with 6% interest per annum from the finality of this decision.[7]

The trial court gave full credence to the positive testimonies of Gerry and Princess who testified in a straightforward, candid, and convincing manner, leaving no room for doubt that appellant was the perpetrator of the crime. Thus, the trial court rejected appellant's self-serving, nay, uncorroborated defenses of denial and alibi.[8]

Appellant was guilty of a complex crime because his single act of firing a gun at Gerry, though ending up killing Jonabel, emanated from a single criminal intent.[9] The trial court appreciated treachery as a qualifying circumstance in the attempted killing of Gerry's, but not as to the killing of Jonabel.

The Court of Appeals' Proceedings

In his appeal, appellant faulted the trial court for convicting him of the complex crime of attempted murder with homicide

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

[7] *Id.* at 113.

[8] CA *rollo*, p. 53.

[9] *Id.* at 54.

based on the supposedly doubtful testimonies of Gerry and Princess. The trial court should not have given full weight and credence to Gerry's positive identification of him since Gerry admitted in open court that he joined a drinking session prior to the shooting incident. Thus, Gerry's inebriation diminished his ability to clearly identify the man armed with a gun standing by his doorstep that night. As regards Princess, her blood relationship with Gerry cast serious doubt on her credibility.[10]

On the other hand, the Office of the Solicitor General (OSG) defended the verdict of conviction. The OSG maintained that the trial court's conclusion on the credibility of the witnesses deserved great respect. The defense lacked evidence to support the allegation that Gerry's level of intoxication impaired his capacity to identify his assailant; intoxication, by itself, does not necessarily prevent a witness from making a positive identification of the perpetrator of the crime. Too, it was immaterial that Princess was Gerry's relative. More so because her testimony was not inherently improbable nor was it shown that she was improperly impelled to falsely incriminate appellant.[11]

The Court of Appeals' Ruling

Under its assailed Decision dated August 17, 2017, the Court of Appeals affirmed with modification, *viz.*:

> **WHEREFORE**, premises considered, the appeal is **DENIED**. The Decision dated 19 July 2016 of the Regional Trial Court of Muntinlupa City, Branch 207 in *Crim. Case No. 12-305* is **AFFIRMED** with **MODIFICATION** in that accused-appellant Nestor Bendecio y Viejo is hereby found guilty beyond reasonable doubt of the complex crime of attempted murder with murder and sentenced to suffer the penalty of *reclusion perpetua*. Accused-appellant is further ordered to pay the heirs of Jonabel Marasigan ₱75,000.00 each as civil indemnity, moral damages and exemplary damages, and ₱50,000.00 as temperate damages, with interest at the rate of six percent (6%) *per annum*

[10] *Rollo*, p. 9.

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

from the time of finality of this decision until fully paid to be imposed on said civil indemnity and all awarded damages.

SO ORDERED.[12]

The Court of Appeals upheld the trial court's factual findings on the credibility of the prosecution witnesses since appellant offered no evidence, other than his bare allegations, to show that Gerry's level of intoxication impaired his ability to identify appellant or that Princess had ulterior motive to falsely testify against him.[13]

It affirmed the trial court's factual finding that appellant's intended victim was Gerry though the bullet he fired hit Princess and killed Jonabel instead.[14] Since appellant failed to perform all the acts of execution which would have resulted in Gerry's death, appellant was liable for attempted murder, qualified as it was by treachery.[15]

Appellant's poor aim amounted to *aberratio ictus* or mistake in the blow — a circumstance that neither exempted him from nor mitigated his criminal liability. On the contrary, it rendered appellant liable for Jonabel's death under Article 4 of the Revised Penal Code (RPC). For although it may not have been appellant's intention to shoot Jonabel, it is clear that Jonabel's death was the natural and direct consequence of appellant's felonious assault against Gerry.[16]

The Court of Appeals further ruled that the killing of Jonabel amounted to murder, not homicide. For Jonabel was a hapless victim who had no opportunity to defend herself or retaliate.[17]

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[12] *Id.* at 20.

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

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

[15] *Id.* at 13.

[16] *Id.*

[17] *Id.* at 12.

In accordance with ***People v. Jugueta***,[18] the Court of Appeals increased the award of temperate damages to ₱50,000.[19]

The Present Petition

Appellant now seeks affirmative relief from the Court and prays anew for his acquittal.

In compliance with Resolution dated January 19, 2018 of the Court, the OSG[20] and appellant[21] manifested that in lieu of supplemental briefs, they were adopting their respective briefs submitted before the Court of Appeals.

Issue

Did the Court of Appeals err in convicting appellant of the complex crime of attempted murder with murder?

Ruling

Appellant was charged with the complex crime of murder and attempted murder.

Article 248 of the RPC defines and penalizes murder, thus:

> **Article 248**. *Murder*. — Any person who, not falling within the provisions of Article 246, shall kill another, shall be guilty of murder and shall be punished by *reclusion perpetua* to death if committed with any of the following attendant circumstances:
>
> 1. With treachery, taking advantage of superior strength, with the aid of armed men, or employing means to weaken the defense or of means or persons to insure or afford impunity;
>
> x x x x x x x x x

It requires the following elements: (1) a person was killed; (2) the accused killed him; (3) the killing was attended by any

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[18] 783 Phil. 806, 846 (2016).

[19] *Rollo*, p. 20.

[20] *Id.* at 32-33.

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

of the qualifying circumstances mentioned in Article 248 of the RPC; and (4) the killing is not parricide or infanticide.[22]

On the other hand, Article 6 of the RPC[23] states that there is an attempt to commit a felony when the offender directly commences its commission by overt acts but was unable to perform all the acts of execution which should have produced the felony by reason of some cause or accident other than his or her own spontaneous desistance. In ***Palaganas v. People***,[24] the Court held that attempted murder or attempted homicide is committed when the accused intended to kill the victim, as manifested by the use of a deadly weapon in the assault, and the wound/s sustained by the victim was/were not fatal.

Here, records bear the detailed narrations of Gerry and Princess about the shooting incident. Appellant fired at Gerry but instead of hitting the latter, the bullet hit Jonabel in the chest and thereafter, Princess in the leg. Jonabel died as a result.

Although appellant, with intent to kill, fired his gun at Gerry, appellant was not able to consummate the killing for reasons other than his own desistance — he simply missed and ended up wounding Princess and killing Jonabel.

The Court reckons with the third element of the crime of murder, *i.e.*, the killing was attended by any of the qualifying circumstances mentioned in Article 248 of the RPC.

The Information alleged that treachery attended the shooting of Gerry. There is treachery when two (2) elements concur:

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[22] *People v. Adriano*, 764 Phil. 144, 154 (2015).

[23] **Art. 6**. *Consummated, frustrated, and attempted felonies.* — Consummated felonies as well as those which are frustrated and attempted, are punishable.

x x x x x x x x x

There is an attempt when the offender commences the commission of a felony directly by overt acts, and does not perform all the acts of execution which should produce the felony by reason of some cause or accident other than this own spontaneous desistance.

[24] 533 Phil. 169, 193 (2006).

(1) the employment of means, methods, or manner of execution which would ensure the offender's safety from any defense or retaliatory act on the part of the offended party; and (2) such means, method, or manner of execution was deliberately or consciously chosen by the offender.[25] The essence of treachery consists of the sudden and unexpected attack on an unguarded and unsuspecting victim without any ounce of provocation on his or her part.[26]

The case records undeniably prove that Gerry was the intended victim of the shooting. When Gerry went home and tried to close the front door, he noticed appellant standing right outside the doorway. Suddenly, appellant drew a gun, aimed at him, and fired. Appellant, however, missed hitting Gerry and ended up injuring Princess and killing Jonabel.

The qualifying circumstance of treachery attended the attempted killing of Gerry. In ***People v. Amora***,[27] the Court held that the qualifying circumstance of treachery does not require that the perpetrator attack his or her victim from behind. Even a frontal attack could be treacherous when unexpected and on an unarmed victim who would be in no position to repel the attack or avoid it. This is the case for Gerry. As shown, appellant commenced the commission of murder by suddenly firing his gun towards Gerry who was then unarmed and was not in a position to defend himself. Gerry, however, did not die as a result because appellant simply missed.

Evidently, Gerry never saw that what started as a mere accidental bumping that night in the house of a friend would carry on and end in a tragedy inside his own home. He almost got killed while his young innocent child lost her life. Things happened so sudden and fast, he never got the chance to defend himself or his child or even to just run away.

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[25] *People v. Flora*, 389 Phil. 601, 615 (2000).

[26] *People v. Jugueta*, 783 Phil. 806, 819 (2016); citing *People v. Fallorina*, 468 Phil. 816 (2004).

[27] 748 Phil. 608, 612 (2014).

As for Jonabel's death, what happened to this seven (7)-year-old was a clear case of *aberratio ictus* or mistake in the blow. Under the doctrine of *aberratio ictus*, as embodied in Article 4 of the RPC,[28] criminal liability is imposed for the acts committed in violation of law and for all the natural and logical consequences resulting therefrom. Thus, while it may not have been appellant's intention to shoot Jonabel, this fact alone will not exculpate him of his criminal liability. Jonabel's death was unquestionably the natural and direct consequence of appellant's felonious deadly assault against Gerry.[29]

Notably, the qualifying circumstance of treachery attended Jonabel's killing. As pointed out by Justice Mario V. Lopez during the deliberation, although appellant did not intend to kill Jonabel, treachery may still be appreciated in *aberratio ictus*, pursuant to the Court's ruling in ***People v. Flora***.[30] There, the accused fired his gun at his target, but missed, and hit two (2) other persons. The Court appreciated treachery as a qualifying circumstance and convicted the accused for murder and attempted murder because even if the death and injury of the two (2) other persons resulted from accused's poor aim, accused's act of suddenly firing upon his victims rendered the latter helpless to defend themselves. This is applicable here. Just because Jonabel was not the intended victim does not make appellant's sudden attack any less treacherous.

In another vein, appellant faults the Court of Appeals for affirming the trial court's factual findings on the credibility of the testimonies of Gerry and Princess. Appellant essentially argues that Gerry's testimony should not have been given weight and credence because he was under the influence of alcohol when the purported shooting incident took place and thus, he could not have positively identified that appellant as the

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[28] **Art. 4**. *Criminal liability*. — Criminal liability shall be incurred:

1. By any person committing a felony *(delito)* although the wrongful act done be different from that which he intended.

[29] *People v. Adriano*, supra note 22.

[30] *People v. Flora*, supra note 25.

perpetrator of the crime. Appellant also asserts that Princess, being Gerry's sister, is a biased witness whose testimony is unworthy of belief.

We are not persuaded.

When the credibility of witnesses is put in issue, the Court will generally not disturb the trial court's factual findings thereon, especially when affirmed by the Court of Appeals, as in this case. Indeed, the trial court was in a better position to decide the question of credibility as it heard the witnesses themselves and observed their deportment and the manner by which they testified during the trial.[31]

Notably, appellant offered no evidence, other than his bare allegations, to show that Gerry's level of intoxication impaired his ability to identify appellant or that Princess had ulterior motive to testify against him.

Against the testimonies of Gerry and Princess, appellant's denial and alibi must crumble. We have held time and again that denial and alibi are inherently weak defenses which cannot prevail over the positive and credible testimonies of the prosecution witnesses that it was appellant who committed the crime charged. Hence, as between a categorical testimony which has a ring of truth on one hand, and a mere denial on the other, the former is generally held to prevail.[32]

Article 48 of the RPC states that there is a complex crime when a single act constitutes two (2) or more grave or less grave felonies. Here, appellant's single act of firing his gun constituted the crime of attempted murder, with respect to Gerry, and the crime of murder, as regards Jonabel. Article 48 of the RPC likewise provides that the penalty for the most serious crime shall be imposed, the same to be applied in its maximum period. Here, the most serious crime is murder. Hence, the imposable penalty is that of murder in its maximum period.

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[31] *People v. Mabalo*, G.R. No. 238839, February 27, 2019; *People v. Bay-Od*, G.R. No. 238176, January 14, 2019.

[32] *People v. Batalla*, G.R. No. 234323, January 07, 2019.

Under Article 248 of the Revised Penal Code, murder is punishable by *reclusion perpetua* to death. Due to Republic Act No. 9346[33] (RA 9346), however, the penalty to be imposed is *reclusion perpetua*. More, in accordance with A.M. No. 15-08-02,[34] the qualification of "without eligibility for parole" shall be used in order to emphasize that the accused should have been sentenced to suffer the death penalty had it not been for RA 9346.

As for the monetary award, ***People v. Jugueta***[35] teaches that civil indemnity, moral damages, and exemplary damages must be awarded for each component of the complex crime. Prevailing jurisprudence sets the award of ₱100,000.00 as civil indemnity, ₱100,000.00 as moral damages, and ₱100,000.00 as exemplary damages in murder cases where the imposable penalty is death but due to the prohibition to impose the same, the actual penalty imposed is *reclusion perpetua*. An award of ₱50,000.00 as temperate damages is likewise proper. With respect to the crime of attempted murder, an award of ₱25,000.00 as civil indemnity, ₱25,000.00 as moral damages, and ₱25,000.00 as exemplary damages is fitting.

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[33] An Act Prohibiting the Imposition of Death Penalty in the Philippines.

Sec. 3. Persons 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.

[34] A.M. No. 15-08-02 clarifies:

x x x 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* 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.

[35] *People v. Jugueta*, 783 Phil. 806, 846 (2016).

WHEREFORE, the instant appeal is **DISMISSED**. The Decision dated August 17, 2017 of the Court of Appeals in CA-G.R. CR No. 39046 is hereby **AFFIRMED**.

Appellant **Nestor Bendecio y Viejo alias "Tan"** is **guilty** of the **COMPLEX CRIME OF MURDER WITH ATTEMPTED MURDER** and sentenced to ***reclusion perpetua* without eligibility for parole**. He is further ordered to pay Gerry Marasigan ₱25,000.00 as civil indemnity, ₱25,000.00 as moral damages, and ₱25,000.00 as exemplary damages and the heirs of Jonabel Marasigan ₱100,000.00 as civil indemnity, ₱100,000.00 as moral damages, ₱100,000.00 as exemplary damages, and ₱50,000.00 as temperate damages. These amounts shall earn six percent (6%) interest *per annum* from finality of this decision until fully paid.

SO ORDERED.

Peralta, C.J. (Chairperson), Caguioa, Reyes, Jr., and *Lopez, JJ.*, concur.

FIRST DIVISION

[G.R. No. 238643. September 8, 2020]

MARIA TERESA B. SALIGUMBA, *Petitioner, v.* **COMMISSION ON AUDIT XIII, represented by CHERYL CANTALEJO-DIME and TEODORA J. BENIGA,** *Respondent.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; PETITION FOR REVIEW UNDER RULE 45; ONLY QUESTIONS OF LAW MAY BE RAISED THEREIN; EXCEPTIONS.— Preliminarily, it must be emphasized that questions of fact may not be raised *via* a petition for review on *certiorari* under Rule 45 because the Court is not a trier of facts. As a general rule, factual findings of the Ombudsman are conclusive when supported by substantial evidence and are accorded due respect and weight, especially when affirmed by the CA. However, the courts may not be bound by such findings of fact when there is absolutely no evidence in support thereof or such evidence is clearly, manifestly and patently insubstantial; and when there is a clear showing that the administrative agency acted arbitrarily, with grave abuse of discretion, or in a capricious and whimsical manner, such that its action may amount to an excess or lack of jurisdiction. None of these exceptions is present in the case at bench.

2. POLITICAL LAW; ADMINISTRATIVE LAW; PUBLIC OFFICERS AND EMPLOYEES; GROSS MISCONDUCT AND DISHONESTY, DEFINED.— Gross Misconduct is defined as the transgression of some established and definite rule of action, more particularly, unlawful behavior or gross negligence by a public officer, coupled with the elements of corruption, or willful intent to violate the law or to disregard established rules. On the other hand, dishonesty has been defined as the concealment or distortion of truth which shows lack of integrity or a disposition to defraud, cheat, deceive, or betray, or intent to violate the truth.

3. ID.; ID.; ID.; DISHONESTY; CHARGE OF SERIOUS DISHONESTY NECESSARILY ENTAILS THE PRESENCE OF ANY ONE OF THE FOLLOWING CIRCUMSTANCES; CIRCUMSTANCES, ENUMERATED.— The charge of Serious Dishonesty necessarily entails the presence of any one of the following circumstances: (a) the dishonest act caused serious damage and grave prejudice to the government; (b) the respondent gravely abused his authority in order to commit the dishonest act; (c) where the respondent is an accountable officer, the dishonest act directly involves property, accountable forms or money for which he is directly accountable and the respondent shows an intent to commit material gain, graft and corruption; (d) the dishonest act exhibits moral depravity on the part of the respondent; (e) the respondent employed fraud and/or falsification of official documents in the commission of the dishonest act related to his/her employment; (f) the dishonest act was committed several times or in various occasions; (g) the dishonest act involves a Civil Service examination irregularity or fake Civil Service eligibility, such as, but not limited to, impersonation, cheating and use of crib sheets; and (h) other analogous circumstances.

4. ID.; ID.; RIGHT TO DUE PROCESS; DUE PROCESS IS COMPLIED WITH IF THE PARTY WHO IS PROPERLY NOTIFIED OF ALLEGATIONS AGAINST HIM OR HER IS GIVEN AN OPPORTUNITY TO DEFEND HIMSELF OR HERSELF AGAINST THOSE ALLEGATIONS, AND SUCH DEFENSE WAS CONSIDERED BY THE TRIBUNAL IN ARRIVING AT ITS OWN INDEPENDENT CONCLUSIONS.— At any rate, administrative due process demands that the party being charged is given an opportunity to be heard. Due process is complied with "if the party who is properly notified of allegations against him or her is given an opportunity to defend himself or herself against those allegations, and such defense was considered by the tribunal in arriving at its own independent conclusions." x x x Having actively participated in the proceedings before the Ombudsman, Saligumba was apparently notified of the charges against her, and was afforded the fair and reasonable opportunity to explain her side. Subsequently, the Ombudsman rendered a decision based on the evidence presented by the parties, and Saligumba even sought reconsideration of the adverse ruling against her.

Verily, the requirements of administrative due process were satisfied in the proceedings before the Ombudsman.

5. ID.; CONSTITUTIONAL LAW; THE OFFICE OF THE OMBUDSMAN; OMBUDSMAN RULES OF PROCEDURE; THE DECISION OF THE OMBUDSMAN ORDERING THE DISMISSAL OF A PARTY FROM GOVERNMENT SERVICE IS IMMEDIATELY EXECUTORY AND CAN BE IMPLEMENTED EVEN BEFORE THE FILING OF HER MOTION FOR RECONSIDERATION OR DURING THE PENDENCY THEREOF OR EVEN PENDING APPEAL.— Verily, the Decision of the Ombudsman ordering the dismissal of Saligumba from government service is immediately executory and, thus, can be implemented even before the filing of her motion for reconsideration or during the pendency thereof or even pending appeal as that is the clear mandate of Section 7, Rule III of the Office of the Ombudsman Rules of Procedure, as amended, as well as the Ombudsman's Memorandum Circular No. 01, Series of 2006. Nowhere in the afore-quoted Section 7 does it state that the aggrieved party is precluded from filing a motion for reconsideration. In fact, Saligumba did file a motion for reconsideration. Such motion, however, would not stay the immediate implementation of the Ombudsman's order of dismissal since "[a] decision of the Office of the Ombudsman in administrative cases shall be executed as a matter of course."

6. ID.; ID.; ID.; ID.; ID.; PURPOSE.— The immediate execution of a decision of the Ombudsman is a protective measure with a purpose similar to that of preventive suspension, which is to prevent public officers from using their powers and prerogatives to influence witnesses or tamper with records. After the Ombudsman renders a decision supported by evidence and during the pendency of any motion for reconsideration or appeal, the civil service must be protected from any acts that may be committed by the disciplined public officer that may affect the outcome of this motion or appeal.

APPEARANCES OF COUNSEL

Reserva-Filoteo Law Office for petitioner.
The Solicitor General for respondent.

D E C I S I O N

PERALTA, *C.J.*:

This is a petition for review on *certiorari*[1] seeking to reverse and set aside the November 17, 2017 Decision[2] of the Court of Appeals (*CA*) in CA-G.R. SP No. 08014-MIN, which affirmed the November 29, 2016 Decision[3] of the Office of the Ombudsman for Mindanao (*Ombudsman*) in OMB-M-A-15-0605 that adjudged petitioner Maria Teresa B. Saligumba guilty of Gross Misconduct and Serious Dishonesty and, thereby, imposed upon her the penalty of dismissal from government service with cancellation of eligibility, forfeiture of retirement benefits and perpetual disqualification for re-employment in the government service.

The antecedent facts are as follows:

The case traces its roots from a complaint for Dishonesty and Grave Misconduct filed before the Ombudsman by the Commission on Audit, Regional Office No. XIII (*COA*), represented by State Auditors Cheryl Cantalejo-Dime and Teodora J. Beniga, against Saligumba, in her capacity as Assistant Municipal Treasurer of the Municipal Government of Barobo, Surigao del Sur.[4]

In their Joint Affidavit of Complaint,[5] State Auditors Cantalejo-Dime and Beniga alleged that on June 24, 2013, they conducted a cash and accounts examination on Saligumba covering the period from December 7, 2012 to June 24, 2013.

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[1] *Rollo,* pp. 11-47.

[2] *Id.* at 50-56. Penned by Associate Justice Ruben Reynaldo G. Roxas, with the concurrence of Associate Justice Romulo V. Borja and Associate Justice Oscar V. Badelles.

[3] *Id.* at 93-98. Penned by Graft Investigation and Prosecution Officer II Modesto F. Onia, Jr.

[4] *Id.* at 93.

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

The result of said examination disclosed that Saligumba incurred a total cash shortage of ₱223,050.93. They prepared a document denominated as Report of Cash Examination, reflecting the subject cash shortage, and Saligumba acknowledged therein that a demand was made upon her to produce all cash and cash items of which she is officially accountable. On May 14, 2014, the COA conducted a complete verification of her accountability, but made no formal demand upon Saligumba because she already restituted the missing funds by remitting the full amount thereof from July 3, 2013 to August 7, 2013.[6]

In her February 9, 2016 Counter-Affidavit,[7] Saligumba admitted that she indeed incurred the subject shortage of government funds. She explained that in 2009, then Municipal Mayor Arturo Ronquillo[8] ordered her to issue official receipts in favor of the market vendors, who were delinquent taxpayers, to make it appear that they fully settled their unpaid taxes so that they could renew their annual permits even though there were no actual cash receipts from them. In return, the market vendors promised that they would pay their accounts to her on installment basis. Unfortunately, the market vendors reneged on their promise to pay the installments due, resulting in the shortage of her cash collections. She submitted the joint affidavit executed by market vendors Fritzie Martinote and Rosenda Salem in support of her allegations.[9]

She invoked good faith and absence of corrupt motive, claiming that the arrangement of issuing official receipts even without receiving cash payments was also practiced by her predecessor. Further, she asserted that the municipal government did not sustain any damage because she fully and promptly restituted the cash shortage.[10] She prayed for the dismissal of the administrative charges against her for lack of merit.

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[6] *Id*. at 93-94.

[7] *Id*. at 74-81.

[8] *Id*. at 86.

[9] *Id*. at 75.

[10] *Id*. at 75-76.

In the position paper[11] she subsequently filed before the Ombudsman, Saligumba reiterated that she was constrained to issue official receipts to the market vendors without the corresponding cash receipts from the latter in obedience to the instruction of Municipal Mayor Ronquillo. She argued that she could not have misappropriated public funds in the amount equivalent to the subject cash shortage, more so, converted the same for her personal use since there was no actual receipt of cash and, hence, the charge of Gross Misconduct against her is baseless. She averred that there was no malicious intent on her part to falsify reports, official receipts and documents as to warrant the charge of Dishonesty.

On November 29, 2016, the Ombudsman rendered a Decision finding Saligumba administratively liable for Gross Misconduct and Serious Dishonesty. The dispositive portion of which reads:

> WHEREFORE, the Office finds respondent Maria Teresa B. Saligumba GUILTY of Grave Misconduct and Serious Dishonesty. She is meted out the penalty of DISMISSAL from service, including the accessory penalties of cancellation of eligibility, forfeiture of retirement benefits, and the perpetual disqualification for re-employment in the government service. Considering that respondent is found guilty of two (2) charges, the penalty to be imposed should be that corresponding to the more serious charge and the other shall be considered as aggravating circumstance.
>
> In the event that the penalty can no longer be enforced due to respondent's separation from service, it shall be converted into a Fine in the amount of her salary, for one (1) year, payable to the Office of the Ombudsman, and may be deducted from her accrued leave credits or any receivable from the government.
>
> Mayor Felixberto S. Urbiztondo of the Municipal Government of Barobo, Surigao del Sur, is directed to implement the penalty meted out against respondent, within ten (10) days from receipt hereof, and to submit to the Office, within the same period, a Compliance Report indicating the docket number of this case.
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> SO ORDERED.[12]

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[11] *Id*. at 83-92.

[12] *Id*. at 96-97; citations omitted.

According to the Ombudsman, Saligumba committed Grave Misconduct and Serious Dishonesty when she misappropriated public funds in the amount of ₱223,050.93, and this is evident from her failure to satisfactorily explain what happened to the missing funds in her custody. The Ombudsman rejected Saligumba's reasoning on how the subject cash shortage allegedly occurred for being self-serving and unsupported by any plausible proof.

On January 4, 2017, Municipal Mayor Felixberto Urbiztondo of the Municipality of Barobo, Surigao del Sur issued Office Order No. 01, Series of 2017, enforcing the penalty of dismissal from government service with all its accessory penalties against Saligumba, in compliance with the directive of the Ombudsman in its November 29, 2016 Decision. Office Order No. 01, Series of 2017 took effect on January 9, 2017.[13]

Saligumba filed a motion for reconsideration, dated January 12, 2017, of the foregoing Decision of the Ombudsman, and annexed thereto the affidavit of Administrative Officer IV Reynaldo Pontillo,[14] the joint affidavit[15] of two more market vendors, Marivic Montederamos and La Mae Theresa Caballos, and the certificate[16] from her co-employee in the Municipality of Barobo to further prove the alleged veracity of her explanation regarding the missing public funds.

On February 15, 2017, the Ombudsman issued an Order[17] denying Saligumba's motion and stated that the issues she raised were mere reiterations of those that it had already squarely passed upon in its assailed Decision. The Ombudsman added that her length of service will not be considered in her favor since the offenses she committed were found to be of serious nature.

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[13] *Id*. at 99.

[14] *Id*. at 110.

[15] *Id*. at 111.

[16] *Id*. at 112.

[17] *Id*. at 136-138.

Not in conformity, Saligumba filed a Petition for Review[18] under Rule 43 of the Rules of Court before the CA, praying for the reversal of the Decision of the Ombudsman.

On November 17, 2017, the CA rendered its assailed Decision denying Saligumba's petition for review; the *fallo* of which states:

> WHEREFORE, premises considered, the Petition for Review is DENIED. The Decision dated 29 November 2016 of respondent Office of the Ombudsman in OMB-M-A-15-0605 is AFFIRMED.
>
> SO ORDERED.[19]

The CA ruled that the findings of the Ombudsman that Saligumba committed Grave Misconduct and Serious Dishonesty were adequately supported by substantial evidence. Anent the explanation she proffered for the cash shortage, the CA declared that with or without such order from Municipal Mayor Ronquillo, the issuance of government official receipts without actually receiving cash payments is downright wrong as it is an unquestionable dishonest act and inimical to the interest of the Municipal Government of Barobo, Surigao del Sur which was deprived of the collection of taxes due to it.

Saligumba moved for a reconsideration, but the same was denied by the CA in its March 7, 2018 Resolution.[20]

The Issues

Unfazed, Saligumba filed the present petition and posited the following issues, to wit:

> [1] What are the rudiments of procedural due process? Was petitioner accorded the same in the course of the Formal Investigation proceedings conducted? Was the filing of pleadings without considering the evidence and arguments

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[18] *Id*. at 139-165.

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

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

raised therein, constitutes sufficient compliance with the requirements of due process?

[2] Is the immediate implementation of the Decision of the Office of the Ombudsman in an administrative case, even before petitioner filed her Motion for Reconsideration and subsequent appeal, proper and justifiable?

[3] What are the elements in Grave Misconduct and Serious Dishonesty? Are these elements attendant to the charges against petitioner?

[4] Is petitioner entitled to the mitigating circumstances owing to her length of service, her being a first-time offender, very satisfactory performance and good moral character?[21]

Essentially, Saligumba maintains that the Ombudsman erred in finding her administratively culpable for Gross Misconduct and Serious Dishonesty. She insists that she acted in good faith as she merely obeyed the directive of Municipal Mayor Ronquillo to issue official receipts to the market vendors even without receiving cash payments. She points out that her good faith was amply demonstrated by her act of fully restituting her accountability in the sum of ₱223,050.93. She denies misappropriating public funds in the amount equivalent to the subject cash shortage.

Moreover, Saligumba claims that she had been denied of her right to procedural due process, alleging that the evidence she presented, as well as the arguments she raised in her various pleadings, was never considered by the Ombudsman in arriving at its decision. She contends that the immediate implementation of the November 29, 2016 Decision of the Ombudsman, without giving her the opportunity to file a motion for reconsideration, is unjust and constitutes a violation of her right to due process. Finally, Saligumba submits that, even granting that there exists substantial evidence to hold her administratively liable, the penalty of dismissal from government service is too harsh. She posits that she is entitled to a mitigated penalty considering her length of service, her very satisfactory work performance,

[21] *Id*. at 20.

her good moral character, her being a first-time offender, and her full restitution of the amount of cash shortage before the filing of the case against her.

The Court's Ruling

Preliminarily, it must be emphasized that questions of fact may not be raised *via* a petition for review on *certiorari* under Rule 45 because the Court is not a trier of facts. As a general rule, factual findings of the Ombudsman are conclusive when supported by substantial evidence and are accorded due respect and weight, especially when affirmed by the CA.[22] However, the courts may not be bound by such findings of fact when there is absolutely no evidence in support thereof or such evidence is clearly, manifestly and patently insubstantial; and when there is a clear showing that the administrative agency acted arbitrarily, with grave abuse of discretion, or in a capricious and whimsical manner, such that its action may amount to an excess or lack of jurisdiction.[23] None of these exceptions is present in the case at bench.

A finding of guilt in an administrative case would have to be sustained for as long as it is supported by substantial evidence that Saligumba has committed the acts stated in the complaint or formal charge.[24] Substantial evidence is defined as such amount of relevant evidence which a reasonable mind might accept as adequate to support a conclusion. It is more than a mere scintilla of evidence.[25] The standard of substantial evidence is satisfied when there is reasonable ground to believe that a person is responsible for the misconduct complained of, even

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[22] *Office of the Ombudsman v. Espina*, G.R. No. 213500, March 15, 2017, 820 SCRA 541, 551; citation omitted.

[23] *Office of the Ombudsman v. Capulong*, 729 Phil. 553, 562 (2014); citation omitted.

[24] *Office of the Ombudsman v. Santos*, 520 Phil. 994, 1001 (2006).

[25] *De Guzman v. Office of the Ombudsman*, G.R. No. 229256, November 22, 2017, 846 SCRA 531, 552; citation omitted.

if such evidence might not be overwhelming or even preponderant.[26]

In the case at bench, the Ombudsman found Saligumba guilty of Gross Misconduct and Serious Dishonesty, which the CA affirmed. Gross Misconduct is defined as the transgression of some established and definite rule of action, more particularly, unlawful behavior or gross negligence by a public officer, coupled with the elements of corruption, or willful intent to violate the law or to disregard established rules.[27] On the other hand, dishonesty has been defined as the concealment or distortion of truth which shows lack of integrity or a disposition to defraud, cheat, deceive, or betray, or intent to violate the truth.[28] The charge of Serious Dishonesty necessarily entails the presence of any one of the following circumstances: (a) the dishonest act caused serious damage and grave prejudice to the government; (b) the respondent gravely abused his authority in order to commit the dishonest act; (c) where the respondent is an accountable officer, the dishonest act directly involves property, accountable forms or money for which he is directly accountable and the respondent shows an intent to commit material gain, graft and corruption; (d) the dishonest act exhibits moral depravity on the part of the respondent; (e) the respondent employed fraud and/or falsification of official documents in the commission of the dishonest act related to his/her employment; (f) the dishonest act was committed several times or in various occasions; (g) the dishonest act involves a Civil Service examination irregularity or fake Civil Service eligibility, such as, but not limited to, impersonation, cheating and use of crib sheets; and (h) other analogous circumstances.[29]

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[26] *Office of the Ombudsman-Visayas, et al. v. Castro*, 759 Phil. 68, 77 (2015).

[27] *Office of the Ombudsman v. Apolonio*, 683 Phil. 553, 571-572 (2012).

[28] *Alfornon v. Delos Santos, et al.*, 789 Phil. 462, 473 (2016); citation omitted.

[29] *Camilo L. Sabio v. Field Investigation Office, Office of the Ombudsman*, G.R. No. 229882, February 13, 2018; underscores supplied.

After a judicious study of the case, the Court finds that the evidence on record sufficiently demonstrates Saligumba's culpability for Grave Misconduct and Serious Dishonesty, and fully satisfies the standard of substantial evidence.

The evidence shows that the state auditors prepared a Report of Cash Examination which stated the total shortage of public funds and demanded upon Saligumba to produce all cash for which she is officially accountable. Saligumba signed and acknowledged said report. It is undisputed that Saligumba offered no explanation to the state auditors for such shortage of funds when the demand was made but, instead, admitted her accountability.

Grave Misconduct was committed when Saligumba failed to keep and account for cash and cash items in her custody. Her corrupt intention was apparent from her failure to give a satisfactory explanation as to what happened to the missing public funds despite reasonable opportunity to do the same. Saligumba's act constitutes Serious Dishonesty because her dishonest act deals with money on her account. Saligumba's failure to account for the cash shortage showed an intent to commit material gain, graft and corruption. Evidence of misappropriation of the missing funds is not required because the existence of shortage of funds and the failure to satisfactorily explain the same would suffice.[30]

In her futile attempt at exculpation, Saligumba offered before the Ombudsman the explanation to the effect that there were actually no missing funds to speak of as she merely obeyed the order of Municipal Mayor Ronquillo to issue official receipts to make it appear that the market vendors have fully settled their unpaid taxes so that they could renew their business permits, even though they did not make any of such payments. Curiously, Saligumba never proffered said explanation to the state auditors when the latter demanded from her the production of the shortage of public funds. The Court finds her assertion to be flimsy and a mere afterthought.

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[30] *Belleza v. Commission on Audit*, 428 Phil. 76, 81 (2002).

Assuming her explanation is factual, the same would not exonerate Saligumba from administrative liabilities. On the contrary, it fortified Saligumba's liability for Grave Misconduct and Serious Dishonesty because it sufficiently demonstrated her propensity to disregard the law and established rules, and her predilection to distort the truth. Saligumba's act of issuing official receipts despite non-payment of taxes is unlawful, it being violative of the National Internal Revenue Code of 1997, and of the basic accounting and auditing rules and regulations. She undeniably deprived the government of taxes that are essentially its lifeblood. At the very least, the act of issuing official receipts and making it appear that the supposed payee remitted funds when no such funds were received constitutes the crime of falsification of public documents committed by a public officer, punishable under Article 171 of the Revised Penal Code.

Saligumba claims that she was well aware of the repercussions of her act but she, nonetheless, issued the official receipts without the corresponding funds being remitted to the coffers of the Municipal Government of Barobo because she did not want to incur the ire of Municipal Mayor Ronquillo. This, however, does not excuse her from any liability. It is grave misconduct when Saligumba participated or consented to the commission of the unlawful act. As an Assistant Municipal Treasurer of the local government, Saligumba fully knew that it is her duty to exercise proper management of the funds under her custody. As a public officer, her duty was not only to perform her assigned tasks, but to prevent the commission of acts inimical to the government and to the public in general. Her compliance with a patently illegal order, without any written objection, clearly demonstrated her intention to violate the law, and her flagrant disregard of the accounting and auditing rules and regulations.

In the light of the above disquisitions, the Court finds no cogent reason to deviate from the similar conclusions reached by the Ombudsman and the CA. The facts established and the evidence presented support the finding of Saligumba's guilt.

Next, Saligumba bewails that she was deprived of procedural due process. She faults the Ombudsman for ignoring the arguments she interposed and the evidence she presented in arriving at its decision.

Saligumba's contention is devoid of merit.

After a careful perusal of the November 29, 2016 Decision of the Ombudsman, the Court observes that the Ombudsman resolved OMB-M-A-15-0605 on the basis of the position papers, affidavits and documentary evidence adduced by the parties. Contrary to Saligumba's claim, the Ombudsman gave due consideration to her arguments and evidence, as well as those of the COA. However, after weighing their respective submissions, the Ombudsman tilted the balance towards the administrative liability of Saligumba for Grave Misconduct and Serious Dishonesty.

Indeed, the evidence presented by the COA is more convincing than that of Saligumba. Saligumba failed to substantiate her defense by clear, convincing and competent evidence. The certificate executed by her former officemate and the joint affidavit of the market vendors to corroborate her excuse deserve scant consideration. The statements contained in the certificate and joint affidavit are viewed with skepticism due to the very nature of Saligumba's excuse that the affiants affirmed. Saligumba can easily fabricate an explanation for the missing funds and ask her friends to corroborate it. Besides, we find the statements given by said affiants less than convincing. Even granting *arguendo* that Saligumba was able to prove the veracity of her explanation regarding the subject cash shortage, the same would not absolve her from administrative liabilities as discussed above.

At any rate, administrative due process demands that the party being charged is given an opportunity to be heard.[31] Due process is complied with "if the party who is properly notified of allegations against him or her is given an opportunity to

[31] *Atty. Mateo v. Exec. Sec. Romulo, et al.*, 792 Phil. 558, 567 (2016).

defend himself or herself against those allegations, and such defense was considered by the tribunal in arriving at its own independent conclusions."[32]

In *F/O Ledesma v. Court of Appeals*,[33] the Court wrote:

> Due process is satisfied when a person is notified of the charge against him and given an opportunity to explain or defend himself. In administrative proceedings, the filing of charges and giving reasonable opportunity for the person so charged to answer the accusations against him constitute the minimum requirements of due process. The essence of due process is simply to be heard, or as applied to administrative proceedings, an opportunity to explain one's side, or an opportunity to seek a reconsideration of the action or ruling complained of.[34]

Having actively participated in the proceedings before the Ombudsman, Saligumba was apparently notified of the charges against her, and was afforded the fair and reasonable opportunity to explain her side. Subsequently, the Ombudsman rendered a decision based on the evidence presented by the parties, and Saligumba even sought reconsideration of the adverse ruling against her. Verily, the requirements of administrative due process were satisfied in the proceedings before the Ombudsman.

Saligumba claims that the immediate implementation of the November 29, 2016 Decision of the Ombudsman in OMB-M-A-15-0605 is "illegal, unwarranted and violative of her right to due process."[35]

Saligumba is mistaken.

Jurisprudence has long settled with finality that the Ombudsman's decision, even if the penalty imposed is dismissal from government service, is immediately executory despite the pendency of a motion for reconsideration or an appeal and cannot

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[32] *Gutierrez v. Commission on Audit, et al.*, 750 Phil. 413, 430 (2015).

[33] 565 Phil. 731 (2007).

[34] *Id*. at 740; citations omitted.

[35] *Rollo,* p. 31.

be stayed by mere filing of them.[36] Section 7, Rule III of the Office of the Ombudsman Rules of Procedure, as amended by Administrative Order No. 17 dated September 15, 2003, explicitly provides:

> Section 7. Finality and execution of decision. - Where the respondent is absolved of the charge, and in case of conviction where the penalty imposed is public censure or reprimand, suspension of not more than one month, or a fine equivalent to one month salary, the decision shall be final, executory and unappealable. In all other cases, the decision may be appealed to the Court of Appeals on a verified petition for review under the requirements and conditions set forth in Rule 43 of the Rules of Court, within fifteen (15) days from receipt of the written Notice of the Decision or Order denying the Motion for Reconsideration.
>
> An appeal shall not stop the decision from being executory. In case the penalty is suspension or removal and the respondent wins such appeal, he shall be considered as having been under preventive suspension and shall be paid the salary and such other emoluments that he did not receive by reason of the suspension or removal.
>
> A decision of the Office of the Ombudsman in administrative cases shall be executed as a matter of course. The Office of the Ombudsman shall ensure that the decision shall be strictly enforced and properly implemented. The refusal or failure by any officer without just cause to comply with an order of the Office of the Ombudsman to remove, suspend, demote, fine, or censure shall be a ground for disciplinary action against said officer. (Underscores supplied)

Moreover, Memorandum Circular No. 01, Series of 2006, of the Ombudsman states:

> Section 7[,] Rule III of Administrative Order No. 07, otherwise known as, the "Ombudsman Rules of Procedure" provides that: "A decision of the Office of the Ombudsman in administrative cases shall be executed as a matter of course."
>
> In order that the foregoing rule may be strictly observed, all concerned are hereby enjoined to implement all Ombudsman decisions,

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[36] *Cobarde-Gamallo v. Escandor*, G.R. Nos. 184464 and 184469, June 21, 2017, 827 SCRA 588, 596; citations omitted.

orders or resolutions in administrative disciplinary cases, immediately upon receipt thereof by their respective offices.

The filing of a motion for reconsideration or a petition for review before the Office of the Ombudsman does not operate to stay the immediate implementation of the foregoing Ombudsman decisions, orders or resolutions. (Underscore supplied)

Verily, the Decision of the Ombudsman ordering the dismissal of Saligumba from government service is immediately executory and, thus, can be implemented even before the filing of her motion for reconsideration or during the pendency thereof or even pending appeal as that is the clear mandate of Section 7, Rule III of the Office of the Ombudsman Rules of Procedure, as amended, as well as the Ombudsman's Memorandum Circular No. 01, Series of 2006. Nowhere in the afore-quoted Section 7 does it state that the aggrieved party is precluded from filing a motion for reconsideration. In fact, Saligumba did file a motion for reconsideration. Such motion, however, would not stay the immediate implementation of the Ombudsman's order of dismissal since "[a] decision of the Office of the Ombudsman in administrative cases shall be executed as a matter of course."[37]

The immediate execution of a decision of the Ombudsman is a protective measure with a purpose similar to that of preventive suspension, which is to prevent public officers from using their powers and prerogatives to influence witnesses or tamper with records.[38] After the Ombudsman renders a decision supported by evidence and during the pendency of any motion for reconsideration or appeal, the civil service must be protected from any acts that may be committed by the disciplined public officer that may affect the outcome of this motion or appeal.

Finally, Saligumba argues that dismissal from government service is a penalty too harsh where a lesser one would suffice. Saligumba asks the Court to consider her length of public service, her very satisfactory performance, her good moral character,

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[37] Section 7, Rule III of the Office of the Ombudsman Rules of Procedure, as amended by Administrative Order No. 17 dated September 15, 2003.

[38] *Governor Pimentel v. Justice Garchitorena*, 284 Phil. 233, 235 (1992).

her being a first-time offender, and her restitution of the missing funds.

We do not find any reversible error in the CA's affirmance of the Ombudsman's imposition on Saligumba of the penalty of dismissal from government service. It must be emphasized that both Grave Misconduct and Serious Dishonesty, of which Saligumba is found guilty of, are classified as grave offenses for which the penalty of dismissal from government service is meted even for first-time offenders.[39] These offenses reveal defects in Saligumba's character, affecting her right to continue in office, and are punishable by dismissal even if committed for the first time.[40]

WHEREFORE, the petition for review on *certiorari* is **DENIED**. The Decision of the Court of Appeals dated November 17, 2017 in CA-G.R. SP No. 08014-MIN is hereby **AFFIRMED.**

SO ORDERED.

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

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[39] See Section 46 (A) (1) and (3), Rule 10 of the Revised Rules on Administrative Cases in the Civil Service.

[40] *Remolona v. Civil Service Commission*, 414 Phil. 590, 600 (2001).

FIRST DIVISION

[G.R. No. 241322. September 8, 2020]

PEOPLE OF THE PHILIPPINES, *Plaintiff-Appellee, v.* **CRISANTO PARAN y LARIOSA a.k.a. "Santo," and LEONARDO F. ROELAN @ "Boyax,"** *Accused,* **LEONARDO F. ROELAN @ "Boyax,"** *Accused-Appellant.*

SYLLABUS

1. CRIMINAL LAW; ROBBERY WITH HOMICIDE; INSTANCES WHEN HOMICIDE IS SAID TO HAVE BEEN COMMITTED BY REASON OR ON THE OCCASION OF ROBBERY.— *Robo con homicidio* or robbery with homicide is an indivisible offense, a special complex crime. It carries a severe penalty because the law sees in this crime that men place lucre above the value of human life, thus justifying the imposition of a harsher penalty than that for simple robbery or homicide. Robbery with homicide exists when a homicide is committed either by reason or on occasion of the robbery. Homicide is said to have been committed by reason or on the occasion of robbery if, for instance, it was committed to (a) facilitate the robbery or the escape of the culprit; (b) preserve the possession by the culprit of the loot; (c) prevent discovery of the commission of the robbery; or (d) eliminate witnesses in the commission of the crime.

2. ID.; ID.; ELEMENTS THAT MUST BE ESTABLISHED TO SUSTAIN A CONVICTION FOR ROBBERY WITH HOMICIDE, PRESENT IN CASE AT BAR.— In order to sustain a conviction for robbery with homicide, the following elements must be proven by the prosecution: (1) the taking of personal property belonging to another; (2) with intent to gain or *animus lucrandi*; (3) with the use of violence or intimidation against a person; and (4) on the occasion or by reason of the robbery, the crime of homicide, as used in its generic sense, was committed. A conviction requires certitude that the robbery is the main purpose and objective of the malefactor, and the killing is merely incidental to the robbery. The intent to rob

must precede the taking of human life, but the killing may occur before, during or after the robbery. Intent to gain, or *animus lucrandi*, is an internal act; hence, presumed from the unlawful taking of things.

In the case at bench, all the essential ingredients of robbery with homicide are present. . . .

. . . [T]here is no mistaking from the actions of Roelan and Paran that their primordial intention was to rob Cosme and Paula. There was no showing that Roelan and Paran held a common grudge against the victims which provided enough reason to maul and seriously injure them. They disabled the couple by hitting them with hard objects precisely to facilitate the robbery, as well as their escape. While Paula was lying helplessly on the ground, Paran divested her of her cash worth ₱2,500.00. The killing was, therefore, merely incidental, resulting by reason or on occasion of the robbery.

3. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; PROSECUTION'S WITNESSES SUFFICIENTLY ESTABLISHED THE IDENTITIES OF THE PERPETRATORS OF THE CRIME.— Visibility is indeed a vital factor in determining whether an eyewitness could have identified the perpetrator of a crime. It is settled that where the conditions of visibility are favorable and the witness does not appear to harbor any ill motive against the malefactors, his testimony as to how the crime was committed and on the identities of the perpetrators must be accepted. In proper situations, illumination produced by a kerosene or wick lamp, a flashlight, even moonlight or starlight may be considered sufficient to allow identification of persons. Under such circumstance, any attack on the credibility of witnesses, based solely on the ground of insufficiency or absence of illumination, becomes unmeritorious.

While Roelan and Paran attempted to hide their identities in the blackness of the early dawn, their identities had been revealed and the darkness that was their cover has been dispelled by the credible testimony of Cosme that, while it was indeed dark in the place where the incident took place, there was, however, adequate light coming from the flashlight which he was then carrying that illuminated the area. . . . Given his familiarity with the faces and other physical features of Paran, who was his neighbor for a long time, and of Roelan, who had resided

in his house for three (3) months prior to the incident, as well as the illumination provided by the flashlight, eliminated any possibility of mistaken identification.

4. ID.; ID.; ID.; ID.; SERIOUS NATURE OF THE VICTIM'S WOUNDS DOES NOT AFFECT HIS CREDIBILITY.— [C]ontrary to Roelan's claim, Cosme was able to observe the fatal mauling of Paula before he lost consciousness due to the injury he sustained. Besides, jurisprudence teaches that the serious nature of a victim's injuries would not necessarily affect his or her credibility as a witness, if such injuries did not cause the immediate loss of his or her ability to perceive and identify the assailant.

Cosme is more than just an eyewitness, he is a surviving victim of the crime. He testified in a categorical, forthright and sincere manner. Cosme was not fazed or rattled by the extensive cross-examination since all he had to do was to recall and relate the true facts. His testimony not only rings true but it is, likewise, clearly consistent with the physical evidence adduced during trial.

5. ID.; ID.; ID.; ID.; LACK OF ILL MOTIVE BOLSTERS THE CREDIBILITY OF THE WITNESSES.— He positively identified Roelan and Paran, and detailed the specific role each played in the commission of the crime. He has no malevolent motive whatsoever to testify falsely against Roelan and Paran. When there is no evidence to indicate that the prosecution witnesses were actuated by improper motives, the presumption is that they were not so actuated and that their testimonies are entitled to full faith and credit. Cosme's identification of Roelan and Paran as his and his wife's assailants can only be explained by his honest desire to have the real perpetrators, and not just anybody, apprehended and punished to give justice to the death of his wife Paula. The natural interest of a witness who is a relative of the victim in securing the conviction of the guilty would deter the witness from implicating a person other than the true culprit.

6. ID.; ID.; INCONSISTENCIES IN THE TESTIMONY OF WITNESSES; AN INCONSISTENCY THAT IS TOO TRIVIAL DOES NOT NEGATE THE POSITIVE IDENTIFICATION OF THE PERPETRATORS.— The Court finds the alleged contradiction too trivial to affect the

prosecution's case. The testimonial imperfection hardly relates to facts material to the commission of the crime. Witnesses testifying on the same event do not have to be consistent in every detail, considering the inevitability of differences in their recollection, viewpoint or impression. Truth-telling witnesses are not expected to give flawless testimonies, considering the lapse of time and the treachery of human memory. Total recall or perfect symmetry is not required as long as the witnesses concur on material points. In the present case, what is material is that Cosme and Macaday both pointed to Roelan as one of the malefactors. Truly, the inconsistency relates to a detail of peripheral significance which does not negate or dissolve the positive identification of Roelan as one of the culprits.

7. ID.; ID.; CRIMINAL LAW; ROBBERY WITH HOMICIDE; CONSPIRACY; WHEN CONSPIRACY IS PRESENT, THE PERPETRATORS BEAR EQUAL CRIMINAL LIABILITY. — [I]n view of the presence of conspiracy, the matter as to who between Paran and Roelan struck Cosme and Paula becomes inconsequential since both Roelan and Paran shall bear equal criminal responsibility. The rule is well-established that whenever homicide has been committed as a consequence of or on the occasion of the robbery, all those who took part as principals in the robbery will also be held guilty as principals of the special complex crime of robbery with homicide although they did not actually take part in the homicide, unless it clearly appears that they endeavored to prevent the homicide.

8. ID.; ID.; ID.; ID.; ID.; THE CONCERTED ACTS OF THE ACCUSED SHOWING UNITY OF PURPOSE CONSTITUTE CONSPIRACY; CASE AT BAR.— In the case at bench, the prosecution has proven beyond reasonable doubt that Roelan and Paran conspired in the commission of the crime. Conspiracy may be deduced from the mode and manner in which the offense was perpetrated, or inferred from the acts of the accused themselves when these point to a joint purpose and design, concerted action and community of interest. The concerted action of Roelan and Paran shows their unity of purpose – to rob the victim, at all cost. These concerted acts manifestly disclose concurrence of wills, unity of action, joint purpose and common design. We note that it has not been shown that Roelan tried to prevent the fatal mauling of Paula.

9. ID.; ID.; DENIAL; ALIBI; THE DEFENSES OF DENIAL AND ALIBI FAIL WHEN THE ACCUSED WAS POSITIVELY IDENTIFIED AND IT WAS NOT PHYSICALLY IMPOSSIBLE FOR HIM TO COMMIT THE CRIME CHARGED ON THE DATE, PLACE, AND TIME IN QUESTION.— Roelan's defense of denial and alibi collapses in the face of the positive identification by prosecution witnesses. Denials, as negative and self-serving evidence, do not deserve as much weight in law as positive and affirmative testimonies. Prevalently repeated is the rule that for alibi to countervail the evidence of the prosecution confirming the accused's guilt, he must prove that he was not at the *locus delicti* when the crime was committed and that it was also physically impossible for him to have been at the scene of the crime at the time it was perpetrated. Roelan's own evidence shows that he was in the house of Paran when the incident occurred, which is 100 meters from the crime scene. Thus, it was not physically impossible for him to commit the crime charged on the date, place and time in question.

10. ID.; CRIMINAL PROCEDURE; WARRANTLESS ARREST; EFFECT OF ENTERING A PLEA; ANY IRREGULARITY IN THE WARRANTLESS ARREST IS DEEMED WAIVED WHEN THE ACCUSED ENTERS A PLEA OF NOT GUILTY.— Anent Roelan's warrantless arrest, any irregularity that may have attended the same would be of no help to him in the present appeal. In voluntarily submitting himself to the RTC by entering a plea of not guilty, instead of filing a motion to quash the information for lack of jurisdiction over his person, Roelan is deemed to have waived his right to assail the legality of his arrest.

11. CRIMINAL LAW; ROBBERY WITH HOMICIDE; EVIDENT PREMEDITATION; IN CRIMES AGAINST PROPERTY, EVIDENT PREMEDITATION IS INHERENT AND CANNOT THEREFORE BE APPRECIATED AS AN AGGRAVATING CIRCUMSTANCE.— The Court notes that the courts *a quo* failed to rule on the aggravating circumstances of evident premeditation that allegedly attended the commission of the offense. In any event, evident premeditation cannot be appreciated as an aggravating circumstance in the crime of robbery with homicide because the elements of which are already

inherent in the crime. Evident premeditation is inherent in crimes against property.

12. ID.; ID.; PENALTY; CIVIL LIABILITY; CIVIL INDEMNITY; MORAL, EXEMPLARY AND TEMPERATE DAMAGES; RESTITUTION.— Under Article 294, paragraph 1 of the RPC, as amended by Republic Act No. 7659, the penalty for robbery with homicide is *reclusion perpetua* to death. Applying Article 63 of the same Code, the lesser penalty of *reclusion perpetua* should be imposed on Roelan, in view of the absence of any modifying circumstance in the present case. Hence, the penalty imposed by the courts *a quo* against Roelan is correct.

Consistent with the prevailing jurisprudence, the Court affirms the award of Seventy-Five Thousand Pesos (₱75,000.00) as civil indemnity and Seventy-Five Thousand Pesos (₱75,000.00) as moral damages. Being corrective in nature, the award of Seventy-Five Thousand Pesos (₱75,000.00) as exemplary damages is proper for the reprehensible act committed against the victim. In addition, the Court deems it appropriate to award temperate damages in the amount of Fifty Thousand Pesos (₱50,000.00), considering that no documentary evidence of burial or funeral expenses was submitted in court. Cosme, as a victim who sustained non-mortal or non-fatal wounds, shall also be entitled to the award of civil indemnity, moral damages and exemplary damages in the amount of Twenty-Five Thousand Pesos (₱25,000.00) each. Further, six percent (6%) interest *per annum* shall be imposed on all damages awarded, to be reckoned from the date of finality of this Decision until fully paid.

Finally, the Court directs Roelan to pay Two Thousand Five Hundred Pesos (₱2,500.00) as restitution for the cash taken from Paula.

APPEARANCES OF COUNSEL

The Solicitor General for plaintiff-appellee.
Public Attorney's Office for accused-appellant.

D E C I S I O N

PERALTA, *C.J.*:

Before the Court is an appeal from the March 28, 2018 Decision[1] of the Court of Appeals (*CA*) in CA-G.R. CEB-CR HC No. 02084 which affirmed with modifications the May 27, 2015 Decision[2] of the Regional Trial Court, Branch 29, Toledo City (*RTC*), in Criminal Case No. TCS-6873, finding accused Crisanto Paran y Lariosa, now deceased, and accused-appellant Leonardo F. Roelan guilty beyond reasonable doubt of Robbery with Homicide.

The antecedent facts are as follows:

Roelan, together with Paran, was indicted for the crime of Robbery with Homicide and Serious Physical Injuries in an Information[3] dated July 26, 2010, the accusatory portion of which reads:

> That on or about 23 J[u]ly 2010, at around 4:00 o'clock dawn, more or less, at Brgy. Biga, Toledo City, and within the jurisdiction of this Honorable Court, said accused, conspiring and confederating together and mutually helping each other and by means of force and violence, did then and there, willfully, unlawfully, and feloniously, and with intent to kill and evident premeditation and with the use of pieces of wood beat[,] maul and strike the spouses COSME GEONSON and PAULA GEONSON inflicting upon COSME [GEONSON] tripod fracture, (L) 2 degrees to mauling, la[c]eration molar Region Linear 3 cm 2 degrees to mauling, multiple teeth lost, Le Fort 1 fracture and upon PAULA GEONSON MPI secondary to mauling, severe brain injury causing her death and thereafter did then and there willfully, unlawfully and feloniously take, steal and carry away with intent to gain and without the consent of the owners the Two Thousand Five

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[1] *Rollo*, pp. 6-25. Penned by Associate Justice Gabriel T. Robeniol, with the concurrence of Associate Justice Gabriel T. Ingles and Associate Justice Marilyn B. Lagura-Yap.

[2] CA *rollo*, pp. 70-79. Penned by Presiding Judge Ruben F. Altubar.

[3] Records, pp. 1-2.

Hundred Pesos (P2,500.00) cash belonging to said spouses to the damage and prejudice of the said spouses in the said sum.

CONTRARY TO LAW.[4]

Upon arraignment, Paran and Roelan pleaded not guilty to the charge.[5] After the marking of exhibits, pre-trial was terminated. Trial on the merits ensued.

Version of the Prosecution

To substantiate its charge against Paran and Roelan, the prosecution presented Cosme Geonson, Hermilando Macaday, Gerardo Geonson and SPO3 Dante P. Talandron as its witnesses.

Private complainant/victim Cosme narrated that on July 23, 2010, he and his wife, Paula Geonson, left their house at around 4:00 a.m. and were on their way to their other house in *Sitio* Ilaya, *Barangay* Biga, Toledo City to pasture their animals, consisting of three (3) carabaos and four (4) cows. It was still dark then but he was with a flashlight. While they were walking along the road, he saw Paran and Roelan a.k.a. Boyax, from about three (3) meters away, approaching them. Paran suddenly struck Paula with a hard object causing her to fall on the ground. While Paula was lying on the ground, Paran hit her again. Meanwhile, Roelan clubbed him once in the mouth, knocking some of his front teeth. He fainted but regained consciousness as Roelan kept on searching his body, looking for money. Paran also searched the body of his wife and was able to find money from her in the amount of ₱2,500.00. Cosme recalled that he gave Paula said cash before they left their house. Thereafter, Paran and Roelan threw him and his wife into a ravine. When his son-in-law, Macaday, arrived, Paran and Roelan ran away.[6]

He recognized the persons who mauled him and his wife as Paran and Roelan through the light coming from his flashlight and because they were very near them. He added that Paran

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[4] *Id*. at 1.

[5] *Id*. at 28.

[6] CA *rollo*, p. 71.

and Roelan also had a flashlight with them. He knew Paran because the latter was his neighbor for a long time, while Roelan used to reside in their house for three (3) months before the incident. He did not see what Paran and Roelan used in attacking them because they hid their weapons behind their backs.[7]

Macaday testified that Cosme and Paula are his parents-in-law. He recalled that he woke up early in the morning of July 23, 2010 and started his work as a *habal-habal* driver. When he passed by *Sitio* Danawan, *Barangay* Biga, Toledo City at around 4:00 a.m., he saw Paran hitting Cosme, who was then bathed with his own blood, with a *go-od* or a bamboo pole. He saw Roelan, who was carrying a stick, emerge from the area where Paula was later found. When he pulled over to help Cosme, he heard Paran tell Roelan that they should escape. Instead of going after Paran and Roelan, he opted to seek help from Gerardo and his neighbors in bringing the victims to the hospital. Cosme survived the ordeal, but Paula died three (3) days later. He stressed that he recognized Paran and Roelan through the aid of the light coming from the headlight of his motorcycle. He added that he later learned that money was taken from the victims.[8]

Gerardo testified that he is the son of the victims. He recounted that Paula woke him up at around 4:00 a.m. of July 23, 2010, and requested him to cook food for his daughter since she and Cosme were going to their farm. About thirty (30) minutes after his parents left, Macaday came to his house and told him that his parents were assaulted. When he arrived at the place of incident, he saw Cosme with a bloodied mouth. While he was carrying Cosme, the latter told him that they were assaulted by Paran and Roelan, and that the two took their ₱2,500.00. After a while, he saw his mother who had a cracked forehead and could not talk. He initially brought his parents to the Toledo City Hospital, but they were later referred to the Vicente Sotto Memorial Medical Center, Cebu. While at the hospital, he again

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[7] TSN dated December 7, 2011, pp. 4-10.

[8] TSN dated October 10, 2012, pp. 4-12.

asked Cosme who waylaid him and Paula, and Cosme answered that Paran and Roelan attacked them. He contacted the Toledo City Police Substation for Cosme, and then the latter disclosed to a police officer the names of the culprits. The doctor who attended to his mother's medical needs told him that Paula could not be saved anymore and true enough, she died three (3) days after the incident.[9]

SPO3 Talandron recalled that at around 10:30 a.m. of July 23, 2010, Macaday went to the Toledo City Police Substation to report that his parents-in-law were attacked and injured by unknown assailants at about 4:00 a.m. of that day. In the morning of July 24, 2010, Cosme called him up and told him that his neighbors Paran and Roelan assaulted and robbed him and his wife. Upon instruction of their Chief, he, together with PO2 Jordan Supatan and PO1 Emmanuel Aragon, proceeded to *Barangay* Biga, and arrested Paran and Roelan. PO2 Supatan recovered one (1) ₱1,000.00 bill and one (1) ₱500.00 bill from Paran, while PO1 Aragon recovered four (4) ₱100.00 bills from Roelan which they believe to be part of the loot.[10]

Version of the Defense

The defense presented Paran, Roelan and Maricris Paran to give their version of the incident in support of Paran's and Roelan's plea for exoneration of the charge.

Paran interposed the defense of denial, claiming that at about 4:00 a.m. of July 23, 2010, he and Roelan were sleeping at his house located in *Sitio* Ilaya, *Barangay* Biga, Toledo City. He explained that Roelan stayed in his house because the latter was then making a bench for his son. Macaday and a certain Alfred Predes woke them up and told them that Cosme and Paula were robbed. They all went together to the scene of the crime, situated about 100 meters, more or less, away from his house. There, he saw Cosme sitting at the side of the road and oozing with blood. He asked Cosme who mauled them and the

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[9] TSN dated November 21, 2012, pp. 3-8.

[10] TSN dated May 15, 2013, pp. 4-12.

latter replied, "I don't know." He went home after Cosme and Paula were brought to the hospital. He was arrested in his house at around 11:30 a.m. of July 24, 2010 by SPO3 Talandron, PO1 Aragon and another officer whose name he did not know.[11]

Roelan also denied any involvement in the mauling and robbing of Cosme and Paula. He corroborated the testimony of Paran in its material points. He alleged that he asked Madacay as to who were the culprits, but Madacay said that they have no suspects. He claimed that although Cosme saw him and Paran at the place of incident, said victim never pointed to them as the authors of the crime. He added that they were not assisted by counsel during their one-hour investigation at the police station. After the investigation, they were brought to the hospital in Cebu City for identification by Cosme.[12]

Maricris confirmed that Roelan was residing at the house of Paran, her father-in-law, at the time of the incident. She recalled that while she was breastfeeding her baby at around 4:00 a.m. of July 23, 2010, she saw Macaday arrive at the house of Paran asking for help from the latter because his mother and father were robbed and somebody died. Paran did not go with Macaday just yet. After a while, Macaday returned with Alfred Predes and, this time, Paran and Roelan went out with them to the place of incident.[13]

The RTC's Ruling

On May 27, 2015, the RTC rendered its Decision finding Paran and Roelan guilty as charged. The *fallo* of which reads:

> WHEREFORE, in the light of all the foregoing, judgment is hereby rendered finding accused Crisanto Paran y Lariosa alias "Santo" and Leonardo Roelan y Flores alias "Boyax" guilty beyond reasonable doubt of the special complex crime of Robbery with Homicide and Serious Physical Injuries and each of them is hereby sentenced to

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[11] TSN dated March 5, 2014, pp. 4-7.

[12] TSN dated November 5, 2014, pp. 3-15.

[13] TSN dated March 25, 2015, pp. 4-8.

suffer the penalty of RECLUSION PERPETUA without being eligible for parole and to jointly and severally indemnify the heirs of deceased victim Paula Geonzon Fifty Thousand Pesos (P50,000.00) as civil indemnity; Fifty Thousand Pesos (P50,000.00) as moral damages; and Two Thousand Five Hundred Pesos (P2,500.00) which was the amount they robbed from the victims, all with interest at 6% per annum until fully paid.

The preventive imprisonment undergone by each of the two accused is fully credited in his favor.

With costs against accused.

SO ORDERED.[14]

According to the RTC, all the elements of the special complex crime of Robbery with Homicide and Serious Physical Injuries were satisfactorily proven by the prosecution. The RTC ruled that Paran and Roelan employed force and violence upon Cosme and Paula, and after disabling the victims from defending themselves, Paran and Roelan took Paula's cash in the amount of ₱2,500.00. It held that the primary intention of Paran and Roelan was to rob the victims of their money. Lastly, the RTC rejected the defense of denial proffered by Paran and Roelan for being self-serving and unsupported by any plausible proof.

Not in conformity, Paran and Roelan appealed their conviction of Robbery with Homicide and Serious Physical Injuries before the CA.

On September 21, 2016, the counsel of Paran filed a Manifestation[15] informing the CA of the fact of death of Paran while detained at the New Bilibid Prison in Muntinlupa City. A copy of Paran's Certificate of Death[16] shows that he died on May 17, 2016. This prompted the CA to dismiss his appeal.

The CA's Ruling

On March 28, 2018, the CA rendered its assailed Decision affirming the conviction of Roelan. In view of the untimely

[14] CA *rollo,* p. 79.

[15] *Id*. at 105-108.

[16] *Id*. at 109-110.

demise of Paran, the CA declared his criminal and civil liabilities totally extinguished. The dispositive portion of which states:

> WHEREFORE, the appeal is DENIED. The Decision dated May 27, 2015 of the Regional Trial Court, Branch 29, Toledo City, in Criminal Case No. TCS-6873, is AFFIRMED with the modifications that:
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> 1. The designation of the felony committed by accused Crisanto Paran and accused-appellant Leonardo Roelan is corrected to be Robbery with Homicide;
> 2. The criminal and civil liabilities ex delicto of accused Crisanto Paran are declared EXTINGUISHED by reason of his death prior to final judgment; and
> 3. Accused-appellant Leonardo Roelan is ordered to pay the heirs of Paula Geonson civil indemnity of Php75,000.00, moral damages of Php75,000.00, and exemplary damages of Php75,000.00.
>
> SO ORDERED.[17]

Preliminarily, the CA, citing the case of *People v. Vallar, et al.*,[18] held that the proper designation of the offense of which Paran and Roelan were charged and subsequently convicted by the RTC should be Robbery with Homicide, and not Robbery with Homicide and Serious Physical Injuries, because the term homicide in Article 294, paragraph 1 of the Revised Penal Code (*RPC*) is to be used in its generic sense as to embrace not only acts that result in death, but all other acts producing any bodily injury short of death. The appellate court ruled that the prosecution witnesses unerringly established the commission of the crime of Robbery with Homicide and Roelan's criminal culpability thereof.

According to the CA, the noted inconsistency or contradiction between the testimonies of Cosme and Macaday, as to who struck who, would not dilute Cosme's credibility or the verity

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[17] *Rollo*, pp. 24-25.

[18] 801 Phil. 870 (2016).

of his testimony because the discrepancy pertained to minor or trivial matters. It declared that the alleged illegality of Roelan's arrest would not merit his exoneration, holding that his failure to impugn the legitimacy of his arrest before his arraignment, through a motion to quash the Information, constitutes a waiver of objection on the legality of such arrest. The CA, however, modified the damages awarded by the RTC to conform with prevailing jurisprudence.

The Issue

Undaunted, Roelan filed the present appeal and posited the same lone assignment of error he previously raised before the CA, to wit:

THE TRIAL COURT GRAVELY ERRED IN CONVICTING THE [ACCUSED-APPELLANT] OF THE CRIME OF ROBBERY WITH HOMICIDE DESPITE FAILURE OF THE PROSECUTION TO PROVE [HIS] GUILT BEYOND REASONABLE DOUBT.[19]

In the Resolution[20] dated September 26, 2018, the Court directed both parties to submit their supplemental briefs, if they so desired. On December 5, 2018, the Office of the Solicitor General filed its Manifestation In Lieu of Supplemental Brief,[21] stating that it would no longer file a supplemental brief as its Appellee's Brief had sufficiently ventilated the issue raised. Later, on January 15, 2019, Roelan filed a Motion to Admit Manifestation (In Lieu of Supplemental Brief),[22] averring that he would adopt all his arguments in his Appellant's Brief filed before the CA.

The Court's Ruling

Roelan contends before this Court that the RTC erred in giving credence to his identification by Cosme and Macaday as one of the perpetrators of the crime; in giving evidentiary

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[19] CA *rollo*, p. 55.

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

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

[22] *Id*. at 43-46.

weight to the unreliable and inconsistent, if not conflicting, testimonies of the said prosecution witnesses; in failing to give exculpatory weight to his denial and alibi which were supported by the testimony of Maricris; and in convicting him even if his guilt was not proven beyond reasonable doubt.

The Court finds Roelan's contentions to be flawed in fact. *En contra*, we are persuaded that the People's case merits acceptance in law. Essentially, Roelan assails the credibility of the prosecution's key witness, Cosme.

Worth reiterating herein is our ruling in *People v. Maxion*,[23] *viz*.:

> [T]he issue raised by accused-appellant involves the credibility of [the] witness, which is best addressed by the trial court, it being in a better position to decide such question, having heard the witness and observed his demeanor, conduct, and attitude under grueling examination. These are the most significant factors in evaluating the sincerity of witnesses and in unearthing the truth, especially in the face of conflicting testimonies. Through its observations during the entire proceedings, the trial court can be expected to determine, with reasonable discretion, whose testimony to accept and which witness to believe. Verily, findings of the trial court on such matters will not be disturbed on appeal unless some facts or circumstances of weight have been overlooked, misapprehended or misinterpreted so as to materially affect the disposition of the case.[24]

After a meticulous scrutiny and conscientious evaluation of the records of this case for those substantial and valuable facts, we find no oversight or omission on the part of the RTC in concluding that Roelan is truly guilty of the crime imputed to him. The RTC, affirmed by the CA, gave more weight and credence to the testimony of Cosme compared to those of Roelan and his witness. Roelan has not given us sufficient ground – and indeed we found none – to believe that the trial court overlooked or misappreciated any fact that might warrant his total exoneration. On the contrary, the evidence on record pointed

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[23] 413 Phil. 740 (2001).

[24] *Id*. at 747-748; citation omitted.

and led to Roelan's complicity in the commission of the crime. Thus, there is no cogent reason for the Court to overturn the judgment of the trial and appellate courts on the matter.

Robo con homicidio or robbery with homicide is an indivisible offense, a special complex crime. It carries a severe penalty because the law sees in this crime that men place lucre above the value of human life, thus justifying the imposition of a harsher penalty than that for simple robbery or homicide.[25] Robbery with homicide exists when a homicide is committed either by reason or on occasion of the robbery. Homicide is said to have been committed by reason or on the occasion of robbery if, for instance, it was committed to (a) facilitate the robbery or the escape of the culprit; (b) preserve the possession by the culprit of the loot; (c) prevent discovery of the commission of the robbery; or (d) eliminate witnesses in the commission of the crime.[26]

In order to sustain a conviction for robbery with homicide, the following elements must be proven by the prosecution: (1) the taking of personal property belonging to another; (2) with intent to gain or *animus lucrandi*; (3) with the use of violence or intimidation against a person; and (4) on the occasion or by reason of the robbery, the crime of homicide, as used in its generic sense, was committed.[27] A conviction requires certitude that the robbery is the main purpose and objective of the malefactor, and the killing is merely incidental to the robbery. The intent to rob must precede the taking of human life, but the killing may occur before, during or after the robbery.[28] Intent to gain, or *animus lucrandi,* is an internal act; hence, presumed from the unlawful taking of things.[29]

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[25] *People v. Salazar,* 342 Phil. 745, 766 (1997).

[26] *People v. Diu, et al.,* 708 Phil. 218, 238 (2013).

[27] *People v. Jojo Bacyaan y Sabaniya, et al.,* G.R. No. 238457, September 18, 2019; citation omitted.

[28] *Crisostomo v. People*, 644 Phil. 53, 61 (2010); citation omitted.

[29] *People v. Obillo,* 411 Phil. 139, 150 (2001); citation omitted.

In the case at bench, all the essential ingredients of robbery with homicide are present. The evidence on record shows that at around 4:00 a.m. of July 23, 2010, Cosme and Paula left their house and were on their way to their other house in *Sitio* Ilaya, *Barangay* Biga, Toledo City to pasture their animals. While they were walking along the road in *Sitio* Danawan, *Barangay* Biga, Toledo City, Paran and Roelan suddenly approached them. Thereafter, Paran immediately struck Paula with a hard object, causing her to fall on the ground and, while she was lying on the ground, he struck her again. On the other hand, Roelan clubbed Cosme once in the mouth, knocking some of the latter's front teeth which caused him to lose consciousness. Cosme regained consciousness because Roelan kept on searching his body. Paran also searched the body of Paula and was able to find money from her in the amount of ₱2,500.00, which cash Cosme earlier gave to Paula, before they left their house. Cosme heard Paran tell Roelan that the money was with Paula. When Macaday arrived, Paran and Roelan ran away, and took with them the money. Gerardo brought Cosme and Paula to a hospital. Paula expired three (3) days after the incident, while Cosme recovered.

From the foregoing, there is no mistaking from the actions of Roelan and Paran that their primordial intention was to rob Cosme and Paula. There was no showing that Roelan and Paran held a common grudge against the victims which provided enough reason to maul and seriously injure them. They disabled the couple by hitting them with hard objects precisely to facilitate the robbery, as well as their escape. While Paula was lying helplessly on the ground, Paran divested her of her cash worth ₱2,500.00. The killing was, therefore, merely incidental, resulting by reason or on occasion of the robbery.

Roelan argues that it was improbable for Cosme to see and identify their assailants because it was still dark when the alleged incident happened. In addition, Roelan posits that Cosme could not have witnessed the fatal mauling of Paula since he too was clubbed and lost consciousness in the process. The defense concludes that the prosecution failed to establish with moral

certainty the identities of the perpetrators as those of Paran and Roelan. The argument is unacceptable.

Visibility is indeed a vital factor in determining whether an eyewitness could have identified the perpetrator of a crime.[30] It is settled that where the conditions of visibility are favorable and the witness does not appear to harbor any ill motive against the malefactors, his testimony as to how the crime was committed and on the identities of the perpetrators must be accepted.[31] In proper situations, illumination produced by a kerosene or wick lamp, a flashlight, even moonlight or starlight may be considered sufficient to allow identification of persons.[32] Under such circumstance, any attack on the credibility of witnesses, based solely on the ground of insufficiency or absence of illumination, becomes unmeritorious.[33]

While Roelan and Paran attempted to hide their identities in the blackness of the early dawn, their identities had been revealed and the darkness that was their cover has been dispelled by the credible testimony of Cosme that, while it was indeed dark in the place where the incident took place, there was, however, adequate light coming from the flashlight which he was then carrying that illuminated the area. This detail makes Cosme's testimony and positive identification of Roelan, as one of the culprits, more reliable. To be sure, Cosme had an unobstructed view of Roelan and Paran because of their proximity with each other. Given his familiarity with the faces and other physical features of Paran, who was his neighbor for a long time, and of Roelan, who had resided in his house for three (3) months prior to the incident, as well as the illumination provided by the flashlight, eliminated any possibility of mistaken identification. Also, contrary to Roelan's claim, Cosme was able to observe the fatal mauling of Paula before he lost

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[30] *People v. Ramirez*, 409 Phil. 238, 250 (2001).

[31] *People v. Dela Cruz*, 452 Phil. 1080, 1093-1094 (2003).

[32] *People v. Licayan*, 428 Phil. 332, 344 (2002).

[33] *People v. Biñas*, 377 Phil. 862, 897 (1999); citation omitted.

consciousness due to the injury he sustained. Besides, jurisprudence teaches that the serious nature of a victim's injuries would not necessarily affect his or her credibility as a witness, if such injuries did not cause the immediate loss of his or her ability to perceive and identify the assailant.[34]

Cosme is more than just an eyewitness, he is a surviving victim of the crime. He testified in a categorical, forthright and sincere manner. Cosme was not fazed or rattled by the extensive cross-examination since all he had to do was to recall and relate the true facts. His testimony not only rings true but it is, likewise, clearly consistent with the physical evidence adduced during trial. Per the Medical Abstract[35] on victim Paula, it was stated that she suffered MPI secondary to mauling and severe brain injury. The Medical Abstract[36] on Cosme signed by a certain Dr. Mumar of the Vicente Sotto Memorial Medical Center, on the other hand, showed that he sustained tripod fracture, (L) secondary to mauling; laceration, molar region linear 3 cm secondary to mauling; multiple teeth lost; and Le Fort I fracture.

He positively identified Roelan and Paran, and detailed the specific role each played in the commission of the crime. He has no malevolent motive whatsoever to testify falsely against Roelan and Paran. When there is no evidence to indicate that the prosecution witnesses were actuated by improper motives, the presumption is that they were not so actuated and that their testimonies are entitled to full faith and credit.[37] Cosme's identification of Roelan and Paran as his and his wife's assailants can only be explained by his honest desire to have the real perpetrators, and not just anybody, apprehended and punished to give justice to the death of his wife Paula. The natural interest of a witness who is a relative of the victim in securing the

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[34] *People v. Teodoro*, 345 Phil. 614, 628 (1997).

[35] Records, p. 13.

[36] *Id*. at 14.

[37] *People v. Tabaco*, 336 Phil. 771, 796 (1997); citation omitted.

conviction of the guilty would deter the witness from implicating a person other than the true culprit.[38] Verily, the eyewitness identification of Roelan virtually sealed his culpability.

Next, Roelan avers that the prosecution witnesses' identification of him as one of the robbers was not enough to hurdle the test of certainty. In an attempt to discredit the testimonies of prosecution witnesses Cosme and Macaday, Roelan points out their conflicting testimonies as to who between Paran and Roelan struck Cosme and Paula on the occasion of the robbery. He alleges that according to Cosme, Paran struck Paula while he was struck by Roelan once, but Macaday positively identified Paran as the one who struck Cosme many times and that it was Roelan who struck Paula. Roelan contends that such substantial contradiction casts serious doubt on the identity of the perpetrators, warranting the reversal of the finding of guilt against him.

Roelan is mistaken.

The Court finds the alleged contradiction too trivial to affect the prosecution's case. The testimonial imperfection hardly relates to facts material to the commission of the crime. Witnesses testifying on the same event do not have to be consistent in every detail, considering the inevitability of differences in their recollection, viewpoint or impression.[39] Truth-telling witnesses are not expected to give flawless testimonies, considering the lapse of time and the treachery of human memory. Total recall or perfect symmetry is not required as long as the witnesses concur on material points. In the present case, what is material is that Cosme and Macaday both pointed to Roelan as one of the malefactors. Truly, the inconsistency relates to a detail of peripheral significance which does not negate or dissolve the positive identification of Roelan as one of the culprits.

At any rate, in view of the presence of conspiracy, the matter as to who between Paran and Roelan struck Cosme and Paula

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[38] *People v. Pabillano*, 404 Phil. 43, 62 (2001); citation omitted.

[39] *People v. Pulusan*, 352 Phil. 953, 974 (1998).

becomes inconsequential since both Roelan and Paran shall bear equal criminal responsibility. The rule is well-established that whenever homicide has been committed as a consequence of or on the occasion of the robbery, all those who took part as principals in the robbery will also be held guilty as principals of the special complex crime of robbery with homicide although they did not actually take part in the homicide, unless it clearly appears that they endeavored to prevent the homicide.[40]

In the case at bench, the prosecution has proven beyond reasonable doubt that Roelan and Paran conspired in the commission of the crime. Conspiracy may be deduced from the mode and manner in which the offense was perpetrated, or inferred from the acts of the accused themselves when these point to a joint purpose and design, concerted action and community of interest.[41] The concerted action of Roelan and Paran shows their unity of purpose – to rob the victim, at all cost. These concerted acts manifestly disclose concurrence of wills, unity of action, joint purpose and common design. We note that it has not been shown that Roelan tried to prevent the fatal mauling of Paula.

Roelan's defense of denial and alibi collapses in the face of the positive identification by prosecution witnesses. Denials, as negative and self-serving evidence, do not deserve as much weight in law as positive and affirmative testimonies. Prevalently repeated is the rule that for alibi to countervail the evidence of the prosecution confirming the accused's guilt, he must prove that he was not at the *locus delicti* when the crime was committed and that it was also physically impossible for him to have been at the scene of the crime at the time it was perpetrated.[42] Roelan's own evidence shows that he was in the house of Paran when the incident occurred, which is 100 meters from the crime scene. Thus, it was not physically impossible for him to commit the crime charged on the date, place and time in question. His

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[40] *People v. Sabadao,* 398 Phil. 346, 366 (2000); citation omitted.

[41] *People v. de la Rosa, Jr.*, 395 Phil. 643, 659 (2000); citation omitted.

[42] *People v. Hernandez,* 476 Phil. 66, 84 (2004); citation omitted.

demeanor and the contents of his testimony, as found by the RTC, belied his protestations of innocence.

The fact that Roelan presented Maricris to corroborate his alibi deserves scant consideration. Maricris's testimony is viewed with skepticism due to the very nature of alibi she affirms. Roelan can easily fabricate an alibi and ask relatives and friends to corroborate it.[43] Besides, we find the testimony of Maricris less than convincing.

Anent Roelan's warrantless arrest, any irregularity that may have attended the same would be of no help to him in the present appeal. In voluntarily submitting himself to the RTC by entering a plea of not guilty, instead of filing a motion to quash the information for lack of jurisdiction over his person, Roelan is deemed to have waived his right to assail the legality of his arrest. Our pronouncements in *Rebellion v. People*[44] are instructive, thus:

> Petitioner's claim that his warrantless arrest is illegal lacks merit. We note that nowhere in the records did we find any objection interposed by petitioner to the irregularity of his arrest prior to his arraignment. It has been consistently ruled that an accused is estopped from assailing any irregularity of his arrest if he fails to raise this issue or to move for the quashal of the information against him on this ground before arraignment. Any objection involving a warrant of arrest or the procedure by which the court acquired jurisdiction over the person of the accused must be made before he enters his plea; otherwise, the objection is deemed waived. In this case, petitioner was duly arraigned, entered a negative plea and actively participated during the trial. Thus, he is deemed to have waived any perceived defect in his arrest and effectively submitted himself to the jurisdiction of the court trying his case. At any rate, the illegal arrest of an accused is not sufficient cause for setting aside a valid judgment rendered upon a sufficient complaint after a trial free from error. It will not even negate the validity of the conviction of the accused.[45]

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[43] *People v. Torres*, 743 Phil. 553, 567 (2014).

[44] 637 Phil. 339 (2010); citations omitted.

[45] *Id.* at 345; underscore supplied, citations omitted.

The Court notes that the courts *a quo* failed to rule on the aggravating circumstance of evident premeditation that allegedly attended the commission of the offense. In any event, evident premeditation cannot be appreciated as an aggravating circumstance in the crime of robbery with homicide because the elements of which are already inherent in the crime. Evident premeditation is inherent in crimes against property.[46]

Under Article 294, paragraph 1 of the RPC, as amended by Republic Act No. 7659,[47] the penalty for robbery with homicide is *reclusion perpetua* to death. Applying Article 63[48] of the same Code, the lesser penalty of *reclusion perpetua* should be imposed on Roelan, in view of the absence of any modifying circumstance in the present case. Hence, the penalty imposed by the courts *a quo* against Roelan is correct.

Consistent with the prevailing jurisprudence,[49] the Court affirms the award of Seventy-Five Thousand Pesos (₱75,000.00) as civil indemnity and Seventy-Five Thousand Pesos (₱75,000.00) as moral damages. Being corrective in nature, the award of Seventy-Five Thousand Pesos (₱75,000.00) as exemplary damages is proper for the reprehensible act committed against the victim.[50] In addition, the Court deems it appropriate to award temperate damages in the amount of Fifty Thousand

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[46] *People v. Layug*, G.R. No. 223679, September 27, 2017; citation omitted.

[47] An Act to Impose the Death Penalty on Certain Heinous Crimes, Amending for that Purpose the Revised Penal Laws, as Amended, Other Special Penal Laws, and for Other Purposes.

[48] Article 63. Rules for the application of indivisible penalties. — x x x.

In all cases in which the law prescribes a penalty composed of two indivisible penalties, the following rules shall be observed in the application thereof:

x x x x x x x x x

2. When there are neither mitigating nor aggravating circumstances in the commission of the deed, the lesser penalty shall be applied.

[49] *People v. Jugueta*, 783 Phil. 806 (2016).

[50] *People v. Renato Cariño y Gocong, et al.*, G.R. No. 232624, July 9, 2018.

Pesos (₱50,000.00), considering that no documentary evidence of burial or funeral expenses was submitted in court.[51] Cosme, as a victim who sustained non-mortal or non-fatal wounds, shall also be entitled to the award of civil indemnity, moral damages and exemplary damages in the amount of Twenty-Five Thousand Pesos (₱25,000.00) each.[52] Further, six percent (6%) interest *per annum* shall be imposed on all damages awarded, to be reckoned from the date of finality of this Decision until fully paid.[53]

Finally, the Court directs Roelan to pay Two Thousand Five Hundred Pesos (₱2,500.00) as restitution for the cash taken from Paula. We note that the CA deleted this award in its questioned Decision.

WHEREFORE, the appeal is **DISMISSED**. The Decision of the Court of Appeals dated March 28, 2018 in CA-G.R. CEB-CR HC No. 02084 is hereby **AFFIRMED** with **MODIFICATION**. Accused-appellant Leonardo F. Roelan is found **GUILTY** beyond reasonable doubt of Robbery with Homicide and is sentenced to suffer the penalty of *Reclusion Perpetua*. He is ordered to pay 1) the heirs of the victim, Paula Geonson, the amounts of Seventy-Five Thousand Pesos (₱75,000.00) as civil indemnity, Seventy-Five Thousand Pesos (₱75,000.00) as moral damages, Seventy-Five Thousand Pesos (₱75,000.00) as exemplary damages, and Fifty Thousand Pesos (₱50,000.00) by way of temperate damages; and 2) the victim, Cosme Geonson, the amounts of Twenty-Five Thousand Pesos (₱25,000.00) as civil indemnity, Twenty-Five Thousand Pesos (₱25,000.00) as moral damages, and Twenty-Five Thousand Pesos (₱25,000.00) as exemplary damages.

He is also **ORDERED** to **PAY** interest at the rate of six percent (6%) *per annum* from the time of finality of this Decision

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[51] *People v. Jugueta*, 783 Phil. 806, 853 (2016).

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[53] *People v. Romobio*, G.R. No. 227705, October 11, 2017, 842 SCRA 512, 538.

until fully paid, to be imposed on the civil indemnity, moral damages, exemplary damages and temperate damages. Lastly, he is ordered to pay the heirs of the victim, Paula Geonson, the amount of Two Thousand Five Hundred Pesos (₱2,500.00) as restitution for the cash taken during the robbery.

SO ORDERED.

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

FIRST DIVISION

[G.R. No. 243366. September 8, 2020]

FELICITAS Z. BELO, *Petitioner, v.* **CARLITA C. MARCANTONIO,** *Respondent.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; SERVICE OF PLEADINGS; SUBSTITUTED SERVICE; RESORT TO SUBSTITUTED SERVICE IS ALLOWED ONLY IF FOR JUSTIFIABLE CAUSES THE DEFENDANT CANNOT BE PERSONALLY SERVED WITH SUMMONS WITHIN A REASONABLE TIME.— It is settled that resort to substituted service is allowed only if, for justifiable causes, the defendant cannot be personally served with summons within a reasonable time. As substituted service is in derogation of the usual method of service – personal service is preferred over substituted service – parties do not have unbridled right to resort to substituted service of summons. In the landmark case of *Manotoc v. Court of Appeals*, the Court ruled that before the sheriff may resort to substituted service, he must first establish the impossibility of prompt personal service. To do so, there must be at least three best effort attempts, preferably on at least two different dates, to effect personal service within a reasonable period of one month or eventually result in failure. It is further required for the sheriff to cite why such efforts were unsuccessful. It is only then that impossibility of service can be confirmed or accepted.

2. ID.; ID.; ID.; VOLUNTARY SUBMISSION; THE DEFECT IN THE SERVICE OF SUMMONS IS CURED BY THE PARTY'S VOLUNTARY SUBMISSION TO THE COURT'S JURISDICTION; VOLUNTARY SUBMISSION NOT SUFFICIENT TO MAKE THE PROCEEDINGS BINDING UPON THE PARTY WITHOUT HIS OR HER PARTICIPATION.— [W]hile the defect in the service of summons was cured by respondent's voluntary submission to the RTC's jurisdiction, it is not sufficient to make the proceedings binding upon the respondent without her participation. This is

because the service of summons or, in this case the voluntary submission, merely pertains to the "notice" aspect of due process. Equally important in the concept of due process is the "hearing" aspect or the right to be heard. This aspect of due process was not satisfied or "cured" by respondent's voluntary submission to the jurisdiction of the trial court when she was unjustifiably disallowed to participate in the proceedings before the RTC. x x x The service of summons is a vital and indispensable ingredient of a defendant's constitutional right to due process, which is the cornerstone of our justice system. Due process consists of notice and hearing. Notice means that the persons with interests in the litigation be informed of the facts and law on which the action is based for them to adequately defend their respective interests. Hearing, on the other hand, means that the parties be given an opportunity to be heard or a chance to defend their respective interests.

CAGUIOA, *J.*, *concurring opinion*:

1. **REMEDIAL LAW; CIVIL PROCEDURE; SERVICE OF PLEADINGS; IN ACTIONS *QUASI IN REM*, WHILE JURISDICTION OVER THE PERSON IS NOT REQUIRED, NOTIFICATION OF THE DEFENDANT IS STILL REQUIRED BY DUE PROCESS OF LAW; THIS NOTICE TAKES THE FORM OF SUMMONS VALIDLY SERVED UPON THE DEFENDANT.—** Hence, while jurisdiction over the person is not required, notification of the defendant is still required by due process of law. In actions *quasi in rem*, like judicial foreclosure proceedings, **this notice takes the form of summons validly served upon the defendant, not for vesting the court with jurisdiction, but for complying with the requirements of fair play**. By service of summons, the defendant is given notice that a civil action has been commenced and places him or her on guard as to the demands of the plaintiff, and the possibility that property belonging to him, or in which he has an interest, might be subjected to a judgment in favor of the plaintiff and he or she can thereby take steps to protect such interest if he or she is so minded.

2. **ID.; ID.; ID.; ID.; ID.; WHEN THE COURT PROCEEDS TO RENDER JUDGMENT DESPITE FAILURE TO PROPERLY SERVE SUMMONS ON THE DEFENDANT,**

THIS DEPRIVES THE DEFENDANT THE OPPORTUNITY TO BE HEARD, AND ONLY THEN MAY THE PROCEEDINGS BE NULLIFIED, NOT ON JURISDICTIONAL GROUNDS, BUT ON DUE PROCESS CONSIDERATIONS. — If service of summons on the person of the defendant is not an antecedent to the acquisition of the court's power to try and hear the case but instead is a facet of due process, any defect does not divest the court of jurisdiction. The Court retains its power to take cognizance of the case and may direct the proper service of summons to satisfy the requirements of due process. **When the court proceeds to render judgment despite the failure to properly serve summons on the defendant, this deprives the latter the opportunity to be heard, and only then may the proceedings be nullified – not on jurisdictional grounds, but on due process considerations.**

APPEARANCES OF COUNSEL

Constante Brillantes, Jr. for petitioner.

Abrenica Ardiente Abrenica & Partners Law Office for respondent.

D E C I S I O N

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

This is a Petition for Review on *Certiorari*,[1] assailing the Decision[2] dated June 29, 2018 and Resolution[3] dated November 23, 2018 of the Court of Appeals (CA) in CA-G.R. SP No. 153771, which annulled and set aside the Orders[4] dated August 15, 2016 and September 22, 2017 of the Regional Trial Court (RTC) of Mandaluyong City, Branch 208, in Civil Case No. MC15-9374.

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[1] *Rollo*, pp. 10-22.

[2] Penned by Associate Justice Manuel M. Barrios with Justices Japar B. Dimaampao and Jhosep Y. Lopez, concurring, id. at 28-37.

[3] Id.

[4] Id. at 80-81 and 91-92.

The Facts

On January 12, 2015, Felicita Z. Belo (petitioner) filed a complaint for foreclosure of mortgage against Carlita C. Marcantonio (respondent). The clerk of court then issued summons dated January 26, 2015 addressed to respondent's known address at 155 Haig St., Mandaluyong City. Per the Sheriff's Return, copies of said summons and the complaint along with its annexes were left to a certain Giovanna Marcantonio (Giovanna), respondent's "niece," allegedly because respondent was not at the given address at that time.[5] The Sheriff's Return[6] dated January 29, 2015 reads:

> This is to certify that on January 28, 2015, a copy of Summons with Complaint, Annexes dated January 26, 2015 issued by the Honorable Court in connection with the above-entitled case was cause[d] to be served by substituted service (Sec. 7 — Rule 14). The defendant/s cannot be served within a reasonable time as provided for in Sec. 8 — Rule 14 because the [d]efendant [is] not around and cannot be found at the given address located at 155 Haig Street, Mandaluyong City at the time of the service of summons and that earnest efforts were exerted to serve summons personally to the defendant and service was effected by leaving a copy of summons at the defendant['s] given address thru Giovann[a] Marcantonio — Niece of the [d]efendant and a person of suitable age and discretion who acknowledged receipt thereof the copy of summons as evidenced by her signature located at the lower portion of the original copy of summons.
>
> WHEREFORE, I respectfully return to the Court of origin the original copy of Summons with annotation **DULY SERVED** for record and information.[7]

No responsive pleading was, however, filed. Thus, upon petitioner's motion, respondent was declared in default. Petitioner was then allowed to present evidence *ex parte*, and thereafter, the case was submitted for decision.[8]

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[5] Id. at 29.

[6] Id. at 61.

[7] Id.

[8] Id. at 30.

In April 2016, before judgment was rendered, respondent learned about petitioner's case against her. Respondent immediately, thus, filed a Motion to Set Aside/Lift Order of Default and to Re-Open Trial[9] dated April 11, 2016 on the ground of defective service of summons. She averred therein, among others, that she learned about the case only on April 5, 2016 through petitioner's niece, a certain Mae Zamora; that she was not able to file a responsive pleading as she did not receive a copy of the summons; that she is currently a resident of Cavite and no longer a resident of Mandaluyong where the summons was served; and that said summons was received by her daughter (not niece as stated in the Sheriff's Return) Giovanna, who never sent the same to her, being unaware of the significance thereof. Respondent further averred that she has good and meritorious defenses to defeat petitioner's claim for foreclosure of mortgage as the same was pursued through fraudulent misrepresentation perpetrated by one Maria Cecilia Duque, and that at any rate, certain payments have already been made, which controverted the amount claimed in the complaint. Respondent, thus, sought for the court's liberality in setting aside the default order and re-opening the case for trial considering her legitimate reason for her failure to file answer, as well as her meritorious defense.[10]

In its Order[11] dated August 15, 2016, the RTC held that the substituted service of summons upon respondent was validly made per Sheriff's Return dated January 29, 2015, thus:

> From the foregoing and finding no cogent reason to depart from the proceedings which had already taken place to be in order, the instant motion is hereby denied.
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> Accordingly, the instant case is submitted anew for decision.
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> The Formal Entry of Appearance filed by Atty. John Gapit Colago as counsel for [respondent] is hereby noted.

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[9] Id. at 68-69.

[10] Id.

[11] Id. at 80-81.

SO ORDERED.[12]

Respondent filed a motion for reconsideration to said Order, reiterating her averment that there was a defective substituted service of summons and asserting her right to file a responsive pleading. This motion for reconsideration was, however, likewise denied in an Order[13] dated September 22, 2017, wherein the RTC ruled that respondent's filing of the motion to lift default order and to re-open trial, as well as the motion for reconsideration of the order denying said motion, amounted to a voluntary appearance which already vested it with jurisdiction over her person.

Aggrieved, respondent sought refuge from the CA through a Petition for *Certiorari* and Prohibition with Application for Temporary Restraining Order (TRO) or Writ of Preliminary Injunction (WPI) imputing grave abuse of discretion against the RTC for ruling that the resort to substituted service of summons was valid, and that there was voluntary appearance on her part in filing the motion to lift default order and to re-open trial, as well as in filing the motion for reconsideration of the order denying the motion to lift default order/re-open trial.[14]

On March 23, 2019, during the pendency of the case before the CA, petitioner filed a motion before the RTC to proceed with the resolution of the case as no TRO or WPI was issued, by the appellate court. Thus, in a Decision[15] dated May 25, 2018, the RTC ruled in favor of petitioner.

In the meantime, in its assailed June 29, 2018 Decision, the CA ruled that there was improper resort to substituted service of summons. It held that the sheriff's single attempt to effect personal service, as well as the mere statement in the Sheriff's

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[12] Id. at 81.

[13] Id. at 91-92.

[14] Id. at 30-31.

[15] Id. at 229-233.

Return that "earnest efforts were exerted to serve summons personally to the defendant" without describing the circumstances surrounding the alleged attempt to personally serve the summons, did not justify resort to substituted service. Thus, the appellate court held that petitioner's reliance upon the presumption of regularity in the performance of duties of public officers was misplaced due to said lapses on the part of the sheriff.[16]

On the matter of voluntary submission to the jurisdiction of the court, the CA ruled that respondent's motions cannot be deemed as voluntary appearance that vested jurisdiction upon the trial court over the person of respondent considering that the same were filed precisely to question the court's jurisdiction. The appellate court observed that respondent raised the defense of lack of jurisdiction due to improper service of summons at the first opportunity, and repeatedly argued therefor.[17]

The CA disposed, thus:

> **WHEREFORE**, the foregoing considered, the instant Petition for Certiorari is **GRANTED**. The Orders dated 15 August 2016 and 22 September 2017 of the Regional Trial Court, Branch 208, Mandaluyong City in Civil Case No. MC15-9374 are **ANNULLED** and **SET ASIDE**. The Regional Trial Court, Branch 208, Mandaluyong City is **DIRECTED** to allow [respondent] to file a responsive pleading within the terms and period as provided for under the Rules of Court; and thereafter, to resolve the case with utmost dispatch.
>
> **SO ORDERED**.

Petitioner's motion for reconsideration was denied in the November 23, 2018 assailed Resolution of the CA.

Hence, this petition.

Issue

The sole issue for our resolution is whether respondent may be granted relief from the RTC's default order.

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[16] Id. at 33-34.

[17] Id. at 34-36.

Notably, petitioner does not question the CA's ruling with regard to the invalidity of the substituted service of summons. She, however, submits that the defect in the service of summons was already cured by respondent's filing of a Motion to Set Aside/Lift Order of Default and Re-open Trial as by such motion, according to petitioner, respondent is deemed to have already voluntarily submitted to the jurisdiction of the trial court. For petitioner, thus, the entire proceedings before the RTC is already binding upon respondent.

For her part, respondent maintains that she explicitly questioned the jurisdiction of the trial court over her person, consistently and categorically stating in detail the circumstances surrounding the defective service of summons, and asserting her right to file a responsive pleading before the resolution of the case. Respondent further points out in her Comment to the petition that, in violation of her right to due process, the RTC treated her motion to lift default order as a responsive pleading, ruling that she failed to substantiate her claim therein that she had already made installment payments to petitioner. Hence, respondent prays for the denial of the instant petition, affirmance of the CA's Decision, and for her to be allowed to file a responsive pleading before the trial court.[18]

The Court's Ruling

It should be emphasized, at the outset, that petitioner no longer questions the appellate court's finding with regard to the invalidity of the service of summons upon respondent. At any rate, it would not go amiss to state in this disquisition that we are one with the CA in ruling that there was a "defective, invalid, and ineffectual" substituted service of summons in this case. It is settled that resort to substituted service is allowed only if, for justifiable causes, the defendant cannot be personally served with summons within a reasonable time. As substituted service is in derogation of the usual method of service — personal service is preferred over substituted service — parties do not have unbridled right to resort to substituted service of summons.

[18] Id. at 34-36.

In the landmark case of *Manotoc v. Court of Appeals*,[19] the Court ruled that before the sheriff may resort to substituted service, he must first establish the impossibility of prompt personal service. To do so, there must be at least three best effort attempts, preferably on at least two different dates, to effect personal service within a reasonable period of one month or eventually result in failure. It is further required for the sheriff to cite why such efforts were unsuccessful. It is only then that impossibility of service can be confirmed or accepted.

Here, as correctly found by the CA, the sheriff merely made a single attempt to personally serve summons upon respondent. Further, he merely made a general statement in the Return that earnest efforts were made to personally serve the summons, without any detail as to the circumstances surrounding such alleged attempted personal service. Clearly, this does not suffice. In addition, this Court observed that the sheriff even made a mistake in the identity of the person who received the summons, stating in his Return that the same was left to respondent's niece,[20] when it turned out that the recipient is respondent's daughter.[21]

Despite the defective service of summons, petitioner insists that such defect has already been cured by respondent's filing of a Motion to Set Aside/Lift Order of Default and to Re-Open Trial, which is deemed as a voluntary submission to the jurisdiction of the trial court.

We resolve.

Contrary to the appellate court's ruling, respondent has indeed already submitted herself to the jurisdiction of the trial court when she moved for the setting aside of the order of default against her and asked the trial court for an affirmative relief to allow her to participate in the trial. Such voluntary submission

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[19] 530 Phil. 454 (2006).

[20] *See* Sheriff's Return, *rollo*, p. 61.

[21] *See* Motion to Set Aside/Lift Order of Default and Re-Open Trial, id. at 68-69.

actually cured the defect in the service of summons.[22] Contrary, however, to petitioner's theory, while the defect in the service of summons was cured by respondent's voluntary submission to the RTC's jurisdiction, it is not sufficient to make the proceedings binding upon the respondent without her participation. This is because the service of summons or, in this case the voluntary submission, merely pertains to the "notice" aspect of due process. Equally important in the concept of due process is the "hearing" aspect or the right to be heard. This aspect of due process was not satisfied or "cured" by respondent's voluntary submission to the jurisdiction of the trial court when she was unjustifiably disallowed to participate in the proceedings before the RTC. Consider:

The effect of a defendant's failure to file an answer within the time allowed therefor is primarily governed by Section 3, Rule 9 of the Rules of Court.[23] Pursuant to said provision, a defendant who fails to file an answer may, upon motion, be declared by the court in default. A party in default then loses his or her right to present his or her defense, control the proceedings, and examine or cross-examine witnesses.[24]

Nevertheless, the fact that a defendant has lost standing in court for having been declared in default does not mean that he or she is left without any recourse to defend his or her case. In *Lina v. Court of Appeals*,[25] the Court enumerated the remedies available to a party who has been declared in default, *viz.*:

a) The defendant in default may, at any time after discovery thereof and before judgment, file a motion, under oath,

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[22] *Navale v. Court of Appeals*, 324 Phil. 70 (1996); *See* also *La Naval Drug Corporation v. Court of Appeals*, 306 Phil. 84 (2004).

[23] SEC. 3. Default; declaration of. — If the defending party fails to answer within the time allowed therefor, the court shall, upon motion of the claiming party with notice to the defending party, and proof of such failure, declare the defending party in default. Thereupon, the court shall proceed to render judgment granting the claimant such relief as his pleading may warrant, unless the court in its discretion requires the claimant to submit evidence.

[24] *Otero v. Tan*, G.R. No. 200134, August 15, 2012.

[25] 220 Phil. 311 (1985).

> **to set aside the order of default on the ground that his failure to answer was due to fraud, accident, mistake or excusable neglect, and that he has meritorious defense [under Section 3, Rule 18]**;
>
> b) If the judgment has already been rendered when the defendant discovered the default, but before the same has become final and executory, he may file a motion for new trial under Section 1(a) of Rule 37;
>
> c) If the defendant discovered the default after the judgment has become final and executory, he may file a petition for relief under Section 2 of Rule 38; and
>
> d) He may also appeal from the judgment rendered against him as contrary to the evidence or to the law, even if no petition to set aside the order of default has been presented by him [in accordance with Section 2, Rule 41]. (Emphasis supplied)

In this case, at a certain point of the proceedings, upon respondent's discovery of the case against her and her property, or specifically, after issuance of default order, petitioner's presentation of evidence *ex parte*, and submission of the case for resolution, she filed a Motion to Set Aside/Lift Order of Default and to Re-Open Trial, where she averred that her failure to file an answer was due to the defective service of summons. At this juncture, it is important to emphasize that the fact of improper service of summons in this case is undisputed and established. Despite such meritorious justification for failure to file answer, the trial court insisted on the validity of the default order and continuously disallowed respondent to participate in the proceedings and defend her case. Such improper service of summons rendered the subsequent proceedings before the trial court null and void as it deprived respondent her right to due process.

The service of summons is a vital and indispensable ingredient of a defendant's constitutional right to due process,[26] which is the cornerstone of our justice system. Due process consists of

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[26] *Express Padala (Italia) S.P.A., now BDO Remittance (Italia) S.PA. v. Ocampo*, G.R. No. 202505, September 6, 2017.

notice and hearing. Notice means that the persons with interests in the litigation be informed of the facts and law on which the action is based for them to adequately defend their respective interests. Hearing, on the other hand, means that the parties be given an opportunity to be heard or a chance to defend their respective interests.

Here, it cannot be denied that respondent has already been notified of petitioner's action against her and her mortgaged property, which prompted her to file the Motion to Set Aside/ Lift Order of Default and to Re-Open Trial, questioning the trial court's jurisdiction on the ground of defective service of summons and asking for affirmative relief to allow her to participate in the proceedings. It is, thus, only at this point when respondent was deemed, for purposes of due process, to have been notified of the action involving her and her mortgaged property. It is also only at this point when respondent was deemed to have submitted herself to the jurisdiction of the RTC. Jurisprudence states that one who seeks an affirmative relief is deemed to have submitted to the jurisdiction of the court.[27]

To reiterate, the concept of due process consists of the twin requirements of notice *and* hearing. Thus, while respondent had been notified of the proceedings, she was however, deprived of the opportunity to be heard due to the RTC's insistence on the validity of the default order despite improper service of summons. Considering, therefore, the defective service of summons, coupled with respondent's plea to be allowed to participate upon learning about the proceedings, it was erroneous on the part of the RTC to insist on disallowing respondent to defend her case. This, to be sure, is tantamount to a violation of respondent's right to due process — a violation of her right to be heard. The CA, therefore, did not err when it nullified the Orders dated August 15, 2016 and September 22, 2017 of the RTC. Accordingly, the RTC Decision rendered during the pendency of the case before the CA should perforce be nullified.

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[27] *Interlink Movie Houses, Inc. and Lim v. Court of Appeals*, G.R. No. 203298, January 17, 2018.

Considering further, however, respondent's voluntary submission to the trial court's jurisdiction and her consistent plea to be allowed to participate in the proceedings before the trial court despite violation of her right to due process, it is only proper to allow the trial to proceed with her participation in the interest of substantial justice, to expedite the proceedings, and to avoid multiplicity of suits. After all, nothing is more fundamental in our Constitution than the guarantee that no person shall be deprived of life, liberty, and property without due process of law.[28]

WHEREFORE, the present petition is **DENIED**. The Decision dated June 29, 2018 and the Resolution dated November 23, 2018 of the Court of Appeals in CA-G.R. SP No. 153771 are hereby **AFFIRMED**. Accordingly, the Decision dated May 25, 2018 of the Regional Trial Court of Mandaluyong City, Branch 208, in Civil Case No. MC15-9374 is **ANNULLED and SET ASIDE**. The Regional Trial Court, Branch 208, Mandaluyong City is **DIRECTED** to allow Carlita C. Marcantonio to file a responsive pleading within the terms and period as provided for under the Rules of Court; to participate in the foreclosure proceedings; and thereafter, to resolve the case with utmost dispatch.

SO ORDERED.

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

Caguioa, J., see concurring opinion.

CONCURRING OPINION

CAGUIOA, *J.*:

I concur in the result.

Carlita C. Marcantonio (the Respondent) should be allowed to participate in the foreclosure proceedings. I maintain, however, that this should proceed from a recognition that: (1) the court

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[28] *See Aberca v. Ver*, G.R. No. 166216, March 14, 2012.

has jurisdiction over the foreclosure proceedings when it acquired jurisdiction over the *res*; but (2) she was denied due process when, albeit deemed notified about the proceedings when she filed her motion to lift the order of default, she was deprived her due participation therein when the trial court erroneously stood by its order of default.

To recall, the controversy arose from a complaint for judicial foreclosure of real estate mortgage filed by the mortgagee, Felicitas Z. Belo (the Petitioner), against the mortgaged property of the Respondent.[1] For failing to file any responsive pleading after service of summons, the Respondent was declared in default and the Petitioner presented evidence *ex parte*.[2]

Before the trial court could render its judgment, the Respondent filed a Motion to Set Aside/Lift Order of Default and to Re-Open Trial[3] (Motion to Lift). The trial court denied the Motion to Lift and ruled that there was valid substituted service of summons.[4] As such, she was validly declared in default.[5] According to the trial court, her filing of the Motion to Lift amounted to voluntary appearance which vested the court with jurisdiction over her person.[6]

The Respondent challenged the findings of the Regional Trial Court (RTC) in a petition for *certiorari* and prohibition under Rule 65 with the Court of Appeals (CA).[7] The CA reversed the orders of the RTC and correctly ruled that there was improper resort to substituted service of summons. The CA also found that the Respondent cannot be deemed to have voluntarily submitted to the jurisdiction of the court as she raised the defense of lack of jurisdiction over her person at the first opportunity.[8] Hence, this petition for review on *certiorari* by the Petitioner.

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[1] *Ponencia*, p. 1.

[2] *Rollo*, p. 65.

[3] Id. at 68-69.

[4] Id. at 80.

[5] Id.

[6] Id. at 91-92. RTC Order dated September 22, 2017.

[7] *Id.* at 93-108.

[8] *Ponencia*, p. 4; *rollo*, pp. 34-36.

The RTC and CA failed to take into consideration the fact that the Petitioner instituted a judicial foreclosure proceeding which is **an action *quasi in rem***.[9] Petitioner is enforcing her personal claim against the property of the Respondent, named as party defendant in the proceedings below, burdened by the mortgage constituted thereon.[10] Otherwise stated, the purpose of the action is to have the mortgaged property seized and sold by court order to the end that proceeds thereof be applied to the payment of the mortgagee's claim.[11]

Being an action *quasi in rem*, **jurisdiction over the person of the defendant is *not* a prerequisite to confer jurisdiction**[12] **in the court provided that the court acquires jurisdiction over the *res***.[13]

In the 1918 case of *El Banco Español-Filipino v. Palanca*,[14] the Court had the first opportunity to discuss the nature of jurisdiction in actions *quasi in rem*.[15] The Court therein clarified that while jurisdiction over the person of the defendant is not required, the defendant nevertheless shall have an opportunity

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[9] See seminal case of *El Banco Español-Filipino v. Palanca*, 37 Phil. 921, 928 (1918); see also *Frias v. Alcayde*, G.R. No. 194262, February 28, 2018, 856 SCRA 514, citing *Munoz v. Yabut*, 655 Phil. 488, 515-516 (2011).

[10] *Ocampo v. Domalanta*, G.R. No. L-21011, August 30, 1967, 20 SCRA 1136, 1141.

[11] See *Ocampo v. Domalanta*, id.; *San Pedro v. Ong*, G.R. No. 177598, October 17, 2008, 569 SCRA 767.

[12] *Biaco v. Philippine Countryside Rural Bank*, G.R. No. 161417, February 8, 2007, 515 SCRA 106, 115; *Alba v. Court of Appeals*, 503 Phil. 451 (2005); *Perkin Elmer Singapore Pte. Ltd. v. Dakila Trading Corp.*, G.R. No. 172242, August 14, 2007, 530 SCRA 170, 188.

[13] Jurisdiction over the *res* is acquired either (1) by the seizure of the property under legal process, whereby it is brought into actual custody of the law; or (2) as a result of the institution of legal proceedings, in which the power of the court is recognized and made effective. (*Biaco v. Philippine Countryside Rural Bank*, id. at 115-116, citing *Alba v. Court of Appeals*, id.)

[14] Supra note 9.

[15] Id.

to be heard by giving him or her notice through the means provided by law:[16]

> It will be observed that in considering the effect of this irregularity, **it makes a difference whether it be viewed as a question involving jurisdiction or as a question involving due process of law**. In the matter of jurisdiction there can be no distinction between the much and the little. The court either has jurisdiction or it has not; and **if the requirement as to the mailing of notice should be considered as a step antecedent to the acquiring of jurisdiction, there could be no escape from the conclusion that the failure to take that step was fatal to the validity of the judgment. In the application of the idea of due process of law, on the other hand, it is clearly unnecessary to be so rigorous. The jurisdiction being once established, all that due process of law thereafter requires is an opportunity for the defendant to be heard**; and as publication was duly made in the newspaper, it would seem highly unreasonable to hold that the failure to mail the notice was fatal.[17] (Emphasis and underscoring supplied)

Hence, while jurisdiction over the person is not required, notification of the defendant is still required by due process of law.[18] In actions *quasi in rem*, like judicial foreclosure proceedings, **this notice takes the form of summons validly served upon the defendant, not for vesting the court with jurisdiction, but for complying with the requirements of fair play**.[19] By service of summons, the defendant is given notice that a civil action has been commenced and places him or her on guard as to the demands of the plaintiff,[20] and the possibility that property belonging to him, or in which he has an interest,

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[16] Id. at 934.

[17] Id. at 937.

[18] See *El Banco Español-Filipino v. Palanca*, supra note 9 at 934.

[19] *Biaco v. Philippine Countryside Rural Bank*, supra note 12 at 118; *Alba v. Court of Appeals*, supra note 12.

[20] See *Paramount Insurance Corp. v. Japzon*, G.R. No. 68037, July 29, 1992, 211 SCRA 879, 885; see also *Guiguinto Credit Cooperative, Inc. (GUCCI) v. Torres*, G.R. No. 170926, September 15, 2006, 502 SCRA 182, 193.

might be subjected to a judgment in favor of the plaintiff and he or she can thereby take steps to protect such interest if he or she is so minded.[21]

To be clear, the proper characterization of the purpose of summons is not a hollow exercise. Viewing compliance, and by extension, any alleged defect in the service of summons as either being jurisdictional or as a question involving due process of law, would yield markedly different conclusions.

If service of summons is jurisdictional, then any defect thereon will necessarily result in the nullification of the proceedings for want of judicial authority.[22] The court either has jurisdiction or it does not. Hence, in actions *in personam*, such as an action for specific performance,[23] defect in the service of summons upon the defendant, barring any voluntary appearance, automatically results in the nullification of the proceedings.[24]

If service of summons on the person of the defendant is not an antecedent to the acquisition of the court's power to try and hear the case but instead is a facet of due process, any defect does not divest the court of jurisdiction. The Court retains its power to take cognizance of the case and may direct the proper

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[21] *Regner v. Logarta*, G.R. No. 168747, October 19, 2007, 537 SCRA 277, 296, citing *Perkin Elmer Singapore PTE. LTD. v. Dakia Trading Corporation*, G.R. No. 172242, August 14, 2007, 530 SCRA 170.

[22] In *El Banco Español-Filipino v. Palanca,* supra note 9 at 937, the Court stated:

> It will be observed that in considering the effect of this irregularity, it makes a difference whether it be viewed as a question involving jurisdiction or as a question involving due process of law. In the matter of jurisdiction there can be no distinction between the much and the little. The court either has jurisdiction or it has not; and if the requirement as to the mailing of notice should be considered as a step antecedent to the acquiring of jurisdiction, there could be no escape from the conclusion that the failure to take that step was fatal to the validity of the judgment.

[23] See *Spouses Jose v. Spouses Boyon*, G.R. No. 147369, October 23, 2003, 414 SCRA 216.

[24] See *Domagas v. Jensen*, 489 Phil. 631 (2005); *Lam v. Rosillosa*, 86 Phil. 447 (1050).

service of summons to satisfy the requirements of due process.[25] **When the court proceeds to render judgment despite the failure to properly serve summons on the defendant, this deprives the latter the opportunity to be heard, and only then may the proceedings be nullified — not on jurisdictional grounds, but on due process considerations**.[26]

In this case, the CA was correct in finding that, indeed, there was an invalid substituted service of summons upon the Respondent. However, her filing of the *Motion to Lift* should be considered as due notice that foreclosure proceedings had been instituted. Stated differently, the Respondent should be deemed to have been notified of the case, thus satisfying the requirement of due process that summons ordinarily serves in a proceeding *quasi in rem*. This necessarily foregoes the necessity of directing the trial court to serve summons anew. Since the Respondent is now deemed notified, due process also mandates that she be entitled to participate in the foreclosure proceedings.

Despite being deemed notified, however, it appears that the Respondent was, in fact, not able to participate in the proceedings. She was deprived of such opportunity because of the RTC's insistence on the validity of its default order, despite the impropriety of the substituted service of summons. Accordingly, the setting aside by the CA of the orders issued by the RTC is correct, but not for lack of jurisdiction — rather, for violation of the Respondent's right to due process of law. Hence, I join the *ponencia* in directing the RTC to allow the Respondent to present her case and participate in the foreclosure proceedings.

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[25] Hence, in *Sahagun v. Court of Appeals*, G.R. No. 78328, June 3, 1991, 198 SCRA 44, likewise involving an action *quasi in rem*, the Court remanded the case to the trial court for proper service of summons.

[26] If, however, the trial court proceeded in rendering judgment despite the defective service of summons and deprived the defendant of his or her participation in the proceedings, the Court has, as in the case of *Biaco v. Philippine Countryside Rural Bank*, supra note 12, vacated the judgment, not on jurisdictional grounds, but on due process considerations.

FIRST DIVISION

[G.R. No. 243796. September 8, 2020]

PEOPLE OF THE PHILIPPINES, *Plaintiff-Appellee, v.* **ROWENA BUNIEL *y* RAMOS and ROWENA SIMBULAN *y* ENCARNADO,** *Accused,*

ROWENA BUNIEL *y* RAMOS, *Accused-Appellant.*

SYLLABUS

1. CRIMINAL LAW; REPUBLIC ACT NO. 9165 (THE COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002); DANGEROUS DRUGS CASES; THE PROSECUTION BEARS NOT ONLY THE BURDEN OF PROVING THE ELEMENTS OF THE CRIME, BUT ALSO OF PROVING THE *CORPUS DELICTI* WHICH IS THE DANGEROUS DRUG ITSELF.— In cases involving dangerous drugs, the prosecution bears not only the burden of proving the elements of the crime, but also of proving the *corpus delicti* — the dangerous drug itself. The identity of the dangerous drug must be established beyond reasonable doubt. Such proof requires an 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. It is thus crucial for the prosecution to establish the unbroken chain of custody of the seized item.

2. ID.; ID.; CHAIN OF CUSTODY PROCEDURE; THE DEVIATION FROM THE STANDARD PROCEDURE COMMITTED BY POLICE OFFICERS AND LEFT UNEXPLAINED BY THE PROSECUTION MILITATES AGAINST THE CONVICTION OF THE ACCUSED BEYOND REASONABLE DOUBT, AS THE INTEGRITY AND EVIDENTIARY VALUE OF THE *CORPUS DELICTI* HAS BEEN COMPROMISED.— Section 21 (1) of RA No. 9165, the law applicable at the time of the commission of the crime, outlines the procedure that police officers must adhere to maintain the integrity of the confiscated evidence x x x. Specifically, Article II, Section 21 (a) of the Implementing Rules and Regulations of RA No. 9165 enumerates the procedures to

be observed by the apprehending officers to confirm the chain of custody x x x. The law and implementing rules mandate that the physical inventory and photographing of the seized items must be in the presence of the accused and the following insulating witnesses: (1) a representative from the media; (2) the Department of Justice (DOJ); and (3) any elected public official, who shall sign the copies of the inventory and be given a copy. However, in earlier cases, we clarified that the deviation from the standard procedure in Section 21 will not *ipso facto* render the seizure and custody over the items as void and invalid, provided that the prosecution satisfactorily proves that: (1) there is justifiable ground for non-compliance; and (2) the integrity and evidentiary value of the seized items are properly preserved. The prosecution must explain the reasons behind the procedural lapses and must show that the integrity and evidentiary value of the seized evidence had been preserved. x x x Indeed, the presence of the insulating witnesses is the first requirement to ensure the preservation of the identity and evidentiary value of the seized drugs. x x x In this case, there is no showing that the marking and inventory were done in the presence of the three insulating witnesses. x x x [T]he police officers did not explain the absence of a representative from the DOJ and another elected public official. To be sure, there was no earnest effort, *nay* attempt, on the part of the buy-bust team to comply with the law and its implementing rules. x x x [I]t is of paramount importance that the procedures laid down by law be complied with. The breaches in the procedure provided in Section 21, Article II of RA No. 9165 committed by police officers and left unexplained by the State, militate against the conviction of accused-appellant beyond reasonable doubt, as the integrity and evidentiary value of the *corpus delicti* had been compromised.

3. ID.; ID.; ID.; IN ORDER THAT THE SEIZED ITEMS MAY BE CONSIDERED CREDIBLE, THE PROSECUTION MUST SHOW, BY RECORD OR TESTIMONY, THE CONTINUOUS WHEREABOUTS OF THE EXHIBIT, FROM THE MOMENT THE TIME WAS PICKED UP TO THE TIME IT WAS OFFERED INTO EVIDENCE.— In *People v. Pajarin*, this Court ruled that in case the parties agreed to dispense with the attendance and testimony of the forensic chemist, it should be stipulated that the forensic chemist would have testified that he had taken the

precautionary steps required to preserve the integrity and evidentiary value of the seized item, thus: (1) that the forensic chemist received the seized article as marked, properly sealed, and intact; (2) that he resealed it after examination of the content; and (3) that he placed his own marking on the same to ensure that it could not be tampered with pending trial. Here, the stipulations do not reflect the manner of handling the drugs (1) after "PO2 J Rodriguez" received the items from PO3 Bernabe; (2) when he turned them over to PCI Reyes; and (3) after PCI Reyes completed his qualitative examination and before they were presented in court. It was simply declared that PCI Reyes received the specimens from PO3 Bernabe and after examination, she presented the specimens to the prosecutor and the defense counsel. We stress that in order that the seized items may be considered credible, the prosecution must show, by records or testimony, the continuous whereabouts of the exhibit, from the moment the item was picked up to the time it is offered into evidence; in such a way that every person who touched the exhibit would describe how and from whom it was received, where it was and what happened to it while in the witness' possession; the condition in which it was received and the condition it was delivered to the next link in the chain. Such is not the case here.

4. REMEDIAL LAW; EVIDENCE; PRESUMPTIONS; PRESUMPTION OF REGULARITY OF PERFORMANCE OF OFFICIAL DUTY; APPLIES ONLY WHEN NOTHING IN THE RECORD SUGGESTS THAT THE LAW ENFORCERS DEVIATED FROM THE STANDARD CONDUCT OF OFFICIAL DUTY REQUIRED BY LAW.— [T]he presumption of regularity of performance of official duty applies only when nothing in the record suggests that the law enforcers deviated from the standard conduct of official duty required by law. It is not conclusive and it cannot, by itself, overcome the constitutional presumption of innocence. Thus, any taint of irregularity, as in this case, affects the whole performance and should make the presumption unavailable.

APPEARANCES OF COUNSEL

The Solicitor General for plaintiff-appellee.
Public Attorney's Office for accused-appellant.

RESOLUTION

LOPEZ, *J.*:

For consideration of this Court is the Decision[1] dated May 31, 2017 of the Court of Appeals (CA) in CA-G.R. CR-H.C. No. 08192, which affirmed *in toto* the Joint Decision[2] dated March 16, 2016 of the Regional Trial Court, Branch 13 of the City of Manila, in Criminal Case Nos. 12-291642 and 12-291643, finding the accused-appellant Rowena Buniel *y* Ramos (in Criminal Case No. 12-291642) guilty of violation of Section 5,[3] Article II of Republic Act (RA) No. 9165.[4]

ANTECEDENTS

Rowena Buniel *y* Ramos a.k.a. "Weng" and Rowena Simbulan *y* Encarnado were separately charged with Illegal Sale and Illegal Possession of Dangerous Drugs, respectively, in two informations that read:

Criminal Case No. 12-291642
Illegal sale of dangerous drugs

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[1] *Rollo*, pp. 2-27; penned by Associate Justice Fernanda Lampas Peralta, with the concurrence of Associate Justices Jane Aurora C. Lantion and Victoria Isabel A. Paredes. See also CA *rollo*, pp. 112-136.

[2] CA *rollo*, pp. 58-65; penned by Judge Emilio Rodolfo Y. Legaspi III. See also records, pp. 209-217.

[3] SEC. 5. *Sale, Trading, Administration, Dispensation, Delivery, Distribution and Transportation of Dangerous Drugs and/or Controlled Precursors and Essential Chemicals*. — The penalty x x x 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.

[4] 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, June 7, 2002.

The undersigned accuses **ROWENA BUNIEL y RAMOS @ "WENG"** of a violation of Section 5, Article II, [RA No.] 9165, committed as follows:

That on or about **May 30, 2012** in the City of Manila, Philippines, the said accused, not having been authorized by law to sell, trade, deliver, transport or distribute any dangerous drug did then and there willfully, unlawfully and knowingly sell or offer for sale to a police officer/poseur buyer **one (1) heat-sealed transparent plastic sachet marked as "TK" containing ZERO POINT ONE ZERO FIVE (0.105) gram** of white crystalline substance known as "shabu", which after a qualitative examination gave positive result to the test for methamphetamine hydrochloride, a dangerous drug.

CONTRARY TO LAW.[5] (Emphasis in the original.)

Criminal Case No. 12-291643
Illegal possession of dangerous drugs

The undersigned accuses **ROWENA SIMBULAN y ENCARNADO** of a violation of Section 11(3), Article II, [RA No.] 9165, committed as follows:

That on or about **May 30, 2012**, in the City of Manila, Philippines, the said accused, not being authorized by law to possess any dangerous drug, did then and there willfully, unlawfully and knowingly have in her possession and under her custody and control **one (1) heat-sealed transparent plastic sachet marked as "TK1" containing ZERO POINT ONE FOUR ZERO (0.140)** gram of white crystalline substance commonly **known as "shabu",** which after a qualitative examination gave positive result to the test for methamphetamine hydrochloride, a dangerous drug.

CONTRARY TO LAW.[6] (Emphasis in the original.)

The two cases were consolidated.[7] On June 21, 2012, both accused were arraigned and they pleaded not guilty to their respective charges.[8] Joint trial then ensued.

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[5] Records, p. 2.

[6] *Id.* at 3.

[7] *Id.* at 1-3.

[8] *Id.* at 50, 51; and pp. 52 and 54.

The prosecution presented Police Officer (PO) 2 Dennis Reyes as witness. Meanwhile, the parties agreed to stipulate on the testimony of forensic chemist Police Chief Inspector (PCI) Elisa G. Reyes (PCI Reyes),[9] PO3 Archie Bernabe (PO3 Bernabe),[10] PO3 John Alfred Taruc (PO3 Taruc),[11] PO3 Modesto Bornel, Jr. (PO3 Bornel),[12] PO3 Christopher Palapal (PO3 Palapal)[13] and Rene Crisostomo.[14]

The version of the prosecution is that, in the afternoon of May 30, 2012, a confidential informant arrived at the Manila Police District (MPD), District Anti-Illegal Drugs, Special Task Group (DAID-SOTG) and reported that he made a deal with a certain Weng for the delivery of sample *shabu* worth ₱1,000.00.[15] According to the informant, he agreed to meet with Weng at Tiago Street corner Karapatan Street, Sta. Cruz, Manila at 10:00 p.m. of the same day.[16] With this information, the DAID-SOTG organized a buy-bust operation composed of Police Inspector Eduardo Vito Pama, PO2 Reyes, PO3 Taruc, PO3 Bornel and PO3 Palapal.[17] During the briefing, PO2 Reyes was designated as the *poseur-buyer*.[18] He was provided with the buy-bust money, a 1000-peso[19] bill, which he marked with his initials "DR."[20] Meanwhile, PO3 Taruc prepared the Authority to Operate[21]

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[9] *Id*. at 74-76.

[10] *Id*. at 115-116.

[11] *Id*. at 120-121.

[12] *Id*.

[13] *Id*. at 139-143.

[14] *Id*. at 127-128.

[15] TSN, January 17, 2013, p. 5. See also Prosecution's Exhibits, pp. 5-6.

[16] Prosecution's Exhibits, p. 5.

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

[18] TSN, January 17, 2013, p. 6.

[19] Prosecution's Exhibits, p. 16.

[20] TSN, January 17, 2013, pp. 6-7.

[21] Prosecution's Exhibits, p. 11.

and Pre-Operation Report,[22] and the team coordinated with the Philippine Drug Enforcement Agency.[23]

At about 9:30 p.m., the buy-bust team and the informant went to Tiago Street corner Karapatan Street, Sta. Cruz, Manila to conduct the buy-bust. They arrived at around 10:00 p.m.[24] PO3 Taruc, Bornel and Palapal alighted from the vehicle first and strategically positioned themselves at about 15-20 meters from the area.[25] PO2 Reyes and the informant alighted next and they proceeded to the agreed place.[26]

At that time, there were no people around and it was drizzling.[27] After a while, PO2 Reyes saw two women coming from Tiago Street.[28] The informant whispered to PO2 Reyes that the small woman sporting short hair and wearing walking shorts and t-shirt was Weng.[29] The informant approached Weng and they conversed briefly.[30] Meanwhile, Weng's companion was standing about two meters away from them and observing them.[31] Then, the informant introduced PO2 Reyes to Weng as the buyer of sample *shabu*.[32] Weng said "*akin na po*," referring to the payment for the *shabu*, to which PO2 Reyes handed her the buy-bust money.[33] Weng placed the money in her right pocket, took out from the same pocket a small plastic sachet containing

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[22] *Id.* at 12.

[23] TSN, January 17, 2013, p. 7.

[24] *Id.* at 4-5, 9. See also records, pp. 120-121; p. 139.

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

[26] *Id.* at 10.

[27] *Id.*

[28] *Id.* at 10-11.

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

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

[31] *Id.* at 13.

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

[33] *Id.* at 14.

white crystalline substance, and gave it to PO2 Reyes.[34] Upon receipt of the sachet, PO2 Reyes removed his bull cap, which was the pre-arranged signal that the sale was consummated.[35] The back-up team rushed to the area. PO2 Reyes searched Weng and recovered from her right pocket the buy-bust money.[36] Next, he frisked Weng's companion and recovered from her a small plastic sachet containing white crystalline substance.[37] As rain poured, the team decided to proceed to the police station.[38]

At the MPD DAID-SOTG office, Weng was identified as accused Buniel and her companion, Simbulan. In the presence of Rene Crisostomo, a member of the media connected with tabloid Remate,[39] PO2 Reyes marked the plastic sachet subject of the sale with "TK," and the sachet recovered from Simbulan with "TK1."[40] PO2 Reyes conducted the inventory[41] and prepared the Receipt of Property/Evidence Seized[42] and the Chain of Custody Form.[43] Meanwhile, PO3 Bernabe took photographs.[44] He also prepared the Requests for Inquest[45] and Laboratory Examination,[46] and Booking Sheets and Arrest Report.[47]

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

[35] *Id*. at 16.

[36] *Id*. at 16-17.

[37] *Id*. at 17.

[38] *Id*. at 19.

[39] Records, pp. 127-128.

[40] TSN, September 13, 2013, p. 6. See also Prosecution's Exhibits, p. 14.

[41] *Id*. at 7.

[42] Prosecution's Exhibits, p. 13, Receipt of Property/Evidence Seized.

[43] *Id*. at 14.

[44] TSN, September 13, 2013, pp. 12-13. See also records, pp. 115-116; and Prosecution's Exhibits, p. 15.

[45] Prosecution's Exhibits, p. 4.

[46] *Id*. at 1.

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

Thereafter, PO2 Reyes turned over the plastic sachets and buy-bust money to PO3 Bernabe.[48]

PO3 Bernabe brought the specimens and the request for laboratory examination to the crime laboratory,[49] and were received by forensic chemist PCI Reyes.[50] PCI Reyes conducted qualitative examination on the two specimens and found the contents positive for Methamphetamine Hydrochloride, also known as "*shabu*."[51] She reduced her findings in Chemistry Report No. D-443-12.[52] Thereafter, PCI Reyes presented the specimens to the prosecutor and the defense counsel. After, she turned them over to the prosecution for safekeeping.[53]

For the defense, only Buniel testified. She denied the charges and claimed that on May 30, 2012, she went to Simbulan's house to pick-up blood sugar strips for her mother. About 8:00 p.m., Simbulan accompanied her along Tiago Street to get a ride home when three men on board a van arrived. The men forced her and Simbulan to get on the car and they were brought to the MPD DAID-SOTG where they were investigated, mauled and forced to admit to selling dangerous drugs. Buniel averred that the police officers told her that they will cooperate with her in exchange for ₱300,000.00.[54]

On March 16, 2016, the trial court rendered a decision convicting Buniel of illegal sale of dangerous drugs and acquitting Simbulan of illegal possession.[55] The trial court found

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[48] TSN, September 13, 2013, pp. 7, 12. See also records, pp. 74-76; pp. 115-116, Order; and Prosecution's Exhibits, p. 14.

[49] Records, pp. 115-116. See also Prosecution's Exhibits, p. 1.

[50] *Id*. at 74-76.

[51] *Id*.; see also Prosecution's Exhibits, p. 2.

[52] Prosecution's Exhibits, p. 2.

[53] Records, p. 75; Minutes dated November 29, 2013, p. 114.

[54] TSN, September 8, 2015, pp. 3-11.

[55] CA *rollo*, p. 64. The dispositive portion of the Decision reads:

all the elements of the crime of illegal sale present and that the prosecution proved an unbroken chain of custody of the drugs. However, the court was not convinced on the guilt of Simbulan as the alleged look-out and co-conspirator in the drug deal.

Aggrieved, Buniel filed an appeal to the CA.[56]

On May 31, 2017, the CA affirmed Buniel's conviction.[57] The CA found that the prosecution proved beyond reasonable doubt the elements of Illegal Sale of *shabu*. Most importantly, the prosecution was able to establish an unbroken chain of

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In Criminal Case No. 12-291642

WHEREFORE, in view of the foregoing, this Court finds the accused ROWENA BUNIEL y RAMOS GUILTY beyond reasonable doubt as principal for violation of Section 5 of Republic Act No. 9165 otherwise known as the Comprehensive Dangerous Drugs Act of 2002 (for pushing shabu) as charged and is sentenced to suffer the penalty of LIFE IMPRISONMENT and to pay a Fine in the amount of ₱500,000.00.

In Criminal Case No. 12-291643

WHEREFORE, in view of the foregoing, for failure of the prosecution to prove her guilt beyond reasonable doubt, this Court finds accused ROWENA SIMBULAN y ENCARNADO NOT GUILTY.

The plastic sachets of shabu are ordered confiscated in favor of the government to be disposed of in accordance with law.

This Court orders the immediate release from detention of ROWENA SIMBULAN y ENCARNADO unless she is held for a lawful cause.

Issue a mittimus order committing ROWENA BUNIEL y RAMOS to the Correctional Institution for Women for service of sentence.

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 Director of the Manila Police District (EPD).

SO ORDERED. (Underscoring in the original.)

[56] CA *rollo*, pp. 15-16; records, pp. 220-221.

[57] *Rollo*, p. 27. The dispositive portion of the Decision reads:

WHEREFORE, the trial court's Decision dated March 16, 2016 is **AFFIRMED** in toto.

SO ORDERED.

custody. The CA found the explanation of PO2 Reyes that they were already wet from the rain, thus, they decided to conduct the marking and inventory at the police station, justifiable. Further, the alleged inconsistencies in the testimony of PO2 Reyes were inconsequential and had no bearing on the prosecution's cause. Also, that only Crisostomo witnessed the inventory-taking and did not present proof of his identity was not fatal because the parties stipulated on Crisostomo's testimony that he signed the Receipt of Inventory of Property/Evidence Seized as member of the media. Neither did the CA find the failure of the prosecution to present the original of the buy-bust money detrimental to the prosecution's case. The CA pointed out that neither law nor jurisprudence requires the presentation of any money used in the buy-bust operation. It was sufficient that the sale of the dangerous drug was adequately proven and that the *corpus delicti* was presented in court.

Hence, this appeal.[58] Accused-appellant and the People manifested that they will no longer file their respective Supplemental Briefs, taking into account the thorough discussions of the issues in their respective appeal briefs before the CA.[59]

RULING

We acquit.

In cases involving dangerous drugs, the prosecution bears not only the burden of proving the elements of the crime, but also of proving the *corpus delicti* — the dangerous drug itself. The identity of the dangerous drug must be established beyond reasonable doubt.[60] Such proof requires an 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

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

[59] *Id.* at 33; *id.* at 39.

[60] *People of the Philippines v. Suarez*, G.R. No. 223141, June 6, 2018, 865 SCRA 281, 290.

place.[61] It is thus crucial for the prosecution to establish the unbroken chain of custody of the seized item.

Section 21 (1) of RA No. 9165, the law applicable at the time of the commission of the crime,[62] outlines the procedure that police officers must adhere to maintain the integrity of the confiscated evidence, *viz.*:

> (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.

Specifically, Article II, Section 21 (a) of the Implementing Rules and Regulations of RA No. 9165 enumerates the procedures to be observed by the apprehending officers to confirm the chain of custody:

> (a) The apprehending officer/team having initial custody and control of the drugs shall, immediately after seizure and confiscation, physically inventory and photograph the same in the presence of the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, a representative from the media and the Department of Justice (DOJ), and any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof: Provided, that the physical inventory and photograph shall be conducted at the place where the search warrant is served; or at the nearest police station or at the nearest office of the apprehending officer/team, whichever is practicable, in case of warrantless seizures; Provided, further that non-compliance with these requirements under justifiable grounds, as long as the integrity and the evidentiary value of the seized items are properly preserved by the apprehending officer/team, shall not render void and invalid such seizures of and custody over said items;

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[61] *Id.*

[62] RA No. 10640 took effect on July 23, 2014. See OCA Circular No. 77-2015 dated April 23, 2015.

The law and implementing rules mandate that the physical inventory and photographing of the seized items must be in the presence of the accused and the following insulating witnesses: (1) a representative from the media; (2) the Department of Justice (DOJ); and (3) any elected public official, who shall sign the copies of the inventory and be given a copy.[63]

However, in earlier cases, we clarified that the deviation from the standard procedure in Section 21 will not *ipso facto* render the seizure and custody over the items as void and invalid, provided that the prosecution satisfactorily proves that: (1) there is justifiable ground for non-compliance; and (2) the integrity and evidentiary value of the seized items are properly preserved.[64] The prosecution must explain the reasons behind the procedural lapses and must show that the integrity and evidentiary value of the seized evidence had been preserved.[65] In *People v. Ramos*,[66]

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[63] Under Section 21, Article II, RA No. 9165, as amended by RA No. 10640, it is now mandated that the conduct of physical inventory and photograph of the seized items must be in the presence of (1) the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, (2) with an elected public official, and (3) a representative of the National Prosecution Service or the media who shall sign the copies of the inventory and be given a copy thereof. See also *People v. Bangalan*, G.R. No. 232249, September 3, 2018, 878 SCRA 533, where the Supreme Court clarified that the inventory and photography shall 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: (1) if prior to the amendment of RA No. 9165 by RA No. 10640, "a representative from the media AND the Department of Justice, and any elected public official"; or (b) if **after** the amendment of R.A. No. 9165 by RA No. 10640, "an elected public official and a representative of the National Prosecution Service OR the media." (Emphasis and underscoring in the original.)

[64] *People v. Dela Cruz*, 591 Phil. 259, 271 (2008); *People v. Nazareno*, 559 Phil. 387 (2007); and *People v. Santos, Jr.*, 562 Phil. 458 (2007).

[65] *People v. Gadiana*, 644 Phil. 686, 694 (2010).

[66] G.R. No. 233744, February 28, 2018, 857 SCRA 175, quoted in *People v. Lim*, G.R. No. 231989, September 4, 2018.

this Court explained that in case the presence of any or all the insulating witnesses was not obtained, the prosecution must allege and prove not only the reasons for their absence, but also the fact that earnest efforts were made to secure their attendance:

> It is well to note that the absence of these required witnesses does not *per se* render the confiscated items inadmissible. However, a justifiable reason for such failure or a **showing of any genuine and sufficient effort to secure the required witnesses** under Section 21 of RA 9165 must be adduced. In *People v. Umipang*, the Court held that the prosecution must show that **earnest efforts** were employed in contacting the representatives enumerated under the law for "a sheer statement that representatives were unavailable without so much as an explanation on whether serious attempts were employed to look for other representatives, given the circumstances is to be regarded as a flimsy excuse." Verily, mere statements of unavailability, absent actual serious attempts to contact the required witnesses are unacceptable as justified grounds for noncompliance. These considerations arise from the fact that police officers are ordinarily given sufficient time — beginning from the moment they have received the information about the activities of the accused until the time of his arrest — to prepare for a buy-bust operation and consequently, make the necessary arrangements beforehand knowing full well that they would have to strictly comply with the set procedure prescribed in Section 21 of RA 9165. As such, police officers are compelled not only to state reasons for their noncompliance, but must in fact, also convince the Court that they exerted earnest efforts to comply with the mandated procedure, and that under the given circumstances, their actions were reasonable. (Emphasis in the original; citation omitted.)

Indeed, the presence of the insulating witnesses is the first requirement to ensure the preservation of the identity and evidentiary value of the seized drugs.[67] In *People v. Caray*,[68] we ruled that the *corpus delicti* cannot be deemed preserved absent any acceptable explanation for the deviation from the

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[67] See *People v. Flores*, G.R. No. 241261, July 29, 2019; *People v. Rodriguez*, G.R. No. 233535, July 1, 2019; and *People v. Maralit*, G.R. No. 232381, August 1, 2018.

[68] G.R. No. 245391, September 11, 2019.

procedural requirements of the chain of custody rule. Similarly, in *Matabilas v. People*,[69] sheer statements of unavailability of the insulating witnesses, without actual serious attempt to contact them, cannot justify non-compliance.

In this case, there is no showing that the marking and inventory were done in the presence of the three insulating witnesses. The first and second photographs submitted in evidence only show PO2 Reyes marking the plastic sachets in the presence of accused-appellant and Simbulan; while the third photograph, the buy-bust money and the marked plastic sachets.[70] That the marking and inventory were done without the insulating witnesses, is evident in the testimony of Crisostomo, who is a *kagawad* of another barangay and a media practitioner, that "he did not see the two (2) accused when he signed the inventory[.]"[71]

And, even if Crisostomo was present, he signed in the inventory as a member of the media.[72] In the Receipt of Property/ Evidence Seized, Crisostomo is the lone signatory.[73] Meanwhile, the police officers did not explain the absence of a representative from the DOJ and another elected public official.[74] To be sure, there was no earnest effort, *nay* attempt, on the part of the buy-bust team to comply with the law and its implementing rules.

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[69] G.R. No. 243615, November 11, 2019.

[70] Prosecution's Exhibits, p. 15.

[71] Records, p. 127.

[72] Records, pp. 127-128.

[73] Prosecution's Exhibits, p. 13.

[74] TSN, January 17, 2013, p. 6.

ATTY. DELOS SANTOS:
Q: There is *[sic]* **no representative from the DOJ** who witness *[sic]* the markings?
A: **None Sir**.
Q: How about an **elected Brgy. Official**?
A: Also **none Sir**. (Emphasis supplied.)

It cannot also escape our attention that it was a certain "PO2 J Rodriguez" who received the request for laboratory examination on the two specimens from PO2 Bernabe at 23:35 of May 30, 2012,[75] and not PCI Reyes as claimed by the prosecution. The stipulated testimony of PCI Reyes failed to show how "PO2 J Rodriguez" turned-over the items to her and that the integrity and evidentiary value of the specimens was preserved, *viz.*:

> The prosecution and the defense also stipulated on the following as regards PCI Elisa G. Reyes and her testimony:
>
> 2.) On May 30, 2012, PCI Elisa G. Reyes received from PO3 Archie Bernabe a letter request for laboratory examination dated May 30, 2012 x x x requesting for the conduct of laboratory examination on two (2) heat-sealed transparent plastic sachets with markings TK and TK1 already marked as Exhibits B-1 to "B-2";
>
> 3.) Upon receipt of the letter request for laboratory examination as well as the specimens, PCI Reyes conducted a laboratory examination;
>
> x x x
>
> 6.) PCI Elisa G. Reyes will be able to identify the request for laboratory examination, chemistry report, and the specimens.
>
> 7.) Due execution, existence, and authenticity of the documents, i.e., request for laboratory examination and the chemistry report.
>
> 8.) PCI Reyes presented the specimens as well as the request for laboratory examination to the prosecutor and to the defense counsel and were turned over to the prosecution for safekeeping purposes and were shown to the defense counsel and;
>
> 9.) PCI Reyes has no personal knowledge with regard to the actual source of the specimens.[76]

In *People v. Pajarin*,[77] this Court ruled that in case the parties agreed to dispense with the attendance and testimony of the

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[75] Prosecution's Exhibits, p. 1.

[76] Records, p. 75.

[77] 654 Phil. 461 (2011), cited in *People v. Ambrosio*, G.R. No. 234051, November 27, 2019.

forensic chemist, it should be stipulated that the forensic chemist would have testified that he had taken the precautionary steps required to preserve the integrity and evidentiary value of the seized item, thus: (1) that the forensic chemist received the seized article as marked, properly sealed, and intact; (2) that he resealed it after examination of the content; and (3) that he placed his own marking on the same to ensure that it could not be tampered with pending trial.[78]

Here, the stipulations do not reflect the manner of handling the drugs (1) after "PO2 J Rodriguez" received the items from PO3 Bernabe; (2) when he turned them over to PCI Reyes; and (3) after PCI Reyes completed his qualitative examination and before they were presented in court. It was simply declared that PCI Reyes received the specimens from PO3 Bernabe and after examination, she presented the specimens to the prosecutor and the defense counsel. We stress that in order that the seized items may be considered credible, the prosecution must show, by records or testimony, the continuous whereabouts of the exhibit, from the moment the item was picked up to the time it is offered into evidence; in such a way that every person who touched the exhibit would describe how and from whom it was received, where it was and what happened to it while in the witness' possession; the condition in which it was received and the condition it was delivered to the next link in the chain.[79] Such is not the case here.

Finally, the presumption of regularity of performance of official duty applies only when nothing in the record suggest that the law enforcers deviated from the standard conduct of official duty required by law.[80] It is not conclusive and it cannot, by itself, overcome the constitutional presumption of innocence. Thus, any taint of irregularity, as in this case, affects the whole performance and should make the presumption unavailable.[81]

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[78] *Id.* at 466.

[79] See *Malillin v. People*, 576 Phil. 576 (2008).

[80] *People v. Que*, G.R. No. 212994, January 31, 2019.

[81] *People v. Capuno*, 655 Phil. 226, 244 (2011).

Time and again, we emphasize that while zealousness on the part of law enforcement agencies in the pursuit of drug peddlers is indeed laudable, it is of paramount importance that the procedures laid down by law be complied with. The breaches in the procedure provided in Section 21, Article II of RA No. 9165 committed by police officers and left unexplained by the State, militate against the conviction of accused-appellant beyond reasonable doubt, as the integrity and evidentiary value of the *corpus delicti* had been compromised.

FOR THESE REASONS, the appeal is **GRANTED**. The Court of Appeals' Decision dated May 31, 2017 in CA-G.R. CR-HC No. 08192 is **REVERSED**. Rowena Buniel *y* Ramos is **ACQUITTED** in Criminal Case No. 12-291642 and is **ORDERED IMMEDIATELY RELEASED** from detention, unless she is being lawfully held for another cause. Let entry of judgment be issued immediately.

Let a copy of this Decision be furnished the Superintendent of the Correctional Institution for Women, Mandaluyong City, for immediate implementation. The Superintendent is likewise **ORDERED** to **REPORT** to this Court within five days from receipt of this Decision the action that has been undertaken.

SO ORDERED.

Caguioa, Reyes, Jr., Lazaro-Javier, and *Gaerlan,*[*] *JJ.*, concur.

[*] Per raffle dated June 29, 2020.

EN BANC

[G.R. No. 244128. September 8, 2020]

MARIO M. MADERA, BEVERLY C. MANANGUITE, CARISSA D. GALING, AND JOSEFINA O. PELO, *Petitioners, v.* **COMMISSION ON AUDIT (COA) AND COA REGIONAL OFFICE NO. VIII,** *Respondents*.

SYLLABUS

1. REMEDIAL LAW; RULES OF PROCEDURE; A LIBERAL APPLICATION OF THE PROCEDURAL RULES IS ALLOWED TO ADVANCE SUBSTANTIAL JUSTICE.— [T]he Court notes that the petition was filed out of time. Petitioners confused Rules 64 and 65 of the Rules of Court when they erroneously claimed that their petition was timely filed within 60 days from notice of judgment. x x x Rule 65 applies to petitions questioning the judgments, final orders, or resolutions of the COA only insofar as Rule 64 does not specifically provide the rules. Consequently, since Rule 64 explicitly provides the 30-day period for the filing of the petition, the same shall apply — not the 60-day period provided in Rule 65. To recall, the COA Decision was promulgated on December 27, 2017 and petitioners received a copy of the Decision on February 23, 2018. Thus, the 30-day period began to run from February 23, 2018. However, following Section 3, Rule 64 the period was interrupted when petititoners filed an MR on February 28, 2018. Petitioners received a copy of the Resolution denying their MR on November 12, 2018. Consequently, they had 25 days from November 12, or until December 7, 2018 to file their petition before the Court. However, petitioners only filed their petition on January 11, 2019 or 35 days after the last day of filing. From the foregoing, there is no dispute that petitioners belatedly filed their petition before the Court. Nevertheless, the petition appears to be partly meritorious. Time and again, the Court has relaxed the observance of procedural rules to advance substantial justice. Moreover, the present petition provides an appropriate avenue for the Court to settle the conflicting jurisprudence on the liability for the refund of disallowed allowances. Thus, the Court opts for a liberal

application of the procedural rules considering that the substantial merits of the case warrant its review by the Court.

2. POLITICAL LAW; CONSTITUTIONAL LAW; CONSTITUTION; CONSTITUTIONAL COMMISSIONS; COMMISSION ON AUDIT (COA); THE COURT HAS GENERALLY SUSTAINED COA'S DECISIONS IN DEFERENCE TO ITS EXPERTISE IN THE IMPLEMENTATION OF THE LAWS IT HAS BEEN ENTRUSTED TO ENFORCE, AND THE REMEDY OF A PETITION FOR *CERTIORARI* IS PROVIDED IN ORDER TO RESTRICT THE SCOPE OF INQUIRY TO ERRORS OF JURISDICTION OR TO GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION COMMITTED BY THE COA.— The Constitution vests the broadest latitude in the COA in discharging its role as the guardian of public funds and properties. In recognition of such constitutional empowerment, the Court has generally sustained the COA's decisions or resolutions in deference to its expertise in the implementation of the laws it has been entrusted to enforce. Thus, the Constitution and the Rules of Court provide the remedy of a petition for *certiorari* in order to restrict the scope of inquiry to errors of jurisdiction or to grave abuse of discretion amounting to lack or excess of jurisdiction committed by the COA. For this purpose, grave abuse of discretion means that there is, on the part of the COA, an evasion of a positive duty or a virtual refusal to perform a duty enjoined by law or to act in contemplation of law, such as when the assailed decision or resolution rendered is not based on law and the evidence but on caprice, whim and despotism.

3. ID.; ADMINISTRATIVE LAW; ADMINISTRATIVE CODE OF 1987; GOVERNMENT FUNDS; LIABILITY FOR UNLAWFUL EXPENDITURES; ADMINISTRATIVE, CIVIL, OR EVEN CRIMINAL LIABILITY MAY ATTACH TO PERSONS RESPONSIBLE FOR UNLAWFUL EXPENDITURES.— It is well-settled that administrative, civil, or even criminal liability, as the case may be, may attach to persons responsible for unlawful expenditures, as a wrongful act or omission of a public officer. It is in recognition of these possible results that the Court is keenly mindful of the importance of approaching the question of personal liability of officers and payees to return the disallowed amounts through the lens

of these different types of liability. Correspondingly, personal liability to return the disallowed amounts must be understood as civil liability based on the loss incurred by the government because of the transaction, while administrative or criminal liability may arise from irregular or unlawful acts attending the transaction. This should be the starting point of determining who must return. The existence and amount of the loss and the nature of the transaction must dictate upon whom the liability to return is imposed.

4. ID.; ID.; ID.; ID.; ID.; THE CIVIL LIABILITY FOR UNLAWFUL EXPENDITURES IS HINGED ON THE FACT THAT THE PUBLIC OFFICER PERFORMED HIS OFFICIAL DUTIES WITH BAD FAITH, MALICE, OR GROSS NEGLIGENCE.— Sections 38 and 39, Chapter 9, Book I of the Administrative Code of 1987 cover the civil liability of officers for acts done in performance of official duties x x x. By the very language of these provisions, the liability for unlawful expenditures is civil. Nonetheless, since these provisions are situated in Chapter 9, Book I of the Administrative Code of 1987 entitled "General Principles Governing Public Officers," the liability is inextricably linked with the administrative law sphere. Thus, the civil liability provided under these provisions is hinged on the fact that the public officers performed his official duties with bad faith, malice, or gross negligence. The participation of these public officers, such as those who approve or certify unlawful expenditures, *vis-à-vis* the incurrence of civil liability is recognized by the COA in its issuances, beginning from COA Circular No. 81-156 dated January 19, 1981 (Old CSB Manual) x x x. Subsequent to the Old CSB Manual, COA Circular No. 94-001 dated January 20, 1994 (MCSB) distinguished liability from responsibility and accountability, and provided the parameters for enforcing the civil liability to refund disallowed amounts x x x. [The] provisions are also substantially reproduced in COA Circular No. 2009-006 dated September 15, 2009 (RRSA) and the 2009 Revised Rules of Procedure of the Commission on Audit (RRPCOA). x x x The procedure for the enforcement of civil liability through the withholding of payment of money due to persons liable and through referral to the OSG is found in Rule XIII of the RRPCOA, particularly, Section 3 and Section 6.

5. ID.; ID.; ID.; ID.; ID.; BADGES OF GOOD FAITH AND DILIGENCE SHOULD BE CONSIDERED BEFORE HOLDING THE APPROVING AND CERTIFYING

OFFICERS, WHOSE PARTICIPATION IN THE DISALLOWED TRANSACTION WAS IN THE PERFORMANCE OF THEIR OFFICIAL DUTIES, LIABLE.— [T]he civil liability under Sections 38 and 39 of the Administrative Code of 1987, including the treatment of their liability as solidary under Section 43, arises only upon a showing that the approving or certifying officers performed their official duties with bad faith, malice or gross negligence. For errant approving and certifying officers, the law justifies holding them solidarily liable for amounts they may or may not have received considering that the payees would not have received the disallowed amounts if it were not for the officers' irregular discharge of their duties x x x. This treatment contrasts with that of individual payees who x x x can only be liable to return the full amount they were paid, or they received pursuant to the principles of *solutio indebiti* and unjust enrichment. Notably, the COA's regulations relating to the settlement of accounts and balances illustrate when different actors in an audit disallowance can be held liable either based on their having custody of the funds, and having approved or certified the expenditure. The Court notes that officers referred to under Sections 19.1.1 and 19.1.3 of the MCSB, and Sections 16.1.1 and 16.1.3 of the RRSA, may nevertheless be held liable based on the extent of their certifications contained in the forms required by the COA under Section 19.1.2 of MCSB, and Section 16.1.2 of the RRSA. To ensure that public officers who have in their favor the unrebutted presumption of good faith and regularity in the performance of official duty, or those who can show that the circumstances of their case prove that they acted in good faith and with diligence, the Court adopts Associate Justice Marvic M.V.F. Leonen's (Justice Leonen) proposed circumstances or badges for the determination of whether an authorizing officer exercised the diligence of a good father of a family x x x. [T]o the extent that these badges of good faith and diligence are applicable to both approving and certifying officers, these should be considered before holding these officers, whose participation in the disallowed transaction was in the performance of their official duties, liable. The presence of any of these factors in a case may tend to uphold the presumption of good faith in the performance of official functions accorded to the officers involved, which must always be examined relative to the circumstances attending therein.

6. ID.; ID.; ID.; ID.; ID.; PASSIVE RECIPIENTS SHOULD NOT BE HELD LIABLE TO RETURN WHAT THEY HAD

UNWITTINGLY RECEIVED IN GOOD FAITH.— As for the civil liability of payees, certain jurisprudence provides that passive recipients or payees in good faith are excused from returning the amounts they received. In the 1998 case of *Blaquera v. Alcala (Blaquera)*, the Court relied on good faith to excuse the return of the disallowed amounts [by both the officers and the payees]. x x x The ruling in *Blaquera* was subsequently relied upon by the Court in the cases of *De Jesus v. Commission on Audit (De Jesus)*, *Kapisanan ng mga Manggagawa sa Government Service Insurance System (KMG) v. Commission on Audit* and *Home Development Mutual Fund v. COA (HDMF)*, to excuse the return from all persons responsible. x x x However, in the 2002 case of *National Electrification Administration v. Commission on Audit (NEA)* involving the accelerated implementation of the salary increase in the Salary Standardization II in violation of law and executive issuances, the Court held both the approving officers and the payees as solidarily liable x x x. In the 2006 case of *Casal v. Commission on Audit (Casal)*, the Court's decisions in *Blaquera* and *NEA* were both relied upon, but the Court reached an outcome different from those reached in both cases. Finding that the non-compliance by the officers with relevant Presidential issuances amounted to gross negligence which could not be deemed a mere lapse consistent with the presumption of good faith, the ruling in *NEA* was applied as to the petitioners-approving officers, while the ruling in *Blaquera* was applied to excuse the payees. Thus, it was *Casal* that originated the peculiar outcome in disallowance cases where payees were excused from liability, while the solidary co-debtors, National Museum officials, were made solely liable for the entire amount of the disallowance. This pronouncement in *Casal* further evolved in jurisprudence when the Court nuanced the same in the 2012 case of *Manila International Airport Authority v. Commission on Audit (MIAA)* and the 2014 case of *Technical Education and Skills Development Authority v. Commission on Audit (TESDA)*. In these cases, the Court also considered the good faith of both payees and officers in determining who must return AND the extent of what must be returned. As ruled therein, a payee in good faith may retain what has been paid. x x x In 2015, the Court promulgated the decision in *Silang v. Commission on Audit* which followed the rule in *Casal*. x x x As *Silang* held that "passive recipients or payees of disallowed salaries, emoluments, benefits, and other

allowances need not refund such disallowed amounts **if they received the same in good faith**," it relies upon the cases of *Lumayna v. COA (Lumayna)* and *Querubin v. The Regional Cluster Director Legal and Adjudication Office, COA Regional Office VI, Pavia, Iloilo City (Querubin)*. x x x In sum, the evolution of the "good faith rule" that excused the passive recipients in good faith from return began in *Blaquera* (1998) and *NEA* (2002), where the good faith of both officers and payees were determinative of their liability to return the disallowed benefits — the good faith of all parties resulted in excusing the return altogether in *Blaquera*, and the bad faith of officers resulted in the return by all recipients in *NEA*. The rule morphed in *Casal* (2006) to distinguish the liability of the payees and the approving and/or certifying officers for the return of the disallowed amounts. In *MIAA* (2012) and *TESDA* (2014), the rule was further nuanced to determine the extent of what must be returned by the approving and/or certifying officers as the government absorbs what has been paid to payees in good faith. This was the state of jurisprudence then which led to the ruling in *Silang* (2015) which followed the rule in *Casal* that payees, as passive recipients, should not be held liable to refund what they had unwittingly received in good faith, while relying on the cases of *Lumayna* and *Querubin*. The history of the rule as shown evinces that the original formulation of the "good faith rule" excusing the return by payees based on good faith was ***not intended*** to be ***at the expense of*** approving and/or certifying officers. The application of this judge made rule of excusing the payees and then placing upon the officers the responsibility to refund amounts they did not personally receive, commits an inadvertent injustice.

7. ID.; ID.; ID.; ID.; ID.; THE LIABILITY OF OFFICERS AND PAYEES FOR UNLAWFUL EXPENDITURE, BEING CIVIL IN NATURE, SHOULD BE CONSISTENT WITH CIVIL LAW PRINCIPLES OF *SOLUTIO INDEBITI* AND UNJUST ENRICHMENT.— [E]xcusing payees from return on the basis of good faith has been previously recognized as an exception to the laws on liability for unlawful expenditures. However, being civil in nature, the liability of officers and payees for unlawful expenditures provided in the Administrative Code of 1987 will have to be consistent with civil law principles such as *solutio indebiti* and unjust enrichment. These civil law principles support the propositions that (1) the good faith of

payees is not determinative of their liability to return; and (2) when the Court excuses payees on the basis of good faith or lack of participation, it amounts to a remission of an obligation at the expense of the government. To be sure, the application of the principles of unjust enrichment and *solutio indebiti* in disallowed benefits cases does not contravene the law on the general liability for unlawful expenditures. In fact, these principles are consistently applied in government infrastructure or procurement cases which recognize that a payee contractor or approving and/or certifying officers cannot be made to shoulder the cost of a correctly disallowed transaction when it will unjustly enrich the government and the public who accepted the benefits of the project. These principles are also applied by the Court with respect to disallowed benefits given to government employees. x x x The COA similarly applies the principle of *solutio indebiti* to require the return from payees regardless of good faith. x x x. In the ultimate analysis, the Court, through x x x [the] new precedents, has returned to the basic premise that the responsibility to return is a civil obligation to which fundamental civil law principles, such as unjust enrichment and *solutio indebiti* apply regardless of the good faith of passive recipients. **This, as well, is the foundation of the rules of return that the Court now promulgates**. Moreover, *solutio indebiti* is an equitable principle applicable to cases involving disallowed benefits which prevents undue fiscal leakage that may take place if the government is unable to recover from passive recipients amounts corresponding to a properly disallowed transaction.

8. ID.; ID.; ID.; ID.; ID.; PAYEES WHO RECEIVE UNDUE PAYMENT, REGARDLESS OF GOOD FAITH, ARE LIABLE FOR THE RETURN OF THE AMOUNTS THEY RECEIVED, AND ANY AMOUNTS ALLOWED TO BE RETAINED BY PAYEES SHALL REDUCE THE SOLIDARY LIABILITY OF OFFICERS FOUND TO HAVE ACTED IN BAD FAITH, MALICE AND GROSS NEGLIGENCE.— With the liability for unlawful expenditures properly understood, payees who receive undue payment, regardless of good faith, are liable for the return of the amounts they received. Notably, in situations where officers are covered by Section 38 of the Administrative Code of 1987 either by presumption or by proof of having acted in good faith, in the regular performance of their official duties, and with the diligence

of a good father of a family, payees remain liable for the disallowed amount unless the Court excuses the return. For the same reason, any amounts allowed to be retained by payees shall reduce the solidary liability of officers found to have acted in bad faith, malice, and gross negligence. In this regard, Justice Bernabe coins the term "net disallowed amount" to refer to the total disallowed amount minus the amounts excused to be returned by the payees. Likewise, Justice Leonen is of the same view that the officers held liable have a solidary obligation only to the extent of what should be refunded and this does not include the amounts received by those absolved of liability. In short, the net disallowed amount shall be solidarily shared by the approving/authorizing officers who were clearly shown to have acted in bad faith, with malice, or were grossly negligent.

9. ID.; ID.; ID.; ID.; ID.; THE RETURN BY PAYEES PRIMARILY RESTS UPON THE CONCEPTION OF A PAYEE'S UNDUE RECEIPT OF AMOUNTS AS RECOGNIZED WITHIN THE GOVERNMENT AUDITING FRAMEWORK, AND THE LIABILITY OF A PASSIVE RECIPIENT IS ONLY TO THE EXTENT OF THE AMOUNT THAT HE UNDULY RECEIVED.— [T]he Court shares the keen observation of Associate Justice Henri Jean Paul B. Inting (Justice Inting) that payees generally have no participation in the grant and disbursement of employee benefits, but their liability to return is based on *solutio indebiti* as a result of the mistake in payment. Save for collective negotiation agreement incentives carved out in the sense that the employees are not considered passive recipients on account of their participation in the negotiated incentives as in *Dubongco v. COA (Dubongco)*, payees are generally held in good faith for lack of participation, with their participation limited to "accept[ing] the same with gratitude, confident that they richly deserve such benefits." x x x [R]etention by passive payees of disallowed amounts received in good faith has been justified on said payee's "lack of participation in the disbursement." However, this justification is unwarranted because a payee's mere receipt of funds not being part of the performance of his official functions still equates to him unduly benefiting from the disallowed transaction; this gives rise to his liability to return. As may be gleaned from Section 16 of the RRSA, "the extent of their participation [or involvement] in the disallowed/charged

transaction" is one of the determinants for liability. The Court has, in the past, taken this to mean that payees should be absolved from liability for lack of participation in the approval and disbursement process. However, under the MCSB and the RRSA, a "transaction" is defined as "[a]n event or condition the recognition of which gives rise to an entry in the accounting records." To a certain extent, therefore, payees always do have an indirect "involvement" and "participation" in the transaction where the benefits they received are disallowed because the accounting recognition of the release of funds and their mere receipt thereof results in the debit against government funds in the agency's account and a credit in the payees' favor. Notably, when the COA includes payees as persons liable in an ND, the nature of their participation is stated as "received payment." Consistent with this, "the amount of damage or loss [suffered by] the government [in the disallowed transaction]," another determinant of liability, is also indirectly attributable to payees by their mere receipt of the disallowed funds. This is because the loss incurred by the government stated in the ND as the disallowed amount corresponds to the amounts received by the payees. Thus, cogent with the application of civil law principles on unjust enrichment and *solutio indebiti*, the return by payees primarily rests upon this conception of a payee's undue receipt of amounts as recognized **within the government auditing framework**. In this regard, it bears repeating that the extent of liability of a payee who is a passive recipient is only with respect to the transaction where he participated or was involved in, *i.e.*, only to the extent of the amount that he unduly received. This limitation on the scope of a payee's participation as only corresponding to the amount he received therefore forecloses the possibility that a passive recipient may be held solidarily liable with approving/certifying officers beyond the amount that he individually received.

10. ID.; ID.; ID.; ID.; ID.; LIABILITY OF PAYEES; EXCEPTIONS.— The exception to payee liability is when he shows that he is, as a matter of fact or law, actually entitled to what he received, thus removing his situation from Section 16.1.5 of the RRSA x x x and the application of the principle of *solution indebiti*. This includes payees who can show that the amounts received were granted in consideration for services actually rendered. In such situations, it cannot be said that any undue

payment was made. Thus, the government incurs no loss in making the payment that would warrant the issuance of a disallowance. Neither payees nor approving and certifying officers can be held civilly liable for the amounts so paid, despite any irregularity or procedural mistakes that may have attended the grant and disbursement. x x x Moreover, the Court may also determine in a proper case other circumstances that warrant excusing the return despite the application of *solutio indebiti*, such as when undue prejudice will result from requiring payees to return or where social justice or humanitarian considerations are attendant. Verily, the Court has applied the principles of social justice in COA disallowances. x x x The pronouncements in the 2000 case of *Uy v. Commission on Audit* illustrate the Court's willingness to consider social justice in disallowance cases. These considerations may be utilized in assessing whether there may be an exception to the rule on *solution indebiti* so that the return may be excused altogether. As Justice Inting correctly pointed out, "each disallowance case is unique, inasmuch as the *facts* behind, *nature of the amounts* involved, and *individuals* so charged in one notice of disallowance are hardly ever the same with any other."

11. ID.; ID.; ID.; ID.; ID.; RETURN OF DISALLOWED AMOUNTS; RULES.— [T]he Court pronounces: the Court pronounces: 1. If a Notice of Disallowance is set aside by the Court, no return shall be required from any of the persons held liable therein. 2. If a Notice of Disallowance is upheld, the rules on return are as follows: a. Approving and certifying officers who acted in good faith, in regular performance of official functions, and with the diligence of a good father of the family are not civilly liable to return consistent with Section 38 of the Administrative Code of 1987. b. Approving and certifying officers who are clearly shown to have acted in bad faith, malice, or gross negligence are, pursuant to Section 43 of the Administrative Code of 1987, solidarily liable to return only the net disallowed amount which x x x excludes amounts excused under the following sections 2c and 2d. c. Recipients — whether approving or certifying officers or mere passive recipients — are liable to return the disallowed amounts respectively received by them, unless they are able to show that the amounts they received were genuinely given in consideration of services rendered. d. The Court may likewise excuse the return of recipients based on undue prejudice, social justice considerations,

and other *bona fide* exceptions as it may determine on a case to case basis. Undoubtedly, consistent with the statements made by Justice Inting, the ultimate analysis of each case would still depend on the facts presented, and these rules are meant only to harmonize the previous conflicting rulings by the Court as regards the return of disallowed amounts — after the determination of the good faith of the parties based on the unique facts obtaining in a specific case has been made. To reiterate, the assessment of the presumptions of good faith and regularity in the performance of official functions and proof thereof will be done by the Court on a case-to-case basis.

PERLAS-BERNABE, *J., separate concurring opinion*:

1. POLITICAL LAW; ADMINISTRATIVE LAW; ADMINISTRATIVE CODE OF 1987; GOVERNMENT FUNDS; LIABILITY FOR UNLAWFUL EXPENDITURES; PUBLIC OFFICERS AND EMPLOYEES TASKED WITH THE DISBURSEMENT OF PUBLIC FUNDS ARE MANDATED TO ENSURE THAT PUBLIC EXPENDITURES ARE MADE IN CONFORMITY WITH THE LAW, AND WHEN THERE IS AN UNLAWFUL EXPENDITURE, THE SAME IS SUBJECT TO DISALLOWANCE BY THE COMMISSION ON AUDIT AND IS THE PERSONAL LIABILITY OF THE OFFICIALS OR EMPLOYEES FOUND TO BE DIRECTLY RESPONSIBLE THEREFOR.— The Administrative Code "embodies changes in administrative structures and procedures designed to serve the people." In the promulgation of Executive Order No. 292, Series of 1987, or the "Administrative Code of 1987," it was envisioned that "[t]he effectiveness of the Government will be enhanced by a new Administrative Code which incorporates in a unified document the major structural, functional and procedural principles and rules of governance." In line with the foregoing, the impetus behind the Administrative Code provisions on public officers is to ensure public accountability. This is embodied in Section 32, Chapter 9, Book I thereof, which is a reflection of Section 1, Article XI of the 1987 Constitution x x x Undoubtedly, an essential administrative function of the government is the disbursement of public funds. In this regard, public officers and government employees tasked

with this vital function are mandated to ensure that public expenditures are made in conformity with the law. This mandate stems from the Constitution itself which states that "[n]o money shall be paid out of the Treasury except in pursuance of an appropriation made by law." This command is also mirrored in Section 32, Chapter 5, Book VI of the Administrative Code which states that "[a]ll moneys appropriated for functions, activities, projects and programs shall be available solely for the specific purposes for which these are appropriated." When there is an "[e]xpenditur[e] of government funds or us[e] of government property in violation of law or regulations," there is an "**unlawful expenditure**." An unlawful or illegal expenditure is subject to disallowance by the COA. Under Section 52, Chapter 9, Subtitle B, Title I, Book V of the Administrative Code, unlawful expenditures are the **personal liability** of officials or employees found to be **directly responsible** therefor x x x. This provision is mirrored in Section 103, Chapter 5, Title II of Presidential Decree No. 1445 (PD 1445), otherwise known as the "Government Auditing Code of the Philippines" (Audit Code) x x x. [T]he liability for unlawful expenditures *per se* must be distinguished from the liability of accountable officers tasked with the custody and safekeeping of government property and funds pertaining to an agency. x x x

2. ID.; ID.; ID.; ID.; ID.; THERE MUST BE A CLEAR SHOWING OF BAD FAITH, MALICE, OR GROSS NEGLIGENCE IN ORDER TO HOLD A PUBLIC OFFICER CIVILLY LIABLE FOR ACTS DONE IN THE PERFORMANCE OF HIS OFFICIAL DUTIES.— Under COA Circular No. 2009-006 or the "Rules and Regulations for the Settlement of Accounts," the term "**persons responsible**" is defined as those "persons determined to be answerable for compliance with the audit requirements as called for in the Notice of Suspension." **A public officer who approves or authorizes a public expenditure (approving/authorizing officer) is necessarily considered as a person directly responsible**. However, it is integral to point out that **approving or authorizing officers are not automatically held liable to return disallowed amounts based on every unlawful expenditure**. Section 16.1.3 of COA Circular No. 2009-006 qualifies that approving/authorizing officers shall be liable for losses arising out of their negligence or failure to exercise the diligence of a good father of a family

in approving/authorizing what turns out to be a disallowed transaction x x x This implementing Circular is an apparent reflection of the exacting requirements of the Administrative Code. Under Section 38 (1), Chapter 9, Book I thereof, there must be a "**clear showing**" of **bad faith**, **malice**, or **gross negligence**, in order to hold a public officer civilly liable for acts done in the performance of his official duties x x x. This provision is supplemented by Section 39 of the same Code which prescribes the need to debunk the good faith of a subordinate officer before he is likewise held civilly liable for acts done under orders or instructions of his superiors x x x.

3. ID.; ID.; ID.; PUBLIC OFFICERS; BEING AGENTS OF THE STATE, THE ACTS DONE IN THE PERFORMANCE OF THEIR OFFICIAL FUNCTIONS ARE CONSIDERED AS ACTS OF THE STATE AND THEY ARE ACCORDED WITH THE PRESUMPTION OF REGULARITY IN THE PERFORMANCE OF THEIR OFFICIAL FUNCTIONS.— [T]he need to first prove bad faith, malice, or gross negligence before holding a public officer civilly liable traces its roots to the core concept of the law on public officers. From the perspective of administrative law, public officers are considered as agents of the State, and as such, acts done in the performance of their official functions are considered as acts of the State. In contrast, when a public officer acts negligently, or worse, in bad faith, the protective mantle of State immunity is lost as the officer is deemed to have acted outside the scope of his official functions; hence, he is treated to have acted in his personal capacity and necessarily, subject to liability on his own. In the case of *Vinzons-Chato v. Fortune Tobacco Corporation*, the Court explained this distinct and peculiar treatment of public officer liability x x x. In line with this, public officers are accorded with the **presumption of regularity** in the performance of their official functions — "[t]hat is, when an act has been completed, it is to be supposed that the act was done in the manner prescribed and by an officer authorized by law to do it." This presumption is a rule borne out of **administrative necessity and practicality**. In *Yap v. Lagtapon*, the Court characterized the presumption of regularity as "an aid to the effective and unhampered administration of government functions. Without such benefit, every official action could be negated with minimal effort from litigants, irrespective of merit or sufficiency of evidence to support such challenge."

4. ID.; ID.; ID.; GOVERNMENT FUNDS; LIABILITY FOR UNLAWFUL EXPENDITURES; THE CIVIL LIABILITY OF PUBLIC OFFICERS FOR ILLEGAL EXPENDITURES DEPENDS ON A CLEAR SHOWING OF BAD FAITH, MALICE, OR GROSS NEGLIGENCE, ABSENT WHICH, THE PRESUMPTIONS OF REGULARITY AND GOOD FAITH OPERATE TO ABSOLVE THEM FROM SAID LIABILITY, BUT TO OVERCOME THE PRESUMPTIONS, THERE MUST BE A CLEAR SHOWING THAT THE SAID OFFICER APPROVED/ AUTHORIZED THE UNLAWFUL EXPENDITURE, ACTING WITH FULL KNOWLEDGE OF THE CIRCUMSTANCES AND WITH THE INTENTION OF TAKING UNCONSCIENTIOUS ADVANTAGE OF HIS PUBLIC POSITION.— In a long line of cases, the Court has ruled that the civil liability of public officers for illegal expenditures depends on a clear showing of bad faith, malice, or gross negligence; absent which, the presumptions of regularity and good faith operate to absolve them from said liability. x x x In disallowance cases, "good faith" has been defined as a "state of mind denoting honesty of intention, and **freedom from knowledge of circumstances** which ought to put the holder upon inquiry; an honest intention to abstain from taking any **unconscientious advantage** of another, even through technicalities of law, together with absence of all information, notice, or benefit or belief of facts which render transaction unconscientious." Thus, in order to overcome the presumption of regularity on the ground of **bad faith**, as well as the synonymous ground of **malice**, there must be a **clear showing** that the said officer approved/authorized an unlawful expenditure, acting with **full knowledge of the circumstances** and with the intention of taking **unconscientious advantage** of his public position. This intention may be shown by, for instance, proof that he approved/authorized the unlawful expenditure for his personal gain or to benefit another. Because the Administrative Code requires a clear showing of bad faith or malice, the Court may analogously apply the jurisprudential definition of "evident bad faith" to gauge the intention behind the acts involved x x x.

5. ID.; ID.; ID.; ID.; ID.; IN ORDER TO ESTABLISH GROSS NEGLIGENCE, ONE MUST ULTIMATELY DETERMINE WHETHER OR NOT IN EFFECTING THE UNLAWFUL EXPENDITURE, THERE WAS WANT OF EVEN SLIGHT CARE ON THE PART OF THE APPROVING/

AUTHORIZING OFFICER WITH A CONSCIOUS INDIFFERENCE TO THE CONSEQUENCES.— [A]s indicated by the Administrative Code, good faith may be negated by a **clear showing** of the approving/authorizing officer's **gross negligence** in the performance of his duties. x x x Gross negligence may become evident through the non-compliance of an approving/authorizing officer of clear and straightforward requirements of an appropriation law, or budgetary rule or regulation, which because of their clarity and straightforwardness only call for one **reasonable** interpretation. On the other hand, gross negligence may be rebutted by showing that an appropriation law, or budgetary rule or regulation is susceptible of various reasonable interpretations because its application involves complicated questions of law, or that by consistent institutional practice over the years, the law, rule or regulation has been unwittingly applied by said officer in accordance with such practice. In *Rotoras*, the Court observed that in previous occasions, public officials and employees were allowed to keep disallowed benefits and allowances they had already received when, *inter alia*, "the approving authority failed to exercise diligence or made mistakes but did not act with malice or in bad faith," or "there was ambiguity in existing rules and regulations that have not yet been clarified." The rationale, as practically observed by the Court in *Castro v. COA*, is that: x x x [i]n order to establish gross negligence, **one must ultimately determine whether or not in effecting the unlawful expenditure, there was "want of even slight care" on the part of the approving/authorizing officer with a "conscious indifference to the consequences."** If there is clear showing of the affirmative, then the approving/authorizing officer must be held civilly liable for the return of the disallowed amounts to the government.

6. ID.; ID.; ID.; ID.; ID.; THE DETERMINATION OF WHETHER A PARTICULAR APPROVING/ AUTHORIZING OFFICER HAS ACTED WITH BAD FAITH, MALICE, OR GROSS NEGLIGENCE IN A GIVEN SITUATION MUST BE MADE ON A CASE-TO-CASE BASIS.— [I]t should be stressed that the determination of whether a particular approving/authorizing officer has acted with bad faith, malice, or gross negligence in a given situation must be made on a **case-to-case basis**. To this end, the *ponencia* has adopted Justice x x x [Marvic] M.V.F. Leonen's view that:

"For one to be absolved of liability the following requisites [may be considered]: (1) Certificates of Availability of Funds pursuant to Section 40 of the Administrative Code, (2) In-house or Department of Justice legal opinion, (3) that there is no precedent allowing a similar case in jurisprudence, (4) that it is traditionally practiced within the agency and no prior disallowance has been issued, [or] (5) with regard the question of law, that there is a reasonable textual interpretation on its legality." and aptly pointed out that "[t]he presence of any of these factors in a case may tend to uphold the presumption of good faith in the performance of official functions accorded to the officers involved, **which must always be examined relative to the circumstances attending therein**."

7. ID.; ID.; ID.; ID.; ID.; WHEN BAD FAITH, MALICE, OR GROSS NEGLIGENCE IS CLEARLY ESTABLISHED, THE CIVIL LIABILITY OF APPROVING/AUTHORIZING OFFICERS TO RETURN DISALLOWED AMOUNTS BASED ON AN UNLAWFUL EXPENDITURE IS SOLIDARY TOGETHER WITH ALL OTHER PERSONS TAKING PART THEREIN, AS WELL AS EVERY PERSON RECEIVING SUCH PAYMENT.— Once the existence of bad faith, malice, or gross negligence as contemplated under Section 38, Chapter 9, Book I of the Administrative Code is clearly established, the civil liability of approving/authorizing officers to return disallowed amounts based on an unlawful expenditure is **solidary** together **with all other persons taking part therein, as well as every person receiving such payment**. This solidary liability is found in Section 43, Chapter 5, Book VI of the Administrative Code x x x. Notably, with respect to "**every official or employee authorizing or making such payment**" in bad faith, with malice, or gross negligence, the law justifies holding them solidarily liable for the amounts they may or may not have received, considering that the payees would not have received the disallowed amounts if it were not for the officers' irregular discharge of their duties. Since the law characterizes their liability as solidary in nature, it means that once this provision is triggered, the State can go after each and every person determined to be liable for the full amount of the obligation; this holds true irrespective of the actual amounts individually received by each co-obligor, without prejudice to claims for reimbursement from one another. As defined, a "solidary obligation [is] one in which each of the debtors is

liable for the entire obligation, and **each of the creditors is entitled to demand the satisfaction of the whole obligation from any or all of the debtors**." However, "[h]e who made the payment may claim from his co-debtors only on the share which corresponds to each [co-debtor]." Of course, the decision as to who the State will go after and the extent of the amount to be claimed falls within the discretion and prerogative of the COA.

8. ID.; ID.; ID.; ID.; ID.; THE CIVIL LIABILITY OF PASSIVE RECIPIENTS IS NOT PREMISED ON ANY BAD FAITH, MALICE, OR GROSS NEGLIGENCE BUT BASED ON THE APPLICATION OF THE PRINCIPLES OF *SOLUTIO INDEBITI* AND UNJUST ENRICHMENT.— [T]he main thrust of the Administrative Code is to exact accountability from public officials in the performance of official duties. For this reason, the Administrative Code requires a clear showing of bad faith, malice, or gross negligence on the part of the public officer in the performance of official duties before recovery of losses to the government may be sought. However, when it comes to passive recipients, their civil liability is not premised on any bad faith, malice, or gross negligence, but rather, based on the application of the principles of *solutio indebiti* and unjust enrichment pursuant to the provisions of the Civil Code. Needless to state, when it comes to the Civil Code, there is no presumption of regularity because the individual is not viewed in his capacity as a State functionary, but rather, as an ordinary civil person. Consequently, **the requirement to clearly show the existence of bad faith, malice, or gross negligence, as required in the Administrative Code, is not necessary to hold an individual liable under the provisions of the Civil Code**.

9. ID.; ID.; ID.; ID.; ID.; PASSIVE RECIPIENTS, NOTWITHSTANDING THEIR GOOD FAITH, SHOULD BE LIABLE TO RETURN DISALLOWED AMOUNTS THEY HAVE RESPECTIVELY RECEIVED ON THE BASIS OF *SOLUTIO INDEBITI* EXCEPT WHEN THE DISALLOWED COMPENSATION IS GENUINELY INTENDED AS PAYMENT FOR SERVICES RENDERED.— In the case of *Siga-an v. Villanueva*, the Court elucidated on the *quasi* contract of *solutio indebiti* x x x. In the same case, the Court observed that "[t]he principle of *solutio indebiti* applies where (1) a payment is made when there exists

no binding relation between the payor, who has no duty to pay, and the person who received the payment; and (2) the payment is made through mistake, and not through liberality or some other cause." These requisites clearly obtain in the case of passive recipients who, by mistake of the erring approving/authorizing officer, were able to unduly receive compensation from disbursements later disallowed by the COA. Indeed, from a strictly technical point of view, there would be no legal duty to pay compensation which contravenes or lacks basis in law. Hence, **as a general rule, passive recipients, notwithstanding their good faith, should be liable to return disallowed amounts they have respectively received on the basis of *solutio indebiti***. To note, this same general rule must equally apply to approving/authorizing officers who have **not** acted in bad faith, with malice, or with gross negligence because while they may not be held civilly liable under Section 38 (1), Chapter 9, Book I of the Administrative Code, they are still subject to return the amounts unduly received by them on the basis of *solutio indebiti*. In this respect, they may also be considered as passive recipients. At this juncture, it is crucial to underscore that good faith cannot be appreciated as a defense against an obligation under *solutio indebiti* as it is "'forced' by operation of law upon the parties, not because of any intention on their part but in order to prevent unjust enrichment." Moreover, it is discerned that the complete absolution of passive recipients from liability may indeed significantly reduce the funds to be recovered by the COA and as a result, cause great losses, or "fiscal leakage," to the detriment of the government. In other words, if non-return of passive recipients is the norm, then the COA's ability to recover may be greatly hampered. This skewed paradigm recognized in earlier jurisprudence should not anymore be propagated. Nevertheless, the foregoing general rule mandating passive recipients to return should not apply where the disallowed compensation was **genuinely intended as payment for services rendered**. As examples, these disallowed benefits may be in the nature of performance incentives, productivity pay, or merit increases that have not been authorized by the Department of Budget and Management as an exception to the rule on standardized salaries. To be sure, Republic Act No. 6758, otherwise known as the "Compensation and Position Classification Act of 1989," "standardize[s] salary rates among government personnel and do[es] away with multiple allowances and other incentive

packages and the resulting differences in compensation among them." Section 12 thereof lays down the general rule that all allowances of State workers are to be included in their standardized salary rates, with the exception of x x x [certain] allowances x x x. The said allowances are the "only allowances which government employees can continue to receive in addition to their standardized salary rates." Conversely, "all allowances not covered by the x x x exceptions x x x are presumed to have been integrated into the basic standardized pay" and hence, subject to disallowance. Indeed, bearing in mind its underlying premise, which is "the ancient principle that no one shall enrich himself unjustly at the expense of another," ***solutio indebiti*** **finds no application where there is no unjust enrichment**. Particularly, an employee cannot be deemed to have been unjustly enriched where the disallowed amounts were genuinely intended as consideration for services rendered as there would be a practical exchange of value resulting into no loss to the government. In such instance, the return of the disallowed amounts is excused, and may therefore, be validly retained by the recipient. Further, the Court may also determine in the proper case *bona fide* exceptions, depending on the purpose and nature of the amount disallowed relative to the attending circumstances.

10. ID.; ID.; ID.; ID.; ID.; WHEN PASSIVE RECIPIENTS ARE EXCUSED TO RETURN THE DISALLOWED AMOUNTS, THE ERRING APPROVING/AUTHORIZING OFFICERS' SOLIDARY OBLIGATION FOR THE DISALLOWED AMOUNT IS NET OF THE AMOUNTS EXCUSED TO BE RETURNED BY THE RECIPIENTS.— [T]he treatment of passive recipient liability has a direct effect to the extent of the amount to be returned by erring approving/authorizing officers held solidarily liable under Section 38 (1), Chapter 9, Book I in relation to Section 43, Chapter 5, Book VI of the Administrative Code. When passive recipients are excused to return disallowed amounts for the reason that they were genuinely made in consideration for rendered services, or for some other *bona fide* exceptions determined by the Court on a case to case basis, **the erring approving/authorizing officers' solidary obligation for the disallowed amount is net of the amounts excused to be returned by the recipients (net disallowed amount). The justifiable exclusion of these amounts signals that no proper loss should be recognized in favor of the**

government, and thus, bars recovery of civil liability to this extent. Accordingly, since there is a justified reason excusing the return, the State should not be allowed a **double recovery** of these amounts from the erring public officials and individuals notwithstanding their bad faith, malice or gross negligence. **Besides, even if the amount to be recovered is limited in this sense, these erring public officers and those who have confederated and conspired with them are subject to the appropriate administrative and criminal actions which may be separately and distinctly pursued against them**.

11. ID.; ID.; ID.; ID.; ID.; GUIDELINES IN DISALLOWANCE CASES.— [T]he following guidelines should be observed in disallowance cases for the guidance of the bench, bar, and the public: 1. Approving/authorizing public officers who were clearly shown to have acted in bad faith, with malice, or with gross negligence, are all solidarily liable for the return of the net disallowed amount. The net disallowed amount is the total disallowed amount minus the amounts excused to be returned by recipients (see exception in Guideline 3). 2. Those who have conspired or confederated with the approving/authorizing officers as stated in Guideline 1 are likewise solidarily liable with such officers for the net disallowed amount. Again, the net disallowed amount is the total disallowed amount minus the amounts excused to be returned by recipients (see exception in Guideline 3). 3. As a general rule, passive recipients, including approving/authorizing public officers who were not clearly shown to have acted in bad faith, with malice, or with gross negligence but had received disallowed amounts they have approved/authorized and thus also considered as passive recipients, are liable to return the amounts they have respectively received on the basis of *solutio indebiti*. As an exception to this general rule, recipients — whether passive recipients or even erring approving/authorizing officers — are excused to return the disallowed amounts only if the amounts were genuinely intended in consideration for services rendered, or when reasonably excused by the Court due to *bona fide* exceptions depending on the purpose and nature of the amounts disallowed relative to the attending circumstances. 4. The foregoing civil liabilities notwithstanding, the State may pursue any other appropriate administrative or criminal actions against erring public officers and individuals involved in any unlawful expenditure case pursuant to existing laws and jurisprudence.

LEONEN, *J., separate concurring opinion*:

1. REMEDIAL LAW; CIVIL PROCEDURE; SPECIAL CIVIL ACTIONS; RULE 64; GOVERNS REVIEWS OF JUDGMENTS OR FINAL ORDERS OF THE COMMISSION ON AUDIT AND IT PROVIDES A REGLEMENTARY PERIOD OF THIRTY DAYS.— [P]etitioners applied the wrong reglementary period in filing their Petition. A petition for certiorari under Rule 64 applies Rule 65 provisions suppletorily. Although the sections for a petition for certiorari under Rule 64 and the ones under Rule 65 are almost identical, they provide different reglementary periods: Rule 64 provides a period of 30 days, while Rule 65 gives a period of 60 days. To be sure, Rule 64 governs reviews of judgments or final orders of the Commission of Audit. Thus, its reglementary period will prevail here. The 30-day period for filing a petition for certiorari began when petitioners received respondent's Decision on February 23, 2018. When they moved for reconsideration five days later, the reglementary period was interrupted. Thus, when petitioners received the subsequent Resolution on November 12, 2018, they still had 25 days, or until December 7, 2018, to file a petition. Unfortunately, they applied the 60-day period under Rule 65 and filed their petition on January 11, 2019. Clearly, the Petition was filed out of time.

2. POLITICAL LAW; CONSTITUTIONAL LAW; CONSTITUTION; CONSTITUTIONAL COMMISSIONS; COMMISSION ON AUDIT; THE POWER TO DISALLOW IS LIMITED TO TRANSACTIONS DEEMED IRREGULAR, UNNECESSARY, EXCESSIVE, EXTRAVAGANT, ILLEGAL OR UNCONSCIONABLE EXPENDITURES OR USES OF GOVERNMENT FUNDS AND PROPERTY.— Under Article IX-D, Section 2 (2) of the 1987 Constitution, the Commission on Audit shall have exclusive authority to "promulgate accounting and auditing rules and regulations, including those for the prevention of irregular, unnecessary, excessive, extravagant, or unconscionable expenditures, or uses of government funds and properties." The constitutional commission is granted enough autonomy and authority to fulfill its role of maintaining checks and balances within the government. [P]ursuant to the Constitution, the Commission on Audit's power to disallow is limited to transactions deemed "irregular, unnecessary, excessive,

extravagant, illegal, or unconscionable" expenditures or uses of government funds and property. Illegal expenditures are simply those that are contrary to law. On the other hand, irregular, unnecessary, excessive, extravagant, or unconscionable transactions are comprehensively defined in Commission on Audit Circular No. 2012-003 x x x.

3. ID.; ID.; ID.; ID.; ID.; THE NATURE OF THE TRANSACTION OR THE REASON BEHIND ITS DISALLOWANCE MUST BE THE BASIS IN DETERMINING THE LIABILITY OF AUTHORIZING OFFICERS AND RECIPIENTS INSTEAD OF WHETHER OR NOT THEY ACTED IN GOOD FAITH.— While I ultimately agree with the *ponencia*'s conclusion, I propose that the nature of the transaction or the reason behind its disallowance be the basis in determining the liability of authorizing officers and recipients, instead of whether or not they acted in good faith. Under Section 16.1 of Commission on Audit Circular No. 2009-006, the liability of public officers and other persons for audit disallowances shall be determined based on the following: (a) the nature of the disallowance; (b) the duties of officers/employees concerned; (c) the extent of their participation in the disallowed transaction; and (d) the amount of damage or loss to the government. Thus, the determination of liability will begin with identifying the reason behind the disallowance. Depending on the nature of the disallowance, various presumptions and liabilities for the responsible officers and employees will attach.

4. ID.; ADMINISTRATIVE LAW; GOVERNMENT FUNDS; LIABILITY FOR EXCESSIVE, EXTRAVAGANT, OR OSTENTATIOUS EXPENDITURES; THE AUTHORIZING OFFICERS ARE TO PAY THE DISALLOWED BENEFITS, NOT ONLY FOR THEIR BLATANT DISREGARD OF LAWS AND REGULATIONS, BUT FOR THEIR GROSS EXCESSIVENESS AND UNREASONABLENESS.— For expenditures disallowed for being excessive, extravagant, or ostentatious, there is no question that the Commission on Audit may properly demand their refund. The authorizing officers are to pay the disallowed benefits, not only for their blatant disregard of laws and regulations, but for their gross excessiveness and unreasonableness. That said, they would have no justification to excuse them from liability.

5. ID.; ID.; ID.; LIABILITY FOR UNNECESSARY EXPENDITURES; AUTHORIZING OFFICERS FOR UNNECESSARY DISALLOWANCES GENERALLY HAVE NO LIABILITY TO RETURN THE EXPENDITURES, BUT LIABILITY MAY ATTACH IF IT IS PROVEN THAT THE OFFICERS PURPOSELY AND KNOWINGLY ISSUED THE UNNECESSARY FUNDS.— [T]his Court has been more forgiving in disallowed expenditures that were unnecessary — those not supportive of the government agency's main objective, inessential, or dispensable. For these, the participants need not return the expenditures to allow the executives or implementers leeway in carrying out their functions. They are expected to create contingencies in light of circumstances that are fluid and susceptible to change. Given that the Commission on Audit merely reviews expenditures in hindsight, to make authorizing officers liable to return the disallowed amounts will hamper the decision-making of an executive and further constrain the implementation of government programs. Moreover, it may cause a chilling effect on government officials. To avoid this, authorizing officers for unnecessary disallowances generally have no liability to return the expenditures. Nevertheless, liability may attach if it is proven that the officers purposely and knowingly issued the unnecessary funds.

6. ID.; ID.; ID.; LIABILITY FOR ILLEGAL OR IRREGULAR EXPENDITURES; WHEN ALL THE REQUIREMENTS TO BE ABSOLVED FROM LIABILITY ARE MET, THE AUTHORIZING OFFICERS ARE EXCUSED OF LIABILITY FOR HAVING SHOWN THAT THEY EXERCISED THE DILIGENCE OF A GOOD FATHER OF THE FAMILY IN THE PERFORMANCE OF THEIR DUTY.— As for disallowances of illegal or irregular expenditures, a more objective approach is taken. First, the authorizing officer's basis for issuing the benefit must be reviewed. For one to be absolved of liability, the following requisites must be present: (1) a certificate of availability of funds, pursuant to Section 40 of the Administrative Code; (2) an in-house or a Department of Justice legal opinion; (3) lack of jurisprudence disallowing a similar case; (4) the issuance of the benefit is traditionally practiced within the agency and no prior disallowance has been issued; and (5) on the question of law, that there is a reasonable textual interpretation on the

expenditure or benefit's legality. If all of these requirements are met, the authorizing officer is absolved of liability for having shown that they exercised the diligence of a good father of the family in the performance of x x x [his] duty.

7. ID.; ID.; ID.; LIABILITY FOR ILLEGAL, IRREGULAR, OR UNNECESSARY EXPENDITURES; RECIPIENTS ARE NOT MADE LIABLE FOR ILLEGAL, IRREGULAR OR UNNECESSARY TRANSACTIONS; EXCEPTION.— Recipients of the disallowed benefits enjoy an even wider leniency on liability. For illegal, irregular, or unnecessary transactions, recipients are not made liable, so as to prevent government employees from losing confidence in their superiors, lest the efficiency of administrative implementation and policy execution suffer. An exception is seen in *Dubongco v. Commission on Audit*, where this Court affirmed the disallowance of collective negotiation agreement incentives and ordered both the authorizing officers and recipients to return the incentives received x x x. Nevertheless, *Dubongco* admits of an exception where recipients of collective negotiation agreement incentives may be excused from refund: if it is proven that they were not consulted in the agreement's ratification, and that they did not participate in disbursing the disallowed funds.

8. ID.; ID.; ID.; LIABILITY FOR DISALLOWED AMOUNTS; THOSE HELD LIABLE HAVE A SOLIDARY OBLIGATION ONLY TO THE EXTENT OF WHAT SHOULD BE REFUNDED AND THIS DOES NOT INCLUDE THE AMOUNTS RECEIVED BY THOSE ABSOLVED OF LIABILITY.— It must be highlighted that the liability of the responsible officers and recipients is solidary only to the extent of what should be refunded. This does not include the amounts received by the rank and file who were absolved of liability to return.

INTING, *J.*, *concurring opinion*:

1. POLITICAL LAW; ADMINISTRATIVE LAW; GOVERNMENT FUNDS; ILLEGAL DISBURSEMENT; APPROVING/CERTIFYING OFFICERS; CLASSES; THE SOURCE OF AN APPROVING OFFICER'S OBLIGATION

TO REFUND THE DISALLOWED AMOUNT IS A *QUASI-DELICT* SINCE HIS LIABILITY HINGES ON THE MANNER BY WHICH HE EXERCISED HIS FUNCTIONS AND THE DEFENSE OF GOOD FAITH IS AVAILABLE TO HIM.— Inasmuch as each officer's liability is grounded on the extent of his participation, there must be a distinction among the different classes of "approving/certifying" officers involved in the disbursement according to the specific bounds of their authority, *viz.*: (i) the authority to direct or instruct the payment of a disbursement *per se*; (ii) the authority to act on these instructions/directives and approve documents to effect payment thereof (*i.e.*, vouchers, checks, etc.); and (iii) the authority to certify that funds are available for the disbursement and that the allotment therefor may be charged accordingly. (i) Authority to direct or instruct the payment of a disbursement *per se*. Depending on the government agency or instrumentality, the power to disburse public funds is vested exclusively in the person/body named in their respective original charters, *e.g.*, the department secretary, commission chairperson, local chief executive/sanggunian, or board of directors/trustees. Stated differently, only these officials are authorized to instruct/direct the payment of a disbursement through the issuance of a memorandum, letter of instruction, ordinance, or board resolution, as the case may be. Certainly, this power is not unfettered. Their exercise therefor[e] must yield to the fundamental rule that public funds shall only be used to pay expenditures pursuant to an appropriation law or other specific statutory authority. Otherwise, their directive/instruction shall be *ultra vires*, rendering the disbursement illegal. Thus, these typically *high-ranking officials* shall answer for the resulting disallowance for acting beyond the authority entrusted to them. (ii) Authority to act on instructions/directives and approve documents to effect payment thereof. In the ordinary course of fiscal administration, the higher authority's directive (*i.e.*, memorandum, resolution, etc.) shall trigger the *disbursement process*. In turn, another group of "approving officers" shall prepare, review, and sign the relevant documents (*i.e.*, purchase orders, forms, disbursement/check vouchers, checks, etc.) to release the funds. Each one shall perform his duty in accordance with the applicable internal control procedures and rules mandated by the COA and/or the government instrumentality itself. Expenses paid in violation of "established

rules, regulations, procedural guidelines, policies, principles or practices that have gained recognition in law" (*e.g.*, without the approval of the authorized signatory of checks, without the required supporting documents, etc.) are illegal or irregular expenditures, as the case may be. The erring official shall be liable for the subsequent disallowance for failure to perform his specific duty in the disbursement process. (iii) Authority to certify that funds are available for the disbursement and that the allotment therefor may be charged accordingly. The Administrative Code of 1987 requires every disbursement to be accompanied by a *certification* issued by the Chief Accountant or head of accounting of the government instrumentality concerned, attesting to the following: a) that funds are available for the disbursement, b) that the corresponding allotment may be charged, and c) that the expense/disbursement is *valid*, *authorized*, and *supported by sufficient evidence*. A disbursement not validly certified according to this rule shall be disallowed for being illegal. In turn, under the COA rules, a certifying officer shall be liable for the disallowed amount according to the extent of his certification. Further, he shall be dismissed from service and susceptible to criminal prosecution. It is clear from the foregoing that the source of an approving officer's obligation to refund the disallowed amount is a *quasi-delict*, since his liability hinges on the manner by which he exercised his functions. In this case, the defense of good faith is available to him. Further, he shall be presumed to have regularly performed his duties, provided there is no clear *indicia* of bad faith, showing patent disregard of his responsibility.

2. ID.; ID.; ID.; ID.; THE PAYEE'S ERRONEOUS RECEIPT GIVES RISE TO THE LIABILITY TO RETURN WHICH IS A QUASI-CONTRACT, AND GOOD FAITH CAN NEVER BE AN EXCUSE.— [S]imple *payees* have no role in the transaction, much less the disbursement approval process, other than receiving and economically benefiting from the payment. Their liability is not based on an administrative duty to perform a task. "Participation" does not only comprehend one's performance of an official function (public officer). One is seen to have participated in an unlawful expenditure if he had a role therein, even as a person who did not sign or approve any of the disbursements but merely received payment thereof. Their erroneous receipt is what gives rise to the liability to return.

Thus, payees are liable to return the amount simply because it was paid by mistake. No one should ever be unjustly enriched, especially if public funds are involved. Since their liability is a quasi-contract (*solutio indebiti*), good faith can never be an excuse. In other words, *payees* cannot be absolved from liability using the same reasoning to exempt *approvers/certifiers*, simply because the nature of their liability for the transaction is not the same.

3. ID.; ID.; ID.; ID.; A PAYEE IS HELD LIABLE FOR A DISALLOWED AMOUNT HE HAS RECEIVED SINCE IT VIOLATES THE PRINCIPLE AGAINST UNJUST ENRICHMENT; EXCEPTIONS.— The general rule remains to be holding a payee liable for a disallowed amount he has received because it violates the principle against unjust enrichment. It is only in *truly exceptional circumstances*, as shown and established by the antecedent facts, that the Court may exonerate him from the obligation. The unique exempting circumstance present in the case at bar is the onslaught of the typhoon Yolanda, which justifies the Court's appreciation of social justice considerations. Also, the *ponencia* now enunciates to henceforth consider certain employee benefits as *bona fide* exceptions to the application of *solutio indebiti*, inasmuch as these were paid in exchange of services rendered. Parenthetically, that a disallowed payment happened to be in the nature of employee benefits to compensate service rendered should not diminish or extinguish altogether the recipients' obligation to return. In theory, these benefits were given to compensate services rendered. However, is the payment itself supported by law? This virtual exchange of value (disbursement *vis-a-vis* service rendered by civil servant) should not be the sole consideration in upholding the payment's validity. x x x To stress, the uniqueness of each disallowance case simply demands the Court to individually evaluate the attending facts. While the Court recognizes certain rare exceptions, We will remain discriminating in exonerating payees from liability in the future.

APPEARANCES OF COUNSEL

Jonathan D. Loberio for petitioners.
The Solicitor General for respondents.

D E C I S I O N

CAGUIOA, *J.*:

In this case, the Court is presented the optimum opportunity to provide for a clear set of rules regarding the refund of amounts disallowed by the Commission on Audit (COA) in order to reach a just and equitable outcome among persons liable for disallowances.

The Facts

Before the Court is a petition for *certiorari*[1] under Rule 64 in relation to Rule 65 of the Rules of Court, assailing the COA Decision[2] dated December 27, 2017 and Resolutions[3] dated August 16, 2018 which affirmed the disallowance of various allowances given in 2013 to the officials and employees of the Municipality of Mondragon, Northern Samar (the Municipality).

In December 2013, the Municipality passed and approved *Sangguniang Bayan* (SB) Ordinance No. 08[4] and SB Resolution Nos. 41,[5] 42,[6] 43,[7] and 48,[8] all series of 2013, granting various allowances to its officials and employees. These allowances are: 1) Economic Crisis Assistance (ECA), 2) Monetary Augmentation of Municipal Agency (MAMA), 3) Agricultural Crisis Assistance (ACA), and 4) Mitigation Allowance to Municipal Employees (MAME).

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[1] *Rollo*, pp. 3-17.

[2] Id. at 18-19.

[3] See id. at 30.

[4] Id. at 41-43.

[5] Id. at 31-32.

[6] Id. at 33-34.

[7] Id. at 35-36.

[8] Id. at 38-39.

For the **ECA**, the Whereas Clauses of SB Resolution No. 41, series of 2013, state:

> **WHEREAS**, the effect of continuing increase of cost on prime commodities brought about by the worldwide inflation and its adverse effect in the locality x x x is felt most by our low-income salaried employees;
>
> **WHEREAS**, it is the policy of the local government unit to alleviate the plight of our lowly paid officials and employees; and
>
> **WHEREAS**, the local government unit of Mondragon has shown the willingness to provide its officials, employees and workers whether local or national, serving in the LGU, an assistance to cushion the impact of increasing prices.[9]

As regards the **MAMA**, the grant of the same is authorized by SB Resolution No. 42, series of 2013, which provides:

> **WHEREAS**, the effect of inflation has weakened the purchasing power of the local employees of Mondragon and has become a major burden in their daily subsistence;
>
> **WHEREAS**, it has been observed that the local officials and employees alike succumbed [to] high-interest rates loans in order to augment their low income and minimal x x x take-home pay; and
>
> **WHEREAS**, it is the policy of the local government unit of Mondragon to help lighten the financial burden of its local official[s] and employees from the sustaining high interest loans[.] [10]

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[9] Id. at 31.

[10] Id. at 33.

With respect to the **ACA**, the Whereas Clauses of Resolution No. 43, series of 2013, state:

> **WHEREAS**, the people of Mondragon are basically dependent on Agriculture;
>
> **WHEREAS**, it is deemed proper that the local government unit of Mondragon provides agricultural assistance to its officials and employees to lighten their burden in terms of agricultural shortage of products caused by typhoon "Yolanda" and help them buy agricultural seeds and other farm facilities from other provinces; and
>
> **WHEREAS**, premises above cited[,] this council hereby approves the grant of Agricultural Crisis Assistance (ACA) in order to help its officials and employees for their agricultural production.[11]

Lastly, SB Resolution No. 44, series of 2013, authorizes the grant of the **MAME** and its Whereas Clauses states:

> **WHEREAS**, there is the global effort against climate change that continuously provides principles and assistance to reduce the human suffering during disaster and calamity;
>
> **WHEREAS**, the Municipality of Mondragon is vulnerable to damaging effects of a possible calamity and disaster because of its location, hence, making its people also susceptible to risk;
>
> **WHEREAS**, the LGU of Mondragon deemed it right to provide mitigation capability by providing financial assistance to its employees that would [equip] them to lessen the adverse impact of hazards and disaster; and

[11] Id. at 35.

WHEREAS, the mitigation assistance will provide them means to pre-empt risks and hazards such as providing their families a risk-free place to dwell.[12]

In total, these allowances in question amounted to ₱7,706,253.10[13] as specified below:

Allowance	Total Amount	Recipients
ECA	₱3,865,203.10	Regular officials and employees, casual and job order/contractual employees, *Barangay Tanods*, *Barangay* Nutrition Scholars (BNS), Day Care Workers (DCW), *Barangay* Health Workers (BHW), public elementary and high school teachers and national employees stationed in the municipality
MAMA	₱1,245,000.00	Regular officials and employees and casual employees
ACA	₱1,771,550.00	Regular officials and employees, casual employees and job order/contractual employees
MAME	₱824,500.00	Regular official and employees, casual employees, job order/ contractual employees, BNSs, DCWs, and BHWs[14]

Notices of Disallowance

On post audit, the Audit Team Leader (ATL) and the Supervising Auditor (SA) of the Municipality issued a total of

[12] Id. at 37.

[13] Id. at 19.

[14] Id. at 19-20.

11 Notices of Disallowance (NDs) dated February 20, 2014 for the grant of the ECA, MAMA, ACA and MAME (subject allowances) as specified below:

ND No.	Date	Nature	Amount	Paid under Check No.
14-004-101 (2013)	02/20/2014	ECA	₱406,000.00	1164301
14-005-101 (2013)	02/20/2014	ECA	358,000.00	1164302
14-006-101 (2013)	02/20/2014	ECA	830,000.00	1164303
14-007-101 (2013)	02/20/2014	MAME	409,500.00	1164304
14-008-101 (2013)	02/20/2014	ACA	246,300.00	1164305
14-010-101 (2013)	02/20/2014	MAMA	1,245,000.00	1164296
14-011-101 (2013)	02/20/2014	ACA	1,525,250.00	1164297
14-012-101 (2013)	02/20/2014	MAME	415,000.00	1164298
14-013-101 (2013)	02/20/2014	ECA	219,000.00	1164300
14-014-101 (2013)	02/20/2014	ECA	44,500.00	1164306
14-015-101 (2013)	02/20/2014	ECA	2,007,703.10	1164307
TOTAL			**₱7,706,253.10**[15]	

The ATL and SA disallowed the subject allowances on the ground that the grants were in violation of the following:

a) Section 12 of Republic Act No. (R.A.) 6758 or the Salary Standardization Law (SSL) as regards the consolidation of allowances and compensation;

b) Item II of COA Circular No. 2013-003 dated January 30, 2013 which excluded the subject allowances among the list of authorized allowances, incentives, and benefits;

c) Items 4 and 5 of Section 1.a of Civil Service Commission (CSC) Resolution No. 02-0790 dated June 5, 2002, which provides that employees under contract or job order do not enjoy the benefits enjoyed by the government employees (such as the Personnel Economic Relief Allowance or PERA, Additional Compensation Allowance or ACA, and Representation Allowance and Transportation Allowance or RATA), and that the services rendered thereunder are not considered as government service.[16]

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[15] Id. at 20.

[16] Id.

The persons held liable under the NDs were as follows:

Name and Position	Participation in the Transaction
Mario M. Madera (Madera) - Municipal Mayor	For certifying in the Obligation Request that the appropriations/ allotments are necessary, lawful and under his direct supervision, and for approving the payment;
Beverly C. Mananguite (Mananguite) - Municipal Accountant	For certifying in the voucher as to the completeness of the supporting documents;
Carissa D. Galing (Galing) - Municipal Treasurer	For certifying the availability of funds;
Josefina O. Pelo (Pelo) - Municipal Budget Officer	For certifying the existence of available appropriation;
All other payees as stated in the ND Nos. 14-004-101 (2013) to 14-008-101 (2013); and 14-010-101 (2013) to 14-015-101 (2013), all dated February 20, 2014	For being claimants/recipients of the allowances.[17]

Notably, the records show that Madera, Mananguite, Galing and Pelo (petitioners) also received the benefits covered by ND Nos. 14-010-101 (2013), 14-011-101 (2013), 14-012-101 (2013), and 14-015-101 (2013).[18]

COA Regional Office

On January 8, 2015, petitioners filed their appeal with the COA Regional Director (RD). They argued that the grant of additional allowances to the employees is allowed by R.A. 7160 or the Local Government Code (LGC); hence, the LGC actually repealed Section 12 of R.A. 6758[19] because the former law

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[17] Id. at 21.

[18] Id. at 84-88, 89-93, 94-98, 110-116.

[19] **Section 12.** ***Consolidation of Allowances and Compensation.*** — All allowances, except for representation and transportation allowances; clothing and laundry allowances; subsistence allowance of marine officers and crew

allows the municipality to grant additional allowances/financial assistance should its finances allow. Petitioners also claimed that the pronouncement of the Audit Team that the disallowed allowances were not among those listed under COA Circular No. 2013-003 is not correct considering that said Circular also stated that "other allowances not listed above, whether granted government-wide or specific to certain government agencies are likewise recognized provided there is sufficient legal basis thereof."[20]

Additionally, petitioners contended that the grant of additional allowances/financial assistance in the Municipality was a customary scheme over the years. They also claimed that the allowances were considered as financial assistance to the employees who suffered the effects of Typhoon *Yolanda*. Lastly, petitioners averred that the *Sangguniang Panlalawigan* (SP), the Department of Budget and Management (DBM) and the COA did not declare the appropriation ordinance as invalid; hence, they remain legal and valid.[21]

In a Decision[22] dated July 14, 2015, the RD affirmed the NDs and ruled that government units are not exempt from the SSL and the grant and payment of the subject allowances were subject to Section 12 of R.A. 6758 which provides that all allowances such as the ECA, MAMA, ACA and MAME are

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on board government vessels and hospital personnel; hazard pay; allowances of foreign service personnel stationed abroad; and such other additional compensation not otherwise specified herein as may be determined by the DBM, shall be deemed included in the standardized salary rates herein prescribed. Such other additional compensation, whether in cash or in kind, being received by incumbents only as of July 1, 1989 not integrated into the standardized salary rates shall continue to be authorized.

Existing additional compensation of any national government official or employee paid from local funds of a local government unit shall be absorbed into the basic salary of said official or employee and shall be paid by the National Government.

[20] *Rollo*, p. 21.

[21] Id. at 22.

[22] Id. at 126-132.

deemed integrated in the standardized salary rates and only six enumerated allowances are considered excluded from the integration. According to the RD, while it may be true that the subject allowances were not among those included in the list of authorized allowances and they may be granted if there is sufficient legal basis, the appropriation ordinance is not sufficient to become the legal basis. Moreover, petitioners' assertion that R.A. 7160 repealed the provision of Section 12 of R.A. 6758 is not convincing since Section 534 of R.A. 7160 mentions the specific laws or parts thereof which are repealed, and R.A. 6758 is not one of them.[23]

Moreover, the RD ruled that petitioners cannot hide behind the claim that the grant of such benefits was a customary scheme of the Municipality because practice, no matter how long continued, cannot give rise to any vested right if it is contrary to law.[24]

As for petitioners' contention that no appropriation ordinance of the Municipality had been declared invalid, the RD gave scant consideration to the same on the position that the subject ordinance and resolutions showed no indication of their having been transmitted to the SP for review in accordance with Section 327[25] of R.A. 7160. Moreover, the subject ordinance and

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[23] Id. at 22-23.

[24] Id. at 23.

[25] SECTION 327. Review of Appropriation Ordinances of Component Cities and Municipalities. — The sangguniang panlalawigan shall review the ordinance authorizing annual or supplemental appropriations of component cities and municipalities in the same manner and within the same period prescribed for the review of other ordinances.

If within ninety (90) days from receipt of copies of such ordinance, the sangguniang panlalawigan takes no action thereon, the same shall be deemed to have been reviewed in accordance with law and shall continue to be in full force and effect. If within the same period, the sangguniang panlalawigan shall have ascertained that the ordinance authorizing annual or supplemental appropriations has not complied with the requirements set forth in this Title, the sangguniang panlalawigan shall, within the ninety-day period hereinabove prescribed, declare such ordinance inoperative in its entirety or in part.

resolutions appropriated amounts for the disallowed benefits from the savings, unexpended allotment, and unappropriated balances for 2013 of the Municipality, in violation of Section 322[26] of R.A. 7160.[27]

Lastly, petitioners cannot claim that the subject allowances were given as financial assistance to the employees because good intention, no matter how noble, cannot be made an excuse for not adhering to the rules.[28]

Consequently, petitioners appealed to the COA.

COA Proper

In a Decision dated December 27, 2017, the COA affirmed the ruling of the COA Regional Office, with modification in

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Items of appropriation contrary to limitations prescribed in this Title or in excess of the amounts prescribed herein shall be disallowed or reduced accordingly.

The sangguniang panlalawigan shall, within the same period, advise the sangguniang panlungsod or sangguniang bayan concerned, through the local chief executive, of any action on the ordinance under review. Upon receipt of such advice, the city or municipal treasurer concerned shall not make further disbursements of funds from any of the items of appropriation declared inoperative, disallowed or reduced.

[26] SECTION 322. Reversion of Unexpended Balances of Appropriations, Continuing Appropriations. — Unexpended balances of appropriations authorized in the annual appropriations ordinance shall revert to the misappropriated surplus of the general fund at the end of the fiscal year and shall not thereafter be available for the expenditure except by subsequent enactment. However, appropriations for capital outlays shall continue and remain valid until fully spent, reverted or the project is completed. Reversions of continuing appropriations shall not be allowed unless obligations therefor have been fully paid or otherwise settled.

The balances of continuing appropriations shall be reviewed as part of the annual budget preparation and the sanggunian concerned may approve, upon recommendation of the local chief executive, the reversion of funds no longer needed in connection with the activities funded by said continuing appropriations subject to the provisions of this section.

[27] *Rollo*, p. 23.

[28] Id.

that the officials and employees who unwittingly received the disallowed benefits or allowances are not held liable for their reimbursement since they are recipient-payees in good faith.

The COA opined that, following applicable rules, the approving officer and each employee who received the disallowed benefit or allowance are obligated, jointly and severally, to refund the amount received. However, it also recognized that the Court has ruled, by way of exception, that passive recipients of disallowed amounts need not refund if they received the same in good faith. Thus, while the COA itself observed that this results in an inequitable burden on the approving officers and that the same is inconsistent with the concept of *solutio indebiti*, it nevertheless applied the exception as to passive recipients in deference to the Court.[29] Thus, the COA ruled as follows:

> WHEREFORE, premises considered, the Petition for Review of Mayor Mario M. Madera, et al., Municipality of Mondragon, Northern Samar, of Commission on Audit—Regional Office No. VIII, Decision No. 2015-020 dated July 14, 2015 is DENIED. Accordingly, Notice of Disallowance Nos. 14-004-101(2013) to 14-008-101 (2013) and 14-010-101 (2013) to 14-015-101(2013), all dated February 20, 2014, on the grant of Economic Crisis Assistance, Agricultural Crisis Allowance, Monetary Augmentation of Municipal Agency, and Mitigation Allowance to the officials and employees of the municipality, including national government employees assigned thereat, in the total amount of P7,706,253.10, are AFFIRMED with MODIFICATION.
>
> **The municipal officials who passed and approved the *Sangguniang Bayan* Ordinance and Resolutions authorizing the grant of subject allowances, including those who approved/certified the payment thereof, are made to refund the entire disallowed benefits or allowances. However, the officials and employees who unwittingly received the disallowed benefits or allowances are not liable for their reimbursement, they, being recipient-payees in good faith**.[30] (Emphasis supplied and emphasis in the original omitted)

[29] Id. at 27.

[30] Id. at 28.

On February 28, 2018, petitioners filed a Motion for Reconsideration (MR), which was denied in a Resolution dated August 16, 2018. Petitioners received a copy of the Resolution denying the MR on November 12, 2018.[31] Aggrieved, petitioners filed the present petition.

Petition Before the Court

On January 11, 2019, petitioners filed a petition for *certiorari* under Rule 64 in relation to Rule 65 of the Rules of Court. While petitioners maintain that the allowances were legal, they also raise the defense of good faith in order to not be held liable for the disallowed amounts.

In its Comment,[32] the COA, through the Office of the Solicitor General (OSG), contends that it did not commit grave abuse of discretion amounting to lack or excess of jurisdiction in upholding the NDs. Likewise, it avers that the liability imposed on petitioners was grounded on jurisprudence.

ISSUE

The issue to be resolved is whether the COA committed grave abuse of discretion in issuing the assailed Decision and Resolution.

Specifically, the resolution of this case rests ultimately on whether the COA was correct in holding petitioners liable for the refund of the disallowed amounts.

RULING

The petition is partly meritorious.

I. Timeliness of the Petition

At the outset, the Court notes that the petition was filed out of time. Petitioners confused Rules 64 and 65 of the Rules of Court when they erroneously claimed that their petition was timely filed within 60 days from notice of judgment.[33] Rule 64 provides:

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[31] Id. at 6.

[32] Id. at 161-177.

[33] Id. at 6.

SECTION 1. *Scope*. — This Rule shall govern the review of judgments and final orders or resolutions of the Commission on Elections and the Commission on Audit.

SEC. 2. *Mode of review*. — A judgment or final order or resolution of the Commission on Elections and the Commission on Audit may be brought by the aggrieved party to the Supreme Court on *certiorari* under Rule 65, except as hereinafter provided.

SEC. 3. *Time to file petition*. — The petition shall be filed within thirty (30) days from notice of the judgment or final order or resolution sought to be reviewed. The filing of a motion for new trial or reconsideration of said judgment or final order or resolution, if allowed under the procedural rules of the Commission concerned, shall interrupt the period herein fixed. If the motion is denied, the aggrieved party may file the petition within the remaining period, but which shall not be less than five (5) days in any event, reckoned from notice of denial. (Underscoring supplied)

As gleaned from above, Rule 65 applies to petitions questioning the judgments, final orders, or resolutions of the COA only insofar as Rule 64 does not specifically provide the rules. Consequently, since Rule 64 explicitly provides the 30-day period for the filing of the petition, the same shall apply — not the 60-day period provided in Rule 65.

To recall, the COA Decision was promulgated on December 27, 2017 and petitioners received a copy of the Decision on February 23, 2018. Thus, the 30-day period began to run from February 23, 2018. However, following Section 3, Rule 64 the period was interrupted when petitioners filed an MR on February 28, 2018. Petitioners received a copy of the Resolution denying their MR on November 12, 2018. Consequently, they had 25 days from November 12, or until December 7, 2018 to file their petition before the Court. However, petitioners only filed their petition on January 11, 2019 or 35 days after the last day of filing.

From the foregoing, there is no dispute that petitioners belatedly filed their petition before the Court. Nevertheless, the petition appears to be partly meritorious. Time and again, the Court has relaxed the observance of procedural rules to

advance substantial justice.[34] Moreover, the present petition provides an appropriate avenue for the Court to settle the conflicting jurisprudence on the liability for the refund of disallowed allowances. Thus, the Court opts for a liberal application of the procedural rules considering that the substantial merits of the case warrant its review by the Court.

The Constitution vests the broadest latitude in the COA in discharging its role as the guardian of public funds and properties.[35] In recognition of such constitutional empowerment, the Court has generally sustained the COA's decisions or resolutions in deference to its expertise in the implementation of the laws it has been entrusted to enforce.[36] Thus, the Constitution and the Rules of Court provide the remedy of a petition for *certiorari* in order to restrict the scope of inquiry to errors of jurisdiction or to grave abuse of discretion amounting to lack or excess of jurisdiction committed by the COA.[37] For this purpose, grave abuse of discretion means that there is, on the part of the COA, an evasion of a positive duty or a virtual refusal to perform a duty enjoined by law or to act in contemplation of law, such as when the assailed decision or resolution rendered is not based on law and the evidence but on caprice, whim and despotism.[38]

In this case, petitioners failed to show that the COA gravely abused its discretion in affirming the subject NDs. Nevertheless,

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[34] See *Barnes v. Padilla*, G.R. No. 160753, September 30, 2004, 439 SCRA 675, 686.

[35] *Miralles v. Commission on Audit*, G.R. No. 210571, September 19, 2017, 840 SCRA 108, 116.

[36] Id. at 116-117.

[37] *Estalilla v. Commission on Audit*, G.R. No. 217448, September 10, 2019, accessed at <https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/65721>.

[38] *Catu-Lopez v. Commission on Audit*, G.R. No. 217997, November 12, 2019, accessed at <https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/65979>.

there is merit to their contention that they should not be held liable to refund the disallowed amounts.

II. Propriety of the Disallowance

As regards the propriety of the issuance of the NDs, the Court notes that while petitioners maintain that the subject allowances had sufficient legal basis, the petition fails to substantiate their claim. The petition principally tackles petitioners' liability for the disallowed amounts, insisting that they approved the subject allowances in good faith.[39] The petition offered no new argument as regards the legality of the subject allowances. Thus, as regards the validity of the disallowance, the Court is constrained to rely on petitioners' submissions before the COA.

After a careful review of the records of the case, the Court upholds the NDs against the subject allowances, finding no grave abuse of discretion on the part of the COA in affirming the disallowance. The Court quotes with approval the following pronouncements by the COA:

> Section 447(a)(1)(viii) of RA No. 7160 provides:
>
> SEC. 447. Powers, Duties, Functions and Compensation. — (a) The sangguniang bayan, as the legislative body of the municipality, shall enact ordinances, approve resolutions and appropriate funds for the general welfare of the municipality and its inhabitants pursuant to Section 16 of this Code and in the proper exercise of the corporate powers of the municipality as provided for under Section 22 of this Code, and shall:
>
> (1) Approve ordinances and pass resolutions necessary for an efficient and effective municipal government, and in this connection shall: x x x
>
> (viii) Determine the positions and salaries, wages, allowances and other emoluments and benefits of officials and employees paid wholly or mainly from municipal funds and provide for expenditures necessary for the proper conduct of programs, projects, services, and activities of the municipal government;

[39] *Rollo,* p. 8.

In addition, Section 12 of RA No. 6758, the SSL, states:

> Consolidation of Allowances and Compensation. — All allowances, except for representation and transportation allowances; clothing and laundry allowances; subsistence allowance of marine officers and crew on board government vessels and hospital personnel; hazard pay; allowances of foreign service personnel stationed abroad; and such other additional compensation not otherwise specified herein as may be determined by the DBM, shall be deemed included in the standardized salary rates herein prescribed x x x." (Underscoring supplied)

In this case, the municipality's compensation-setting power in Section 447 of RA No. 7160 to grant ECA, ACA, MAME, and MAMA cannot prevail over Section 12 of RA No. 6758 or the SSL. No law or administrative issuance, much less the [SSL], authorizes the grant of [the] subject benefits.

Moreover, in the case of *Luciano Veloso, et al. vs. COA*, the Supreme Court ruled that:

> [T]he disbursement of public funds, salaries and benefits of government officers and employees should be granted to compensate them for valuable public services rendered, and the salaries or benefits paid to such officers or employees must be commensurate with services rendered. In the same vein, additional allowances and benefits must be shown to be necessary or relevant to the fulfillment of the official duties and functions of the government officers and employees. Without this limitation, government officers and employees may be paid enormous sums without limit or without justification necessary other than that such sums are being paid to someone employed by the government. Public funds are the property of the people and must be used prudently at all times with a view to prevent dissipation and waste.

Thus, the grant of ECA, ACA, MAME, and MAMA to the officials and employees cannot be justified as a simple gesture of gratitude of the municipality to its employees for their great contribution to the delivery of public service. The grant of any benefit to them must be necessary or relevant to the performance of their official duties and functions, which is absent in this case.

The appellants' claim that the grant of additional allowances/ financial assistance to the municipal and national employees assigned thereat is a customary scheme of the municipality anchored on a yearly appropriation ordinance is misplaced, as the grant thereof is illegal. x x x[40]

In view of the foregoing, the Court upholds the NDs against the ECA, ACA, MAME, and MAMA.

III. Liability of the petitioners for the return of the disallowed allowances

On their liability for the refund of the disallowed allowances, petitioners aver that they should not be held liable as they approved the disbursements in good faith. In support of this claim, petitioners cited various cases[41] where the Court did not order a refund despite upholding the disallowance.[42] Petitioners insist that since the COA failed to show that they were in bad faith in approving the allowances, the alleged refund should not be personally imposed on them especially considering that they merely relied on the yearly grant of additional allowances that were not previously disallowed by the COA.[43]

To recall, the NDs, as issued, held the payees of the disallowed allowances liable for being claimants or recipients of said amounts. The payees' liability to return the amounts was likewise affirmed by the COA RD. It was only on appeal to the COA Proper that the petitioning officers were held liable for the refund of the entire disallowed amount while the recipient-payees in good faith were excused.

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[40] Id. at 25-26.

[41] *Blaquera v. Alcala*, G.R. No. 109406, September 11, 1998, 295 SCRA 366; *De Jesus v. Commission on Audit*, G.R. No. 149154, 403 SCRA 666; *Home Development Mutual Fund v. Commission on Audit*, G.R. No. 157001, October 19, 2004, 440 SCRA 643; and *Lumayna v. Commission on Audit*, G.R. No. 185001, September 25, 2009, 601 SCRA 163.

[42] *Rollo*, pp. 10-13.

[43] Id. at 13.

In its assailed Decision, the COA Proper cited the 2015 case of *Silang v. Commission on Audit*[44] *(Silang)* where the Court ruled that public officials who are directly responsible for, or participated in making the illegal expenditures, as well as those who actually received the amounts therefrom, shall be solidarily liable for their reimbursement. Consequently, the obligation to refund the payment received falls upon both those directly responsible, *i.e.*, the approving officers, and those who actually received the disallowed benefit.[45] According to the COA, this is consistent with Section 43, Chapter 5, Book VI of Executive Order No. (E.O.) 292 or the Administrative Code of 1987, which states in part:

> **SECTION 43.** Liability for Illegal Expenditures. — Every expenditure or obligation authorized or incurred in violation of the provisions of this Code or of the general and special provisions contained in the annual General or other Appropriations Act shall be void. Every payment made in violation of said provisions shall be illegal and every official or employee authorizing or making such payment, or taking part therein, and every person receiving such payment shall be jointly and severally liable to the Government for the full amount so paid or received.

Consequently, the COA concluded that the approving officers and each employee who received the disallowed benefit are obligated, jointly and severally, to refund the amount so received. However, in the same breath, the COA also acknowledged the ruling of the Court in several cases as regards passive recipients or payees of disallowed amounts who received the same in good faith, to wit:

> Clearly, the approving officer and each employee who received the disallowed benefit are obligated, jointly and severally, to refund the amount so received. The Supreme Court has ruled that by way of exception, however, passive recipients or payees of disallowed salaries, emoluments, benefits and other allowances need not refund such disallowed amounts if they received the same in good faith. Stated

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[44] G.R. No. 213189, September 8, 2015, 770 SCRA 110, 126.

[45] *Rollo*, pp. 26-27.

otherwise, government officials and employees who unwittingly received disallowed benefits or allowances are not liable for their reimbursement if there is no finding of bad faith.

The result of exempting recipients who are in good faith from refunding the amount received is that the approving officers are made to shoulder the entire amount paid to the employees. This is perhaps an inequitable burden on the approving officers, considering that they are or remain exposed to administrative and even criminal liability for their act in approving such benefits, and is not consistent with the concept of *solutio indebiti* and the principle of unjust enrichment.

Nevertheless, in deference to the Supreme Court ruling in *Silang v. COA*, the Commission rules that government officials and employees who unwittingly received disallowed benefits or allowances are not liable for their reimbursement if there is no finding of bad faith. Public officials who are directly responsible for or participated in making illegal expenditures shall be solidarily liable for their reimbursement.[46] (Emphasis and underscoring supplied)

Indeed, the Court recognizes that the jurisprudence regarding the refund of disallowed amounts by the COA is evolving, at times conflicting, and is primarily dealt with on a case-to-case basis. The discussions made in this petition, however, have made it apparent that there is now a need to harmonize the various rulings of the Court. For this reason, the Court takes this opportunity to lay down the rules that would be applied henceforth in determining the liability to return disallowed amounts, guided by applicable laws and rules as well as the current state of jurisprudence.

In arriving at these new set of rules, the Court shall first delve into: a) the statutory bases for the liability of approving and certifying officers and payees for illegal expenditures; b) the badges of good faith in determining the liability of approving and certifying officers; c) the body of jurisprudence which inequitably absolve responsible persons from liability to return based on good faith; and d) the nature of the payees' participation

[46] Id. at 26-28.

and their liability for return and the acceptable exceptions as regards the liability to return disallowed amounts on the bases of unjust enrichment and *solutio indebiti*. The discussion on these matters will serve as the foundation of the rules of return that will be laid down in this decision.

A. Bases for Responsibility/Liability

The Budget Reform Decree of 1977[47] (PD 1177) provides:

> SEC. 49. *Liability for Illegal Expenditures*. — Every expenditure or obligation authorized or incurred in violation of the provisions of this Decree or of the general and special provisions contained in the annual General or other Appropriations Act shall be void. Every payment made in violation of said provisions shall be illegal and every official or employee authorizing or making such payment, or taking part therein, and every person receiving such payment shall be jointly and severally liable to the Government for the full amount so paid or received.
>
> Any official or employee of the Government knowingly incurring any obligation, or authorizing any expenditure in violation of the provisions herein, or taking part therein, shall be dismissed from the service, after due notice and hearing by the duly authorized appointing official. If the appointing official is other than the President and should he fail to remove such official or employee, the President may exercise the power of removal. (Underscoring supplied)

Parenthetically, the Government Auditing Code of the Philippines[48] (PD 1445), promulgated a year after PD 1177, provides:

> 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

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[47] Presidential Decree No. 1177, July 30, 1977.

[48] Presidential Decree No. 1445, June 11, 1978.

to him, without prejudice to the liability of either party to the government.

SECTION 103. *General liability for unlawful expenditures.* — Expenditures of government funds or uses of government property in violation of law or regulations shall be a personal liability of the official or employee found to be directly responsible therefor.

SECTION 104. *Records and reports required by primarily responsible officers.* — The head of any agency or instrumentality of the national government or any government-owned or controlled corporation and any other self-governing board or commission of the government shall exercise the diligence of a good father of a family in supervising accountable officers under his control to prevent the incurrence of loss of government funds or property, otherwise he shall be jointly and solidarily liable with the person primarily accountable therefore. The treasurer of the local government unit shall likewise exercise the same degree of supervision over accountable officers under his supervision otherwise, he shall be jointly and solidarily liable with them for the loss of government funds or property under their control.

SECTION 105. *Measure of liability of accountable officers.* — (1) Every officer accountable for government property shall be liable for its money value in case of improper or unauthorized use or misapplication thereof, by himself or any person for whose acts he may be responsible. He shall likewise be liable for all losses, damages, or deterioration occasioned by negligence in the keeping or use of the property whether or not it be at the time in his actual custody.

(2) Every officer accountable for government funds shall be liable for all losses resulting from the unlawful deposit, use, or application thereof and for all losses attributable to negligence in the keeping of the funds.

These provisions of PD 1177 and PD 1445 are substantially reiterated in the Administrative Code of 1987, thus:

SECTION 51. 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

to him, without prejudice to the liability of either party to the Government.

SECTION 52. General Liability for Unlawful Expenditures. — Expenditures of government funds or uses of government property in violation of law or regulations shall be a personal liability of the official or employee found to be directly responsible therefor.[49]

x x x x x x x x x

SECTION 40. Certification of Availability of Funds. — No funds shall be disbursed, and no expenditures or obligations chargeable against any authorized allotment shall be incurred or authorized in any department, office or agency without first securing the certification of its Chief Accountant or head of accounting unit as to the availability of funds and the allotment to which the expenditure or obligation may be properly charged.

No obligation shall be certified to accounts payable unless the obligation is founded on a valid claim that is properly supported by sufficient evidence and unless there is proper authority for its incurrence. Any certification for a non-existent or fictitious obligation and/or creditor shall be considered void. The certifying official shall be dismissed from the service, without prejudice to criminal prosecution under the provisions of the Revised Penal Code. Any payment made under such certification shall be illegal and every official authorizing or making such payment, or taking part therein or receiving such payment, shall be jointly and severally liable to the government for the full amount so paid or received.

x x x x x x x x x

SECTION 43. Liability for Illegal Expenditures. — Every expenditure or obligation authorized or incurred in violation of the provisions of this Code or of the general and special provisions contained in the annual General or other Appropriations Act shall be void. Every payment made in violation of said provisions shall be illegal and every official or employee authorizing or making such payment, or taking part therein, and every person receiving such payment shall be jointly and severally liable to the Government for the full amount so paid or received.

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[49] Chapter 9, Subtitle B, Title I, Book V.

Any official or employee of the Government knowingly incurring any obligation, or authorizing any expenditure in violation of the provisions herein, or taking part therein, shall be dismissed from the service, after due notice and hearing by the duly authorized appointing official. If the appointing official is other than the President and should he fail to remove such official or employee, the President may exercise the power of removal.[50] (Underscoring supplied)

It is well-settled that administrative, civil, or even criminal liability, as the case may be, may attach to persons responsible for unlawful expenditures, as a wrongful act or omission of a public officer.[51] It is in recognition of these possible results that the Court is keenly mindful of the importance of approaching the question of personal liability of officers and payees to return the disallowed amounts through the lens of these different types of liability.

Correspondingly, personal liability to return the disallowed amounts must be understood as civil liability[52] based on the

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[50] Book VI, Chapter 5.

[51] *Domingo v. Rayala*, G.R. Nos. 155831, 155840 & 158700, February 18, 2008, 546 SCRA 90, 112: "Basic in the law of public officers is the *three-fold liability rule*, which states that the wrongful acts or omissions of a public officer may give rise to civil, criminal and administrative liability. x x x"

[52] See *Suarez v. Commission on Audit*, G.R. No. 131077, August 7, 1998, 294 SCRA 96, 108-109, which treats liability for disallowance as civil liability, *viz.*,

> In holding petitioner liable for having failed to show good faith and diligence in properly performing her functions as a member of the PBAC, Respondent COA misconstrued Sec. 29.2 of the Revised CSB Manual. The aforesaid section requires a clear showing of bad faith, malice or gross negligence before a public officer may be held civilly liable for acts done in the performance of his or her official duties. The same principle is reiterated in Book I, Chapter 9, Section 38 of the 1987 Administrative Code. A public officer is presumed to have acted in the regular performance of his/her duty; therefore, he/she cannot be held civilly liable, unless contrary evidence is presented to overcome the presumption. There is no such evidence in this case. From the foregoing, it is as clear as day that Respondent COA committed grave abuse of discretion in including petitioner among those liable for the subject disallowance. (Underscoring supplied)

loss incurred by the government because of the transaction, while administrative or criminal liability may arise from irregular or unlawful acts attending the transaction. This should be the starting point of determining who must return. The existence and amount of the loss and the nature of the transaction must dictate upon whom the liability to return is imposed.

Sections 38 and 39, Chapter 9, Book I of the Administrative Code of 1987 cover the civil liability of officers for acts done in performance of official duties:

SECTION 38. Liability of Superior Officers. — (1) A public officer shall not be **civilly liable** for acts done in the performance of his official duties, unless there is a clear showing of **bad faith, malice or gross negligence**.

x x x x x x x x x

(3) A head of a department or a superior officer shall not be civilly liable for the wrongful acts, omissions of duty, negligence, or misfeasance of his subordinates, unless he has actually authorized by written order the specific act or misconduct complained of.

SECTION 39. Liability of Subordinate Officers. — No subordinate officer or employee shall be **civilly liable** for acts done by him in **good faith** in the performance of his duties. However, he shall be liable for willful or negligent acts done by him which are contrary to law, morals, public policy and good customs even if he acted under orders or instructions of his superiors.[53] (Emphasis and underscoring supplied)

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[53] See *Eslao v. Commission on Audit*, G.R. No. 89745, April 8, 1991, 195 SCRA 730 (procurement of plans and designs for extension of school building); *Andres v. Commission on Audit*, G.R. No. 94476, September 26, 1991, 201 SCRA 780 (overpricing in purchase of school desks); *Arriola v. Commission on Audit*, G.R. No. 90364, September 30, 1991, 202 SCRA 147 (overpricing of Batangas Water Well Project); *Orocio v. Commission on Audit*, G.R. No. 75959, August 31, 1992, 213 SCRA 109 (legal officer sought to be held liable for hospitalization costs advanced by National Power Corporation based on his legal opinion that the agency is liable under quasi-delict for the accident in Malaya Thermal Plant); *Suarez v. Commission on Audit*, id.

By the very language of these provisions, the liability for unlawful expenditures is civil. Nonetheless, since these provisions are situated in Chapter 9, Book I of the Administrative Code of 1987 entitled "General Principles Governing Public Officers," the liability is inextricably linked with the administrative law sphere. Thus, the civil liability provided under these provisions is hinged on the fact that the public officers performed his official duties with bad faith, malice, or gross negligence.

The participation of these public officers, such as those who approve or certify unlawful expenditures, *vis-à-vis* the incurrence of civil liability is recognized by the COA in its issuances, beginning from COA Circular No. 81-156[54] dated January 19, 1981 (Old CSB Manual):

> C. Liability of Head of Agency, Accountable Officer and Other Officials and Employees
>
> 1. The liability of an official or employee for disallowances or discrepancies in accounts audited shall depend upon his participation in the transaction involved. **The accountability and responsibility of officials and employees for government funds and property** as provided in Sections 101 and 102 of P.D. 1445 **do not necessarily give rise to liability for loss or government funds or damage to property**.
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> x x x x x x x x x
>
> III. GENERAL INSTRUCTIONS:
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> x x x x x x x x x
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> 5. The Head of Agency, who is immediately and primarily responsible for all government funds and property pertaining to his agency, shall see that the audit suspensions/disallowances are immediately settled. (Emphasis and underscoring supplied)

[54] Restating the Requirements for the Use of the Certificate of Settlement and Balances and Providing Guidelines on its Issuance Including the Accounting Treatment Thereof.

Subsequent to the Old CSB Manual, COA Circular No. 94-001[55] dated January 20, 1994 (MCSB) distinguished liability from responsibility and accountability, and provided the parameters for enforcing the civil liability to refund disallowed amounts:

SECTION 3. DEFINITION OF TERMS

The following terms shall be understood in the sense herein defined, unless the context otherwise indicates:

x x x x x x x x x

3.10 **LIABILITY**. — A **personal obligation arising from an audit disallowance/charge which may be satisfied through payment or restitution** as determined by competent authority and in accordance with law.

x x x x x x x x x

3.12 **PECUNIARY LIABILITY**. — The amount of **consequential loss or damage** arising from an act or omission and for which restitution, reparation, or indemnification is required.

x x x x x x x x x

SECTION 18. SETTLEMENT OF DISALLOWANCES AND CHARGES

Disallowances and charges shall be settled through submission of the required explanation/justification and/or documentations by the person or persons determined by the auditor to be liable therefor, or **by payment of the amount disallowed in audit; or by such other applicable modes of extinguishment of obligation** as provided by law.

x x x x x x x x x

SECTION 34. ENFORCEMENT OF CIVIL LIABILITY.

To enforce civil liability, the auditor shall submit a report on the disallowances and charges to the COA Chairman (Thru: The Director

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[55] Prescribing the Use of the Manual on Certificate of Settlement and Balances (Revised 1993).

concerned), requesting that the matter be referred to the Office of the Solicitor General (National Government agencies), or to the Office of the Government Corporate Counsel (for government-owned or controlled corporations) or to the appropriate Provincial or City Attorney (in the case of local government units). The report shall be duly supported with certified copies of the subsidiary records, the CSB, and the payrolls/vouchers/collections disallowed and charged together with all necessary documents, official receipts for the filing of the appropriate civil suit. (Emphasis and underscoring supplied)

These provisions are also substantially reproduced in COA Circular No. 2009-006[56] dated September 15, 2009 (RRSA) and the 2009 Revised Rules of Procedure of the Commission on Audit (RRPCOA). Under Section 4 of the RRSA:

> 4.17 **Liability** — a **personal obligation** arising from an audit disallowance or charge which may be **satisfied through payment or restitution** as determined by competent authority **or by other modes of extinguishment of obligation** as provided by law.
>
> x x x x x x x x x
>
> 4.24 **Settlement** — refers to the **payment/restitution or other act of extinguishing an obligation as provided by law** in satisfaction of the liability under an ND/NC, or in compliance with the requirements of an NS, as defined in these Rules. (Emphasis and underscoring supplied)

The procedure for the enforcement of civil liability through the withholding of payment of money due to persons liable and through referral to the OSG is found in Rule XIII of the RRPCOA, particularly, Section 3 and Section 6.

B. Badges of good faith in the determination of approving/certifying officers' liability

As mentioned, the civil liability under Sections 38 and 39 of the Administrative Code of 1987, including the treatment of

[56] Prescribing the Use of the Rules and Regulations on Settlement of Accounts.

their liability as solidary under Section 43, arises only upon a showing that the approving or certifying officers performed their official duties with bad faith, malice or gross negligence. For errant approving and certifying officers, the law justifies holding them solidarily liable for amounts they may or may not have received considering that the payees would not have received the disallowed amounts if it were not for the officers' irregular discharge of their duties, as further emphasized by Senior Associate Justice Estela M. Perlas-Bernabe (Justice Bernabe). This treatment contrasts with that of individual payees who, as will be discussed below, can only be liable to return the full amount they were paid, or they received pursuant to the principles of *solutio indebiti* and unjust enrichment.

Notably, the COA's regulations relating to the settlement of accounts and balances[57] illustrate when different actors in an audit disallowance can be held liable either based on their having custody of the funds, and having approved or certified the expenditure. The Court notes that officers referred to under Sections 19.1.1 and 19.1.3 of the MCSB, and Sections 16.1.1 and 16.1.3 of the RRSA, may nevertheless be held liable based on the extent of their certifications contained in the forms required by the COA under Section 19.1.2 of MCSB, and Section 16.1.2 of the RRSA. To ensure that public officers who have in their favor the unrebutted presumption of good faith and regularity in the performance of official duty, or those who can show that the circumstances of their case prove that they acted in good faith and with diligence, the Court adopts Associate Justice Marvic M.V.F. Leonen's (Justice Leonen) proposed circumstances or badges[58] for the determination of whether an authorizing officer exercised the diligence of a good father of a family:

> x x x For one to be absolved of liability the following requisites [may be considered]: (1) Certificates of Availability of Funds pursuant to Section 40 of the Administrative Code, (2) In-house or Department

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[57] See Section 19 of the MCSB and Section 16 of the RRSA.

[58] Separate Concurring Opinion of Justice Leonen, pp. 8, 13.

of Justice legal opinion, (3) that there is no precedent disallowing a similar case in jurisprudence, (4) that it is traditionally practiced within the agency and no prior disallowance has been issued, [or] (5) with regard the question of law, that there is a reasonable textual interpretation on its legality.[59]

Thus, to the extent that these badges of good faith and diligence are applicable to both approving and certifying officers, these should be considered before holding these officers, whose participation in the disallowed transaction was in the performance of their official duties, liable. The presence of any of these factors in a case may tend to uphold the presumption of good faith in the performance of official functions accorded to the officers involved, which must always be examined relative to the circumstances attending therein.

C. Cases absolving recipients' liability to return based on good faith

As for the civil liability of payees, certain jurisprudence provides that passive recipients or payees in good faith are excused from returning the amounts they received.

In the 1998 case of *Blaquera v. Alcala*[60] *(Blaquera)*, the Court relied on good faith to excuse the return of the disallowed amounts. The petition was brought by officials and employees of several government agencies assailing the disallowance of the excess productivity incentive benefits given in 1992, as rationalized by Administrative Orders Nos. 29 and 268. In excusing both the officers and the payees from the liability to return the benefits already received, the Court held:

Untenable is petitioners' [payees'] contention that the herein respondents be held personally liable for the refund in question. Absent a showing of bad faith or malice, public officers are not personally liable for damages resulting from the performance of official duties.

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[59] Id. at 8.

[60] Supra note 41.

Every public official is entitled to the presumption of good faith in the discharge of official duties. Absent any showing of bad faith or malice, there is likewise a presumption of regularity in the performance of official duties.

In upholding the constitutionality of AO 268 and AO 29, the Court reiterates the well-entrenched doctrine that "in interpreting statutes, that which will avoid a finding of unconstitutionality is to be preferred."

Considering, however, that all the parties here acted in good faith, we cannot countenance the refund of subject incentive benefits for the year 1992, which amounts the petitioners have already received. **Indeed, no *indicia* of bad faith can be detected under the attendant facts and circumstances. The officials and chiefs of offices concerned disbursed such incentive benefits in the honest belief that the amounts given were due to the recipients and the latter accepted the same with gratitude, confident that they richly deserve such benefits**. (Emphasis, underscoring supplied and citations omitted)[61]

The decision refused to shift the economic burden of returning the amounts the payees received to the officers who authorized or approved the grant of the benefits. Instead, the decision opted to excuse the return altogether. While the discussion on the presumption of good faith and regularity in the performance of official duties can easily be inferred as anchored on Section 38 of the Administrative Code of 1987, no statutory basis was provided for the excuse of payees from the obligation to return, leading to the conclusion that it is merely a judge made rule.

The ruling in *Blaquera* was subsequently relied upon by the Court in the cases of *De Jesus v. Commission on Audit*[62] *(De Jesus), Kapisanan ng mga Manggagawa sa Government Service Insurance System (KMG) v. Commission on Audit*[63] and *Home Development Mutual Fund v. COA*[64] *(HDMF)*, to excuse the

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[61] *Rotoras v. Commission on Audit*, G.R. No. 211999, August 20, 2019, accessed at <https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/65585>.

[62] Supra note 41.

[63] G.R. No. 150769, August 31, 2004, 437 SCRA 371.

[64] Supra note 41.

return from all persons responsible. *De Jesus*, specifically dealing with the payment of allowances and bonuses authorized under a 1995 Local Water Utilities Administration Resolution to members of an *interim* Board of Directors (BOD) of a water district, is still cited as authority in benefits disallowances of water district employees. *De Jesus* and *HDFM* were also cited by petitioners herein in support of their argument.[65]

However, in the 2002 case of *National Electrification Administration v. Commission on Audit*[66] *(NEA)* involving the accelerated implementation of the salary increase in the Salary Standardization II in violation of law and executive issuances, the Court held both the approving officers and the payees as solidarily liable on the following explanation:

> This case would not have arisen had N[E]A complied in good faith with the directives and orders of the President in the implementation of the last phase of the Salary Standardization Law II. The directives and orders are clearly and manifestly in accordance with all relevant laws. The reasons advanced by NEA in disregarding the President's directives and orders are patently flimsy, even ill[-]conceived. This cannot be countenanced as it will result in chaos and disorder in the executive branch to the detriment of public service.[67]

Thus, the petition filed by the NEA was denied, and the Decision of the COA[68] was affirmed by the Court. The affirmed decision directed "all NEA officials and employees who received compensation and allowances in violation of the provisions of

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[65] *Rollo*, p. 12.

[66] G.R. No. 143481, February 15, 2002, 377 SCRA 223.

[67] Id. at 240.

[68] The COA in its Decision stated: "Thus, when the NEA effected full implementation of the new salary schedule on January 1, 1997, instead of November 1, 1997, NEA was, then, clearly acting in violation of the mandates of the law. Consequently, said wrongful implementation must be struck down for being baseless and unlawful, and **all its employees who received the undue increases must necessarily return the amount thus received**," id. at 227-228; emphasis and underscoring supplied.

Executive Order No. 389 and National Budget Circular No. 458 x x x to refund."[69]

In the 2006 case of *Casal v. Commission on Audit*[70] *(Casal)*, the Court's decisions in *Blaquera* and *NEA* were both relied upon, but the Court reached an outcome different from those reached in both cases. Finding that the non-compliance by the officers with relevant Presidential issuances amounted to gross negligence which could not be deemed a mere lapse consistent with the presumption of good faith, the ruling in *NEA* was applied as to the petitioners-approving officers, while the ruling in *Blaquera* was applied to excuse the payees. Thus, it was *Casal* that originated the peculiar outcome in disallowance cases where payees were excused from liability, while the solidary co-debtors, National Museum officials, were made solely liable for the entire amount of the disallowance.

This pronouncement in *Casal* further evolved in jurisprudence when the Court nuanced the same in the 2012 case of *Manila International Airport Authority v. Commission on Audit*[71] *(MIAA)* and the 2014 case of *Technical Education and Skills Development Authority v. Commission on Audit*[72] *(TESDA)*. In these cases, the Court also considered the good faith of both payees and officers in determining who must return AND the extent of what must be returned. As ruled therein, a payee in good faith may retain what has been paid. In this regard, the government effectively absorbs the excess paid to good faith payees, and approving and/or certifying officers in bad faith were required to return only to the extent of the amounts they received.

In *MIAA*, the Court found that the amounts involved were properly disallowed signing bonus. Good faith payees were excused but responsible officers and members of the BOD were made to refund, but only the amounts they received, thus:

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[69] Id. at 224.

[70] G.R. No. 149633, November 30, 2006, 509 SCRA 138.

[71] G.R. No. 194710, February 14, 2012, 665 SCRA 653.

[72] G.R. No. 204869, March 11, 2014, 718 SCRA 402.

Clearly, good faith is anchored on an honest belief that one is legally entitled to the benefit. In this case, the MIAA employees who had no participation in the approval and release of the disallowed benefit accepted the same on the assumption that Resolution No. 2003-067 was issued in the valid exercise of the power vested in the Board of Directors under the MIAA charter. As they were not privy as to reason and motivation of the Board of Directors, they can properly rely on the presumption that the former acted regularly in the performance of their official duties in accepting the subject benefit. Furthermore, their acceptance of the disallowed grant, in the absence of any competent proof of bad faith on their part, will not suffice to render liable for a refund.

The same is not true as far as the Board of Directors. Their authority under Section 8 of the MIAA charter is not absolute as their exercise thereof is "subject to existing laws, rules and regulations" and they cannot deny knowledge of *SSS v. COA* and the various issuances of the Executive Department prohibiting the grant of the signing bonus. In fact, they are duty-bound to understand and know the law that they are tasked to implement and their unexplained failure to do so barred them from claiming that they were acting in good faith in the performance of their duty. The presumptions of "good faith" or "regular performance of official duty" are disputable and may be contradicted and overcome by other evidence.

Granting that the benefit in question is a CNA Incentive, MIAA's Board of Directors has no authority to include its members, the members of the Board Secretariat, ExeCom and other employees not occupying rank-and-file positions in the grant. Indeed, this is an open and contumacious violation of PSLMC Resolution No. 2 and A.O. No. 135, which were unequivocal in stating that only rank-and-file employees are entitled to the CNA Incentive. Given their repeated invocation of these rules to justify the disallowed benefit, they cannot feign ignorance of these rules. That they deliberately ignored provisions of PSLMC Resolution No. 2 and A.O. No. 135 that they failed to observe bolsters the finding of bad faith against them.

The same is true as far as the concerned officers of MIAA are concerned. They cannot approve the release of funds and certify as to the legality of the subject disbursement knowing that it is a signing bonus. Alternatively, if they acted on the belief that the benefit is a CNA Incentive, they were in no position to approve its funding without assuring themselves that the conditions imposed by PSLMC Resolution

No. 2 are complied with. They were also not in the position to release payment to the members of the Board of Directors, ExeCom and employees who do not occupy rank-and-file positions considering the express language of PSLMC Resolution No. 2.

Simply put, these individuals cannot honestly claim that they have no knowledge of the illegality of their acts. Thus, this Court finds that a refund of the amount of ₱30,000.00 received by each of the responsible officers and members of MIAA's Board of Directors is in order.[73] (Underscoring supplied and citations omitted)

In 2015, the Court promulgated the decision in *Silang*[74] which followed the rule in *Casal*. Parenthetically, the COA rationalizes the inequitable outcome it reached in this case as being in deference to *Silang*.[75] *Silang* involves the disallowance of CNA incentives granted to the employees of the Local Government Unit of Tayabas, Quezon. The case distinguished the liability to return based on the good faith of the persons held liable in the ND. The Court held that Mayor Silang, the *Sanggunian*, and the officers of the employee's organization cannot be deemed to have acted in good faith. Therefore, only passive recipients of the disallowed benefits were excused from the responsibility to return on the basis of their good faith "anchored on an honest belief that one is legally entitled to the benefit, as said employees did so believe in this case."[76] The Court stated that the payees "should not be held liable to refund what they had unwittingly received."[77]

As *Silang* held that "passive recipients or payees of disallowed salaries, emoluments, benefits, and other allowances need not refund such disallowed amounts **if they received the same in good faith,**" it relies upon the cases of *Lumayna v. COA*[78]

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[73] Supra note 71, at 678-679.

[74] Supra note 44.

[75] *Rollo*, pp. 27-28.

[76] *Silang v. Commission on Audit*, supra note 44, at 129.

[77] Id.

[78] Supra note 41, at 182-183. The relevant portion reads:

(Lumayna) and *Querubin v. The Regional Cluster Director Legal and Adjudication Office, COA Regional Office VI, Pavia, Iloilo City*[79] *(Querubin)*. Petitioners herein also cite *Lumayna* to support their claim.[80]

Examining *Lumayna*, the Court excused all petitioners (including the petitioning approving and certifying officers — Municipal Mayor, Municipal Accountant, and Budget Officer) from liability to return the disallowed amounts despite the affirmance of the disallowance.

The same outcome was reached in *Querubin* where the members of the BOD of the Bacolod City Water District were excused from returning the benefits they themselves approved and received for having been received in good faith. Both these cases also rely upon *Blaquera* as jurisprudential support to excuse the return.

In sum, the evolution of the "good faith rule" that excused the passive recipients in good faith from return began in *Blaquera* (1998) and *NEA* (2002), where the good faith of both officers and payees were determinative of their liability to return the disallowed benefits — the good faith of all parties resulted in excusing the return altogether in *Blaquera*, and the bad faith

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Furthermore, granting *arguendo* that the municipality's budget adopted the incorrect salary rates, this error or mistake was not in any way indicative of bad faith. Under prevailing jurisprudence, mistakes committed by a public officer are not actionable, absent a clear showing that he was motivated by malice or gross negligence amounting to bad faith. It does not simply connote bad moral judgment or negligence. Rather, there must be some dishonest purpose or some moral obliquity and conscious doing of a wrong, a breach of a sworn duty through some motive or intent, or ill will. It partakes of the nature of fraud and contemplates a state of mind affirmatively operating with furtive design or some motive of self-interest or ill will for ulterior purposes. As we see it, the disbursement of the 5% salary increase was done in good faith. Accordingly, petitioners need not refund the disallowed disbursement in the amount of P895,891.50. (Citations omitted and underscoring supplied)

[79] G.R. No. 159299, July 7, 2004, 433 SCRA 769.

[80] *Rollo*, pp. 12-13.

of officers resulted in the return by all recipients in *NEA*. The rule morphed in *Casal* (2006) to distinguish the liability of the payees and the approving and/or certifying officers for the return of the disallowed amounts. In *MIAA* (2012) and *TESDA* (2014), the rule was further nuanced to determine the extent of what must be returned by the approving and/or certifying officers as the government absorbs what has been paid to payees in good faith. This was the state of jurisprudence then which led to the ruling in *Silang* (2015) which followed the rule in *Casal* that payees, as passive recipients, should not be held liable to refund what they had unwittingly received in good faith, while relying on the cases of *Lumayna* and *Querubin*.

The history of the rule as shown evinces that the original formulation of the "good faith rule" excusing the return by payees based on good faith was ***not intended*** to be ***at the expense of*** approving and/or certifying officers. The application of this judge made rule of excusing the payees and then placing upon the officers the responsibility to refund amounts they did not personally receive, commits an inadvertent injustice.

D. Nature of payee participation

Verily, excusing payees from return on the basis of good faith has been previously recognized as an exception to the laws on liability for unlawful expenditures. However, being civil in nature, the liability of officers and payees for unlawful expenditures provided in the Administrative Code of 1987 will have to be consistent with civil law principles such as *solutio indebiti* and unjust enrichment. These civil law principles support the propositions that (1) the good faith of payees is not determinative of their liability to return; and (2) when the Court excuses payees on the basis of good faith or lack of participation, it amounts to a remission of an obligation at the expense of the government.

To be sure, the application of the principles of unjust enrichment and *solutio indebiti* in disallowed benefits cases does not contravene the law on the general liability for unlawful expenditures. In fact, these principles are consistently applied

in government infrastructure or procurement cases which recognize that a payee contractor or approving and/or certifying officers cannot be made to shoulder the cost of a correctly disallowed transaction when it will unjustly enrich the government and the public who accepted the benefits of the project.[81]

These principles are also applied by the Court with respect to disallowed benefits given to government employees. In characterizing the obligation of retirees-payees who received benefits properly disallowed by the COA, the Resolution in the 2004 case of *Government Service Insurance System v. Commission on Audit*[82] stated:

> Anent the benefits which were improperly disallowed, the same rightfully belong to respondents without qualification. As for benefits which were justifiably disallowed by the COA, the same were erroneously granted to and received by respondents who now have the obligation to return the same to the System.
>
> It cannot be denied that respondents were recipients of benefits that were properly disallowed by the COA. These COA disallowances would otherwise have been deducted from their salaries, were it not for the fact that respondents retired before such deductions could be effected. The GSIS can no longer recover these amounts by any administrative means due to the specific exemption of retirement benefits from COA disallowances. Respondents resultantly retained benefits to which they were not legally entitled which, in turn, gave rise to an obligation on their part to return the amounts under the principle of *solutio indebiti*.
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> Under Article 2154 of the Civil Code, if something is received and unduly delivered through mistake when there is no right to demand it, the obligation to return the thing arises. Payment by reason of

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[81] See *Melchor v. Commission on Audit*, G.R. No. 95398, August 16, 1991, 200 SCRA 704, 714, citing *Eslao v. Commission on Audit*, supra note 53, at 739. This case applies the same principle of unjust enrichment in cases where the contractor seeks payment to this case where reimbursement is sought from the official concerned; see also *Andres v. Commission on Audit*, supra note 53.

[82] G.R. Nos. 138381 & 141625, November 10, 2004, 441 SCRA 532.

mistake in the construction or application of a doubtful or difficult question of law also comes within the scope of *solutio indebiti*.

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While the GSIS cannot directly proceed against respondents' retirement benefits, it can nonetheless seek restoration of the amounts by means of a proper court action for its recovery. Respondents themselves submit that this should be the case, although any judgment rendered therein cannot be enforced against retirement benefits due to the exemption provided in Section 39 of RA 8291. However, there is no prohibition against enforcing a final monetary judgment against respondents' other assets and properties. This is only fair and consistent with basic principles of due process.[83] (Citations omitted)

The COA similarly applies the principle of *solutio indebiti* to require the return from payees regardless of good faith. The COA Decisions in the cases of *Jalbuena v. COA*,[84] *DBP v. COA*,[85] and *Montejo v. COA*,[86] are examples to that effect. In the instant case, the COA Decision expressly articulated this predicament of exempting recipients who are in good faith and expressed that the same is not consistent with the concept of *solutio indebiti* and the principle of unjust enrichment:

Clearly, the approving officer and each employee who received the disallowed benefit are obligated, jointly and severally, to refund the amount so received. The Supreme Court has ruled that by way of exception, however, passive recipients or payees of disallowed salaries, emoluments, benefits and other allowances need not refund such disallowed amounts if they received the same in good faith. Stated otherwise, government officials and employees who unwittingly received disallowed benefits or allowances are not liable for their reimbursement if there is no finding of bad faith.

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[83] Id. at 548-550.

[84] G.R. No. 218478, June 19, 2018, p. 2, (Unsigned Resolution), [*En Banc*].

[85] G.R. No. 210838, July 3, 2018, accessed at <http://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/64358>.

[86] G.R. No. 232272, July 24, 2018, accessed at <http://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/64480>.

The result of exempting recipients who are in good faith from refunding the amount received is that the approving officers are made to shoulder the entire amount paid to the employees. This is perhaps an inequitable burden on the approving officers, considering that they are or remain exposed to administrative and even criminal liability for their act in approving such benefits, and is not consistent with the concept of *solutio indebiti* and the principle of unjust enrichment.

Nevertheless, in deference to the Supreme Court ruling in *Silang v. COA*, the Commission rules that government officials and employees who unwittingly received disallowed benefits or allowances are not liable for their reimbursement if there is no finding of bad faith. Public officials who are directly responsible for or participated in making illegal expenditures shall be solidarily liable for their reimbursement.[87] (Emphasis and underscoring supplied)

With the liability for unlawful expenditures properly understood, payees who receive undue payment, regardless of good faith, are liable for the return of the amounts they received. Notably, in situations where officers are covered by Section 38 of the Administrative Code of 1987 either by presumption or by proof of having acted in good faith, in the regular performance of their official duties, and with the diligence of a good father of a family, payees remain liable for the disallowed amount unless the Court excuses the return. For the same reason, any amounts allowed to be retained by payees shall reduce the solidary liability of officers found to have acted in bad faith, malice, and gross negligence. In this regard, Justice Bernabe coins the term "net disallowed amount" to refer to the total disallowed amount minus the amounts excused to be returned by the payees.[88] Likewise, Justice Leonen is of the same view that the officers held liable have a solidary obligation only to the extent of what should be refunded and this does not include the amounts received by those absolved of liability.[89] In short,

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[87] *Rollo*, pp. 27-28.

[88] Separate Concurring Opinion of Justice Bernabe, p. 13.

[89] Separate Concurring Opinion of Justice Leonen, p. 12.

the net disallowed amount shall be solidarily shared by the approving/authorizing officers who were clearly shown to have acted in bad faith, with malice, or were grossly negligent.

Consistent with the foregoing, the Court shares the keen observation of Associate Justice Henri Jean Paul B. Inting (Justice Inting) that payees generally have no participation in the grant and disbursement of employee benefits, but their liability to return is based on *solutio indebiti* as a result of the mistake in payment. Save for collective negotiation agreement incentives carved out in the sense that the employees are not considered passive recipients on account of their participation in the negotiated incentives as in *Dubongco v. COA*[90] *(Dubongco)*, payees are generally held in good faith for lack of participation, with their participation limited to "accept[ing] the same with gratitude, confident that they richly deserve such benefits."[91]

On the other hand, the RRSA provides:

SECTION 16. DETERMINATION OF PERSONS RESPONSIBLE/LIABLE

16.1 The liability of public officers and other persons for audit disallowances/charges shall be determined on the basis of (a) the nature of the disallowance/charge; (b) the duties and responsibilities or obligations of officers/employees concerned; (c) the extent of their participation in the disallowed/charged transaction; and (d) the amount of damage or loss to the government, thus:

x x x x x x x x x

16.1.5 The **payee** of an expenditure shall be personally liable for a disallowance where the ground thereof is his failure to submit the required documents, and the Auditor is convinced that the disallowed transaction did not occur or has no basis in fact.

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[90] G.R. No. 237813, March 5, 2019, accessed at <http://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/65051>.

[91] *Blaquera v. Alcala*, supra note 41, at 448.

16.3 The liability of persons determined to be liable under an ND/NC shall be **solidary** and the Commission may go against any person liable without prejudice to the latter's claim against the rest of the persons liable.

To recount, as noted from the cases earlier mentioned, retention by passive payees of disallowed amounts received in good faith has been justified on said payee's "lack of participation in the disbursement." However, this justification is unwarranted because a payee's mere receipt of funds not being part of the performance of his official functions still equates to him unduly benefiting from the disallowed transaction; this gives rise to his liability to return.

As may be gleaned from Section 16 of the RRSA, "the extent of their participation [or involvement] in the disallowed/charged transaction" is one of the determinants for liability. The Court has, in the past, taken this to mean that payees should be absolved from liability for lack of participation in the approval and disbursement process. However, under the MCSB and the RRSA, a "transaction" is defined as "[a]n event or condition the recognition of which gives rise to an entry in the accounting records."[92] To a certain extent, therefore, payees always do have an indirect "involvement" and "participation" in the transaction where the benefits they received are disallowed because the accounting recognition of the release of funds and their mere receipt thereof results in the debit against government funds in the agency's account and a credit in the payees' favor. Notably, when the COA includes payees as persons liable in an ND, the nature of their participation is stated as "received payment."

Consistent with this, "the amount of damage or loss [suffered by] the government [in the disallowed transaction],"[93] another determinant of liability, is also indirectly attributable to payees by their mere receipt of the disallowed funds. This is because

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[92] Sections 3.19 and 4.28 of the MCSB and the RRSA, respectively.

[93] The RRSA, Section 16.1.

the loss incurred by the government stated in the ND as the disallowed amount corresponds to the amounts received by the payees. Thus, cogent with the application of civil law principles on unjust enrichment and *solutio indebiti*, the return by payees primarily rests upon this conception of a payee's undue receipt of amounts as recognized **within the government auditing framework**. In this regard, it bears repeating that the extent of liability of a payee who is a passive recipient is only with respect to the transaction where he participated or was involved in, *i.e.*, only to the extent of the amount that he unduly received. This limitation on the scope of a payee's participation as only corresponding to the amount he received therefore forecloses the possibility that a passive recipient may be held solidarily liable with approving/certifying officers beyond the amount that he individually received.

The exception to payee liability is when he shows that he is, as a matter of fact or law, actually entitled to what he received, thus removing his situation from Section 16.1.5 of the RRSA above and the application of the principle of *solution indebiti*. This include payees who can show that the amounts received were granted in consideration for services actually rendered. In such situations, it cannot be said that any undue payment was made. Thus, the government incurs no loss in making the payment that would warrant the issuance of a disallowance. Neither payees nor approving and certifying officers can be held civilly liable for the amounts so paid, despite any irregularity or procedural mistakes that may have attended the grant and disbursement.

Returning to the earlier cases of *Blaquera*, *Lumayna*, and *Querubin*, the good faith of all parties was basis to excuse the return of the entire obligation from any of the debtors in the case. Thus, either the COA or the Court through their respective decisions exercised an act of liberality by renouncing the enforcement of the obligation as against payees — persons who received the moneys corresponding to the disallowance, a determinate "respective share" in the resulting solidary obligation. This redounds to the benefit of officers. Clearly,

therefore, cases which result in a clear transfer of economic burden cannot have been the intention of the law in exacting civil liability from payees in disallowance cases. Where the ultimate beneficiaries are excused, what can only be assumed as the legislative policy of achieving the highest possibility of recovery for the government unwittingly sanctions unjust enrichment.

In *Dubongco*,[94] the Court affirmed the disallowance of CNA incentives sourced out of CARP funds. Even as it recognized that the payees therein committed no fraud, the Court ordered the return, thus:

> Finally, the payees received the disallowed benefits with the mistaken belief that they were entitled to the same. If property is acquired through mistake or fraud, the person obtaining it is, by force of law, considered a trustee of an implied trust for the benefit of the person from whom the property comes. A constructive trust is substantially an appropriate remedy against unjust enrichment. It is raised by equity in respect of property, which has been acquired by fraud, *or where, although acquired originally without fraud*, it is against equity that it should be retained by the person holding it. In fine, payees are considered trustees of the disallowed amounts, as although they committed no fraud in obtaining these benefits, it is against equity and good conscience for them to continue holding on to them.[95] (Italics in the original and citations omitted)

Similarly, in *DPWH v. COA*,[96] the disallowance of CNA incentives sourced out of the Engineering Administrative Overhead (EAO) was upheld, and the recipients of the disallowed benefits were held liable to return. In finding that the payees are obliged to return the amounts they received, the Court stated:

> Jurisprudence holds that there is unjust enrichment when a person unjustly retains a benefit to the loss of another, or when a person

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[94] Supra note 90.

[95] Id.

[96] G.R. No. 237987, March 19, 2019, accessed at <http://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/65047>.

retains money or property of another against the fundamental principles of justice, equity and good conscience. The statutory basis for the principle of unjust enrichment is Article 22 of the Civil Code which provides that "[e]very 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."

The principle of unjust enrichment under Article 22 requires two conditions: (1) that a person is benefited without a valid basis or justification, and (2) that such benefit is derived at another's expense or damage. There is no unjust enrichment when the person who will benefit has a valid claim to such benefit.

The conditions set forth under Article 22 of the Civil Code are present in this case.

It is settled that the subject CNA Incentive was invalidly released by the DPWH IV-A to its employees as a consequence of the erroneous application by its certifying and approving officers of the provisions of DBM Budget Circular No. 2006-1. As such, it only follows that the DPWH IV-A employees received the CNA Incentive without valid basis or justification; and that the DPWH IV-A employees have no valid claim to the benefit. Moreover, it is clear that the DPWH IV-A employees received the subject benefit at the expense of another, specifically, the government. Thus, applying the principle of unjust enrichment, the DPWH IV-A employees must return the benefit they unduly received.[97] (Underscoring supplied and citations omitted)

That the incentives were negotiated and approved by the employees was only one of several reasons for the return in the said case. The excerpt cited above sufficiently signals that the elements of unjust enrichment are completed as soon as a payee receives public funds without valid basis or justification — without necessarily requiring participation in the grant and disbursement.

For other incentives not negotiated by the recipients, the Court promulgated its decision in *Chozas v. COA*[98] which dealt

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[97] Id.

[98] G.R. Nos. 226319 & 235031, October 8, 2019.

with the accomplishment incentive sourced out of Bulacan State University Special Trust Fund. Notably, this case relied upon the Court's ratiocination in *Dubongco* on the question of liability to return, without any showing of participation on the part of the payees as to the grant and disbursement. This is jurisprudential recognition that the judge made rule of absolving good faith payees is the exception, and not the rule.

In *Rotoras v. COA*,[99] the Court held that it will be unjust enrichment to allow the members of the governing boards to retain additional honoraria that they themselves approved and received. Here, the Court ruled that the nature of the obligation of approving officials to return "depends on the circumstances,"[100] with the officers' obligation to return expressly determined to not be solidary.[101] This case illustrates how approving officers may still be held liable to return in their capacity as payees, notwithstanding their good faith or bad faith.

In the ultimate analysis, the Court, through these new precedents, has returned to the basic premise that the responsibility to return is a civil obligation to which fundamental civil law principles, such as unjust enrichment and *solutio indebiti* apply regardless of the good faith of passive recipients. **This, as well, is the foundation of the rules of return that the Court now promulgates**.

Moreover, *solutio indebiti* is an equitable principle applicable to cases involving disallowed benefits which prevents undue

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[99] Supra note 61.

[100] Separate Concurring Opinion of Justice Leonen, p. 12.

[101] Supra note 61. The dispositive portion of *Rotoras* reads:

WHEREFORE, the Petition for Certiorari is **DISMISSED**. The November 3, 2011 Decision and February 14, 2014 Resolution of the Commission on Audit in COA CP Case No. 2010-341 are **AFFIRMED**. The members of the governing boards of the state universities and colleges shall return the disallowed benefits. Their obligation to return shall not be solidary.

SO ORDERED.

fiscal leakage that may take place if the government is unable to recover from passive recipients amounts corresponding to a properly disallowed transaction.

Nevertheless, while the principle of *solutio indebiti* is henceforth to be consistently applied in determining the liability of payees to return, the Court, as earlier intimated, is not foreclosing the possibility of situations which may constitute *bona fide* exceptions to the application of *solutio indebiti*. As Justice Bernabe proposes, and which the Court herein accepts, the jurisprudential standard for the exception to apply is that the amounts received by the payees constitute disallowed benefits that were genuinely given in consideration of services rendered (or to be rendered)[102] negating the application of unjust enrichment and the *solutio indebiti* principle).[103] As examples, Justice Bernabe explains that these disallowed benefits may be in the nature of performance incentives, productivity pay, or merit increases that have not been authorized by the Department of Budget and Management as an exception to the rule on standardized salaries.[104] In addition to this proposed exception standard, Justice Bernabe states that the Court may also determine in the proper case *bona fide* exceptions, depending on the purpose and nature of the amount disallowed.[105] These proposals are well-taken.

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[102] Separate Concurring Opinion of Justice Bernabe, p. 12.

[103] Id. at 11-12.

[104] Id. at 11. Justice Bernabe further explains:

> x x x To be sure, Republic Act No. 6758, otherwise known as the "Compensation and Position Classification Act of 1989," "standardize[s] salary rates among government personnel and do[es] away with multiple allowances and other incentive packages and the resulting differences in compensation among them." Section 12 lays down the general rule that all allowances of state workers are to be included in their standardized salary rates, with the exception of the following allowances: x x x
>
> The said allowances are the "only allowances which government employees can continue to receive in addition to their standardized salary rates." Conversely, "all allowances not covered by the [above] exceptions x x x are presumed to have been integrated into the basic standardized pay" and hence, subject to disallowance. Id. at 11-12.

[105] Id. at 12.

Moreover, the Court may also determine in a proper case other circumstances that warrant excusing the return despite the application of *solutio indebiti*, such as when undue prejudice will result from requiring payees to return or where social justice or humanitarian considerations are attendant. Verily, the Court has applied the principles of social justice in COA disallowances. Specifically, in the 2000 case of *Uy v. Commission on Audit*[106] *(Uy)*, the Court made the following pronouncements in overturning the COA's decision:

> x x x *Under the policy of social justice, the law bends over backward to accommodate the interests of the working class on the humane justification that those with less privilege in life should have more in law. Rightly, we have stressed that social justice legislation, to be truly meaningful and rewarding to our workers, must not be hampered in its application by long-winded arbitration and litigation. Rights must be asserted and benefits received with the least inconvenience. And the obligation to afford protection to labor is incumbent not only on the legislative and executive branches but also on the judiciary to translate this pledge into a living reality. Social justice would be a meaningless term if an element of rigidity would be affixed to the procedural precepts. Flexibility should not be ruled out. Precisely, what is sought to be accomplished by such a fundamental principle expressly so declared by the Constitution is the effectiveness of the community's effort to assist the economically underprivileged. For under existing conditions, without such succor and support, they might not, unaided, be able to secure justice for themselves. To make them suffer, even inadvertently, from the effect of a judicial ruling, which perhaps they could not have anticipated when such deplorable result could be avoided, would be to disregard what the social justice concept stands for*.[107] (Italics in the original)

The pronouncements in *Uy*[108] illustrate the Court's willingness to consider social justice in disallowance cases. These considerations may be utilized in assessing whether there may be an exception to the rule on *solution indebiti* so that the return

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[106] G.R. No. 130685, March 21, 2000, 328 SCRA 607.

[107] Id. at 619.

[108] Id.

may be excused altogether. As Justice Inting correctly pointed out, "each disallowance case is unique, inasmuch as the *facts* behind, *nature of the amounts* involved, and *individuals* so charged in one notice of disallowance are hardly ever the same with any other."[109]

E. The Rules on Return

In view of the foregoing discussion, the Court pronounces:

1. If a Notice of Disallowance is set aside by the Court, no return shall be required from any of the persons held liable therein.

2. If a Notice of Disallowance is upheld, the rules on return are as follows:

    a. Approving and certifying officers who acted in good faith, in regular performance of official functions, and with the diligence of a good father of the family are not civilly liable to return consistent with Section 38 of the Administrative Code of 1987.

    b. Approving and certifying officers who are clearly shown to have acted in bad faith, malice, or gross negligence are, pursuant to Section 43 of the Administrative Code of 1987, solidarily liable to return only the net disallowed amount which, as discussed herein, excludes amounts excused under the following Sections 2c and 2d.

    c. Recipients — whether approving or certifying officers or mere passive recipients — are liable to return the disallowed amounts respectively received by them, unless they are able to show that the amounts they received were genuinely given in consideration of services rendered.

    d. The Court may likewise excuse the return of recipients based on undue prejudice, social justice

[109] Concurring Opinion, p. 1.

considerations, and other *bona fide* exceptions as it may determine on a case to case basis.

Undoubtedly, consistent with the statements made by Justice Inting, the ultimate analysis of each case would still depend on the facts presented, and these rules are meant only to harmonize the previous conflicting rulings by the Court as regards the return of disallowed amounts — after the determination of the good faith of the parties based on the unique facts obtaining in a specific case has been made.

To reiterate, the assessment of the presumptions of good faith and regularity in the performance of official functions and proof thereof will be done by the Court on a case-to-case basis. Moreover, the additional guidelines eloquently presented by Justice Leonen will greatly aid the Court in determining the good faith of officers and resultantly, whether or not they should be held solidarily liable in disallowed transactions.[110]

F. As applied to the instant case

Examined under the rubric of the rules above, the Court holds that petitioners approving and certifying officers need not refund the disallowed amounts inasmuch as they had acted in good faith.

In support of their good faith, petitioners aver:

It has been a customary scheme of the municipality to grant additional allowances during year-end period and which act is legally anchored on yearly appropriation ordinance by the sanggunian. Similar scheme is also practiced in all government agencies, local or national.

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[110] Separate Concurring Opinion of Justice Leonen, p. 8. To reiterate, Justice Leonen proposes the following circumstances or badges for the determination of whether an authorizing officer exercised the diligence of a good father of a family: "(1) Certificate of Availability of Funds pursuant to Section 40 of the Administrative Code, (2) In-house or Department of Justice legal opinion, (3) that there is no precedent disallowing a similar case in jurisprudence, (4) that it is traditionally practiced within the agency and no prior disallowance has been issued, and (5) with regard the question of law, that there is a reasonable textual interpretation on its legality."

On such previous disbursement[s] of the municipality, there were no disallowance[s] issued by the COA or DBM, hence, the municipal officials [believed] in good faith that such grant of additional allowances were legal and allowed.

It was only on June 26, 2014 when [the NDs herein were] issued and [the Municipality was informed]. That is why, since 2014, petitioners never grant[ed] additional allowances anymore to its employees.

x x x x x x x x x

On [a] final note, since the COA failed to show bad faith on the approving officers, the alleged refund should not be personally imposed on them, they being in good faith that recipients richly deserved such benefits and the officers relied merely on the yearly basis of granting additional allowances, without them being informed by [the] COA or DBM that such disbursements were illegal.[111]

All in all, petitioners' averments are well-taken. In evaluating the presence of good faith in cases involving disallowances, the Court's pronouncement in *Lumayna* is still instructive and remains true even under the foregoing guidelines:

Furthermore, granting *arguendo* that the municipality's budget adopted the incorrect salary rates, this error or mistake was not in any way indicative of bad faith. Under prevailing jurisprudence, **mistakes committed by a public officer are not actionable, absent a clear showing that he was motivated by malice or gross negligence amounting to bad faith. It does not simply connote bad moral judgment or negligence**. Rather, there must be some **dishonest purpose or some moral obliquity and conscious doing of a wrong, a breach of a sworn duty through some motive or intent, or ill will**. It partakes of the nature of **fraud** and contemplates a state of mind affirmatively operating with **furtive design or some motive of self-interest or ill will for ulterior purposes**. x x x[112] (Emphasis supplied)

Applying the foregoing, the Court accepts the arguments raised by the petitioners as badges of good faith.

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[111] *Rollo*, pp. 9-13.

[112] Supra note 41, at 182.

First, a review of the SB Resolutions and Ordinance used as basis for the grant of the subject allowances shows that these were primarily intended as financial assistance to municipal employees in view of the increase of cost on prime commodities,[113] shortage of agricultural products,[114] and the vulnerability of their municipality to calamities and disasters.[115] Notably, these subject allowances were granted after the onslaught of typhoon *Yolanda* which greatly affected the Municipality. While noble intention is not enough to declare the allowances as valid, it nevertheless supports petitioners' claim of good faith. As held in *Escarez v. COA*:

> The grant of the FGI to petitioners has a lofty purpose behind it: the alleviation, to any extent possible, of the difficulty in keeping up with the rising cost of living. Indeed, under the circumstances, We find that the FGI was given and received in good faith. The NFA Council approved the grant under the belief, albeit mistaken, that the presidential issuances and the OGCC Opinion provided enough bases to support it; and the NFA officials and employees received the grant with utmost gratefulness.[116]

Second, that these additional allowances had been customarily granted over the years and there was no previous disallowance issued by the COA against these allowances further bolster petitioners' claim of good faith. Indeed, while it is true that this customary scheme does not ripen into valid allowances, it is equally true that in all those years that the additional allowances had been granted, the COA did not issue any ND against these grants, thereby leading petitioners to believe that these allowances were lawful.

Notably, since the issuance of the NDs in 2014, the Municipality has stopped giving these allowances to their employees.[117] However, this is not to say that the presumption

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[113] *Rollo*, p. 31.

[114] Id. at 35.

[115] Id. at 37.

[116] G.R. Nos. 217818, 218334, 219979, 220201, & 222118, May 31, 2016, p. 8 (Unsigned Resolution).

[117] *Rollo*, p. 9.

of good faith would be *ipso facto* negated if the Municipality had otherwise continued to grant the allowances despite the issuance of NDs. After all, an ND is not immediately final as it may still be reversed by the COA or even the Court. Unless and until an ND becomes final, the continued grant of a benefit or allowance should not *automatically* destroy the presumption of good faith on the part of the approving/certifying officers, especially when there is sufficient or, at the very least, colorable legal basis for such grant.

Third, petitioners relied on the Resolutions and Ordinance of the *Sangguniang Bayan* which have not been invalidated; hence, it was within their duty to execute these issuances in the absence of any contrary holding by the *Sangguniang Panlalawigan* or the COA. They were of the belief, albeit mistakenly, that these Resolutions and Ordinance were sufficient legal bases for the grant of the allowances especially since the LGC[118] empowers the *Sangguniang Bayan* to approve ordinances and pass resolutions concerning allowances. Similar to the ruling in *Veloso v. Commission on Audit*[119] where the Court accepted as a badge of good faith the fact that the questioned disbursements were made pursuant to ordinances, petitioners' reliance on the SB Resolutions and Ordinance should likewise be considered in their favor.

As can be deduced above, petitioners disbursed the subject allowances in the honest belief that the amounts given were due to the recipients and the latter accepted the same with gratitude, confident that they richly deserve such reward. Otherwise stated, and to borrow the language of *Lumayna*, these mistakes committed are not actionable, absent a clear showing that such actions were motivated by malice or gross negligence amounting to bad faith. There was no showing of some dishonest purpose or some moral obliquity and conscious doing of a wrong, a breach of a sworn duty through some motive or intent, or ill will in the grant of these benefits. There was no fraud nor was

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[118] R.A. 7160, Section 447 (a) (1) (viii).

[119] G.R. No. 193677, September 6, 2011, 656 SCRA 767.

there a state of mind affirmatively operating with furtive design or some motive of self-interest or ill will for ulterior purposes.

Thus, petitioners-approving and certifying officers are shielded from civil liability for the disallowance under Section 38 of the Administrative Code of 1987.

As for the payees, the Court notes that the COA Proper already excused their return; hence, they no longer appealed. In any case, while they are ordinarily liable to return for having unduly received the amounts validly disallowed by COA, the return was properly excused not because of their good faith but because it will cause undue prejudice to require them to return amounts that were given as financial assistance and meant to tide them over during a natural disaster.

In view of the foregoing, the return is excused in its entirety in favor of all persons held liable in the ND.

A Final Note

In interpreting and applying the law, the Court is very sensitive to the need to balance competing interests and considerations amongst various stakeholders. Here, the Court is given the opportunity to set a workable rule that exacts accountability for disallowances and ensures that unjust enrichment and inadvertent unfairness do not result. This has been brought about by an acknowledgment that previous attempts by this Court to excuse payees who unwittingly received the disallowed amounts may have resulted in undue prejudice to the government. Further, if such rule would continue to be the norm in deciding these cases, then the Court may be unsuspectingly playing a role in the chilling effect on current and aspiring government officials, who were previously left to shoulder the entire disallowed amounts to the benefit of recipients. A chilling effect that ultimately hampers and suffocates urgent public need — which the Government, through the Executive Branch, is mandated to serve at the soonest time.

As the Court has previously held,[120] government employment should be seen as an opportunity for individuals of good will to render honest-to-goodness public service, and not a trap for the unwary. It should be an attractive alternative to private employment, not an undesirable undertaking grudgingly accepted, to therefore regret.[121] While the Court supports the mandate of the COA in ensuring that the funds of the government are properly utilized and the return to the government of funds unduly spent, the same must not be at the expense of public officials and employees who are directly tasked to discharge and render public service — especially when the presumptions of good faith and regularity in the performance of their duties have not been rebutted or overturned. Otherwise, the Court would unintentionally sanction the discouragement of competent and well-meaning individuals from joining the government. When service in the government is seen as unattractive and unappealing, it is the public that suffers.

Taking all this into consideration, the Court has laid down the rules that it deems equitable to the government whose interest is safeguarded by the COA, on the one hand, and to the government employees who approved, certified, and received the disallowed benefits, on the other.

Finally, the Court exhorts the COA to take into consideration the pronouncements made herein to prevent future decisions that "result [in] exempting recipients who are in good faith from refunding the amount received x x x [while] approving officers are made to shoulder the entire amount paid to the employees"[122] and impose, in the very words of the COA itself, "an inequitable burden on the approving officers, considering that they are or remain exposed to administrative and even criminal liability for their act in approving such benefits, and is not consistent with the concept of *solutio indebiti* and the principle of unjust enrichment."[123]

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[120] *Philippine Economic Zone Authority (PEZA) v. Commission on Audit*, G.R. No. 210903, October 11, 2016, 805 SCRA 618.

[121] Id. at 621.

[122] *Rollo*, p. 27.

[123] Id.

WHEREFORE, the instant petition is **PARTIALLY GRANTED**. The Commission on Audit Decision No. 2017-454 dated December 27, 2017 affirming the Notice of Disallowance Nos. 14-004-101 (2013) to 14-008-101 (2013) and 14-010-101 (2013) to 14-015-101 (2013) in the total amount of ₱7,706,253.10 is **AFFIRMED with MODIFICATION** that petitioners need not refund the said disallowed amount.

SO ORDERED.

Peralta, C.J., Gesmundo, Reyes, Jr., Hernando, Carandang, Lazaro-Javier, Zalameda, Lopez, Delos Santos, and *Gaerlan, JJ.,* concur.

Perlas-Bernabe, Leonen, and *Inting, JJ.,* see separate concurring opinions.

Baltazar-Padilla, J., on leave.

SEPARATE CONCURRING OPINION

PERLAS-BERNABE, *J.*:

I concur.

In this case, the Court has decided to set straight the conflicting jurisprudential guidelines in cases involving the directive to return amounts that are validly disallowed by the Commission on Audit (COA). As definitively expressed in the *ponencia*, the guidelines agreed upon by the members of this Court now serve to enlighten both the government and the public regarding the proper parameters for the return of disallowed public funds.

Consistent with the guidelines in the *ponencia*, I express my views on the frameworks of law that pertinently govern the return of amounts disallowed by the government. These frameworks of law pertain to the body of statutory provisions found in the Administrative Code on the one hand, and the applicable provisions of the Civil Code, on the other. An in-depth discussion of these two legal frameworks provides for a better understanding of the underlying reasons that justify the parameters for the return of disallowed amounts.

I. The Administrative Law Perspective

The Administrative Code "embodies changes in administrative structures and procedures designed to serve the people."[1] In the promulgation of Executive Order No. 292, Series of 1987, or the "Administrative Code of 1987," it was envisioned that "[t]he effectiveness of the Government will be enhanced by a new Administrative Code which incorporates in a unified document the major structural, functional and procedural principles and rules of governance."[2] In line with the foregoing, the impetus behind the Administrative Code provisions on public officers is to ensure public accountability. This is embodied in Section 32, Chapter 9, Book I thereof, which is a reflection of Section 1, Article XI[3] of the 1987 Constitution:

> CHAPTER 9
> General Principles Governing Public Officers
>
> Section 32. *Nature of Public Office.* — Public office is a public trust. Public officers and employees must at all times be accountable to the people, serve them with the utmost responsibility, integrity, loyalty and efficiency, act with patriotism and justice, and lead modest lives.

Undoubtedly, an essential administrative function of the government is the disbursement of public funds. In this regard, public officers and government employees tasked with this vital function are mandated to ensure that public expenditures are made in conformity with the law. This mandate stems from the Constitution itself which states that "[n]o money shall be paid out of the Treasury except in pursuance of an appropriation

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[1] Executive Order No. 292, entitled "INSTITUTING THE 'ADMINISTRATIVE CODE OF 1987'" (August 3, 1988), 4th Whereas clause.

[2] ADMINISTRATIVE CODE, 3rd Whereas clause.

[3]
> ARTICLE XI
> Accountability of Public Officers
>
> Section 1. Public office is a public trust. Public officers and employees must at all times be accountable to the people, serve them with utmost responsibility, integrity, loyalty, and efficiency, act with patriotism and justice, and lead modest lives.

made by law."[4] This command is also mirrored in Section 32, Chapter 5, Book VI of the Administrative Code which states that "[a]ll moneys appropriated for functions, activities, projects and programs shall be available solely for the specific purposes for which these are appropriated."

When there is an "[e]xpenditur[e] of government funds or us[e] of government property in violation of law or regulations,"[5] there is an "**unlawful expenditure**." An unlawful or illegal expenditure is subject to disallowance[6] by the COA.[7] Under Section 52, Chapter 9, Subtitle B, Title I, Book V of the Administrative Code, unlawful expenditures are the **personal liability** of officials or employees found to be **directly responsible** therefor:

> Section 52. *General Liability for* ***Unlawful Expenditures***. — Expenditures of government funds or uses of government property in violation of law or regulations shall be a **personal liability of the official or employee found to be directly responsible therefor**. (Emphasis and underscoring supplied)

This provision is mirrored in Section 103, Chapter 5, Title II of Presidential Decree No. 1445[8] (PD 1445), otherwise known

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[4] 1987 CONSTITUTION, Article VI, Section 29 (1).

[5] ADMINISTRATIVE CODE, Book V, Title I, Subtitle B, Chapter 9, Section 52.

[6] Section 4.16 of COA Circular No. 2009-006 defines a disallowance as "the disapproval or in audit of a transaction."

[7] Section 10 of COA Circular No. 2009-006 pertinently reads:

> Section 10. Notice of Disallowance (ND). —
>
> 10.1 The Auditor shall issue an ND-Form 3 — for transactions which are irregular/unnecessary/excessive and extravagant as defined in COA Circular No. 85-55A as well as other COA issuances, and those which are illegal and unconscionable.
>
> 10.1.1 **Illegal expenditures are expenditures which are contrary to law**.
>
> x x x x x x x x x (Emphasis supplied)

[8] Entitled "ORDAINING AND INSTITUTING A GOVERNMENT AUDITING CODE OF THE PHILIPPINES," approved on June 11, 1978.

as the "Government Auditing Code of the Philippines" (Audit Code):

> Section 103. *General Liability for Unlawful Expenditures*. — Expenditures of government funds or uses of government property in violation of law or regulations shall be a **personal liability of the official or employee found to be directly responsible therefor**. (Emphasis and underscoring supplied)

Notably, the liability for unlawful expenditures *per se* must be distinguished from the liability of accountable officers tasked with the custody and safekeeping of government property and funds pertaining to an agency.[9] With respect to the latter, Section 51, Chapter 9, Subtitle B, Title I, Book V of the Administrative Code distinctly provides for the primary and secondary responsibilities of the following officers:

> Section 51. *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 to him, without prejudice to the liability of either party to the Government.[10] (Emphases supplied)

Under COA Circular No. 2009-006[11] or the "Rules and Regulations for the Settlement of Accounts," the term "**persons**

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[9] Section 50, Chapter 9, Subtitle B, Title I, Book V of the ADMINISTRATIVE CODE characterizes these officers as follows:

> Section 50. *Accountable Officers; Board Requirements*. — (1) Every officer of any government agency whose duties permit or require the possession or custody of government funds shall be accountable therefor and for safekeeping thereof in conformity with law; and
>
> (2) Every accountable officer shall be properly bonded in accordance with law.

[10] See also Section 102, Chapter 5, Title II of the AUDIT CODE.

[11] Approved on September 15, 2009. Notably, the issuance superseded COA Circular No. 94-001, approved on January 20, 1994, otherwise known as the "Manual on Certificate of Settlement and Balances" (see Section 29,

responsible" is defined as those "persons determined to be answerable for compliance with the audit requirements as called for in the Notice of Suspension."[12] **A public officer who approves or authorizes a public expenditure (approving/ authorizing officer) is necessarily considered as a person directly responsible**.

However, it is integral to point out that **approving or authorizing officers are not automatically held liable to return disallowed amounts based on every unlawful expenditure**. Section 16.1.3 of COA Circular No. 2009-006 qualifies that approving/authorizing officers shall be liable for losses arising out of their negligence or failure to exercise the diligence of a good father of a family in approving/authorizing what turns out to be a disallowed transaction:

> 16.1.3 Public officers who **approve or authorize expenditures** shall be liable for losses arising out of their **negligence or failure to exercise the diligence of a good father of a family**. (Emphases and underscoring supplied)

This implementing Circular is an apparent reflection of the exacting requirements of the Administrative Code. Under Section 38 (1), Chapter 9, Book I thereof, there must be a "**clear showing**" of **bad faith**, **malice**, or **gross negligence** in order to hold a public officer civilly liable for acts done in the performance of his official duties:

> Section 38. *Liability of Superior Officers*. — (1) A public officer shall **not be civilly liable** for acts done in the performance of his official duties, unless there is a **clear showing of bad faith, malice or gross negligence**. (Emphases and underscoring supplied)

This provision is supplemented by Section 39 of the same Code which prescribes the need to debunk the good faith of a subordinate officer before he is likewise held civilly liable for acts done under orders or instructions of his superiors:

Chapter VII of COA Circular No. 2009-006), but the provisions on liability of public officers for disallowed expenditures have remained unchanged.

[12] COA Circular No. 2009-06, Section 4.21.

Section 39. *Liability of Subordinate Officers*. — **No** subordinate officer or employee shall be **civilly liable** for acts **done by him in good faith in the performance of his duties**. However, he shall be liable for **willful or negligent** acts done by him which are **contrary to law, morals, public policy and good customs even if he acted under orders or instructions of his superiors**. (Emphases and underscoring supplied)

To be sure, the need to first prove bad faith, malice, or gross negligence before holding a public officer civilly liable traces its roots to the core concept of the law on public officers. From the perspective of administrative law, public officers are considered as agents of the State, and as such, acts done in the performance of their official functions are considered as acts of the State. In contrast, when a public officer acts negligently, or worse, in bad faith, the protective mantle of State immunity is lost as the officer is deemed to have acted outside the scope of his official functions; hence, he is treated to have acted in his personal capacity and necessarily, subject to liability on his own. In the case of *Vinzons-Chato v. Fortune Tobacco Corporation*,[13] the Court explained this distinct and peculiar treatment of public officer liability as follows:

[T]he general rule is that a public officer is not liable for damages which a person may suffer arising from the just performance of his official duties and within the scope of his assigned tasks. An officer who acts **within his authority to administer the affairs of the office** which he/she heads is not liable for damages that may have been caused to another, **as it would virtually be a charge against the Republic, which is not amenable to judgment for monetary claims without its consent**. However, a public officer is by law **not immune from damages in his/her personal capacity for acts done in bad faith which, being outside the scope of his authority**, are no longer protected by the mantle of immunity for official actions.[14] (Emphases and underscoring supplied)

In line with this, public officers are accorded with the **presumption of regularity** in the performance of their official

[13] 552 Phil. 101 (2007).

[14] Id.

functions — "[t]hat is, when an act has been completed, it is to be supposed that the act was done in the manner prescribed and by an officer authorized by law to do it."[15] This presumption is a rule borne out of **administrative necessity and practicality**. In *Yap v. Lagtapon*,[16] the Court characterized the presumption of regularity as "an aid to the effective and unhampered administration of government functions. Without such benefit, every official action could be negated with minimal effort from litigants, irrespective of merit or sufficiency of evidence to support such challenge."[17]

In a long line of cases,[18] the Court has ruled that the civil liability of public officers for illegal expenditures depends on a clear showing of bad faith, malice, or gross negligence; absent which, the presumptions of regularity and good faith operate to absolve them from said liability. Among others, in the 1998 case of *Suarez v. COA*[19] (August 7, 1998), the Court absolved

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[15] *People v. Jolliffe*, 105 Phil. 677, 682-683 (1959).

[16] 803 Phil. 652 (2017).

[17] Id. at 653.

[18] See *Alejandrino v. COA*, G.R. No. 245400, November 12, 2019; *Gubat Water District v. COA*, G.R. No. 222054, October 1, 2019; Unsigned Resolution in *Castro v. COA*, G.R. No. 233499, February 26, 2019; *Montejo v. COA*, G.R. No. 232272, July 24, 2018; *Career Executive Service Board v. COA*, G.R. No. 212348, June 19, 2018, 866 SCRA 475; *Development Bank of the Philippines v. COA*, 827 Phil. 818 (2018); *Metropolitan Waterworks and Sewerage System v. COA*, 821 Phil. 117 (2017); *Philippine Health Insurance Corporation v. COA*, 801 Phil. 427 (2016); *Development Academy of the Philippines v. Tan*, 797 Phil. 537 (2016); *Philippine Economic Zone Authority v. COA*, 797 Phil. 117 (2016); *Social Security System v. COA*, 794 Phil. 387 (2016); *Velasco v. COA*, 695 Phil. 226 (2012); *Veloso v. COA*, 672 Phil. 419 (2011); *Agra v. COA*, 677 Phil. 608 (2011); *Singson v. COA*, 641 Phil. 154 (2010); *Lumayna v. COA*, 616 Phil. 928 (2009); *Bases Conversion and Development Authority v. COA*, 599 Phil. 455 (2009); *Barbo v. COA*, 589 Phil. 289 (2008); *Magno v. COA*, 558 Phil. 76 (2007); *Public Estates Authority v. COA*, 541 Phil. 412 (2007); *Casal v. COA*, 538 Phil. 634 (2006); *Kapisanan ng mga Manggagawa sa Government Service Insurance System v. COA*, 480 Phil. 861 (2004); *Abanilla v. COA*, 505 Phil. 202 (2005); *Home Development Mutual Fund v. COA*, 483 Phil. 666 (2004); and *Blaquera v. Alcala*, 356 Phil. 678 (1998).

[19] 355 Phil. 527 (1998).

the petitioner therein of civil liability for the disallowance of a government contract on the basis of Section 38, Chapter 9, Book I of the Administrative Code, remarking that "[a] public officer is presumed to have acted in the regular performance of his/her duty; therefore, he/she cannot be held civilly liable, unless contrary evidence is presented to overcome the presumption[:]"[20]

> In holding petitioner liable for having failed to show good faith and diligence in properly performing her functions as a member of the PBAC, Respondent COA misconstrued Sec. 29.2 of the Revised CSB Manual. The aforesaid section requires a **clear showing of bad faith, malice or gross negligence before a public officer may be held civilly liable for acts done in the performance of his or her official duties. The same principle is reiterated in Book I, Chapter 9, Section 38 of the 1987 Administrative Code. A public officer is presumed to have acted in the regular performance of his/her duty; therefore, he/she cannot be held civilly liable, unless contrary evidence is presented to overcome the presumption.** x x x[21] (Emphasis and underscoring supplied)

Also, in the oft-cited case of *Blaquera v. Alcala*[22] (September 11, 1998), the Court ruled that:

> Absent a showing of bad faith or malice, public officers are not personally liable for damages resulting from the performance of official duties.
>
> Every public official is entitled to the **presumption of good faith** in the discharge of official duties. Absent any showing of bad faith or malice, there is likewise a **presumption of regularity** in the performance of official duties.[23] (Emphases supplied)

In disallowance cases, "good faith" has been defined as a "state of mind denoting honesty of intention, and **freedom from knowledge of circumstances** which ought to put the holder

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[20] Id. at 540-541.

[21] Id.

[22] *Supra* note 18.

[23] Id. at 165.

upon inquiry; an honest intention to abstain from taking any **unconscientious advantage** of another, even through technicalities of law, together with absence of all information, notice, or benefit or belief of facts which render transaction unconscientious."[24] Thus, in order to overcome the presumption of regularity on the ground of **bad faith**, as well as the synonymous ground of **malice**, there must be a **clear showing** that the said officer approved/authorized an unlawful expenditure, acting with **full knowledge of the circumstances** and with the intention of taking **unconscientious advantage** of his public position. This intention may be shown by, for instance, proof that he approved/authorized the unlawful expenditure for his personal gain or to benefit another. Because the Administrative Code requires a clear showing of bad faith or malice, the Court may analogously apply the jurisprudential definition of "evident bad faith" to gauge the intention behind the acts involved:

> "[E]vident bad faith" connotes not only bad judgment but also palpably and patently fraudulent and dishonest purpose to do moral obliquity or conscious wrongdoing for some perverse motive or ill will. **It contemplates a state of mind affirmatively operating with furtive design or with some motive or self-interest or ill will or for ulterior purposes**.[25] (Emphasis and underscoring supplied)

In the 2019 case of *Rotoras v. COA*[26] (*Rotoras*; August 20, 2019), the Court held that "officials and officers who disbursed the disallowed amounts are liable to refund: (1) when they patently disregarded existing rules in granting the benefits to be disbursed, amounting to gross negligence;[27] (2) when there was clearly no legal basis for the benefits or allowances;[28] (3)

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[24] *Development Bank of the Philippines v. COA*, supra note 18, at 833; *Maritime Industry Authority v. COA*, 750 Phil. 288, 337 (2015); and *Philippine Economic Zone Authority v. COA*, 690 Phil. 104, 115 (2012); emphases supplied.

[25] *Fuentes v. People*, 808 Phil. 586, 594 (2017).

[26] See G.R. No. 211999.

[27] See id.; citing *Casal v. COA*, *supra* note 18 and *Sambo v. COA*, 811 Phil. 344 (2017).

[28] See id.; citing *Manila International Airport Authority v. COA*, 681 Phil. 644 (2012) and *Oriondo v. COA*, G.R. No. 211293, June 4, 2019.

when the amount disbursed is so exorbitant that the approving/authorizing officers were alerted to its validity and legality; [29] or (4) when they knew that they had no authority over such disbursement."[30] To my mind, these instances are manifestations of the public officer's bad faith or malice.

Likewise, as indicated by the Administrative Code, good faith may be negated by a **clear showing** of the approving/authorizing officer's **gross negligence** in the performance of his duties. Gross negligence refers to:

> [N]egligence characterized by the **want of even slight care**, or by acting or omitting to act in a situation where there is a duty to act, not inadvertently but willfully and intentionally, with a **conscious indifference** to the consequences, insofar as other persons may be affected. It is the omission of that care that even inattentive and thoughtless men never fail to give to their own property. It denotes a flagrant and culpable refusal or unwillingness of a person to perform a duty. **In cases involving public officials, gross negligence occurs when a breach of duty is flagrant and palpable**.[31] (Emphases and underscoring supplied)

Gross negligence may become evident through the non-compliance of an approving/authorizing officer of clear and straightforward requirements of an appropriation law, or budgetary rule or regulation, which because of their clarity and straightforwardness only call for one **reasonable** interpretation. On the other hand, gross negligence may be rebutted by showing that an appropriation law, or budgetary rule or regulation is susceptible of various reasonable interpretations because its application involves complicated questions of law,[32] or that by consistent institutional practice over the years, the law, rule or regulation has been unwittingly applied by said officer in

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[29] Id.; citing *Maritime Industry Authority v. COA*, *supra* note 24.

[30] Id.; citing *Silang v. COA*, 769 Phil. 327 (2015).

[31] *Office of the Ombudsman v. De Leon*, 705 Phil. 26, 37-38 (2013).

[32] "[B]y law and jurisprudence, a mistake upon a doubtful or difficult question of law may properly be the basis of good faith." (*Philippine National Bank v. Heirs of Militar*, 526 Phil. 788, 797 [2006]).

accordance with such practice. In *Rotoras*, the Court observed that in previous occasions, public officials and employees were allowed to keep disallowed benefits and allowances they had already received when, *inter alia*, "the approving authority failed to exercise diligence or made mistakes but did not act with malice or in bad faith,"[33] or "there was ambiguity in existing rules and regulations that have not yet been clarified."[34] The rationale, as practically observed by the Court in *Castro v. COA*,[35] is that:

> [I]t [would be] unfair to penalize public officials based on overly stretched and strained interpretations of rules which were not that readily capable of being understood at the time such functionaries acted in good faith. x x x A contrary rule would be counterproductive. It could result in paralysis, or lack of innovative ideas getting tried. In addition, it could dissuade others from joining the government. When government service becomes unattractive, it could only have adverse consequences for society.[36]

Thus, in order to establish gross negligence, **one must ultimately determine whether or not in effecting the unlawful expenditure, there was "want of even slight care" on the part of the approving/authorizing officer with a "conscious indifference to the consequences."** If there is clear showing of the affirmative, then the approving/authorizing officer must be held civilly liable for the return of the disallowed amounts to the government.

In this relation, it should be stressed that the determination of whether a particular approving/authorizing officer has acted with bad faith, malice, or gross negligence in a given situation must be made on a **case-to-case basis**. To this end, the *ponencia* has adopted Justice Mario Victor M.V.F. Leonen's view that:

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[33] See supra note 26; citing *Home Development Mutual Fund v. COA*, supra note 18 and *Lumayna v. COA*, supra note 18.

[34] *Rotoras*, id.

[35] See supra note 18; see also *Philippine Economic Zone Authority v. COA*, supra note 18.

[36] *Castro v. COA*, supra note 18.

> For one to be absolved of liability the following requisites [may be considered]: (1) Certificates of Availability of Funds pursuant to Section 40 of the Administrative Code, (2) In-house or Department of Justice legal opinion, (3) that there is no precedent allowing a similar case in jurisprudence, (4) that it is traditionally practiced within the agency and no prior disallowance has been issued, [or] (5) with regard the question of law, that there is a reasonable textual interpretation on its legality.[37]

and aptly pointed out that "[t]he presence of any of these factors in a case may tend to uphold the presumption of good faith in the performance of official functions accorded to the officers involved, **which must always be examined relative to the circumstances attending therein**."[38]

Once the existence of bad faith, malice, or gross negligence as contemplated under Section 38, Chapter 9, Book I of the Administrative Code is clearly established, the civil liability of approving/authorizing officers to return disallowed amounts based on an unlawful expenditure is **solidary** together **with all other persons taking part therein, as well as every person receiving such payment**. This solidary liability is found in Section 43, Chapter 5, Book VI of the Administrative Code, which states:

> Section 43. *Liability for Illegal Expenditures*. — Every expenditure or obligation authorized or incurred in violation of the provisions of this Code or of the general and special provisions contained in the annual General or other Appropriations Act shall be void. Every payment made in violation of **said provisions** shall be illegal and **every official or employee authorizing or making such payment, or taking part therein, and every person receiving such payment shall be jointly and severally liable** to the Government for the full amount so paid or received. (Emphases and underscoring supplied)

Notably, with respect to "**every official or employee authorizing or making such payment**" in bad faith, with malice, or gross negligence, the law justifies holding them solidarily

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[37] *Ponencia*, pp. 21-22.

[38] Id. at 22; emphasis supplied.

liable for the amounts they may or may not have received, considering that the payees would not have received the disallowed amounts if it were not for the officers' irregular discharge of their duties.

Since the law characterizes their liability as solidary in nature, it means that once this provision is triggered, the State can go after each and every person determined to be liable for the full amount of the obligation; this holds true irrespective of the actual amounts individually received by each co-obligor, without prejudice to claims for reimbursement from one another. As defined, a "solidary obligation [is] one in which each of the debtors is liable for the entire obligation, and **each of the creditors is entitled to demand the satisfaction of the whole obligation from any or all of the debtors**."[39] However, "[h]e who made the payment may claim from his co-debtors only on the share which corresponds to each [co-debtor]."[40] Of course, the decision as to who the State will go after and the extent of the amount to be claimed falls within the discretion and prerogative of the COA. As provided for in Section 16.3 of COA Circular 2009-006:

> 16.3 The liability of persons determined to be liable under an ND/NC shall be **solidary** and **the Commission may go against any person liable without prejudice to the latter's claim against the rest of the persons liable**. (Emphasis supplied)

That being said, it must be observed that a disallowed amount under a Notice of Disallowance does not only comprise of amounts received by guilty public officials but also of amounts unwittingly received by **passive recipients**. This begs the following question: *should the erring public officer be held liable for the return of the entire disallowed amount, including the amounts received by passive recipients*? To this end, the nature of a passive recipient's liability must be examined under

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[39] *AFP Retirement and Separation Benefits System v. Sanvictores*, 793 Phil. 442, 451 (2016); emphasis and underscoring supplied.

[40] CIVIL CODE, Article 1217.

the perspective of the civil law principles of *solutio indebiti* and unjust enrichment.

II. The Civil Law Perspective

As preliminarily discussed, the main thrust of the Administrative Code is to exact accountability from public officials in the performance of official duties. For this reason, the Administrative Code requires a clear showing of bad faith, malice, or gross negligence on the part of the public officer in the performance of official duties before recovery of losses to the government may be sought.

However, when it comes to passive recipients, their civil liability is not premised on any bad faith, malice, or gross negligence, but rather, based on the application of the principles of *solutio indebiti* and unjust enrichment pursuant to the provisions of the Civil Code. Needless to state, when it comes to the Civil Code, there is no presumption of regularity because the individual is not viewed in his capacity as a State functionary, but rather, as an ordinary civil person. Consequently, **the requirement to clearly show the existence of bad faith, malice, or gross negligence, as required in the Administrative Code, is not necessary to hold an individual liable under the provisions of the Civil Code**.

In the case of *Siga-an v. Villanueva*,[41] the Court elucidated on the *quasi* contract of *solutio indebiti*:

> Article 2154 of the Civil Code explains the principle of *solutio indebiti*. Said provision provides that if something is received when there is no right to demand it, and it was unduly delivered through mistake, the obligation to return it arises. In such a case, a creditor-debtor relationship is created under a quasi-contract whereby the payor becomes the creditor who then has the right to demand the return of payment made by mistake, and the person who has no right to receive such payment becomes obligated to return the same. **The quasi-contract of *solutio indebiti* harks back to the ancient principle that no one shall enrich himself unjustly at the expense of another**.[42] (Emphasis supplied)

[41] 596 Phil. 760 (2009).

[42] Id. at 772-773.

In the same case, the Court observed that "[t]he principle of *solutio indebiti* applies where (1) a payment is made when there exists no binding relation between the payor, who has no duty to pay, and the person who received the payment; and (2) the payment is made through mistake, and not through liberality or some other cause."[43] These requisites clearly obtain in the case of passive recipients who, by mistake of the erring approving/authorizing officer, were able to unduly receive compensation from disbursements later disallowed by the COA. Indeed, from a strictly technical point of view, there would be no legal duty to pay compensation which contravenes or lacks basis in law. Hence, **as a general rule, passive recipients, notwithstanding their good faith, should be liable to return disallowed amounts they have respectively received on the basis of *solutio indebiti***. To note, this same general rule must equally apply to approving/authorizing officers who have **not** acted in bad faith, with malice, or with gross negligence because while they may not be held civilly liable under Section 38 (1), Chapter 9, Book I of the Administrative Code, they are still subject to return the amounts unduly received by them on the basis of *solutio indebiti*. In this respect, they may also be considered as passive recipients.

At this juncture, it is crucial to underscore that good faith cannot be appreciated as a defense against an obligation under *solutio indebiti* as it is "'forced' by operation of law upon the parties, not because of any intention on their part but in order to prevent unjust enrichment."[44] Moreover, it is discerned that the complete absolution of passive recipients from liability may indeed significantly reduce the funds to be recovered by the COA and as a result, cause great losses, or "fiscal leakage," to the detriment of the government. In other words, if non-return of passive recipients is the norm, then the COA's ability to recover may be greatly hampered. This skewed paradigm

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[43] Id. at 773.

[44] *Philippine National Bank v. Court of Appeals*, 291 Phil. 356, 367 (1993).

recognized in earlier jurisprudence should not anymore be propagated.

Nevertheless, the foregoing general rule mandating passive recipients to return should not apply where the disallowed compensation was **genuinely intended as payment for services rendered**. As examples, these disallowed benefits may be in the nature of performance incentives, productivity pay, or merit increases that have not been authorized by the Department of Budget and Management as an exception to the rule on standardized salaries. To be sure, Republic Act No. 6758,[45] otherwise known as the "Compensation and Position Classification Act of 1989," "standardize[s] salary rates among government personnel and do[es] away with multiple allowances and other incentive packages and the resulting differences in compensation among them."[46] Section 12 thereof lays down the general rule that all allowances of State workers are to be included in their standardized salary rates, with the exception of the following allowances:

1. Representation and transportation allowances (RATA);
2. Clothing and laundry allowances;
3. Subsistence allowances of marine officers and crew on board government vessels;
4. Subsistence allowance of hospital personnel;
5. Hazard pay;
6. Allowance of foreign service personnel stationed abroad; and
7. **Such other additional compensation not otherwise specified herein as may be determined by the DBM**. (Emphasis supplied)

The said allowances are the "only allowances which government employees can continue to receive in addition to their standardized salary rates." Conversely, "all allowances

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[45] Entitled "AN ACT PRESCRIBING A REVISED COMPENSATION AND POSITION CLASSIFICATION SYSTEM IN THE GOVERNMENT AND FOR OTHER PURPOSES," approved on August 21, 1989.

[46] *Gubat Water District v. COA*, supra note 18.

not covered by the [above] exceptions x x x are presumed to have been integrated into the basic standardized pay" and hence, subject to disallowance.

Indeed, bearing in mind its underlying premise, which is "the ancient principle that no one shall enrich himself unjustly at the expense of another,"[47] ***solutio indebiti*** **finds no application where there is no unjust enrichment**. Particularly, an employee cannot be deemed to have been unjustly enriched where the disallowed amounts were genuinely intended as consideration for services rendered as there would be a practical exchange of value resulting into no loss to the government. In such instance, the return of the disallowed amounts is excused, and may therefore, be validly retained by the recipient. Further, the Court may also determine in the proper case *bona fide* exceptions, depending on the purpose and nature of the amount disallowed relative to the attending circumstances.

As earlier intimated, the treatment of passive recipient liability has a direct effect to the extent of the amount to be returned by erring approving/authorizing officers held solidarily liable under Section 38 (1), Chapter 9, Book I in relation to Section 43, Chapter 5, Book VI of the Administrative Code. When passive recipients are excused to return disallowed amounts for the reason that they were genuinely made in consideration for rendered services, or for some other *bona fide* exceptions determined by the Court on a case to case basis, **the erring approving/ authorizing officers' solidary obligation for the disallowed amount is net of the amounts excused to be returned by the recipients (net disallowed amount). The justifiable exclusion of these amounts signals that no proper loss should be recognized in favor of the government, and thus, bars recovery of civil liability to this extent**. Accordingly, since there is a justified reason excusing the return, the State should not be allowed a **double recovery** of these amounts from the erring public officials and individuals notwithstanding their bad faith, malice or gross negligence. **Besides, even if the**

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[47] *Ramie Textiles, Inc. v. Mathay, Sr.*, 178 Phil. 482, 487 (1979).

amount to be recovered is limited in this sense, these erring public officers and those who have confederated and conspired with them[48] **are subject to the appropriate administrative and criminal actions which may be separately and distinctly pursued against them**.

III. Guidelines

All things considered, the following guidelines should be observed in disallowance cases for the guidance of the bench, bar, and the public:

1. Approving/authorizing public officers who were clearly shown to have acted in bad faith, with malice, or with gross negligence, are all solidarily liable for the return of the net disallowed amount. The net disallowed amount is the total disallowed amount minus the amounts excused to be returned by recipients (see exception in Guideline 3).

2. Those who have conspired or confederated with the approving/authorizing officers as stated in Guideline 1 are likewise solidarily liable with such officers for the net disallowed amount. Again, the net disallowed amount is the total disallowed amount minus the amounts excused to be returned by recipients (see exception in Guideline 3).

3. As a general rule, passive recipients, including approving/authorizing public officers who were not clearly shown to have acted in bad faith, with malice, or with gross negligence but had received disallowed amounts they have approved/authorized and thus also considered as passive recipients, are liable to return the amounts they have respectively received on the basis of *solutio indebiti*.

As an exception to this general rule, recipients — whether passive recipients or even erring approving/authorizing officers

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[48] Section 16.1.4 of COA Circular No. 2009-006 provides:

16.1.4 Public officers and other persons who **confederated or conspired** in a transaction which is disadvantageous or prejudicial to the government shall be held liable **jointly and severally** with those who benefited therefrom. (Emphases supplied)

— are excused to return the disallowed amounts only if the amounts were genuinely intended in consideration for services rendered, or when reasonably excused by the Court due to *bona fide* exceptions depending on the purpose and nature of the amounts disallowed relative to the attending circumstances.

4. The foregoing civil liabilities notwithstanding, the State may pursue any other appropriate administrative or criminal actions against erring public officers and individuals involved in any unlawful expenditure case pursuant to existing laws and jurisprudence.

IV. Application to the Case at Bar

In this case, the COA disallowed the total amount of ₱7,706,253.10 pertaining to additional allowances given on top of the basic salary of the government employees involved. These are the Economic Crisis Assistance (ECA), Monetary Augmentation of Municipal Agency (MAMA), Agricultural Crisis Allowance (ACA), and Mitigation Allowance to Municipal Employees (MAME),[49] which, by nature, are all forms of financial assistance. The persons held liable were Municipal Mayor Mario M. Madera (Madera), Municipal Accountant Beverly C. Mananguite, and Municipal Budget Officers Carissa D. Galing and Josefina O. Pelo (Madera, *et al.*), and all other payees stated in the notices of disallowance.[50] As correctly ruled by the *ponencia*, Madera, *et al.*, being the approving/authorizing officers, did not act in bad faith as there was no clear showing of any dishonest purpose, motive or intent, or ill will, when they granted these benefits to the payees involved. Quite the contrary, it was demonstrated that the resolutions and ordinances used as basis for the grant of these allowances were intended as financial assistance to municipal employees brought about by the effects of Typhoon *Yolanda*.[51] The amounts were then so disbursed for this purpose, despite the fact that they were

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[49] *Ponencia*, pp. 4-5.

[50] Id. at 4-6.

[51] See id. at 7.

technically unlawful expenditures for contravening Section 12[52] of RA 6758,[53] or the "Salary Standardization Law." Moreover, these additional allowances had been customarily granted over the years and that no previous disallowance was issued by the COA against similar allowances of such nature. Finally, the resolutions and ordinances, used as basis for these disbursements have not been invalidated, and hence, presumed to be valid.[54]

Taking these circumstances, Madera, *et al.* — the approving/authorizing officers who were not clearly shown to have acted in bad faith, with malice, or with gross negligence, are not civilly liable for the disallowed amounts under Section 38 (1), Chapter 9, Book I of the Administrative Code despite the legal propriety of the COA's reasons for disallowance.

As the disallowed amounts in this case, *i.e.*, the subject ECA, MAMA, ACA, and MAME, were given as financial assistance in the wake of a significant calamity, *i.e.*, the onslaught brought about by typhoon *Yolanda*, it is acceptable to excuse their return on humanitarian and social justice considerations. Accordingly,

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[52] Section 12. *Consolidation of Allowances and Compensation*. — **All allowances, except for representation and transportation allowances; clothing and laundry allowances; subsistence allowance of marine officers and crew on board government vessels and hospital personnel; hazard pay; allowances of foreign service personnel stationed abroad; and such other additional compensation not otherwise specified herein as may be determined by the DBM**, shall be **deemed included in the standardized salary rates herein prescribed**. Such other additional compensation, whether in cash or in kind, being received by incumbents only as of July 1, 1989 not integrated into the standardized salary rates shall continue to be authorized.

Existing additional compensation of any national government official or employee paid from local funds of a local government unit shall be absorbed into the basic salary of said official or employee and shall be paid by the National Government. (Emphasis and underscoring supplied)

[53] Entitled "AN ACT PRESCRIBING A REVISED COMPENSATION AND POSITION CLASSIFICATION SYSTEM IN THE GOVERNMENT AND FOR OTHER PURPOSES," also known as the "COMPENSATION AND POSITION CLASSIFICATION ACT OF 1989" (July 1, 1989).

[54] See *ponencia*, p. 7.

the subject notices of disallowance should be affirmed with modification as ruled in the *ponencia*. Again, it must be emphasized, that the exoneration of Madera, *et al.*, from civil liability is without prejudice to the proper administrative or criminal actions that may be separately and distinctly pursued against them in accordance with law and jurisprudence.

SEPARATE CONCURRING OPINION

LEONEN, *J.*:

Before this Court are Mario Madera, Beverly Mananguite, Carissa Galing, and Josefina Pelo — the mayor, municipal accountant, and budget officers, respectively, of the municipality of Mondragon, Northern Samar. In their Petition for Certiorari under Rule 64 of the Rules of Court, they question the disallowances of Sangguniang Bayan Ordinance No. 08 and Sangguniang Bayan Resolution Nos. 41, 42, 43, and 48, series of 2013, which had granted various allowances[1] to the municipality's officials and employees amounting to ₱7,706,253.10.[2] They likewise contest being jointly and severally liable to refund the disbursed amounts, insisting that they approved the disbursements in good faith.

I concur with the *ponencia* that respondent Commission on Audit was correct in issuing the Notices of Disallowance, and that the public officers who authorized the disallowed benefits should be free of liability. Nevertheless, I qualify the additional guidelines on the liability that may attach to the authorizing officers, as well as the recipients (either passive or active) of the disallowed benefits.

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I agree with the *ponencia* that petitioners applied the wrong

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[1] Ponencia, p. 2. These disallowed allowances were: (1) Economic Crisis Assistance; (2) Monetary Augmentation of Municipal Agency; (3) Agricultural Crisis Assistance; and (4) Mitigation Allowance to Municipal Employees.

[2] Id. at 4.

reglementary period in filing their Petition. A petition for *certiorari* under Rule 64 applies Rule 65 provisions suppletorily. Although the sections for a petition for certiorari under Rule 64 and the ones under Rule 65 are almost identical, they provide different reglementary periods: Rule 64 provides a period of 30 days, while Rule 65 gives a period of 60 days.

To be sure, Rule 64 governs reviews of judgments or final orders of the Commission of Audit. Thus, its reglementary period will prevail here.

The 30-day period for filing a petition for certiorari began when petitioners received respondent's Decision on February 23, 2018. When they moved for reconsideration five days later, the reglementary period was interrupted. Thus, when petitioners received the subsequent Resolution on November 12, 2018, they still had 25 days, or until December 7, 2018, to file a petition. Unfortunately, they applied the 60-day period under Rule 65 and filed their petition on January 11, 2019.[3] Clearly, the Petition was filed out of time.

Nevertheless, I agree with the *ponencia* that this Petition presents an avenue to clarify the guidelines in cases involving disallowed benefits or incentives, as well as the corresponding liability of authorizing officers and recipients.[4]

II

It is well established that petitions for certiorari against Commission on Audit rulings are only granted when there is a sufficient finding of grave abuse of discretion. This is to give deference to the specialization of the Commission, whose power is constitutionally endowed:

> SECTION 2. (1) The Commission on Audit shall have the power, authority, and duty to examine, audit, and settle all accounts pertaining to the revenue and receipts of, and expenditures or uses of funds

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[3] Id. at 10.

[4] Id.

and property, owned or held in trust by, or pertaining to, the Government, or any of its subdivisions, agencies, or instrumentalities, including government-owned or controlled corporations with original charters, and on a post-audit basis[.][5]

In *Yap v. Commission on Audit*:[6]

We have previously declared that it is the general policy of the Court to sustain the decisions of administrative authorities, especially one that was constitutionally created like herein respondent COA, not only on the basis of the doctrine of separation of powers, but also of their presumed expertise in the laws they are entrusted to enforce. It is, in fact, an oft-repeated rule that findings of administrative agencies are accorded not only respect but also finality when the decision and order are not tainted with unfairness or arbitrariness that would amount to grave abuse of discretion. Thus, only when the COA acted without or in excess of jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction, may this Court entertain a petition for certiorari under Rule 65 of the Rules of Court.

There is grave abuse of discretion when there is an evasion of a positive duty or a virtual refusal to perform a duty enjoined by law or to act in contemplation of law as when the judgment rendered is not based on law and evidence but on caprice, whim and despotism.[7] (Citations omitted)

Under Article IX-D, Section 2 (2) of the 1987 Constitution, the Commission on Audit shall have exclusive authority to "promulgate accounting and auditing rules and regulations, including those for the prevention of irregular, unnecessary, excessive, extravagant, or unconscionable expenditures, or uses of government funds and properties." This was reiterated in Section 33 of the Government Auditing Code of the Philippines,[8] which states:

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[5] CONST., art. IX-D, sec. 2 (1).

[6] 633 Phil. 174 (2010) [Per J. Leonardo-De Castro, En Banc].

[7] Id. at 195-196.

[8] Presidential Decree No. 1445 (1978).

SECTION 33. Prevention of irregular, unnecessary, excessive, or extravagant expenditures of funds or uses of property; power to disallow such expenditures. — The Commission shall promulgate such auditing and accounting rules and regulations as shall prevent irregular, unnecessary, excessive, or extravagant expenditures or uses of government funds or property.

The constitutional commission is granted enough autonomy and authority to fulfill its role of maintaining checks and balances within the government. In *Delos Santos v. Commission on Audit*,[9] this Court, in upholding the Commission on Audit's disallowance of the irregularly disbursed Priority Development Assistance Fund, stated:

> At the outset, it must be emphasized that the *CoA is endowed with enough latitude to determine, prevent, and disallow irregular, unnecessary, excessive, extravagant or unconscionable expenditures of government funds*. It is tasked to be vigilant and conscientious in safeguarding the proper use of the government's, and ultimately the people's, property. *The exercise of its general audit power is among the constitutional mechanisms that gives life to the check and balance system inherent in our form of government*.
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> Corollary thereto, it is the general policy of the Court to sustain the decisions of administrative authorities, especially one which is constitutionally-created, such as the CoA, not only on the basis of the doctrine of separation of powers but also for their presumed expertise in the laws they are entrusted to enforce. Findings of administrative agencies are accorded not only respect but also finality when the decision and order are not tainted with unfairness or arbitrariness that would amount to grave abuse of discretion. It is only when the CoA has acted without or in excess of jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction, that this Court entertains a petition questioning its rulings.[10] (Emphasis supplied, citation omitted)

Nevertheless, pursuant to the Constitution, the Commission on Audit's power to disallow is limited to transactions deemed

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[9] 716 Phil. 322 (2013) [Per J. Perlas-Bernabe, En Banc].

[10] Id. at 332-333.

"irregular, unnecessary, excessive, extravagant, illegal, or unconscionable"[11] expenditures or uses of government funds and property.[12]

Illegal expenditures are simply those that are contrary to law.[13] On the other hand, irregular, unnecessary, excessive, extravagant, or unconscionable transactions are comprehensively defined in Commission on Audit Circular No. 2012-003,[14] as follows:

"IRREGULAR" EXPENDITURES[15]

The term "irregular expenditure" signifies an expenditure incurred without adhering to established rules, regulations, procedural guidelines, policies, principles or practices that have gained recognition in laws. Irregular expenditures are incurred if funds are disbursed without conforming with prescribed usages and rules of discipline. There is no observance of an established pattern, course, mode of action, behavior, or conduct in the incurrence of an irregular expenditure. A transaction conducted in a manner that deviates or departs from, or which does not comply with standards set is deemed irregular. A transaction which fails to follow or violates appropriate rules of procedure is, likewise, irregular.

"UNNECESSARY" EXPENDITURES[16]

The term pertains to expenditures which could not pass the test of prudence or the diligence of a good father of a family, thereby denoting non-responsiveness to the exigencies of the service. Unnecessary

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[11] *Miralles v. Commission on Audit*, 818 Phil. 380, 384 (2017) [Per J. Bersamin, En Banc].

[12] Id. at 390-391.

[13] Id. at 392.

[14] Updated Guidelines for the Prevention and Disallowance of Irregular, Unnecessary, Excessive, Extravagant and Unconscionable Expenditures, available at <https://www.coa.gov.ph/phocadownload/userupload/Issuances/Circulars/Circ2012/COA_C2012-003.pdf> (last accessed on September 7, 2020).

[15] COA Circular No. 2012-003 (2012), item no. 3.1.

[16] COA Circular No. 2012-003 (2012), item no. 4.1.

expenditures are those not supportive of the implementation of the objectives and mission of the agency relative to the nature of its operation. This would also include incurrence of expenditure not dictated by the demands of good government, and those the utility of which cannot be ascertained at a specific time. An expenditure that is not essential or that which can be dispensed with without loss or damage to property is considered unnecessary. The mission and thrusts of the agency incurring the expenditures must be considered in determining whether or not an expenditure is necessary.

"EXCESSIVE" EXPENDITURES[17]

The term "excessive expenditures" signifies unreasonable expense or expenses incurred at an immoderate quantity and exorbitant price. It also includes expenses which exceed what is usual or proper, as well as expenses which are unreasonably high and beyond just measure or amount. They also include expenses in excess of reasonable limits.

"EXTRAVAGANT" EXPENDITURES[18]

The term "extravagant expenditure" signifies those incurred without restraint, judiciousness and economy. Extravagant expenditures exceed the bound of propriety. These expenditures are immoderate, prodigal, lavish, luxurious, grossly excessive, and injudicious.

"UNCONSCIONABLE" EXPENDITURES[19]

The term "unconscionable expenditures" pertains to expenditures which are unreasonable and immoderate, and which no man in his right sense would make, nor a fair and honest man would accept as reasonable, and those incurred in violation of ethical and moral standards.

Based on these definitions, it is apparent that the disallowed benefits here are illegal, irregular government expenditures.

In issuing the disallowances, respondent cited Section 12 of the Salary Standardization Law, which explicitly provides that the allowances not specified in the provision would be deemed included in the standard salary rates prescribed. It provides:

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[17] COA Circular No. 2012-003 (2012), item no. 5.1.

[18] COA Circular No. 2012-003 (2012), item no. 6.1.

[19] COA Circular No. 2012-003 (2012), item no. 7.1.

SECTION 12. Consolidation of Allowances and Compensation. — All allowances, except for representation and transportation allowances; clothing and laundry allowances; subsistence allowance of marine officers and crew on board government vessels and hospital personnel; hazard pay; allowances of foreign service personnel stationed abroad; and such other additional compensation not otherwise specified herein as may be determined by the DBM, shall be deemed included in the standardized salary rates herein prescribed. Such other additional compensation, whether in cash or in kind, being received by incumbents only as of July 1, 1989 not integrated into the standardized salary rates shall continue to be authorized.

Existing additional compensation of any national government official or employee paid from local funds of a local government unit shall be absorbed into the basic salary of said official or employee and shall be paid by the National Government.

Respondent also cited Item II of its Circular No. 2013-003 to emphasize that "[g]overnment officials and employees shall be entitled only to allowances, incentives, and other benefits expressly provided by law, and other statutory authority, and the rules and regulations promulgated by competent authority."[20] As the allowances issued by petitioners were not authorized in Circular No. 2013-003 or in the exemptions mentioned in the Salary Standardization Law, it is patently clear that petitioners' claim that respondent's disallowances were erroneous is without basis.

Aside from this, petitioners did not present in their Petition any new arguments regarding respondent's supposed grave abuse of discretion. Instead, they focused on their liability to refund the disallowed amounts. For that, I concur with the *ponencia* that petitioners failed to show that respondent had gravely abused its discretion in issuing the disallowances. The disallowances are, therefore, valid.

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[20] COA Circular 2013-003 (2013), item II. Reiteration of Audit Disallowance of Payments without Legal Basis of Allowances, Incentives, and Other Benefits of Government Officials and Employees in the NGAs, LGUs, and GOCCs and their Subsidiaries, available at <https://www.coa.gov.ph/phocadownloadpap/userupload/Issuances/Circulars/Circ2013/COA_C2013-003.pdf> (last accessed on September 7, 2020).

III

In discussing the liability of authorizing or certifying officers of disallowed disbursements, the *ponencia* took the opportunity to clarify conflicting jurisprudence on the issue. It adequately discussed the applicable laws and regulations and reviewed the relevant cases, which led to this Court's creation of a new set of guidelines in determining liability. In doing so, the *ponencia* went on to absolve petitioners from their liability to refund the disallowed amounts disbursed.

While I ultimately agree with the *ponencia*'s conclusion, I propose that the nature of the transaction or the reason behind its disallowance be the basis in determining the liability of authorizing officers and recipients, instead of whether or not they acted in good faith.

Under Section 16.1 of Commission on Audit Circular No. 2009-006,[21] the liability of public officers and other persons for audit disallowances shall be determined based on the following: (a) the nature of the disallowance; (b) the duties of officers/employees concerned; (c) the extent of their participation in the disallowed transaction; and (d) the amount of damage or loss to the government.[22] Thus, the determination of liability will begin with identifying the reason behind the disallowance. Depending on the nature of the disallowance, various presumptions and liabilities for the responsible officers and employees will attach.

For expenditures disallowed for being excessive, extravagant, or ostentatious, there is no question that the Commission on Audit may properly demand their refund. The authorizing officers are to pay the disallowed benefits, not only for their blatant disregard of laws and regulations, but for their gross excessiveness and unreasonableness. That said, they would have no justification to excuse them from liability. This is illustrated in *National Electrification Administration v. Commission on*

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[21] Rules and Regulations on the Settlement of Accounts (2009).

[22] COA Circular No. 2009-006 (2009), sec. 16.1.

Audit,[23] where this Court found that the officers who had approved the advanced release of salary increases — which were later disallowed — blatantly disregarded the President's directives and orders. Accordingly, all officers and employees who had received the compensation were directed to refund the amounts received.

This was similarly applied in *Casal v. Commission on Audit*,[24] in which the incentive awards for employees, also released without authority from the President, were disallowed. This Court said:

> The failure of petitioners-approving officers to observe all these issuances cannot be deemed a mere lapse consistent with the presumption of good faith. Rather, even if the grant of the incentive award were not for a dishonest purpose as they claimed, the patent disregard of the issuances of the President and the directives of the COA amounts to gross negligence, making them liable for the refund thereof. The following ruling in *National Electrification Administration v. COA* bears repeating:
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> This case would not have arisen had NEA complied in good faith with the directives and orders of the President in implementation of the last phase of the Salary Standardization Law II. The directives and orders are clearly and manifestly in accordance with all relevant laws. The reasons advanced by NEA in disregarding the President's directives and orders are patently flimsy, even ill-conceived. This cannot be countenanced as it will result in chaos and disorder in the executive branch to the detriment of public service.[25] (Citations omitted)

On the other hand, this Court has been more forgiving in disallowed expenditures that were unnecessary — those not supportive of the government agency's main objective, inessential, or dispensable. For these, the participants need not

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[23] 427 Phil. 464 (2002) [Per J. Carpio, En Banc].

[24] 538 Phil. 634 (2006) [Per J. Carpio-Morales, En Banc].

[25] Id. at 644-645.

return the expenditures to allow the executives or implementers leeway in carrying out their functions. They are expected to create contingencies in light of circumstances that are fluid and susceptible to change. Given that the Commission on Audit merely reviews expenditures in hindsight, to make authorizing officers liable to return the disallowed amounts will hamper the decision-making of an executive and further constrain the implementation of government programs. Moreover, it may cause a chilling effect on government officials.

To avoid this, authorizing officers for unnecessary disallowances generally have no liability to return the expenditures. Nevertheless, liability may attach if it is proven that the officers purposely and knowingly issued the unnecessary funds.

As for disallowances of illegal or irregular expenditures, a more objective approach is taken. First, the authorizing officer's basis for issuing the benefit must be reviewed. For one to be absolved of liability, the following requisites must be present: (1) a certificate of availability of funds, pursuant to Section 40[26] of the Administrative Code; (2) an in-house or a Department of Justice legal opinion; (3) lack of jurisprudence disallowing a similar case; (4) the issuance of the benefit is traditionally

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[26] SECTION 40. Certification of Availability of Funds. — No funds shall be disbursed, and no expenditures or obligations chargeable against any authorized allotment shall be incurred or authorized in any department, office or agency without first securing the certification of its Chief Accountant or head of accounting unit as to the availability of funds and the allotment to which the expenditure or obligation may be properly charged.

No obligation shall be certified to accounts payable unless the obligation is founded on a valid claim that is properly supported by sufficient evidence and unless there is proper authority for its incurrence. Any certification for a non-existent or fictitious obligation and/or creditor shall be considered void. The certifying official shall be dismissed from the service, without prejudice to criminal prosecution under the provisions of the Revised Penal Code. Any payment made under such certification shall be illegal and every official authorizing or making such payment, or taking part therein or receiving such payment, shall be jointly and severally liable to the government for the full amount so paid or received.

practiced within the agency and no prior disallowance has been issued; and (5) on the question of law, that there is a reasonable textual interpretation on the expenditure or benefit's legality.

If all of these requirements are met, the authorizing officer is absolved of liability for having shown that they exercised the diligence of a good father of the family in the performance of their duty.

In *Blaquera v. Alcala*,[27] officers and employees of several government agencies questioned the disallowance of productivity incentive benefits and their corresponding liability to return these benefits. While this Court upheld the disallowance since the benefits exceeded what was allowed, it excused the return of the amount, absent a showing of bad faith or malice. It held:

> Considering, however, that all the parties here acted in good faith, we cannot countenance the refund of subject incentive benefits for the year 1992, which amounts the petitioners have already received. *Indeed, no indicia of bad faith can be detected under the attendant facts and circumstances. The officials and chiefs of offices concerned disbursed such incentive benefits in the honest belief that the amounts given were due to the recipients and the latter accepted the same with gratitude, confident that they richly deserve such benefits.*[28] (Emphasis supplied)

In *Lumayna v. Commission on Audit*,[29] officers of the municipality of Mayoyao, Ifugao assailed the disallowance of the 5% salary increase of municipality personnel, as well as the directive for them to refund. This Court affirmed the disallowance but excused both the authorizing officials and passive employees from returning the disallowed amounts. It stated:

> In the instant case, although the 5% salary increase exceeded the limitation for appropriations for personal services in the Municipality

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[27] 356 Phil. 678 (1998) [Per J. Purisima, En Banc].

[28] Id. at 765-766.

[29] 616 Phil. 929 (2009) [Per J. Del Castillo, En Banc].

of Mayoyao, this alone is insufficient to overthrow the presumption of good faith in favor of petitioners as municipal officials. It must be mentioned that the disbursement of the 5% salary increase of municipal personnel was done under the color and by virtue of resolutions enacted pursuant to LBC No. 74, and was made only after the *Sangguniang Panlalawigan* declared operative the 2002 municipal budget. In fact, the Notice of Disallowance was issued only on 16 May 2003, after the municipality had already implemented the salary increase. Moreover, in its Resolution No. 2004-1185, the *Sangguniang Panlalawigan* reconsidered its prior disallowance of the adoption of a first class salary schedule and 5% salary increase of the Municipality of Mayoyao based on its finding that the municipal officials concerned acted in good faith, thus:

. . . . . .

Furthermore, granting *arguendo* that the municipality's budget adopted the incorrect salary rates, this error or mistake was not in any way indicative of bad faith. Under prevailing jurisprudence, mistakes committed by a public officer are not actionable, absent a clear showing that he was motivated by malice or gross negligence amounting to bad faith. It does not simply connote bad moral judgment or negligence. Rather, there must be some dishonest purpose or some moral obliquity and conscious doing of a wrong, a breach of a sworn duty through some motive or intent, or ill will. It partakes of the nature of fraud and contemplates a state of mind affirmatively operating with furtive design or some motive of self-interest or ill will for ulterior purposes. *As we see it, the disbursement of the 5% salary increase was done in good faith. Accordingly, petitioners need not refund the disallowed disbursement in the amount of ₱895,891.50.*[30] (Emphasis supplied, citations omitted)

In both *Blaquera* and *Lumayna*, the authorizing officers granted the disallowed benefits believing that they had basis for their implementation, and only upon audit did they discover that these exceeded what was allowed. Thus, when the authorizing officers have a colorable basis for the benefits that were disallowed, this Court refrains from ordering them to refund the wrongfully released amounts. The officers will not be liable to return the amount released.

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[30] Id. at 944-945.

Recipients of the disallowed benefits enjoy an even wider leniency on liability. For illegal, irregular, or unnecessary transactions, recipients are not made liable, so as to prevent government employees from losing confidence in their superiors, lest the efficiency of administrative implementation and policy execution suffer. An exception is seen in *Dubongco v. Commission on Audit*,[31] where this Court affirmed the disallowance of collective negotiation agreement incentives and ordered both the authorizing officers and recipients to return the incentives received:

> In this case, it must be emphasized that the grant of CNA Incentive was financed by the CARP Fund, contrary to the express mandate of PSLMC Resolution No. 4, Series of 2002, A.O. No. 135 and DBM Budget Circular No. 2006-01. This is not simply a case of a negotiating union lacking the authority to represent the employees in the CNA negotiations, or lack of knowledge that the CNA benefits given were not negotiable, or failure to comply with the requirement that payment of the CNA Incentive should be a one-time benefit after the end of the year. Here, the use of the CARP Fund has no basis as the three issuances governing the grant of CNA Incentive could not have been any clearer in that the CNA Incentive shall be sourced solely from savings from released MOOE allotments for the year under review. Consequently, the payees have no valid claim to the benefits they received.
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> Hence, it can be gleaned that unlike ordinary monetary benefits granted by the government, *CNA Incentives require the participation of the employees who are the intended beneficiaries. The employees indirectly participate through the negotiation between the government agency and the employees' collective negotiation representative and directly, through the approval of the CNA by the majority of the rank-and-file employees in the negotiating unit. Thus, the employees' participation in the negotiation and approval of the CNA, whether direct or indirect, allows them to acquire knowledge as to the*

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[31] G.R. No. 237813, March 5, 2019, <https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/65051> [Per J.C. Reyes, En Banc].

prerequisites for the valid release of the CNA Incentive. They could not feign ignorance of the requirement that CNA Incentive must be sourced from savings from released MOOE.[32] (Emphasis supplied, citations omitted)

In *Dubongco*, the recipients were made to return the incentives since these were borne from a collective negotiation agreement that they themselves ratified, meaning they were not mere passive recipients and could not deny their participation in its disbursement. Likewise, in *Department of Public Works and Highways, Region IV-A v. Commission on Audit*,[33] the recipients of the disallowed benefits were obligated to return the amounts they had received since they negotiated and approved the disbursement despite no valid justification.

Nevertheless, *Dubongco* admits of an exception where recipients of collective negotiation agreement incentives may be excused from refund: if it is proven that they were not consulted in the agreement's ratification, and that they did not participate in disbursing the disallowed funds. Thus, in *Silang v. Commission on Audit*,[34] which also involved a collective negotiation agreement, the city mayor and *Sanggunian* members, who had approved the disallowed benefits, as well as the negotiating members of the union, were held liable for refund. Conversely, the passive recipients were not required to return the amounts since they did not participate in the acts that led to the disbursement. This Court held:

In this case, the majority of the petitioners are the LGU of Tayabas, Quezon's rank-and-file employees and bona fide members of UNGKAT (named-below) who received the 2008 and 2009 CNA Incentives on the honest belief that UNGKAT was fully clothed with the authority to represent them in the CNA negotiations. As the records bear out, there was no indication that these rank-and-file employees, except the UNGKAT officers or members of its Board of Directors named

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[32] Id.

[33] G.R. No. 237987, March 19, 2019, <https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/65047> [Per. J. Reyes, Jr., En Banc].

[34] 769 Phil. 327 (2015) [Per J. Perlas-Bernabe, En Banc].

below, had participated in any of the negotiations or were, in any manner, privy to the internal workings related to the approval of said incentives; hence, under such limitation, the reasonable conclusion is that they were mere passive recipients who cannot be charged with knowledge of any irregularity attending the disallowed disbursement. Verily, good faith is anchored on an honest belief that one is legally entitled to the benefit, as said employees did so believe in this case. Therefore, said petitioners should not be held liable to refund what they had unwittingly received.

. . . . . .

Similarly, such finding of good faith cannot be made to apply to Silang, who, as City Mayor, approved the allowances, as well as the local *Sanggunian* members, who enacted the ordinances authorizing the payment of the subject CNA Incentives. As City Mayor and members of the local *Sanggunian*, they are presumed to be acquainted with — and, in fact, even duty bound to have full knowledge of — the requirements under the applicable policies for the valid grant of CNA Incentives, *i.e.*, the requisite accreditation of UNGKAT with the CSC at the time of the signing of the CNA as required under DBM Budget Circular No. 2006-01. Indeed, knowledge of basic procedure is part and parcel of their shared fiscal responsibility under Section 305 (1), Chapter I, Title V, Book II of the LGC[.][35] (Emphasis supplied, citations omitted)

It must be highlighted that the liability of the responsible officers and recipients is solidary only to the extent of what should be refunded. This does not include the amounts received by the rank and file who were absolved of liability to return. This is pursuant to *Rotoras v. Commission on Audit*,[36] in which this Court stated that the nature of the obligation of approving officials to return "depends on the circumstances":

The defense of good faith is, therefore, no longer available to members of governing boards and officials who have approved the disallowed allowance or benefit. Neither would the defense be available to the rank and file should the allowance or benefit be the subject of

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[35] Id. at 347-349.

[36] G.R. No. 211999, August 20, 2019, <http://sc.judiciary.gov.ph/8130/> [Per J. Leonen, En Banc].

collective negotiation agreement negotiations. Furthermore, the rank and file's obligation to return shall be limited only to what they have actually received. They may, subject to the Commission on Audit's approval, agree to the terms of payment for the return of the disallowed funds. For the approving board members or officers, however, the nature of the obligation to return — whether it be solidary or not — depends on the circumstances.[37]

In this regard, Section 16.3 of Commission on Audit Circular No. 2009-006, series of 2009, states:

16.3 The liability of persons determined to be liable under an ND/NC shall be solidary and the Commission may go against any person liable without prejudice to the latter's claim against the rest of the persons liable.

Based on this, those held liable have a solidary obligation only to the extent of what should be refunded. This does not include the amounts received by those absolved of liability.

For ease of review, the matrix below illustrates the liability of each of the parties involved given the different reasons behind the disallowance.

Nature of Disallowance	**Presumption and Liability**		**Extent of Obligation for Refund**
Illegal, Irregular	Authorizing officer Not liable if the following are present: 1) Certificate of availability of funds;	Recipients Generally, not liable *Except* if the recipients participated in the negotiations	Solidary, but see *Rotoras v. Commission on Audit* regarding extent.

[37] Id. at 24.

	2) In-house or Department of Justice legal opinion; 3) No precedent disallowing a similar case in jurisprudence; 4) It is traditionally practiced within the agency and no prior disallowance has been issued; and 5) There is a reasonable textual interpretation on its legality.	for the implementation and release of the benefits. *Exception to exception:* Recipient is a rank-and-file employee who was absent during the negotiations and did not ratify the agreement releasing the benefit.	
Unnecessary	Authorizing officers and recipients are not liable, unless it is shown that expenditures are purposely or knowingly made.		Solidary, but see *Rotoras v. Commission on Audit* regarding extent.
Excessive, Extravagant, Unconscionable, Ostentatious	Authorizing officers and recipients are liable.		Entire amount is disallowed.

With this matrix, we move away from a subjective determination of "good faith," and therefore provide better guidelines for the management of branches and offices in government.

IV

In this case, the disbursements were validly disallowed for being illegal and irregular. However, circumstances exist showing that petitioners exercised the diligence of a good father of the family when they implemented the release of the benefits.

It appears that petitioners implemented the disbursements in an honest belief that their release and distribution had legal basis. Records show that a Certificate of Availability of Funds was issued, showing that the municipality had enough savings to release the amounts. Moreover, believing that the disbursements were lawful, the *Sangguniang Bayan* even issued ordinances and resolutions appropriating a budget for the benefits. These disallowed benefits have been traditionally released to the municipality's employees and have never been disallowed in the past. There are also no jurisprudential precedents disallowing benefits of the like.

Clearly present here are all the requisites that absolve petitioners from liability on the amounts disbursed. Thus, as the *ponencia* declares, to order them to reimburse the disallowed amounts, including those received by the rank and file, would lead to undue prejudice.[38]

This is not to say that public officers are not to be held to a higher standard and do not need to be more circumspect in the performance of their duties. Given that our public officials discharge their functions as a public trust,[39] they are accountable for their actions that affect government funds and property they hold in trust for the public. However, when it is shown that they followed the required guidelines in the policy implementation, there is no need to penalize them by asking them to refund the disbursed amounts which they believed to be legal.

ACCORDINGLY, I vote to **PARTIALLY GRANT** the Petition.

CONCURRING OPINION

INTING, *J.*:

I concur.

I expound on my views on the liability of the actors involved in a disallowed transaction, as well as the concept of "good faith" in disallowance cases.

I

The *ponente* recognizes that disallowance cases have been ruled upon on a case-to-case basis. One could even go as far as saying that each disallowance case is unique, inasmuch as the *facts* behind, *nature of the amounts* involved, and *individuals* so charged in one notice of disallowance are hardly ever the same with any other.

I share my observations on the facts behind commonly cited jurisprudence on disallowance cases.

Blaquera v. Hon. Alcala[1] *(Blaquera)*, the pioneer case law on good faith and the obligation to reimburse in disallowance cases, was a case on the *constitutionality* (*via* petitions for *certiorari* and prohibition) of Administrative Order (AO) Nos. 29 and 268 on various grounds, which directed the concerned government agencies that paid out *productivity incentive bonuses* to return the same for being excessive and without prior approval of the President. The Court eventually upheld the AOs, but did not require the *recipients* nor the *officials* concerned to refund the bonuses on account of good faith, *viz.*:

> Considering, however, that all the parties here acted in good faith, we cannot countenance the refund of subject incentive benefits for the year 1992, which amounts the petitioners have already received. Indeed, no *indicia* of bad faith can be detected under the attendant facts and circumstances. The *officials and chiefs of offices* concerned disbursed such incentive benefits in the honest belief that the amounts given were due to the *recipients* and the latter accepted the same with gratitude, confident that they richly deserve such benefits.[2] (Underscoring and italics supplied.)

The following factual milieu sets *Blaquera* apart from other cases involving *illegal disbursements* of compensation and bonuses: *first*, it was not integrally a disallowance case inasmuch as it was primarily a constitutionality case. The petitioners therein came to the Court assailing the validity of administrative

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[1] 356 Phil. 678 (1998).

[2] *Id.* at 765-766.

issuances, not the issuance of notices of disallowance or any Commission on Audit (COA) decision holding them, public officials, liable for the disallowed amount. Notably, the Court only mentioned in passing that the corporate auditor disallowed the subject disbursement, without referring to a specific notice of disallowance nor identifying the officials charged therein. *Second*, as already observed by Associate Justice Arturo D. Brion in his Separate Opinion in *TESDA v. COA Chairperson Tan, et al.*,[3] the case involved "numerous petitioners, numbering in several hundreds, that would make a refund very cumbersome" and "small amounts (about ₱1,000.00 per plaintiff) whose aggregate sum was not commensurate with the administrative costs of enforcing the refund." *Third*, by the time the case was brought to the Court, the government had already recovered a significant portion of the bonuses ordered to be refunded by way of salary deductions from those who received them.

Thereafter, the Court applied *Blaquera* in a number of cases involving the disallowance of illegal disbursements to exempt *passive* recipients[4] from their obligation to refund the amounts paid or released to them.

In contrast, a number of subsequent jurisprudence citing *Blaquera*, such as *Executive Director Casal v. Commission on Audit*,[5] *Lumayna, et al. v. Commission on Audit*,[6] *TESDA v. COA Chairperson Tan, et al.*,[7] *Silang, et al. v. Commission on Audit*,[8] *Metropolitan Naga Water District, et al. v. Commission on Audit*,[9] *National Transmission Corporation v. Commission on Audit, et al.*,[10] *Nayong Filipino Foundation, Inc. v.*

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[3] 729 Phil. 60 (2014).

[4] See *Silang, et al. v. Commission on Audit*, 769 Phil. 327 (2015).

[5] 538 Phil. 634 (2006).

[6] 616 Phil. 929 (2009).

[7] *TESDA v. COA Chairperson Tan, et al., supra* note 3.

[8] *Silang, et al. v. Commission on Audit, supra* note 4.

[9] 782 Phil. 281 (2016).

[10] 800 Phil. 618 (2016).

Chairperson Pulido Tan, et al.,[11] and *Balayan Water District v. Commission on Audit*,[12] were all disallowance cases *per se* that reached the Court *via* petitions for *certiorari* under Rule 64 in relation to Rule 65, assailing various COA decisions which upheld the disallowance of disbursements, and the corresponding liability of officials and recipients involved therein.

Following is a tabular comparison of the above-cited disallowance cases' pertinent details:

Disallowed Disbursement	**Ground for Disallowance**	**Persons involved**	**Charged in Notice of Disallowance/ Notice of Suspension?**	**Liable in SC Ruling?**
1) Executive Director Casal v. Commission on Audit				
Incentive award	Illegal disbursement	Recipients	Yes	Not liable *cf.* good faith
		Officers	No	-NA-
		Certifier/ Approver	Yes	Liable *cf.* patent disregard of issuances
2) Lumayna, et al. v. Commission on Audit				
5% salary increase	Illegal disbursement	Recipients	No	-NA-
		Officers	Yes (*e.g.*, municipal mayor, Sangguniang Bayan members who approved the resolution)	Not liable *cf.* good faith
		Certifier/ Approver	Yes (*e.g.*, budget officer, municipal accountant)	Not liable *cf.* good faith

[11] 818 Phil. 406 (2017).

[12] G.R. No. 229780, January 22, 2019.

Disallowed Disbursement	**Ground for Disallowance**	**Persons involved**	**Charged in Notice of Disallowance/ Notice of Suspension?**	**Liable in SC Ruling?**
3) TESDA v. COA Chairperson Tan, et al.				
Extraordinary and Miscellaneous Expenses (EME)	Illegal disbursement	Recipients	Yes	Not liable *cf.* good faith; honest belief that they were entitled to amount
		Officers	Yes (*e.g.*, TESDA Director-Generals who directed the payment and were, at the same time, recipients thereof)	Liable
		Certifier/ Approver	Yes	Not liable (no dicussion on good faith)
4) Silang, et al. v. Commission on Audit				
Collective Negotitation Agreement Incentives	Irregular disbursement	Recipients	Yes	In general, not liable *cf.* good faith
		Officers	Yes (*e.g.*, mayor, local sanggunian members who enacted ordinances authorizing payment)	Liable
		Certifier/ Approver	No	-NA-

Disallowed Disbursement	**Ground for Disallowance**	**Persons involved**	**Charged in Notice of Disallowance/ Notice of Suspension?**	**Liable in SC Ruling?**
5) Metropolitan Naga water District, et al. v. Commission on Audit				
Backpay differential of Cost of Living Allowance (COLA)	Illegal disbursement	Recipients	No	Not charged under the Notice of Disallowance but nonetheless adjudged as not liable for being mere passive recipients (*cf. Silang v. COA*)
		Officers	No	-NA-
		Certifier/ Approver	Yes	Not liable *cf.* good faith
6) National Transmission Corporation v. Commission on Audit, et al.				
Separation benefits	Illegal disbursement	Recipients	Yes (one payee only)	Not liable for being recipient (*cf. Silang v. COA*)
		Officers	Yes (*e.g.* Board of Directors)	Not liable (abandoned *Lopez v. MWSS*[13] but still exonerated *pro hac vice*)
		Certifier/ Approver	No	-NA-

[13] 501 Phil. 115 (2005).

Disallowed Disbursement	**Ground for Disallowance**	**Persons involved**	**Charged in Notice of Disallowance/ Notice of Suspension?**	**Liable in SC Ruling?**
7) Nayong Filipino Foundation, Inc. v. Chairperson Pulido Tan, et al.				
a. Anniversary bonus	Illegal disbursement	Recipients	No	Not liable *cf.* good faith
		Officers	No (e.g., Board of Trustees and corporate officers	Not liable *cf.* good faith, relied on existing jurisprudence
		Certifier/ Approver	Yes	No mention
b. Extra cash gift and excess honoraria to Bids and Awards Committee and Technical Working Group	Illegal disbursement	Recipients	No	Not liable *cf.* good faith
		Officers	No (e.g., Board of Trustees and corporate officers)	Liable
		Certifier/ Approver	Yes	Liable
8) Balayan Water District v. Commission on Audit				
COLA	Illegal	Recipients	Details of the Notice of Disallowance not expressly mentioned	Not liable for being mere passive recipient (*cf. Silang v. COA*)
		Officers	Yes	Liable
		Certifier/ Approver	No	-NA-

Some may interpret the variations in the Court's rulings as "inconsistencies" or "flip-flopping." However, the disparity in the Court's *ratio decidendi* is only a logical result of the different circumstances present in and most of the time unique to each disallowance case.

One notable factor that may have caused divergent outcomes in these cases is the manner by which the COA charges persons under notices of disallowance. Under the COA Rules,[14] custodians of public funds,[15] certifying officers,[16] approving/authorizing officials,[17] co-conspirators in the illegal disbursement,[18] and the recipients[19] of illegal payments may be held liable for a disallowance. Verily, there may be disbursements that may not have involved the participation of a custodian or a so-called co-conspirator. In contrast, the involvement of approving/certifying officers and recipients is indispensible inasmuch as these transactions would have necessarily been approved first prior to its release and the payment thereof received by a certain individual/entity. Thus, it is reasonable to expect that all notices of disallowance will be initially issued against these indispensable parties. Yet, as evident from the table above, there had been cases where the COA omitted the certifying/approving or the recipients from charges for no specified reason.

It becomes apparent that there are rarely two disallowance cases that will fall squarely on each others' factual foundation. The present case, for example, involves the payment of economic crisis assistance, monetary augmentation of municipal agency, agricultural crisis assistance, and mitigation allowance to

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[14] Section 16.1, Prescribing the Use of the Rules and Regulations on Settlement of Accounts, COA Circular No. 006-09, [September 15, 2009].

[15] Section 16.1.1, *id.*

[16] Section 16.1.2, *id.*

[17] Section 16.1.3, *id.*

[18] Section 16.1.4, *id.*

[19] Section 16.1.5, *id.*

municipal employees, as well as approving/certifying officers and payees alike. In other words, its factual background is distinct and separable.

That the guidelines as laid out by the *ponente* have now become more fluid is the most reasonable manner by which the Court could settle the present controversy, without unduly restricting the Court's exercise of judicial review in future disallowance cases. These rules appropriately serve as guideposts for subsequent rulings and at the same time allow the Court sufficient leeway to decide on these issues on a case-to-case basis.

II

The *ponencia* makes an excellent distinction between/among the different aspects of one's personal liability for a disallowance: the *civil* aspect, which is "based on the loss incurred by the government because of the transaction," and the *administrative/criminal* aspects, which are founded on "irregular or unlawful acts attending the transaction."

At this juncture, I find it important to clearly differentiate between *payees* and *approving/certifying officers*, to particularize their respective roles in the transactions. These roles must always be delineated because appreciating good faith in favor of the parties and determining their respective liabilities are founded on the extent of their participation in the transaction.

The statutory basis of liability over illegal expenditures is found in the Administrative Code of 1987,[20] *viz.*:

SECTION 43. *Liability for Illegal Expenditures*. — Every expenditure or obligation authorized or incurred in violation of the provisions of this Code or of the general and special provisions contained in the annual General or other Appropriations Act shall be void. Every payment made in violation of said provisions shall be illegal and **every official or employee authorizing or making such payment, or taking part therein**, and **every person receiving such**

[20] Section 43, Chapter 5, Book VI, Executive Order No. 292.

payment shall be jointly and severally liable to the Government for the full amount so paid or received. (Emphasis supplied.)

In her separate opinion, Senior Associate Justice Estela M. Perlas-Bernabe aptly identified the *three categories* of persons *solidarily liable* for disallowed amounts under the above-cited provision, to wit: (i) every official or employee authorizing or making such payment, (ii) those taking part therein, and (iii) recipients.

In the case at bar, the notice of disallowance charged persons under the first and third categories: approvers/certifiers *who were at the same time payees* of the disallowed amounts and payees *whose participation was limited to their receipt of the amounts*.

A. Approving/Certifying Officers

Verily, the first category encompasses all public officers who authorized/approved an illegal disbursement. However, not all seals of approval and authority, albeit in relation to the same transaction, bear the same weight.

Inasmuch as each officer's liability is grounded on the extent of his participation,[21] there must be a distinction among the different classes of "approving/certifying" officers involved in the disbursement according to the specific bounds of their authority, *viz.*: (i) the authority to direct or instruct the payment of a disbursement *per se*; (ii) the authority to act on these instructions/directives and approve documents to effect payment thereof (*i.e.*, vouchers, checks, etc.); and (iii) the authority to certify that funds are available for the disbursement and that the allotment therefor may be charged accordingly.

(i) Authority to direct or instruct the payment of a disbursement *per se*.

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[21] Section 29 (1), Article VI, 1987 Constitution. See also Section 16.1, Prescribing the Use of the Rules and Regulations on Settlement of Accounts, COA Circular No. 006-09, [September 15, 2009].

Depending on the government agency or instrumentality, the power to disburse public funds is vested exclusively in the person/body named in their respective original charters, *e.g.*, the department secretary, commission chairperson, local chief executive/sanggunian, or board of directors/trustees. Stated differently, only these officials are authorized to instruct/direct the payment of a disbursement through the issuance of a memorandum, letter of instruction, ordinance, or board resolution, as the case may be.

Certainly, this power is not unfettered. Their exercise therefor must yield to the fundamental rule that public funds shall only be used to pay expenditures pursuant to an appropriation law or other specific statutory authority.[22] Otherwise, their directive/instruction shall be *ultra vires*, rendering the disbursement illegal. Thus, these typically *high-ranking officials* shall answer for the resulting disallowance for acting beyond the authority entrusted to them.

(ii) Authority to act on instructions/directives and approve documents to effect payment thereof.

In the ordinary course of fiscal administration, the higher authority's directive (*i.e.*, memorandum, resolution, etc.) shall trigger the *disbursement process*. In turn, another group of "approving officers" shall prepare, review, and sign the relevant documents (*i.e.*, purchase orders, forms, disbursement/check vouchers, checks, etc.) to release the funds. Each one shall perform his duty in accordance with the applicable internal control procedures and rules mandated by the COA and/or the government instrumentality itself.

Expenses paid in violation of "established rules, regulations, procedural guidelines, policies, principles or practices that have gained recognition in law" (*e.g.*, without the approval of the authorized signatory of checks, without the required supporting documents, etc.) are illegal or irregular[23] expenditures, as the

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[22] Section 45, Chapter 8, Subtitle B, Title I, Book V, Administrative Code of 1987.

[23] Paragraph 3.1, COA Circular No. 85-55-A, [September 8, 1985].

case may be. The erring official shall be liable for the subsequent disallowance for failure to perform his specific duty in the disbursement process.

(iii) Authority to certify that funds are available for the disbursement and that the allotment therefor may be charged accordingly.

The Administrative Code of 1987[24] requires every disbursement to be accompanied by a *certification* issued by the Chief Accountant or head of accounting of the government instrumentality concerned, attesting to the following: a) that funds are available for the disbursement, b) that the corresponding allotment may be charged, and c) that the expense/disbursement is *valid, authorized,* and *supported by sufficient evidence*.[25]

A disbursement not validly certified according to this rule shall be disallowed for being illegal.[26] In turn, under the COA rules, a certifying officer shall be liable for the disallowed amount according to the extent of his certification.[27] Further, he shall be dismissed from service and susceptible to criminal prosecution.[28]

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[24] Section 40, Chapter 5, Book VI, Administrative Code of 1987.

[25] Section 40, Chapter 5, Book VI, Administrative Code of 1987 provides, "x x x No obligation shall be certified to accounts payable unless the obligation is founded on a valid claim that is properly supported by sufficient evidence and unless there is proper authority for its incurrence."

[26] Section 40, Chapter 5, Book VI, Administrative Code of 1987 provides, "x x x Any payment made under such certification shall be illegal and every official authorizing or making such payment, or taking part therein or receiving such payment, shall be jointly and severally liable to the government for the full amount so paid or received."

[27] Section 16.1.2, Prescribing the Use of the Rules and Regulations on Settlement of Accounts, COA Circular No. 006-09, [September 15, 2009].

[28] Section 40, Chapter 5, Book VI, Administrative Code of 1987 provides, "x x x The certifying official shall be dismissed from the service, without prejudice to criminal prosecution under the provisions of the Revised Penal Code."

It is clear from the foregoing that the source of an approving officer's obligation to refund the disallowed amount is a *quasi-delict*,[29] since his liability hinges on the manner by which he exercised his functions. In this case, the defense of good faith is available to him. Further, he shall be presumed to have regularly performed his duties, provided there is no clear *indicia* of bad faith, showing patent disregard of his responsibility.

B. Payees

On the other hand, simple *payees* have no role in the transaction, much less the disbursement approval process, other than receiving and economically benefiting from the payment. Their liability is not based on an administrative duty to perform a task.

"Participation" does not only comprehend one's performance of an official function (public officer). One is seen to have participated in an unlawful expenditure if he had a role therein, even as a person who did not sign or approve any of the disbursements but merely received payment thereof. Their erroneous receipt is what gives rise to the liability to return.

Thus, payees are liable to return the amount simply because it was paid by mistake. No one should ever be unjustly enriched, especially if public funds are involved. Since their liability is a quasi-contract (*solutio indebiti*), good faith can never be an excuse. In other words, *payees* cannot be absolved from liability using the same reasoning to exempt *approvers/certifiers*, simply because the nature of their liability for the transaction is not the same.

III

The general rule remains to be holding a payee liable for a disallowed amount he has received because it violates the principle against unjust enrichment. It is only in *truly exceptional circumstances*, as shown and established by the antecedent facts, that the Court may exonerate him from the obligation. The unique

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[29] Article 2176, Civil Code.

exempting circumstance present in the case at bar is the onslaught of the typhoon Yolanda, which justifies the Court's appreciation of social justice considerations.

Also, the *ponencia* now enunciates to henceforth consider certain employee benefits as *bona fide* exceptions to the application of *solutio indebiti*, inasmuch as these were paid in exchange of services rendered.

Parenthetically, that a disallowed payment happened to be in the nature of employee benefits to compensate service rendered should not diminish or extinguish altogether the recipients' obligation to return. In theory, these benefits were given to compensate services rendered. However, is the payment itself supported by law? This virtual exchange of value (disbursement *vis-a-vis* service rendered by civil servant) should not be the sole consideration in upholding the payment's validity.

For example, merit increases are given for exemplary performance in public office. However, there are cases where the increases are excessive and totally lacking of legal basis because they were computed using a rate or factor in excess of what was provided under the law. In the computation of separation pay, there may be instances where the law clearly provides for a 1.5 multiplier and, yet, an employee nonetheless receives separation pay computed with a different one (*e.g.*, 2.0 or 2.5, etc.), simply because the board of directors or the president took the initiative to reward their employees. Furthermore, there are also instances where employees are given allowances, which were intended to be consumed as part of the performance of their official functions, but clearly in violation of the Salary Standardization Law.

To stress, the uniqueness of each disallowance case simply demands the Court to individually evaluate the attending facts. While the Court recognizes certain rare exceptions, We will remain discriminating in exonerating payees from liability in the future.

Accordingly, I submit my concurrence to the *ponencia*.

FIRST DIVISION

[G.R. No. 244609. September 8, 2020]

PEOPLE OF THE PHILIPPINES, *Plaintiff-Appellee, v.* **XXX,**[*] *Accused-Appellant.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; THE TRIAL COURT'S ASSESSMENT THEREOF AND ITS FACTUAL FINDINGS ARE ACCORDED GREAT RESPECT; CASE AT BAR.— We see no reason to depart from the trial court's assessment of AAA's credibility, which was affirmed by the appellate court. AAA's recollection of her ordeal clearly established that XXX had carnal knowledge of her at the time when everyone in the house was in their deep slumber. XXX dragged AAA by her feet, pulled her to a solitary spot behind the television set, undressed her, and inserted his penis into her vagina despite her objection and resistance. It bears reiterating that the Court accords great respect and even confer finality to the findings of the trial court as to matters which are factual in nature as well as its assessment of the credibility of witnesses. The trial court's firsthand observation and direct estimation of the witnesses place it in a unique position to observe and weigh that elusive and incommunicable evidence of the witnesses' deportment on the stand while testifying. Thus, when there is no clear showing that the trial court's factual findings were tainted with arbitrariness or that the trial court overlooked or misapplied relevant facts and circumstances, or inadequately calibrated the witnesses' credibility, the reviewing court is bound by its assessment, as in this case.

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[*] At the victim's instance or, if the victim is a minor, that of his or her guardian, the complete name of the accused may be replaced by fictitious initials and his or her personal circumstances blotted out from the decision if the name and personal circumstances of the accused may tend to establish or compromise the victim's identity, in accordance with the Amended Administrative Circular No. 83-2015 dated September 5, 2017.

2. CRIMINAL LAW; RAPE; THE GRAVAMEN OF RAPE IS SEXUAL INTERCOURSE WITH A WOMAN AGAINST HER WILL; CASE AT BAR.— XXX contends that the victim's narration is unbelievable considering that in the normal course of things, AAA should have been awakened at the time she was dragged or when her shortpants and underwear were being removed. It is worthy to stress that AAA was attacked in the middle of the night while she was sleeping beside her two cousins. There is nothing absurd about the fact that AAA remained in slumber until the rape incident for XXX could not have carried out his sexual advances had he been unwary and reckless in pulling AAA out of their floor bed set up and awakened her at once. Furthermore, ordinary human experience would tell us that it is not impossible for a young child to not be awakened while being dragged because those who have children know that most young children, and even those in their pre-teens, can be transferred, moved, or even lifted from one place to another by their parents and can even be undressed and dressed up without waking up.

Suffice it to state that XXX's contention pertains to an insignificant detail which does not bear on the very fact of the commission of the offense. Neither does it render XXX's bestial act physically impossible nor inconceivable. For the gravamen of rape is sexual intercourse with a woman against her will or without her consent, which was fully sustained by the evidence presented by the prosecution.

3. ID.; ID.; RAPE DEFIES CONSTRAINT OF TIME AND SPACE AND CAN BE COMMITTED EVEN IN THE MOST UNLIKELY PLACES; CASE AT BAR.— [T]he Court cannot concede to XXX's asseveration that the rape incident was improbable because other members of the household were present in the same room where the rape was perpetrated. It has been repeatedly announced that lust respects no time and place; rape defies constraint of time and space. The abominable crime of rape can be committed even in places where people congregate, in parks, along the roadside, within school premises, inside a house where there are other occupants, and even in the same room where other members of the family are also sleeping. It is known to happen even in the most unlikely places. Hence, it is not impossible or incredible for the members of the victim's

family to be in deep slumber and not to be awakened while a sexual assault is being committed.

4. ID.; ID.; ELEMENTS OF RAPE UNDER THE REVISED PENAL CODE AND UNDER R.A. NO. 7610; CASE AT BAR.— The Court agrees with the CA that all the elements for the crime of rape under Article 266-A (1) are extant in this case, to wit: (1) the male offender had carnal knowledge of a woman; and (2) he accomplished the said act through force, threat or intimidation. However, we cannot sustain the appellate court's pronouncement that the prosecution has established XXX's criminal liability under Section 5(b), Article III of R.A. No. 7610. . . .

The elements of Section 5(b) 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.

5. ID.; ID.; PHRASES "CHILDREN EXPLOITED IN PROSTITUTION" AND "OTHER SEXUAL ABUSE" UNDER R.A. NO. 7610, EXPLAINED; CASE AT BAR.— For a charge under R.A. No. 7610 to prosper, it is crucial that the minor victim is a child "exploited in prostitution or other sexual abuse." The Court scrutinized the phrases "children exploited in prostitution" and "other sexual abuse" in *People v. Tulagan* in this wise:

> To avoid further confusion, We dissect the phrase "children exploited in prostitution" as an element of violation of Section 5 (b) of R.A. No. 7610. As can be gathered from the text of Section 5 of R.A. No. 7610 and having in mind that the term "lascivious conduct" has a clear definition which does not include "sexual intercourse," the phrase "children exploited in prostitution" contemplates four (4) scenarios: (a) a child, whether male or female, who for money, profit or any other consideration, indulges in lascivious conduct; (b) a female child, who for money, profit or any other consideration, indulges in sexual intercourse; (c) a child, whether male or female, who due to the coercion or influence of any adult, syndicate or group, indulges in lascivious conduct; and (d) a female, due to the coercion or influence of any adult, syndicate or group, indulge in sexual intercourse.

> The term "other sexual abuse," on the other hand, is construed in relation to the definitions of "child abuse" under Section 3, Article I of R.A. No. 7610 and "sexual abuse" under Section 2(g) of the *Rules and Regulations on the Reporting and Investigation of Child Abuse Cases.* In the former provision, "child abuse" refers to the maltreatment, whether habitual or not, of the child which includes sexual abuse, among other matters. In the latter provision, "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.
>
> . . .
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> In light of the foregoing definition, AAA cannot be deemed to be a child "exploited in prostitution and other sexual abuse." Patently, the second element of Section 5(b) of R.A. No. 7610 is lacking in this case. Accordingly, XXX should be convicted for rape under Article 266-A(l) in relation to Article 266-B of the RPC, as amended by R.A. No. 8353. . . .

CAGUIOA, *J., concurring opinion*:

1. CRIMINAL LAW; SEXUAL ABUSE AGAINST MINORS; REPUBLIC ACT NO. (RA) 7610; SECTION 5(B) THEREOF APPLIES ONLY WHERE THE CHILD-VICTIM IS "EXPLOITED IN PROSTITUTION OR SUBJECTED TO OTHER SEXUAL ABUSE" (EPSOSA).— I reiterate and maintain my position in *People v. Tulagan* that RA 7610 and the RPC, as amended by RA 8353, "have different spheres of application; they exist to complement each other such that there would be no gaps in our criminal laws. They were not meant to operate simultaneously in each and every case of sexual abuse committed against minors."

In other words, for an act to be considered under the purview of Section 5(b), RA 7610, "the following essential elements need to be proved: (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." Hence, it is not enough that the victim be under 18 years of age.

2. ID.; ID.; THE ELEMENT OF THE VICTIM BEING A CHILD EPSOSA MUST BE BOTH ALLEGED AND PROVED FOR SECTION 5(B) OF R.A. NO. 7610 TO APPLY; CASE AT BAR.— The element of the victim being EPSOSA — *a separate and distinct element* — must first be both alleged and proved before a conviction under Section 5(b), RA 7610 may be reached.

Specifically, in order for Section 5(b) to apply as compared to Article 336 of the RPC, as amended by RA 8353, it must be **alleged** and **proved** that the child — (1) for money, profit, or any other consideration or (2) due to the coercion or influence of any adult, syndicate, or group — indulges in sexual intercourse or lascivious conduct.

In this case, the Information only alleged that the victim was a 13-year old minor, but it did not allege that she was EPSOSA. Likewise, there was no proof or evidence presented during the trial that she indulged in sexual intercourse or lascivious conduct either for a consideration, or due to the coercion or influence of any adult.

APPEARANCES OF COUNSEL

The Solicitor General for plaintiff-appellee.
Public Attorney's Office for accused-appellant.

D E C I S I O N

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

On appeal is the Decision[1] dated October 8, 2018 of the Court of Appeals — Cebu City (CA) in CA-G.R. CEB CR-HC No. 02356, affirming with modification the Decision[2] dated July

[1] Penned by Associate Justice Louis P. Acosta, with Associate Justices Pamela Ann Abella Maxino and Dorothy P. Montejo-Gonzaga, concurring; *rollo*, pp. 5-17.

[2] Penned by Presiding Judge Bienvenido M. Montalla; CA *rollo*, pp. 29-40.

11, 2016 of the Regional Trial Court (RTC), Branch 16, Naval, Biliran in Criminal Case No. N-2881.

In an Information dated September 13, 2012, XXX was charged with the crime of rape in relation to Republic Act (R.A.) No. 7610, otherwise known as the Special Protection of Children Against Abuse, Exploitation and Discrimination Act. The Information reads:

> That on or about the 8th day of May 2012, at around 1:00 o'clock early dawn, more or less, in x x x and within the jurisdiction of this Honorable Court, above-named accused, being the brother-in-law of AAA,[3] a 13-year old girl, actuated by lust and with evident premeditation, did then and there, willfully, unlawfully, and feloniously, undress said AAA and had carnal knowledge with said minor-victim, against the latter's will, to her damage and prejudice.
>
> Contrary to law and with aggravating circumstance of minority.[4]

When arraigned on July 3, 2014, XXX entered a plea of not guilty to the crime charged.[5] Trial on the merits ensued.

At the time of the alleged commission of the crime, XXX and AAA were at the house of AAA's aunt. XXX is the live-in partner of AAA's sister.

Version of the Prosecution

On May 8, 2012, at around 1:00 a.m., AAA and her two cousins were sleeping on the floor of the main sala of her aunt's house. She averred that she was dragged by XXX towards the place where their plates were placed. XXX undressed AAA, inserted his penis into her vagina and made a push and pull movement. She tried to shout but XXX covered her mouth.

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[3] Pursuant to the ruling in *People v. Cabalquinto*, 533 Phil. 703 (2006), the real name of the victim, her personal circumstances and other information which tend to establish or compromise her identity, as well as those of her immediate family or household members shall not be disclosed to protect her privacy and fictitious initials shall instead be used.

[4] CA *rollo*, p. 29.

[5] Id. at 29.

After satisfying himself, XXX threatened AAA that he would kill her mother if she tells anyone about the incident.[6] A few days after, AAA told her sister-in-law about her experience in the hands of XXX. Thereafter, she reported the rape incident to the police.[7]

On June 29, 2012, Dr. Fernando B. Montejo (Dr. Montejo), Municipal Health Officer of the place where AAA resides, examined her and found that her vaginal orifice manifested signs that it had been penetrated.[8]

Version of the Defense

XXX testified in his defense. He averred that on the date of the alleged rape incident, he and his live-in partner slept in a room while AAA, her parents, and her cousins slept in the sala of the house of AAA's aunt. He maintained that he has a good relationship with his live-in partner and AAA.[9]

The RTC Ruling

On July 11, 2016, the RTC rendered a Decision finding XXX guilty of the crime charged, *viz.*:

> WHEREFORE, judgment is hereby rendered finding [XXX] guilty beyond reasonable doubt of the crime of Rape in relation to R.A. 7610 and imposing upon him the penalty of Reclusion Perpetua. The accused is ordered to pay moral damages in the amount of P75,000.00 and exemplary damages of P50,000.00.
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> SO ORDERED.[10]

The RTC rejected XXX's defense of denial in light of the prosecution's positive identification that it was him who raped

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[6] Id. at 52.

[7] Id. at 52-53.

[8] Id. at 53.

[9] Id. at 17-18.

[10] Id. at 39-40.

AAA. Citing *People v. Espenilla*,[11] the court *a quo* stressed that no young girl would concoct a tale of defloration, allow the examination of her private parts and undergo the expense, trouble and inconvenience, not to mention the trauma and scandal of a public trial if she was not in fact raped. It enunciated that by the quantum of evidence presented against XXX, the prosecution has overcome the presumption of his innocence and proved his guilt beyond reasonable doubt.

Aggrieved, XXX appealed his conviction.

The Court of Appeals Ruling

In its Decision dated October 8, 2018, the CA-Cebu affirmed the RTC's ruling with modification by increasing the exemplary damages to ₱75,000.00 and ordering XXX to pay ₱75,000.00 as civil indemnity *ex delicto*. It found no cogent reason to deviate from the findings of the RTC regarding the credibility of AAA and the prosecution witnesses who testified in a straightforward and convincing manner about the victim's ravishment.[12] The appellate court clarified that the applicable law in the instant case is R.A. No. 8353, otherwise known as The Anti-Rape Law of 1997, and not R.A. No. 7610.[13]

Hence, the instant appeal.

The Court's Ruling

The appeal is without merit.

On the basis of AAA's testimony, the RTC and the CA uniformly found that XXX had carnal knowledge of AAA against her will or without her consent. AAA testified in a clear, consistent, and categorical manner:

Q (Public Prosecutor): While you were in that house, what happened?

A [AAA]: During that time, my mother was not in the house, only the three of us, my cousins were sleeping, after that, I was dragged.

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[11] 718 Phil. 153 (2013).

[12] CA *rollo*, pp. 80-82.

[13] Id. at 84-86.

Q: You said you were dragged, who dragged you?

A: [XXX].

x x x x x x x x x

Q: You said that you were dragged, in what part of the house were you brought by [XXX]?

A: Towards the place where the plates were placed.

Q: After you were brought to that portion of the house, what happened next?

A: He undressed me.

Q: After he undressed you, what happened next?

A: After that, he inserted his penis to my vagina and made a push and pull movement.

Q: Did you not shout?

A: I tried to shout but my mouth was covered by him.

Q: You said that he inserted his penis into your vagina, why did you know that his penis was inserted into your vagina?

A: I know it because I felt pain.

Q: You said that the accused made push and pull movement after he inserted his penis into your vagina, what happened next after he made that act?

A: After that, he told me that if ever I will tell anyone of what he did, he will kill my mother, so, I did not tell my mother.

Q: Going back to where you said he was making a push and pull movement while his penis was inserted into vagina, were *(sic)* not able to shout at that moment?

A: I was not able to shout, he was covering my mouth.

Q: Did you not try to resist from his aggression?

A: No, Sir, he is strong, I am overpowered by him.[14]

We see no reason to depart from the trial court's assessment of AAA's credibility, which was affirmed by the appellate court.

[14] Id. at 80-82.

AAA's recollection of her ordeal clearly established that XXX had carnal knowledge of her at the time when everyone in the house was in their deep slumber. XXX dragged AAA by her feet, pulled her to a solitary spot behind the television set, undressed her, and inserted his penis into her vagina despite her objection and resistance. It bears reiterating that the Court accords great respect and even confer finality to the findings of the trial court as to matters which are factual in nature as well as its assessment of the credibility of witnesses. The trial court's firsthand observation and direct estimation of the witnesses place it in a unique position to observe and weigh that elusive and incommunicable evidence of the witnesses' deportment on the stand while testifying.[15] Thus, when there is no clear showing that the trial court's factual findings were tainted with arbitrariness or that the trial court overlooked or misapplied relevant facts and circumstances, or inadequately calibrated the witnesses' credibility, the reviewing court is bound by its assessment,[16] as in this case.

Furthermore, AAA's narration as to the fact of sexual intercourse was corroborated by the medical certificate issued by Dr. Montejo indicating that the latter's "hymen [was] not appreciated" and that her "vaginal orifice was penetrated."[17] In his direct examination, Dr. Montejo testified:

COURT:
Q: When is the hymen intact?

A: It is untouched.

Q: Was there a laceration?

A: I did not see the hymen.

Q: No more hymen. In your opinion as an expert, what caused the loss of the hymen?

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[15] *People v. Traigo*, 734 Phil. 726, 729 (2014).

[16] *People v. Santuille*, 800 Phil. 284, 290 (2016).

[17] CA *rollo*, pp. 32-33.

A: It was touched.

Q: One has sexual intercourse?

A: Yes. Sir.

Q: Here, the hymen was lacerated through sexual intercourse?

A: Yes, Sir.[18]

In bidding for acquittal, XXX impugns AAA's credibility and questions her claim that she was dragged on her feet while she was sleeping and that she was only awakened when he penetrated her. XXX asserts that AAA should have been awakened when she was dragged or during the time when she felt her short pants and underwear were being removed.[19]

The argument fails to persuade.

The prosecution has sufficiently established the sexual congress between XXX and AAA against the latter's will. XXX pulled AAA away from where she was sleeping and, when he found a convenient spot to satisfy his lust, forced himself on her, covered her mouth and let her suffer in silence. Such fact cannot be negated by AAA's account of the events that transpired prior to the sexual attack which XXX finds incredible.

XXX contends that the victim's narration is unbelievable considering that in the normal course of things, AAA should have been awakened at the time she was dragged or when her shortpants and underwear were being removed. It is worthy to stress that AAA was attacked in the middle of the night while she was sleeping beside her two cousins. There is nothing absurd about the fact that AAA remained in slumber until the rape incident for XXX could not have carried out his sexual advances had he been unwary and reckless in pulling AAA out of their floor bed set up and awakened her at once. Furthermore, ordinary human experience would tell us that it is not impossible for a young child to not be awakened while being dragged because

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[18] Id. at 61.

[19] Id. at 24.

those who have children know that most young children, and even those in their pre-teens, can be transferred, moved, or even lifted from one place to another by their parents and can even be undressed and dressed up without waking up.

Suffice it to state that XXX's contention pertains to an insignificant detail which does not bear on the very fact of the commission of the offense. Neither does it render XXX's bestial act physically impossible nor inconceivable. For the gravamen of rape is sexual intercourse with a woman against her will or without her consent,[20] which was fully sustained by the evidence presented by the prosecution.

Moreover, the Court cannot concede to XXX's asseveration that the rape incident was improbable because other members of the household were present in the same room where the rape was perpetrated. It has been repeatedly announced that lust respects no time and place; rape defies constraint of time and space.[21] The abominable crime of rape can be committed even in places where people congregate, in parks, along the roadside, within school premises, inside a house where there are other occupants, and even in the same room where other members of the family are also sleeping. It is known to happen even in the most unlikely places. Hence, it is not impossible or incredible for the members of the victim's family to be in deep slumber and not to be awakened while a sexual assault is being committed.[22]

In view thereof, the courts below correctly found XXX guilty of rape.

The RTC convicted XXX of rape in relation to R.A. 7610 but the CA, on appeal, modified the July 11, 2016 RTC Decision as to the damages awarded and the nomenclature of the offense and convicted XXX of rape under Article 266-A, paragraph 1 (a) of the Revised Penal Code, as amended by R.A. No. 8353.

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[20] *People v. Gragasin*, 613 Phil. 574, 587 (2009).

[21] *People v. XXX*, G.R. No. 225793, August 14, 2019.

[22] *People v. Bangsoy*, 778 Phil. 294, 303 (2016).

The Court agrees with the CA that all the elements for the crime of rape under Article 266-A (1) are extant in this case, to wit: (1) the male offender had carnal knowledge of a woman; and (2) he accomplished the said act through force, threat or intimidation.[23] However, we cannot sustain the appellate court's pronouncement that the prosecution has established XXX's criminal liability under Section 5 (b), Article III of R.A. No. 7610, which provides:

> Section 5. Child Prostitution and Other Sexual Abuse. — Children, whether male or female, who for money, profit, or any other consideration or due to the coercion or influence of any adult, syndicate or group, indulge in sexual intercourse or lascivious conduct, are deemed to be children exploited in prostitution and other sexual abuse.
>
> x x x x x x x x x
>
> (b) Those who commit the act of sexual intercourse or lascivious conduct with a child exploited in prostitution or subject to other sexual abuse; Provided, That when the victim is under twelve (12) years of age, the perpetrators shall be prosecuted under Article 335, paragraph 3, for rape and Article 336 of Act No. 3815, as amended, the Revised Penal Code, for rape or lascivious conduct as the case may be: Provided, That the penalty for lascivious conduct when the victim is under twelve (12) years of age shall be reclusion temporal in its medium period;
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> x x x x x x x x x

The elements of Section 5 (b) 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.[24]

For a charge under R.A. No. 7610 to prosper, it is crucial that the minor victim is a child "exploited in prostitution or other sexual abuse." The Court scrutinized the phrases "children exploited in prostitution" and "other sexual abuse" in *People v. Tulagan*[25] in this wise:

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[23] *People v. Chavez*, G.R. No. 235783, September 25, 2019.

[24] *People v. Jaime*, G.R. No. 225332, July 23, 2018.

[25] G.R. No. 227363, March 12, 2019.

To avoid further confusion, We dissect the phrase "children exploited in prostitution" as an element of violation of Section 5 (b) of R.A. No. 7610. As can be gathered from the text of Section 5 of R.A. No. 7610 and having in mind that the term "lascivious conduct" has a clear definition which does not include "sexual intercourse," the phrase "children exploited in prostitution" contemplates four (4) scenarios: (a) a child, whether male or female, who for money, profit or any other consideration, indulges in lascivious conduct; (b) a female child, who for money, profit or any other consideration, indulges in sexual intercourse; (c) a child, whether male or female, who due to the coercion or influence of any adult, syndicate or group, indulges in lascivious conduct; and (d) a female, due to the coercion or influence of any adult, syndicate or group, indulge in sexual intercourse.

The term "other sexual abuse," on the other hand, is construed in relation to the definitions of "child abuse" under Section 3, Article I of R.A. No. 7610 and "sexual abuse" under Section 2(g) of the *Rules and Regulations on the Reporting and Investigation of Child Abuse Cases*. In the former provision, "child abuse" refers to the maltreatment, whether habitual or not, of the child which includes sexual abuse, among other matters. In the latter provision, "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.

In *Quimvel*, it was held that the term "coercion or influence" is broad enough to cover or even synonymous with the term "force or intimidation." Nonetheless, it should be emphasized that "coercion or influence" is used in Section 5 of R.A. No. 7610 to qualify or refer to the means through which "any adult, syndicate or group" compels a child to indulge in sexual intercourse. On the other hand, the use of "money, profit or any other consideration" is the other mode by which a child indulges in sexual intercourse, without the participation of "any adult, syndicate or group." In other words, "coercion or influence" of a child to indulge in sexual intercourse is clearly exerted NOT by the offender whose liability is based on Section 5(b) of R.A. No. 7610 for committing sexual act with a child exploited in prostitution or other sexual abuse. Rather, the "coercion or influence" is exerted upon the child by "any adult, syndicate, or group" whose liability is found under Section 5(a) for engaging in, promoting, facilitating or inducing child prostitution, whereby the sexual intercourse is the necessary consequence of the prostitution.

For a clearer view, a comparison of the elements of rape under the RPC and sexual intercourse with a child under Section 5 (b) of R.A. No. 7610 where the offended party is between 12 years old and below 18, is in order.

Rape under Article 266-A (1) (a, b, c) under the RPC	**Section 5 (1) of R.A. No. 7610**
1. Offender is a man;	1. Offender is a man;
2. Carnal knowledge of a woman;	2. Indulges in sexual intercourse with a female child exploited in prostitution or other sexual abuse, who is 12 years old or below 18 or above 18 under special circumstances;
3. Through force, threat or intimidation; when the offended party is deprived of reason or otherwise unconscious; and by means of fraudulent machination or grave abuse of authority.	3. Coercion or influence of any adult, syndicate or group is employed against the child to become a prostitute.

As can be gleaned above, "force, threat or intimidation" is the element of rape under the RPC, while "due to coercion or influence of any adult, syndicate or group" is the operative phrase for a child to be deemed "exploited in prostitution or other sexual abuse," which is the element of sexual abuse under Section 5(b) of R.A. No. 7610. The "coercion or influence" is not the reason why the child submitted herself to sexual intercourse, but it was utilized in order for the child to become a prostitute. Considering that the child has become a prostitute, the sexual intercourse becomes voluntary and consensual because that is the logical consequence of prostitution as defined under Article 202 of the RPC, as amended by R.A. No. 10158 where the definition of "prostitute" was retained by the new law: x x x" (citations omitted and underscoring supplied).

In light of the foregoing definition, AAA cannot be deemed to be a child "exploited in prostitution and other sexual abuse."

Patently, the second element of Section 5 (b) of R.A. No. 7610 is lacking in this case. Accordingly, XXX should be convicted for rape under Article 266-A (1) in relation to Article 266-B of the RPC, as amended by R.A. No. 8353, and ordered to pay AAA the following: (a) ₱75,000.00 as civil indemnity; (b) ₱75,000.00 as moral damages; (c) ₱75,000.00 as exemplary damages; and (d) interest of 6% per annum on all damages awarded from the date of finality of this judgment until fully paid pursuant to prevailing jurisprudence.[26]

WHEREFORE, the appeal is **DENIED**. The Decision dated October 8, 2018 of the Court of Appeals-Cebu City in CA-G.R. CEB CR-HC No. 02356 is **AFFIRMED**.

SO ORDERED.

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

Caguioa, J., see concurring opinion.

FIRST DIVISION

PEOPLE OF THE PHILIPPINES, *Plaintiff-Appellee, v.* **XXX,**[*] *Accused-Appellant.*

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[26] *People v. Jugueta*, 783 Phil. 806 (2016).

[*] The identity of the victim or any information which could establish or compromise her identity, as well as those of her immediate family or household members, shall be withheld pursuant to Republic Act (RA) No. 7610, entitled "AN ACT PROVIDING FOR STRONGER DETERRENCE AND SPECIAL PROTECTION AGAINST CHILD ABUSE, EXPLOITATION AND DISCRIMINATION, AND FOR OTHER PURPOSES," approved on June 17, 1992; RA No. 9262, entitled "AN ACT DEFINING VIOLENCE AGAINST WOMEN AND THEIR CHILDREN, PROVIDING FOR PROTECTIVE MEASURES FOR VICTIMS, PRESCRIBING PENALTIES THEREFOR, AND FOR OTHER PURPOSES," approved on March 8, 2004; and Section 40 of A.M. No. 04-10-11-SC, otherwise known as the "Rule on Violence against Women and Their Children" (November 15, 2004). (See footnote 4 in *People v. Cadano, Jr.*, 729 Phil. 576, 578 [2014], citing *People v. Lomaque*, 710 Phil. 338, 342 [2013]. See also Amended Administrative Circular No. 83-2015, entitled "PROTOCOLS AND PROCEDURES IN

CONCURRING OPINION

CAGUIOA, *J.*:

I concur with the *ponencia* that the proper nomenclature of the crime for which the accused-appellant should be convicted is Rape under Article 266-A (1) in relation to 266-B of the Revised Penal Code (RPC), as amended by Republic Act No. (RA) 8353.

In this case, the Court of Appeals (CA) ruled that the prosecution was able to establish the accused-appellant's criminal liability under Section 5 (b), Article III of RA 7610.[1] It further held that at the time the accused-appellant had sexual intercourse with the victim on May 8, 2012, AAA was only a 13-year old minor. As such, the CA ruled that AAA is considered under the law as a child who is "exploited in prostitution or subjected to other sexual abuse"[2] (EPSOSA). Thus, accused-appellant's act may be qualified as a violation of Section 5 (b) of RA 7610.[3] However, the CA upheld the penalty of *reclusion perpetua* under Article 266-B of RA 8353 pursuant to the case of *People v. Ejercito*[4] wherein the Court held that the provisions of RA 8353 should prevail over Section 5 (b) of RA 7610.[5]

While the CA correctly ruled that the imposable penalty against the accused-appellant is *reclusion perpetua* under Article 266-B (1) of RA 8353, I agree with the *ponencia* that the accused-

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THE PROMULGATION, PUBLICATION, AND POSTING ON THE WEBSITES OF DECISIONS, FINAL RESOLUTIONS, AND FINAL ORDERS USING FICTITIOUS NAMES/PERSONAL CIRCUMSTANCES," dated September 5, 2017); *People v. XXX*, G.R. No. 235652, July 9, 2018, 871 SCRA 424.

[1] *Rollo*, p. 14.

[2] Id.

[3] Id.

[4] G.R. No. 229861, July 2, 2018, accessed at <https://elibrary. judiciary. gov.ph/thebookshelf/showdocs/1/64370>.

[5] *Rollo*, p. 15.

appellant should be convicted of the crime of Rape under **Article 266-A (1) in relation to Article 266-B of the RPC, as amended by RA 8353**, and not Rape in relation to Section 5 (b), Article III of RA 7610 as the element of EPSOSA was not duly proven by the prosecution.

I reiterate and maintain my position in *People v. Tulagan*[6] that RA 7610 and the RPC, as amended by RA 8353, "have different spheres of application; they exist to complement each other such that there would be no gaps in our criminal laws. They were not meant to operate simultaneously in each and every case of sexual abuse committed against minors."[7] Section 5 (b) of RA 7610 applies only to the **specific** and **limited instances** where the child-victim is EPSOSA.

In other words, for an act to be considered under the purview of Section 5 (b), RA 7610, "the following essential elements need to be proved: (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."[8] Hence, it is not enough that the victim be under 18 years of age. The element of the victim being EPSOSA — *a separate and distinct element* — must first be both alleged and proved before a conviction under Section 5 (b), RA 7610 may be reached.

Specifically, in order for Section 5 (b) to apply as compared to Article 336 of the RPC, as amended by RA 8353, it must be **alleged** and **proved** that the child — (1) for money, profit, or any other consideration or (2) due to the coercion or influence of any adult, syndicate, or group — indulges in sexual intercourse or lascivious conduct.[9]

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[6] *J.* Caguioa, Concurring and Dissenting Opinion in G.R. No. 227363, March 12, 2019.

[7] Id. at 33; emphasis and underscoring omitted.

[8] Id. at 21, citing *People v. Abello*, 601 Phil. 373, 392 (2009).

[9] Id. at 23.

In this case, the Information only alleged that the victim was a 13-year old minor, but it did not allege that she was EPSOSA. Likewise, there was no proof or evidence presented during the trial that she indulged in sexual intercourse or lascivious conduct either for a consideration, or due to the coercion or influence of any adult.

Thus, I agree with the *ponencia* that the accused-appellant should be convicted of Rape under Article 266-A (1) in relation to Article 266-B of the RPC, not Section 5 (b), Article III of RA 7610.

Accordingly, the penalty that ought to be imposed is *reclusion perpetua* and the accused-appellant should pay the victim ₱75,000.00 as moral damages, ₱75,000.00 as exemplary damages, and ₱75,000.00 as civil indemnity. The interest of 6% *per annum* should be imposed on all the awards for damages from the date of finality of the Decision until fully paid.

FIRST DIVISION

[G.R. No. 246439. September 8, 2020]

PPC ASIA CORPORATION, *Petitioner, v.* **DEPARTMENT OF TRADE AND INDUSTRY, SEC. RAMON M. LOPEZ, USEC. ROWEL S. BARBA AND LOUIS "BAROK" BIRAOGO,** *Respondents.*

SYLLABUS

1. **REMEDIAL LAW; RULES OF COURT; PROCEDURAL RULES SHOULD NOT BE REGARDED AS MERE TECHNICALITIES THAT MAY BE IGNORED FOR THE PARTY'S CONVENIENCE AS IT IS EQUALLY IMPORTANT IN EFFECTIVE, ORDERLY, AND SPEEDY ADMINISTRATION OF JUSTICE; CASE AT BAR.—** Procedural rules should not be regarded as mere technicalities that may be ignored for the party's convenience as it is equally important in effective, orderly, and speedy administration of justice. These rules are not intended to hamper litigants or complicate litigation but, indeed to provide for a system under which a suitor may be heard in the correct form and manner and at the prescribed time in a peaceful confrontation before a judge whose authority they acknowledge. x x x Indeed, petitioner utterly failed to show that its obstinate refusal to abide by the rules, nay, utter disrespect toward the Court of Appeals and its validly issued directive do not warrant a departure from the rules, much less, liberality from the Court.

2. **MERCANTILE LAW; CONSUMER ACT OF THE PHILIPPINES (RA 7394); THE DEPARTMENT OF TRADE AND INDUSTRY HAS THE AUTHORITY TO INSPECT AND ANALYZE CONSUMER PRODUCTS FOR PURPOSES OF DETERMINING CONFORMITY TO ESTABLISHED QUALITY AND SAFETY STANDARDS. —** Under Article 17 of the Consumer Act, the DTI has the authority to inspect and analyze consumer products for purposes of determining conformity to established quality and safety standards. Thus, the DTI acted well within the authority granted it by law when it ordered the testing of subject batteries as an

initial step toward the eventual resolution of the appeal on the merits. Notably, petitioner has not adduced any cogent argument that this testing requirement is even prejudicial to its business interest. On the contrary, prior testing of subject batteries as required by the DTI would in fact serve petitioner's best interest to dispel once and for all any doubts on the quality and safety of its battery brands. Most important, it is for the best interest of the public consumers that the DTI does ensure that petitioner's battery brands conform to the Philippines' quality and safety products standards.

APPEARANCES OF COUNSEL

April Fleurenz Rose C. Macalanda for petitioner.
The Solicitor General for respondents.

D E C I S I O N

LAZARO-JAVIER, *J.*:

Antecedents

On July 22, 2015, respondent Louis "Barok" Biraogo filed a consumer complaint[1] with the Department of Trade and Industry-Fair Trade Enforcement Bureau (DTI-FTEB) entitled *Louis "Barok" Biraogo v. Pollux Distributors, Inc., TPL Industrial Sales Corporation, Power Point Battery Manufacturing Corporation and PPC Asia Corporation*, docketed FTEB ADM Case No. CC17-005. He impleaded as respondents the following importers and distributors:

Distributor	Battery Brand
PPC Asia Corporation	3k
Pollux Distributors, Inc.	Nagoya and Quantum
TPL Industrial Sales Corporation	Quantum and Panasonic
Power Point Battery Manufacturing Corporation	GS Tropical

[1] *Rollo*, pp. 87-98.

He alleged that sometime in 2013, he had to replace four (4) times the lead acid storage battery of his motorcycle even though he had only used the original battery for three (3) months. These batteries carried the following brands: 3K, Nagoya, Quantum, and GS Tropical.

Consequently, he asked the Philippine Association of Battery Manufacturers (PABMA) to verify the brands' compliance with the Philippine products standards. In response, PABMA members sought the assistance of the Philippine Batteries, Inc. (PBI) to do the verification process.

After testing twenty-four (24) battery samples, the PBI discovered that a great number of the branded batteries did not comply with PNS 06:1987 as they failed to pass the reserve capacity test. Thus, the PBI concluded that these branded batteries were substandard.

Consequently, Biraogo filed a complaint with the Department of Trade and Industry (DTI) praying for a confirmatory test to be done on subject batteries, for a cease and desist order to issue against the further importation, distribution, and sale of the same battery brands, for a fine to be imposed on the named importers, and for their respective licenses or permits to be cancelled for violating Sections 50 and 52 of Republic Act No. 7394 (RA 7394), otherwise known as the Consumer Act of the Philippines.

The DTI-FTEB's Ruling

By Decision dated February 14, 2017,[2] the DTI-FTEB dismissed the complaint on ground of lack of legal standing and cause of action. It ruled that Biraogo's sales receipts did not show that he was the one who actually bought the batteries or that the batteries he purchased were the same ones actually submitted for testing. It also ruled that the previous certification issued by the Bureau of Philippine Standards in favor of the importers for the purpose of selling the battery brands in the Philippines should prevail over the test conducted by PBI. Hence,

[2] *Id.* at 61-66.

the DTI-FTEB concluded that the named respondents may not be found guilty of concealment and false representation.

The Ruling of the DTI on Appeal

By Decision[3] dated May 25, 2018 in DTI Appeal Case No. 2017-50, the DTI, through Undersecretary Rowel S. Barba, reversed and ordered the immediate testing of the branded batteries in order to settle any doubts on their quality before any resolution on the merits may be had. It dispensed with the application of technical rules pertaining to the parties who could file a complaint on the basis of sales receipts. It thus found that Biraogo's allegations based on the sales receipts submitted sufficed to establish that as a consumer, he was prejudiced by the sale of the branded batteries in the market.

The Court of Appeals' Ruling

Only PPC Asia Corporation (PPC) questioned this decision before the Court of Appeals *via* a petition for *certiorari* in CA-G.R. SP No. 157378.[4] By Resolution[5] dated October 18, 2018, the Court of Appeals dismissed the petition due to the following procedural infirmities: (1) failure to attach complaint, position paper, and appeal memorandum to the petition, and (2) failure to file a motion for reconsideration prior to elevating the case to the Court of Appeals.

Petitioner's subsequent motion for reconsideration was denied under Resolution[6] dated March 12, 2019. The Court of Appeals noted therein that petitioner did not even try to submit the lacking documents when it moved to reconsider the decree of dismissal. It simply glossed over the deficiencies and stated as a matter of fact that it can just later on submit these additional documents should the court so require. At any rate, the Court of Appeals

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

[4] *Id.* at 28-43.

[5] Penned by Associate Justice Remedios A. Salazar-Fernando and concurred in by now Supreme Court Associate Justice Henri Jean Paul B. Inting and Associate Justice Ronaldo Roberto B. Martin, *id.* at 25-27.

[6] *Id.* at 21-23.

pointed to another deficiency pertaining to the unauthorized signing by petitioner's counsel of the verification and certification against forum-shopping.

The Present Petition

PPC now seeks affirmative relief from the Court *via* the present petition for review on *certiorari*. It imputes error on the Court of Appeals when the latter dismissed the petition allegedly on mere technicalities instead of resolving it on the merits. It also accuses the DTI of violating its right to due process when the agency reinstated the consumer complaint without even affording the company a chance to oppose it.[7]

For its part, the DTI[8] ripostes that the Court of Appeals aptly dismissed the petition for PPC's failure to strictly observe the requisites of *certiorari*. It alleges that PPC not only failed to incipiently attach the relevant supporting documents but stubbornly persisted on its non-compliance even on reconsideration. The DTI also reiterates that petitioner's counsel was not authorized to sign the verification and certification on non-forum shopping since the Secretary's Certificate supposedly bearing this authority is not on file with the DTI.

On the denial of due process, the DTI asserts that petitioner's active participation in the proceedings below belies its protestation on the issue of due process. Nevertheless, the assailed decision is not yet a judgment that finally disposes of the case, hence, petitioner still has the opportunity to defend itself in the administrative case. Citing ***Macayayong v. Ople***,[9] the DTI further posits that petitioner cannot claim denial of due process when it had the opportunity to move to reconsider the questioned DTI decision, but did not. PPC missed the opportunity to be heard on reconsideration when it immediately went to the Court of Appeals.

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[7] *Id.* at 3-15.

[8] *Id.* at 176-190.

[9] 281 Phil. 419, 423-424 (1991).

Issues

FIRST: Did the Court of Appeals err in dismissing the petition for *certiorari* on grounds that (a) petitioner failed to submit twice the three (3) relevant documents specifically required by the court, (b) petitioner failed to file a motion for reconsideration of the assailed decision of the DTI, and (c) petitioner failed to submit the corresponding authority of its lawyer to sign the verification and certificate on non-forum shopping in the case?

SECOND: Was petitioner's right to due process violated when the DTI required a test to be done on its battery brands for the purpose of determining their compliance with the quality and safety products standards?

Ruling

On the **first** issue, we first tackle the requirement of filing a motion for reconsideration before a petition for *certiorari* may be resorted to. Petitioner posits that it did not seek a reconsideration before the DTI because it is proscribed under the *Simplified and Uniform Rules of Procedure for Administrative Cases Filed with the Department of Trade and Industry for Violations of the Consumer Act of the Philippines and Other Trade and Industry Law, viz.*:

RULE XIV
MOTION FOR RECONSIDERATION

Section 1. Motion for Reconsideration. — (a) Cases Filed by Consumers for Violations of the Consumer Act — Per Article 165 of the Consumer Act, no Motion for Reconsideration is allowed for said cases.

x x x x x x x x x

The argument is meritorious. Being a prohibited pleading, PPC's direct recourse to the Court of Appeals *via* petition for *certiorari* is justified. To require PPC to file a motion for reconsideration when it is prohibited under the DTI's rules of procedure prior to availing of the writ of *certiorari* is useless,

nay devoid of legal basis. The filing of a prohibited pleading would not toll the running of the period of an appeal. In ***Chua v. COMELEC***,[10] we ruled that the filing of a prohibited pleading does not produce any legal effect and, thus, did not toll the running of the period to appeal, *viz.*:

> x x x Under the COMELEC Rules of Procedure, a motion for reconsideration of its en banc ruling is prohibited except in a case involving an election offense. **A prohibited pleading does not produce any legal effect and may be deemed not filed at all.** In Landbank of the Philippines vs. Ascot Holdings and Equities, Inc., the Court emphasized that "**a prohibited pleading cannot toll the running of the period to appeal since such pleading cannot be given any legal effect precisely because of its being prohibited**." (Emphasis supplied)

So must it be.

As for petitioner's claim that the corresponding Secretary's Certificate authorizing its lawyer to sign on its behalf the certification and verification on non-forum shopping in this case, we did find that this document was actually submitted to the Court of Appeals as Annex B of the petition for *certiorari*.

Going now to the petitioner's failure to attach the complaint, position paper, and appeal memorandum, petitioner offers the following explanation: a) although it failed to attach copies of these documents, its petition already bore the essential attachments which could already serve as sufficient bases for the Court of Appeals to be able to resolve the case; and b) it was not able to submit copy of the appeal memorandum to the Court of Appeals because it never received copy of such pleading at the DTI level.

Petitioner therefore prays for the Court's liberality to dispense with the procedural formalities to prevent a miscarriage of justice.

On this score, we affirm the dismissal of the petition.

Section 3, Rule 46 of the Rules of Court provides that failure to attach to the petition, among others, relevant documents or

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[10] G.R. No. 236573, August 14, 2018.

portions of the records shall be a sufficient ground for dismissal of the petition. In ***Atillo v. Bombay***,[11] the Court affirmed the dismissal of the petition not only because the supporting documents were insufficient but also because petitioner inexplicably refused to even submit the required attachments, thus:

> The phrase "of the pleadings and other material portions of the record" in Section 2(d), Rule 42 is followed by the phrase "as would support the allegations of the petition" clearly contemplates the exercise of discretion on the part of the petitioner in the selection of documents that are deemed to be relevant to the petition. x x x. The crucial issue to consider then is whether or not the documents accompanying the petition before the CA sufficiently supported the allegations therein.
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> x x x x x x x x x
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> x x x Petitioner's discretion in choosing the documents to be attached to the petition is however not unbridled. **The CA has the duty to check the exercise of this discretion, to see to it that the submission of supporting documents is not merely perfunctory. The practical aspect of this duty is to enable the CA to determine at the earliest possible time the existence of prima facie merit in the petition.** Moreover, Section 3 of Rule 42 of the Rules of Court provides that if petitioner fails to comply with the submission of "documents which should accompany the petition," it "shall be sufficient ground for the dismissal thereof." In this case, **the insufficiency of the supporting documents combined with the unjustified refusal of petitioner to even attempt to substantially comply with the attachment requirement justified the dismissal of her petition**. (Emphasis supplied)

Here, the Court of Appeals emphasized that the "lacking documents were indeed necessary, if not indispensable for it to be able to render an intelligent decision on the petition." Although petitioner sought a reconsideration of the Court of Appeals' decree of dismissal, it exerted nary an effort at all to submit the lacking documents. It simply and casually informed the Court of Appeals that it did not have a copy of this or that

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[11] 404 Phil. 179, 188, 191-192 (2001).

document and that anyway the Court of Appeals could already resolve the case based on what petitioner had thus far submitted. This is plain obstinate arrogance and utter disrespect toward the Court of Appeals and its legal processes. It is in fact an irreverent challenge to the rule of law!

Procedural rules should not be regarded as mere technicalities that may be ignored for the party's convenience as it is equally important in effective, orderly, and speedy administration of justice. These rules are not intended to hamper litigants or complicate litigation but, indeed to provide for a system under which a suitor may be heard in the correct form and manner and at the prescribed time in a peaceful confrontation before a judge whose authority they acknowledge.[12] In ***Limpot v. CA***,[13] the Court ordained that rules of procedures and substantive laws complement each other in the orderly administration of justice, thus:

> Rules of procedure are intended to ensure the orderly administration of justice and the protection of substantive rights in judicial and extrajudicial proceedings. **It is a mistake to propose that substantive law and adjective law are contradictory to each other** or, as has often been suggested, that enforcement of procedural rules should never be permitted if it will result in prejudice to the substantive rights of the litigants. This is not exactly true; the concept is much misunderstood. **As a matter of fact, the policy of the courts is to give both kinds of law, as complementing each other, in the just and speedy resolution of the dispute between the parties. Observance of both substantive rights is equally guaranteed by due process, whatever the source of such rights, be it the Constitution itself or only a statute or a rule of court**. x x x (Emphasis supplied)

Indeed, petitioner utterly failed to show that its obstinate refusal to abide by the rules, nay, utter disrespect toward the

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[12] *Malixi v. Baltazar*, 821 Phil. 423, 435 (2017).

[13] 252 Phil. 377, 379 (1989).

Court of Appeals and its validly issued directive do not warrant a departure from the rules, much less, liberality from the Court.

We now discuss the second issue pertaining to due process. Petitioner claims it was prejudiced by the DTI's sudden reversal of the ruling of the DTI—Fair Trade Enforcement Bureau finding it not guilty of concealment and false representation. Petitioner thus faults the Court of Appeals for failing to consider that it was not even given an opportunity to explain its side.

We are not persuaded. It must be emphasized that the DTI's decision to reinstate the consumer complaint does not in any way equate to a finding of guilt against petitioner. All the DTI did so far was to order subject batteries to be officially tested *vis-à-vis* their compliance with the Philippines' quality and safety products standard. The DTI explicitly stated that this initial procedure ought to be done before it can proceed with the case.

Under Article 17 of the Consumer Act, the DTI has the authority to inspect and analyze consumer products for purposes of determining conformity to established quality and safety standards. Thus, the DTI acted well within the authority granted it by law when it ordered the testing of subject batteries as an initial step toward the eventual resolution of the appeal on the merits. Notably, petitioner has not adduced any cogent argument that this testing requirement is even prejudicial to its business interest. On the contrary, prior testing of subject batteries as required by the DTI would in fact serve petitioner's best interest to dispel once and for all any doubts on the quality and safety of its battery brands. Most important, it is for the best interest of the public consumers that the DTI does ensure that petitioner's battery brands conform to the Philippines' quality and safety products standards.

In fine, petitioner's protestation against the purported denial of its right to due process is at best misplaced. As stated, the proceedings on appeal before the DTI have not even commenced in the main, much less, caused any prejudice to petitioner.

ACCORDINGLY, the petition is **DENIED**. The Resolutions dated October 18, 2018 and March 12, 2019 of the Court of Appeals in CA-G.R. SP No. 157378 are **AFFIRMED**. The case is remanded to the Office of the Secretary of Trade and Industry for continuation of the proceedings in *Louis "Barok" Biraogo v. Pollux Distributors, Inc., TPL Industrial Sales Corporation, Power Point Battery Manufacturing Corporation and PPC Asia Corporation*, docketed as Appeal Case No. 2017-50.

SO ORDERED.

Peralta, C.J. (Chairperson), Caguioa, Reyes, Jr., and *Lopez, JJ.,* concur.

FIRST DIVISION

[G.R. No. 247429. September 8, 2020]

JAIME ARAZA y JARUPAY, *Petitioner, v.* **PEOPLE OF THE PHILIPPINES,** *Respondent.*

SYLLABUS

1. REMEDIAL LAW; CRIMINAL PROCEDURE; INFORMATION, WHEN SUFFICIENT; CONSTITUTIONAL LAW; RIGHT OF AN ACCUSED TO BE INFORMED OF THE NATURE AND CAUSE OF ACCUSATION.— In *Dela Chica v. Sandiganbayan,* an Information is sufficient if it accurately and clearly alleges all the elements of the crime charged, to wit:

> The issue on how the acts or omissions constituting the offense should be made in order to meet the standard of sufficiency has long been settled. It is fundamental that every element of which the offense is composed must be alleged in the information. No information for a crime will be sufficient if it does not accurately and clearly allege the elements of the crime charged. **Section 6, Rule 110 of the Revised Rules of Court requires, *inter alia*, that the information must state the acts or omissions so complained of as constitutive of the offense.** Recently, this Court emphasized that **the test in determining whether the information validly charges an offense is whether the material facts alleged in the complaint or information will establish the essential elements of the offense charged as defined in the law.** In this examination, matters *aliunde* are not considered. The law essentially requires this to enable the accused suitably to prepare his defense, as he is presumed to have no independent knowledge of the facts that constitute the offense.
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> This is in consonance with the fundamental right of an accused to be informed of the "nature and cause of accusation."

2. CRIMINAL LAW; REPUBLIC ACT NO. 9262 (ANTI-VIOLENCE AGAINST WOMEN AND THEIR CHILDREN ACT OF 2004); ELEMENTS OF VIOLATION OF SECTION 5(i).— In *Dimamling v. People,* the elements of violation of Section 5(i) of R.A. No. 9262 are enumerated:

(1) The offended party is a woman and/or her child or children; (2) The woman is either the wife or former wife of the offender, or is a woman with whom the offender has or had a sexual or dating relationship, or is a woman with whom such offender has a common child. As for the woman's child or children, they may be legitimate or illegitimate, or living within or without the family abode; (3) The offender causes on the woman and/or child mental or emotional anguish; and (4) The anguish is caused through acts of public ridicule or humiliation, repeated verbal and emotional abuse, denial of financial support or custody of minor children or access to the children or similar acts or omissions.

3. ID.; ID.; ID.; PSYCHOLOGICAL VIOLENCE; EMOTIONAL ANGUISH OR MENTAL SUFFERING; MARITAL INFIDELITY IS A FORM OF PSYCHOLOGICAL VIOLENCE THAT CAN CAUSE EMOTIONAL ANGUISH OR MENTAL SUFFERING; CASE AT BAR.— Psychological violence is an indispensable element of violation of Section 5(i) of R.A. No. 9262. Equally essential is the element of emotional anguish and mental suffering, which are personal to the complainant. Psychological violence is the means employed by the perpetrator, while emotional anguish or mental suffering are the effects caused to or the damage sustained by the offended party. The law does not require proof that the victim became psychologically ill due to the psychological violence done by her abuser. Rather, the law only requires emotional anguish and mental suffering to be proven. To establish emotional anguish or mental suffering, jurisprudence only requires that the testimony of the victim to be presented in court, as such experiences are personal to this party.

In order to establish psychological violence, proof of the commission of any of the acts enumerated in Section 5(i) or similar of such acts, is necessary.

The prosecution has established Araza's guilt beyond reasonable doubt by proving that he committed psychological violence upon his wife by committing marital infidelity. AAA's testimony was strong and credible. She was able to confirm that Araza was living with another woman. . . .

Marital infidelity, which is a form of psychological violence, is the proximate cause of AAA's emotional anguish and mental

suffering, to the point that even her health condition was adversely affected.

4. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; THE TRIAL COURT'S FINDINGS THEREON AS AFFIRMED BY THE COURT OF APPEALS WILL NOT BE DISTURBED ON APPEAL.— This Court will not disturb the findings of the RTC and as affirmed by the CA, as regards AAA's credibility as a witness. The RTC is in a better position to observe her candor and behavior on the witness stand. Its assessment is respected unless certain facts of substance and value were overlooked which, if considered, might affect the result of the case.

5. ID.; ID.; ID.; DENIAL; BEING A SELF-SERVING NEGATIVE DEFENSE, DENIAL CANNOT BE GIVEN GREATER WEIGHT THAN THE DECLARATION OF CREDIBLE WITNESSES WHO TESTIFY ON AFFIRMATIVE MATTERS.— Araza can only offer the defense of denial. The defense of denial is inherently weak and cannot prevail over the positive and credible testimonies of the prosecution witnesses that the accused committed the crime. Denial, being a self-serving negative defense, cannot be given greater weight than the declaration of credible witnesses who testify on affirmative matters.

6. CRIMINAL LAW; REPUBLIC ACT NO. 9262 (ANTI-VIOLENCE AGAINST WOMEN AND THEIR CHILDREN ACT OF 2004); PENALTY FOR VIOLATION OF SECTION 5(i); CASE AT BAR.— The prosecution has established beyond reasonable doubt that Araza committed the crime of psychological violence, through his acts of marital infidelity, which caused mental or emotional suffering on the part of AAA. Having ascertained the guilt of Araza for violation of Section 5(i), We shall now proceed to determine the appropriate penalty.

. . .

Applying the Indeterminate Sentence Law, the minimum term of the indeterminate penalty shall be taken from the penalty next lower in degree, which is *prision correcional*, in any of its period which is from six (6) months and one (1) day to six (6) years, while the maximum term shall be which could be properly imposed under the law, which is eight (8) years and

one (1) day to ten (10) years of *prision mayor,* there being no aggravating or mitigating circumstance attending the commission of the crime. This Court deems it proper to impose on petitioner Araza, the indeterminate penalty of six (6) months and one (1) day of *prision correcional,* as minimum, to eight (8) years and one (1) day of *prision mayor,* as maximum.

APPEARANCES OF COUNSEL

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

D E C I S I O N

PERALTA, *C.J.*:

This is a petition for review on *certiorari* filed by petitioner Jaime Araza y Jarupay (*Araza*), praying for the reversal of the December 17, 2018 Decision[1] of the Court of Appeals (*CA*) in CA-G.R. CR No. 40718 and its May 10, 2019 Resolution,[2] which affirmed that October 30, 2017 Decision[3] of the Regional Trial Court of Las Piñas City, Branch 199 (*RTC*), in Criminal Case No. 15-1287, finding petitioner guilty of violating Republic Act (*R.A.*) No. 9262, or the *Anti-Violence Against Women and Their Children Act of 2004*.

Antecedents

The Information filed against Araza reads:

That on or about the month of September 2007, prior and subsequent thereto, in the City of Las Piñas, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused with intent to

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[1] Penned by Associate Justice Danton Q. Bueser, with Associate Justices Miraflor P. Punzalan Castillo and Rafael Antonio M. Santos, concurring; *rollo,* pp. 34-45.

[2] *Id.* at 47-48.

[3] Penned by Presiding Judge Joselito dj. Vibandor; *id.* at 69-83.

humiliate and degrade his lawful wife AAA,[4] did then and there willfully, unlawfully and feloniously commit acts of psychological abuse upon his wife by then and there committing acts of marital infidelity by having an affair with his paramour Tessie Luy Fabillar and begetting three illegitimate children with his paramour thus causing [his] wife emotional anguish and mental suffering.

CONTRARY TO LAW.[5]

When arraigned, Araza pleaded not guilty to the charge.

Evidence for the Prosecution

The prosecution presented three (3) witnesses: 1) private complainant AAA; 2) Armando Que (*Que*); and 3) Dr. Kristina Ruth Lindain (*Dr. Lindain*).

As culled from the records of the RTC, the prosecution elicited the following:

[AAA] testified that she and [Araza] were married on October 5, 1989 at Malate Catholic Church. Initially and at the onset of their marriage[,] her husband [Araza] was hardworking, loving and faithful. She had no marital issues with [Araza] until x x x [he] went to Zamboanga City in February 2007[,] for their networking business. [Araza] was formerly working as an Overseas Filipino Worker but decided to stop in 1993 to join [AAA] in her business.

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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] *Rollo*, p. 69.

It was at this point that she began to notice [Araza's] change in behavior. Allegedly, he would act x x x depressed and would cry. He always appeared absent[-]minded. She was concerned and would ask [him about it] but [he] would just stay quiet, [and]x x x stare at her[,] full of anxiety.

One day, she received a text message from a certain Edna and Mary Ann who told her that her husband x x x is having an affair with their best friend. At first, she did not believe them. However, that information brought [AAA] to Zamboanga to see for her herself whether [it] is true. Indeed[,] on September 3, 2007[,] she was able to confirm that her husband was living with another woman[,] a certain Tessie Luy Fabillar [*Fabillar*].

She instituted a complaint against [her husband Araza] x x x and his alleged mistress, [for Concubinage,] at the Philippine National Police. The case was subsequently amicably settled after the parties executed an Agreement whereby [Araza] and [Fabillar] committed themselves never to see each other again.

After the case was settled x x x, [Araza again] lived with [AAA] x x x. However, [it] x x x was only for a short time. Without saying a word, [Araza] left [AAA] on November 22, 2007. She was looking for [Araza] and out of desperation[,] she sought the help of the NBI to search for [him]. To her surprise, [Araza] had returned to live with his mistress again.

In the days to come, she would receive text messages from her husband's supposed mistress using various numbers. The messages would tell her that [Araza] is sick and needed money for medicines. There was also another text message threatening her that she will kill [AAA's] husband. Because of this, sometime in 2013, she sought a law firm who issued a letter addressed to [Fabillar,] demanding for the release of [Araza].

[AAA] was emotionally depressed and anxious of her husband's condition. She believed that [Araza's] liberty was being restrained by [Fabillar]. She was determined to bring her husband home. Thus, [i]n May 2014[,] she went to Zamboanga to search for [Araza]. She looked for him from one [b]arangay to another; she would ask help from [p]olice [s]tations giving out pictures of her husband. She would promise a reward to those who are able to locate [Araza]. She was desperate looking for [him] and she fell ill and [was] confined in a hospital.

Thereupon, thinking that [Fabillar] was restraining the liberty of [Araza], she filed a Petition for Habeas Corpus before the [CA,] Manila[,] on June 20, 2014. The [CA] deputized a [National Bureau of Investigation] NBI agent to conduct a thorough investigation on [Araza] and [Fabillar].

[Based on the investigation, Araza] left their conjugal abode on his own volition and he has been living with his mistress[,] as husband and wife. As a matter of fact, three children were born out of their cohabitation. Hence, the petition for habeas corpus was dismissed.

The truth cause[d] AAA emotional and psychological suffering. She was suffering from insomnia and asthma. Allegedly, she is still hurting and crying[.] [S]he could not believe x x x what had happened in their marriage as they were living harmoniously as husband and wife.

At present[,] she is [taking] x x x anti-depressant and sleeping pills to cope with her severe emotional and psychological turmoil brought about by [Araza's] marital infidelity and having children with his mistress.

She claimed she had spent a large amount of money to search for her husband[,] [which] includes the filing of several cases.

Armando Que, a friend of AAA and x x x [Araza], x x x testified that he is a member of Boardwalk, a direct selling and networking business. Allegedly, he met AAA and [Araza] for the first time in 2001 in this Boardwalk business. He alleged that while he was recruiting and selling items of Boardwalk in Zamboanga, he frequently saw [Araza] and [Fabillar] together[,] [and] holding hands.

Allegedly, he kept that information to himself because he knew once AAA would know about it[,] there would be trouble in their relationship.

After the reception of prosecution evidence, they formally offered their exhibits, which were all admitted by the court[,] but only as part of the testimonies of witnesses who testified thereon.[6]

x x x

On rebuttal, the prosecution presented Dr. Lindain as expert witness, who testified:

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[6] *Id.* at 70-72. (Citations omitted)

[S]he met x x x AAA for the first time on September 9, 2016 when she was referred to her by the Women's Desk of the PGH[,] in relation to her filing of a VAWC complaint against her husband[,] [Araza].

Allegedly, she saw AAA on September 9, x x x 22, and x x x 29, 2016[,] on an hour per session. Based on her assessment and expert opinion, the symptoms AAA was having was like the depressed mood; her occasional difficulty in sleeping are secondary to the relational distress with [Araza]. It was [her] wanting to be with [her] husband that was causing those symptoms. However, [Dr. Lindain] clarified that the manifestations exhibited by [AAA] are not sufficient to be considered as a psychiatric disorder. She advised AAA to undergo consel[l]ing or psychotherapy[,] in order to help her accept [her] situation x x x.[7]

Evidence for the Defense

The defense presented Araza as it sole witness. According to Araza:[8]

[H]e and AAA were married in 1989. He averred that he was a former taxi driver and an [Overseas Filipino Worker] OFW for [two] years. When he stopped being an OFW, he went back to being a taxi driver. [O]n the other hand[,] [AAA] was into buy and sell of Boardwalk. In order to extend help to his wife AAA, he helped in the recruitment of Boardwalk dealers to the extent of even going to various provinces.

He recalls that initially, their marriage was going smoothly[,] but when AAA started earning money, her behavior changed. He revealed that he did not earn anything from recruiting agents who worked under AAA. All the commissions went to AAA['s] account.

He disclosed that when he was in Cagayan de Oro to recruit agents for their business, AAA had told him that his sister had a stroke. He was allegedly dismayed when his wife did not even offer any help as she claimed she has nothing to spare. He felt hurt about it and sadly, his sister died.

He testified that since 2007[,] his relationship with his wife has gone sour. Oftentimes, she would believe rumors and accuse him of being a womanizer.

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[7] *Id*. at 74.

[8] *Id.* at 73.

He denied having an affair with x x x Fabillar[,] who was acting as his guide in his recruiting activities in Zamboanga. He revealed that when AAA went to Zamboanga, she filed a complaint against him at the Women's Desk. He was arrested as a consequence and was forced to sign an agreement. He returned to Manila with his wife hoping that she would change her ways towards him[,] but she [did not].

About a month, he sought a friend['s] help [for him to secure] a plane ticket [bound] to Zamboanga. He left his wife because he could no longer stand [her] attitude towards him. He also denied fathering children with x x x Fabillar.[9]

Ruling of the RTC

In its Decision dated October 30, 2017, the RTC found that all the elements of the crime of violence against women under Section 5(i) of R.A. No. 9262 were satisfied. Araza and AAA were married, as required by the first element. The prosecution was able to establish through testimonial and documentary evidence that Araza was the perpetrator of the mental and emotional anguish suffered by AAA.[10] Araza left their conjugal abode and chose to live with his mistress; and he reneged his promise to stop seeing his mistress, contrary to the written agreement between him and his mistress. AAA's psychological and emotional sufferings due to the said ordeals can also be gleaned from Dr. Lindain's testimony, who was presented as an expert witness.[11]

With regard to AAA's testimony, the RTC is convinced by her sincerity and candor.[12] Her testimony was able to show that due to Araza's acts of infidelity, she suffered emotional and psychological harm.[13] Since there are no facts and/or circumstances from which it could be reasonably inferred that

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[9] *Id*. at 73.

[10] *Id*. at 75-76.

[11] *Id*. at 79.

[12] *Id*. at 82.

[13] *Id*.

AAA falsely testified or was actuated by improper motives, her testimony is worthy of full faith and credit.[14]

On the other hand, Araza only offered the defense of denial, which cannot be given greater weight than that of the declaration of a credible witness who testifies on affirmative matters. The dispositive portion of the Decision reads:

> WHEREFORE, in view of the foregoing, this court finds accused JAIME ARAZA y JARUPAY GUILTY beyond reasonable doubt for Violation of Section 5(i) of Republic Act 9262 and hereby imposes an indeterminate penalty of imprisonment for SIX (6) MONTHS and ONE (1) DAY of PRISION CORRECIONAL as its minimum, to EIGHT (8) YEARS and ONE (1) DAY of PRISION MAYOR as its maximum.
>
> In addition to imprisonment[,] accused shall pay a FINE in the amount of ONE HUNDRED THOUSAND PESOS [₱100,000.00] and to indemnify the private complainant moral damages in the amount of TWENTY-FIVE THOUSAND PESOS [₱25,000.00].
>
> The period during which accused has remained under detention shall be credited to him in full[,] provided that[,] he complies with the terms and conditions of the City Jail.
>
> Let a copy of this Decision be furnished the prosecution, the private complainant, the accused[,] as well as his counsel for their information and guidance.
>
> SO ORDERED.[15]

Aggrieved, Araza appealed to the CA.

Ruling of the CA

The CA denied Araza's appeal, and motion for reconsideration, *in toto*. The appellate court echoed the RTC's factual findings and conclusions. The CA found that the prosecution sufficiently established the elements of the crime as defined in Section 5(i) of R.A. No. 9262, and as alleged in the Information filed against Araza. Psychological violence as

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[14] *Id.*

[15] *Id.* at 82-83.

an element of the crime, and the mental and emotional anguish she suffered, were proven through the testimonies of AAA and Dr. Lindain. The defense of denial of Araza, which were not supported by clear and convincing evidence, cannot prevail over the positive declarations of the victim.[16]

The CA concluded that R.A. No. 9262 does not criminalize acts such as the marital infidelity *per se*, but the psychological violence causing mental or emotional suffering on the wife.[17]

Araza filed a motion for reconsideration, which was denied by the CA in its May 10, 2019 Resolution.

Hence, this petition.

Issues

1. Whether the CA erred in affirming Araza's conviction for violation of Section 5(i) of R.A. No. 9262 although his conviction was based on facts not alleged in the Information.
2. Whether the CA gravely erred in affirming Araza's conviction for violation of Section 5(i) of R.A. No. 9262 on the ground that the prosecution failed to prove beyond reasonable doubt the acts allegedly committed by Araza.
3. Whether the CA gravely erred in affirming Araza's conviction for violation of Section 5(i) of R.A. No. 9262, considering that the prosecution failed to prove beyond reasonable doubt that AAA suffered mental and emotional anguish and Araza's act was the proximate cause thereof.

Our Ruling

The Petition is denied for lack of merit.

The elements of violation of Section 5(i) of R.A. No. 9262 were

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[16] *Id*. at 42.

[17] *Id*. at 44.

sufficiently alleged in the Information.

Araza argued that nothing in the Information mentioned his alleged abandonment of the conjugal home, and his pretenses that he was forcefully detained, specifically caused AAA's emotional anguish and mental suffering. For this reason, he cannot be convicted based on these acts which were not part of the charge against him.[18]

In *Dela Chica v. Sandiganbayan*,[19] an Information is sufficient if it accurately and clearly alleges all the elements of the crime charged, to wit:

> The issue on how the acts or omissions constituting the offense should be made in order to meet the standard of sufficiency has long been settled. It is fundamental that every element of which the offense is composed must be alleged in the information. No information for a crime will be sufficient if it does not accurately and clearly allege the elements of the crime charged. **Section 6, Rule 110 of the Revised Rules of Court requires, *inter alia*, that the information must state the acts or omissions so complained of as constitutive of the offense**. Recently, this Court emphasized that **the test in determining whether the information validly charges an offense is whether the material facts alleged in the complaint or information will establish the essential elements of the offense charged as defined in the law**. In this examination, matters *aliunde* are not considered. The law essentially requires this to enable the accused suitably to prepare his defense, as he is presumed to have no independent knowledge of the facts that constitute the offense.[20]

This is in consonance with the fundamental right of an accused to be informed of the "nature and cause of accusation."[21]

In order to determine the sufficiency of the averments in a complaint or information, Section 5(i) of R.A. No. 9262 must

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[18] *Id*. at 19

[19] 462 Phil. 712, 719 (2003). (Emphases ours)

[20] *Id*. at 719.

[21] *Sen. De Lima v. Judge Guerrero, et al.*, 819 Phil. 616 (2017).

be referred to, being the law defining the offense charged in this case.

Section 3(c) of R.A. No. 9262, in relation to Section 5(i), provides:

> Section 3. *Definition of Terms*. — As used in this Act:
>
> x x x
>
> C. "Psychological violence" refers to acts or omissions, causing or likely to cause mental or emotional suffering of the victim such as but not limited to intimidation, harassment, stalking, damage to property, public ridicule or humiliation, repeated verbal abuse and mental infidelity. It includes causing or allowing the victim to witness the physical, sexual or psychological abuse of a member of the family to which the victim belongs, or to witness pornography in any form or to witness abusive injury to pets or to unlawful or unwanted deprivation of the right to custody and/or visitation of common children.

On the other hand, Section 5(i) of R.A. No. 9262 penalizes some forms of psychological violence that are inflicted on victims who are women and children through the following acts:

> (i) Causing mental or emotional anguish, public ridicule or humiliation to the woman or her child, including, but not limited to, repeated verbal and emotional abuse, and *denial of financial support or custody* of *minor children* or access to the woman's child/children. (Emphasis supplied)

In *Dimamling v. People*,[22] the elements of violation of Section 5(i) of R.A. No. 9262 are enumerated:

(1) The offended party is a woman and/or her child or children;

(2) The woman is either the wife or former wife of the offender, or is a woman with whom the offender has or had a sexual or dating relationship, or is a woman with whom such offender has a common child. As for the woman's child or children, they may be legitimate or illegitimate, or living within or without the family abode;

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[22] 761 Phil. 356, 373 (2015).

(3) The offender causes on the woman and/or child mental or emotional anguish; and

(4) The anguish is caused through acts of public ridicule or humiliation, repeated verbal and emotional abuse, denial of financial support or custody of minor children or access to the children or similar acts or omissions.

To determine whether the elements of violation of Section 5(i) were sufficiently alleged, the accusatory portion of the Information is reproduced below:

That on or about the month of September 2007, prior and subsequent thereto, in the City of Las Piñas, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused with intent to humiliate and degrade his lawful wife AAA, did then and there ***willfully, unlawfully and feloniously commit acts of psychological abuse upon his wife by then and there committing acts of marital infidelity*** *by having an affair with his paramour Tessie Luy Fabillar* ***and begetting three illegitimate children with his paramour thus causing [his] wife emotional anguish and mental suffering****.*

CONTRARY TO LAW. [23]

Araza is correct that he cannot be convicted based on acts of abandonment of the conjugal home, and pretenses that he was forcefully detained. These were not alleged in the Information. However, there were other acts alleged in the Information that caused emotional anguish and mental suffering on AAA.

In this case, the Court finds that the Information contains the recital of facts necessary to constitute the crime charged. It clearly stated that: (1) The offended party AAA, is the wife of offender Araza; (2) AAA sustained emotional anguish and mental suffering; and (3) such anguish and suffering is inflicted by Araza when he had an extramarital affair with Fabillar and had three illegitimate children with her.

The CA was correct in ruling that Araza committed psychological

[23] *Rollo,* p. 69.

violence upon his wife AAA by committing marital infidelity, which caused AAA to suffer emotional anguish and mental suffering.

Psychological violence is an indispensable element of violation of Section 5(i) of R.A. No. 9262.[24] Equally essential is the element of emotional anguish and mental suffering, which are personal to the complainant.[25] Psychological violence is the means employed by the perpetrator, while emotional anguish or mental suffering are the effects caused to or the damage sustained by the offended party.[26] The law does not require proof that the victim became psychologically ill due to the psychological violence done by her abuser. Rather, the law only requires emotional anguish and mental suffering to be proven. To establish emotional anguish or mental suffering, jurisprudence only requires that the testimony of the victim to be presented in court, as such experiences are personal to this party.[27]

In order to establish psychological violence, proof of the commission of any of the acts enumerated in Section 5(i) or similar of such acts, is necessary.

The prosecution has established Araza's guilt beyond reasonable doubt by proving that he committed psychological violence upon his wife by committing marital infidelity. AAA's testimony was strong and credible. She was able to confirm that Araza was living with another woman:

Q: You also mentioned in your complaint affidavit that in September 2007 there was some sort of an agreement entered into by you[,] the complainant and your complainant's alleged mistress, do you confirm that?

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[24] *Esteban Donato Reyes v. People*, G.R. No. 232678, July 3, 2019.

[25] *Id.*

[26] *Id.*

[27] *Dinamling v. People, supra* note 22, at 376.

A: Yes, sir.

x x x

COURT
Q: What was the agreement all about?

WITNESS
A: I went to Zamboanga when I learned that my husband has a live[-] in relationship with one Tessie Fabillar. I went to the police station to ask for assistance. I had them arrested and I had them sign a document saying that they will stay apart from each other.

x x x

FISCAL MACASAET
Q: What happened to that agreement Madam Witness?

WITNESS
A: He stayed in my house for a short period only and then after November 22, 2007 he fled without asking for my permission.

Q: Do you know where he went?
A: I'm aware that he went to his mistress.

Q: How did you know that he went to his mistress?
A: Because my colleagues in the office told me.

Q: Were you able to confirm that he went to his mistress?
A: Yes[,] sir, because I went to Zamboanga[,] I secured NBI assistance to investigate on my husband and we discovered that he had a mistress.

Q: Who was that mistress as discovered by the National Bureau of Investigation?
A: Tessie Luy Fabillar, sir.[28]

x x x

Q: When did you discover that indeed your husband is living with another woman?
A: When I went back to Zamboanga last December and the police caught Jaime Araza and Tessie Luy Fabillar living in one house.

Q: Were you able to see them living in that house?
A: Yes, Your Honor.

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[28] TSN, Testimony of AAA, April 26, 2016, pp. 7-8. (Emphases ours)

Q: You were also saying that there was a policeman, what did the policeman do?
A: They just brought Tessie Luy Fabillar and Jaime Araza to the police and sign an agreement that they be separated and no more relationship will be made.

Q: Were you able to confirm the relationship of your husband from himself?
A: Yes, Your Honor.[29]

On the part of Araza, he admitted that he deserted AAA in order to live with Fabillar:

Q: Was there a time that you lived with Tessie Fabillar?
A: Yes[,] sir.

x x x

Q: ***Nagsama kayo sa iisang bubong ni [Fabillar]?***
A: Yes, I stayed in her place.

Q: In the house of [Fabillar]?
A: Yes[,] sir.

Q: You are in one room?
A: In one house, your [H]onor.

x x x

Q: For how long did you stay with [Fabillar] and in her house?
A: Now, I'm staying with her, your [H]onor.

COURT
Continue.

FISCAL MACASAET
Q: When did you start living in the same house with [Fabillar]?

x x x

WITNESS
A: For 1 year only.

Q: Are you sure Mr. Witness for one year only?
A: Yes[,] sir.

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[29] *Id.* at 12-13. (Emphases ours)

FISCAL MACASAET
I have to warn you Mr. Witness if you are lying you can be...

COURT
Naiintindihan po ba ninyo ang sabi ni Fiscal *kung ikaw ay nagsisinungaling mananagot ka sa batas.*

Q: I'm giving you a chance, how long have you been living with [Fabillar] under one roof.
A: Since 2008, sir.[30]

Marital infidelity, which is a form of psychological violence, is the proximate cause of AAA's emotional anguish and mental suffering, to the point that even her health condition was adversely affected.

The RTC ruled:

Logic and experience dictate that any woman who goes through that kind of ordeal would suffer psychologically and emotionally as a consequence. The prosecution was able to prove this in the case of AAA as can be gleaned from the testimony of Dr. Kristina Ruth B. Lindain who was presented as an expert witness.[31]

On the other hand, the CA held:

In addition to [Araza's] marital infidelity[,] [i]t was the thought that her husband was being detained, sick and ailing, and in the danger of being killed if she will not send money that caused [AAA's] emotional and psychological turmoil that drove her to the brink of despair. [AAA] became so depressed that she had to be hospitalized.[32]

In the RTC Decision, and as affirmed by the CA, these acts were in accord with the Information to have caused emotional and mental anguish on AAA:

No doubt that the prosecution **has successfully established that [Araza] left his wife AAA and decided to stay in Zamboanga City**

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[30] TSN, Testimony of Jaime Araza y Jarupay, January 18, 2017, pp. 21-22. (Emphases ours)

[31] *Rollo*, p. 79.

[32] *Id*. at 44.

where he maintained an illicit affair with x x x Fabillar during the subsistence of their marriage. The record is brimming with evidence that [Araza] intentionally left AAA groping in the dark. Without any explanation or mature conversation with his wife, x x x [Araza] simply left his wife causing the latter emotional and psychological distress.[33]

First, the prosecution was able to prove the case of AAA, as can be gleaned from the testimony of Dr. Lindain, who was presented as an expert witness:

COURT
Q: In other words[,] doctor[,] it cannot be denied that the separation and the non-providing of support from the accused has exposed the private complainant to emotional suffering, is this correct?

WITNESS
A: Yes, Your Honor.

Q: And you were saying that at that time when you conducted the psychiatric evaluation of the patient, it is possible that in the past after the separation of the private complainant with [Araza,] that was the time that she suffered the most and the possibility that she had suffered the anxiety and depression, is this correct?

A: Yes, Your Honor.

x x x

Q: So, just because she could not accept that the accused can no longer be with her and stay with her she then suffered anxiety and insomnia?
A: It's part of it[,] but it's not solely.

Q: What other factors could have triggered those manifestations of psychological or psychiatric problem?
A: Well, separation po, even that they have been together from 1989 to 2007[,] it's been a marriage wherein there's a commitment, the fact that he was not there *nawala siya* counted as a loss so, the actual loss can actually perpetrate symptoms of depression, anxiety so *na-test yung* reaction it's a contegration but the actual loss of him not being there anymore can trigger the symptom.[34]

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[33] *Id*. at 76. (Emphasis ours)

[34] TSN, Testimony of Dr. Kristina Ruth B. Lindain, August 22, 2017, pp. 12-14.

x x x

Q: Just the sole act of leaving a spouse, can you already qualify that as psychological or emotional abuse?
A: In my opinion, yes.

Q: Why so?
A: During the separation there was no understanding of what had actually happened and from her story that per 2007 until 2013[,] she was making an effort to actually find the husband and she was worried what was happening to the husband, it is enough to be the cause of emotional and psychological abuse.[35]

Second, AAA narrated how she received several information about Araza's affair with Fabillar; how she was able to confirm the affair herself which led to the filing of the complaint for concubinage; and despite the complaint being settled and that both Araza and Fabillar agreed to stop living together, Araza repeated his affair with Fabillar.[36]

AAA's testimony that she suffered mental and emotional anguish due to Araza's acts, was categorical and straightforward, to wit:

Q: In this letter Madam Witness, [Fabillar] was asked to release your husband from her custody and to send your husband to you, what was the result of this letter, if you know?
A: The case was not given due course because the truth is, my husband was living with x x x Fabillar.

Q: Was your husband returned to you by x x x Fabillar?
A: No, sir.

x x x

Q: What was the effect of your husband's unfaithfulness to you?
A: I became so depressed until now, I was always hospitalized.

Q: What was your proof that you were hospitalized?
A: I have a medical certificate from Perpetual Help.

x x x

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[35] *Id*. at 18.

[36] *Rollo*, p. 36.

Q: And if you see those medical records, will you be able to identify them?
A: Yes, sir.

Q: I'm showing you [these] documents marked as Exhibits "E" up to "E- 6", will you please look at them and tell us if those are the medical records that you are referring to?
A: Yes, sir.

FISCAL MACASAET
Your Honor, just for the record the witness identified Exhibits "E" up to "E-6".

Q: Now in filing this complaint against your husband, what do you wish to attain?

WITNESS
A: He must be put in jail so that he knows that he is really, he had done something wrong to me because I love him so much but then he has different attitudes and he has a different answer against me. I want to put him in jail that's all.

FISCAL MACASAET
We want to make it on record Your Honor, that the witness is crying.

Q: What if he...
A: The main purpose of mine today is to put him in jail.

Q: That's all?
A: After the case I will also present the case against Tessie Luy Fabillar so that both of them will be put in jail.[37]

x x x

Q: And you said that your husband came back and live with you again as husband and wife?
A: Only for two (2) months.

Q: And then after two (2) months?
A: He went back to x x x Fabillar.

x x x

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[37] TSN, Testimony of AAA, April 26, 2016, pp. 8-10.

Q: And this time when your husband left you to live with her mistress once more, how did you feel about this?
A: Until now I am depressed, I can't forget my husband.

Q: So, you want to impress upon this court that you still love your husband?
A: Yes of course, but then a punishment should be made.

Q: Have you forgiven your husband about this?
A: I'm still hurt.[38]

x x x

Q: You said in your affidavit in no. 28 of that document Madam Witness, Jaime is engaging in conduct that causes substantial emotional or psychological distress to you, can you please tell us what do you mean by that?
A: First of all[,] when my husband left me[,] I didn't eat, I didn't sleep until 2013 when I found out that he's still alive[,] then that's the time I changed my mind so I tried my health to be better so that I can move to another case.

Q: Isn't it that the matter that you told us is just an effect of love being unreturned and not because of what Jaime intentionally did to you?
A: No, it's not, ma'am.

Q: You considered those things as the effect of actions of Jaime, not loving you back?
A: Yes, ma'am.

Q: And what you wanted now to do is that you filed this case so that he will love you back?
A: I think no more because until now I know he doesn't love me anymore because he wants to stay with another woman so, I want him to be punished so that he will know how it feels to be hurt, both of them.[39]

Third, while Araza denied that he committed marital infidelity against AAA, he would later on admit that he left his wife AAA to live with Fabillar, and that he was fully aware that

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

[39] *Id*. at 22.

AAA suffered emotionally and psychologically because of his decision:

[ATTY. SOMERA]
Q: After a month more or less[,] where did you go?
A: When I couldn't take her behavior anymore, I called my friend who's in Zamboanga, ma'am.

Q: And what did you ask this friend[,] if there be any?
A: I asked the help of my friend for him to secure a plane ticket for me because I was intending to go back and work in Zamboanga.[40]

x x x

Q: You decided to finally leave your wife in 2007 because you cannot stand her character anymore, is that correct?
A: Yes[,] sir.

Q: And you know very well that your separation from her is affecting her emotionally and psychologically, is that correct? You know that?

COURT
Please answer the question.
A: Yes[,] sir.

Q: And despite knowing that your wife is suffering emotionally and psychologically because of your decision to leave [her] you still choose to stay [away] from her, is that correct?
A: Yes, sir.

x x x

Q: Was there a time that you lived with Tessie Fabillar?
A: Yes[,] sir.

x x x

COURT
Q: I'm giving you a chance, how long have you been living with [Fabillar] under one roof.
A: Since 2008, sir.[41]

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[40] TSN, Testimony of Jaime Araza y Jarupay, January 18, 2017, p. 14.

[41] *Id.* at 20-22. (Emphases ours)

x x x

Q: And it is correct to say based on this document that you and [Fabillar] agreed not to live [together] anymore, is that correct?

COURT
Please don't nod.

Q: What's the answer?
A: Yes, sir[.]

Q: And yet after signing that agreement you and [Fabillar] lived together under one roof, is that correct?
A: Yes[,] sir[.][42]

The RTC was convinced by the sincerity and truthfulness of AAA's testimony. AAA, who only intended to bring justice to what happened to her, was able to testify and to show through her testimony that due to Araza's act of infidelity and failure to stay true to his promise, she suffered emotional and psychological harm.

This Court will not disturb the findings of the RTC and as affirmed by the CA, as regards AAA's credibility as a witness. The RTC is in a better position to observe her candor and behavior on the witness stand. Its assessment is respected unless certain facts of substance and value were overlooked which, if considered, might affect the result of the case.[43]

Araza can only offer the defense of denial. The defense of denial is inherently weak and cannot prevail over the positive and credible testimonies of the prosecution witnesses that the accused committed the crime.[44] Denial, being a self-serving negative defense, cannot be given greater weight than the declaration of credible witnesses who testify on affirmative matters.[45]

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

[43] *People v. Dizon*, 453 Phil. 858, 881 (2003).

[44] *People v. Leonardo*, 638 Phil. 161, 195 (2010).

[45] *People v. Peteluna, et al.*, 702 Phil. 128, 142 (2013).

The prosecution has established beyond reasonable doubt that Araza committed the crime of psychological violence, through his acts of marital infidelity, which caused mental or emotional suffering on the part of AAA.

Having ascertained the guilt of Araza for violation of Section 5(i), We shall now proceed to determine the appropriate penalty.

Section 6 of R.A. No. 9262 provides:

SECTION 6. *Penalties.* - The crime of violence against women and their children, under Section 5 hereof shall be punished according to the following rules:

(f) Acts falling under Section 5(h) and Section 5(i) shall be punished by *prision mayor*.

If the acts are committed while the woman or child is pregnant or committed in the presence of her child, the penalty to be applied shall be the maximum period of penalty prescribed in the section.

In addition to imprisonment, the perpetrator shall (a) pay a fine in the amount of not less than One hundred thousand pesos (P100,000.00) but not more than three hundred thousand pesos (P300,000.00); (b) undergo mandatory psychological counseling or psychiatric treatment and shall report compliance to the court.

Applying the Indeterminate Sentence Law, the minimum term of the indeterminate penalty shall be taken from the penalty next lower in degree, which is *prision correcional*, in any of its period which is from six (6) months and one (1) day to six (6) years, while the maximum term shall be which could be properly imposed under the law, which is eight (8) years and one (1) day to ten (10) years of *prision mayor*, there being no aggravating or mitigating circumstance attending the commission of the crime.[46] This Court deems it proper to impose on petitioner

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[46] **Article 64.** *Rules for the application of penalties which contain three periods.* - In cases in which the penalties prescribed by law contain three periods, x x x the courts shall observe for the application of the penalty the following rules, according to whether there are or are no mitigating or aggravating circumstances:

1. When there are neither aggravating nor mitigating circumstances, they shall impose the penalty prescribed by law in its medium period.

Araza, the indeterminate penalty of six (6) months and one (1) day of *prision correcional*, as minimum, to eight (8) years and one (1) day of *prision mayor*, as maximum.

Also, petitioner Araza is **DIRECTED TO PAY** a fine in the amount of ONE HUNDRED THOUSAND PESOS (₱100,000.00), and moral damages in the amount of TWENTY-FIVE THOUSAND PESOS (₱25,000.00).

WHEREFORE, premises considered, the petition is **DENIED** for failure of the petitioner to show any reversible error in the assailed CA Decision. The assailed Decision dated December 17, 2018 and the Resolution dated May 10, 2019 of the Court of Appeals in CA-G.R. CR No. 40718 are hereby **AFFIRMED** with **MODIFICATION:**

1. Petitioner Jaime Araza y Jarupay is found **GUILTY** beyond reasonable doubt of Violation of Section 5(i) of Republic Act No. 9262 and is sentenced to suffer the indeterminate penalty of six (6) months and one (1) day of *prision correcional*, as minimum, to eight (8) years and one (1) day of *prision mayor*, as maximum;
2. Petitioner is **ORDERED** to **PAY** a fine equivalent to One Hundred Thousand Pesos (₱100,000.00), and moral damages in the amount of Twenty-Five Thousand Pesos (₱25,000.00); and
3. Further, petitioner is **DIRECTED** to **UNDERGO** a mandatory psychological counselling or psychiatric treatment, and to **REPORT** his compliance therewith to the court of origin within fifteen (15) days after the completion of such counselling or treatment.

SO ORDERED.

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

FIRST DIVISION

[G.R. No. 248010. September 8, 2020]

PEOPLE OF THE PHILIPPINES, *Plaintiff-Appellee, v.* **HENRY SORIANO y SORIANO,** *Accused-Appellant.*

SYLLABUS

1. CRIMINAL LAW; REPUBLIC ACT NO. 9165 (COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002); ILLEGAL SALE OF DANGEROUS DRUGS, ELEMENTS; THE IDENTITY OF THE DANGEROUS DRUG MUST BE ESTABLISHED WITH MORAL CERTAINTY, IT BEING THE VERY *CORPUS DELICTI* OF THE VIOLATION OF THE LAW.— To secure conviction for illegal sale of dangerous drugs, the prosecution must establish: (a) the identity of the buyer and the seller, the object and the consideration; and (b) the delivery of the thing sold and the payment. In this offense, the existence of the drug is of paramount importance such that no drug case can be successfully prosecuted and no judgment of conviction can be validly sustained without the identity of the dangerous substance being established with moral certainty, it being the very *corpus delicti* of the violation of the law. There must be a clear showing that "the drug itself is the object of the sale." Thus, the chain of custody over the confiscated drugs must be sufficiently proved.

2. ID.; ID.; ID.; CHAIN OF CUSTODY; LINKS THEREIN.— Chain of custody is a procedural mechanism that ensures that the identity and integrity of the *corpus delicti* are clear and free from any unnecessary doubt or uncertainty. It secures the close and careful monitoring and recording of the custody, safekeeping, and transfer of the confiscated illegal drug so as to preclude any incident of planting, tampering, or switching of evidence. The links in the chain, to wit: (1) the seizure and marking, if practicable, of the illegal drug recovered from the accused by the apprehending officer; (2) the turnover of the illegal drug seized by the apprehending officer to the investigating officer; (3) the turnover by the investigating officer of the illegal

drug to the forensic chemist for laboratory examination; and (4) the turnover and submission of the marked illegal drug seized from the forensic chemist to the court must be adequately proved in such a way that no question can be raised as to the authenticity of the dangerous drug presented in court.

3. ID.; ID.; ID.; ID.; ID.; MANNER OF ESTABLISHING THE CHAIN OF CUSTODY OF SEIZED ITEMS.— The Court thoroughly laid down the manner of establishing the chain of custody of seized items in *Mallillin v. People*:

. . .

In other words, it is incumbent upon the prosecution to establish that the confiscated drug and the drug submitted in court are one and the same by providing a clear narration of the following: 1) the date and time when, as well as the manner, in which the illegal drug was transferred; 2) the handling, care and protection of the person who had interim custody of the seized illegal drug; 3) the condition of the drug specimen upon each transfer of custody; and 4) the final disposition of the seized illegal drug.

4. ID.; ID.; ID.; ID.; PHYSICAL INVENTORY AND PHOTOGRAPH OF THE SEIZED ILLEGAL DRUG; REQUISITES THEREOF.— Since the offense was committed on December 10, 2010, the Court is bound to evaluate the apprehending officers' compliance with the chain of custody requirement in accordance with Section 21 of R.A. No. 9165. The law sets forth the fine points of the **physical inventory** and **photograph** of the seized illegal drug such that:

1. They must be done immediately after seizure or confiscation;

2. They must be done in the presence of the following persons: a) the accused or his representative or counsel; b) representative from the media; c) representative from the DOJ; and d) any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof; and

3. They shall be conducted at the following places: a) place where the search warrant is served; or b) at the nearest police station or nearest office of the apprehending officer/team, whichever is practicable, in case of warrantless seizure.

5. ID.; ID.; ID.; ID.; INSTANCES WHEN IMMEDIATE PHYSICAL INVENTORY AND PHOTOGRAPH OF THE CONFISCATED ITEMS AT THE PLACE OF ARREST MAY BE EXCUSED; CASE AT BAR.— In *People v. Lim*, it has been held that "immediate physical inventory and photograph of the confiscated items at the place of arrest may be excused in instances when the safety and security of the apprehending officers and the witnesses required by law or of the items seized are threatened by immediate or extreme danger such as retaliatory action of those who have the resources and capability to mount a counter-assault." The apprehending officers in the present case undoubtedly did not show that the immediate physical inventory and photographing posed a threat on the safety and security of the police officers, or of the confiscated dangerous substance nor did they offer any other acceptable reason for not complying strictly with the requirement of immediate inventory and photographing at the place of arrest.

6. ID.; ID.; ID.; ID.; WHEN STRICT COMPLIANCE WITH THE CHAIN OF CUSTODY RULE MAY BE EXCUSED; CASE AT BAR.— The chain of custody rule, nevertheless, admits of an exception which is found in the saving clause introduced in Section 21 (a), Article II of R.A. No. 9165. Less than strict compliance with the guidelines stated in Section 21 does not automatically render void and invalid the confiscation and custody over the evidence obtained. The saving clause is set in motion when these requisites are satisfied: 1) the existence of justifiable grounds; and 2) the integrity and evidentiary value of the seized items are properly preserved by the police officers.

The first requirement directs the prosecution to identify and concede the lapses of the buy-bust team and thereafter give a justifiable and credible explanation therefor. *First*, records indicate that the prosecution did not concede nor gave a viable explanation for the absence of the required witnesses during the marking of the seized item. *Second*, it also failed to specify a reason for the conduct of the inventory and photographing in a place other that the place of apprehension and seizure.

Anent the second requirement, the prosecution was not able to prove that the integrity and evidentiary value of the seized items remained intact from the time of confiscation, marking,

submission to the laboratory for examination, and presentation in court. The absence of the three required witnesses at the place of seizure for the immediate physical inventory and photographing without offering a justification created a gap in the chain of custody. Considering the miniscule amount of 0.04 grams of the confiscated illegal drugs involved in this case, rigid compliance with Section 21 of R.A. No. 9165 is expected from the apprehending officers.

APPEARANCES OF COUNSEL

The Solicitor General for plaintiff-appellee.
Public Attorney's Office for accused-appellant.

D E C I S I O N

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

This resolves the appeal filed by Henry Soriano y Soriano (accused-appellant) from the Decision[1] dated September 28, 2017 of the Court of Appeals (CA) in CA-G.R. CR-HC No. 09035 affirming the Decision of the Regional Trial Court (RTC), Branch 8, La Trinidad, Benguet, in Criminal Case No. 10-CR-8284 finding him guilty beyond reasonable doubt of violation of Section 5, Article II, Republic Act (R.A.) No. 9165,[2] otherwise known as the Comprehensive Dangerous Drugs Act of 2002, and sentencing him to suffer the penalty of life imprisonment and to pay a fine of ₱500,000.00.

The Antecedents

Accused-appellant was charged before the RTC for violating Section 5, Article II of R.A. No. 9165, *viz.*:

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[1] Penned by Associate Justice Fernanda Lampas Peralta, with Associate Justices Elihu A. Ybañez and Carmelita Salandanan Manahan; *rollo*, pp. 3-26.

[2] 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.

That on or about the 10th day of December, 2010, at Buyagan, Poblacion, Municipality of La Trinidad, Province of Benguet, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, without any authority of law, did then and there willfully, unlawfully, and knowingly possess, control, sell and deliver 0.04 grams of methamphetamine hydrochloride also known as "[*shabu*,]" a dangerous drug, to **SPOII RAYMOND B. TACIO**, a personnel of the Philippine National Police, in violation of said law.

CONTRARY TO LAW.[4]

Upon arraignment, accused-appellant pleaded "not guilty." Thereafter, pre-trial and trial on the merits ensued.

The facts, as found by the CA, are as follows:

At around 2:00 in the afternoon of December 10, 2010, a confidential informant went to the Philippine National Police (PNP) Special Operations Unit-Regional Anti-Illegal Drugs Special Operation Task Group (SOU-RAIDSOTG) at Camp Bado Dangwa, La Trinidad, Benguet and informed Chief, P/SUPT. Glenn Lonogan, about the illegal drug activities of one "Henry Soriano" who could "dispense at any time his stuff *'Shabu'* to any prospective buyer." According to the informant, he transacted with "Henry Soriano" for the sale of ₱500 pesos worth of *"shabu"* while en route to the PNP SOU-RAIDSOTG Office, and "Henry Soriano" agreed to meet him near Buyagan Elementary School at Buyagan, La Trinidad, Benguet at 4:00 p.m. that day.[5]

P/SUPT. Glenn Lonogan thereafter formed a buy-bust team, with PSI Melchor Ong as team leader, SPO4 Romeo Abordo and SPO4 Nicolas Luna as backup operatives, SPO2 Benedict Calado as driver, PO2 Christian Boado as photographer and SPO2 Raymond Tacio as *poseur-buyer*. At the briefing, the informant described "Henry Soriano" as someone between 40

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[4] Id. at 8.

[5] Id. at 4.

to 45 years of age, of medium built, with fair complexion and slightly curly hair. SPO2 Raymond Tacio was given a ₱500 bill to be used as buy-bust money and it was agreed that he would grab the suspect's hand as pre-arranged signal that he had completed the purchase. The ₱500 bill to be used as buy-bust money was photocopied and the photocopy was authenticated and subscribed by City Prosecutor Elmer Sagsago.[6]

Before going to the target area, police operatives coordinated with the Philippine Drug Enforcement Agency (PDEA) and the Coordination Form signed by P/SUPT. Glenn Lonogan for the operation to be conducted by the buy-bust team, was given control number 12-10-S3. The team, accompanied by the confidential informant, proceeded to Buyugan Elementary School on board an L-300 Van. SPO2 Raymond Tacio and the confidential informant waited at the street beside Buyugan Elementary School, while the other police officers positioned themselves strategically within viewing distance of the target area.[6]

At around 4:00 p.m., a man matching the description of "Henry Soriano" approached the team and asked, *"Manu ti gatangen yo"* (How much will you buy?), to which the confidential informant replied, "₱500 *laeng*." The confidential informant then introduced SPO2 Raymond Tacio, *"Isuna to gumatang"* (He will be the one to buy) as the buyer of drugs to "Henry Soriano," who stared as SPO2 Tacio and asked payment from him. SPO2 Raymond Tacio gave "Henry Soriano" the ₱500-peso buy-bust money and "Henry Soriano" gave SPO2 Raymond Tacio one heat-sealed transparent plastic sachet containing white crystalline substance.[7]

Upon consummation of the sale, SPO2 Tacio grabbed the right hand of "Henry Soriano" which was the pre-arranged signal. PO2 Boado and SPO4 Luna immediately rushed to the scene and helped SPO2 Tacio arrest "Henry Soriano." SPO2 Tacio frisked "Henry Soriano" and recovered the buy-bust money from his right front pocket. He compared the ₱500-peso bill

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[6] Id.

[6] Id. at 5.

[7] Id.

with the photocopied bill and confirmed that the serial numbers in the original and photocopy were the same. SPO2 Tacio then marked the plastic sachet of white crystalline substance with "EXH. "A" RBT 10 DEC 2010" and placed his signature thereon at the place of arrest. PO2 Christian Boado took pictures of SPO2 Tacio while marking the plastic sachet in the presence of "Henry Soriano." The police officers asked for the name of accused-appellant, who identified himself as Henry Soriano. PO2 Boado then informed accused-appellant of his constitutional rights using the Ilocano dialect, which was understood by accused-appellant.[8]

Accused-appellant and the seized items were brought by the police officers to Camp Bado Dangwa, La Trinidad, Benguet where the police officers learned that the accused-appellant was a native of Mangaldan, Pangasinan who had been residing in La Trinidad, Benguet. Thereafter, an inventory of the seized drugs and buy-bust money was conducted in the presence of Rolando Leon, a Barangay elected official, Fiscal Mark C. Maranes, a DOJ representative, and Ruel Toquero, a representative from the media. PO2 Boado took pictures of the seized items and of Rolando Leon, Fiscal Mark C. Maranes and Ruel Toquero while signing the inventory in the presence of accused-appellant.[9]

A request for qualitative examination of the plastic sachet of white crystalline substance, as marked, and a request for drug test of the accused-appellant, were thereafter signed by P/SUPT. Glenn Lonogan. SPO2 Tacio turned over accused-appellant, as well as the marked plastic sachet and the requests for qualitative examination and drug test, to the PNP Crime Laboratory Office, Police Regional Office—Cordillera. The plastic sachet was received by "PSI Canlas R.F." at "10:05 PM/10 Dec. 2010," while accused-appellant was turned over

[8] Id. at 5-6.

[9] Id. at 6.

to "PSI Canlas R.F." at "10:07 PM/10 Dec. 2010." Upon examination by Forensic Chemist PSI Rowena Fajardo Canlas, the "heat sealed transparent plastic sachet with markings 'EXH "A" RBT 10 DEC 2010 and signature' containing 0.04 gram of white crystalline substance" "gave **POSITIVE** result to the test for the presence of Methamphetamine hydrochloride, a dangerous drug," per Chemistry Report No. D-88-2010 dated December 11, 2010. The urine sample taken from accused-appellant was also subjected to "screening and confirmatory test" which "gave POSITIVE result for the presence of Methamphetamine, a dangerous drugs," per Chemistry Report No. DT-39-2010 dated December 14, 2010.[10]

Accused-appellant for his part averred that he sold vegetables at La Trinidad Trading Post in the morning of December 10, 2010, and in the afternoon, he visited his friend Mario Fernando at the latter's apartment at Buyagan, La Trinidad, Benguet. While at the apartment, "Dick'' arrived and chatted with him. Mario Fernando left the apartment to check on the schedule of his basketball game and to buy drinks. While the accused-appellant and "Dick" were playing "tong-its," two men wearing black jackets entered the apartment and pointed their guns at accused-appellant. Another male person wearing a black jacket and carrying a gun also entered and asked, "Who is Henry here?" to which accused-appellant raised his hand and said that he was Henry. Accused-appellant was frisked and the men took his wallet, cellphone and the pot money on top of the table. He later came to know the men as PSI Melchor Ong, SPO4 Abordo and PO2 Boado. The police informed him that a person named "Victor" had been arrested in connection with illegal drug activities and asked accused-appellant if he knew other persons engaged in the sale of *"shabu."* Accused-appellant said he knew who "Victor" was, but apart from him, he did not know anyone else involved in *"shabu."* He was then taken to Camp Bado Dangwa on board a white van. According to him, the first time he saw the ₱500-peso bill allegedly used as buy-bust money

[10] Id. at 6-7.

was during the inventory at Camp Bado Dangwa, whereas he only saw the plastic sachet of *"shabu"* when SPO2 Tacio brought it out of his pocket for marking near Buyugan Elementary School.[11]

The Ruling of the RTC

On November 17, 2016, the RTC rendered a Decision[12] finding the accused-appellant guilty in Criminal Case No. 10-CR-8284 for the illegal sale of dangerous drugs in violation of Section 5, Article II of R.A. No. 9165, thereby sentencing him to suffer the penalty of life imprisonment, and to pay a fine of ₱500,000.00.

In convicting the accused-appellant for violation of Section 5, Article II of R.A. No. 9165, the RTC was convinced that the prosecution was able to prove the elements of the crime beyond reasonable doubt. It brushed aside accused-appellant's defense of denial and frame-up, and further mentioned accused-appellant's failure to present any evidence of ill motive on the part of the prosecution witnesses to falsely impute the commission of the said crime upon him. The RTC expounded that without proof of ill motive, the testimonies of the police officers deserved full faith and credit and they were presumed to have performed their duties in a regular manner. In this regard, it held that the integrity and evidentiary value of the seized drugs had been duly preserved by the unbroken chain of custody of the *corpus delicti*.

Thus, the trial court disposed in this wise:

WHEREFORE, foregoing premises considered, the court finds accused Henry Soriano *y* Soriano GUILTY beyond reasonable doubt of the crime of Violation of Section 5, Article II of Republic Act No. 9165 and hereby sentences him to suffer the penalty of Life Imprisonment and to pay a fine in the amount of Five Hundred Thousand Pesos (₱500,000.00).

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[11] Id. at 7.

[12] Penned by Judge Cecilia Corazon S. Dulay-Archog, Regional Trial Court (RTC) Branch 8, La Trinidad, Benguet; CA *rollo* pp. 38-50.

Pursuant to Article 29 of the Revised Penal Code, the period of the preventive imprisonment of the accused shall be credited in the service of his sentence, provided he conditions prescribed in such article have been fully met.

SO ORDERED.[13]

Aggrieved, accused-appellant elevated the case to the CA via a Notice of Appeal.[14]

The Ruling of the CA

In its assailed Decision,[15] the CA affirmed the findings of the RTC that the elements for the prosecution of offenses involving the illegal sale of dangerous drugs under Section 5, Article II of R.A. No. 9165 were met. It also agreed with the RTC that non-compliance by the police officers with the procedure laid down in Section 21, Article II of R.A. No. 9165 was not fatal to the prosecution's cause considering that it was able to sufficiently prove the unbroken chain of custody of the plastic sachet containing *shabu*, from the moment it came into the possession of SPO2 Tacio, the poseur-buyer, until the same was brought to the crime laboratory for testing, and its subsequent presentation in court. The CA brushed aside accused-appellant's defenses of denial and frame-up for being unmeritorious in light of his failure to present strong and concrete evidence that would support his claim as well as any ill motive on the part of the police officers to concoct the false charge against him. Such defenses cannot prevail over the positive assertions of the police officers who were deemed to have performed their official duties in a regular manner. The dispositive portion of the CA Decision reads:

WHEREFORE, the trial court's Decision dated November 17, 2016 and Resolution dated January 17, 2017 are affirmed in toto.

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[13] *Rollo*, pp. 3-26.

[14] CA *rollo*, pp. 129-131.

[15] Supra note 1.

SO ORDERED.[16]

Hence, this appeal.

Accused-appellant centers his defense on the failure of the police officers to comply with the mandatory procedure in Section 21, Article II of R.A. No. 9165 relative to the handling of the seized *shabu*. In particular, he contends that the prosecution failed to prove all the material details of the buy-bust operation. Accused-appellant likewise questions the non-presentation of the confidential informant and argues that the same is fatal to the prosecution's case because it violated his constitutional right to confront the witness against him. Accused-appellant also puts in issue the fact that the inventory and photographing was not done immediately after seizure and confiscation of the illegal drug. Accordingly, accused-appellant stresses that he is entitled to an acquittal of the crime charged against him.[17]

The Issue

The primordial issue for determination is whether accused-appellant is guilty beyond reasonable doubt of violation of Section 5, Article II of R.A. No. 9165.

Our Ruling

We resolve to acquit accused-appellant Soriano on the ground of reasonable doubt.

To secure conviction for illegal sale of dangerous drugs, the prosecution must establish: (a) the identity of the buyer and the seller, the object and the consideration; and (b) the delivery of the thing sold and the payment.[18] In this offense, the existence of the drug is of paramount importance such that no drug case can be successfully prosecuted and no judgment of conviction can be validly sustained without the identity of the dangerous substance being established with moral certainty,

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[16] *Rollo*, p. 26.

[17] CA *rollo*, pp. 13-36.

[18] *People v. Cuevas*, G.R. No. 238906, November 5, 2018.

it being the very *corpus delicti* of the violation of the law.[19] There must be a clear showing that "the drug itself is the object of the sale."[20] Thus, the chain of custody over the confiscated drugs must be sufficiently proved.

Chain of custody is a procedural mechanism that ensures that the identity and integrity of the *corpus delicti* are clear and free from any unnecessary doubt or uncertainty. It secures the close and careful monitoring and recording of the custody, safekeeping, and transfer of the confiscated illegal drug so as to preclude any incident of planting, tampering, or switching of evidence. The links in the chain, to wit: (1) the seizure and marking, if practicable, of the illegal drug recovered from the accused by the apprehending officer; (2) the turnover of the illegal drug seized by the apprehending officer to the investigating officer; (3) the turnover by the investigating officer of the illegal drug to the forensic chemist for laboratory examination; and (4) the turnover and submission of the marked illegal drug seized from the forensic chemist to the court[21] must be adequately proved in such a way that no question can be raised as to the authenticity of the dangerous drug presented in court. The Court thoroughly laid down the manner of establishing the chain of custody of seized items in *Mallillin v. People*:[22]

> As a method of authenticating evidence, the chain of custody rule requires that the admission of an exhibit be preceded by evidence sufficient to support a finding that the matter in question is what the proponent claims it to be. It would include testimony about every link in the chain, from the moment the item was picked up to the time it is offered into evidence, in such a way that every person who touched the exhibit would describe how and from whom it was received, where it was and what happened to it while in the witness' possession, the

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[19] *People v. Rivera*, G.R. No. 225786, November 14, 2018.

[20] *People v. Bintaib*, G.R. No. 217805, April 2, 2018.

[21] *People v. Lim*, G.R. No. 231989, September 4, 2018.

[22] 576 Phil. 576, 587 (2008).

condition in which it was received and the condition in which it was delivered to the next link in the chain. These witnesses would then describe the precautions taken to ensure that there had been no change in the condition of the item and no opportunity for someone not in the chain to have possession of the same. (Citations omitted)

In other words, it is incumbent upon the prosecution to establish that the confiscated drug and the drug submitted in court are one and the same by providing a clear narration of the following: 1) the date and time when, as well as the manner, in which the illegal drug was transferred; 2) the handling, care and protection of the person who had interim custody of the seized illegal drug; 3) the condition of the drug specimen upon each transfer of custody; and 4) the final disposition of the seized illegal drug.

The chain of custody rule is embodied in Section 21 (1), Article II of R.A. No. 9165 which specifies:

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.

Section 21 (a) of the Implementing Rules and Regulations (IRR) of R.A. No. 9165 further provides:

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; or at the nearest police station or at the nearest office of the apprehending officer/team, whichever is practicable, in case of warrantless seizures**; *Provided, further*, **that non-compliance with these requirements under justifiable grounds, as long as the integrity and the evidentiary value of the seized items are properly preserved by the apprehending officer/ team, shall not render void and invalid such seizures of and custody over said items**. (Emphasis supplied)

On July 15, 2014, Section 21 was amended by R.A. No. 10640[23] to this effect:

SEC. 21. x x x. —

(1) The apprehending team having initial custody and control of the dangerous drugs, controlled precursors and essential chemicals, instruments/paraphernalia and/or laboratory equipment shall, immediately after seizure and confiscation, conduct a physical inventory of the seized items and photograph the same in the presence of the accused or the person/s from whom such items were confiscated and/ or seized, or his/her representative or counsel, with an elected public official and a representative of the National Prosecution Service or the media who shall be required to sign the copies of the inventory and be given a copy thereof: *Provided*, That the physical inventory and photograph shall be conducted at the place where the search warrant is served; or at the nearest police station or at the nearest office of the apprehending officer/team, whichever is practicable, in case of warrantless seizures: *Provided, finally*, That noncompliance of these

[23] AN ACT TO FURTHER STRENGTHEN THE ANTI-DRUG CAMPAIGN OF THE GOVERNMENT, AMENDING FOR THE PURPOSE SECTION 21 OF R.A. NO. 9165, OTHERWISE KNOWN AS THE "COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002."

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. (Emphases supplied)

Since the offense was committed on December 10, 2010, the Court is bound to evaluate the apprehending officers' compliance with the chain of custody requirement in accordance with Section 21 of R.A. No. 9165. The law sets forth the fine points of the **physical inventory** and **photograph** of the seized illegal drug such that:

1. They must be done immediately after seizure or confiscation;
2. They must be done in the presence of the following persons: a) the accused or his representative or counsel; b) representative from the media; c) representative from the DOJ; and d) any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof; and
3. They shall be conducted at the following places: a) place where the search warrant is served; or b) at the nearest police station or nearest office of the apprehending officer/team, whichever is practicable, in case of warrantless seizure.

Measured against the foregoing yardstick, the prosecution miserably failed to establish the apprehending officers' faithful compliance with the rule on the chain of custody.

The members of the buy-bust team obviously did not comply with the procedural safeguards embodied in Section 21 of R.A. No. 9165 and its IRR. The physical inventory and photographing of the seized illegal drugs were not immediately done at the place of seizure. The presence of a representative from the media, the DOJ, and an elected public official were not secured to witness the inventory and photographing of the confiscated dangerous drug at the time of apprehension and seizure. Notwithstanding the foregoing deviations from Section 21 of

R.A. No. 9165, the RTC and the CA were in unison in holding that there was substantial compliance with the law and that the integrity of the illegal drug seized from accused-appellant was preserved.

We do not agree.

The Court cannot turn a blind eye on the absence of a representative from the media, a representative from the DOJ, and an elected public official: 1) at the time of apprehension and seizure; and 2) at or near the place of apprehension and seizure. In *People v. Adobar*,[24] the Court shed light on when the presence of a representative from the media, the DOJ, and an-elected public official is required:

> In no uncertain words, Section 21 requires the apprehending team to "immediately after seizure and confiscation, physically inventory and photograph [the seized illegal drugs] in the presence of the accused x x x or his representative or counsel, a representative from the media and the Department of Justice (DOJ) and any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof."
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> The phrase "immediately after seizure and confiscation" means that the physical inventory and photographing of the drugs must be **at the place of apprehension and/or seizure**. If this is not practicable, it may be done as soon as the apprehending team reaches the nearest police station or nearest office.
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> In all of these cases, the photographing and inventory are required to be done **in the presence of any elected public official and a representative from the media and the DOJ who shall be required to sign an inventory and given copies thereof**. By the same intent of the law behind the mandate that the initial custody requirements be done "immediately after seizure and confiscation," the aforesaid witnesses must already be physically present at the time of apprehension and seizure — a requirement that can easily be complied with by the buy-bust team considering that the buy-bust operation is, by its very nature, a planned activity. Simply put, the buy bust team had enough time and opportunity to bring with them these witnesses.

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[24] G.R. No. 222559, June 6, 2018.

In other words, while the physical inventory and photographing is allowed to be done "at the nearest police station or at the nearest office of the apprehending officer/team, whichever is practicable, in case of warrantless seizure," this does not dispense with the requirement of having the DOJ and media representative and the elected public official to be **physically present at the time of and at or near the place of apprehension and seizure so that they can be ready to witness the inventory and photographing of the seized drugs "immediately after seizure and confiscation."**

The reason is simple, it is at the time of arrest or at the time of the drugs' "seizure and confiscation" that the presence of the three (3) witnesses is most needed. **It is their presence at that point that would insulate against the police practices of planting evidence**. (Citations omitted; emphases and underscoring in the original)

In *People v. [Lim]*,[25] the Court ruled:

Without the insulating presence of the representative from the media or the [DOJ], or any elected public official during the seizure and marking of the sachets of *shabu*, the evils of switching, "planting" or contamination of the evidence that had tainted the buy-busts conducted under the regime of RA No. 6425 *(Dangerous Drugs Act of 1972)* again reared their ugly heads as to negate the integrity and credibility of the seizure and confiscation of the sachets of *shabu* that were evidence herein of the *corpus delicti*, and thus adversely affected the trustworthiness of the incrimination of the accused. x x x (Citation omitted)

In the instant case, the physical inventory and photographing of the seized items were not executed immediately at the place of apprehension and seizure. While these procedures may be conducted at the nearest police station or at the nearest office of the apprehending officer/team, substantial compliance with Section 21 of R.A. No. 9165 may be allowed if attended with good and sufficient reason, a condition that was not met in this case. In *People v. Lim*, it has been held that "immediate physical inventory and photograph of the confiscated items at the place of arrest may be excused in instances when the safety and security of the apprehending officers and the witnesses

[25] G.R. No. 231989, September 4, 2018.

required by law or of the items seized are threatened by immediate or extreme danger such as retaliatory action of those who have the resources and capability to mount a counter-assault." The apprehending officers in the present case undoubtedly did not show that the immediate physical inventory and photographing posed a threat on the safety and security of the police officers, or of the confiscated dangerous substance nor did they offer any other acceptable reason for not complying strictly with the requirement of immediate inventory and photographing at the place of arrest.

The case of *People v. Ramos*[26] is explicit:

> It is well to note that the absence of these required witnesses does not *per se* render the confiscated items inadmissible. However, a justifiable reason for such failure or a **showing of any genuine and sufficient effort to secure the required witnesses** under Section 21 of R.A. 9165 must be adduced. In *People v. Umipang*, the Court held that the prosecution must show that **earnest efforts** were employed in contacting the representatives enumerated under the law for "a sheer statement that representatives were unavailable without so much as an explanation on whether serious attempts were employed to look for other representatives, given the circumstances is to be regarded as a flimsy excuse." Verily, mere statements of unavailability, absent actual serious attempts to contact the required witnesses are unacceptable as justified grounds for non-compliance. These considerations arise from the fact that police officers are ordinarily given sufficient time — beginning from the moment they have received the information about the activities of the accused until the time of his arrest — to prepare for a buy-bust operation and consequently, make the necessary arrangements beforehand knowing full well that they would have to strictly comply with the set procedure prescribed in Section 21 of RA 9165. As such, police officers are compelled not only to state reasons for their non-compliance, but must in fact, also convince the Court that they exerted earnest efforts to comply with the mandated procedure, and that under the given circumstances, their actions were reasonable. (Citations omitted; emphases and underscoring in the original)

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[26] G.R. No. 233744, February 28, 2018.

It also bears stressing that the prosecution was glaringly mum about the absence of the required insulating witnesses during the marking of the seized item. It displayed indifference to this requirement of R.A. No. 9165; thus, to the mind of the Court, the integrity of the confiscated drug has been put in serious doubt.

The chain of custody rule, nevertheless, admits of an exception which is found in the saving clause introduced in Section 21 (a), Article II of R.A. No. 9165. Less than strict compliance with the guidelines stated in Section 21 does not automatically render void and invalid the confiscation and custody over the evidence obtained. The saving clause is set in motion when these requisites are satisfied: 1) the existence of justifiable grounds; and 2) the integrity and evidentiary value of the seized items are properly preserved by the police officers.[27]

The first requirement directs the prosecution to identify and concede the lapses of the buy-bust team and thereafter give a justifiable and credible explanation therefor. *First*, records indicate that the prosecution did not concede nor gave a viable explanation for the absence of the required witnesses during the marking of the seized item. *Second*, it also failed to specify a reason for the conduct of the inventory and photographing in a place other than the place of apprehension and seizure.

Anent the second requirement, the prosecution was not able to prove that the integrity and evidentiary value of the seized items remained intact from the time of confiscation, marking, submission to the laboratory for examination, and presentation in court. The absence of the three required witnesses at the place of seizure for the immediate physical inventory and photographing without offering a justification created a gap in the chain of custody. Considering the miniscule amount of 0.04 grams of the confiscated illegal drugs involved in this case, rigid compliance with Section 21 of R.A. No. 9165 is expected from the apprehending officers. As aptly held in *People v.*

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[27] *People v. Fatallo*, G.R. No. 218805, November 7, 2018.

Plaza,[28] "[buy-bust] teams should be more meticulous in complying with Section 21 of R.A. No. 9165 to preserve the integrity of the seized *shabu* most especially where the weight of the seized item is a miniscule amount that can be easily planted and tampered with."

There being no plausible reason for the apprehending officers non-compliance with Section 21 of R.A. No. 9165, accused-appellant must perforce be acquitted.

WHEREFORE, the appeal is hereby **GRANTED**. The Decision dated September 28, 2017 of the Court of Appeals in CA-G.R. CR-HC No. 09035 is hereby **REVERSED** and **SET ASIDE**. Accused-appellant **HENRY SORIANO y SORIANO** is **ACQUITTED** for failure of the prosecution to prove his guilt beyond reasonable doubt. He is ordered **IMMEDIATELY RELEASED** from detention, unless he is confined for any other lawful cause. Let an entry of final judgment be issued immediately.

Let a copy of this Decision be furnished the Director of the Bureau of Corrections, for immediate implementation. Said Director is ordered to report the action he has taken to this Court within five days from receipt of this Decision.

SO ORDERED.

Caguioa (*Acting Chairperson*), *Lazaro-Javier, Inting,*[*] and *Lopez, JJ.*, concur.

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[28] G.R. No. 235467, August 20, 2018.

[*] Designated additional member in lieu of Chief Justice Diosdado M. Peralta per Raffle dated March 16, 2020.

FIRST DIVISION

[G.R. No. 248333. September 8, 2020]

PEOPLE OF THE PHILIPPINES, *Plaintiff-Appellee, v.* **KHALED FIRDAUS ABBAS *y* TIANGCO,** *Accused-Appellant*.

SYLLABUS

1. **CRIMINAL LAW; THE COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002 (RA 9165); ILLEGAL SALE OF DANGEROUS DRUGS; ELEMENTS.—** "In order to properly secure the conviction of an accused charged with Illegal Sale of Dangerous Drugs, the prosecution must prove: (*a*) the identity of the buyer and the seller, the object, and the consideration; and (*b*) the delivery of the thing sold and the payment."

2. **ID.; ID.; CHAIN OF CUSTODY RULES; IT IS INCUMBENT UPON THE ARRESTING OFFICERS TO FOLLOW THE PROCEDURAL SAFEGUARDS PROVIDED UNDER SEC. 21 OF RA 9165 TO REMOVE ANY DOUBT ON THE EXISTENCE OF THE OBJECT OF THE ILLEGAL SALE. —** Considering that the object of the illegal sale is the seized drug, we have emphasized time and again that "the seized drug is the *corpus delicti* of the crime itself." For this reason, "[i]ts existence must be proved beyond reasonable doubt." Thus, to successfully establish that appellant had sold an illegal drug to the officer posing as a buyer and triggering an *in flagrante delicto* arrest, it was incumbent on the arresting officers to have followed procedural safeguards provided in Sec. 21 (1), Art. II of R.A. No. 9165, the applicable law at that time, to remove any doubt on the existence of the object of the illegal sale.

APPEARANCES OF COUNSEL

The Solicitor General for plaintiff-appellee.
Public Attorney's Office for accused-appellant.

D E C I S I O N

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

This resolves the appeal from the March 14, 2018 Decision[1] of the Court of Appeals (CA) in CA-G.R. CR-H.C. No. 08396, which sustained the conviction of Khaled Firdaus Abbas *y* Tiangco (appellant) for violation of Section (Sec.) 5,[2] Article (Art.) II of Republic Act (R.A.) No. 9165 or "*The Comprehensive Dangerous Drugs Act of 2002*."

The appeal stems from an Information[3] charging appellant and worded as follows:

> That on or about the 29th day of December 2013 in Quezon City, Philippines, the above-named accused without lawful authority did then and there willfully and unlawfully sell, trade, administer, dispense, deliver, give away to another, distribute, dispatch in transit or transport, or act as broker in the said transaction, a dangerous drug, to wit twenty four point forty six (24.46) grams of white crystalline substance containing Methamphetamine Hydrochloride otherwise known as "SHABU" a dangerous drug.
>
> CONTRARY TO LAW.[4]

The evidence for the prosecution tends to establish that on December 28, 2013, SPO1 Leonardo Dulay (SPO1 Dulay) was on duty at Camp Karingal, Quezon City, when a confidential informant reported to the station's chief at around 1:00 p.m., about the illegal drug activity of a certain "JR" in *Barangay* Socorro, Quezon City. SPO1 Dulay was instructed to verify the report and a buy-bust team was formed. SPO1 Dulay was designated as the poseur-buyer, for which he was given two

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[1] Penned by Associate Justice Elihu A. Ybanez, with Associate Justices Rosmari D. Carandang (now a member of this Court) and Pedro B. Corales, concurring; *rollo*, pp. 3-28.

[2] Illegal Sale of Dangerous Drugs.

[3] *Rollo*, p. 4.

[4] Id.

marked Five Hundred Peso (₱500.00) bills and boodle money representing Sixty-Five Thousand Pesos (₱65,000.00). A Coordination Form and Pre-Operation Report were also prepared. SPO1 Dulay, through the informant, ordered 25g of *shabu* worth ₱65,000.00 from the said "JR."[5]

On December 29, 2013, SPO1 Dulay and the informant rode a Toyota Altis with plate number CAA 518 towards the agreed meeting place at General Roxas Street, Cubao, Quezon City. They arrived at around 7:00 p.m. When the appellant arrived at around 7:30 p.m., the informant called out to him to get into the car. Inside the car, the informant introduced SPO1 Dulay to appellant and inquired about the order for 25g of *shabu*, which appellant handed over to SPO1 Dulay, who then gave appellant the buy-bust money with bogus money enclosed in a brown envelope. SPO1 Dulay turned on the car's hazard light, which was the pre-arranged signal that the drug deal was consummated. The rest of the team rushed over and SPO1 Dulay introduced himself as a police officer to appellant. PO3 Rolando Alieger, Jr. (PO3 Alieger) assisted SPO1 Dulay in frisking appellant, although it was SPO1 Dulay who recovered the buy-bust and boodle money from appellant. They informed appellant of his constitutional rights. SPO1 Dulay then marked the sachet of substance sold to him by appellant with "KFTA-LD-12/29/13." They prepared the Inventory Receipt and contacted media and *barangay* representatives, but no one came. They proceeded to the office. All the while, SPO1 Dulay kept in his possession the *shabu* he purchased until they arrived at the office.[6]

Upon arrival, SPO1 Dulay turned over the seized evidence to PO3 Nilo Duazo (PO3 Duazo), the police investigator on duty. PO3 Duazo prepared the Chain of Custody Form, Request for Laboratory Examination, Request for Drug Test Examination, Inventory of Seized/Confiscated Item/Property, Arrest and Booking Sheet, and took photographs of appellant and the evidence. Rey Argana of Police Files Tonite and one BPSO

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[5] CA *rollo*, p. 46.

[6] Id. at 47.

Rolando Paronia, a *barangay* representative who was not an elected official, signed the Inventory Receipt.[7]

PCI Maridel Rodis-Martinez (PCI Martinez), forensic chemist of the PNP Crime Laboratory, received the Request for Laboratory Examination and the heat-sealed transparent plastic sachet containing white crystalline substance marked as "KFTA-LD-12/29/13" from SPO1 Dulay on December 30, 2013. PCI Martinez immediately conducted a qualitative examination on the specimen received, which tested positive for methamphetamine hydrochloride, commonly known as *shabu*. Afterwards, PCI Martinez sealed the specimen and turned it over to PO1 Junia Tuccad, the evidence custodian, and issued Initial Laboratory Report No. D-486-13, as well as Chemistry Report No. D-486-13 to reflect her findings. Upon subpoena by the court, PCI Martinez retrieved the specimen from the evidence custodian on June 3, 2014.[8]

Appellant, on the other hand, denied the charge and testified that on December 28, 2013, at around 4:00 p.m., he was in Cubao, Quezon City, when two men blocked his path, introduced themselves as police officers and arrested him. They forced him to board their car, where two men were already seated. The officers took his mobile phone, grocery items, and employment identification at a call center. PO3 Alieger pointed a gun to his head and told him to keep his head down as they took appellant to a nipa hut where SPO1 Dulay and PO3 Alieger told him that they knew his father and sister, and that they wanted his father to settle the case with them. Afterwards, appellant was brought to Camp Karingal where he was detained for two hours, then brought to the District Anti-Illegal Drugs office, where he saw documents and a white crystalline substance on top of a table. PO3 Alieger instructed appellant to sign a blank piece of paper, but he initially refused until PO3 Alieger insisted and told him it was only for safekeeping. Appellant further narrated that he was unable to report his arrest to his father because his mobile phone was never returned to him, so

[7] Id. at 47-48.

[8] Id. at 46.

his family found out about the arrest after a few days. According to appellant, for his own safety, his father has not yet filed a case against the officers who arrested him, but intend to do so when the case is over.[9]

On June 10, 2016, the Regional Trial Court (RTC) of Quezon City, Branch 79, rendered Judgment[10] in favor of the prosecution, as follows:

> **WHEREFORE**, judgment is hereby rendered finding accused **KHALED FIRDAUS ABBAS y TIANGCO, GUILTY BEYOND REASONABLE DOUBT** of violation of [Sec.] 5, Art. II, of [R.A. No.] 9165, and he is hereby sentenced to suffer life imprisonment, and to pay a fine of five hundred thousand pesos (₱500,000.00).
>
> The Branch Clerk of Court is directed to immediately turn over to the Chief of PDEA Crime Laboratory, the subject drugs covered by Chemistry Report No. D-486-13, to be disposed of in strict conformity with the provisions of R.A. [No.] 9165 and its implementing rules and regulations on the matter.
>
> SO ORDERED.[11]

On appeal, the CA upheld the RTC's Judgment[12] through the currently assailed Decision,[13] disposing:

> **FOR THESE REASONS**, the instant appeal is hereby ordered **DISMISSED**, and the appealed Judgment dated 10 June 2016 rendered by Branch 79 of the National Capital Judicial Region of the Regional Trial Court of Quezon City in Criminal Case No. R-QZN-13-02726-CR is **AFFIRMED *in toto***.
>
> **SO ORDERED**.[14]

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[9] Id. at 48.

[10] Penned by Presiding Judge Nadine Jessica Corazon J. Pama; id. at 45-53.

[11] Id. at 53.

[12] Supra note 10.

[13] Supra note 1.

[14] *Rollo*, p. 27.

Both appellant and the Office of the Solicitor General manifested[15] that no supplemental briefs are forthcoming, given that they've exhaustively argued their respective positions in their appeal briefs before the CA. In the issues[16] raised before the CA, appellant argued that the trial court gravely erred:

I.

x x x IN FINDING THAT [APPELLANT] IS GUILTY OF THE CRIME CHARGED NOTWITHSTANDING THE PROSECUTION'S FAILURE TO PROVE THE LEGALITY OF HIS ARREST;

II.

x x x IN FINDING THAT [APPELLANT] IS GUILTY OF THE CRIME CHARGED BASED ON THE EVIDENCE OBTAINED BY VIRTUE OF AN INVALID WARRANTLESS ARREST;

III.

x x x IN FINDING THAT [APPELLANT] IS GUILTY DESPITE THE PROSECUTION'S FAILURE TO PRESERVE THE INTEGRITY AND EVIDENTIARY VALUE OF THE ALLEGEDLY SEIZED DANGEROUS DRUGS; and

IV.

x x x IN RULING THAT THE PRESUMPTION OF REGULARITY IN THE PERFORMANCE OF OFFICIAL DUTIES APPLIES IN THE INSTANT CASE.[17]

In sum, we are tasked to revisit whether or not the lower courts correctly ruled that the prosecution established beyond reasonable doubt appellant's guilt for violation of Sec. 5, Art. II of R.A. No. 9165, given that an appeal in criminal cases opens the entire case for review.[18]

There is merit in the appeal.

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[15] Id. at 36-38 and 43-45.

[16] Id. at 9-10.

[17] Id.

[18] *People v. Cabrellos*, G.R. No. 229826, July 30, 2018.

"The right to question the validity of an arrest may be waived if the accused, assisted by counsel, fails to object to its validity before arraignment."[19] This holds true in this case, where the issue on the legality of appellant's arrest is already foreclosed by appellant's participation during trial after entering a plea of not guilty. That said, the arresting officers' non-compliance with Sec. 21 (1),[20] Art. II of R.A. No. 9165, nonetheless, leave unresolved doubts relative to the circumstances of appellant's arrest.

"In order to properly secure the conviction of an accused charged with Illegal Sale of Dangerous Drugs, the prosecution must prove: *(a)* the identity of the buyer and the seller, the object, and the consideration; and *(b)* the delivery of the thing sold and the payment."[21] Considering that the object of the illegal sale is the seized drug, we have emphasized time and again that "the seized drug is the *corpus delicti* of the crime itself."[22] For this reason, "[i]ts existence must be proved beyond reasonable doubt."[23] Thus, to successfully establish that appellant

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[19] *Lapi v. People*, G.R. No. 210731, February 13, 2019.

[20] SEC. 21. *Custody and Disposition of Confiscated, Seized, and/or Surrendered Dangerous Drugs, Plant Sources of Dangerous Drugs, Controlled Precursors and Essential Chemicals, Instruments/Paraphernalia and/or Laboratory Equipment*. — The PDEA shall take charge and have custody of all dangerous drugs, plant sources of dangerous drugs, controlled precursors and essential chemicals, as well as instruments/paraphernalia and/or laboratory equipment so confiscated, seized and/or surrendered, for proper disposition in the following manner:

(1) **The apprehending team having initial custody and control of the drugs shall, immediately after seizure and confiscation, physically inventory and photograph the same in the presence of the accused or the person/s from whom such items were confiscated and/or seized**, or his/her representative or counsel, **a representative from the media and the Department of Justice (DOJ), and any elected public official** who shall be required to sign the copies of the inventory and be given a copy thereof[.] (Emphasis supplied)

[21] Supra note 18.

[22] *People v. Tomawis*, G.R. No. 228890, April 18, 2018.

[23] *People v. Ameril*, G.R. No. 222192, March 13, 2019.

had sold an illegal drug to the officer posing as a buyer and triggering an *in flagrante delicto* arrest, it was incumbent on the arresting officers to have followed procedural safeguards provided in Sec. 21 (1), Art. II of R.A. No. 9165, the applicable law at that time, to remove any doubt on the existence of the object of the illegal sale.

SPO1 Dulay's initial testimony and appellant's version fixes the date of arrest on December 28, 2013, only to be amended[24] by SPO1 Dulay on cross-examination as having taken place on December 29, 2013, which is the date stated in the Information.[25] Going by the prosecution's version, the buy-bust operation was triggered by a tip-off regarding a certain "JR." The records, however, do not disclose that this alias or nickname refer to appellant, as the subject of the supposedly verified report and the planned buy-bust operation. Any inconsistency in the arresting officers' timeline, from the tip off and planning stage to the execution stage, would certainly seem minor, had there been compliance with the requisite witnesses at the time of arrest and seizure.

In *People v. Luna*,[26] the Court said:

> To recapitulate, the presence of the three (3) insulating witnesses must be secured and complied with at the time of the warrantless arrest, such that they are required to be at or at least near the intended place of the arrest, and accordingly be ready to witness the inventory and photographing of the seized items "immediately after seizure and confiscation." This is the necessary interpretation of Section 21 if the purpose of the law, which is to insulate the accused from abuse, is to be achieved.

We note that the buy-bust team had time to secure the presence of required witnesses, given that it was not some random sale and they even had to place an order ahead of time, for 25 grams of the contraband. As made clear in *People v. Manabat*:[27]

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[24] CA *rollo*, p. 47.

[25] Supra note 3.

[26] G.R. No. 219164, March 21, 2018.

[27] G.R. No. 242947, July 17, 2019; emphasis and underscoring in the original.

Section 21 of RA 9165 further requires the apprehending team to conduct a physical inventory of the seized items and the photographing of the same immediately after seizure and confiscation. The said inventory must be done in the presence of the aforementioned required witness, all of whom shall be required to sign the copies of the inventory and be given a copy thereof. The phrase "immediately after seizure and confiscation" means that the physical inventory and photographing of the drugs were intended by the law to be made **immediately after, or at the place of apprehension**. It is only when the same is not practicable that the Implementing Rules and Regulations (IRR) of RA 9165 allow the inventory and photographing to be done as soon as the buy-bust team reaches the nearest police station or the nearest office of the apprehending officer/team. **In this connection, this also means that the three required witnesses should already be physically present at the time of apprehension — a requirement that can easily be complied with by the buy-bust team considering that the buy-bust operation is, by its nature, a planned activity**.[28]

The lower courts should not have given any weight on the explanation given by SPO1 Dulay that he contacted media and *barangay* representatives immediately after the arrest, but none came. The required witnesses could not ordinarily be expected to appear on short notice. Compliance should not be an afterthought, but made part of the planning stage as far as it is practicable. To do otherwise is to leave more questions than answers, as in this case.

Scouring through the records, no attempt was made by the prosecution to show any effort to obtain the presence of the required witnesses at the point of sale, given that the buy-bust transaction was supposedly scheduled the day before the arrest. Relative to this, we have "emphasized that **the justifiable ground for non-compliance must be proven as a fact, because the Court cannot presume what these grounds are or that they even exist**."[29]

In *Luna*,[30] the Court explained:

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[28] Id.

[29] Supra note 18; emphasis and underscoring in the original.

[30] Supra note 26.

Concededly, Section 21 of the IRR of RA 9165 provides 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." For this provision to be effective, however, the prosecution must first (1) recognize any lapse on the part of the police officers and (2) be able to justify the same.

According to SPO1 Dulay, he could not complete the marking and inventory at the place of arrest because there was a growing crowd of onlookers. This is no justification for the deviation because it was not shown that the said crowd was interfering in any way with the arrest or inventory. Furthermore, the marking, physical inventory, and photographing of the evidence at the initial stage were never intended to be conducted in secrecy or absolute privacy. It is also strange that, in this age of camera phones, none of the arresting officers photographed the marked sachet of *shabu* at the place of arrest, to establish that it was indeed the object of the sale.

Given the arresting officers' lapses in observing proper procedure as we pointed out, the presumption of regularity in the performance of official duty cannot be accorded them. In any case, we remind that "**[t]he presumption of regularity in the performance of duty cannot overcome the stronger presumption of innocence in favor of the accused**."[31]

In sum, we cannot sustain the lower courts' conclusion upholding the integrity and evidentiary value of the sachet of *shabu* allegedly sold by appellant, despite the fact that neither an elected official nor a representative from the Department of Justice witnessed the inventory of the seized evidence at the police station, falling short of what the law requires. There was also no justification as why the inventory could not be completed where the arrest took place. Even if we were to view the inventory at the police station as called for by circumstances, it was only witnessed by a media representative who had no

[31] Supra note 27.

personal knowledge as to the source of the sachet of *shabu* presented in evidence. For these reasons, the prosecution failed to convincingly establish that appellant sold the sachet of *shabu* to SPO1 Dulay. It is serious error to conclude that the prosecution sufficiently discharged its burden of proving that the illegal transaction took place.

WHEREFORE, the present appeal is **GRANTED**. The Decision dated March 14, 2018 of the Court of Appeals in CA-G.R. CR-HC No. 08396 is hereby **REVERSED and SET ASIDE**. Accordingly, appellant Khaled Firdaus Abbas *y* Tiangco is **ACQUITTED** of the crime charged on the ground of reasonable doubt. Consequently, appellant's **IMMEDIATE RELEASE** is in order, unless appellant is confined for any other lawful cause.

SO ORDERED.

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

EN BANC

[G.R. No. 251177. September 8, 2020]

ALFREDO J. NON, GLORIA VICTORIA C. YAP-TARUC, JOSEFINA PATRICIA A. MAGPALE-ASIRIT and GERONIMO D. STA. ANA, *Petitioners, v.* **OFFICE OF THE OMBUDSMAN, ALYANSA PARA SA BAGONG PILIPINAS, INC., and HON. MARIA GRACIA A. CADIZ-CASACLANG, Presiding Judge, Branch 155, Regional Trial Court, Pasig City,** *Respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; SPECIAL CIVIL ACTIONS; *CERTIORARI*; NOT AN APPROPRIATE REMEDY TO ASSAIL INTERLOCUTORY ORDERS, SPECIFICALLY PERTAINING TO DENIALS OF MOTIONS TO QUASH; EXCEPTIONS.— As a rule, a denial of a motion to quash filed by an accused is not appealable, since an appeal from an interlocutory order is not allowed under Section 1 (b), Rule 41 of the Rules of Court. Neither can it be a proper subject of a petition for *certiorari*, which is filed only in the absence of an appeal or any other adequate, plain, and speedy remedy. In a denial of a motion to quash information, the plain and speedy remedy is to proceed to trial. In the usual course of procedure, a denial of a motion to quash filed by an accused results in the continuation of the trial and the determination of his guilt or innocence. If a judgment of conviction is rendered and the lower court's decision of conviction is appealed, the accused can raise the denial of his motion to quash, not only as an error committed by the trial court, but as an added ground to overturn the latter's ruling. Thus, a direct resort to this Court *via* a special civil action for *certiorari* is an exception rather than the rule, and is a recourse that must be firmly grounded on compelling reasons. In meritorious cases, however, we have recognized *certiorari* as an appropriate remedy to assail interlocutory orders, specifically pertaining to denials of motions to quash. These instances are: (a) when the court issued the order without or in excess of jurisdiction or with

grave abuse of discretion; (b) when the interlocutory order is patently erroneous and the remedy of appeal would not afford adequate and expeditious relief; (c) in the interest of a more enlightened and substantial justice; (d) to promote public welfare and public policy; and (e) when the cases have attracted nationwide attention, making it essential to proceed with dispatch in the consideration thereof.

2. ID.; ID.; ID.; ID.; THE WRIT OF *CERTIORARI* SERVES TO KEEP AN INFERIOR COURT WITHIN THE BOUNDS OF ITS JURISDICTION OR TO PREVENT IT FROM COMMITTING SUCH GRAVE ABUSE OF DISCRETION AMOUNTING TO EXCESS OR LACK OF JURISDICTION, OR TO RELIEVE PARTIES FROM ARBITRARY ACTS OF COURTS WHICH COURTS HAVE NO POWER OR AUTHORITY IN LAW TO PERFORM.— *Certiorari* is the appropriate remedy in grave abuse of discretion cases, if the petitioner can establish that the lower court issued the judgment or order without or in excess of jurisdiction or with grave abuse of discretion, and the remedy of appeal would not afford adequate and expeditious relief. The writ of *certiorari* serves to keep an inferior court within the bounds of its jurisdiction or to prevent it from committing such grave abuse of discretion amounting to excess or lack of jurisdiction, or to relieve parties from arbitrary acts of courts which courts have no power or authority in law to perform. The burden is on the petitioner to show that the circumstances warrant the resort to *certiorari*. Here we find that the RTC Pasig City acted with grave abuse of discretion in denying petitioners' motion to quash the Information which warrants the resort to the filing of the instant Petition for *Certiorari*. By definition, the special civil action of *certiorari*, as provided for under Section 1, Rule 65 of the Rules of Court, is an extraordinary remedy that is available only upon showing that a tribunal, board or officer exercising judicial or quasi-judicial functions has acted without or in excess of jurisdiction or with grave abuse of discretion amounting to lack or excess of jurisdiction. x x x In the present case, respondent judge refused to grant the Motion to Quash filed by petitioners despite the clear wording of R.A. No. 10660 that cases falling under the jurisdiction of the RTC under Section 4, as amended, shall be tried in a judicial region other than where the official holds office.

3. ID.; ACTIONS; JURISDICTION; THE STATUTE IN FORCE AT THE TIME OF THE COMMENCEMENT OF ACTION DETERMINES THE JURISDICTION OF THE COURT SINCE JURISDICTION IS A MATTER OF SUBSTANTIVE LAW.— A quick look at Section 15 (a), Rule 110 of the Revised Rules on Criminal Procedure would reveal that when a law specifically provides a venue, then the criminal action shall be instituted in such place. x x x Here, Section 2 of R.A. No. 10660 clearly provides that the RTC has original and exclusive jurisdiction when the information either: (a) does not allege any damage to the government or any bribery; or (b) alleges damage to the government or bribery arising from the same or closely related transactions or acts in an amount not exceeding One Million Pesos (₱1,000,000.00). Moreover, such cases falling within the jurisdiction of the RTC shall be tried in a judicial region *other* than the place where the accused official holds office. R.A. No. 10660 took effect in 2015. When the Information against petitioners was filed in 2018, petitioners were still Commissioners of the ERC, holding office in Ortigas, Pasig City. The Information also did not allege any amount of damage to the government, or any bribery. Applying Section 2 of R.A. No. 10660, the Information against petitioners should have been filed in a judicial region outside of the National Capital Judicial Region. Since jurisdiction is a matter of substantive law, the established rule is that the statute in force at the time of the commencement of the action determines the jurisdiction of the court.

4. POLITICAL LAW; CONSTITUTIONAL LAW; JUDICIAL DEPARTMENT; SUPREME COURT; CANNOT ENLARGE, DIMINISH, OR DICTATE WHEN JURISDICTION SHALL BE REMOVED, GIVEN THAT THE POWER TO DEFINE, PRESCRIBE, AND APPORTION JURISDICTION IS, AS A GENERAL RULE, A MATTER OF LEGISLATIVE PREROGATIVE.— The *proviso* "*subject to the rules promulgated by the Supreme Court*" should not stand as a hindrance to the application of the clear intention of the law. The Senate deliberations on R.A. No. 10660 support the view that the RTC's jurisdiction under said law shall be tried in a judicial region outside of the place where the accused public official holds office. x x x Contrary to the interpretation of the respondent judge and the Ombudsman, the

applicability of R.A. No. 10660 is not conditioned upon the promulgation of rules by the Court. x x x If we were to follow respondents' reasoning — that until the Court comes up with implementing rules, the application of R.A. No. 10660 shall be put on hold — then the letter of the law would be rendered nugatory by the mere expediency of the Court's non-issuance of such rules. This is clearly not the intention of the framers of the law in placing the *proviso*, neither would the Court countenance such a scenario. The Court cannot enlarge, diminish, or dictate when jurisdiction shall be removed, given that the power to define, prescribe, and apportion jurisdiction is, as a general rule, a matter of legislative prerogative.

5. REMEDIAL LAW; ACTIONS; JUDGMENTS; VOID JUDGMENTS; ANY ACT THAT A COURT PERFORMS WITHOUT JURISDICTION SHALL BE NULL AND VOID, AND WITHOUT ANY BINDING LEGAL EFFECTS.— Since the RTC of Pasig City has no jurisdiction over the present case, the dismissal of Criminal Case No. R-PSG-18-01280-CR is clearly in order. Further, all actions of the RTC of Pasig City in the case are declared null and void for having been issued without jurisdiction. As the Court held in *Bilag v. Ay-ay*, "x x x any act that [a court] performs without jurisdiction shall be null and void, and without any binding legal effects." It is also well established that "the decision of a court or tribunal without jurisdiction is a total nullity. A void judgment for want of jurisdiction is no judgment at all. All acts performed pursuant to it and all claims emanating from it have no legal effect." The dismissal of the case, thus, follows as a necessary consequence.

APPEARANCES OF COUNSEL

Rolando B. Faller for petitioners.

The Solicitor General for respondents.

Orlalyn F. Suarez-Fetesio for Alyansa Para Sa Bagong Pilipinas, Inc.

D E C I S I O N

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

Petitioners Alfredo J. Non (Non), Gloria Victoria C. Yap-Taruc (Yap-Taruc), Josefina Patricia A. Magpale-Asirit (Magpale-Asirit), and Geronimo D. Sta. Ana (Sta. Ana; collectively, petitioners), who are former[1] Commissioners of the Energy Regulatory Commission (ERC), are before the Court *via* a Petition for *Certiorari* under Rule 65 of the Rules of Court, with prayer for temporary restraining order (TRO) and/or writ of preliminary injunction, assailing the Orders dated September 10, 2018 and October 22, 2018 of the Regional Trial Court, Branch 155 of Pasig City (RTC), in Criminal Case No. R-PSG-18-01280-CR which denied their Motion to Quash, and their Motion for Reconsideration, respectively.

The Antecedents

The case originated from ERC's issuance of Resolution No. 1, Series of 2016 (Resolution No. 1-2016) which moved the effectivity date of Resolution No. 13, Series of 2015 (Resolution No. 13-2015) from November 2015 to April 2016. The Resolution No. 13-2015 directed all distribution utilities (DUs) to conduct a competitive selection process (CSP) in securing their power supply agreements (PSAs).

Believing that Resolution No. 1-2016 was a ploy to accommodate or favor the Manila Electric Company (MERALCO) and its sister companies, and enable them to bag lucrative PSAs without complying with the CSP requirement, the Alyansa Para sa Bagong Pilipinas (ABP) filed before the Court on November 3, 2016 a Petition for *Certiorari* and Prohibition (With Urgent Prayer for the Issuance of a TRO and/or Writ of Preliminary Injunction) assailing the validity

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[1] Except for Josefina Patricia A. Magpale-Asirit who is an incumbent Commissioner.

of Resolution No. 1-2016, as well as the CSP Guidelines, docketed as **G.R. No. 227670**.[2]

On November 23, 2016, the ABP also filed before the Office of the Ombudsman (Ombudsman) a verified complaint against herein petitioners, together with Jose Vicente B. Salazar (Salazar) for: (a) violation of Section 3 (e) of Republic Act (R.A.) No. 3019 or the Anti-Graft and Corrupt Practices Act; (b) violation of R.A. No. 6713 or the Code of Conduct and Ethical Standards for Public Officials and Employees; (c) violation of R.A. No. 9136, otherwise known as the Electric Power Industry Reform Act of 2001; (d) grave abuse of authority; (e) grave misconduct; (f) oppression; and (g) gross neglect of duty.

The administrative complaint was docketed as OMB-C-A-16-0438, which gave rise to **G.R. No. 237586**[3] while the criminal complaint was docketed as OMB-C-C-16-0497 which led to the filing of **G.R. Nos. 239168**,[4] **240288**[5] and herein petition, **251177**.

G.R. Nos. 239168 and 240288 were consolidated on July 30, 2018. Then these two, together with G.R. No. 237586 were consolidated with G.R. No. 227670 on October 17, 2018. On

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[2] Entitled "*Alyansa Para sa Bagong Pilipinas, represented by Evelyn V. Jallorina and Noel Villones v. Energy Regulatory Commission, represented by its Chairman, Jose Vicente B. Salazar, Department of Energy, represented by Secretary Alfonso G. Cusi, MERALCO, Central Luzon Premiere Power Corporation, St. Raphael Power General Corporation, Panay Energy Development Corporation, Mariveles Power Generation Corporation, Global Luzon Energy Development Corporation, Atimonan One Energy, Inc., Redondo Peninsula Energy, Inc., and Philippine Competition Commission*."

[3] Entitled "*Alyansa Para sa Bagong Pilipinas, Inc., represented by Noel G. Villones and Evelyn V. Jallorina v. Court of Appeals, Jose Vicente B. Salazar, Gloria Victoria C. Yap-Taruc, Alfredo J. Non, et al.*"

[4] Entitled "*Alfredo J. Non, Gloria Victoria C. Yap-Taruc, Josefina Patricia A. Magpale-Asirit and Geronimo D. Sta. Ana v. Office of the Ombudsman and Alyansa Para sa Bagong Pilipinas, Inc.*"

[5] Entitled "*Jose Vicente B. Salazar v. Alyansa Para sa Bagong Pilipinas, Inc., Office of the Ombudsman and Hon. Regional Trial Court, Branch 155, Pasig City*."

January 15, 2019, however, the Court deconsolidated the cases and returned to same original members-in-charge.

Meanwhile on September 29, 2017, the Ombudsman issued a Resolution in OMB-C-C-16-0497, finding probable cause to charge petitioners and Salazar for violation of Section 3 (e) of R.A. No. 3019. From this, petitioners filed a petition for *certiorari* with the Court, docketed as G.R. No. 239168, while Salazar filed a separate petition, docketed as G.R. No. 240288. During the pendency of both G.R. Nos. 239168 and 240288, the Ombudsman filed a criminal Information before the RTC of Pasig City against petitioners and Salazar for violation of Section 3 (e) of R.A. No. 3019.

The pertinent portion of the Information reads:

> That on 6 November 2015 to 30 April 2016, or sometime prior or subsequent thereto, in Pasig City, Philippines, and within the jurisdiction of this Honorable Court, accused public officers Jose Vicente B. Salazar, being then Chairman and Chief Executive Officer, and Gloria Victoria C. Yap-Taruc, Alfredo J. Non, Josefina Patricia A. Magpale-Asirit, and Geronimo D. Sta. Ana, being then Commissioners, all of the Energy Regulatory Commission (ERC), committing the offense in relation to their official positions as such, conspiring and confederating and mutually helping one another, acting with evident bad faith, manifest partiality or gross inexcusable negligence, did then and there willfully, unlawfully and criminally give unwarranted benefits, advantage or preference to MERALCO by modifying the date of implementation of Resolution No. 13, Series of 2015, which required MERALCO, other Distribution Utilities, Generation Companies and Electric Cooperatives to go through a Competitive Selection Process (CSP) before entering into Power Supply Agreements (PSA[s]) from 6 November 2015 to 30 April 2016, thereby favoring MERALCO by allowing it to file with ERC on 29 April 2016 the PSAs it entered with its sister companies/affiliates, namely: 1) Atimonan One Energy, Inc. (AIE); 2) St. Raphael Power Generation Corporation (SR GenCor); 3) Central Luzon Premier Power Corporation (CLPPC); 4) Mariveles Power Generation Corporation (MP GenCor); 5) Redondo Peninsula Energy, Inc. (RPE); 6) Panay Energy Development Corporation (PEDC); and 7) Global Luzon Energy Development Corporation (GLEDC), without complying with the CSP requirement, to the damage and prejudice of the government and public interest.

CONTRARY TO LAW.[6]

The Information was docketed as Criminal Case No. R-PSG-18-01280-CR and raffled to Branch 155 of RTC Pasig City.

On July 12, 2018, petitioners filed a Motion to Quash dated July 11, 2018 on the ground that the RTC Pasig City has no jurisdiction over the case pursuant to Section 2, paragraph 3 of R.A. No. 10660 which took effect in 2015.[7]

On September 10, 2018, the RTC Pasig City issued the herein assailed Order denying petitioners' Motion to Quash. It states:

> x x x [T]his Court differs with the movant-commissioners in their assertion that the RTC of Pasig City cannot try their case because under [R.A. No.] 10660, "*cases falling under the jurisdiction of the Regional Trial Court under this section, shall be tried in a judicial region other than were the official holds office*." This is because as things stand, the Honorable Supreme Court has yet to promulgate the pertinent rules on the aforesaid innovation of the law. As there are no implementing rules yet on this particular matter, the default regime is the one found in Section [15(a)], Rule 110 of the Revised Rules on Criminal Procedure, *[viz.]*, the criminal action shall be instituted and tried in the proper court of the municipality, city, or province where the offense was committed or where any of its essential ingredients took place. Since the instant Information alleges that the subject offense was committed by the accused in relation to the exercise of their official positions in the ERC, the office of which is seated in Ortigas Center, Pasig City, it cannot be gainsaid that this Court has territorial jurisdiction over the offense charged.
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> x x x x x x x x x

WHEREFORE, premises considered, the Motion to Quash Information filed by accused Jose Vicente B. Salazar and the Motion to Quash Information filed by accused Alfredo Non, Gloria Victoria C. Yap-Taruc, Josefina Patricia A. Magpale-Asirit, and Geronimo

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[6] *Rollo*, pp. 21-22.

[7] AN ACT STRENGTHENING FURTHER THE FUNCTIONAL AND STRUCTURAL ORGANIZATION OF THE SANDIGANBAYAN, FURTHER AMENDING PRESIDENTIAL DECREE NO. 1606, AS AMENDED, AND APPROPRIATING FUNDS THEREFOR.

D. Sta Ana, are hereby DENIED for want of basis. Let the arraignment of the accused proceed on September 19, 2018, at 8:30 in the morning, as previously scheduled.

SO ORDERED.[8]

Petitioners' motion for reconsideration was denied on October 22, 2018.[9]

Petitioners then filed an Urgent Motion for the Issuance of TRO or Writ of Preliminary Injunction dated October 29, 2018 in G.R. No. 239168, seeking to restrain RTC Pasig City from hearing Criminal Case No. R-PSG-18-01280-CR, on the ground that a prejudicial question exists in G.R. No. 227670. Petitioners also asserted that RTC Pasig City had no jurisdiction over the offense pursuant to Section 2 of R.A. No. 10660.

Upon their arraignment on November 21, 2018 in Criminal Case No. R-PSG-18-01280-CR, the petitioners pleaded "not guilty," and the trial court set the pre-trial conference on February 13, 2019. The initial presentation of prosecution evidence, however, has not commenced in view of the motion filed by petitioners to suspend proceedings.[10]

In the meantime, the Court, on May 3, 2019, rendered its Decision in G.R. No. 227670 holding that the assailed issuances of the ERC were void *ab initio*.

On September 20, 2019, petitioners filed a Motion for Leave to File Supplemental Petition and the attached Supplemental Petition in G.R. No. 239168, arguing that respondent judge committed grave abuse of discretion amounting to lack or excess of jurisdiction in denying their Motion to Quash.[11]

The Court granted petitioners' Motion for Leave to File Supplemental Petition in G.R. No. 239168, which was docketed as a separate petition, herein **G.R. No. 251177**.[12]

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[8] *Rollo*, p. 77.

[9] Id. at 90.

[10] Id.

[11] Id. at 80-83.

[12] Id. at 3-4.

The Issue

Petitioners are now before the Court raising the sole issue that:

THE PUBLIC RESPONDENT GRAVELY ERRED IN DENYING THE MOTION TO QUASH INFORMATION BECAUSE, BY EXPRESS PROVISIONS OF [R.A.] NO. 10660, SHE HAS NO JURISDICTION OVER THE CRIMINAL CASE AS IT MUST [BE] TRIED BY [A] REGIONAL TRIAL COURT IN A JUDICIAL REGION OTHER THAN IN THE NATIONAL CAPITAL JUDICIAL REGION.[13]

The pertinent provision of R.A. No. 10660 reads:

SEC. 2. Section 4 of the same decree, as amended, is hereby further amended to read as follows:

SEC. 4. *Jurisdiction*. — The Sandiganbayan shall exercise exclusive original jurisdiction in all cases involving:

a. Violations of Republic Act No. 3019, as amended, otherwise known as the Anti-Graft and Corrupt Practices Act, Republic Act No. 1379, and Chapter II, Section 2, Title VII, Book II of the Revised Penal Code, where one or more of the accused are officials occupying the following positions in the government, whether in a permanent, acting or interim capacity, at the time of the commission of the offense:

(1) Officials of the executive branch occupying the positions of regional director and higher, otherwise classified as Grade '27' and higher, of the Compensation and Position Classification Act of 1989 (Republic Act No. 6758), specifically including:

(a) Provincial governors, vice-governors, members of the *sangguniang panlalawigan*, and provincial treasurers, assessors, engineers, and other provincial department heads;

(b) City mayors, vice-mayors, members of the *sangguniang panlungsod*, city treasurers,

[13] Supra note 9.

assessors, engineers, and other city department heads;

(c) Officials of the diplomatic service occupying the position of consul and higher;

(d) Philippine army and air force colonels, naval captains, and all officers of higher rank;

(e) Officers of the Philippine National Police while occupying the position of provincial director and those holding the rank of senior superintendent and higher;

(f) City and provincial prosecutors and their assistants, and officials and prosecutors in the Office of the Ombudsman and special prosecutor;

(g) Presidents, directors or trustees, or managers of government-owned or controlled corporations, state universities or educational institutions or foundations.

(2) Members of Congress and officials thereof classified as Grade '27' and higher under the Compensation and Position Classification Act of 1989;

(3) Members of the judiciary without prejudice to the provisions of the Constitution;

(4) Chairmen and members of the Constitutional Commissions, without prejudice to the provisions of the Constitution; and

(5) All other national and local officials classified as Grade '27' and higher under the Compensation and Position Classification Act of 1989.

b. Other offenses or felonies whether simple or complexed with other crimes committed by the public officials and employees mentioned in subsection a. of this section in relation to their office.

c. Civil and criminal cases filed pursuant to and in connection with Executive Order Nos. 1, 2, 14 and 14-A, issued in 1986.

***Provided,* That the Regional Trial Court shall have exclusive original jurisdiction where the information: (a) does not allege**

any damage to the government or any bribery; or (b) alleges damage to the government or bribery arising from the same or closely related transactions or acts in an amount not exceeding One million pesos (P1,000,000.00).

Subject to the rules promulgated by the Supreme Court, the cases falling under the jurisdiction of the Regional Trial Court under this section shall be tried in a judicial region other than where the official holds office. (Emphases supplied)

Petitioners assert that under Section 2 of R.A. No. 10660, not only is the RTC vested with jurisdiction over the instant case, the law also fixed the venue of the action. The Congress' intent was to confer both jurisdiction and venue on certain cases that used to be within the jurisdiction of the Sandiganbayan to the RTC, but in a judicial region different from where the accused holds office. They argue that even though the Supreme Court has yet to promulgate rules therefor, since R.A. No. 10660 was already effective at the time of the filing of the Information, the public respondent should have applied its provisions.[14]

The Ombudsman, in its Comment, meanwhile, avers that *certiorari* is not the proper remedy from a denial of a motion to quash. Assuming that *certiorari* is proper, it should have been filed with the Sandiganbayan. In any event, the RTC Pasig City has jurisdiction over Criminal Case No. R-PSG-18-01280-CR.

According to the Ombudsman, while Section 4 of the Sandiganbayan law (as amended by Section 2 of R.A. No. 10660) explicitly states that "cases falling under the jurisdiction of the RTC under this section shall be tried in a judicial region other than where the official holds office" such *proviso* is qualified by the phrase "subject to the rules promulgated by the Supreme Court." Said section regarding venue is not self-executing as it is still subject to the rules to be promulgated by the Supreme Court. This interpretation, according to the Ombudsman, is more consistent with the constitutional provision that the Congress may not deprive the Court of its power to

[14] *Rollo*, pp. 91-109.

promulgate rules of pleadings, practice, and procedure. Further, the Ombudsman asserts, as the Court has yet to promulgate the pertinent rules on venue, the actions against high ranking officials falling under the jurisdiction of the RTC under Section 4 must be instituted and tried in the court of the municipality or territory where the offense was committed or where any of its essential ingredients occurred," pursuant to existing rule on venue under Section 15 (a), Rule 110 of the Revised Rules on Criminal Procedure.[15]

The Office of the Solicitor General (OSG), meanwhile, filed its Manifestation and Motion (In Lieu of Comment) stating that as the Tribune of the People and an officer of the Court, it shares in the task and responsibility of dispensing justice. In the discharge of its duty, it is mandated to present to the Court the position that will best uphold the interest of both the Government and the People. Thus, in certain instances, it may take a position adverse or contrary to that of its client.[16]

The OSG then expressed its agreement with petitioners specifically on the following points: that direct resort to this Court *via certiorari* was proper; that respondent judge gravely abused her discretion in denying petitioners' motion to quash; that the RTC Pasig City has no jurisdiction over Criminal Case No. R-PSG-18-01280-CR; and that petitioners are entitled to the issuance of a TRO/Writ of Preliminary Investigation.[17]

The Court's Ruling

We grant the petition.

Direct recourse to the Court from a denial of a Motion to Quash allowed in meritorious cases

As a rule, a denial of a motion to quash filed by an accused is not appealable, since an appeal from an interlocutory order

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[15] Ombudsman's Comment, pp. 3-10.

[16] OSG's Manifestation and Motion, pp. 1-2.

[17] Id. at 14-28.

is not allowed under Section 1 (b), Rule 41 of the Rules of Court. Neither can it be a proper subject of a petition for *certiorari*, which is filed only in the absence of an appeal or any other adequate, plain, and speedy remedy. In a denial of a motion to quash information, the plain and speedy remedy is to proceed to trial.[18]

In the usual course of procedure, a denial of a motion to quash filed by an accused results in the continuation of the trial and the determination of his guilt or innocence. If a judgment of conviction is rendered and the lower court's decision of conviction is appealed, the accused can raise the denial of his motion to quash, not only as an error committed by the trial court, but as an added ground to overturn the latter's ruling.[19]

Thus, a direct resort to this Court *via* a special civil action for *certiorari* is an exception rather than the rule, and is a recourse that must be firmly grounded on compelling reasons.[20]

In meritorious cases, however, we have recognized *certiorari* as an appropriate remedy to assail interlocutory orders, specifically pertaining to denials of motions to quash. These instances are: (a) when the court issued the order without or in excess of jurisdiction or with grave abuse of discretion; (b) when the interlocutory order is patently erroneous and the remedy of appeal would not afford adequate and expeditious relief; (c) in the interest of a more enlightened and substantial justice; (d) to promote public welfare and public policy; and (e) when the cases have attracted nationwide attention, making it essential to proceed with dispatch in the consideration thereof.[21]

Certiorari is the appropriate remedy in grave abuse of discretion cases, if the petitioner can establish that the lower court issued the judgment or order without or in excess of jurisdiction or with grave abuse of discretion, and the remedy

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[18] *Galzote v. Briones*, 673 Phil. 165, 172 (2011).

[19] *Maximo v. Villapando, Jr.*, 809 Phil. 843, 870 (2017).

[20] Id. at 871.

[21] Id.

of appeal would not afford adequate and expeditious relief. The writ of *certiorari* serves to keep an inferior court within the bounds of its jurisdiction or to prevent it from committing such grave abuse of discretion amounting to excess or lack of jurisdiction, or to relieve parties from arbitrary acts of courts which courts have no power or authority in law to perform. The burden is on the petitioner to show that the circumstances warrant the resort to *certiorari*.[22]

Here we find that the RTC Pasig City acted with grave abuse of discretion in denying petitioners' motion to quash the Information which warrants the resort to the filing of the instant Petition for *Certiorari*.

By definition, the special civil action of *certiorari*, as provided for under Section 1, Rule 65 of the Rules of Court, is an extraordinary remedy that is available only upon showing that a tribunal, board or officer exercising judicial or quasi-judicial functions has acted without or in excess of jurisdiction or with grave abuse of discretion amounting to lack or excess of jurisdiction.

As we held in *De Lima v. City of Manila*:[23]

> *The writ is designed to correct grave errors of jurisdiction* — [W]hich means either that the judicial or quasi-judicial power was exercised in an arbitrary or despotic manner by reason of passion or personal hostility, or that the respondent judge, tribunal or board evaded a positive duty, or virtually refused to perform the duty enjoined or to act in contemplation of law, such as when such judge, tribunal or board exercising judicial or quasi-judicial powers acted in a capricious or whimsical manner as to be equivalent to lack of jurisdiction.

In the present case, respondent judge refused to grant the Motion to Quash filed by petitioners despite the clear wording of R.A. No. 10660 that cases falling under the jurisdiction of the RTC under Section 4, as amended, shall be tried in a judicial region other than where the official holds office.

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[22] Id. at 871, 873.

[23] G.R. No. 222886, October 17, 2018.

RTC Pasig City has no jurisdiction over Criminal Case No. R-PSG-18-01280-CR

In the September 10, 2018 Order of respondent judge, she held that since the "Supreme Court has yet to promulgate the pertinent rules on R.A. No. 10660 and there are no implementing rules yet on this particular matter. The default regime is found in Section 15 (a), Rule 110 of the Revised Rules on Criminal Procedure, *viz.*, the criminal action shall be instituted and tried in the proper court of the municipality, city, or province where the offense was committed and where any of its essential ingredients took place."[24]

Such reasoning is specious.

A quick look at Section 15 (a), Rule 110 of the Revised Rules on Criminal Procedure would reveal that when a law specifically provides a venue, then the criminal action shall be instituted in such place.

> SEC. 15. *Place where action is to be instituted.* —
>
> (a) Subject to existing laws, the criminal action shall be instituted and tried in the court of the municipality or territory where the offense was committed or where any of its essential ingredients occurred.

Here, Section 2 of R.A. No. 10660 clearly provides that the RTC has original and exclusive jurisdiction when the information either: (a) does not allege any damage to the government or any bribery; or (b) alleges damage to the government or bribery arising from the same or closely related transactions or acts in an amount not exceeding One Million Pesos (₱1,000,000.00). Moreover, such cases falling within the jurisdiction of the RTC shall be tried in a judicial region *other* than the place where the accused official holds office.

R.A. No. 10660 took effect in 2015. When the Information against petitioners was filed in 2018, petitioners were still Commissioners of the ERC, holding office in Ortigas, Pasig

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[24] *Rollo,* p. 77.

City. The Information also did not allege any amount of damage to the government, or any bribery. Applying Section 2 of R.A. No. 10660, the Information against petitioners should have been filed in a judicial region outside of the National Capital Judicial Region. Since jurisdiction is a matter of substantive law, the established rule is that the statute in force at the time of the commencement of the action determines the jurisdiction of the court.[25]

The *proviso* "*subject to the rules promulgated by the Supreme Court*" should not stand as a hindrance to the application of the clear intention of the law.

The Senate deliberations on R.A. No. 10660 support the view that the RTC's jurisdiction under said law shall be tried in a judicial region outside of the place where the accused public official holds office.

As regards the amendment on page 3, lines 28 to 31, on the trial of cases falling within the jurisdiction of the RTC in a judicial region other than where the official holds office, **Senator Angara believed that the basic reasoning behind the provision is to prevent a public official from exerting influence over the RTC judge who is hearing the case. Senator Pimentel agreed**, saying that it is the assumption of the amendment.

Senator Angara expressed concern that the proposed amendment could be used as harassment against a public official. For instance, he noted that if cases are filed against a mayor or governor x x x in Region III and these cases are referred to RTCs in Regions I, II and IV, that would entail substantial expenses and time on their part. Senator Pimentel explained that the provision would only apply when there is already an information and it could not be considered harassment because those cases would have to go through the Ombudsman. He stated that under existing procedures, there are sufficient safeguards in detailing with such kind of situation, and he believed that the Ombudsman would not file harassment cases. Besides, not all cases filed with the Sandiganbayan lead to convictions, he said.[26]

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[25] *Anama v. Citibank, N.A.*, 822 Phil. 630, 640 (2017).

[26] *Rollo*, p. 71.

Contrary to the interpretation of the respondent judge and the Ombudsman, the applicability of R.A. No. 10660 is not conditioned upon the promulgation of rules by the Court. As we declared in *Government Service Insurance System v. Daymiel*:[27]

> Jurisdiction over a subject matter is conferred by the Constitution or the law, and rules of procedure yield to substantive law. Otherwise stated, jurisdiction must exist as a matter of law. Only a statute can confer jurisdiction on courts and administrative agencies.

If we were to follow respondents' reasoning — that until the Court comes up with implementing rules, the application of R.A. No. 10660 shall be put on hold — then the letter of the law would be rendered nugatory by the mere expediency of the Court's non-issuance of such rules. This is clearly not the intention of the framers of the law in placing the *proviso*, neither would the Court countenance such a scenario. The Court cannot enlarge, diminish, or dictate when jurisdiction shall be removed, given that the power to define, prescribe, and apportion jurisdiction is, as a general rule, a matter of legislative prerogative.[28]

Since the RTC of Pasig City has no jurisdiction over the present case, the dismissal of Criminal Case No. R-PSG-18-01280-CR is clearly in order. Further, all actions of the RTC of Pasig City in the case are declared null and void for having been issued without jurisdiction. As the Court held in *Bilag v. Ay-ay*,[29] "x x x any act that [a court] performs without jurisdiction shall be null and void, and without any binding legal effects." It is also well established that "the decision of a court or tribunal without jurisdiction is a total nullity. A void judgment for want of jurisdiction is no judgment at all. All acts performed pursuant to it and all claims emanating from it have no legal effect."[30]

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[27] G.R. No. 218097, March 11, 2019.

[28] *Gonzales v. GJH Land, Inc.*, 772 Phil. 483, 510 (2015).

[29] 809 Phil. 236, 243 (2017).

[30] *Tan v. Cinco*, 787 Phil. 441, 450 (2016).

The dismissal of the case, thus, follows as a necessary consequence. As aptly stated in the case of *Radiowealth Finance Co., Inc. v. Pineda, Jr.*:[31]

> Jurisdiction is a matter of substantive law. Thus, an action may be filed only with the court or tribunal where the Constitution or a statute says it can be brought. Objections to jurisdiction cannot be waived and may be brought at any stage of the proceedings, even on appeal. When a case is filed with a court which has no jurisdiction over the action, the court shall *motu proprio* dismiss the case.

WHEREFORE, the Petition is **GRANTED**. The Orders dated September 10, 2018 and October 22, 2018 of the Regional Trial Court, Branch 155, Pasig City are **ANNULLED** for lack of jurisdiction. Criminal Case No. R-PSG-18-01280-CR is ordered **DISMISSED**. All actions of and all proceedings undertaken by the RTC of Pasig City in the case are declared **NULL** and **VOID** for lack of jurisdiction.

SO ORDERED.

Peralta, C.J., Perlas-Bernabe, Leonen, Caguioa, Gesmundo, Hernando, Carandang, Lazaro-Javier, Zalameda, Lopez, Delos Santos, and *Gaerlan, JJ.,* concur.

Inting, J., no part.

Baltazar-Padilla, J., on sick leave.

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[31] G.R. No. 227147, July 30, 2018.

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there is no pending special proceeding for the settlement of the decedent's estate. (*Id.*)

Ordinary civil action and special proceeding — The main point of differentiation between a civil action and a special proceeding is that in the former, a party sues another for the enforcement or protection of a right which the party claims he/she is entitled to, such as when a party-litigant seeks to recover property from another, while in the latter, a party merely seeks to have a right established in his/her favor. (Treyes *v.* Larlar, *et al.,* G.R. No. 232579, Sept. 8, 2020) p. 505

Reconveyance — An action for reconveyance based on an implied or constructive trust prescribes in ten (10) years from the issuance of the Torrens Title in the name of the trustee over the property; the 10-year prescriptive period finds basis in Article 1144 of the Civil Code, which states that an action involving an obligation created by law must be brought within 10 years from the time the right of action accrues; in cases wherein fraud was alleged to have been attendant in the trustee's registration of the subject property in his/her own name, the prescriptive period is 10 years reckoned from the date of the issuance of the original certificate of title or TCT since such issuance operates as a constructive notice to the whole world, the discovery of the fraud being deemed to have taken place at that time. (Treyes *v.* Larlar, *et al.*, G.R. No. 232579, Sept. 8, 2020) p. 505

ADMINISTRATIVE CHARGES

Desistance — The affidavit of desistance executed by complainant stating that she is no longer interested in further prosecuting the case does not *ipso facto* warrant the dismissal of the case against respondents; once administrative charges have been filed, this Court may not be divested of its jurisdiction to investigate and to ascertain the truth thereof; for it has an interest in the conduct of those in the service of the Judiciary and in improving the delivery of justice to the people, and its efforts in the direction may not be derailed by

of their participation in the negotiated incentives; to a certain extent, therefore, payees always do have an indirect "involvement" and "participation" in the transaction where the benefits they received are disallowed because the accounting recognition of the release of funds and their mere receipt thereof results in the debit against government funds in the agency's account and a credit in the payees' favor; in this regard, it bears repeating that the extent of liability of a payee who is a passive recipient is only with respect to the transaction where he participated or was involved in only to the extent of the amount that he unduly received. (*Id.*)

— Payees who receive undue payment, regardless of good faith, are liable for the return of the amounts they received, and any amounts allowed to be retained by payees shall reduce the solidary liability of officers found to have acted in bad faith, malice and gross negligence. (*Id.*)

— The application of the principles of unjust enrichment and *solutio indebiti* in disallowed benefits cases does not contravene the law on the general liability for unlawful expenditures; these principles are consistently applied in government infrastructure or procurement cases which recognize that a payee contractor or approving and/or certifying officers cannot be made to shoulder the cost of a correctly disallowed transaction when it will unjustly enrich the government and the public who accepted the benefits of the project; these principles are also applied by the Court with respect to disallowed benefits given to government employees; the COA similarly applies the principle of *solutio indebiti* to require the return from payees regardless of good faith; this, as well, is the foundation of the rules of return that the Court now promulgates. (*Id.*)

— The civil liability for unlawful expenditures is hinged on the fact that the public officer performed his official duties with bad faith, malice, or gross negligence. (*Id.*)

— The Court may also determine in a proper case other circumstances that warrant excusing the return despite

— The civil liability under Sections 38 and 39 of the Administrative Code of 1987, including the treatment of their liability as solidary under Section 43, arises only upon a showing that the approving or certifying officers performed their official duties with bad faith, malice or gross negligence; for errant approving and certifying officers, the law justifies holding them solidarily liable for amounts they may or may not have received considering that the payees would not have received the disallowed amounts if it were not for the officers' irregular discharge of their duties. (*Id.*)

Return of disallowed amounts — The Court pronounces: 1. If a Notice of Disallowance is set aside by the Court, no return shall be required from any of the persons held liable therein; 2. If a Notice of Disallowance is upheld, the rules on return are as follows: a. Approving and certifying officers who acted in good faith, in regular performance of official functions, and with the diligence of a good father of the family are not civilly liable to return consistent with Section 38 of the Administrative Code of 1987; b. Approving and certifying officers who are clearly shown to have acted in bad faith, malice, or gross negligence are, pursuant to Section 43 of the Administrative Code of 1987, solidarily liable to return only the net disallowed amount which x x x excludes amounts excused under the following sections 2c and 2d; c. Recipients — whether approving or certifying officers or mere passive recipients — are liable to return the disallowed amounts respectively received by them, unless they are able to show that the amounts they received were genuinely given in consideration of services rendered; d. The Court may likewise excuse the return of recipients based on undue prejudice, social justice considerations, and other *bona fide* exceptions as it may determine on a case-to-case basis. (Madera, *et al. v.* Commission on Audit (COA), *et al.*, G.R. No. 244128, Sept. 8, 2020) p. 744

criminal cases, the standard for an administrative case should be similar or less punitive. (*Id.*)

— The Court so now holds that the death of a respondent in an administrative case before its final resolution is a cause for its dismissal; otherwise stated, the non-dismissal of a pending administrative case in view of the death of the respondent public servant is a transgression of his or her Constitutional rights to due process and presumption of innocence. (*Id.*)

— The other exception is the presence of exceptional circumstances on the ground of equitable and humanitarian reason; based on this ground, the instant administrative case should be dismissed and death and survivorship benefits should be released to Judge Abul's heirs, as his passing preceded the rendition of a judgment on his administrative case. (*Id.*)

AGGRAVATING CIRCUMSTANCES

Evident premeditation — Evident premeditation cannot be appreciated as an aggravating circumstance in the crime of robbery with homicide because the elements of which are already inherent in the crime; evident premeditation is inherent in crimes against property. (People *v.* Roelan @ "Boyax," G.R. No. 241322, Sept. 8, 2020) p. 683

ALIBI

Defense of — Prevalently repeated is the rule that for alibi to countervail the evidence of the prosecution confirming the accused's guilt, he must prove that he was not at the *locus delicti* when the crime was committed and that it was also physically impossible for him to have been at the scene of the crime at the time it was perpetrated. (People *v.* Roelan @ "Boyax," G.R. No. 241322, Sept. 8, 2020) p. 683

***AMPARO,* WRIT OF**

Petition for — Considering that the definition of enforced disappearances does not make a distinction between abduction of private citizens or abduction of convicted

— The means employed by the perpetrator, while emotional anguish or mental suffering are the effects caused to or the damage sustained by the offended party; the law does not require proof that the victim became psychologically ill due to the psychological violence done by her abuser; rather, the law only requires emotional anguish and mental suffering to be proven; to establish emotional anguish or mental suffering, jurisprudence only requires that the testimony of the victim to be presented in court, as such experiences are personal to this party. (*Id.*)

Violation of Section 5(i) — Applying the Indeterminate Sentence Law, the minimum term of the indeterminate penalty shall be taken from the penalty next lower in degree, which is *prision correcional*, in any of its periods which is from six (6) months and one (1) day to six (6) years, while the maximum term shall be which could be properly imposed under the law, which is eight (8) years and one (1) day to ten (10) years of prision mayor, there being no aggravating or mitigating circumstance attending the commission of the crime. (Araza *v*. People, G.R. No. 247429, Sept. 8, 2020) p. 905

— Elements: (1) The offended party is a woman and/or her child or children; (2) The woman is either the wife or former wife of the offender, or is a woman with whom the offender has or had a sexual or dating relationship, or is a woman with whom such offender has a common child; as for the woman's child or children, they may be legitimate or illegitimate, or living within or without the family abode; (3) The offender causes on the woman and/or child mental or emotional anguish; and (4) The anguish is caused through acts of public ridicule or humiliation, repeated verbal and emotional abuse, denial of financial support or custody of minor children or access to the children or similar acts or omissions. (*Id.*)

APPEALS

Appeal in criminal cases — An appeal by the accused in criminal cases throws the entire case wide open for review

transferred "outside the said penal institution" through a court order; however, this means that transfers inside the penal institution do not require any court authorization. (In the Matter of the Petition for Writ of *Habeas Corpus*/ Data and *Amparo* in Favor of Amin Imam Boratong, *et al*. *v.* De Lima in her capacity as Secretary of Justice, *et al.*, G.R. No. 215585, Sept. 8, 2020) p. 439

— The Nelson Mandela Rules provides for the isolation or segregation of inmates, whether as a disciplinary sanction or for the maintenance of order and security, subject to authorization by law or by the regulation of the competent administrative authority; Rule 114, Section 3 of the Rules of Court provides: SECTION 3. No release or transfer except on court order or bail - No person under detention by legal process shall be released or transferred except upon order of the court or when he is admitted to bail. (*Id.*)

— The Revised Implementing Rules and Regulations of Republic Act No. 10575 make mention of the United Nations Standard Minimum Rules for Treatment of Prisoners or the Nelson Mandela Rules; the Nelson Mandela Rules was not meant to specify a model penal system; rather, it aimed to "set out what is generally accepted as being good principles and practice in the treatment of prisoners and prison management." (*Id.*)

Safekeeping of national inmates — "Safekeeping" is defined under the law as: The act that ensures the public (including families of inmates and their victims) that national inmates are provided with their basic needs, completely incapacitated from further committing criminal acts, and have been totally cut off from their criminal networks (or contacts in the free society) while serving sentence inside the premises of the national penitentiary; this act also includes protection against illegal organized armed groups which have the capacity of launching an attack on any prison camp of the national penitentiary to rescue their convicted comrade or to forcibly amass firearms issued to prison guards. (In the Matter of the Petition

— The humane and ethical treatment of detained persons must be balanced with the public interest to not duly hamper the efficient prison management; detained persons, whether deprived of liberty or convicted by final order, are still deserving of humane and ethical treatment under detention; however, this must be balanced with the public interest to not unduly hamper effective and efficient penal management. (*Id.*)

— The movement of the national inmates from New Bilibid Prison to its extension facility was within the authority of the Secretary of Justice; the national inmates in this case were transferred from the New Bilibid Prison in Muntinlupa City to the New Bilibid Prison Extension Facility in the National Bureau of Investigation Compound in Manila City; neither the law nor its Revised Implementing Rules and Regulations define what an "extension facility" is or how one is established; however, as an extension facility, the control and supervision of these national inmates remained with the Bureau of Corrections, through the Secretary of Justice. (*Id.*)

— Under Republic Act No. 10575, or the Bureau of Corrections Act of 2013, it is the policy of the State to promote the general welfare and safeguard the basic rights of every prisoner incarcerated in our national penitentiary; to this end, the Bureau of Corrections is charged with the safekeeping of national inmates. (*Id.*)

CERTIORARI

Petition for — As a general rule, the filing of a motion for reconsideration is an indispensable condition for filing a special civil action for *certiorari*; the motion for reconsideration is essential to grant the court or tribunal the opportunity to correct its error, if any, before resort to the courts of justice may be had; however, this rule is not iron-clad, and is subject to well-known exceptions, such as: where the questions raised in the certiorari proceedings have been duly raised and passed upon by the lower court, or are the same as those raised and passed upon in the lower court. (Del Rosario, *et al. v.*

CHILDREN EXPLOITED IN PROSTITUTION AND OTHER SEXUAL ABUSE (R.A. NO. 7610)

Commission of — For a charge under R.A. No. 7610 to prosper, it is crucial that the minor victim is a child exploited in prostitution or other sexual abuse; the Court scrutinized the phrases children exploited in prostitution and other sexual abuse: As can be gathered from the text of Section 5 of R.A. No. 7610 and having in mind that the term "lascivious conduct" has a clear definition which does not include "sexual intercourse," the phrase "children exploited in prostitution" contemplates four (4) scenarios: (a) a child, whether male or female, who for money, profit or any other consideration, indulges in lascivious conduct; (b) a female child, who for money, profit or any other consideration, indulges in sexual intercourse; (c) a child, whether male or female, who due to the coercion or influence of any adult, syndicate or group, indulges in lascivious conduct; and (d) a female, due to the coercion or influence of any adult, syndicate or group, indulge in sexual intercourse. (People *v*. XXX, G.R. No. 244609, Sept. 8, 2020) p. 875

— The term "other sexual abuse," on the other hand, is construed in relation to the definitions of "child abuse" under Section 3, Article I of R.A. No. 7610 and "sexual abuse" under Section 2(g) of the Rules and Regulations on the Reporting and Investigation of Child Abuse Cases; in the former provision, "child abuse" refers to the maltreatment, whether habitual or not, of the child which includes sexual abuse, among other matters; in the latter provision, "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. (*Id*.)

the place of arrest may be excused in instances when the safety and security of the apprehending officers and the witnesses required by law or of the items seized are threatened by immediate or extreme danger such as retaliatory action of those who have the resources and capability to mount a counter-assault. (People *v*. Soriano, G.R. No. 248010, Sept. 8, 2020) p. 931

— It is incumbent upon the prosecution to establish that the confiscated drug and the drug submitted in court are one and the same by providing a clear narration of the following: 1) the date and time when, as well as the manner, in which the illegal drug was transferred; 2) the handling, care and protection of the person who had interim custody of the seized illegal drug; 3) the condition of the drug specimen upon each transfer of custody; and 4) the final disposition of the seized illegal drug. (*Id.*)

— The chain of custody rule, nevertheless, admits of an exception which is found in the saving clause introduced in Section 21 (a), Article II of R.A. No. 9165; less than strict compliance with the guidelines stated in Section 21 does not automatically render void and invalid the confiscation and custody over the evidence obtained; the saving clause is set in motion when these requisites are satisfied: 1) the existence of justifiable grounds; and 2) the integrity and evidentiary value of the seized items are properly preserved by the police officers. (*Id.*)

— The law and implementing rules mandate that the physical inventory and photographing of the seized items must be in the presence of the accused and the following insulating witnesses: (1) a representative from the media; (2) the Department of Justice (DOJ); and (3) any elected public official, who shall sign the copies of the inventory and be given a copy; however, in earlier cases, we clarified that the deviation from the standard procedure in Section 21 will not *ipso facto* render the seizure and custody over the items as void and invalid, provided that the prosecution satisfactorily proves that: (1) there is justifiable ground for non-compliance; and (2) the integrity and

re-hired by the same employer for the same tasks or nature of tasks; and (ii) the tasks they perform are vital, necessary and indispensable to the usual business or trade of the employer. (Del Rosario, *et al. v.* ABS-CBN Broadcasting Corporation, G.R. No. 202481, Sept. 8, 2020) pp. 130-132

EMPLOYER-EMPLOYEE RELATIONSHIP

Elements of — In ascertaining the existence of an employer-employee relationship, the Court has invariably adhered to the four-fold test, which pertains to: (i) the selection and engagement of the employee; (ii) the payment of wages; (iii) the power of dismissal; and (iv) the power of control over the employee's conduct, or the so-called "control test." (Del Rosario, *et al. v.* ABS-CBN Broadcasting Corporation, G.R. No. 202481, Sept. 8, 2020) pp. 130-132

EMPLOYMENT, TERMINATION OF

Illegal dismissal — Burden of proof for payment of monetary benefits rests with the employer; this standard follows the basic rule that in all illegal dismissal cases the burden rests on the defendant to prove payment rather than on the plaintiff to prove non-payment; this, likewise, stems from the fact that all pertinent personnel files, payrolls, records, remittances, and other similar documents which will show that the differentials, service incentive leave and other claims of workers have been paid are not in the possession of the worker, but are in the custody and control of the employer. (Del Rosario, *et al. v.* ABS-CBN Broadcasting Corporation, G.R. No. 202481, Sept. 8, 2020) pp. 130-132

— Money claims not incurred in the normal course of business, the burden of proof for payment rests with the employee; as to the workers' claims for overtime pay, premium pay for holidays and rest days, and night shift differential pay, the burden is shifted on the employee, as these monetary claims are not incurred in the normal course of business. (*Id*.)

— The necessary consequence of a declaration that the workers are regular employees is the correlative rule

FORUM SHOPPING

Elements of — Forum shopping exists when one party repetitively avails of several judicial remedies in different courts, simultaneously or successively; the remedies stem from the same transactions, are founded on identical facts and circumstances, and raise substantially similar issues, which are either pending in, or have been resolved adversely by another court; through forum shopping, unscrupulous litigants trifle with court processes by taking advantage of a variety of competent tribunals, repeatedly trying their luck in several different fora until they obtain a favorable result; because of this, forum shopping is condemned, as it unnecessarily burdens the courts with heavy caseloads, unduly taxes the manpower and financial resources of the judiciary and permits a mockery of the judicial processes. (Del Rosario, *et al. v.* ABS-CBN Broadcasting Corporation, G.R. No. 202481, Sept. 8, 2020) pp. 130-132

HABEAS CORPUS

Elements of — Section 6 of the Rule on the Writ of *Habeas* Data requires that the petition for the writ must contain the following allegations: (a) The personal circumstances of the petitioner and the respondent; (b) The manner the right to privacy is violated or threatened and how it affects the right to life, liberty or security of the aggrieved party; (c) The actions and recourses taken by the petitioner to secure the data or information; (d) The location of the files, registers or databases, the government office, and the person in charge, in possession or in control of the data or information, if known; (e) The reliefs prayed for, which may include the updating, rectification, suppression or destruction of the database or information or files kept by the respondent; in case of threats, the relief may include a prayer for an order enjoining the act complained of; and (f) Such other relevant reliefs as are just and equitable. (In the Matter of the Petition for Writ of *Habeas Corpus*/Data and *Amparo* in Favor of Amin Imam Boratong, *et al. v.* De Lima in her capacity as Secretary of Justice, *et al.*, G.R. No. 215585, Sept. 8, 2020) p. 439

it also means that he can continue to use the mark simultaneous with the registered owner's own use; the only condition given to a prior user in good faith is that his right may only be transferred or assigned together with his enterprise or business or with that part of his enterprise or business in which the mark is used. (*Id.*)

— Section 159.1 states that notwithstanding the provisions of Section 155 hereof, a registered mark shall have no effect against any person who, in good faith, before the filing date or the priority date, was using the mark for the purposes of his business or enterprise. (*Id.*)

— The main reason behind abandoning the prior user in good faith rule is that use is a pre-requisite for the registration of a trademark was for the Philippines to comply with its international obligations under the foregoing agreements which introduced a system of trademark registration; it may therefore be discerned that the shift to a trademark acquisition regime based on registration is premised on practical considerations of stability and uniformity; indeed, while it may be true that intellectual property is a creation of the mind and hence, conceptually acquired through use, our present laws recognize that, by legal fiction, ownership acquisition must be reckoned from the more definite and concrete act of registration; otherwise, trademark ownership may always be subject to adverse claims of other parties who insist that they were the first ones who have thought of and used a certain intellectual property and hence, entrench uncertainty, if not chaos, to the regulatory and even commercial aspects of trademark protection. (*Id.*)

— The prior user in good faith rule appears to stray from the overarching impetus of stability and uniformity which had, in fact, prompted the shift of our trademark acquisition regime from being based on use to being based on registration. (*Id.*)

— The prior user in good faith rule, while indeed provided for under the IP Code, appears to stray from the overarching impetus of stability and uniformity which

had in fact, prompted the shift of our trademark acquisition regime from being based on use to being based on registration; registration, as compared to use, denotes a standardized procedure to determine, on both domestic and international levels, at what point in time has a person acquired ownership of a trademark to the exclusion of others; because "registration" is a formal, definite, and concrete act that is processed through official State institutions, whereas "use" is arbitrary individual action that remains subject to evidentiary proof, the protection of trademark rights is therefore more stable and uniform with the former. (*Id.*)

— The shift from the old "use-based" system under R.A. No. 166, as amended, to a "registration-based" system of acquiring rights over trademark under R.A. No. 8293 did not entirely take away the importance of use in the realm of trademark ownership; for instance, under Section 124.2 of R.A. No. 8293, the applicant or registrant of a trademark is required, within three (3) years from the filing date of its application, to file before the IPO a declaration of actual use (DAU) of the mark with evidence to that effect; similarly, Section 145 of the same Code requires the filing of the same declaration within one (1) year from the fifth anniversary of the date of registration of such trademark; alternatively, the applicant/registrant may file a declaration of non-use (DNU) if there are justifiable circumstances for doing so; failure to file a DAU/DNU within the prescribed period will result in the automatic refusal of the application or cancellation of registration of the mark, as the applicant/registrant is considered to have abandoned and/or withdrawn any right/s that he/she has over the trademark; in all of these regulatory facets, however, use is relevant to maintain ownership of the trademark, as opposed to its acquisition, which, as mentioned, is reckoned upon good faith registration. (*Id.*)

JUDGMENTS

Void judgment — Any act that a court performs without jurisdiction shall be null and void, and without any binding

LABOR RELATIONS

Management prerogative — The creation of a work pool is a valid exercise of management prerogative; it is a privilege inherent in the employer's right to control and manage its enterprise effectively, and freely conduct its business operations to achieve its purpose; however, in order to ensure that the work pool arrangement is not used as a scheme to circumvent the employees' security of tenure, the employer must prove that (i) a work pool in fact exists, and (ii) the members therein are free to leave anytime and offer their services to other employers; these requirements are critical in defining the precise nature of the workers' employment. (Del Rosario, *et al. v.* ABS-CBN Broadcasting Corporation, G.R. No. 202481, Sept. 8, 2020) pp. 130-132

MITIGATING CIRCUMSTANCES

Sufficient provocation — Under Article 13, paragraph 4, of the RPC, the criminal liability of the accused shall be mitigated if sufficient provocation or threat on the part of the offended party immediately preceded the act of the accused; sufficient provocation refers to any unjust or improper conduct or act of the victim adequate enough to excite a person to commit a wrong, which is accordingly proportionate in gravity; in order to be mitigating, provocation on the part of the victim must be sufficient and should immediately precede the act of the offender. (Cruz *v.* People, G.R. No. 216642, Sept. 8, 2020) p. 484

Voluntary surrender — Article 13, paragraph 7, of the RPC requires that the offender had voluntarily surrendered himself to a person in authority or his agents; for this mitigating circumstance to be appreciated, the following elements must be present: 1) the offender has not been actually arrested; 2) the offender surrendered himself to a person in authority or the latter's agent; and 3) the surrender was voluntary; all three elements are present in this case. (Cruz *v.* People, G.R. No. 216642, Sept. 8, 2020) p. 484

and corruption; (d) the dishonest act exhibits moral depravity on the part of the respondent; (e) the respondent employed fraud and/or falsification of official documents in the commission of the dishonest act related to his/her employment; (f) the dishonest act was committed several times or in various occasions; (g) the dishonest act involves a Civil Service examination irregularity or fake Civil Service Eligibility, such as, but not limited to, impersonation, cheating and use of crib sheets; and (h) other analogous circumstances. (Saligumba *v*. Commission on Audit XIII, represented by Cheryl Cantalejo-Dime, et al., G.R. No. 238643, Sept. 8, 2020) p. 665

Gross misconduct and dishonesty — Gross Misconduct is defined as the transgression of some established and definite rule of action, more particularly, unlawful behavior or gross negligence by a public officer, coupled with the elements of corruption, or willful intent to violate the law or to disregard established rules; on the other hand, dishonesty has been defined as the concealment or distortion of truth which shows lack of integrity or a disposition to defraud, cheat, deceive, or betray, or intent to violate the truth. (Saligumba *v*. Commission on Audit XIII, represented by Cheryl Cantalejo-Dime, et al., G.R. No. 238643, Sept. 8, 2020) p. 665

QUIETING OF TITLE

Requisites — For this action to prosper, two (2) requisites must concur: first, the plaintiff or complainant has a legal or an equitable title to or interest in the real property subject of the action; and second, the deed, claim, encumbrance, or proceeding claimed to be casting cloud on his or her title must be shown to be in fact invalid or inoperative despite its *prima facie* appearance of validity or legal efficacy. (Tensuan, *et al. v.* Heirs of Ma. Isabel M. Vasquez, G.R. No. 204992, Sept. 8, 2020) p. 230

RAPE

Commission of — Criminal liability under Section 5(b), Article III of R.A. No. 7610: the elements of Section 5(b) are:

ROBBERY WITH HOMICIDE

Commission of — Robbery with homicide exists when a homicide is committed either by reason or on occasion of the robbery; homicide is said to have been committed by reason or on the occasion of robbery if, for instance, it was committed to (a) facilitate the robbery or the escape of the culprit; (b) preserve the possession by the culprit of the loot; (c) prevent discovery of the commission of the robbery; or (d) eliminate witnesses in the commission of the crime. (People *v.* Roelan @ "Boyax," G.R. No. 241322, Sept. 8, 2020) p. 683

— *Robo con homicidio* or robbery with homicide is an indivisible offense, a special complex crime; it carries a severe penalty because the law sees in this crime that men place lucre above the value of human life, thus justifying the imposition of a harsher penalty than that for simple robbery or homicide. (*Id.*)

— The rule is well-established that whenever homicide has been committed as a consequence of or on the occasion of the robbery, all those who took part as principals in the robbery will also be held guilty as principals of the special complex crime of robbery with homicide although they did not actually take part in the homicide, unless it clearly appears that they endeavored to prevent the homicide. (*Id.*)

Elements — In order to sustain a conviction for robbery with homicide, the following elements must be proven by the prosecution: (1) the taking of personal property belonging to another; (2) with intent to gain or animus lucrandi; (3) with the use of violence or intimidation against a person; and (4) on the occasion or by reason of the robbery, the crime of homicide, as used in its generic sense, was committed. (People *v.* Roelan @ "Boyax," G.R. No. 241322, Sept. 8, 2020) p. 683

RULES OF COURT

Construction — The rules are not meant to subvert or override substantive law; procedural rules are meant to

Substituted service — It is settled that resort to substituted service is allowed only if, for justifiable causes, the defendant cannot be personally served with summons within a reasonable time; as substituted service is in derogation of the usual method of service, personal service is preferred over substituted service, parties do not have unbridled right to resort to substituted service of summons. (Belo *v.* Marcantonio, G.R. No. 243366, Sept. 8, 2020)

Voluntary submission — The defect in the service of summons is cured by the party's voluntary submission to the court's jurisdiction; voluntary submission not sufficient to make the proceedings binding upon the party without his or her participation; the service of summons is a vital and indispensable ingredient of a defendant's constitutional right to due process, which is the cornerstone of our justice system. (Belo *v.* Marcantonio, G.R. No. 243366, Sept. 8, 2020)

SUPREME COURT (SC)

Powers — The Court cannot enlarge, diminish, or dictate when jurisdiction shall be removed, given that the power to define, prescribe, and apportion jurisdiction is, as a general rule, a matter of legislative prerogative. (Non, *et al. v*. Office of the Ombudsman, *et al.*, G.R. No. 251177, Sept. 8, 2020) p. 962

Supreme Court En Banc — No doctrine or principle of law laid down by the Court in a decision rendered *en banc* may be modified or reversed except by the Court sitting *en banc*. (Treyes *v*. Larlar, *et al.*, G.R. No. 232579, Sept. 8, 2020) p. 505

TREACHERY

As a qualifying circumstance — The Court appreciated treachery as a qualifying circumstance and convicted the accused for murder and attempted murder because even if the death and injury of the two (2) other persons resulted from accused's poor aim, accused's act of suddenly firing upon his victims rendered the latter helpless to

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Tolentino, Civil Code of the Philippines,
Property, Vol. II, p. 452 587

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United Nations Standard Minimum Rules for the
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Rules 1,3,37,50,58 478
Rule 37 (d) 479

B. BOOKS

Nwabueze, Biotechnology and the Challenge
of Property, p. 33 (2007) 400
Pistor, The Code of Capital, pp. 108, 123 (2019) 400-401