REMEDIAL LAW

2018 Cases

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BY:

DEAN'S CIRCLE 2019

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Dumelod, Ricka Abigael R.
Fernandez, Ma. Czarina A.
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Fronda, John Edward F.
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Manguiat, Julie Ann C.
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Reyes, Alarice V.
Reyes, Joanna Marie
Salvador, Kharina Mar V
Samson, Kristel L.
Santos, Nikki Tricia R.
Sanvictores, Ruth Mae G.
Sarmiento, Arianna Laine T.
Sarmiento, Ian Timothy R.
Sim, Lance Lester Angelo
Soriano, Manuel Joshua O.
Sugay, Alexandra Nicole D.
Teves, Jan Matthew V.

TABLE OF CONTENTS

REMEDIAL LAW

I. GENERAL PRINCIPLES

A. Substantive law vs. remedial law

B. Rule-making power of the Supreme Court

C. Principle of judicial hierarchy

D. Doctrine of non-interference/judicial stability

II. JURISDICTION

A. Classification of jurisdiction

1. Original vs. appellate

2. General vs. special

IN THE MATTER OF THE INTESTATE ESTATE OF REYNALDO GUZMAN RODRIGUEZ; ANITA ONG TAN, *Petitioner*, -versus- ROLANDO C. RODRIGUEZ, RACQUEL R. GEGAJO, ROSALINDA R. LANDON, REYNALDO C. RODRIGUEZ, JR., ESTER R. FULGENCIO, RAFAEL C. RODRIGUEZ and REYNEST C. RODRIGUEZ, *Respondent*. G.R. No. 230404, FIRST DIVISION, January 31, 2018, TIJAM, *J.*

Equally important is the rule that the determination of whether or not a particular matter should be resolved by the CFI in the exercise of its general jurisdiction or of its limited jurisdiction as a special court (probate, land registration, etc.) is in reality not a jurisdictional question. It is in essence a procedural question involving a mode of practice "which may be waived."

Such waiver introduces the exception to the general rule that while the probate court exercises limited jurisdiction, it may settle questions relating to ownership when the claimant and all other parties having legal interest in the property consent, expressly or impliedly, to the submission of the question to the probate court for adjudgment.

Such waiver was evident from the fact that the respondents sought for affirmative relief before the court a quo as they claimed ownership over the funds in the joint account of their father to the exclusion of his co-depositor.

FACTS:

Respondents Rolando Rodriguez, RacquelGegajo, Rosalinda Landon, Reynaldo Rodriguez, Jr., Ester Fulgencio, Rafael Rodriguez and Reynest Rodriguez are children of Reynaldo Rodriguez and Ester Rodriguez, who died in 2008 and in 2004 respectively.

Reynaldo and Ester left several properties to their surviving children. In 2009, respondents executed an Extrajudicial Settlement of the Estate of the late Reynaldo and Ester.

On the other hand, petitioner Anita Ong Tan is a co-depositor in a Joint Account under the name Anita Ong Tan and Reynaldo in the Bank of the Philippine Islands. When Reynaldo passed away, said joint account continued to be in active status. When Anita decided to withdraw her funds, BPI required her to submit an extrajudicial settlement of the heirs of Reynaldo. To comply with the same, Anita approached respondents and asked them to sign a waiver of rights to the said joint account. Respondents refused to sign the waiver as they believed that the funds in the said joint account belonged to their father.

Anita filed before the trial court a petition for the settlement of the Intestate Estate of the late Reynaldo and issuance of letters of administration to any competent neutral willing person, other than any of the heirs of Reynaldo. Anita alleged that the funds used to open the BPI joint account were her exclusive funds, which came from her East West Bank account. To prove her claim, she presented as evidence a Debit Memo from East West Bank, which was used for the issuance of a Manager's Check in the amount of P 1,021,868 which exact amount was deposited to the BPI joint account. Anita presented the testimony of a Branch Manager of East West to corroborate her testimony.

The RTC ruled in favor of Anita and held that Anita sufficiently adduced evidence to rebut the presumption that the funds deposited under the BPI joint account of Anita and Reynaldo were owned by them in common.

The CA however reversed the ruling of the RTC. In giving credence to respondents' contention, the CA maintained that the presumption of co-ownership as regards the nature of joint accounts was not sufficiently overturned, as Anita failed to prove that she is indeed the sole owner of the funds therein.

ISSUE

Whether the CA erred in declaring Anita and Reynaldo as co-owners of the subject bank deposits despite the evidence submitted by Anita to prove otherwise. (Yes)

RULING:

A joint account is one that is held jointly by two or more natural persons, or by two or more juridical persons or entities. Under such setup, the depositors are joint owners or co-owners of the said account, and their share in the deposits shall be presumed equal, unless the contrary is proved. The nature of joint accounts is governed by the rule on co-ownership embodied in Article 485 of the Civil Code.

While the rule is that the shares of the owners of the joint account holders are equal, the same may be overturned by evidence to the contrary. Hence, the mere fact that an account is joint is not conclusive of the fact that the owners thereof have equal claims over the funds in question.

In line with this, it is also indispensable to consider whether or not there exists a survivorship agreement between the co-depositors. In said agreement, the co-depositors agree that upon the death of either of them, the share pertaining to the deceased shall accrue to the surviving co-

depositor or he can withdraw the entire deposit. It must be noted that there exists no survivorship agreement between Anita and Reynaldo. Hence, it is but rightful to determine their respective shares based on evidence presented during trial.

On this note, the Court agrees with the findings of the lower court that Anita sufficiently proved that she owns the funds in the BPI joint account exclusively. It can be gleaned from the records that the money in the BPI joint account amounts to P1,021,868, and it is undisputed that said amount came from Anita's personal account with East West. Based on East West's records, as testified to by its Branch Manager, two withdrawals were subsequently made: first, in the amount of P1,021,868; and second, in the amount of P1,003,111. In all such withdrawals, manager's checks were issued.

The amount which was first withdrawn from the East West account, *i.e.*, P1,021,868, was the exact amount used to open the BPI joint account. Notable is the fact that these transactions occurred within the same day. It is also significant to consider that no further transaction in said joint account was made after the same was opened until the death of Reynaldo.

With all these, it is apparent that Anita owned the funds exclusively as she sufficiently overturned the presumption under the law.

Noteworthy is the fact that even if the probing arms of an intestate court is limited, it is equally important to consider the call of the exercise of its power of adjudication especially so when the case calls for the same, to wit:

> While it may be true that the RTC, acting in a restricted capacity and exercising limited jurisdiction as a probate court, is competent to issue orders involving inclusion or exclusion of certain properties in the inventory of the estate of the decedent, and to adjudge, albeit, provisionally the question of title over properties, it is no less true that such authority conferred upon by law and reinforced by jurisprudence, should be exercised judiciously, with due regard and caution to the peculiar circumstances of each individual case.

The facts obtaining in this case call for the determination of the ownership of the funds contained in the BPI joint account; for the intestate estate of Reynaldo has already been extrajudicially settled by his heirs. The trial court, in this case, exercised sound judiciousness when it ruled out the inclusion of the BPI joint account in the estate of the decedent.

Equally important is the rule that the determination of whether or not a particular matter should be resolved by the CFI in the exercise of its general jurisdiction or of its limited jurisdiction as a special court (probate, land registration, etc.) is in reality not a jurisdictional question. It is in essence a procedural question involving a mode of practice "which may be waived."

Such waiver introduces the exception to the general rule that while the probate court exercises limited jurisdiction, it may settle questions relating to ownership when the claimant and all other parties having legal interest in the property consent, expressly or impliedly, to the submission of the question to the probate court for adjudgment.

Such waiver was evident from the fact that the respondents sought for affirmative relief before the court *a quo* as they claimed ownership over the funds in the joint account of their father to the exclusion of his co-depositor.

In this case, the Court notes that the parties submitted to the jurisdiction of the intestate court in settling the issue of the ownership of the joint account. While respondents filed a Motion to Dismiss, which hypothetically admitted all the allegations in Anita's petition, the same likewise sought affirmative relief from the intestate court. Said affirmative relief is embodied in respondents' claim of ownership over the funds in said joint account to the exclusion of Anita, when in fact said funds in the joint account was neither mentioned nor included in the inventory of the intestate estate of the late Reynaldo. Therefore, respondents impliedly agreed to submit the issue of ownership before the trial court, acting as an intestate court, when they raised an affirmative relief before it. To reiterate, the exercise of the trial court of its limited jurisdiction is not jurisdictional, but procedural; hence, waivable.

3. Exclusive vs. concurrent

B. Doctrines of hierarchy of courts and continuity of jurisdiction

C. Jurisdiction of various Philippine courts

STEPHEN A. ANTIG, AS REPRESENTATIVE OF AMS BANANA EXPORTER, INC. [FORMERLY AMS FARMING CORPORATION], BERNARDITA S. LEMOSNERO, JEMARIE J. TESTADO, THOMAS BERNARD C. ALLADIN, AND GERARDO ARANGOSO, *PETITIONERS,* -versus- ANASTACIO ANTIPUESTO, IN HIS OWN CAPACITY AND AS REPRESENTATIVE OF AMS KAPALONG AGRARIAN REFORM BENEFICIARIES MULTI-PURPOSE COOPERATIVE (AMSKARBEMCO) AND ITS MEMBERS, *RESPONDENTS.*.
G.R. No. 192396,THIRD DIVISION, January 17, 2018, MARTIRES, *J.*

The original and exclusive jurisdiction of the RTC acting as a Special Agrarian Court as delineated by law is to cover only the following controversies:

1. All petitions for the determination of just compensation to landowners, and
2. The prosecution of all criminal offenses under RA No. 6657.

A perusal of the petition for injunction filed by private respondents in DAR Case No. 95-2003 shows that it does not raise either of the foregoing issues. The principal averments of the petition and the relief prayed for therein actually assert a cause of action to enjoin the "installation/physical takeover" of the subject landholdings by the ARBs affiliated with the Cooperative, and therefore not within the purview of the limited or special jurisdiction of the public respondent as a Special Agrarian Court.

FACTS:

Petitioners Bernadita S. Lemosnero (*Lemosnero*), Jemarie J. Testado (*Testado*), Thomas Bernard C. Alladin (*Alladin*), and Gerardo C. Arangoso (*Arangoso*) (collectively, *the landowners*) were registered owners of four agricultural lots, located at Barangay Sampao, Municipality of Kapalong, Province of Davao del Norte.

Pursuant to separate lease contracts, AMS Farming Corporation (*AMS Farming*, presently petitioner AMS Banana Exporter, Inc.), a domestic corporation engaged in the business of cultivating and exporting Cavendish bananas, had been leasing, developing, and operating portions of the lots as

banana plantations since the 1970s;[8] the leased portions totaled 18,828 square meters. As lessee, developer, and operator of these banana plantations, AMS Farming asserts ownership over the standing crops (banana trees) and other improvements found thereon. Correspondingly, AMS Farming had been declaring such ownership for taxation purposes.

In 2002, during the effectivity of the lease contracts, the landowners offered their respective lots for agrarian reform, and availed of the Voluntary Offer to Sell (*VOS*) scheme under the CARP. They proposed that as the just compensation for the lots, the standing crops, and the improvements should be computed at P903,857.15 per hectare.

Pursuant to its mandate as the duly designated financial intermediary of the CARP, the Land Bank of the Philippines (*LBP*) arrived at its own valuation. Petitioners disagreed with the LBP valuation as it allegedly did not include the value of the standing crops and the improvements.[11] Thus, they protested[12]before the DAR Adjudication Board (*DARAB*), prompting the Office of the Provincial Adjudicator, Tagum City, to conduct summary proceedings for the administrative determination of the just compensation for the lots, in accordance with the primary jurisdiction conveyed unto DAR by Section 16 (d)[13] of Republic Act. No. 6657, or the Comprehensive Agrarian Reform Law of 1988. Before the DARAB, petitioners specifically prayed that the value of the standing crops and improvements be included in the determination of the just compensation.[14] Meanwhile, Certificates of Land Ownership Awards over the lots were issued in favor of the agrarian reform beneficiaries (ARBs), including herein respondents, the members of AMS Kapalong Agrarian Reform Beneficiaries Multi-Purpose Cooperative (*the cooperative*).

In a Letter dated 1 August 2003, the Provincial Agrarian Reform Officer (PARO) notified AMS Farming of the impending "physical takeover" of the lots by the ARBs, scheduled on 5 August 2003.
On the day of the intended "takeover," and when the administrative proceedings before the DARAB were pending, petitioners filed before the Regional Trial Court, Tagum City, designated as SAC, a Petition for Injunction with an Application for the Issuance of a Temporary Restraining Order (TRO). The case was docketed as DAR Case No. 98-2003.

In an 8 August 2003 Order, the SAC took cognizance of the petition for injunction and granted its prayer for a TRO. On appeal, the CA ruled that the SAC had acted with grave abuse of discretion amounting to lack or excess of jurisdiction in taking cognizance of the petition for injunction. Hence, this petition.

ISSUE:

Whether the SAC had the jurisdiction to issue the injunction in this case.

RULING:

Sections 50, 56, and 57 of R.A. No. 6657 clearly demonstrate that the jurisdiction of the RTC as a Special Agrarian Court is in the nature of a limited and special jurisdiction, that is, the RTC's authority to hear and determine a class of cases is confined to particular causes or can only be exercised under the limitations and circumstances prescribed by statute, particularly the above-quoted Section 57.

Thus, the original and exclusive jurisdiction of the RTC acting as a Special Agrarian Court as delineated by law is to cover only the following controversies:

1. All petitions for the determination of just compensation to landowners, and

2. The prosecution of all criminal offenses under RA No. 6657.

A perusal of the petition for injunction filed by private respondents in DAR Case No. 95-2003 shows that it does not raise either of the foregoing issues. The principal averments of the petition and the relief prayed for therein actually assert a cause of action to enjoin the "installation/physical takeover" of the subject landholdings by the ARBs affiliated with the Cooperative, and therefore not within the purview of the limited or special jurisdiction of the public respondent as a Special Agrarian Court.

Clearly, public respondent is bereft of any authority to hear the petition for injunction in DAR Case No. 98-2003 as a Special Agrarian Court, and, thus, acted with grave abuse of discretion, amounting to lack or excess of jurisdiction, in taking cognizance of the petition. Consequently, public respondent is also devoid of any authority to issue a preliminary injunction, pursuant to its Orders of August 21, 2003 and October 6, 2003.

Therefore, the Orders of the SAC, dated 21 August 2003 and 6 October 2003, in DAR Case No. 98-2003 are absolutely null and void.

PEDRO S. AGCAOILI, JR., ENCARNACION A. GAOR, JOSEPHINE P. CALAJATE, GENEDINE D. JAMBARO, EDEN C. BATTULAYAN, EVANGELINE C. TABULOG, *Petitioners*, MARIA IMELDA JOSEFA "IMEE" R. MARCOS, *Co-Petitioner*, -versus- THE HONORABLE REPRESENTATIVE RODOLFO C. FARIÑAS, THE HONORABLE REPRESENTATIVE JOHNNY T. PIMENTEL, CHAIRMAN OF THE COMMITTEE ON GOOD GOVERNMENT AND PUBLIC ACCOUNTABILITY, AND LT. GEN. ROLAND DETABALI (RET.), IN HIS CAPACITY AS SERGEANT-AT-ARMS OF THE HOUSE OF REPRESENTATIVES, *Respondents*, THE COMMITTEE ON GOOD GOVERNMENT AND PUBLIC ACCOUNTABILITY, *Co-Respondent*.

G.R. No. 232395, EN BANC, July 03, 2018, TIJAM, *J*.

The release of persons in whose behalf the application for a Writ of Habeas Corpus was filed renders the petition for the issuance thereof moot and academic.

The Court's administrative supervision over lower courts does not equate to the power to usurp jurisdiction already acquired by lower courts.

Under the Court's expanded jurisdiction, the remedy of prohibition may be issued to correct errors of jurisdiction by any branch or instrumentality of the Government.

The filing of the petition for the issuance of a writ of Amparo before this Court while the Habeas Corpus Petition before the CA was still pending is improper.

FACTS:

House Resolution No. 882 was introduced by respondent Fariñas directing House Committee to conduct an inquiry, in aid of legislation, pertaining to the use by the Provincial Government of Ilocos Norte of its shares from the excise taxes on locally manufactured virginia-type cigarettes for a purpose other than that provided for by Republic Act No. 7171. Allegedly, the purchases by the

Provincial Government of Ilocos Norte of vehicles in three separate transactions from the years 2011 to 2012 were in violation of R.A. No. 7171 as well as of R.A. 9184 and P.D. No. 1445.

Because of petitioners' absence, a subpoena ad testificandum was issued by co-respondent House Committee on directing petitioners to appear and testify under oath at a hearing set on May 16, 2017. Likewise, an invitation was sent to co-petitioner Marcos to appear on said hearing.

Petitioners failed to attend the hearing. As such, the House Committee issued a Show Cause Order why they should not be cited in contempt for their refusal without legal excuse to obey summons. Additionally, petitioners and co-petitioner Marcos were notified of the next scheduled hearing.

In response to the Show Cause Order, petitioners reiterated that they received the notice only one day prior to the scheduled hearing date in alleged violation of the three-day notice rule under Section 818 of the House Rules Governing Inquiries.

On one hand, petitioners allege that at the hearing of May 29, 2017, they were subjected to threats and intimidation. According to petitioners, they were asked "leading and misleading questions" and that regardless of their answers, the same were similarly treated as evasive. They alleged that such manner of questioning involving threats, intimidation and coercion caused them to be cited in contempt and ordered detained.

Respondents aver that petitioners were evasive in answering questions and simply claimed not to remember the specifics of the subject transactions.

The next day, petitioners filed a Petition for Habeas Corpus against respondent House Sergeant-at-Arms Lieutenant General Detabali before the CA, which issued a writ of Habeas Corpus ordering Detabali to produce the bodies of the petitioners before the court on June 5, 2017.

Detabali again failed to attend. A motion to dissolve the writ of Habeas Corpus was also filed on the ground that the CA had no jurisdiction over the petition.

Petitioners filed a Motion for Provisional Release based on petitioners' constitutional right to bail. Detabali, through the OSG, opposed the motion.

The CA issued a Resolution denying Detabali's motion to dissolve the writ of Habeas Corpus and granting petitioners' Motion for Provisional Release upon posting of a bond. Accordingly, the CA issued an Order of Release Upon Bond. Attempts to serve said Resolution and Order of Release Upon Bond to Detabali were made but to no avail.

The House of Representatives called a special session for the continuation of the legislative inquiry. Thereat, a subpoena ad testificandum was issued to compel co-petitioner Marcos to appear.

While the Habeas Corpus Petition was still pending before the CA, petitioners and co-petitioner Marcos filed the instant Omnibus Petition.

During the congressional hearing which petitioners and co-petitioner Marcos attended, and while the present Omnibus Petition is pending final resolution by the Court, respondent House Committee

lifted the contempt order and ordered the release of petitioners. Consequently, petitioners were released on the same date.

The CA issued a Resolution in the Habeas Corpus Petition considering the case as closed and terminated on the ground of mootness.

Petitioners Pedro S. Agcaoili, Jr., et. al, all employees of the Provincial Government of Ilocos Norte seek that the Court assume jurisdiction over the Habeas Corpus Petition earlier filed by petitioners before the Court of Appeals, and upon assumption, to direct the CA to forward the records of the case to the Court for proper disposition and resolution.

Co-petitioner Maria Imelda Josefa "Imee" Marcos – the incumbent Governor of the Province of Ilocos Norte – joins the present petition by seeking the issuance of a writ of prohibition under Rule 65 of the Rules of Court for purposes of declaring the legislative investigation into House Resolution No. 8825 illegal and in excess of jurisdiction, and to enjoin respondents Representatives Rodolfo C. Fariñas and Johnny T. Pimentel and co-respondent Committee on Good Government and Public Accountability from further proceeding with the same.

ISSUES:

1. Whether or not the instant Omnibus Petition which seeks the release of petitioners from detention was rendered moot by their subsequent release from detention?

2. Whether or not the Court can assume jurisdiction over the Habeas Corpus Petition then pending before the CA?

3. Whether or not the subject legislative inquiry on House Resolution No. 882 may be enjoined by a writ of prohibition?

4. Whether or not the instant Omnibus Petition sufficiently states a cause of action for the issuance of a writ of Amparo?

RULING:

We dismiss the Omnibus Petition.

1. Yes. The release of persons in whose behalf the application for a Writ of Habeas Corpus was filed renders the petition for the issuance thereof moot and academic.

The writ of Habeas Corpus was devised as a "speedy and effectual remedy to relieve persons from unlawful restraint, and as the best and only sufficient defense of personal freedom." The primary purpose of the writ "is to inquire into all manner of involuntary restraint as distinguished from voluntary, and to relieve a person therefrom if such restraint is illegal."

Far compelling than the question of mootness is that the element of illegal deprivation of freedom of movement or illegal restraint is jurisdictional in petitions for habeas corpus. Consequently, in the

absence of confinement and custody, the courts lack the power to act on the petition for habeas corpus and the issuance of a writ thereof must be refused.

2. No. The Court's administrative supervision over lower courts does not equate to the power to usurp jurisdiction already acquired by lower courts.

Jurisdiction over petitions for habeas corpus and the adjunct authority to issue the writ are shared by this Court and the lower courts.

The Constitution vests upon this Court original jurisdiction over petitions for habeas corpus. On the other hand, Batas Pambansa (B.P.) Big. 129, as amended, gives the CA original jurisdiction to issue a writ of habeas corpus whether or not in aid of its appellate jurisdiction. Similarly, B.P. Blg. 129 gives the RTCs original jurisdiction in the issuance of a writ of Habeas Corpus.

The CA and the RTC enjoy concurrent jurisdiction over petitions for habeas corpus. As the Habeas Corpus Petition was filed by petitioners with the CA, the latter has acquired jurisdiction over said petition to the exclusion of all others, including this Court. This must be so considering the basic postulate that jurisdiction once acquired by a court is not lost upon the instance of the parties but continues until the case is terminated.

Petitioners are without unbridled freedom to choose which between this Court and the CA should decide the habeas corpus petition. Mere concurrency of jurisdiction does not afford the parties absolute freedom to choose the court to which the petition shall be filed.

Further, there appears to be no basis either in fact or in law for the Court to assume or wrest jurisdiction over the Habeas Corpus Petition filed with the CA.

The administrative function of the Court to transfer cases is a matter of venue, rather than jurisdiction. The import of the Court's pronouncement in Gutierrez is the recognition of the incidental and inherent power of the Court to transfer the trial of cases from one court to another of equal rank in a neighboring site, whenever the imperative of securing a fair and impartial trial, or of preventing a miscarriage of justice, so demands.

3. Yes. Under the Court's expanded jurisdiction, the remedy of prohibition may be issued to correct errors of jurisdiction by any branch or instrumentality of the Government. However, the Court finds no justification for the issuance thereof in the instant case.

In any case, the availability of the remedy of prohibition for determining and correcting grave abuse of discretion amounting to lack or excess of jurisdiction on the part of the Legislative and Executive branches has been categorically affirmed by the Court in Judge Villanueva v. Judicial and Bar Council.

The above pronouncement is but an application of the Court's judicial power which Section 1, Article VIII of the Constitution defines as the duty of the courts of justice (1) to settle actual controversies involving rights which are legally demandable and enforceable, and (2) to determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the Government. Such innovation under the 1987 Constitution later on became known as the Court's "traditional jurisdiction" and "expanded jurisdiction," respectively.

While the requisites for the court's exercise of either concept of jurisdiction remain constant, note that the exercise by the Court of its "expanded jurisdiction" is not limited to the determination of grave abuse of discretion to quasi-judicial or judicial acts, but extends to any act involving the exercise of discretion on the part of the government.

However, co-petitioner Marcos failed to show that the subject legislative inquiry violates the Constitution or that the conduct thereof was attended by grave abuse of discretion amounting to lack or in excess of jurisdiction.

4. The filing of the petition for the issuance of a writ of Amparo before this Court while the Habeas Corpus Petition before the CA was still pending is improper.

Petitioners and co-petitioner Marcos failed to show, by prima facie evidence, entitlement to the issuance of the writ. Much less have they exhibited, by substantial evidence, meritorious grounds to the grant of the petition. Here, petitioners and co-petitioner Marcos readily admit that the instant Omnibus Petition does not cover extralegal killings or enforced disappearances, or threats thereof. Thus, on this ground alone, their petition for the issuance of a writ of Amparo is dismissible.

The alleged unlawful restraint on petitioners' liberty has effectively ceased upon their subsequent release from detention. The apprehension of co-petitioner Marcos that she will be detained is, at best, merely speculative. In other words, co-petitioner Marcos has failed to show any clear threat to her right to liberty actionable through a petition for a writ of Amparo. It appears that petitioners and co-petitioner Marcos even attended and participated in the subsequent hearings without any untoward incident. Petitioners and co-petitioner Marcos thus failed to establish that their attendance at and participation in the legislative inquiry as resource persons have seriously violated their right to liberty and security, for which no other legal recourse or remedy is available. Perforce, the petition for the issuance of a writ of Amparo must be dismissed.

D. Aspects of jurisdiction

1. Jurisdiction over the parties

2. Jurisdiction over the subject matter

STEPHEN Y. KU, *Petitioner,* -versus – RCBC SECURITIES, INC., *Respondent.*
G.R. No. 219491, THIRD DIVISION, October 17, 2018, PERALTA, J.

The settled rule is that ***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 petitioner's cause of action. The nature of an action, as well as which court or body has jurisdiction over it, is determined based on the allegations contained in the complaint of the petitioner. The averments in the complaint and the character of the relief sought are the ones to be consulted. Once vested by the allegations in the complaint, jurisdiction also remains vested, irrespective of whether or not the petitioner is entitled to recover upon all or some of the claims asserted therein.*

As it now stands, jurisdiction over the cases enumerated under Section 5 of PD 902-A, collectively known as ***intra-corporate controversies or disputes, now falls under the jurisdiction of the RTCs.***

Based on the allegations in petitioner's Complaint, there is no dispute that the case falls under the jurisdiction of the RTC. . However, whether or not the RTC shall take cognizance of the case in the exercise of its general jurisdiction, or as a special commercial court, is another matter. In resolving this issue, what needs to be determined, at the first instance, is the nature of petitioner's complaint. Is it an ordinary civil action for collection, specific performance and damages as would fall under the jurisdiction of regular courts or is it an intracorporate controversy or of such nature that it is required to be heard and tried by a special commercial court?

The Court finds, and so holds, that ***the case is not an intra-corporate dispute and, instead, is an ordinary civil action****. There are no intracorporate relations between the parties. Petitioner is neither a stockholder, partner, member nor officer of respondent corporation. The parties' relationship is limited to that of an investor and a securities broker. Moreover, the questions involved neither pertain to the parties' rights and obligations under the Corporation Code, if any, nor to matters directly relating to the regulation of the corporation.*

FACTS:

Petitioner Stephen Y. Ku opened an account with respondent on June 5, 2007, for the purchase and sale of securities as evidenced by the Customer Account Information Form and Agreement. Unknown to petitioner, the name of M.G. Valbuena ("MGV") was deliberately inserted beside the name of Ivan L. Zalameda as one of the agents after petitioner completed and signed the Agreement. Petitioner only discovered this anomaly when petitioner recently requested for a copy of his Account Information.

In the course of petitioner's trading transactions with RSEC, MGV represented herself as a Sales Director of RSEC. With this representation, petitioner continued to transact business with RSEC through MGV, on the honest belief that the latter was acting for and in behalf of RSEC.

ARPO, as represented to petitioner, is an investment arm of RSEC that offers considerably higher interest rate of return as compared to any other financing company. Petitioner agreed to invest in ARPO funds. Sometime in January 2012, it came to the knowledge of petitioner that his account with RSEC was subject of mismanagement. MGV was blacklisted by RSEC due to numerous fraudulent and unauthorized transactions.

After audit, petitioner has conclusively determined that there were FOUR HUNDRED SIXTY-SEVEN (467) unauthorized transactions in his account. In summary, petitioner's audit report would show that RSEC owes petitioner the total amount of Php70,064,426.88 as of 31 October 2012. Petitioner wrote RSEC on 10 May 2012 and demanded payment for the said amounts. However, RSEC, in its letter-reply dated 29 May 2012, only made categorical denials of its relationship with ARPO and failed to sufficiently explain what happened to petitioner's account or where did all of petitioner's money intended for ARPO go.

On February 22, 2013, petitioner filed with the RTC of Makati a Complaint for Sum of Money and Specific Performance with Damages against respondent. Respondent filed a Motion to Dismiss.

After conducting several hearings on the Motion to Dismiss, the RTC of Makati, Branch 63, issued its questioned Order dated September 12, 2013, to wit:

> "After going over petitioner's Complaint and defendant's [herein respondent's] Motion to Dismiss and the Reply that followed, the Court is of the considered view that this case involves trading of securities. Consequently, the case should be heard and tried before a Special Commercial Court."

The case was, subsequently, re-raffled to Branch 149 of the RTC of Makati. Branch 149 denied the Motion to Dismiss for lack of merit. It held that petitioner's payment of insufficient docket fees does not warrant the dismissal of the Complaint and that the trial court still acquires jurisdiction over the case subject to the payment of the deficiency assessment.

The CA reversed the RTC decision. The CA held that, based on the language of the Order of September 12, 2013, the RTC of Makati, Branch 63, has acknowledged that it has no jurisdiction over the subject matter of the case; and having acknowledged its lack of jurisdiction, Branch 63 should have dismissed the Complaint, instead of having it re-raffed to another Branch.

ISSUE:

Which court has jurisdiction over the complaint filed by petitioner? (RTC, in the exercise of its general jurisdiction)

RULING:

The settled rule is that 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 petitioner's cause of action. The nature of an action, as well as which court or body has jurisdiction over it, is determined based on the allegations contained in the complaint of the petitioner. The averments in the complaint and the character of the relief sought are the ones to be consulted. Once vested by the allegations in the complaint, jurisdiction also remains vested, irrespective of whether or not the petitioner is entitled to recover upon all or some of the claims asserted therein.

As it now stands, jurisdiction over the cases enumerated under Section 5 of PD 902-A, collectively known as intra-corporate controversies or disputes, now falls under the jurisdiction of the RTCs.

Jurisdiction over intra-corporate controversies is transferred by law (RA 8799) from the SEC to the RTCs in general, but the authority to exercise such jurisdiction is given by the Supreme Court, in the exercise of its rule-making power under the Constitution, to RTCs which are specifically designated as Special Commercial Courts.

Based on the allegations in petitioner's Complaint, there is no dispute that the case falls under the jurisdiction of the RTC. However, whether or not the RTC shall take cognizance of the case in the exercise of its general jurisdiction, or as a special commercial court, is another matter. In resolving this issue, what needs to be determined, at the first instance, is the nature of petitioner's complaint. Is it an ordinary civil action for collection, specific performance and damages as would fall under the jurisdiction of regular courts or is it an intracorporate controversy or of such nature that it is required to be heard and tried by a special commercial court?

The Court finds, and so holds, that the case is not an intra-corporate dispute and, instead, is an ordinary civil action. There are no intracorporate relations between the parties. Petitioner is neither a stockholder, partner, member nor officer of respondent corporation. The parties' relationship is limited to that of an investor and a securities broker. Moreover, the questions involved neither pertain to the parties' rights and obligations under the Corporation Code, if any, nor to matters directly relating to the regulation of the corporation.

On the basis of the foregoing, since the Complaint filed by petitioner partakes of the nature of an ordinary civil action, it is clear that it was correctly raffled-off to Branch 63. Hence, it is improper for it (Branch 63) to have ordered the re-raffle of the case to another branch of the Makati RTC. Moreover, while designated as a Special Commercial Court, Branch 149, to which it was subsequently re-raffled, retains its general jurisdiction to try ordinary civil cases such as petitioner's Complaint. In sum, it is error to conclude that the questioned Orders of Branches 63 and 149 are null and void on the ground of lack of jurisdiction, because, in fact, both branches of the Makati RTC have jurisdiction over the subject matter of petitioner's Complaint.

TOURISM INFRASTRUCTURE AND ENTERPRISE ZONE AUTHORITY, *Petitioner*, -versus- GLOBAL-V BUILDERS CO., *Respondent*.

G.R. No. 219708, THIRD DIVISION, October 03, 2018, PERALTA, J.

From the foregoing, it is evident that for CIAC to acquire jurisdiction over a construction controversy, the parties to a dispute must be bound by an arbitration agreement in their contract or subsequently agree to submit the same to voluntary arbitration, and that an arbitration clause in a construction contract or a submission to arbitration of a construction dispute shall be deemed an agreement to submit an existing or future controversy to CIAC's jurisdiction.

In this case, the Court of Appeals found that there was an agreement to arbitrate in the General Conditions of Contract, particularly in Clause 20.2 thereof, which formed part of the MOAs dated September 6, 2007 (BEIP- Extension of Drainage Component System [Main Road and Access Road] Project) and February 29, 2008 (Perimeter Fence at Banaue Hotel Project), which contracts were procured through competitive bidding.

FACTS:

The Philippine Tourism Authority entered into five Memoranda of Agreement with respondent Global-V Builders Co. Global-V filed a Request for Arbitration and a Complaint before the CIAC, seeking payment from the Tourism Infrastructure and Enterprise Zone Authority (TIEZA), the office that took over the functions of PTA, of unpaid bills in connection with the five projects, as well as payment of interest, moral and exemplary damages, and attorney's fees. The claims of Global-V amounted to P16,663,736.34. TIEZA filed a Refusal of Arbitration instead of filing an Answer. TIEZA argued that CIAC has no jurisdiction over the case filed by Global-V because the Complaint does not allege an agreement to arbitrate and the contracts do not contain an arbitration agreement in accordance with Sections 2.3 and 2.3.113 of the CIAC Revised Rules of Procedure Governing Construction Arbitration.

Global-V countered that R.A. No. 9184 vests on CIAC jurisdiction over disputes involving government infrastructure projects like the projects in this case. Section 59 of R.A. No. 9184 provides that "[a]ny and all disputes arising from the implementation of a contract covered by this Act shall be submitted to arbitration in the Philippines according to the provisions of Republic Act No. 876, otherwise known as the "Arbitration Law": Provided, however, That, disputes that are within the competence of the Construction Industry Arbitration Commission to resolve shall be referred thereto." Global-V asserted that the pertinent provisions of R.A. No. 9184 governing the subject infrastructure projects are deemed part of the contracts entered into by the parties. Global-V contended that considering that the arbitration process is an integral part of the contracts between the parties by operation of law, the requirement under Section 2.3 of the CIAC Rules has been met.

The Arbitral Tribunal dismissed TIEZA's motion to dismiss for lack of merit. The parties and their respective counsels attended the preliminary conference. TIEZA manifested that its participation in the preparation of the Terms of Reference was being done to safeguard its rights in the proceedings, without waiving its challenge on the jurisdiction of CIAC. The Arbitral Tribunal resolved the issues raised by the parties. The Arbitral Tribunal affirmed with finality its ruling in the Order dated January 29, 2013 that CIAC has jurisdiction over this case.

A second preliminary conference was conducted for the purpose of amending the TOR. The amended TOR was signed by' Global-V and its counsel, and by the members of the Arbitral Tribunal. TIEZA, through its representative, also signed the amended TOR with reservation, in view of the non-inclusion of the jurisdictional issue in the amended TOR. The Arbitral Tribunal rendered the decision in favor of Global-V in the amount of P10,178,440.17. The Court of Appeals reversed and set aside its Decision dated June 19, 2014 and upheld the Final Award of the Arbitral Tribunal.

ISSUE:

Whether or not the CA committed a reversible error in ruling that the CIAC had jurisdjction over the dispute. (NO)

RULING:

E.O. No. 1008 created the CIAC as an arbitral machinery to settle disputes in the construction industry expeditiously in order to maintain and promote a healthy partnership between the government and the private sector in the furtherance of national development goals. It was therein declared to be the policy of the State to encourage the early and expeditious settlement of disputes in the Philippine construction industry. CIAC's jurisdiction over disputes arising from construction contracts is contained in Section 4 of E.O. No. 1008.

The CIAC, pursuant to its rule-making power granted by E.O. No. 1008, promulgated the first Rules of Procedure Governing Construction in August 1988, and it has amended the rules through the years to address the problems encountered in the administration of construction arbitration.

In this case, the pertinent provisions of the CIAC Rules are as follows:

> SECTION 2.1 Jurisdiction. - The CIAC shall have original and exclusive jurisdiction over construction disputes, which arose from, or is connected with contracts entered into by

> parties involved in construction in the Philippines whether the dispute arose before or after the completion of the contract, or after the abandonment or breach thereof. These disputes may involve government or private contracts.
>
> 2.1.1 The jurisdiction of the CIAC may include but is not limited to violation of specifications for materials and workmanship; violation of the terms of agreement; interpretation and/or application of contractual provisions; amount of damages and penalties; commencement time and delays; maintenance and defects; payment default of employer or contractor and changes in contract cost.
>
> x x x
>
> SECTION 2.3 Condition for exercise of jurisdiction. - For the CIAC to acquire jurisdiction, the parties to a dispute must be bound by an arbitration agreement in their contract or subsequently agree to submit the same to voluntary arbitration.
>
> 2.3.1 Such arbitration agreement or subsequent submission must be alleged in the Complaint. Such submission may be an exchange of communication between the parties or some other form showing that the parties have agreed to submit their dispute to arbitration. Copies of such communication or other form shall be attached to the Complaint.
>
> x x x
>
> SECTION 4.1 Submission to CIAC Jurisdiction. - An arbitration clause in a construction contract or a submission to arbitration of a construction dispute shall be deemed an agreement to submit an existing or future controversy to CIAC jurisdiction, notwithstanding the reference to a different arbitration institution or arbitral body in such contract or submission. (Emphasis supplied.)

From the foregoing, it is evident that for CIAC to acquire jurisdiction over a construction controversy, the parties to a dispute must be bound by an arbitration agreement in their contract or subsequently agree to submit the same to voluntary arbitration, and that an arbitration clause in a construction contract or a submission to arbitration of a construction dispute shall be deemed an agreement to submit an existing or future controversy to CIAC's jurisdiction.

In this case, the Court of Appeals found that there was an agreement to arbitrate in the General Conditions of Contract, particularly in Clause 20.2 thereof, which formed part of the MOAs dated September 6, 2007 (BEIP- Extension of Drainage Component System [Main Road and Access Road] Project) and February 29, 2008 (Perimeter Fence at Banaue Hotel Project), which contracts were procured through competitive bidding.

Clause 20.2 of the General Conditions of Contract is an arbitration clause that clearly provides that all disputes arising from the implementation of the contract covered by R.A. No. 9184 shall be submitted to arbitration in the Philippines. In accordance with Section 4.1 of the CIAC Rules, the existence of the arbitration clause in the General Conditions of Contract that formed part of the said MOAs shall be deemed an agreement of the parties to submit existing or future controversies to CIAC's jurisdiction. Since CIAC's jurisdiction is conferred by law, it cannot be subjected to any condition; nor can it be waived or diminished by the stipulation, act or omission of the parties, as long as the parties agreed to submit their construction contract dispute to arbitration, or if there is

an arbitration clause in the construction contract. Hence, the fact that the process of arbitration was not incorporated in the contract by the parties is of no moment. Moreover, the contracts in this case are expressly covered by R.A. No. 9184, which provides under Section 5945 thereof that all disputes arising from the implementation of a contract covered by it shall be submitted to arbitration in the Philippines, and disputes that are within the competence of CIAC to resolve shall be referred thereto.

The jurisdiction of courts and quasi-judicial bodies is determined by the Constitution and the law. Section 4 of E.O. No. 1008 provides that the CIAC shall have original and exclusive jurisdiction over disputes arising from, or connected with, construction contracts, which may involve government or private contracts, provided that the parties to a dispute agree to submit the dispute to voluntary arbitration. In LICOMCEN, Inc. v. Foundation Specialists, Inc., the Court held that the text of Section 4 of E.O. No. 1008 is broad enough to cover any dispute arising from, or connected with, construction contracts, whether these involve mere contractual money claims or execution of the works. What is only excluded from the coverage of E.O. No. 1008 are disputes arising from employer-employee relationships, which shall continue to be covered by the Labor Code of the Philippines.

MA. ROSARIO AGARRADO, RUTH LIBRADA AGARRADO AND ROY AGARRADO, FOR THEMSELVES AND FOR THE BENEFIT OF THEIR SIBLINGS AND CO-OWNERS ROBERTO AGARRADO, REUEL ANDRES AGARRADO, HEIRS OF THE LATE RODRIGO AGARRADO, JR., REX AGARRADO AND JUDY AGARRADO, ***Petitioners***, **-versus- CRISTITA LIBRANDO-AGARRADO AND ANA LOU AGARRADO-KING**, ***Respondents***.G.R. No. 212413, SECOND DIVISION, June 06, 2018, REYES, JR.

Jurisprudence has ruled that an action for partition, while one not capable of pecuniary estimation, falls under the jurisdiction of either the first or second level courts depending on the amounts specified in Secs. 19(2) and 33(3) of B.P. 129, as amended. Consequently, a failure by the plaintiff to indicate the assessed value of the subject property in his/her complaint, or at the very least, in the attachments in the complaint as ruled in Foronda-Crystal vs. Son is dismissible because the court which would exercise jurisdiction over the same could not be identified.

The Court is without any recourse but to agree with the petitioners in dismissing the complaint filed before the RTC for lack of jurisdiction. A scouring of the records of this case revealed that the complaint did indeed lack any indication as to the assessed value of the subject property.

FACTS:

As borne by the records of the case, it appears that the petitioners Ma. Rosario Agarrado (Ma. Rosario), Ruth Librada Agarrado (Ruth), and Roy Agarrado (Roy) are children of the late spouses Rodrigo (Rodrigo) and Emilia (Emilia) Agarrado, who, during their lifetime, acquired a 287-square meter land (subject property) in Bacolod City, Negros Occidental. The subject property was registered in the name of the spouses Rodrigo and Emilia and was covered by Transfer Certificate of Title No. T-29842-B.

On August 18, 1978, Emilia died intestate, leaving Rodrigo and their children as her compulsory heirs.

Meanwhile, unknown to the petitioners, Rodrigo was involved in an illicit affair with respondent CristitaLibrando-Agarrado (Cristita), with whom Rodrigo begot respondent Ana Lou Agarrado-King

(Ana Lou). As it turned out, Ana Lou was conceived during the existence of the marriage between Rodrigo and Emilia, but was born on September 27, 1978—one month after the dissolution of Rodrigo and Emilia's marriage through the latter's death.

Eventually, Rodrigo married Cristita on July 6, 1981.

On December 8, 2000, Rodrigo also succumbed to mortality and died. He left his surviving spouse, Cristita, his legitimate children by his marriage with Emilia, and Ana Lou.

On January 23, 2003, Cristita and Ana Lou filed a complaint before the Regional Trial Court (RTC), Branch 44, of Bacolod City for the partition of the subject property, with Ma. Rosario, Ruth, Roy, "and other heirs of Rodrigo Agarrado"as defendants. None of the other heirs were however named in any pleading filed by either the plaintiffs (now respondents) or defendants (now petitioners).

Eventually, the RTC rendered its January 17, 2007 Decision, which ordered the parties to partition the subject property "among themselves by proper instruments of conveyance or any other means or method."

Aggrieved, the petitioners elevated the case to the Court of Appeals, which, through the assailed April 19, 2013 Decision, affirmed with modification the January 17, 2007 Decision of the RTC.

ISSUE:

Whether the Hon. Court of Appeals was correct in not ordering the dismissal of the case for failure of Plaintiffs-Respondents to allege the market value and pay the right docket fees at the incipience of the Complaint.(NO)

RULING:

The CA glossed over this issue by saying that the action for partition instituted by the respondents in the RTC is one incapable of pecuniary estimation, which would thus confer jurisdiction over the case to the RTC. In ruling thus, the appellate court invoked the guidance of the case of *Russel vs. Vestil*,and stated that:

> We are guided by the ruling in *Russel vs Vestil*, 304 SCRA 739, March 17, 1999 wherein **the Supreme Court considered petitioners' complaint seeking the annulment of the document entitled "Declaration of Heirs and Deed of Confirmation of Previous Oral Partition," as an action incapable of pecuniary estimation,** rationalizing that the resolution of the same principally involved the determination of hereditary rights. In effect, the partition aspect is an action incapable of pecuniary estimation.

This, however, is an error that must be reversed. The appellate court's reliance on *Russel* is misplaced.

The Court, in *Russel*, explained that the complaint filed by the plaintiff is one incapable of pecuniary estimation because the subject matter of the complaint is **not one of partition, but one of the annulment of a document** denominated as a "Declaration of Heirs and Deed of Confirmation of

Previous Oral Partition." Considering that the annulment of a document is the main subject matter, and that the same is incapable of pecuniary estimation, then necessarily, the RTC has jurisdiction.

This is not so in the present case.

In determining whether a case is incapable of pecuniary estimation, the case of *Cabrera vs. Francisco*, in reiterating the case of *Singson vs. Isabela Sawmill*, teaches that identifying the nature of the principal action or remedy sought is primarily necessary. It states:

> In determining whether an action is one the subject matter of which is not capable of pecuniary estimation **this Court has adopted the criterion of first ascertaining the nature of the principal action or remedy sought.** If it is primarily for the recovery of a sum of money, the claim is considered capable of pecuniary estimation, and whether jurisdiction is in the municipal courts or in the Courts of First Instance would depend on the amount of the claim. However, where the basic issue is something other than the right to recover a sum of money, where the money claim is purely incidental to, or a consequence of, the principal relief sought, this Court has considered such actions as cases where the subject of the litigation may not be estimated in terms of money, and are cognizable exclusively by Courts of First Instance (now Regional Trial Courts).

For actions on partition, the subject matter is two-phased. In *Bagayas vs. Bagayas*, the Court ruled that partition is at once an action (1) for declaration of co-ownership and (2) for 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.

The case of *Russel*, the very same case cited by the Court of Appeals, determined that while actions for partition are incapable of pecuniary estimation owing to its two-phased subject matter, **the determination of the court which will acquire jurisdiction over the same must still conform to Sec. 33(3) of B.P. 129, as amended.** *Russel* said:

> **While actions under Sec. 33(3) of B.P. 129 are also incapable of pecuniary estimation**, the law specifically mandates that they are cognizable by the MTC, METC, or MCTC where the assessed value of the real property involved does exceed P20,000.00 in Metro Manila, or P50,000.00, if located elsewhere. **If the value exceeds P20,000.00 or P50,000.00 as the case may be, it is the Regional Trial Courts which have jurisdiction under Sec. 19(2).**

To be sure, according to the recent case of *Foronda-Crystal vs. Son*,jurisdiction is defined as the power and authority of a court to hear, try, and decide a case. To exercise this, the court or adjudicative body must acquire, among others, jurisdiction over the subject matter, **which is conferred by law** and not by the consent or acquiescence of any or all of the parties or by erroneous belief of the court that it exists.

Jurisdiction over cases for partition of real properties therefore, like all others, is determined by law. Particularly, the same is identified by Sections 19(2) and 33(3) of the Judiciary Reorganization Act of 1980, as amended by Republic Act 7691.

The provisions state that in all civil actions which involve title to, or possession of, real property, or any interest therein, the RTC shall exercise exclusive original jurisdiction where the assessed value of the property exceeds P20,000.00 or, for civil actions in Metro Manila, where such value exceeds P50,000.00.For those below the foregoing threshold amounts, exclusive jurisdiction lies with the Metropolitan Trial Courts (MeTC), Municipal Trial Courts (MTC), or Municipal Circuit Trial Courts (MCTC).

Thus, the determination of the assessed value of the property, which is the subject matter of the partition, is essential. This, the courts could identify through an examination of the allegations of the complaint.

According to the case of *Tumpag vs. Tumpag*, it is a hornbook doctrine that the court should only look into the facts alleged in the complaint to determine whether a suit is within its jurisdiction.According to the case of *Spouses Cruz vs. Spouses Cruz, et al*.,only these facts can be the basis of the court's competence to take cognizance of a case, and that one cannot advert to anything not set forth in the complaint, such as evidence adduced at the trial, to determine the nature of the action thereby initiated.

According to *Foronda-Crystal*, failure to allege the assessed value of a real property in the complaint would result to a dismissal of the case. The reason put forth by the Court is that:

> x xx absent any allegation in the complaint of the assessed value of the property, **it cannot be determined whether the RTC or the MTC has original and exclusive jurisdiction over the petitioner's action.** Indeed, the courts cannot take judicial notice of the assessed or market value of the land.

This same *ratio* has been repeated in a number of cases, including the cases of *Spouses Cruz vs. Spouses Cruz, et al*. and *Quinagoran vs. Court of Appeals*,where the Court concluded that:

> Considering that the respondents failed to allege in their complaint the assessed value of the subject property, the RTC seriously erred in denying the motion to dismiss. Consequently, all proceedings in the RTC are null and void, and the CA erred in affirming the RTC.

Based on the foregoing, in *Foronda-Crystal*, the Court already established the rules that have to be followed in determining the jurisdiction of the first and second level courts. It said:

> A reading of the quoted cases would reveal a pattern which would invariably guide both the bench and the bar in similar situations. Based on the foregoing, **the rule on determining the assessed value of a real property, insofar as the identification of the jurisdiction of the first and second level courts is concerned, would be two-tiered:**
>
> **First,** the general rule is that jurisdiction is determined by the assessed value of the real property as alleged in the complaint; and
>
> **Second,** the rule would be liberally applied if the assessed value of the property, while not alleged in the complaint, could still be identified through a facial examination of the documents already attached to the complaint.

On the basis of this most recent ruling, the Court is without any recourse but to agree with the petitioners in dismissing the complaint filed before the RTC for lack of jurisdiction.

A scouring of the records of this case revealed that the complaint did indeed lack any indication as to the assessed value of the subject property.

Clearly, therefore, jurisprudence has ruled that an action for partition, while one not capable of pecuniary estimation, falls under the jurisdiction of either the first or second level courts depending on the amounts specified in Secs. 19(2) and 33(3) of B.P. 129, as amended. Consequently, a failure by the plaintiff to indicate the assessed value of the subject property in his/her complaint, or at the very least, in the attachments in the complaint as ruled in *Foronda-Crystal*, is dismissible because the court which would exercise jurisdiction over the same could not be identified.

Consequently, as the complaint in this case is dismissible for its failure to abide by the rules in *Foronda-Crystal*, then the Court sees no further necessity to discuss the other issues raised.

INTRAMUROS ADMINISTRATION, *Petitioner*, -versus- OFFSHORE CONSTRUCTION DEVELOPMENT COMPANY, *Respondent.* G.R. No. 196795, THIRD DIVISION, March 7, 2018, LEONEN, *J*.

To determine the nature of the action and the jurisdiction of the court, the allegations in the complaint must be examined. The jurisdictional facts must be evident on the face of the complaint.

Respondent's defense that its relationship with petitioner is one of concession rather than lease does not determine whether or not the Metropolitan Trial Court has jurisdiction over petitioner's complaint. The pleas or theories set up by a defendant in its answer or motion to dismiss do not affect the court's jurisdiction.

FACTS:

In 1998, Intramuros leased certain real properties of the national government, which it administered to Offshore Construction. Three (3) properties were subjects of Contracts of Lease: Baluarte De San Andres, Baluarte De San Francisco De Dilao, and Revellin De Recoletos. All three (3) properties were leased for five (5) years, from September 1, 1998 to August 31, 2003. All their lease contracts also made reference to an August 20, 1998 memorandum of stipulations, which included a provision for lease renewals every five (5) years upon the parties' mutual agreement.

Offshore Construction occupied and introduced improvements in the leased premises. However, Intramuros and the Department of Tourism halted the projects due to Offshore Construction's non-conformity with Presidential Decree No. 1616, which required 16th to 19th centuries' Philippine-Spanish architecture in the area. Consequently, Offshore Construction filed a complaint against Intramuros and the Department of Tourism before the Manila Regional Trial Court.

Eventually, the parties executed a Compromise Agreement which the Manila Regional Trial Court approved. In the Compromise Agreement, the parties affirmed the validity of the two (2) lease contracts but terminated the one over Revellin de Recoletos. The Compromise Agreement retained

the five (5)-year period of the existing lease contracts and stated the areas that may be occupied by Offshore Construction.

During the lease period, Offshore Construction failed to pay its utility bills and rental fees, despite several demand letters. Intramuros tolerated the continuing occupation, hoping that Offshore Construction would pay its arrears.

To settle its arrears, Offshore Construction proposed to pay the Department of Tourism's monthly operational expenses for lights and sound equipment, electricity, and performers at the Baluarte Plano Luneta de Sta. Isabel. Intramuros and the Department of Tourism accepted the offer, and the parties executed a Memorandum of Agreement covering the period of August 15, 2004 to August 25, 2005. However, Offshore Construction continued to fail to pay its arrears.Offshore Construction received Intramuros' latest demand letter.

Intramuros filed a Complaint for Ejectment before the Manila Metropolitan Trial Court.

On July 12, 2010, Offshore Construction filed a Motion to dismiss. The MTC granted the same, it found that while a motion to dismiss is a prohibited pleading under the Rule on Summary Procedure, Offshore Construction's motion was grounded on the lack of jurisdiction over the subject matter. The MTC held that it had no jurisdiction over the complaint. While there were lease contracts between the parties, the existence of the other contracts between them made Intramuros and Offshore Construction's relationship as one of concession. Under this concession agreement, Offshore Construction undertook to develop several areas of the Intramuros District, for which it incurred expenses.

Intramuros appealed to the RTC which affirmed the decision of the MTC.

ISSUE:

Whether the MTC has jurisdiction. (YES)

RULING:

In dismissing the complaint, the Metropolitan Trial Court found that "[t]he issues . . . between the parties cannot be limited to a simple determination of who has the better right of possession of the subject premises or whether or not [petitioner] is entitled [to] rentals in arrears."[79] It held that the relationship between the parties was a "more complicated situation where jurisdiction is better lodged with the regional trial court," upon a finding that there was a concession, rather than a lease relationship between the parties.

To determine the nature of the action and the jurisdiction of the court, the allegations in the complaint must be examined. The jurisdictional facts must be evident on the face of the complaint. There is a case for unlawful detainer if the complaint states the following:

> (1) initially, possession of property by the defendant was by contract with or by tolerance of the plaintiff;

> (2) eventually, such possession became illegal upon notice by plaintiff to defendant of the termination of the latter's right of possession;
>
> (3) thereafter, the defendant remained in possession of the property and deprived the plaintiff of the enjoyment thereof; and
>
> (4) within one year from the last demand on defendant to vacate the property, the plaintiff instituted the complaint for ejectment.

A review of petitioner's Complaint for Ejectment shows that all of these allegations were made.

First, petitioner alleges that respondent is its lessee by virtue of three (3) Contracts of Lease. The validity of these contracts was later affirmed in a Compromise Agreement, which modified certain provisions of the previous leases but retained the original lease period. Respondent does not dispute these contracts' existence or their validity.

Second, following respondent's failure to pay rentals, petitioner alleges that it has demanded that respondent vacate the leased premises.

Third, respondent continues to occupy and possess the leased premises despite petitioner's demand. This is admitted by respondent, which seeks to retain possession and use of the properties to "recoup its multimillion pesos worth of investment."

Fourth, petitioner filed its Complaint for Ejectment on April 28, 2010, within one (1) year of its last written demand to respondent, made on March 18, 2010 and received by respondent on March 26, 2010. Contrary to respondent's claim, the one (1)-year period to file the complaint must be reckoned from the date of last demand, in instances when there has been more than one (1) demand to vacate.

The Metropolitan Trial Court seriously erred in finding that it did not have jurisdiction over petitioner's complaint because the parties' situation has allegedly become "more complicated" than one of lease. Respondent's defense that its relationship with petitioner is one of concession rather than lease does not determine whether or not the Metropolitan Trial Court has jurisdiction over petitioner's complaint. The pleas or theories set up by a defendant in its answer or motion to dismiss do not affect the court's jurisdiction. In *Morta v. Occidental*:

> 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."

Not even the claim that there is an implied new lease or *tacitareconduccion* will remove the Metropolitan Trial Court's jurisdiction over the complaint. To emphasize, physical possession, or *de facto* possession, is the sole issue to be resolved in ejectment proceedings. Regardless of the claims

or defenses raised by a defendant, a Metropolitan Trial Court has jurisdiction over an ejectment complaint once it has been shown that the requisite jurisdictional facts have been alleged, such as in this case. Courts are reminded not to abdicate their jurisdiction to resolve the issue of physical possession, as there is a public need to prevent a breach of the peace by requiring parties to resort to legal means to recover possession of real property.

SPOUSES AVELINA RIVERA-NOLASCO AND EDUARDO A. NOLASCO, Petitioners, -versus-. RURAL BANK OF PANDI, INC., Respondent. G.R. No. 194455, THIRD DIVISION, June 27, 2018, MARTIRES, J.

It is axiomatic that the jurisdiction of a tribunal, including a quasi-judicial officer or government agency such as the DARAB and the PARAD, over the nature and subject matter of a petition or complaint is determined by the material allegations therein and the character of the relief prayed for, irrespective of whether the petitioner or complainant is entitled to any or all such reliefs. Jurisdiction over the nature and subject matter of an action is conferred by the Constitution and the law, and not by the consent or waiver of the parties where the court otherwise would have no jurisdiction over the nature or subject matter of the action. Nor can it be acquired through or waived by any act or omission of the parties. Indeed, the jurisdiction of the court or tribunal is not affected by the defenses or theories set up by the defendant or respondent in his answer or motion to dismiss.

In fine, absent administrative findings on the particularities of Avelina's tillage, this Court cannot ascribe to the view that the averment of co-ownership should disallow petitioner spouses from pressing on their suit to be recognized as agricultural tenants.

FACTS:

Spouses Reynaldo and Primitiva Rivera obtained a Two Hundred Thousand Peso loan from the Rural Bank of Pandi, Inc. The loan was secured with a mortgage over a parcel of land measuring 18,101 square meters, located at Barangay Bunsuran II, Municipality of Pandi, Province of Bulacan, and registered in the spouses' names under Transfer Certificate of Title (TCT) No. T-304255.

The spouses Rivera failed to pay their loan, prompting respondent bank to extrajudicially foreclose the mortgage. At the resultant auction sale, the bank was declared the highest bidder for the property. When Primitiva (Reynaldo had by then died) failed to exercise the right of redemption, respondent bank filed an Affidavit of Consolidation with the Register of Deeds. TCT No. T-304255 was then cancelled and a new certificate of title, TCT No. T-512737 (M), was issued in respondent bank's name.

The spouses now solely represented by Primitiva, refused to vacate the property, prompting the bank to seek relief from the Regional Trial Court. Said court issued a writ of possession in favor of the bank, directing its sheriff to eject the spouses. The next month, by virtue of the writ, the bank was placed in possession of the property.

Spouses Avelina Rivera--Nolasco and Eduardo Nolasco, filed a Complaint before the DARAB denominated as "For: Maintenance and Peaceful Possession of Landholding and Damages with Prayer for Temporary Restraining Order and/or Writ of Preliminary Injunction". Petitioner spouses alleged, in the main, that they were tenants of the subject property.

As earlier narrated, Spouses Rivera mortgaged the property to respondent bank. Petitioner spouses claim that this was without their and the other siblings' prior knowledge. After the RTC issued the aforementioned writ of possession, the bank had the entire property fenced and forthwith denied Avelina entry. She and her workers were thus prevented from tending to their palay crop which by April 2008, was ready for harvest.

Respondent bank filed an Answer with Motion to Dismiss contending that the DARAB had no jurisdiction over the complaint as petitioner spouses were not tenants at the property. PARAD found the motion to dismiss to be of no merit. The CA, on the other hand, conclude that the DARAB had no jurisdiction over the subject complaint, the appellate court zeroed in on petitioner spouses' averment, made in the same complaint, that they were co-owners of the property.

ISSUE:

Whether the averment of co-ownership is sufficient reason for the complaint's dismissal, such that, consequently, petitioner spouses can no longer obtain the reliefs they seek. (NO)

RULING:

It is axiomatic that the jurisdiction of a tribunal, including a quasi-judicial officer or government agency such as the DARAB and the PARAD, over the nature and subject matter of a petition or complaint is determined by the material allegations therein and the character of the relief prayed for, irrespective of whether the petitioner or complainant is entitled to any or all such reliefs. Jurisdiction over the nature and subject matter of an action is conferred by the Constitution and the law, and not by the consent or waiver of the parties where the court otherwise would have no jurisdiction over the nature or subject matter of the action. Nor can it be acquired through or waived by any act or omission of the parties. Indeed, the jurisdiction of the court or tribunal is not affected by the defenses or theories set up by the defendant or respondent in his answer or motion to dismiss.

At the time the subject complaint was filed, the 2003 DARAB Rules of Procedure governed the proceedings of the board and its adjudicators. Section 1, Rule II of said Rules provides, among others:

> RULE II
>
> JURISDICTION OF THE BOARD AND THE ADJUDICATORS
>
> SECTION 1. Primary and Exclusive Original Jurisdiction. The Adjudicator shall have primary and exclusive original jurisdiction to determine and adjudicate the following cases:
>
> 1.1 The rights and obligations of persons, whether natural or juridical, engaged in the management, cultivation, and use of all agricultural lands covered by R.A. No. 6657, otherwise known as the Comprehensive Agrarian Reform Law (CARL), as amended, and other related agrarian laws; x xxx
>
> x xxx

The averments and prayers in the complaint amount to an issue cognizable by the DARAB and its adjudicators. In fine, petitioner spouses assert that they are tenants of agricultural land and pray that their tenancy be respected by respondent bank. What results is an agrarian dispute, a controversy over which the PARAD has jurisdiction. To recall, an agrarian dispute is any controversy relating to, among others, tenancy over lands devoted to agriculture. Here, the controversy raised squarely falls under that class of cases described under Paragraph 1.1, Section 1, Rule II of the 2003 DARAB Rules of Procedure.

In this regard, we note that the specific elements of tenancy are sufficiently averred in the subject complaint, these being: first, that the parties are the landowner and the tenant or agricultural lessee; second, that the subject matter of the relationship is an agricultural land; third, that there is consent between the parties to the relationship; fourth, that the purpose of the relationship is to bring about agricultural production; fifth, that there is personal cultivation on the part of the tenant or agricultural lessee; and sixth, that the harvest is shared between the landowner and the tenant or agricultural lessee. Averments corresponding to each of these elements are easily seen, demonstrable in the face of the subject complaint.

Outright dismissal of an action is not proper where there are factual matters in dispute requiring the presentation and appreciation of evidence. The numerous questions surrounding the averred co-ownership are worth pondering. The averment was the appellate court's sole basis for dismissing the subject complaint. Incidentally, respondent bank did not even include said basis as part of its defenses before the PARAD. Certainly, the question of whether the particulars of the arrangement between Avelina and her siblings preponderate to an agricultural leasehold relationship or to a co-ownership should form part of an administrative inquiry, in order to properly address the larger question of whether an agricultural leasehold relationship among co-owners may co-exist in their civil co-ownership. It is in view of these questions that we deem the dismissal under review to have been premature. In Ingjug-Tiro v. Casals, we held that a summary or outright dismissal of an action is not proper where there are factual matters in dispute that require presentation and appreciation of evidence. We so rule in this case.
To recall, what prompted the filing of the subject complaint were the acts of respondent bank in preventing petitioner spouses and their workers from entering the subject property and from tending to their alleged agricultural harvest thereon. If we set the agricultural tenancy of petitioner spouses as a basic postulate, then these acts essentially amount to their eviction from the land. Subsequently, the dismissal of the subject complaint before the PARAD lent judicial imprimatur to a summary extrajudicial eviction of agricultural tenants.

The law, however, has set careful parameters before an agricultural tenant may be ejected. In Natividad vs. Mariano, the Court put a spotlight on how the law set these careful parameters:

> Section 7 of R.A. No. 3844 ordains that once the tenancy relationship is established, a tenant or agricultural lessee is entitled to security of tenure. Section 36 of R.A. No. 3844 strengthens this right by providing that the agricultural lessee has the right to continue the enjoyment and possession of the landholding and shall not be disturbed in such possession except only upon court authority in a final and executory judgment, after due notice and hearing, and only for the specifically enumerated causes. The subsequent R.A. No. 6657 further reiterates, under its Section 6, that the security of tenure previously acquired shall be respected. Finally, in order to protect this right, Section 37 of R.A. No. 3844 rests the burden

of proving the existence of a lawful cause for the ejectment of the agricultural lessee on the agricultural lessor.

In the 1993 case of Bernas v. CA and Deita, the Court held that the grounds for the ejectment of an agricultural leasehold lessee are an exclusive enumeration; no other grounds could justify the termination of an agricultural leasehold.

On the postulate that petitioner spouses are agricultural tenants, or at the least allowed to proceed with their suit to be recognized as agricultural tenants, we observe that respondent bank had evicted petitioner spouses extrajudicially. But the law sets that the burden of proving the existence of a lawful cause for ejectment of an agricultural tenant rests on respondent bank. Co-ownership, however, does not appear to be one of the legislated causes for the lawful ejectment of an agricultural tenant; certainly, it is presently not a recognized mode of extinguishing such relationship.

In fine, absent administrative findings on the particularities of Avelina's tillage, this Court cannot ascribe to the view that the averment of co-ownership should disallow petitioner spouses from pressing on their suit to be recognized as agricultural tenants. To reiterate, absent the conduct by the PARAD of the proceedings in DARAB Case No. R-03-02-5792'08 and the resolution of said case on the merits, the assailed CA ruling risks judicially approving the summary and extrajudicial eviction of agricultural tenants. Parenthetically, the Court is also mindful of the dangers of reifying as doctrine a practice where unscrupulous landowners would offer their tenants co-ownership of a portion of their agricultural land in order to terminate the latter's tenancy rights. Given the material averments in the subject complaint, the PARAD had already gained a jurisdictional foothold in DARAB Case No. R-03-02-5792'08, and should have been allowed to exercise the agency expertise in resolving the issues and problems presented.

ALONA G. ROLDAN, *Petitioner*, -versus- SPOUSES CLARENCE I. BARRIOS AND ANNA LEE T. BARRIOS, ROMMEL MATORRES, AND HON. JEMENA ABELLAR ARBIS, IN HER CAPACITY AS PRESIDING JUDGE, BRANCH 6, REGIONAL TRIAL COURT, AKLAN, *Respondents*. G.R. No. 214803, SECOND DIVISION, April 23, 2018, PERALTA, *J.*

While actions under Sec. 33(3) of B.P. 129 are also incapable of pecuniary estimation, the law specifically mandates that they are cognizable by the MTC, METC, or MCTC where the assessed value of the real property involved does exceed P20,000.00 in Metro Manila, or P50,000.00, if located elsewhere. *If the value exceeds P20,000.00 or P50,000.00 as the case may be, it is the Regional Trial Courts which have jurisdiction under Sec. 19(2).*

Clearly, the last paragraph clarified *that while civil actions which involve title to, or possession of, real property, or any interest therein,* ***are also incapable of pecuniary estimation*** *as it is not for recovery of money, the court's jurisdiction will be determined by the* ***assessed value*** *of the property involved.*

As foreclosure of mortgage is a real action, it is the assessed value of the property which determines the court's jurisdiction. Considering that the assessed value of the mortgaged property is only P13,380.00, the RTC correctly found that the action falls within the jurisdiction of the first level court.

FACTS:

Petitioner Alona G. Roldan filed an action for foreclosure of real estate mortgage against respondents spouses Clarence I. Barrios and Anna Lee T. Barrios and respondent Romel D. Matorres. The RTC, however, dismissed the complaint. According to the RTC, it appearing from the complaint that the assessed value of the property mortgaged is only P13,380.00 and the instant case being a real action, the assessed value of the property determines the jurisdiction. The assessed value of the property involved being below P20,000.00, it is the first level court that has jurisdiction over the cases. The MR by petitioner was also denied.

Petitioner filed the instant petition for *certiorari* alleging grave abuse of discretion committed by the RTC when it ordered the dismissal of her foreclosure case without prejudice and denying her motion for reconsideration. She argues that foreclosure of mortgage is an action incapable of pecuniary estimation which is within the exclusive jurisdiction of the RTC.

ISSUE: Whether or not the RTC committed grave abuse of discretion in dismissing the foreclosure cases filed with it on the ground of lack of jurisdiction. (NO)

RULING:

The RTC dismissed the foreclosure cases finding that being a real action and the assessed value of the mortgaged property is only P13,380.00, it is the first level court which has jurisdiction over the case and not the RTC.

The allegations and reliefs sought in petitioner's action for foreclosure of mortgage showed that the loan obtained by respondents spouses Barrios from petitioner fell due and they failed to pay such loan which was secured by a mortgage on the property of the respondents spouses; and prayed that in case of default of payment of such mortgage indebtedness to the court, the property be ordered sold to answer for the obligation under the mortgage contract and the accumulated interest. It is worthy to mention that the essence of a contract of mortgage indebtedness is that a property has been identified or set apart from the mass of the property of the debtor-mortgagor as security for the payment of money or the fulfillment of an obligation to answer the amount of indebtedness, in case of default in payment.Foreclosure is but a necessary consequence of non-payment of the mortgage indebtedness. In a real estate mortgage when the principal obligation is not paid when due, the mortgagee has the right to foreclose the mortgage and to have the property seized and sold with the view of applying the proceeds to the payment of the obligation.Therefore, **the foreclosure suit is a real action so far as it is against property, and seeks the judicial recognition of a property debt, and an order for the sale of the res.**

As foreclosure of mortgage is a real action, it is the assessed value of the property which determines the court's jurisdiction. Considering that the assessed value of the mortgaged

property is only P13,380.00, the RTC correctly found that the action falls within the jurisdiction of the first level court.

Petitioner cites *Russell v. Vestil* to show that action for foreclosure of mortgage is an action incapable of pecuniary estimation and, therefore, within the jurisdiction of the RTC. We are not persuaded. In the *Russell* case, we held:

In *Singsong vs. Isabela Sawmill*, we had the occasion to rule that:

[I]n determining whether an action is one the subject matter of which is not capable of pecuniary estimation, this Court has adopted the criterion of first ascertaining the nature of the principal action or remedy sought. **If it is primarily for the recovery of a sum of money, the claim is considered capable of pecuniary estimation**, and whether jurisdiction is in the municipal courts or in the courts of first instance would depend on the amount of the claim. **However, where the basic issue is something other than the right to recover a sum of money,** where the money claim is purely incidental to, or a consequence of, the principal relief sought, **this Court has considered such actions as cases where the subject of the litigation may not be estimated in terms of money, and are cognizable exclusively by courts of first instance (now Regional Trial Courts).**

Examples of actions incapable of pecuniary estimation are those for specific performance, support, or ***foreclosure of mortgage*** or annulment of judgment; also actions questioning the validity of a mortgage, annulling a deed of sale or conveyance and to recover the price paid and for rescission, which is a counterpart of specific performance.

While actions under Sec. 33(3) of B.P. 129 are also incapable of pecuniary estimation, *the law specifically mandates* that they are cognizable by the MTC, METC, or MCTC where the assessed value of the real property involved does exceed P20,000.00 in Metro Manila, or P50,000.00, if located elsewhere. If the value exceeds P20,000.00 or P50,000.00 as the case may be, it is the Regional Trial Courts which have jurisdiction under Sec. 19(2). X XX

Clearly, the last paragraph clarified that while civil actions which involve title to, or possession of, real property, or any interest therein,***are also incapable of pecuniary estimation***as it is not for recovery of money, the court's jurisdiction will be determined by the***assessed value***of the property involved.

AAA, Petitioner -versus-BBB, Respondent. G.R. No. 212448, FIRST DIVISION, January 11, 2018, TIJAM, *J.*

What may be gleaned from Section 7 of R.A. No. 9262 is that the law contemplates that acts of violence against women and their children may manifest as transitory or continuing crimes; meaning that some acts material and essential thereto and requisite in their consummation occur in one municipality or territory, while some occur in another. In such cases, the court wherein any of the crime's essential and material acts have been committed maintains jurisdiction to try the case; it being understood that the first court taking cognizance of the same excludes the other.

It is necessary, for Philippine courts to have jurisdiction when the abusive conduct or act of violence under Section 5(i) of R.A. No. 9262 in relation to Section 3(a), Paragraph (C) was committed outside Philippine territory, that the victim be a resident of the place where the complaint is filed in view of the anguish suffered being a material element of the offense. In the present scenario, the offended wife and children of respondent husband are residents of Pasig City since March of 2010. Hence, the RTC of Pasig City may exercise jurisdiction over the case.

FACTS:

Petitioner AAA and BBB were married on August 1, 2006 in Quezon City. Their union produced two children: CCC and DDD. In May of 2007, BBB started working in Singapore as a chef, where he acquired permanent resident status in September of 2008. This petition nonetheless indicates his address to be in Quezon City where his parents reside and where AAA also resided from the time they were married until March of 2010, when AAA and their children moved back to her parents' house in Pasig City. AAA claimed, albeit not reflected in the Information, that BBB sent little to no financial support, and only sporadically. To make matters worse, BBB supposedly started having an affair with a Singaporean woman named LiselMok with whom he allegedly has been living in Singapore. AAA thereafter filed a case for psychological violence under Republic Act (R.A.) No. 9262,[1] otherwise known as the Anti-Violence Against Women and their Children Act of 2004.

The Information having been filed, a warrant of arrest was issued against BBB. AAA was also able to secure a Hold-Departure Order against BBB who continued to evade the warrant of arrest.
The trial court granted the motion to quash on the ground of lack of jurisdiction and thereby dismissed the case. Aggrieved by the denial of the prosecution's motion for reconsideration of the dismissal of the case, AAA sought direct recourse to this Court via the instant petition on a pure question of law. AAA posits that R.A. No. 9262 is in danger of becoming transmogrified into a weak, wobbly, and worthless law because with the court *a quo*'s ruling, it is as if husbands of Filipino women have been given license to enter into extra-marital affairs without fear of any consequence, as long as they are carried out abroad.

ISSUE:
Whether or not Philippine courts may exercise jurisdiction over an offense constituting psychological violence under Republic Act (R.A.) No. 9262,[1] otherwise known as the Anti-Violence Against Women and their Children Act of 2004, committed through marital infidelity, when the alleged illicit relationship occurred or is occurring outside the country? (YES)

RULING:

"Physical violence is only the most visible form of abuse. Psychological abuse, particularly forced social and economic isolation of women, is also common."[30] In this regard, Section 3 of R.A. No. 9262 made it a point to encompass in a non-limiting manner the various forms of violence that may be committed against women and their children. As jurisdiction of a court over the criminal case is determined by the allegations in the complaint or information, threshing out the essential elements

of psychological abuse under R.A. No. 9262 is crucial. In *Dinamling v. People,*[31] this Court already had occasion to enumerate the elements of psychological violence under Section 5(i) of R.A. No. 9262.

Contrary to the interpretation of the RTC, what R.A. No. 9262 criminalizes is not the marital infidelity *per se* but the psychological violence causing mental or emotional suffering on the wife. Otherwise stated, it is the violence inflicted under the said circumstances that the law seeks to outlaw. Marital infidelity as cited in the law is only one of the various acts by which psychological violence may be committed. Moreover, depending on the circumstances of the spouses and for a myriad of reasons, the illicit relationship may or may not even be causing mental or emotional anguish on the wife. Thus, the mental or emotional suffering of the victim is an essential and distinct element in the commission of the offense.

In Section 7 of R.A. No. 9262, venue undoubtedly pertains to jurisdiction. As correctly pointed out by AAA, Section 7 provides that the case may be filed where the crime or any of its elements was committed at the option of the complainant. Which the psychological violence as the means employed by the perpetrator is certainly an indispensable element of the offense, equally essential also is the element of mental or emotional anguish which is personal to the complainant.

What may be gleaned from Section 7 of R.A. No. 9262 is that the law contemplates that acts of violence against women and their children may manifest as transitory or continuing crimes; meaning that some acts material and essential thereto and requisite in their consummation occur in one municipality or territory, while some occur in another. In such cases, the court wherein any of the crime's essential and material acts have been committed maintains jurisdiction to try the case; it being understood that the first court taking cognizance of the same excludes the other.

It is necessary, for Philippine courts to have jurisdiction when the abusive conduct or act of violence under Section 5(i) of R.A. No. 9262 in relation to Section 3(a), Paragraph (C) was committed outside Philippine territory, that the victim be a resident of the place where the complaint is filed in view of the anguish suffered being a material element of the offense. In the present scenario, the offended wife and children of respondent husband are residents of Pasig City since March of 2010. Hence, the RTC of Pasig City may exercise jurisdiction over the case

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CHAILESE DEVELOPMENT COMPANY, INC., REPRESENTED BY MA. TERESA M. CHUNG,*Petitioner*, -versus-MONICO DIZON, JIMMY V. CRUZ, JESUS A. CRUZ, RONALD V. DE GUZMAN, JARDO M. ENRIQUEZ, NENITA B. LUSUNG, EDGAR F. NICDAO, RAFAEL L. DIZON, SOTERO J. SANCHEZ, FERNANDO N. LEONARDO, MARILYN L. VALENZUELA, JOE F. VALENZUELA, RAMON L. MANALASTAS, NESTOR D. REYES, BRIGIDO S. CALMA, ANABELLA C. VALLEJO, FERNANDO M. DIZON, JUANITO D. SERRANO, LOURDES V. LAPID, FERDINAND L. UNCIANO, ALFREDO L. DIZON, MARIO A. TONGOL, ROSSANA D. LEONES, RUFINO L. DIZON, ADELMO V. GARCIA, NORMAN G. SUNDIAM, ORLANDO D. CRUZ, JERRY C. ESPINO, ESTRELLITA S. CRUZ, ORLANDO B. CRUZ, SUSANA C. AZARCON, FERNANDO MANDAP, RUBEN I. SUSI, MARIO M. PAULE, ANGELITO G. PECO, LAURO R. MAQUESIAS, MAYLINDA A. DAGAL, ABELARDO I. SUSI, MARIA C. MAQUESIAS, ISAGANI A. TONGOL, JOSEFA L. UNCIANO, ORLANDO A. SERRANO, SR., GONZALO C. MAQUESIAS, CONSOLACION M. VALENZUELA, REYNALDO A. CRUZ, RESTITUTO D. DABU, LEONARDO A. CRUZ, PABLO M. DIZON, DOMINADOR V. CRUZ, RENATO DONATO, SR., EDUARDO L. BUNAG, SR., CARMELITA C. LAQUINDANUM, JUAN O.

MACABULOS, LIGAYA L. ECLARINAL, ANGEL D. VALENZUELA, JR., HERNANDO D. CRUZ, ROSALINDA D. CRUZ, BERNARD B. MENDOZA, RODALINO M. MEDINA, FERNANDO L. MANANSALA, CORAZON C. SANTOS, JOSELITO C. NICDAO, ROSARIO R. LOPEZ, MARY GRACE D. SAMONTE AND TERESITA R. MAQUESIAS, *Respondents*. G.R. No. 206788, SECOND DIVISION, February 14, 2018, REYES, JR., *J.*

Based on the said provision, ***the judge or prosecutor is obligated to automatically refer*** *the cases pending before it* ***to the DAR*** *when the following requisites are present:*

> *a. There is an* ***allegation from any one or both of the parties that the case is agrarian in nature****; and*
> *b.* ***One of the parties is a farmer, farmworker, or tenant****.*

In this case, the presence of the first requisite is satisfied by the allegations made by the respondents in their Answer with Counterclaim. The allegations in petitioner's complaint make a case for recovery of possession, over which the regular courts have jurisdiction. However, in response thereto, the respondents filed their Answer with Counterclaim, ***assailing the jurisdiction of the regular court to rule on the matter on the ground that it is agrarian in nature****, which thus* ***complies with the first requisite****, viz.:*

> *BY WAY OF SPECIAL/AFFIRMATIVE DEFENSES, defendants further state that:*
> *5. The Court has no jurisdiction over the subject matter and the nature of the action. Verily, the allegations of the complaint would show that this* ***involves the implementation of Agrarian Reform law*** *hence beyond the pale of jurisdiction of this Court.*

Anent the second requisite, the Court finds that the respondents failed to prove that they are farmers, farmworkers, or are agricultural tenants. Contrary to the CA's conclusion and as opposed to the first requisite, ***mere allegation would not suffice to establish the existence of the second requirement****.* ***Proof must be adduced*** *by the person making the allegation as to his or her status as a farmer, farmworker, or tenant. Respondents merely alleged in their Answer with Counterclaim that they are previous tenants in the subject landholdings implying that a tenancy relationship exists between them and petitioner's predecessor-in-interest.*

Apart from these statements, respondents failed to elaborate much less prove the details of such tenancy agreement and the peculiarities of the subject landholding's previous ownership. There was no evidence adduced of the existence of any tenancy agreement between respondents and the petitioner's predecessor-in-interest. This precludes the application of Section 50-A of R.A. 6657, as amended by R.A. 9700, for failure to satisfy the second requisite.

FACTS:

Petitioner Chailese Development Company, Inc. filed a complaintfor recovery of possession and damages before the RTC, against respondents. Petitioner alleged that it is a corporation duly organized under Philippine laws and is the registered owner of the subject parcels of lot, all situated at Floridablanca, Pampanga with an aggregate area of 148 hectares more or less. Petitioner averred that it is unable to introduce developments into the properties as a portion of the lots were being illegally occupied by respondents who refused to vacate the premises.

In their Answer with Counterclaim,**respondents submitted that the lower court has no jurisdiction over the case as the allegations of the complaint involve the application of the Agrarian Reform Law**. According to the **respondents**, prior to being transferred in the name of the petitioner, they **are tenants of the subject landholdings which are then a hacienda devoted to agricultural production**. That without their knowledge and consent, the property was transferred to the petitioner, who in order to avoid the compulsory distribution of the subject landholdings under the Comprehensive Agrarian Reform Law (CARL), filed a "bogus" petition for conversion, which was later granted.

The lower court dismissed the Complaint for lack of jurisdiction. Petitioner filed a Motion for Reconsideration. The lower court granted the motion and set the case for pre-trial. The trial proceeded with the presentation of petitioner's evidence.

Meanwhile, on July 1, 2009, **R.A. 9700 took effect**. The Act aimed to strengthen the CARL of 1988. Among the amendments introduced by R.A. 9700 is the addition of Section 50-A which **vests upon the DAR the exclusive jurisdiction to take cognizance upon cases involving the implementation of the Comprehensive Agrarian Reform Program (CARP) and mandates the automatic referral of cases to the DAR by the judge or prosecutor upon allegation of any of the parties that the controversy is an agrarian dispute.**

Respondents filed a motionseeking the referral of the case to the DAR pursuant to Section 19 of R.A. 9700. The lower court denied the motion for lack of merit. **The CA ordered the referral of the case to the DAR.** The CA ruled that with the addition of R.A. 9700 of Section 50-A, "the only condition for automatic referral by the court to the DAR is when there is an allegation from any of the parties that the case is agrarian in nature and one of the parties is a farmer, farmworker, or tenant."

ISSUES:

Whether or not the CA erred in concluding that the subject case be referred to the DAR for the necessary determination and classification as to whether an agrarian dispute exists between the petitioner and the respondent pursuant to Section 19 of R.A. 9700. (YES)

RULING:

It is a basic rule in procedure that the jurisdiction of the Court over the subject matter as well as the concomitant nature of an action is determined by law and the allegations of the complaint, and is unaffected by the pleas or theories raised by the defendant in his answer or motion to dismiss.

The jurisdiction of the DAR is laid down in Section 50 of R.A. 6657, otherwise known as the CARL, which provides:

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

The exclusive jurisdiction of the DAR over agrarian cases was further amplified by the amendment introduced by Section 19 of R.A. 9700 to Section 50. The provision reads:

> SEC. 50-A. *Exclusive Jurisdiction on Agrarian Dispute.* - No court or prosecutor's office shall take cognizance of cases pertaining to the implementation of the CARP except those provided under Section 57 of Republic Act No. 6657, as amended. **If there is an allegation from any of the parties that the case is agrarian in nature and one of the parties is a farmer, farmworker, or tenant, the case shall be automatically referred by the judge or the prosecutor to the DAR which shall determine and certify within fifteen (15) days from referral whether an agrarian dispute exists**: Provided, that from the determination of the DAR, an aggrieved party shall have judicial recourse. In cases referred by the municipal trial court and the prosecutor's office, the appeal shall be with the proper regional trial court, and in cases referred by the regional trial court, the appeal shall be to the Court of Appeals.

In this regard, it must be said that there is no merit in the contention of petitioner that the amendment introduced by R.A. 9700 cannot be applied retroactively in the case at bar. A cursory reading of the provision readily reveals that Section 19 of R.A. 9700 merely highlighted the exclusive jurisdiction of the DAR to rule on agrarian cases by adding a clause which mandates the automatic referral of cases upon the existence of the requisites therein stated. Moreover, in the absence of any stipulation to the contrary, as the amendment is essentially procedural in nature it is deemed to apply to all actions pending and undetermined at the time of its passage.

Based on the said provision, **the judge or prosecutor is obligated to automatically refer** the cases pending before it **to the DAR** when the following requisites are present:

> a. There is an **allegation from any one or both of the parties that the case is agrarian in nature**; and
> b. **One of the parties is a farmer, farmworker, or tenant**.

In this case, the presence of the first requisite is satisfied by the allegations made by the respondents in their Answer with Counterclaim. The allegations in petitioner's complaint make a case for recovery of possession, over which the regular courts have jurisdiction. However, in response thereto, the respondents filed their Answer with Counterclaim, **assailing the jurisdiction of the regular court to rule on the matter on the ground that it is agrarian in nature**, which thus **complies with the first requisite**, *viz*.:

> BY WAY OF SPECIAL/AFFIRMATIVE DEFENSES, defendants further state that:
> 5. The Court has no jurisdiction over the subject matter and the nature of the action. Verily, the allegations of the complaint would show that this **involves the implementation of Agrarian Reform law** hence beyond the pale of jurisdiction of this Court.

Anent the second requisite, the Court finds that the respondents failed to prove that they are farmers, farmworkers, or are agricultural tenants.

Section 3 of R.A. No. 6657 defines farmers and farmworkers as follows:

> (f) Farmer refers to a natural person whose primary livelihood is cultivation of land or the production of agricultural crops, either by himself, or primarily with the assistance of his

> immediate farm household, whether the land is owned by him, or by another person under a leasehold or share tenancy agreement or arrangement with the owner thereof.
>
> (g) Farmworker is a natural person who renders service for value as an employee or laborer in an agricultural enterprise or farm regardless of whether his compensation is paid on a daily, weekly, monthly or *"pakyaw*" basis. The term includes an individual whose work has ceased as a consequence of, or in connection with, a pending agrarian dispute and who has not obtained a substantially equivalent and regular farm employment.

An agricultural tenancy relation is established by the concurrence of the following elements enunciated by this Court in the case of *Chico v. CA*,

> (1) that the parties are the landowner and the tenant or agricultural lessee; (2) that the subject matter of the relationship is an agricultural land; (3) that there is consent between the parties to the relationship; (4) that the purpose of the relationship is to bring about agricultural production; (5) that there is personal cultivation on the part of the tenant or agricultural lessee; and (6) that the harvest is shared between the landowner and the tenant or agricultural lessee.[41]

Contrary to the CA's conclusion and as opposed to the first requisite, **mere allegation would not suffice to establish the existence of the second requirement**. **Proof must be adduced** by the person making the allegation as to his or her status as a farmer, farmworker, or tenant.

The pertinent portion of Section 19 of R.A. No. 9700 reads:

> If there is an **allegation** from any of the parties that the case is **agrarian in nature** and one of the parties is a farmer, farmworker, or tenant, the case shall be automatically referred by the judge or the prosecutor to the DAR xxx.

The use of the word "an" prior to "allegation" indicate that the latter qualifies only the immediately subsequent statement, *i.e.*, that the case is agrarian in nature. Otherwise stated, an allegation would suffice only insofar as the characterization of the nature of the action.

Respondents merely alleged in their Answer with Counterclaim that they are previous tenants in the subject landholdings implying that a tenancy relationship exists between them and petitioner's predecessor-in-interest.

Apart from these statements, respondents failed to elaborate much less prove the details of such tenancy agreement and the peculiarities of the subject landholding's previous ownership. There was no evidence adduced of the existence of any tenancy agreement between respondents and the petitioner's predecessor-in-interest. This precludes the application of Section 50-A of R.A. 6657, as amended by R.A. 9700, for failure to satisfy the second requisite.

GREGORIO AMOGUIS TITO AMOGUIS, *Petitioners*, -versus-CONCEPCION BALLADO AND MARY GRACE BALLADO LEDESMA, AND ST. JOSEPH REALTY, LTD.*Respondents*.

G.R. No. 189626, THIRD DIVISION, August 20, 2018, LEONEN, *J.*

Jurisdiction over the subject matter of a complaint is conferred by law. It cannot be lost through waiver or estoppel. It can be raised at any time in the proceedings, whether during trial or on appeal. The edict in Tijam v. Sibonghanoy is not an exception to the rule on jurisdiction. A court that does not have jurisdiction over the subject matter of a case will not acquire jurisdiction because of estoppel. Rather, the edict in Tijam must be appreciated as a waiver of a party's right to raise jurisdiction based on the doctrine of equity. It is only when the circumstances in Tijam are present that a waiver or an estoppel in questioning jurisdiction is appreciated.

The unique circumstances in Tijam are present in this case. Indeed, as the petitioners in this case belatedly argue, the Regional Trial Court did not have jurisdiction over the subject matter of the Complaint. However, under the doctrine in Tijam, petitioners cannot now raise lack of jurisdiction as they have waived their right to do so. Estoppel by laches has set in. Petitioners did not question the jurisdiction of the Regional Trial Court during trial and on appeal. It is only before this Court, 22 long years after the Complaint was filed, that petitioners raised the Regional Trial Court's lack of jurisdiction.

FACTS:

On November 24, 1969, spouses Francisco Ballado and Concepcion Ballado entered into two contracts to sell with owner and developer St. Joseph Realty, Ltd. to buy on installment parcels of land, designated as Lot Nos. 1 and 2. The Ballado Spouses amortized until 1979 when CrisantoPinili, St. Joseph Realty's collector, refused to receive their payments because of a small house they had erected therein in violation of the rules of the subdivision. Francisco informed St. Joseph Realty that the small house had already been taken down, but Pinili still did not come to collect.

On February 17, 1987, the Ballado Spouses discovered that St. Joseph Realty rescinded their contracts. Meanwhile, St. Joseph Realty sold Lot Nos. 1 and 2 to Epifanio Amoguis,father of Gregorio Amoguis and Tito Amoguis (collectively, the Amoguis Brothers).After making payments, the Amoguis Brothers then occupied the lots.Francisco confronted the Amoguis Brothers when he saw that the barbed fences, which he had installed around the lots, were taken down. Epifanio told him that he bought the lots from St. Joseph Realty.

The Ballado Spouses filed a Complaint for damages, injunction with writ of preliminary injunction, mandatory injunction, cancellation and annulment of titles, and attorney's fees. St. Joseph Realty filed its Answer. It was its affirmative defense that the Regional Trial Court had no jurisdiction to hear the case, and that jurisdiction was properly vested in the Human Settlements Regulatory Commission.

The Regional Trial Court ruled in favor of the Ballado Spouses, and against St. Joseph Realty and the Amoguis Brothers. The Court of Appeals rendered its Decision, affirming the Regional Trial Court. Though not raised, the Court of Appeals discussed at the outset the issue of jurisdiction. The Court of Appeals ruled that since neither St. Joseph Realty nor the Amoguis Brothers raised the issue of jurisdiction before the Regional Trial Court, they must be considered estopped from raising it on appeal.

ISSUE:

Whether or not the Regional Trial Court's lack of jurisdiction was lost by waiver or estoppel (YES)

RULING:

Petitioners are already estopped from questioning the jurisdiction of the Regional Trial Court. Laches had already set in.

Presidential Decree No. 957 instituted the National Housing Authority as the administrative body with exclusive jurisdiction to regulate the trade and business of subdivision and condominium developments. Presidential Decree No. 1344 was later on enacted to add to the National Housing Authority's jurisdiction. Section 1 of Presidential Decree No. 1344 gave authority to the National Housing Authority to hear and decide cases: *...C. Cases involving specific performance of contractual and statutory obligations filed by buyers of subdivision lot or condominium unit against the owner, developer, dealer, broker or salesman.*

Presidential Decree No. 957 was approved on July 12, 1976, 11 years before the Ballado Spouses filed their complaint. This means that the law mandating the jurisdiction of the National Housing Authority, which later on became the House and Land Use Regulatory Board, had long been in effect when petitioners filed their Answer and participated in trial court proceedings. It behooved them to raise the issue of jurisdiction then, especially since St. Joseph Realty, their co-respondent, raised it in its Answer albeit superficially and without any discussion.

The Ballado Spouses' rights and interests lie not just as buyers of any property, but buyers of subdivision lots from a subdivision developer. From the circumstances between St. Joseph Realty and the Ballado Spouses, there is no doubt that the then National Housing Authority had jurisdiction to determine the parties' obligations under the contracts to sell and the damages that may have arisen from their breach. The Ballado Spouses' Complaint should have been filed before it.

However, this Court has discussed with great nuance the legal principle enunciated in *Tijam vs Sibonghanoy*. In estoppel by laches, a claimant has a right that he or she could otherwise exercise if not for his or her delay in asserting it. This delay in the exercise of the right unjustly misleads the court and the opposing party of its waiver. Thus, to claim it belatedly given the specific circumstances of the case would be unjust.

Calimlim v. Hon. Ramirez unequivocally ruled that it is only when the exceptional instances in *Tijam* are present should estoppel by laches apply over delayed claims. *Calimlim* clarified the additional requirement that for estoppel by laches to be appreciated against a claim for jurisdiction, there must be an ostensible showing that the claimant had "knowledge or consciousness of the facts upon which it is based."

Figueroa v. People of the Philippines framed the exceptional character of *Tijam*:

The Court, thus, wavered on when to apply the exceptional circumstance in *Sibonghanoy* and on when to apply the general rule enunciated as early as in *De La Santa* and expounded at length in *Calimlim*. The general rule should, however, be, as it has always been, that the *issue of jurisdiction may be raised at any stage of the proceedings, even on appeal, and is not lost by waiver or by estoppel. Estoppel by laches, to bar a litigant from asserting the court's absence or lack of jurisdiction, only supervenes in exceptional cases similar to the factual milieu of Tijam v. Sibonghanoy.* Indeed, the fact that a person attempts to invoke unauthorized jurisdiction of a court does not estop him from thereafter challenging its jurisdiction over the subject matter, since such jurisdiction must arise by law and not by mere consent of the parties. This is especially true where the person seeking to invoke

unauthorized jurisdiction of the court does not thereby secure any advantage or the adverse party does not suffer any harm.

Thus, *Tijam* will only apply when given the circumstances of a case, allowing the belated objection to the jurisdiction of the court will additionally cause irreparable damages, and therefore, injustice to the other party that relied on the forum and the implicit waiver.

In *Tijam*, this Court ruled that long delay in raising lack of jurisdiction is unfair to the party pleading laches because he or she was misled into believing that this defense would no longer be pursued. A delay of 15 years in raising questions on subject matter jurisdiction was appreciated by this Court as estoppel by laches.

In *Figueroa*, this Court observed the injustice caused to the party pleading laches. Restoration of and reparation towards the party may no longer be accomplished due to the changes in his or her circumstances. Laches, however, was not appreciated as it was a mere four (4) years since trial began that the petitioner in that case raised the issue of jurisdiction on appeal.

In summary, *Tijam* applies to a party claiming lack of subject matter jurisdiction when: (1) there was a statutory right in favor of the claimant; (2) the statutory right was not invoked; (3) an unreasonable length of time lapsed before the claimant raised the issue of jurisdiction; (4) the claimant actively participated in the case and sought affirmative relief from the court without jurisdiction; (5) the claimant knew or had constructive knowledge of which forum possesses subject matter jurisdiction; and (6) irreparable damage will be caused to the other party who relied on the forum and the claimant's implicit waiver.

Tijam applies in this case. The allegations, determinative of subject matter jurisdiction, were apparent on the face of the Complaint. The law that determines jurisdiction of the National Housing Authority had been in place for more than a decade when the Complaint was filed. St. Joseph Realty raised lack of jurisdiction in its Answer. Petitioners sought affirmative relief from the Regional Trial Court and actively participated in all stages of the proceedings. Therefore, there was no valid reason for petitioners to raise the issue of jurisdiction only now before this Court.

JOHN CARY TUMAGAN, ALAM HALIL, AND BOT PADILLA, ***Petitioners***, **-versus - MARIAM K. KAIRUZ**, ***Respondent***.
G.R. No. 198124, FIRST DIVISION, September 12, 2018, JARDELEZA, *J.*

In Matling Industrial and Commercial Corporation v. Coros, the Court summarized the guidelines for determining whether a dispute constitutes an intra-corporate controversy or not. There, we held that in order that the SEC (now the RTC) can take cognizance of a case, the controversy must pertain to any of the following relationships: (a) between the corporation, partnership, or association and the public; (b) between the corporation, partnership, or association and its stockholders, partners, members, or officers; (c) between the corporation, partnership, or association and the State as far as its franchise, permit, or license to operate is concerned; and (d) among the stockholders, partners, or associates themselves. However, not every conflict between a corporation and its stockholders involves corporate matters. Concurrent factors, such as the status or relationship of the parties, or the nature of the question that is the subject of their controversy, must be considered in determining whether the SEC (now the RTC) has jurisdiction over the controversy.

What appears on record as the true nature of the controversy is that of a shareholder seeking relief from the court to contest the management's decision to: (1) post guards to secure the premises of the corporate property; (2) padlock the premises; and (3) deny her access to the same on May 28, 2007 due to her alleged default on the provisions of the MOA.

Thus, we agree with petitioners that while the case purports to be one for forcible entry filed by Mariam against BIRI's employees and contractors in their individual capacities, the true nature of the controversy is an intra-corporate dispute between BIRI and its shareholder, Mariam, regarding the management of, and access to, the corporate property subject of the MOA. We therefore find that the MCTC never acquired jurisdiction over the ejectment case filed by Mariam.

FACTS:

In her complaint for ejectment filed before the MCTC, respondent Mariam K. Kairuz (Mariam) alleged that she had been in actual and physical possession of a 5.2-hectare property located at Tadiangan, Tuba, Benguet (property) until May 28, 2007. She alleged that in the afternoon of May 28, 2007, petitioners John Cary Tumagan (John), Alam Halil (Alam), and Bot Padilla (Bot) conspired with each other and took possession of the property by means of force, intimidation, strategy, threat, and stealth with the aid of armed men. After forcibly gaining entry into the property, petitioners then padlocked its three gates, posted armed men, and excluded Mariam from the property. Mariam likewise sought the issuance of a temporary restraining order (TRO) and/or a writ of preliminary injunction (WPI) against petitioners.

In their answer, petitioners averred that Mariam could not bring the present action for forcible entry because she was never the sole owner or possessor of the property. They alleged that Mariam is the spouse of the late Laurence Ramzy Kairuz (Laurence), who co-owned the property with his sisters, Vivien Kairuz (Vivien) and Elizabeth D' Alessandri (Elizabeth). Petitioners claimed that the property is a good source of potable water and is publicly known as Kairuz Spring. During his lifetime, Laurence, in his own capacity and as attorney-in-fact for his sisters, entered into a Memorandum of Agreement (MOA) with Balibago Waterworks System Incorporated (BWSI) and its affiliate company, PASUDECO, to establish a new corporation, Bali Irisan Resources, Inc. (BIRI). As stipulated in the MOA, Laurence and his two sisters will sell the property containing Kairuz Spring and other improvements to BIRI for P115,000,000.00. Eventually, the Kairuz family sold the property, including the bottling building, Kairuz Spring, machineries, equipment, and other facilities following the terms of the MOA. BIRI took full possession over the property and caused new certificates of title to be issued. BIRI is 30% owned by the Kairuz family and 70% owned by BWSI and its allied company, PASUDECO. Its Board of Directors is composed of seven members, with a three-person Management Committee (ManCom) handling its day-to-day operations. The one seat accorded to the Kairuz family in the ManCom was initially occupied by Laurence, while the two other seats in the ManCom were occupied by John and one Victor Hontiveros. Petitioners alleged that Mariam was aware of the MOA, the ManCom, and of the operations of the BIRI properties precisely because she succeeded Laurence's seat in the Board of Directors and ManCom after his death.

Furthermore, petitioners claim that the MCTC has no jurisdiction over the action filed by Mariam because the same is an intra-corporate dispute which falls under the jurisdiction of the appropriate RTC.

On March 9, 2009, the MCTC dismissed the case due to Mariam's failure to implead BIRI, an indispensable party. It ruled that the joinder of all indispensable parties must be made under any and all conditions, their presence being *sine qua non* to the exercise of judicial power. Thus, although it made a finding on Mariam's prior physical possession of the property, ultimately, the MCTC ruled that if an indispensable party is not impleaded, as in this case, there can be no final determination of the action.

On appeal, the RTC upheld the MCTC's dismissal of the case.

Aggrieved, Mariam filed a petition for review before the CA.

On December 21, 2010, the CA granted the petition and reversed the RTC Decision. It ruled that the MCTC and the RTC should have limited the issue to who had prior physical possession of the disputed land. It ruled that the MCTC erred in dismissing Mariam's complaint because of a technical rule of failure to implead an indispensable party, BIRI. It pointed out that Rule 3, Section 11 of the Rules of Court provides that neither misjoinder nor non-joinder of parties is a ground for the dismissal of an action. The remedy is to implead the non-party claimed to be indispensable either by order of the court on motion of the party or on its own initiative at any stage of the action. If the party refuses to implead the indispensable party despite order of the court, then the latter may dismiss the complaint/petition for the plaintiffs failure to comply therewith.

ISSUE:

Whether or not the CA gravely erred in not finding that the issues are intra-corporate in nature which should be best resolved before the RTC in Angeles City. (YES)

RULING:

An indispensable party is a party in interest without whom no final determination can be had of an action and who shall be joined either as plaintiffs or defendants. The presence of indispensable parties is necessary to vest the court with jurisdiction.

Here, as correctly held by the MCTC and the RTC, it is indisputable that BIRI is an indispensable party, being the registered owner of the property and at whose behest the petitioner-employees acted. Thus, without the participation of BIRI, there could be no full determination of the issues in this case considering that it was sufficiently established that petitioners did not take possession of the property for their own use but for that of BIRI's. Contrary to the CA's opinion, the joinder of indispensable parties is not a mere technicality. We have ruled that the joinder of indispensable parties is mandatory and **the responsibility of impleading all the indispensable parties rests on the plaintiff.** In *Domingo v. Scheer,* we ruled that without the presence of indispensable parties to the suit, the judgment of the court cannot attain real finality. Otherwise stated, the absence of an indispensable party renders all subsequent actions of the court **null and void for want of authority to act not only as to the absent party but even as to those present.**

In this case, while the CA correctly pointed out that under Rule 3, Section 11 of the Rules of Court, failure to implead an indispensable party is not a ground for the dismissal of an action, it failed to take into account that it remains essential that any indispensable party be impleaded in the proceedings *before the court renders judgment.* Here, the CA simply proceeded to discuss the merits

of the case and rule in Mariam's favor, recognizing her prior physical possession of the subject property. This is not correct. The Decision and Resolution of the CA in this case is, therefore, null and void for want of jurisdiction, having been rendered in the absence of an indispensable party, BIRI.

Nonetheless, while a remand of the case to the MCTC for the inclusion of BIRI, the non-party claimed to be indispensable, seems to be a possible solution, a review of the records reveals that the remand to the MCTC is not warranted considering that the MCTC itself did not acquire jurisdiction over Mariam's complaint for forcible entry.

From the beginning, petitioners were consistent in their position that the MCTC has no jurisdiction over the action filed by Mariam. They claim that Mariam is not only a shareholder of BIRI, she is also the successor of her late husband, Laurence, and the case involves management of corporate property, an intra-corporate dispute which falls under the jurisdiction of the appropriate commercial court. Thus, pursuant to Article XII of the MOA, Mariam should have brought the case before the RTC of Angeles, Pampanga. Petitioners also argue that Mariam has already filed a case earlier against BIRI for annulment of the Deed of Assignment before the RTC of Angeles City, that this case is merely an attempt to split causes of action, and that Mariam purposely did not mention material facts in order to obtain a favorable judgment. Petitioners likewise point out that Mariam cannot feign ignorance that petitioners were merely acting on the orders of BIRI considering that both Mariam and John are members of the same ManCom which oversaw the day-to-day business operations of BIRI.

In *Matling Industrial and Commercial Corporation v. Coros,* the Court summarized the guidelines for determining whether a dispute constitutes an intra-corporate controversy or not. There, we held that in order that the SEC (now the RTC) can take cognizance of a case, the controversy must pertain to any of the following relationships: (a) between the corporation, partnership, or association and the public; (b) between the corporation, partnership, or association and its stockholders, partners, members, or officers; (c) between the corporation, partnership, or association and the State as far as its franchise, permit, or license to operate is concerned; and (d) among the stockholders, partners, or associates themselves. However, not every conflict between a corporation and its stockholders involves corporate matters. Concurrent factors, such as the status or relationship of the parties, or the nature of the question that is the subject of their controversy, must be considered in determining whether the SEC (now the RTC) has jurisdiction over the controversy.

Here, the Court considers two elements in determining the existence of an intra-corporate controversy, namely: (a) the status or relationship of the parties; and (b) the nature of the question that is the subject of their controversy.

As discussed earlier, the parties involved in the controversy are respondent Mariam (a shareholder of BIRI and successor to her late husband's position on the ManCom), petitioner John (then the branch manager, shareholder, and part of the BIRI ManCom), and petitioners Bot and Alam (licensed geodetic engineers engaged by BIRI for a contract to survey the property subject of the dispute). The controversy also involves BIRI itself, the corporation of which Mariam is a shareholder, and which through Board Resolutions No. 2006-0001, 2007-0004 and 2007-0005 authorized John, its branch manager, to do all acts fit and necessary to enforce its corporate rights against the Kairuz family, including the posting of guards to secure the property. The controversy is thus one between corporation and one of its shareholders.

Moreover, the CA erred in characterizing the action as an ejectment case filed by a co-owner who was illegally deprived of her right to possess the property by the presence of armed men.

The CA ruled that since the Kairuzes own 30% of the shares of stocks of BIRI, Mariam, as a co-owner who was unlawfully ousted from BIRI property by its employees, may bring an action for ejectment against the employees. This is not correct.

Here, it is undisputed that the property has already been transferred to BIRI and registered in its name. It is likewise undisputed that based on the MOA, the Kairuzes own 30% of the outstanding capital stock of BIRI. This, however, does not make Mariam a co-owner of the property of BIRI, including the property subject of this case. Shareholders are in no legal sense the owners of corporate property, which is owned by the corporation as a distinct legal person. At most, Mariam's interest as a shareholder is purely inchoate, or in sheer expectancy of a right, in the management of the corporation and to share in its profits, and in its properties and assets on dissolution after payment of the corporate debts and obligations.

In sum, what appears on record as the true nature of the controversy is that of a shareholder seeking relief from the court to contest the management's decision to: (1) post guards to secure the premises of the corporate property; (2) padlock the premises; and (3) deny her access to the same on May 28, 2007 due to her alleged default on the provisions of the MOA.

Thus, we agree with petitioners that while the case purports to be one for forcible entry filed by Mariam against BIRI's employees and contractors in their individual capacities, the true nature of the controversy is an intra-corporate dispute between BIRI and its shareholder, Mariam, regarding the management of, and access to, the corporate property subject of the MOA. We therefore find that the MCTC never acquired jurisdiction over the ejectment case filed by Mariam.

SPOUSES FRANCISCO and DELMA SANCHEZ, represented by HILARIO LOMBOY, *Petitioners,* - versus - ESTHER DIVINAGRACIA VDA. DE AGUILAR, TERESITA AGUILAR, ZENAIDA AGUILAR, JUANITO AGUILAR, JR., AMALIA AGUILAR, and SUSAN AGUILAR, THE MUNICIPALITY of LAKE SEBU, represented by its Mayor, BASILIO SALIF, NOEMI DUTA D. DALIPE in her capacity as ZONING OFFICER II, ZALDY B. ARTACHO, in his capacity as CHAIRMAN AD HOC COMMITTEE ON LAND CONFLICT, HON. RENATO TAMPAC, in his capacity as PRESIDING JUDGE of the 6TH MUNICIPAL CIRCUIT TRIAL COURT OF SURALLA-LAKE SEBU, ***Respondents*****.**
G.R. No. 228680, THIRD DIVISION, September 17, 2018, PERALTA, *J.*

In the instant case, the Spouses Sanchez anchored their Complaint for Annulment of Judgment on the alleged lack of jurisdiction of the MCTC. ***Jurisdiction*** *is the power and authority of the tribunal to hear, try and decide a case and the lack thereof refers to either lack of jurisdiction over the person of the defending party or over the subject matter of the action. Lack of jurisdiction or absence of jurisdiction presupposes that the court should not have taken cognizance of the complaint because the law or the Constitution does not vest it with jurisdiction over the subject matter. On the one hand,* ***jurisdiction over the person*** *of the defendant or respondent is acquired by voluntary appearance or submission by the defendant/respondent to the court, or by coercive process issued by the court to such party through service of summons. On the other hand,* ***jurisdiction over the subject matter*** *of the claim is conferred by law and is determined by the allegations of the complaint and the relief prayed for. Thus, whether the plaintiff is entitled to recovery upon all or some of the claims prayed therein is not essential. Jurisdiction over the subject matter is conferred by the Constitution or by law and not by agreement or*

consent of the parties. Neither does it depend upon the defenses of the defendant in his/her answer or in a motion to dismiss.

Here, the Court agrees with the appellate court that the MCTC had both jurisdictions over the person of the defendant or respondent and over the subject matter of the claim. On the former, it is undisputed that the MCTC duly acquired jurisdiction over the persons of the spouses Sanchez as they are the ones who filed the Forcible Entry suit before it. On the latter, Republic Act No. 7691 (R.A. No. 7691) clearly provides that the proper Metropolitan Trial Court (MeTC), MTC, or Municipal Circuit Trial Court (MCTC) has exclusive original jurisdiction over ejectment cases, which includes unlawful detainer and forcible entry.

FACTS:

On July 11, 2000, Juanito Aguilar sold to petitioner spouses Francisco and Delma Sanchez (*Spouses Sanchez*) a 600-square-meter portion of his 33,600-square meter lot identified as Lot No. 71, Pls 870, located in the Municipality of Lake Sebu, South Cotabato. On October 23, 2004, the heirs of Juanito Aguilar, namely, respondents Esther Divinagracia V da. de Aguilar, Juanito's spouse, and their children, fenced the boundary line between the 600-square-meter lot of the spouses and the alleged alluvium on the northwest portion of the land by the lake Sebu. The Spouses Sanchez protested the act of fencing by Esther before the *barangay*, but since no settlement was reached, they filed a Complaint for Forcible Entry against the heirs of Aguilar before the Municipal Circuit Trial Court (*MCTC*) of Surallah-Lake Sebu, Province of South Cotabato. They claimed that under the law, they are the owners of the alluvium which enlarged their 600- square-meter lot. It cannot, therefore, be fenced by the heirs of Aguilar. For their part, the heirs refute the existence of the alluvium. They assert that the "alluvium" referred to is the 800-square-meter area beyond the 600-squaremeter lot of the spouses which has been in their actual possession but was used, with their tolerance, by the spouses in connection with their operation of fish cages in that portion of Lake Sebu abutting their lot.

On June 7, 2006, the MCTC rendered a Decision dismissing the complaint of the Spouses Sanchez. It ruled that since the spouses purchased the 600-meter land adjacent to the land in question only on July 11, 2000, they could not have been in possession thereof ahead of the heirs of Aguilar. Thus, the heirs are the ones in actual possession of the subject property and cannot be held liable for forcible entry by stealth as alleged by the Spouses Sanchez.

On May 22, 2010, the spouses filed a Complaint for Annulment of Judgment with Prayer for the Issuance of a Temporary Restraining Order and Preliminary Injunction and Damages before the RTC seeking to annul the June 7, 2006 Decision of the MCTC for lack of jurisdiction over the subject matter or for rendering judgment over a non-existent parcel of land since there is no excess of the 600-square-meter portion to speak of.

On July 8, 2013, the RTC granted the spouses' complaint and annulled the June 7, 2006 MCTC Decision.

On July 28, 2016, however, the CA reversed and set aside the RTC Decision. The appellate court ruled that the MCTC Decision cannot be annulled on the ground of lack of jurisdiction over the subject matter of the case. It is clear that the MCTC acquired jurisdiction over the persons of the Spouses Sanchez as they are the ones who filed the forcible entry complaint before said court. As to the nature

of the action, the MCTC likewise had jurisdiction since under the law, it exercises exclusive original jurisdiction over ejectment suits.

ISSUE:

Whether or not the ruling of the CA erred in reversing the RTC Decision and in ruling that MCTC Decision cannot be annulled on the ground of lack of jurisdiction over the subject matter of the case. (NO)

RULING:

Time and again, the Court has ruled that a petition for annulment of judgment is a remedy in equity so exceptional in nature that it may be availed of only when other remedies are wanting, and only if the judgment, final order or final resolution sought to be annulled was rendered by a court lacking jurisdiction or through extrinsic fraud. Its objective is to undo or set aside the judgment or final order, and thereby grant to the petitioner an opportunity to prosecute his cause or to ventilate his defense. Being exceptional in character, it is not allowed to be so easily and readily abused by parties aggrieved by the final judgments, orders or resolutions. Thus, the Court has instituted safeguards by limiting the grounds for the annulment to lack of jurisdiction and extrinsic fraud, and by prescribing in Section 1 of Rule 47 of the Rules of Court that the petitioner should show that the ordinary remedies of new trial, appeal, petition for relief or other appropriate remedies are no longer available through no fault of the petitioner. In this regard, if the ground relied upon is lack of jurisdiction, the entire proceedings are set aside without prejudice to the original action being refiled in the proper court. If the judgment or final order or resolution is set aside on the ground of extrinsic fraud, the CA may on motion order the trial court to try the case as if a timely motion for new trial had been granted therein.

In the instant case, the Spouses Sanchez anchored their Complaint for Annulment of Judgment on the alleged lack of jurisdiction of the MCTC. Jurisdiction is the power and authority of the tribunal to hear, try and decide a case and the lack thereof refers to either lack of jurisdiction over the person of the defending party or over the subject matter of the action. Lack of jurisdiction or absence of jurisdiction presupposes that the court should not have taken cognizance of the complaint because the law or the Constitution does not vest it with jurisdiction over the subject matter. On the one hand, jurisdiction over the person of the defendant or respondent is acquired by voluntary appearance or submission by the defendant/respondent to the court, or by coercive process issued by the court to such party through service of summons. On the other hand, jurisdiction over the subject matter of the claim is conferred by law and is determined by the allegations of the complaint and the relief prayed for. Thus, whether the plaintiff is entitled to recovery upon all or some of the claims prayed therein is not essential. Jurisdiction over the subject matter is conferred by the Constitution or by law and not by agreement or consent of the parties. Neither does it depend upon the defenses of the defendant in his/her answer or in a motion to dismiss.

Here, the Court agrees with the appellate court that the MCTC had both jurisdictions over the person of the defendant or respondent and over the subject matter of the claim. On the former, it is undisputed that the MCTC duly acquired jurisdiction over the persons of the spouses Sanchez as they are the ones who filed the Forcible Entry suit before it. On the latter, Republic Act No. 7691 (*R.A. No. 7691*) clearly provides that the proper Metropolitan Trial Court (MeTC), MTC, or Municipal Circuit

Trial Court (MCTC) has exclusive original jurisdiction over ejectment cases, which includes unlawful detainer and forcible entry.

It bears stressing that the Spouses Sanchez explicitly brought the subject matter to the jurisdiction of the MCTC. They cannot now deny such jurisdiction simply because said court did not rule in their favor. The Court has consistently ruled that *jurisdiction* is not the same as the *exercise of jurisdiction*. As distinguished from the exercise of jurisdiction, jurisdiction is the authority to decide a cause, and not the decision rendered therein. Where there is jurisdiction over the person and the subject matter, the decision on all other questions arising in the case is but an exercise of the jurisdiction. And the errors which the court may commit in the exercise of jurisdiction are merely errors of judgment which are the proper subject of an appeal.

Thus, the issue of whether the MCTC erred in dismissing the forcible entry complaint, ruling that the heirs of Aguilar were in actual physical possession over the subject property should have been raised by the Spouses Sanchez in an appeal before the RTC. But as the records reveal, the spouses did not do anything to question the decision of the MCTC, merely allowing the same to attain finality. In fact, the sheriff had already started its execution. Moreover, without even providing any explanation for their delay, it was only on May 22, 2010, or four (4) years after the issuance of the MCTC ruling on June 7, 2006, that the spouses filed the instant Complaint for Annulment of Judgment. On this matter, the Court must emphasize that an action for annulment of judgment based on lack of jurisdiction must be brought before the same is barred by laches or estoppel. On the one hand, laches is the failure or neglect for an unreasonable and unexplained length of time to do that which by exercising due diligence could nor should have been done earlier; it is negligence or omission to assert a right within a reasonable time, warranting a presumption that the party entitled to assert it either has abandoned it or declined to assert it. On the other hand, estoppel precludes a person who has admitted or made a representation about something as true from denying or disproving it against anyone else relying on his admission or representation. To the Court, the failure on the part of the Spouses Sanchez to file either an appeal of the MCTC Decision or the instant complaint for annulment of judgment for an unreasonable and unexplained length of time, four (4) years to be exact, despite receiving notice and knowledge of the said decision, constitutes laches that necessarily barred their cause.

Indeed, the attitude of judicial reluctance towards the annulment of a judgment, final order or final resolution is understandable, for the remedy disregards the time-honored doctrine of immutability and unalterability of final judgments, a solid cornerstone in the dispensation of justice by the courts. The doctrine of immutability and unalterability serves a two-fold purpose, namely: (a) to avoid delay in the administration of justice and, thus, procedurally, to make orderly the discharge of judicial business; and (b) to put an end to judicial controversies, at the risk of occasional errors, which is precisely why the courts exist. As to the first, a judgment that has acquired finality becomes immutable and unalterable and is no longer to be modified in any respect even if the modification is meant to correct an erroneous conclusion of fact or of law, and whether the modification is made by the court that rendered the decision or by the highest court of the land. As to the latter, controversies cannot drag on indefinitely because fundamental considerations of public policy and sound practice demand that the rights and obligations of every litigant must not hang in suspense for an indefinite period of time.

PABLO B. MALABANAN, *Petitioner*, -versus- REPUBLIC OF THE PHILIPPINES, *Respondent*.
G.R. No. 201821, FIRST DIVISION, September 19, 2018, BERSAMIN, J.

The basic rule is that the jurisdiction of a court over the subject matter is determined from the allegations in the complaint, the law in force at the time the complaint is filed, and the character of the relief sought, irrespective of whether the plaintiff is entitled to all or some of the claims averred. Jurisdiction over the subject matter is not affected by the pleas or the theories set up by the defendant in the answer or motion to dismiss; otherwise, jurisdiction becomes dependent almost entirely upon the whims of the defendant.

FACTS:

The Republic commenced Civil Case No. C-192 against Angelo B. Malabanan, Pablo B. Malabanan, and Greenthumb Realty and Development Corporation, the registered owners of various parcels of land covered by certificates of title derived from TCT No. T-24268 of the Registry of Deeds of Batangas.

The Republic alleged that TCT No. T-24268 had emanated from OCT No. 0-17421 of the Registry of Deeds of Batangas, which was purportedly issued pursuant to Decree No. 589383 in LRC Record No. 50573; that upon verification, the LRA could not find any copy of the judgment rendered in LRC Record No. 50573; and that the tract of land covered by TCT No. T-24268, being within the unclassified public forest, remained part of the public domain that pertained to the State and could not be the subject of disposition or registration.

In response, the petitioner moved to dismiss Civil Case No. C-192 by arguing that the RTC had no jurisdiction over the action because it sought the annulment of the judgment and the decree issued in LRC Record No. 50573 by the CFI the jurisdiction over which pertained to the CA.

The Republic opposed the motion to dismiss, insisting that its complaint did not ask the RTC to annul a judgment because the judgment supposedly rendered in LRC Record No. 50573 did not exist to begin with.

On December 11, 1998, the RTC granted the motion to dismiss. After the Republic filed its notice of appeal, the defendants, including the herein petitioner, moved that the RTC deny due course to the notice of appeal because the mode of appeal adopted was improper because the issue of jurisdiction, being a question of law, was directly cognizable by the SC on appeal by petition for review on *certiorari*.

On June 29, 1999, the RTC denied due course to the Republic's notice of appeal, and consequently dismissed it. The Republic assailed the said order in the CA by petition for *certiorari*, alleging that the RTC thereby gravely abused its discretion amounting to lack or excess of its jurisdiction.

The CA set aside the Order issued by the RTC on December 11, 1998. Consequently, the appellate court denied petitioner's motion for reconsideration for its lack of merit.

Hence, this appeal.

ISSUE:

Whether Civil Case No. C-192 should be considered as an action to annul the judgment of the LRA. (NO)

RULING:

The appeal lacks merit.

The basic rule is that the jurisdiction of a court over the subject matter is determined from the allegations in the complaint, the law in force at the time the complaint is filed, and the character of the relief sought, irrespective of whether the plaintiff is entitled to all or some of the claims averred. Jurisdiction over the subject matter is not affected by the pleas or the theories set up by the defendant in the answer or motion to dismiss; otherwise, jurisdiction becomes dependent almost entirely upon the whims of the defendant.

The complaint in Civil Case No. C-192 alleged that: *(a)* TCT No. T-24268 had emanated from OCT No. 0-17421 of the Registry of Deeds of Batangas pursuant to Decree No. 589383, issued in L.R.C. Record No. 50573; *(b)* copy of the decision in L.R.C. Record No. 50573 could not be found in the files of the Land Registration Authority; *(c)* the land described in TCT No. T-24268 was within the unclassified public forest of Batangas; *(d)* TCT No. T-24268 was subdivided into four lots that were covered by TCT No. T-24386, TCT No. T-24387, TCT No. T-24388 and TCT No. T-24389; *(d)* the land covered by TCT No. T-24386 was in turn subdivided into 92 lots registered in the name of Greenthumb Realty and Development Corporation; *(e)* the lands covered by TCT No. T-24387 and TCT No. T-24388 were now subdivided into nine lots each all in the name of the Malabanans (including herein petitioner); and *(f)* TCT No. T-24389 remained in the name of the Malabanans.

The complaint sought as reliefs the cancellation of OCT No. 0-17421, and the reversion to the Republic of the tract of land therein covered on the grounds that there had been no decision of the Land Registration Court authorizing its issuance, and that the land covered by TCT No. 24268 was within the unclassified public forest of Batangas.

We find and declare that the complaint of the Republic was not seeking the annulment of the judgment issued in L.R.C. Record No. 50573.

3. Jurisdiction over the issues

4. Jurisdiction over the res or the property in litigation

E. Jurisdiction vs. exercise of jurisdiction

F. Jurisdiction vs. venue

G. Jurisdiction over cases covered by Barangay Conciliation, Small Claims Cases, and cases covered by Summary Procedure

III. CIVIL PROCEDURE

A. General provisions (Rule 1)

B. Cause of action (Rule 2)

EMMANUEL M. LU, ROMMEL M. LU, CARMELA M. LU, KAREN GRACE P. LU and JAMES MICHAEL LU, *Petitioners,*-versus - MARISSA LU CHIONG and CRISTINA LU NG, *Respondents*. G.R. No. 222070, SECOND DIVISION, April 16, 2018, REYES, JR., J:

As the Court reiterated in King vs. CA, "an issue is said to have become moot and academic when it ceases to present a justiciable controversy so that a declaration on the issue would be of no practical use or value."

The promulgation by the RTC of the Consolidated Decision that finally disposed of the main issues in the two cases had rendered CA-G.R. SP No. 139683 moot and academic

FACTS:

Respondents Marissa Lu Chiong and Cristinina Lu Ng filed a complaint for Nullification of Stockholder's Meeting, Election of the Members of the Board of Directors, Officers, General Information Sheet and Minutes of Meeting, and Damages against petitioners Emmanuel Lu et al.

Respondents filed a Motion for Inhibition as they asked Presiding Judge Maria Florencia Formes-Baculo (Judge Formes-Baculo) to recuse herself from the cases. Among the ground cited is that Judge Formes-Baculo granted the petitioner's applications for preliminary injunction on the basis of erroneous findings of fact, unfounded evidence and misapplication of law and jurisprudence, leading the respondents to believe that her order was made to favor the petitioners

Judge Formes-Baculo issued in the two cases her twin Orders that granted the motions to inhibit. Judge Formes-Baculo explained that the inhibition would dispel the "notion[s] of prejudgment and partiality. When the order granting the motion for inhibition was elevated to CA through a special civil action for certiorari, the appellate court declared the order as contrary to Section 1, Rule 137 of the ROC and jurisprudence. In reversing the trial court, the CA explained that a judge's voluntary inhibition from a case must be based on just or valid reasons. Mere imputations of bias or partiality are not enough grounds for inhibition. There should be concrete statements and proof of specific acts that could establish the charges, something which the petitioners failed to satisfy.

However, while the case is pending before the CA, the RTC had already promulgated its decision that finally disposed of the main case.

ISSUE:

Whether the present petition is moot and academic (YES)

RULING:

Pertinent is the settled rule that "the mere pendency of a special civil action for certiorari commenced in relation to a case pending before a lower court does not automatically interrupt the proceedings in the lower court." Moreover, jurisdiction over the main actions attached to the RTC of Calamba City, not in its branches or judges, to the exclusion of others; the RTC's different branches did not possess

jurisdictions independent of and incompatible with each other. The RTC was with the authority to proceed with the main actions notwithstanding the pendency of the CA petition.

As the Court reiterated in *King vs. CA*, "an issue is said to have become moot and academic when it ceases to present a justiciable controversy so that a declaration on the issue would be of no practical use or value." As a rule, courts decline jurisdiction over such actions, or dismiss them on the ground of mootness. In this case, this ground on mootness is sufficient to justify the grant of the present petition, rendering it unnecessary for the Court to rule on the merits of the other grounds that are invoked by the petitioners.

The promulgation by the RTCof the Consolidated Decision that finally disposed of the main issues in the two cases had rendered CA-G.R. SP No. 139683 moot and academic. Instead of issuing its Decision and Resolution the appellate court should have then dismissed the CA petition on the ground of mootness.

C. Parties to civil actions (Rule 3)

ROSARIO ENRIQUEZ VDA. DE SANTIAGO, *petitioner* –versus- ANTONIO T. VILAR, *respondent*.
G.R. No. 225309, FIRST DIVISION, March 6, 2018, TIJAM, *J*

The joinder of indispensable parties is mandatory. The presence of indispensable parties is necessary to vest the court with jurisdiction, which is the authority to hear and determine a cause, the right to act in a case. Thus, without the presence of indispensable parties to a suit or proceeding, judgment of a court cannot attain real finality.

Verily, Rosario is an indispensable party in the petition before the CA as she is the widow of the original party-plaintiff Eduardo. The determination of the propriety of the action of the trial court in merely noting and not granting his motion would necessarily affect her interest in the subject matter of litigation as the party-plaintiff.

FACTS:

Spouses Jose C. Zulueta and Soledad Ramos (Spouses Zulueta), registered owners of several parcels of land covered by Transfer Certificate of Title (TCT) Nos. 26105, 37177 and 50356, obtained various loans secured by the mother titles from the GSIS. The amount of loans, with the accumulated value of P3,117,000.00 were obtained from September 1956 to October 1957. From the records, the lot covered by Transfer Certificate of Title (TCT) No. 26105 was divided into 199 lots. Under the first mortgage contract, 78 of these lots were excluded from the mortgage.

When Spouses Zulueta defaulted in their payment, GSIS extra-judicially foreclosed the mortgages in August 1974 wherein the latter emerged as the highest bidder. A certificate of sale was then issued. GSIS, however, consolidated its title on all of the three mother titles, including the 78 lots which were expressly excluded from the mortgage contract.

Later, GSIS began to dispose the foreclosed lots, including those not covered by the foreclosure sale.

Thereafter, Spouses Zulueta were succeeded by Antonio Zulueta (Antonio), who transferred all his rights and interests in the excluded lots to Eduardo Santiago (Eduardo). Claiming his rights and interests over the excluded lots, Eduardo, through his counsel, sent a letter to GSIS for the return of the same.

In May 1990, Antonio, as represented by Eduardo, filed an Action for Reconveyance of the excluded lots against the GSIS. Subsequently, Antonio was substituted by Eduardo. Upon Eduardo's demise, however, he was substituted by his widow, herein petitioner Rosario.

In a Decision dated December 17, 1997, the Regional Trial Court (RTC) of Pasig City, Branch 71, ordered GSIS to reconvey to Rosario the excluded lots or to pay the market value of said lots in case reconveyance is not possible. The Registry of Deeds of Pasig City was likewise ordered to cancel the titles covering the excluded lots issued in the name of GSIS.

In the interim, herein respondent Antonio Vilar (Vilar) filed a Verified Omnibus Motion (for **Substitution of Party-Plaintiff** with Authority to Implement Writ of Execution until Full Satisfaction of the Final Judgment of the Court) before the RTC. In his motion, Vilar alleged that after Antonio transferred his rights and interests to Eduardo, the latter assigned to Vilar 90% of his interest in the judgment proceeds of the reconveyance case. Further, Vilar averred that he and Eduardo agreed that the Deed of Assignment shall still take effect despite the fact of substitution.

In resolving Vilar's motion, the RTC merely noted the same without action in its Order dated December 8, 2010.

Hence, Vilar filed a Petition for *Certiorari* before the CA, ascribing grave abuse of discretion on the part of the RTC in merely noting and not granting Vilar's motion. In a Decision dated February 10, 2014, the CA **granted Vilar's petition**.

On June 17, 2016, the CA issued its assailed Amended Decision, which in essence, denied the motion for intervention filed by Atty. Gilberto Alfafara (Atty. Alfafara), former counsel of Vilar and denied GSIS' partial motion for reconsideration and Rosario's motion to intervene and to admit motion for reconsideration.

ISSUE:

Whether or not the CA erred in impleading Vilar as party-plaintiff in substitution of Rosario. (YES)

RULING:

The case stemmed from the action for reconveyance filed by Eduardo, husband of Rosario. To recall, Eduardo was the successor-in-interest of Antonio, who is actually the successor-in-interest of Spouses Zulueta. Spouses Zulueta are the original owners of the subject parcels of land. Upon the death of the party-plaintiff Eduardo, Rosario was substituted in his stead. The case was subsequently decided on December 17, 1997 and affirmed by this Court in October 28, 2003. An Entry of Judgment was issued in 2004. In all these incidents, Rosario was considered as the party-plaintiff.

By definition, an indispensable party is a party-in-interest without whom no final determination can be had of an action, and who shall be joined either as plaintiffs or defendants. It is a party whose interest will be affected by the court's action in the litigation.

In the Matter of the Heirship (Intestate Estates) of the Late Hermogenes Rodriguez, et al. v. Robles, 41 the Court held that:

> The joinder of indispensable parties is mandatory. The presence of indispensable parties is necessary to vest the court with jurisdiction, which is the authority to hear and determine a cause, the right to act in a case. Thus, without the presence of indispensable parties to a suit or proceeding, judgment of a court cannot attain real finality.

Verily, Rosario is an indispensable party in the petition before the CA as she is the widow of the original party-plaintiff Eduardo. The determination of the propriety of the action of the trial court in merely noting and not granting his motion would necessarily affect her interest in the subject matter of litigation as the party-plaintiff.

Accordingly, the Court differs with the CA in ruling that the petition for *certiorari* filed before it merely delves into the issue of grave abuse of discretion committed by the lower court. Guilty of repetition, the final determination of the case would pry into the right of Rosario as party-plaintiff before the lower court who is entitled to the proceeds of the judgment award. As it is, the CA did not actually rule on the issue of grave abuse of discretion alone as its corollary ruling inquired into the right of Rosario. In ruling for Vilar's substitution, the right of Rosario as to the proceeds of the judgment award was thwarted as the CA effectively ordered that the proceeds pertaining to Rosario be awarded instead to Vilar.

Likewise, the Court finds merit in Rosario's contention that her failure to participate in the proceedings before the CA constitutes a denial of her constitutional right to due process.

Hence, failure to implead Rosario as an indispensable party rendered all the proceedings before the CA null and void for want of authority to act.

Moreover, even the basis for the substitution of Vilar as pronounced by the CA was unfounded. In ruling so, the CA merely relied on the purported Deeds of Assignment of Rights executed between Eduardo and Vilar in considering that the latter is a transferee *pendente lite*, who can rightfully and legally substitute Rosario as party-plaintiff in the implementation of a writ of execution

Yet, it is significant to note that the Court already brushed aside said Deeds of Assignment for being belatedly filed in its Decision dated October 21, 2015 in G.R. Nos. 194814 and 194825. The Court did not discuss any further the validity and due execution of said Deeds as the same were brought to the attention of the trial court **more than 20 years** after the same were allegedly executed.

GENOVEVA P. TAN, DECEASED, SUBSTITUTED BY MELCHOR P. TAN AS THE LEGAL REPRESENTATIVE OF THE DECEASED PETITIONER, *Petitioner*, -versus- REPUBLIC OF THE PHILIPPINES, REPRESENTED BY THE BUREAU OF CUSTOMS, *Respondent*.

G.R. No. 216756, FIRST DIVISION, August 08, 2018, DEL CASTILLO, *J*.

Rule 87, Section 1 of the Rules of Court enumerates actions that survive against a decedent's executors or administrators, and they are: (1) actions to recover real and personal property from the estate; (2) actions to enforce a lien thereon; and (3) actions to recover damages for an injury to person or property.

With Genoveva's death, Civil Case No. 02-102639 need not be dismissed. The action against her survives as it is one to recover damages for an injury to the State. In this case, the CA denied petitioner's plea to be dropped as defendant in Civil Case No. 02-102639 because it found - by meticulous consideration of the extant evidence - that Genoveva was "the principal orchestrator" of the scheme to use spurious TCCs to pay Mannequin's 1995-1997 duties and taxes; that such a finding was based on positive testimony of a witness presented in court; that documentary evidence pointed to Genoveva's significant participation in Mannequin's affairs during the time material to the suit; and that all the other defendants to the case seemed to have absconded and suspiciously waived all their rights and properties in the country in favor of Genoveva, who was then dropped from the suit. Adopting the CA's finding that Genoveva appears to have been the principal figure in the illegal scheme, this Court cannot but reach the logical conclusion that she should not have been excluded from the case.

FACTS:

In 2002, the herein respondent, through the Bureau of Customs, filed an Amended Complaintfor collection of sum of money with damages and prayer for injunctive writ against Mannequin International Corporation (Mannequin) before the Regional Trial Court (RTC) of Manila, on the cause of action that Mannequin paid its 1995-1997 duties and taxes using spurious Tax Credit Certificates (TCCs) amounting to P55,664,027.00. The case was docketed as Civil Case No. 02-102639 and assigned to Branch 8 of the Manila RTC. The original complaint was amended to include other individuals - among them herein petitioner Genoveva P. Tan (Genoveva) - as one of the defendants.

After the respondent rested its case, petitioner filed a demurrer to evidence followed by an urgent manifestation with leave of court to allow her to change the caption of her demurrer to that of a motion to exclude and drop her from the case and/or dismiss the same as against her.

The Manila RTC granted petitioner's urgent manifestation and treated her demurrer as a motion to exclude/drop her from the case.

Respondent thus filed an original Petition for *Certiorari* with the CA, on the contention that the Manila RTC committed grave abuse of discretion in granting petitioner's motion to exclude/drop her from the case.

In a March 30, 2011 Resolution, the CA dismissed the petition for being tardy and for failing to attach thereto relevant documents and pleadings. But, on motion for reconsideration, the petition was reinstated. Petitioner took no action to question the reinstatement. The CA hold that the judge gravely abused his discretion in granting Genoveva's Motion to Exclude.

In the instant case, the recovery of a huge amount of money that was fraudulently taken from the coffers of the government is at stake. However, it is already established that Mannequin had long ceased its operation and is no longer in existence. Petitioner has also been adamant in stressing that all the other defendants are already outside the country, seemingly without intention to return. What is more, these other defendants, who are Genoveva's descendants, even went as far as waiving, during the pendency of the case, their respective rights in all their properties in the Philippines in favor of Genoveva. Given all these facts, it is starkly clear that petitioner is only left with Genoveva for the full satisfaction of its claim.

ISSUE:

Whether Genoveva should be dropped from the case. (NO)

RULING:

With Genoveva's death, Civil Case No. 02-102639 need not be dismissed. The action against her survives as it is one to recover damages for an injury to the State. Rule 87, Section 1 of the Rules of Court enumerates actions that survive against a decedent's executors or administrators, and they are: (1) actions to recover real and personal property from the estate; (2) actions to enforce a lien thereon; and (3) actions to recover damages for an injury to person or property.

In effect, the only issue raised by petitioner relates to the CA's reinstatement of respondent's Petition for *Certiorari* which it initially dismissed - with petitioner arguing that the reinstatement was erroneous, and in her reply, attempts to impress upon this Court that her case was meritorious - such that she may not be held personally liable for Mannequin's corporate liability, absent proof of bad faith or wrongdoing on her part.

The facts reveal that when the CA overturned its own March 30, 2011 Resolution dismissing respondent's Petition for *Certiorari* for being tardy and lacking in the requisite attachments and thus reinstated the same, petitioner took no action to question the reinstatement. She did not move to reconsider; nor did she come to this Court for succor. Instead, she allowed the proceedings before the CA to continue, and is only now - at this stage - raising the propriety of the reinstatement, after participating in the whole process before the CA. This cannot be countenanced. As correctly ruled by the CA, petitioner may not, after participating in the proceedings before it, later question its disposition when it turns out to be unfavorable to her cause.

The CA denied petitioner's plea to be dropped as defendant in Civil Case No. 02-102639 because it found - by meticulous consideration of the extant evidence - that Genoveva was "the principal orchestrator" of the scheme to use spurious TCCs to pay Mannequin's 1995-1997 duties and taxes; that such a finding was based on positive testimony of a witness presented in court; that documentary evidence pointed to Genoveva's significant participation in Mannequin's affairs during the time material to the suit; and that all the other defendants to the case seemed to have absconded and suspiciously waived all their rights and properties in the country in favor of Genoveva, who was then dropped from the suit.

It goes without saying then that Genoveva's exclusion would virtually render the entire proceedings a futile recourse as far as the petitioner is concerned. **Verily, even if petitioner Republic of the Philippines wins this case, the government will end up with a pyrrhic victory as it cannot recover even a single centavo from the other defendants. On the other hand, it would be the height of injustice, and surely unacceptable, that those who were responsible for this grand fraud and benefited therefrom would laugh their way to the bank and enjoy their loot with impunity.** It was, thus, essential for the public respondent to exercise extreme caution in dealing with Genoveva's Motion to Exclude.

Adopting the CA's finding that Genoveva appears to have been the principal figure in the illegal scheme, this Court cannot but reach the logical conclusion that she should not have been excluded from the case.

ALLIANCE OF QUEZON CITY HOMEOWNERS' ASSOCIATION, INC., *Petitioner*, *-versus-* THE QUEZON CITY GOVERNMENT, REPRESENTED BY HON. MAYOR HERBERT BAUTISTA, QUEZON CITY ASSESSOR'S OFFICE, AND QUEZON CITY TREASURER'S OFFICE, *Respondents.*
G.R. No. 230651, EN BANC, September 18, 2018, PERLAS-BERNABE, J.

The Rules of Court mandates that only natural or juridical persons, or entities authorized by law may be parties in a civil action. Non-compliance with this requirement renders a case dismissible on the ground of lack of legal capacity to sue, which refers to "a plaintiff's general disability to sue, such as on account of minority, insanity, incompetence, lack of juridical personality or any other general disqualifications of a party."

Jurisprudence provides that an unregistered association, having no separate juridical personality, lacks the capacity to sue in its own name.

FACTS:

In 2010, the DILG and the DOF issued Joint Memorandum Circular No. 2010-01, directing all local government units to implement Section 219 of the LGC, which requires assessors to revise the real property assessments in their respective jurisdictions every 3 years. In the said Memorandum, the assessors were also ordered to: *(a)* require all owners or administrators of real properties, prior to the preparation of the revised schedule of Fair Market Values, to file sworn statements declaring the true value of their properties and the improvements thereon; and *(b)* comply with the DOF issuances relating to the appraisal and assessment of real properties, particularly, DOF Local Assessment Regulation No. 1-92, DOF Department Order No. 37-09 (Philippine Valuation Standards), and DOF Department Order No. 2010-10 (Mass Appraisal Guidebook). Hence, given that the last reevaluation of real property assessment values in QC was made way back in 1995 under Ordinance No. SP-357, Series of 1995, which thus rendered the values therein outdated, the QC Assessor prepared a revised schedule of FMVs and submitted it to the *Sangguniang Panlungsod* of QC for approval pursuant to Section 212 of the LGC.

On December 5, 2016, the *Sangguniang Panlungsod* of QC enacted the assailed 2016 Ordinance, which:*(a)* approved the revised schedule of FMVs of all lands and Basic Unit Construction Cost for buildings and other structures, whether for residential, commercial, and industrial uses; and *(b)* set the new assessment levels at 5% for residential and 14% for commercial and industrial classifications. The revised schedule increased the FMVs indicated in the 1995 Ordinance to supposedly reflect the prevailing market price of real properties in QC. The 2016 Ordinance was approved on December 14, 2016, and pursuant to Section 6 thereof, the General Revision of Real Property Assessment for lands shall become demandable beginning January 1, 2017, while that for Buildings and other Structures shall take effect beginning 2018.

On April 7, 2017, petitioner Alliance of Quezon City Homeowners' Association, Inc., allegedly a non-stock, non-profit corporation, filed the present petition, praying that: *(a)* a TRO be issued to restrain the implementation of the 2016 Ordinance; *(b)* the said Ordinance be declared unconstitutional for violating substantive due process, and invalid for violating Section 130 of the LGC; and (c) the tax payments made by the QC residents or individuals based on the 2016 Ordinance's revised schedule of FMVs be refunded. The Alliance argued that the 2016 Ordinance should be declared

unconstitutional for violating substantive due process, considering that the increase in FMVs, which resulted in an increase in the taxpayer's base, and ultimately, the taxes to be paid, was unjust, excessive, oppressive, arbitrary, and confiscatory as proscribed under Section 130 of the LGC.

On April 18, 2017, the Court issued a TRO against the implementation of the 2016 Ordinance and required respondents to file their comment.

In their Comment, respondents countered that the petition is procedurally infirm because Alliance: *(a)* failed to exhaust its administrative remedies under the LGC, which were to question the assessments on the taxpayers' properties by filing a protest before the City Treasurer, as well as to assail the constitutionality of the 2016 Ordinance before the Secretary of Justice; *(b)* violated the hierarchy of courts when it directly filed its petition before this Court; *(c)* **has no legal capacity to sue** since its Certificate of Registration as a corporation was revoked by the Securities and Exchange Commission (SEC) in an Order dated February 10, 2004, and it has no separate juridical personality as a homeowners' association due to its non-registration with the Housing and Land Use Regulatory Board (HLURB); and *(d)* is not a real party-in-interest because it does not own any real property in QC to be affected by the 2016 Ordinance. On the substantive aspect, respondents posited that the 2016 Ordinance complied with all the formal and substantive requisites for its validity.

On July 14, 2017, the OSG likewise filed its Comment, arguing that the petition should be dismissed on the grounds of non-exhaustion of administrative remedies, non-observance of the hierarchy of courts, and **lack of *locus standi.***

In the Reply, the Alliance argued that it has legal capacity to sue because it is merely representing its trustees and members who filed the petition in their own personal capacities as taxpayers and residents of QC. In fact, these trustees and members are the ones who will suffer personal and substantial injury by the implementation of the 2016 Ordinance. On the merits, Alliance posited that the 2016 Ordinance failed to comply with both the procedural and substantive requirements for a valid ordinance.

ISSUE:

Whether the Alliance has the legal capacity to sue. (NO)

RULING:

The Rules of Court mandates that only natural or juridical persons, or entities authorized by law may be parties in a civil action. Non-compliance with this requirement renders a case dismissible on the ground of **lack of legal capacity to sue,**which refers to **"a plaintiff's general disability to sue,** such as on account of minority, insanity, incompetence, **lack of juridical personality** or any other general disqualifications of a party."

Jurisprudence provides that **an unregistered association,** having no separate juridical personality, **lacks the capacity to sue in its own name.** In this case, Alliance admitted that it has no juridical personality, considering the revocation of its SEC Certificate of Registration and its failure to register with the HLURB as a homeowner's association. Nevertheless, Alliance insists that the petition should not be dismissed because it was filed by the members of the Board of Trustees in their

own personal capacities, as evidenced by a letter dated March 10, 2017 (Authorization Letter) authorizing its ostensible Treasurer, Danilo Liwanag, to file the petition in their behalf.

The Court disagrees. A perusal of the petition readily shows that it was filed by Alliance, and not by the individual members of its Board of Trustees in their personal capacities. As it is evident from the title and "Parties" section of the petition, the same was filed solely in the name of "Alliance of Quezon City Homeowners' Association, Inc.," as petitioner. Moreover, the Authorization Letter above-adverted to clearly indicates that the signatories therein **signed merely in their official capacities as Alliance's trustees.** In fact, even assuming that the trustees intended to file the case in their own behalf, Section 3, Rule 3 of the Rules of Court requires that their names as beneficiaries must be included in the title of the case, which was, however, not done here. Thus, Alliance's claim that the petition was filed by the trustees in their personal capacities is bereft of merit.

The fact that Liwanag, a natural person, signed and verified the petition did not cure Alliance's lack of legal capacity to file this case. By the same logic, the signatures of the supposed trustees in the Authorization Letter did not confer Alliance with a separate juridical personality required to pursue this case.

D. Venue (Rule 4)

RUDY L. RACPAN, *Petitioner*, -versus- SHARON BARROGA-HAIGH, *Respondent*.
G.R. No. 234499,THIRD DIVISION, June 06, 2018, VELASCO JR., *J.*

The venue of a case is determined by the primary objective for the filing of the case. If the plaintiff seeks the recovery of personal property, the enforcement of a contract or the recovery of damages, his complaint is a personal action that may be filed in the place of residence of either party. On the other hand, if the plaintiff seeks the recovery of real property, or if the action affects title to real property or for the recovery of possession, or for partition or condemnation of, or foreclosure of mortgage on, real property, then the complaint is a real action that must be brought before the court where the real property is located.

Applying the pronouncement in Chua v. Total Office Products and Services, Inc., the Court ruled that where the action is not intended for the recovery of real property but solely for the annulment of a contract, it is a personal action that may be filed in the court where the plaintiff or the respondent resides.

FACTS:

Petitioner Rudy Racpan filed a Complaint "*For Declaration For Nullity of Deed of Sale with Right to Repurchase & Attorney's Fees* before the RTC of Davao City. In his Complaint, petitioner alleged that after his wife's death, he instructed their daughter to arrange his wife's important documents. In so doing, their daughter discovered a *Deed of Sale with Right to Purchase*. The Deed of Sale was purportedly signed by him and his late wife and appeared to convey to respondent Sharon Barroga-

Haigh a real property registered in his name under TCT No. T-142-2011009374 and located in Bo. Tuganay, Municipality of Carmen, Province of Davao del Norte.Petitioner maintained that the Deed of Sale was falsified and fictitious as he never signed any contract, not even any special power of attorney, for the sale or conveyance of the property which is still in his possession.

Respondent contended, by way of affirmative defense, that the venue of the Complaint was improperly laid.

RTC dismissed the complaint for being improperly filed. CA affirmed the decision of the RTC.

Issue:

Whether the CA erred in affirming the dismissal of the petitioner's Complaint. (Yes)

RULING:

The venue was properly laid as the complaint was a personal action.

By weight of jurisprudence, the nature of an action is determined by the allegations in the complaint. In turn, the nature of the action determines its proper venue. Rule 4 of the Rules of Court provides the rules on the situs for bringing real and personal actions.

The venue of a case is determined by the primary objective for the filing of the case. If the plaintiff seeks the recovery of personal property, the enforcement of a contract or the recovery of damages, his complaint is a personal action that may be filed in the place of residence of either party. On the other hand, if the plaintiff seeks the recovery of real property, or if the action affects title to real property or for the recovery of possession, or for partition or condemnation of, or foreclosure of mortgage on, real property, then the complaint is a real action that must be brought before the court where the real property is located.

Applying the pronouncement in *Chua v. Total Office Products and Services*, Inc., the Court ruled that where the action is not intended for the recovery of real property but solely for the annulment of a contract, it is a personal action that may be filed in the court where the plaintiff or the respondent resides.

In the present case, petitioner sought the nullification of the *Deed of Sale with Right to Repurchase* on the strength of this claim: he did not sign the same nor did he execute any special power of attorney in favor of his late wife to do so in his behalf. But, as there was no allegation that the possession and title to the property have been transferred to respondent, nowhere in the Complaint did petitioner allege or pray for the recovery or reconveyance of the real property.

It was a personal action since the complaint was not concerned with the title to or recovery of the real property. Thus, Davao City, where both the petitioner and the respondent reside is the proper venue for the complaint. The appellate court therefore committed a reversible error in affirming the trial court's dismissal of the case for improper venue.

FIRST SARMIENTO PROPERTY HOLDINGS, INC., ***Petitioner*, -versus- PHILIPPINE BANK OF COMMUNICATIONS**, ***Respondent*.** G.R. No. 202836, En Banc, June 19, 2018, Leonen, J.

To determine the nature of an action, whether or not its subject matter is capable or incapable of pecuniary estimation, the nature of the principal action or relief sought must be ascertained. If the principal relief is for the recovery of a sum of money or real property, then the action is capable of pecuniary estimation. However, if the principal relief sought is not for the recovery of sum of money or real property, even if a claim over a sum of money or real property results as a consequence of the principal relief, the action is incapable of pecuniary estimation.

FACTS:

On June 19, 2002, First Sarmiento obtained from Philippine Bank of Communications (PBCOM) a P40,000,000.00 loan, which was secured by a real estate mortgage over 1,076 parcels of land. Thereafter, the loan agreement was amended with the increase of the loan amount to P51,200,000.00 and was later increased to P100,000,000.00.

On January 2, 2006, PBCOM filed a Petition for Extrajudicial Foreclosure of Real Estate Mortgage.It claimed in its Petition that it sent First Sarmiento several demand letters, yet First Sarmiento still failed to pay the principal amount and accrued interest on the loan. This prompted First Sarmiento to file a Complaint for annulment of real estate mortgage with the RTC. However, the Clerk of Court refused to accept the Complaint in the absence of the mortgaged properties' tax declarations, which would be used to assess the docket fees.

On December 29, 2011, Executive Judge Francisco, First Vice-Executive Judge Mendoza Arcega, Second Vice-Executive Judge Liban, and Third Vice-Executive Judge Gabo, Jr. of the RTC of City of Malolos, Bulacan, granted First Sarmiento's Urgent Motion to Consider the Value of Subject Matter of the Complaint as Not Capable of Pecuniary Estimation, and ruled that First Sarmiento's action for annulment of real estate mortgage was incapable of pecuniary estimation. On the same day, the mortgage properties were auctioned and sold to PBCOM as the highest bidder.

Thus, on January 2, 2012, claiming that it never received the loan proceeds of P100,000,000.00 from PBCOM, First Sarmiento filed a Complaint for annulment of real estate mortgage and its amendments, with prayer for the issuance of temporary restraining order and preliminary injunction. It paid a filing fee of P5,545.00. That same day, Judge Francisco issued an ex-parte temporary restraining order for 72 hours, enjoining the registration of the certificate of sale with the Registry of Deeds of Bulacan.

Consequently, the RTC directed the parties to observe the status quo ante. On January 24, 2012, the Clerk of Court and Ex-Officio Sheriff of Malolos City, Bulacan issued a certificate of sale to PBCOM.

In its Opposition, PBCOM asserted that the RTC failed to acquire jurisdiction over First Sarmiento's Complaint because the action for annulment of mortgage was a real action; thus, the filing fees filed should have been based on the fair market value of the mortgaged properties. PBCOM also pointed out that the RTC's directive to maintain the status quo order beyond 72 hours constituted an indefinite extension of the temporary restraining order, a clear contravention of the rules.

The RTC dismissed the Complaint filed by First Sarmiento for lack of jurisdiction. The RTC likewise denied its Motion for Reconsideration prompting First Sarmiento to seek direct recourse with the SC via Petition for Review under Rule 45. Complying with the SC's order to file a Comment on the said petition, PBCOM contends that petitioner's action to annul the real estate mortgage and enjoin the foreclosure proceedings did not hide the true objective of the action, which is to restore petitioner's ownership of the foreclosed properties.

In its Reply, First Sarmiento denied that its Complaint was for the annulment of the foreclosure sale, because when it filed its Complaint, the foreclosure sale had not yet happened.

Both parties also reiterated their arguments in their respective memoranda. Hence, the instant petition.

ISSUE:

Whether the RTC obtained jurisdiction over First Sarmiento Corporation, Inc.'s Complaint for annulment of real estate mortgage.

RULING:

Yes. Section 19(1) of Batas Pambansa Blg. 129, as amended, provides Regional Trial Courts with exclusive, original jurisdiction over "all civil actions in which the subject of the litigation is incapable of pecuniary estimation." *Lapitan v. Scandia* instructed that to determine whether the subject matter of an action is incapable of pecuniary estimation, the nature of the principal action or remedy sought must first be established. However, it also stressed that where the money claim is only a consequence of the remedy sought, the action is said to be one incapable of pecuniary estimation.

Far East Bank and Trust Company v. Shemberg Marketing Corporation stated that an action for cancellation of mortgage has a subject that is incapable of pecuniary estimation. Section 6 of Act No. 3135, as amended, provides that a property sold through an extrajudicial sale may be redeemed "at any time within the term of one year from and after the date of the sale". As clarified in the case of *Mahinay v. Dura Tire & Rubber Industries Inc.,* "[t]he date of the sale' referred to in Section 6 is the date the certificate of sale is registered with the Register of Deeds. This is because the sale of registered land does not 'take effect as a conveyance, or bind the land' until it is registered."

In the case at bar, considering that petitioner paid the docket fees as computed by the clerk of court, upon the direction of the Executive Judge, this Court is convinced that the RTC acquired jurisdiction over the Complaint for annulment of real estate mortgage. Furthermore, even if it is assumed that the instant case were a real action and the correct docket fees were not paid by petitioner, the case should not have been dismissed; instead, the payment of additional docket fees should have been made a lien on the judgment award. The records attest that in filing its complaint, petitioner readily paid the docket fees assessed by the clerk of court; hence, there was no evidence of bad faith or intention to defraud the government that would have rightfully merited the dismissal of the Complaint.

In light of the foregoing, to determine the nature of an action, whether or not its subject matter is capable or incapable of pecuniary estimation, the nature of the principal action or relief sought must be ascertained. If the principal relief is for the recovery of a sum of money or real property, then the action is capable of pecuniary estimation. However, if the principal relief sought is not for the

recovery of sum of money or real property, even if a claim over a sum of money or real property results as a consequence of the principal relief, the action is incapable of pecuniary estimation.

RADIOWEALTH FINANCE COMPANY, INC., PETITIONER, VS. ALFONSO O. PINEDA, JR., AND JOSEPHINE C. PINEDA, RESPONDENTS.

[G.R. No. 227147, SECOND DIVISION, July 30, 2018, PERLAS-BERNABE, J.]

CASE DOCTRINE:

The parties are not precluded from agreeing in writing on an exclusive venue, as qualified by Section 4 of the same rule. Written stipulations as to venue may be restrictive in the sense that the suit may be filed only in the place agreed upon, or merely permissive in that the parties may file their suit not only in the place agreed upon but also in the places fixed by law. As in any other agreement, what is essential is the ascertainment of the intention of the parties respecting the matter.

FACTS:

In its Complaint, petitioner alleged that it extended a loan to respondents, as evidenced by a Promissory Note, in the amount of P557,808.00 payable in 24 equal monthly installments of P23,242.00, which was secured by a Chattel Mortgageconstituted on a vehicle owned by respondents. Notably, the Promissory Note states that "any action to enforce payment of any sums due under this Note shall exclusively be brought in the proper court within the National Capital Judicial Region or in any place where Radiowealth Finance Company, Inc. has a branch/office, a[t] its sole option."

Due to respondents' default, petitioner demanded payment of the whole remaining balance of the loan, which stood at P510,132.00 as of June 8, 2015, excluding penalty charges. As the demand went unheeded, petitioner filed the instant suit for sum of money and damages with application for a Writ of Replevin before the RTC, further alleging that it has a branch in San Mateo, Rizal.

RTC: The RTC issued a Writ of Replevin, due to respondents' continued failure to pay their monetary obligations to petitioner and/or surrender their vehicle subject of the Chattel Mortgage.

However, in an Amended Order, the RTC recalled the Writ of Replevin and ordered the dismissal of petitioner's complaint on the ground of lack of jurisdiction. It pointed out that since: *(a)* petitioner's principal place of business is in Mandaluyong City, Metro Manila; and *(b)* respondents' residence is in Porac, Pampanga, it has no jurisdiction over any of the party-litigants, warranting the dismissal of the complaint.

Hence, this petition.

ISSUE:

Whether or not the RTC correctly dismissed petitioner's complaint on the ground of lack of jurisdiction.

RULING:

No. The RTC incorrectly dismissed petitioner's complaint on the ground of lack of jurisdiction.

In this case, petitioner filed a complaint for, inter alia, sum of money involving the amount of P510,132.00. Pursuant to Section 19 (8) of Batas Pambansa Blg. (BP) 129,as amended by Section 5 of Republic Act No. (RA) 7691, the RTC irrefragably has jurisdiction over petitioner's complaint. Thus, it erred in dismissing petitioner's complaint on the ground of its purported lack of jurisdiction.

Clearly, the RTC confused the concepts of jurisdiction and venue which are not synonymous with each other. Even assuming arguendo that the RTC correctly pertained to venue, it still committed grave error in dismissing petitioner's complaint, as will be explained hereunder.

Rule 4 of the Rules of Court governs the rules on venue of civil actions. In Briones v. Court of Appeals, the Court succinctly discussed the rule on venue, including the import of restrictive stipulations on venue:

"Based therefrom, the general rule is that the venue of real actions is the court which has jurisdiction over the area wherein the real property involved, or a portion thereof, is situated; while the venue of personal actions is the court which has jurisdiction where the plaintiff or the defendant resides, at the election of the plaintiff. As an exception, jurisprudence in Legaspi v. Rep. of the Phils. instructs that the parties, thru a written instrument, may either introduce another venue where actions arising from such instrument may be filed, or restrict the filing of said actions in a certain exclusive venue, viz.:

The parties, however, are not precluded from agreeing in writing on an exclusive venue, as qualified by Section 4 of the same rule. Written stipulations as to venue may be restrictive in the sense that the suit may be filed only in the place agreed upon, or merely permissive in that the parties may file their suit not only in the place agreed upon but also in the places fixed by law. As in any other agreement, what is essential is the ascertainment of the intention of the parties respecting the matter.

As regards restrictive stipulations on venue, jurisprudence instructs that it must be shown that such stipulation is exclusive. In the absence of qualifying or restrictive words, such as "exclusively," "waiving for this purpose any other venue," "shall only" preceding the designation of venue, "to the exclusion of the other courts," or words of similar import, the stipulation should be deemed as merely an agreement on an additional forum, not as limiting venue to the specified place."

In this case, the venue stipulation found in the subject Promissory Note – which reads "[a]ny action to enforce payment of any sums due under this Note shall exclusively be brought in the proper court within [the] National Capital Judicial Region or in any place where Radiowealth Finance Company, Inc. has a branch/office, a[t] its sole option" – is indeed restrictive in nature, considering that it effectively limits the venue of the actions arising therefrom to the courts of: (a) the National Capital Judicial Region; or (b) any place where petitioner has a branch/office. In light of petitioner's standing allegation that it has a branch in San Mateo, Rizal, it appears that venue has been properly laid, unless such allegation has been disputed and successfully rebutted later on.

Finally, even if it appears that venue has been improperly laid, it is well-settled that the courts may not motu proprio dismiss the case on the ground of improper venue. Without any objection at the earliest opportunity, as in a motion to dismiss or in the answer, it is deemed waived.

E. Pleadings

1. Kinds (Rule 6)

2. Parts of a pleading (Rule 7)

MA. VICTORIA M. GALANG, *Petitioner*, -versus- PEAKHOLD FINANCE CORPORATION AND THE REGISTER OF DEEDS OF CALOOCAN CITY, *Respondents*.G.R. No. 233922, SECOND DIVISION, January 24, 2018, PERLAS-BERNABE, *J.*

In Fontana Development Corporation v. Vukasinovic:
To determine whether a party violated the rule against forum shopping, it is essential to ask whether a final judgment in one case will amount to res judicata in another or whether the following elements of litis pendentia are present:
(a) identity of parties, or at least such parties as representing the same interests in both actions;
(b) identity of rights asserted and reliefs prayed for, the relief being founded on the same facts; and
(c) the identity of the two (2) preceding particulars, such that any judgment rendered in the other action will, regardless of which party is successful, amount to res judicata in the action under consideration.

Forum shopping is the act of a litigant who repetitively availed of several judicial remedies in different courts, simultaneously or successively, all substantially founded on the same transactions and the same essential facts and circumstances, and all raising substantially the same issues, either pending in or already resolved by some other court, to increase the chances of obtaining a favorable decision if not in one court, then in another. It can be committed in three (3) ways:
(1) by filing multiple cases based on the same cause of action and with the same prayer, the previous case not having been resolved yet (where the ground for dismissal is litis pendentia);
(2) by filing multiple cases based on the same cause of action and with the same prayer, the previous case having been finally resolved (where the ground for dismissal is res judicata); and
(3) by filing multiple cases based on the same cause of action but with different prayers (splitting of causes of action, where the ground for dismissal is also either litis pendentia or res judicata). In this instance, Galang filed a total of four (4) cases. A judicious perusal of the records reveals that there is no identity of causes of actions and reliefs prayed for among the said cases.

FACTS:

This case stemmed from a complaint for annulment of deed of real estate mortgage and foreclosure proceedings filed by Galang against respondent Peakhold Finance Corporation (Peakhold) before the RTC of Caloocan City, Branch 123 (RTC-Br. 123), docketed as Civil Case No. C-22988 (Annulment Case).

While the Annulment Case was pending, Peakhold filed an Ex-Parte Petition for Issuance of Writ of Possession (Ex-Parte Petition) over the subject lot, before the RTC of Caloocan City, Branch 122 (RTC-Br. 122), docketed as LRC Case No. C-6032, to which Galang filed her opposition.

On November 27, 2012, the RTC-Br. 122 granted Peakhold's Ex-Parte Petition, noted Galang's opposition, and ordered the issuance of a writ of possession in favor of Peakhold. Initially, Galang

filed a motion for extension of time to file a petition for review before the CA. Further, Galang filed a Petition for Relief from Judgment contending that the Ex-Parte Petition is not summary in nature and should have been threshed out in an adversarial proceeding, as it essentially deals with the validity of the subject deed. After filing the Petition for Relief Case, Galang manifested that he is withdrawing the filing of the intended petition for review before the CA, which was granted on April 24, 2013.

Thus, on May 7, 2013, Peakhold, through a Motion to Dismiss, **sought the dismissal of the Petition for Relief Case on the ground of forum shopping.** On September 2, 2013, the RTC-Br. 122 granted the said motion.

Galang elevated the matter to the CA via a petition for certiorari and mandamus. During the pendency of the Certiorari Case, the Annulment Case was re-raffled to the RTC-Br. 126. Considering the implementation of the writ of possession, Galang was prompted to file a Motion for Leave to Amend Complaint and to Admit Attached Amended Complaint (Amended Complaint) incorporating her additional prayer for reconveyance of the subject lot.

In response, Peakhold**moved to dismiss the Annulment Case on the ground of, inter alia, forum shopping, since the Amended Complaint failed to disclose that Galang has a pending Certiorari** Case before the CA, **as well as a complaint for qualified theft** (Criminal Complaint) against the President of Peakhold and a certain Jocelyn "Gigi" Cortina-Donasco (Donasco) before the Office of the City Prosecutor of Caloocan City (OCP Caloocan).

Initially, the RTC-Br. 126 issued an Order denying Peakhold's motion to dismiss. On reconsideration, however, the RTC-Br. 126 issued an Order finding Galang guilty of forum shopping. Aggrieved, Galang moved for reconsideration, but the same was denied; hence, the appeal. On April 21, 2017, the CA affirmed the RTC-Br. 126 ruling. It held that Galang is guilty of forum shopping. Dissatisfied, Galang sought reconsideration which was denied; hence, the instant petition.

ISSUE:

Whether or not the CA erred in finding that Galang committed forum shopping when she failed to declare the pending Certiorari Case and Criminal Complaint in her Amended Complaint in the Annulment Case?

RULING:
The petition is meritorious.

Forum shopping is the act of a litigant who repetitively availed of several judicial remedies in different courts, simultaneously or successively, all substantially founded on the same transactions and the same essential facts and circumstances, and all raising substantially the same issues, either pending in or already resolved by some other court, to increase the chances of obtaining a favorable decision if not in one court, then in another.

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

Thus, **to determine whether a party violated the rule against forum shopping, it is essential to ask whether a final judgment in one case will amount to res judicata in another or whether the following elements of litis pendentia are present:**
(a) identity of parties, or at least such parties as representing the same interests in both actions;
(b) identity of rights asserted and reliefs prayed for, the relief being founded on the same facts; and
(c) the identity of the two (2) preceding particulars, such that any judgment rendered in the other action will, regardless of which party is successful, amount to res judicata in the action under consideration.

In this instance, Galang filed a total of four (4) cases. A judicious perusal of the records **reveals that there is no identity of causes of actions and reliefs prayed for** among the said cases.

As already adverted to, the Annulment Case seeks to nullify the mortgage document executed in Peakhold's favor, as well as the subsequent foreclosure proceedings, given that the alleged real estate mortgage covering the subject lot was void for having been executed without Galang's knowledge and consent. In the Petition for Relief Case, Galang sought to set aside the ex- parte writ of possession, contending that the same should have been threshed out in an adversarial proceeding, since it involves a fictitious deed of real estate mortgage, where the mortgagor therein is supposedly an impostor of Galang; while the Certiorari Case sought to revive the Petition for Relief Case which was dismissed on the ground of forum shopping. Finally, the Criminal Complaint involves the determination of whether or not there is probable cause to indict the President of Peakhold and Donasco for Qualified Theft.

Similarly, the issues raised and determined in these cases likewise differ. In the Annulment Case, the issue is whether or not the deed of real estate mortgage is void, thereby entitling Galang to the recovery of the subject lot. In the Petition for Relief Case, the issue is whether or not extrinsic fraud was actually employed by Peakhold during the Ex-Parte Petition proceedings. In the Certiorari Case, the issue is whether or not the RTC-Br. 122 acted with grave abuse of discretion when it affirmed the dismissal of Galang's Petition for Relief. Lastly, in the Criminal Complaint, the issue is whether or not there is probable cause to believe that the President of Peakhold and Donasco committed the crime of Qualified Theft and should stand trial therefor.

Given the above, the Court finds that Galang correctly declared in the Amended Complaint in the Annulment Case that she did not commence any action or proceeding which involves the same causes of actions, reliefs, and issues in any court, tribunal, or agency at the time she filed the said Amended Complaint, or anytime thereafter. In this light, there is no litis pendentia, as the cases essentially involve different causes of actions, reliefs, and issues. Thus, any judgment rendered in one will not necessarily amount to res judicata in the action under consideration.

Moreover, the cases also differ in their form and nature, for while a ruling in the Annulment Case may result in the recovery of ownership and possession of the subject lot, a favorable ruling in the other cases will not have the same effect, considering that: (a) the granting of the Certiorari Case will lead to the granting of the Petition for Relief Case; (b) a favorable result in the Petition for Relief Case would end up in the conduct of adversarial proceedings before a writ of possession concerning the subject lot may be issued; and (c) the resolution of the Criminal Complaint is only determinative of whether or not the President of Peakhold and/or Donasco should be indicted of the crime of Qualified Theft and stand trial therefor.

Accordingly, the CA erred in upholding the dismissal of the Annulment Case on the ground of forum shopping. Thus, a revival of the Annulment Case and its remand to RTC-Br. 126 is in order.

RAMON K. ILUSORIO, MA. LOURDES C. CRISTOBAL, ROMEO G. RODRIGUEZ, EDUARDO C. ROJAS, CESAR B. CRISOL, VIOLETA J. JOSEF, ERLINDA K. ILUSORIO, SHEREEN K. ILUSORIO, and CECILIA A. BISUÑA, *Petitioners,,* -versus - SYLVIA K. ILUSORIO, *Respondent.* G.R. No. 210475, SECOND DIVISION, April 11, 2018, PERALTA, J.

In Spouses Gutierrez v. Spouses Valiente, et al.:x x x [The] general prayer is broad enough "to justify extension of a remedy different from or together with the specific remedy sought." Even without the prayer for a specific remedy, proper relief may be granted by the court if the facts alleged in the complaint and the evidence introduced so warrant. The court shall grant relief warranted by the allegations and the proof, even if no such relief is prayed for. The prayer in the complaint for other reliefs equitable and just in the premises justifies the grant of a relief not otherwise specifically prayed for.

While the petition did not categorically state the reversal and setting aside of the Order dated April 3, 2013 as one of the specific reliefs desired, causing the CA to hastily conclude that there was no principal action sought by petitioners, it did contain a general prayer "for other legal and equitable reliefs." This general prayer should be interpreted to include the plea for the nullity of the Order because it is already evident from the allegations contained in the body of the petition.

FACTS:

Sylvia Ilusorio filed a complaint for libel against petitioners Ilusorio et al. It stemmed from the alleged libelous book entitled "On the Edge of Heaven" authored by Erlinda and circulated by the Directors/Officers of PI-EKI Foundation (formerly House of St. Joseph Foundation), Senior Partners Foundation, Inc. (formerly Quantum Foundation of the Philippines), and Multinational Investment Bancorporation.

Initially, the complaint was dismissed but upon MR, the DOJ found probable cause and filed the information. Subsequently, petitioners filed a motion to quash. The trial court denied the motion through an Order dated April 3, 2013.

Immediately, petitioners filed before a CA a petition for certiorari with a prayer for TRO and or WPI. They prayed for the following:

1. In view of extreme urgency and in order that the petitioners may not suffer great and irreparable injuries, a Temporary Restraining Order/Preliminary Injunction enjoining the respondents from proceeding with the subject criminal case;

2. The petitioners are willing to post a bond for this purpose as may be directed by this Honorable Court; [and]
3. The petitioners pray for other legal and equitable reliefs

The CA dismissed the petition. According to the CA, based on the reliefs prayed for, petitioners are only seeking injunctive relief sans the requisite principal action for the nullification of any issuances rendered by the RTC. It ruled that the petition indubitably failed for lack of principal action on which the prayer for injunction relief rests.

ISSUE

Whether the failure of petitioner to include the prayer to annul the order of the RTC is fatal and warrants its dismissal (NO)

RULING

The failure of petitioners to state in their prayer the declaration of nullity of the RTC Order dated April 3, 2013 is a mere formal defect. It was a result of a mere inadvertence; hence, constituting excusable negligence

The CA should have disregarded the fact that the prayer of the petition in CA-G.R. SP No. 130416 did not specifically seek to declare as void the Order dated April 3, 2013. On its face, the main object of the petition was clear and unmistakable

*In Spouses Gutierrez v. Spouses Valiente, et al.:*x x x [The] general prayer is broad enough "to justify extension of a remedy different from or together with the specific remedy sought." Even without the prayer for a specific remedy, proper relief may be granted by the court if the facts alleged in the complaint and the evidence introduced so warrant. The court shall grant relief warranted by the allegations and the proof, even if no such relief is prayed for. The prayer in the complaint for other reliefs equitable and just in the premises justifies the grant of a relief not otherwise specifically prayed for..

The pleading shall specify the relief sought, but it may add a general prayer for such further or other relief as may be deemed just or equitable. While the petition did not categorically state the reversal and setting aside of the Order dated April 3, 2013 as one of the specific reliefs desired, causing the CA to hastily conclude that there was no principal action sought by petitioners, it did contain a general prayer "for other legal and equitable reliefs." This general prayer should be interpreted to include the plea for the nullity of the Order because it is already evident from the allegations contained in the body of the petition.

Certainly, a general prayer for "other reliefs just and equitable" appearing on a complaint or pleading (a petition in this case) normally enables the court to award reliefs supported by the complaint or other pleadings, by the facts admitted at the trial, and by the evidence adduced by the parties, even if these reliefs are not specifically prayed for in the complaint.

3. Manner of making allegations (Rule 8)

FLORO MERCENE, Petitioner vs. GOVERNMENT SERVICE INSURANCE SYSTEM, Respondent.
G.R. No. 192971, THIRD DIVISION, January 10, 2018, MARTIRES, J.

Material averments not specifically denied are deemed admitted. Nonetheless, his conclusion that GSIS judicially admitted that its right to foreclose had prescribed is erroneous. It must be remembered that conclusions of fact and law stated in the complaint are not deemed admitted by the failure to make a specific denial. Only ultimate facts must be alleged in any pleading and only material allegation of facts need to be specifically denied. The allegation of prescription in Mercene's complaint is a mere conclusion of law.

FACTS

On 19 January 1965, petitioner FloroMercene obtained a loan from respondent Government Service Insurance System in the amount of ₱29,500.00. As security, a real estate mortgage was executed over Mercene's property in Quezon City, registered under Transfer Certificate of Title No. 90535. The mortgage was registered and annotated on the title on 24 March 1965.

On 14 May 1968, Mercene contracted another loan with GSIS for the amount of ₱14,500.00. The loan was likewise secured by a real estate mortgage on the same parcel of land. The following day, the loan was registered and duly annotated on the title.

On 11 June 2004, Mercene opted to file a complaint for Quieting of Title against GSIS. He alleged that: since 1968 until the time the complaint was filed, GSIS never exercised its rights as a mortgagee; the real estate mortgage over his property constituted a cloud on the title; GSIS' right to foreclose had prescribed. In its answer, GSIS assailed that the complaint failed to state a cause of action and that prescription does not run against it because it is a government entity.

During the pre-trial conference, Mercene manifested that he would file a motion for judgment on the pleadings. There being no objection, the RTC granted the motion for judgment on the pleadings.

The RTC granted Mercene's complaint and ordered the cancellation of the mortgages annotated on the title. It ruled that the real estate mortgages annotated on the title constituted a cloud thereto, because the annotations appeared to be valid but was ineffective because the GSIS' right as a mortgagee had prescribed because more than ten (10) years had lapsed from the time the cause of action had accrued. The R TC stated that prescription ran against GSIS because it is a juridical person with a separate personality, and with the power to sue and be sued.

Aggrieved, GSIS appealed before the CA.

The CA reversed the RTC decision. The appellate court posited that the trial court erred in declaring that GSIS' right to foreclose the mortgaged properties had prescribed. It highlighted that Mercene's complaint neither alleged the maturity date of the loans, nor the fact that a demand for payment was made. The CA explained that prescription commences only upon the accrual of the cause of action, and that a cause of action in a written contract accrues only when there is an actual breach or violation. Thus, the appellate court surmised that no prescription had set in against GSIS because it has not made a demand to Mercene.

Mercene moved for reconsideration, but the same was denied by the CA. Hence, this present petition. He assails the CA decision for entertaining issues that were not addressed by the trial court, and that GSIS failed to specifically deny the allegations in his complaint, and consequently, that the GSIS had judicially admitted that its right to foreclose the mortgage had prescribed.

ISSUES:

1. Whether the court of appeals erred in disregarding the judicial admission allegedly made by GSIS
2. Whether the court of appeals erred in ruling that the real estate mortgages had yet to prescribe.

RULING:

1. No. Only ultimate facts need be specifically denied.

The Court agrees with Mercene that **material averments not specifically denied are deemed admitted. Nonetheless,his conclusion that GSIS judicially admitted that its right to foreclose had prescribed is erroneous**. It must be remembered that **conclusions of fact and law stated in the complaint are not deemed admitted by the failure to make a specific denial**. This is true considering that **only ultimate facts must be alleged in any pleading and only material allegation of facts need to be specifically denied**.

A conclusion of law is a legal inference on a question of law made as a result of a factual showing where no further evidence is required**. The allegation of prescription in Mercene's complaint is a mere conclusion of law.Labelling an obligation to have prescribed without specifying the circumstances behind it is a mere conclusion of law.** As would be discussed further, the fact that GSIS had not instituted any action within ten (10) years after the loan had been contracted is insufficient to hold that prescription had set in.

Thus, even if GSIS' denial would not be considered as a specific denial, only the fact that GSIS had not commenced any action, would be deemed admitted at the most. This is true considering that the circumstances to establish prescription against GSIS have not been alleged with particularity.

2. Yes.

Prescription runs in mortgage contract from the time the cause of action arose and not from the time of its execution. In other words, ten (10) years may lapse from the date of the execution of contract, without barring a cause of action on the mortgage when there is a gap between the period of execution of the contract and the due date or between the due date and the demand date in cases when demand is necessary.

The mortgage contracts in this case were executed by SaturninoPetalcorin in 1982. The maturity dates of FISLAI's loans were repeatedly extended until the loans became due and demandable only in 1990. Respondent informed petitioner of its decision to foreclose its properties and demanded payment in 1999.

The RTC erred in ruling that GSIS' right to foreclose had prescribed because the allegations in Mercene's complaint were insufficient to establish prescription against GSIS. The only information

the trial court had were the dates of the execution of the loan, and the annotation of the mortgages on the title. As elucidated in the above-mentioned decisions, prescription of the right to foreclose mortgages is not reckoned from the date of execution of the contract. Rather, prescription commences from the time the cause of action accrues; in other words, from the time the obligation becomes due and demandable, or upon demand by the creditor/mortgagor, as the case may be.

4. Effect of failure to plead (Rule 9)

5. Amended and supplemental pleadings (Rule 10)

6. When to file responsive pleadings (Rule 11)

F. Filing and service of pleadings, judgments, final orders, and resolutions

1. Rules on payment of docket fees; effect of non-payment

JONATHAN Y. DEE, *Petitioner*, - versus -
HARVEST ALL INVESTMENT LIMITED, VICTORY FUND LIMITED, BOND EAST PRIVATE LIMITED, and ALBERT HONG HIN KAY, as Minority Shareholders of ALLIANCE SELECT FOODS INTERNATIONAL, INC., and HEDY S.C. YAP-CHUA, as Director and Shareholder of ALLIANCE SELECT FOODS INTERNATIONAL, INC., *Respondents*
x - x
G.R. No. 224871
HARVEST ALL INVESTMENT LIMITED, VICTORY FUND LIMITED, BOND EAST PRIVATE LIMITED, ALBERT HONG HIN KAY, as Minority Shareholders of Alliance Select Foods International, Inc., and HEDY S.C. YAP-CHUA, as a Director and Shareholder of Alliance Select Foods International, Inc., *Petitioners,* - versus -
ALLIANCE SELECT FOODS INTERNATIONAL, INC., GEORGE E. SYCIP, JONATHAN Y. DEE, RAYMUND K.H. SEE, MARY GRACE T. VERA-CRUZ, ANTONIO C. PACIS, ERWIN M. ELECHICON, and BARBARA ANNE C. MIGALLOS, *Respondents.*
G.R. No. 224834, FIRST DIVISION, March 15, 2017, PERLAS-BERNABE, *J.*

An intra-corporate controversy may involve a subject matter which is either capable or incapable of pecuniary estimation.

*A cursory perusal of Harvest All, et al.'s Complaint and Amended Complaint reveals that its main purpose is to have Alliance hold its 2015 ASM on the date set in the corporation's by-laws, or at the time when Alliance's SRO has yet to fully materialize, so that their voting interest with the corporation would somehow be preserved. Thus, Harvest All, et al. sought for the nullity of the Alliance Board Resolution which indefinitely postponed the corporation's 2015 ASM pending completion of subscription to the SRO. Certainly, Harvest All, et al.'s prayer for nullity, as well as the concomitant relief of holding the 2015 ASM as scheduled in the by-laws, **do not involve the recovery of sum of money.** The mere mention of Alliance's impending SRO valued at ₱1 Billion cannot transform the nature of Harvest All, et al.'s action to one capable of pecuniary estimation.**Clearly therefore, Harvest All, et al.'s action was one incapable of pecuniary estimation.***

In view of the foregoing, and having classified Harvest All, et al.'s action as one incapable of pecuniary estimation, the Court finds that Harvest All, et al. should be made to pay the appropriate docket fees in

accordance with the applicable fees provided under Section 7(b)(3) of Rule 141 (fees for all other actions not involving property) of the Revised Rules of Court, in conformity with A.M. No. 04-02-04-SC dated October 5, 2016.

FACTS:

Harvest All Investment Limited, Victory Fund Limited, Bondeast Private Limited, Albert Hong Hin Kay, and Hedy Yap Chua (Harvest All, et al.) are minority stockholders of Alliance Select Foods International, Inc. (Alliance), with Hedy Yap Chua acting as a member of Alliance's Board of Directors.

As per Alliance's by-laws, its Annual Stockholders' Meeting (ASM) is held every June 15. However, in a Special Board of Directors Meeting, the Board of Directors, over Hedy Yap Chua's objections, passed a Board Resolution indefinitely postponing Alliance's 2015 ASM pending complete subscription to its Stock Rights Offering (SRO) consisting of shares with total value of ₱1 Billion which was earlier approved in a Board Resolution. Such postponement was made to give the stockholders of Alliance better representation in the annual meeting, after taking into consideration their subscription to the SRO of Alliance.

Harvest All, et al. then filed a Complaint involving an intra-corporate controversy against Alliance, and its other Board members (Alliance Board).

Harvest All, et al. claimed that the subscription to the new shares through the SRO cannot be made a condition precedent to the exercise by the current stockholders of their right to vote in the 2015 ASM; otherwise, they will be deprived of their full voting rights proportionate to their existing shareholdings. Thus, Harvest All, et al. prayed for the declaration of nullity of the Board Resolution indefinitely postponing the 2015 ASM, as well as the Board Resolution approving the SRO. The Clerk of Court of the RTC assessed Harvest All, et al. with filing fees amounting to ₱8,860.00 which they paid accordingly.

Later on, Harvest All, et al. filed an Amended Complaint, deleting its prayer to declare null and void the Board Resolution approving the SRO, and instead, prayed that the Alliance Board be enjoined from implementing the SRO prior to and as a condition for the holding of the 2015 ASM.

Alliance Board raised the issue of lack of jurisdiction on the ground of Harvest All, et al.'s failure to pay the correct filing fees. It argued that the latter should have paid P20 Million, more or less, in filing fees based on the SRO which was valued at ₱1 Billion.

Harvest All, et al. maintained that they paid the correct filing fees, considering that the subject of their complaint is the holding of the 2015 ASM and not a claim on the aforesaid value of the SRO. Harvest All, et al. likewise pointed out that they simply relied on the assessment of the Clerk of Court and had no intention to defraud the government.

The RTC dismissed the instant complaint for lack of jurisdiction due to Harvest All, et al.'s failure to pay the correct filing fees. Citing Rule 141 of the Rules of Court, as amended by A.M. No. 04-2-04-SC, and the Court's pronouncement in *Lu v. Lu Ym, Sr. (Lu)*, the RTC found that the basis for the computation of filing fees should have been the ₱1 Billion value of the SRO, it being the property in litigation. As such, Harvest All, et al. should have paid filing fees in the amount of more or less ₱20

Million and not just ₱8,860.00. In this regard, the RTC also found that Harvest All, et al.'s payment of incorrect filing fees was done in bad faith and with clear intent to defraud the government.

On appeal, the CA reversed the RTC's order of dismissal, and reinstated the case and remanded the same to the court *a quo* for further proceedings after payment of the proper legal fees. Also citing Rule 141 of the Rules of Court, as amended by A.M. No. 04-2-04-SC, and *Lu*, the CA held that the prevailing rule is that all intra-corporate controversies always involve a property in litigation. Consequently, it agreed that the basis for the computation of filing fees should have been the ₱1 Billion value of the SRO and, thus, Harvest All, et al. should have paid filing fees in the amount of more or less ₱20 Million and not just ₱8,860.00. The CA further ruled that Harvest All, et al. were not in bad faith and had no intention of defrauding the government, as they merely relied in the assessment of the Clerk of Court.

ISSUE:

Whether the Harvest All, et. al.'s action is incapable of pecuniary estimation. (YES)

RULING:

An intra-corporate controversy may involve a subject matter which is either capable or incapable of pecuniary estimation. In *Cabrera v. Francisco,* the Court laid down the parameters in determining whether an action is considered capable of pecuniary estimation or not:

> In determining whether an action is one the subject matter of which is not capable of pecuniary estimation this Court has adopted the criterion of first ascertaining the nature of the principal action or remedy sought. If it is primarily for the recovery of a sum of money, the claim is considered capable of pecuniary estimation, and whether jurisdiction is in the municipal courts or in the CFI would depend on the amount of the claim. However, where the basic issue is something other than the right to recover a sum of money, where the money claim is purely incidental to, or a consequence of, the principal relief sought, this Court has considered such actions as cases where the subject of the litigation may not be estimated in terms of money, and are cognizable exclusively by CFI (now RTCs).

A cursory perusal of Harvest All, et al.'s Complaint and Amended Complaint reveals that its main purpose is to have Alliance hold its 2015 ASM on the date set in the corporation's by-laws, or at the time when Alliance's SRO has yet to fully materialize, so that their voting interest with the corporation would somehow be preserved. Thus, Harvest All, et al. sought for the nullity of the Alliance Board Resolution which indefinitely postponed the corporation's 2015 ASM pending completion of subscription to the SRO. Certainly, Harvest All, et al.'s prayer for nullity, as well as the concomitant relief of holding the 2015 ASM as scheduled in the by-laws, **do not involve the recovery of sum of money.**

The mere mention of Alliance's impending SRO valued at ₱1 Billion cannot transform the nature of Harvest All, et al.'s action to one capable of pecuniary estimation, considering that: (a) Harvest All, et al. do not claim ownership of, or much less entitlement to, the shares subject of the SRO; and (b) such mention was merely narrative or descriptive in order to emphasize the severe dilution that their voting interest as minority shareholders would suffer if the 2015 ASM were to be held after the SRO was completed. If, in the end, a sum of money or anything capable of pecuniary estimation would be

recovered by virtue of Harvest All, et al.'s complaint, then it would simply be the consequence of their principal action. **Clearly therefore, Harvest All, et al.'s action was one incapable of pecuniary estimation.**

At this juncture, it should be mentioned that the Court passed A.M. No. 04-02-04-SC dated October 5, 2016, which introduced amendments to the schedule of legal fees to be collected in various commercial cases, including those involving intra-corporate controversies. Pertinent portions of A.M. No. 04-02-04-SC read:

> NOW, THEREFORE, the Court resolves to ADOPT a new schedule of filing fees as follows:
>
> 4. Section 21(k) of Rule 141 of the Revised Rules of Court is hereby DELETED as the fees covering petitions for insolvency are already provided for in this Resolution. **As for cases involving intra-corporate controversies, the applicable fees shall be those provided under Section 7(a), 7(b)(1), or 7(b)(3) of Rule 141 of the Revised Rules of Court depending on the nature of the action.**

Verily, the deletion of Section 21(k) of Rule 141 and in lieu thereof, the application of (1) Section 7(a) where fees for actions where the value of the subject matter can be determined/estimated; (2) 7(b)(1) where fees for actions where the value of the subject matter cannot be estimated; or (3) 7(b)(3) where fees for all other actions not involving property of the same Rule to cases involving intra-corporate controversies for the determination of the correct filing fees, as the case may be, serves a dual purpose: **(1) the amendments concretize the Court's recognition that the subject matter of an intra-corporate controversy may or may not be capable of pecuniary estimation;** and **(2) they were also made to correct the anomaly created by A.M. No. 04-2-04-SC** dated July 20, 2004 (as advanced by the *Lu obiter dictum)* implying that all intra-corporate cases involved a subject matter which is deemed capable of pecuniary estimation.

While the Court is not unaware that the amendments brought by A.M. No. 04-02-04-SC dated October 5, 2016 only came after the filing of the complaint subject of this case, such amendments may nevertheless **be given retroactive effect so as to make them applicable to the resolution of the instant consolidated petitions as they merely pertained to a procedural rule, *i.e.,* Rule 141, and not substantive law.**

In view of the foregoing, and having classified Harvest All, *et al.*'s action as one incapable of pecuniary estimation, the Court finds that Harvest All, *et al.* should be made to pay the appropriate docket fees in accordance with the applicable fees provided under Section 7(b)(3) of Rule 141 (fees for all other actions not involving property) of the Revised Rules of Court, in conformity with A.M. No. 04-02-04-SC dated October 5, 2016.

The matter is therefore remanded to the RTC in order: (a) to determine if Harvest, et al.'s payment of filing fees in the amount of ₱8,860.00, as initially assessed by the Clerk of Court, constitutes sufficient compliance with A.M. No. 04-02-04-SC; (b) if Harvest All, et al.'s payment of ₱8,860.00 is insufficient, to require Harvest, et al.' s payment of any discrepancy, and after such payment, proceed with the regular proceedings of the case with dispatch; or (c) if Harvest All, et al.'s payment of ₱8,860.00 is already sufficient, proceed with the regular proceedings of the case with dispatch.

AYALA LAND, INC., ***Petitioner***, **-versus- THE (ALLEGED) HEIRS OF THE LATE LUCAS LACTAO AND SILVESTRA AQUINO, NAMELY, DIONISIO LACTAO-BARTOLAY, DOMINGO LACTAO, ELADIO LACTAO, ERNESTO LACTAO, MA. TERESA LACTAO ROZON-TARNATE, LUCILA L. LACTAO, MAMERTO R. LACTAO, PROCESO LACTAO, CARMEN LACTAO-MARCELO, HELARDO LACTAO MARCELO, PIO LACTAO MARCELO AND SERGIO LACTAO MARCELO (ALL REPRESENTED BY MARCIANA LACTAO-GARCIA)**, ***Respondents*****.**

G.R. No. 208213, FIRST DIVISION, August 08, 2018, TIJAM, *J.*

In Pilipinas Shell Petroleum Corporation v. CA, where the plaintiff was required to pay additional docket fees, the Court directed that the proceedings before the trial court resume "upon payment of all lawful fees (as assessed by the Clerk of Court of said Court) by (the plaintiff) ***or upon exemption from payment thereof upon proper application to litigate as pauper****." The Court held that said plaintiff's right to free access to the courts is not denied by the correct application of the rules on legal fees because he could apply for the privilege to litigate his case as pauper if he is so entitled.*

In this case, there is no dispute that the judgment in CA-G.R. SP No. 99631 had become final and executory. It ordered the Clerk of Court of the RTC to reassess and determine the correct amount of docket fees and the RTC to direct respondents to pay the same. The directive, however, does not preclude a motion for exemption from paying the additional fees by reason of indigence.

FACTS:

On September 9, 2005, respondents filed a Complaint[5] before the RTC, against petitioner and Capitol Hills Golf and Country Club, Inc. (Capitol Hills) as principal defendants and the Register of Deeds of Quezon City as a nominal party, for quieting of title and for annulment and cancellation of titles with the alternative remedy of reconveyance of possession and ownership, involving a parcel of land known as Lot 42-B-1, Pcs-13, located in Barangay Culiat (Balara), Caloocan (now Quezon City), with an approximate area of 215,464 square meters.

Docketed as Civil Case No. 05-56296, the Complaint alleged that the land had been owned and possessed by respondents' grandparents, Lucas Lactao and Silvestra Aquino, who died during World War II. Upon their demise, the land was transferred by way of succession to respondents' parents and predecessors-in-interest who built their houses and planted trees on the property. In the latter part of 1996, petitioner and Capitol Hills entered into a Joint Development Project over the property south of the subject land. Subsequently, petitioner and Capitol Hills allegedly entered respondents' land by force and bulldozed a portion thereof, destroying their houses and trees. Respondents claimed that they were eventually driven away from the property as they were constantly harassed by armed men hired by petitioner and Capitol Hills. With the remaining 15 hectares of their land allegedly under threat of further land-grabbing, respondents also prayed for a temporary restraining order (TRO) and a writ of preliminary injunction to enjoin petitioner and Capitol Hills from taking said portion.

Respondents paid P6,828.80 in docket fees, as assessed by the Office of the Clerk of Court and executed an Affidavit of Undertaking that in the event of deficiency in the payment of filing fees, they would settle the same through a first lien on any monetary judgment rendered in their favor.

Petitioner and Capitol Hills jointly moved for the dismissal of the Complaint on the grounds of

prescription, laches, failure to state a cause of action, and lack of jurisdiction for respondents' failure to disclose the fair market value of the subject property which resulted in the Clerk of Court not being able to properly compute, and the respondents falling short of paying, the necessary filing fees. They claimed that the total filing fee (exclusive of JDF and other components) should have been assessed at P62,903,240.00.

The RTC subsequently denied the joint motion to dismiss and granted respondents' application for TRO. When the RTC denied reconsideration, petitioner and Capitol Hills filed a petition for *certiorari*, docketed as **CA-G.R. SP No. 99631**.[14] They maintained that the RTC never acquired jurisdiction over the case, following the rule set in *Manchester Development Corporation, et al. v. CA*.[15]

In a Decisionthe CA denied the petition. Anent the issue of docket fees, it held that: The docket fees were computed on the basis of what was legally quantifiable at the time of the filing of the complaint. The CA, however, required the RTC Clerk of Court to determine the correct amount of docket fees based on Section 7(a), Rule 141 of the Rules of Court since the case is a real action involving cancellation of titles and reconveyance of properties.

Remand to the RTC

On January 6, 2010, the RIC ordered the payment of the docket fees as reassessed by the RTC's Clerk of Court pursuant to the CA's decision in CA-G.R. SP No. 99631.

In its March 22, 2010 Order, the RTC directed respondents anew to pay the reassessed docket fees. On March 26, 2010, after the Clerk of Court manifested that respondents had not yet provided the tax declaration over, or information on the zonal value of, the land, the RTC ordered respondents to furnish the Clerk of Court the required documents as basis for computation of the required fees.

However, in an Omnibus Motion dated May 24, 2010, respondents asked the RTC to set a hearing to determine the factual and legal basis for the computation of the additional filing fees (the market value prior to the alleged taking or the current market value), and to rule that the additional filing fee would constitute a lien on the judgment.

In support of said motion, respondents averred that while they were willing to pay the additional docket fees, they could not do so because they were already pauper litigants, having neither business nor remaining property.

Petitioner eventually moved for the dismissal of the case with prejudice based on Section 3, Rule 17 of the Rules of Court, for respondents' failure to pay the additional docket fees as directed by the RTC, and alternatively, for lack of jurisdiction.

Holding that the additional filing fee could constitute a lien on the judgment, the RTC considered respondents as indigent litigants, with no property to cover the additional fees. The RTC also noted that filing fees, albeit insufficient, were initially paid by respondents and there was no intention on their part to defraud the government. These circumstances, according to the RTC, justified the relaxation of the *Manchester* rule and called for the application of the following pronouncement in *Sun Insurance*. The CA declared that said fees, which respondents were exempted from paying as pauper litigants, shall be a lien on any judgment in their favor.

ISSUE:

Whether the respondents' Complaint should be dismissed. (NO)

RULING:

First. There is no dispute that the judgment in CA-G.R. SP No. 99631 had become final and executory. It ordered the Clerk of Court of the RTC to reassess and determine the correct amount of docket fees and the RTC to direct respondents to pay the same. The directive, however, does not preclude a motion for exemption from paying the additional fees by reason of indigence.

In *Pilipinas Shell Petroleum Corporation v. CA*, where the plaintiff was required to pay additional docket fees, the Court directed that the proceedings before the trial court resume "upon payment of all lawful fees (as assessed by the Clerk of Court of said Court) by (the plaintiff) **or upon exemption from payment thereof upon proper application to litigate as pauper**." The Court held that said plaintiff's right to free access to the courts is not denied by the correct application of the rules on legal fees because he could apply for the privilege to litigate his case as pauper if he is so entitled.

Second. There is nothing in CA-G.R. SP No. 99631 (as upheld in G.R. No. 184376) which stated that petitioner should pay the additional docket fee, otherwise the lower court would dismiss the Complaint for lack of jurisdiction. Considering that the CA did not specify the period within which respondents should comply with its ruling, it is understood that payment of the additional docket fee, or the motion for exemption therefrom due to indigence, must be made within a reasonable period of time. What constitutes a reasonable period is relative and depends on the factual circumstances of the case. In this case, the Court finds that respondents sought to be considered as pauper litigants within an acceptable period.
Under the circumstances of the case, the filing of respondents' May 24, 2010 Omnibus Motion roughly five (5) months after the RTC's January 2010 directive to pay the additional filing fee was reasonable.

Third. The Court finds no merit in petitioner's argument that respondents' claim of indigence was an afterthought because they did not ask to litigate as indigent parties when they filed the Complaint, or when petitioner moved for its dismissal for non-payment of the correct filing fees, or even when the higher courts passed upon petitioner's motion to dismiss.

A party who was assessed a minimal amount in filing fees may opt to simply pay the same although he may qualify as a pauper litigant. He is not, by such initial payment, estopped from claiming indigence should he subsequently be required to pay additional fees.

Respondents cannot likewise be faulted for not raising their indigence in CA-G.R. SP No. 99631 and G.R. No. 184376. They were of the view and thus asserted in these proceedings that they had paid the correct filing fees, and any additional docket fees should constitute a lien on the judgment by virtue of their Affidavit of Undertaking and on the strength of this Court's ruling in *Sun Insurance*.

Fifth. Access to justice by the impoverished is held sacrosanct under Article III, Section 11 of the 1987 Constitution. The idea of paying docket fees at P39,172,020.00, as alleged by respondents, or P62,903,240.00, as computed by petitioner, is enough to give anyone pause. To an indigent, it is scarcely within the realm of possibility.

Sixth. Respondents' motion to be allowed to litigate as indigent parties was granted by the RTC in its Order of May 4, 2012, and petitioner's motion for reconsideration thereof is still pending resolution.

Petitioner argues that respondents cannot be allowed to litigate as indigents because they failed to comply with the evidentiary requirements of Section 19 of Rule 141. Whether respondents qualify as indigent litigants is however, a question of fact.

ISABEL G. RAMONES, *Petitioner*, -versus- SPOUSES TEODORICO GUIMOC, JR. AND ELENITA GUIMOC, *Respondents.*
G.R. No. 226645, SECOND DIVISION, August 13, 2018, PERLAS-BERNABE, *J*.

Jurisprudence now uniformly holds that "when insufficient filing fees are initially paid by the plaintiffs and there is no intention to defraud the government, the Manchester rule does not apply."

*In line with this legal paradigm, prevailing case law demonstrates that "the non-payment of the prescribed filing fees at the time of the filing of the complaint or other initiatory pleading fails to vest jurisdiction over the case in the trial court. Yet, where the plaintiff has paid the amount of filing fees **assessed by the clerk of court**, and the amount paid turns out to be deficient, the trial court still acquires jurisdiction over the case, subject to the payment by the plaintiff of the deficiency assessment.""The reason is that to penalize the party for the omission of the clerk of court is not fair if the party has acted in good faith."*

*In this case, it is undisputed that the amount of P500.00 paid by petitioner was insufficient to cover the required filing fees for her estafa case under the premises of Section 21, Rule 141 of the Rules of Court, as amended by A.M. No. 04-2-04-SC. Nonetheless, it is equally undisputed that she paid the full amount of docket fees **as assessed by the Clerk of Court of the MTC**, which is evidenced by a certification dated April 11, 2016 issued therefor. In addition, petitioner consistently manifested her willingness to pay additional docket fees when required. In her petition, she claims that she is "very much willing to pay the correct docket fees which is the reason why she immediately went to the clerks of court and records show that she paid the MTC of the amount assessed from her." Indeed, the foregoing actuations negate any bad faith on petitioner's part, much more belie any intent to defraud the government. As such, applying the principles above-discussed, the Court holds that the courta quo properly acquired jurisdiction over the case. However, petitioner should pay the deficiency that shall be considered as a lien on the monetary awards in her favor pursuant to Section 2, Rule 141 of the Rules of Court.*

FACTS:

The case stemmed from an Information filed on June 30, 2006 before the Municipal Trial Court of Mariveles, Bataan (MTC), docketed as Criminal Case No. 06-8539, charging respondents with the crime of Other Forms of Swindling under Article 316 (2) of the Revised Penal Code.

After the said Information was filed by the Office of the Provincial Prosecutor of Bataan to the MTC, the latter's Clerk of Court wrote a letter to petitioner requiring her to pay the amount of P500.00 as docket fees. After petitioner's payment thereof, a certification was later issued by the MTC Clerk of Court reflecting the same.

Eventually, the case proceeded to trial, and thereafter, the MTC, in a Judgment dated September 21, 2011, acquitted Teodorico but found Elenita guilty beyond reasonable doubt of the crime of Other Forms of Swindling under Article 316 (2) of the RPC, and accordingly, sentenced her to suffer the penalty of imprisonment. In addition, Elenita was ordered to pay the amount of P507,000.00, and despite his acquittal, Teodorico was also directed to pay the amount of P60,000.00, which amounts reflect their respective civil liabilities, both with legal interest from December 13, 2006 until fully paid.

In their Memorandum on Appeal filed before the RTC on January 10, 2012, respondents argued that the MTC did not acquire jurisdiction to award damages in favor of petitioner for failure of the latter to pay the correct amount of docket fees pursuant to Supreme Court Administrative Circular No. 35-2004 (SC Circular No. 35-2004), which provides that the filing fees must be paid for money claims in *estafa* cases. They claimed that due to petitioner's failure to make an express reservation to separately institute a civil action, her payment of filing fees in the amount of P500.00 was deficient. The damages sought was worth P663,000.00; thus, the correct filing fees should have allegedly been around P9,960.00.

In her Reply, petitioner countered that based on Rule 111 of the Rules of Criminal Procedure, actual damages are not included in the computation of the filing fees in cases where the civil action is impliedly instituted with the criminal action, and the filing fees shall constitute a lien on the judgment.

The RTC affirmed the MTC ruling with modification, acquitting Elenita on the ground of reasonable doubt, but still maintaining respondents' civil liabilities. Notably, however, the RTC did not rule upon the issue of non-payment of correct filing fees.

Upon reconsideration, the CA held that SC Circular No. 35-2004 was in effect at the time petitioner filed the case against respondents, and therefore, the court *a quo* erred when it awarded damages in her favor. Consequently, the CA deleted the order directing respondents to pay their respective civil liabilities.

ISSUE:

Whether the award of damages should be deleted. (NO)

RULING:

Rule 111 of the Rules of Criminal Procedure states that "except as otherwise provided in these Rules, no filing fees shall be required for actual damages."

Among these exceptions, Section 21, Rule 141 of the Rules of Court, as amended by A.M. No. 04-2-04-SC - which guidelines were reflected in SC Circular No. 35-2004 and was already in effect at the time the Information was filed - states that the payment of filing fees is required in estafa cases under the following conditions:

SEC. 21. *Other fees*. -The following fees shall also be collected by the clerks of court of the regional trial courts or courts of the first level, as the case may be:

(a) In *estafa* cases where the offended party fails to manifest within fifteen (15) days following the filing of the information that the civil liability arising from the crime has been or would be separately prosecuted, or in violations of BP No. 22 if the amount involved is.

In *Sun Insurance*, the Court found that "a more liberal interpretation of the rules was called for considering that, unlike *Manchester*, the private respondent [therein] demonstrated his willingness to abide by the rules by paying the additional docket fees as required." Nonetheless, the Court held that "the clerk of court of the lower court and/or his duly authorized docket clerk or clerk in-charge should determine and, thereafter, if any amount is found due, x xx must require the private respondent to pay the same."

Accordingly, subsequent decisions now uniformly hold that "when insufficient filing fees are initially paid by the plaintiffs and there is no intention to defraud the government, the *Manchester* rule does not apply."

In line with this legal paradigm, prevailing case law demonstrates that "the non-payment of the prescribed filing fees at the time of the filing of the complaint or other initiatory pleading fails to vest jurisdiction over the case in the trial court. Yet, where the plaintiff has paid the amount of filing fees **assessed by the clerk of court**, and the amount paid turns out to be deficient, the trial court still acquires jurisdiction over the case, subject to the payment by the plaintiff of the deficiency assessment.""The reason is that to penalize the party for the omission of the clerk of court is not fair if the party has acted in good faith."

In this case, it is undisputed that the amount of P500.00 paid by petitioner was insufficient to cover the required filing fees for her *estafa* case under the premises of Section 21, Rule 141 of the Rules of Court, as amended by A.M. No. 04-2-04-SC. Nonetheless, it is equally undisputed that she paid the *full amount of docket fees* **as assessed by the Clerk of Court of the MTC**, which is evidenced by a certification dated April 11, 2016 issued therefor. In addition, petitioner consistently manifested her willingness to pay additional docket fees when required. In her petition, she claims that she is "very much willing to pay the correct docket fees which is the reason why she immediately went to the clerks of court and records show that she paid the MTC of the amount assessed from her." Indeed, the foregoing actuations negate any bad faith on petitioner's part, much more belie any intent to defraud the government. As such, applying the principles above-discussed, the Court holds that the court*a quo* properly acquired jurisdiction over the case. However, petitioner should pay the deficiency that shall be considered as a lien on the monetary awards in her favor pursuant to Section 2, Rule 141 of the Rules of Court.

Besides, the Court observes that if respondents believed that the assessment of filing fees was incorrect, then it was incumbent upon them to have raised the same before the MTC. Instead, contrary to the CA's assertion, records show that respondents actively participated in the proceedings before the MTC and belatedly questioned the alleged underpayment of docket fees only for the first time on appealbefore the RTC, or five (5) years later after the institution of the instant case. The Court is aware that lack of jurisdiction, as a ground to dismiss a complaint, may, as a general rule, be raised at any stage of the proceedings. However, in *United Overseas Bank*, the Court has observed that the same is subject to the doctrine of estoppel by *laches*, which squarely applies here.

2. Rule 13

REYNALDO E. ORLINA, *Petitioner,* -versus – CYNTHIA VENTURA, represented by her sons ELVIC JHON HERRERA and ERIC VON HERRERA, *Respondent.*
G.R. No. 227033, THIRD DIVISION, December 3, 2018, PERALTA, J.

But like any other rule, the doctrine of immutability of judgment has exceptions, namely: (1) the correction of clerical errors; (2) the so-called nunc pro tunc entries which cause no prejudice to any party; (3) ***void judgments****; and (4) whenever circumstances transpire after the finality of the decision rendering its execution unjust and inequitable.*

Similarly, while it is doctrinally entrenched that certiorari is not a substitute for a lost appeal, the Court has allowed the resort to a petition for certiorari despite the existence of or prior availability of an appeal, such as: (1) where the appeal does not constitute a speedy and adequate remedy; (2) where the ***orders were also issued either in excess of or without jurisdiction****; (3) for certain special considerations, as public welfare or public policy; (4) where in criminal actions, the court rejects rebuttal evidence for the prosecution as, in case of acquittal, there could be no remedy; (5) where the order is a patent nullity; and (6) where the decision in the certiorari case will avoid future litigations.*

Thus, in many instances, the Court found it necessary to apply the exception rather than the general rule above.

Similarly, in the instant case, the ***trial court failed to serve Ventura with a notice of hearing and a copy of the petition with its annexes****. As aptly found by the CA, there was no proof that Ventura was personally served with said notice. Neither was there proof of substantial service or even service by publication in a newspaper of general circulation. The records of the present case reveal that only the following were notified: the Register of Deeds of Quezon City, the Land Registration Authority of Quezon City, the Secretary of the Department of Environment and Natural Resources, the Office of the Solicitor General, and the City Prosecutor of Quezon City.*

FACTS:

The property involved in the present controversy is a 406 square meter parcel of land in the name of Ventura. From 1998 to 2008, Ventura had been delinquent in the payment of its real property taxes. As a result, the City Treasurer of Quezon City issued a warrant subjecting the property to levy.

The property was then advertised for sale at a public auction. On April 2, 2009, a public auction was conducted during which Orlina turned out to be the highest bidder. The corresponding Certificate of Sale was issued in his favor on even date. After the lapse of the one (1)-year period of redemption without Ventura redeeming the subject property, the City Treasurer of Quezon City issued a Final Bill of Sale to Orlina.

Consequently, Orlina filed a petition for the approval of the final bill of sale, cancellation of the original and duplicate copy of TCT No. 272336, and issuance of a new certificate of title for the subject property in his favor. On September 28, 2011, the RTC issued an Order setting the case for hearing. During the initial hearing on December 7, 2011, Orlina marked several documents to establish

compliance with the jurisdictional requirements. There being no opposition filed, the RTC issued an order of general default and granted Orlina's motion to present evidence ex-parte.

The RTC rendered a Decision confirming the Final Bill of Sale. TCT No. 004-2012010324 was issued in favor of Orlina, who subsequently filed an ex-parte motion for the issuance of a writ of possession, which was granted by the RTC.

It was only at this point that Ventura filed an omnibus motion seeking a reconsideration of the RTC's Decision. She argued that the RTC did not acquire jurisdiction over her person. She also filed an urgent motion for reconsideration of the Order granting the issuance of the writ of possession. The RTC denied both motions, holding that the reliefs sought by Ventura are proper to be raised and taken up in a separate action.

The CA annulled and set aside the Decision of the RTC and all subsequent proceedings taken in relation thereto. It held that there was no proof that Ventura was served with notices of the proceedings before the trial court.

ISSUE:

Whether or not the Regional Trial Court acquired jurisdiction over the person of herein respondent. (NO)

RULING:

As a general rule, the perfection of an appeal in the manner and within the period permitted by law is not only mandatory but also jurisdictional, and the failure to perfect the appeal renders the judgment of the court final and executory. This is in line with the doctrine of finality of judgment or immutability of judgment under which a decision that has acquired finality becomes immutable and unalterable, and may no longer be modified in any respect, even if the modification is meant to correct erroneous conclusions of fact and law, and whether it be made by the court that rendered it or by the Highest Court of the land.

But like any other rule, the doctrine of immutability of judgment has exceptions, namely: (1) the correction of clerical errors; (2) the so-called nunc pro tunc entries which cause no prejudice to any party; (3) void judgments; and (4) whenever circumstances transpire after the finality of the decision rendering its execution unjust and inequitable.

Similarly, while it is doctrinally entrenched that certiorari is not a substitute for a lost appeal, the Court has allowed the resort to a petition for certiorari despite the existence of or prior availability of an appeal, such as: (1) where the appeal does not constitute a speedy and adequate remedy; (2) where the orders were also issued either in excess of or without jurisdiction; (3) for certain special considerations, as public welfare or public policy; (4) where in criminal actions, the court rejects rebuttal evidence for the prosecution as, in case of acquittal, there could be no remedy; (5) where the order is a patent nullity; and (6) where the decision in the certiorari case will avoid future litigations.

Thus, in many instances, the Court found it necessary to apply the exception rather than the general rule above.

Similarly, in the instant case, the trial court failed to serve Ventura with a notice of hearing and a copy of the petition with its annexes. As aptly found by the CA, there was no proof that Ventura was

personally served with said notice. Neither was there proof of substantial service or even service by publication in a newspaper of general circulation. The records of the present case reveal that only the following were notified: the Register of Deeds of Quezon City, the Land Registration Authority of Quezon City, the Secretary of the Department of Environment and Natural Resources, the Office of the Solicitor General, and the City Prosecutor of Quezon City.

Orlina insists that he and the City Treasurer of Quezon City actually sent the warrant of levy and notices to Ventura using the address stated in the tax declaration and certificate of title of the subject property. The Court, however, finds said contention unacceptable. First, the notices allegedly sent to Ventura were made in a separate and distinct proceeding, specifically, the tax sale. Nowhere in the records of the case, however, did Orlina show that Ventura was duly notified of the instant proceeding for the approval of the final bill of sale, cancellation of the original and duplicate copy of TCT No. 272336, and issuance of a new certificate of title for the subject property in Orlina's favor.

Second, while Orlina persistently argues that notices were sent to Ventura, the validity and due execution of the same remain doubtful. The Court is curious as to why, in attempting to prove proper notification, Orlina makes reference to different addresses. To illustrate, in his petition before the Court alone, he refers to three (3) different addresses where notices were allegedly sent.

To the Court, these circumstances belie Orlina's claims of good faith. But even if We assume that he sent notices to the different addresses by mere honest mistake and in good faith, believing said addresses to be true, the fact remains that Ventura was, indeed, not properly notified of the instant proceedings. Verily, this fact alone is a denial of her right to due process which the Court deems necessary to correct.

We find that the CA aptly held that the order of the RTC of general default, allowing Orlina to adduce evidence ex-parte, is void for violating Ventura's right to due process. Similarly, the May 14, 2012 Decision of said trial court, which granted Orlina's petition for approval of deed of sale and the transfer of the titles in his name, and all subsequent orders issued pursuant to the said judgment are also null and void. Necessarily, it follows that the nullity of the RTC Decision carries with it the nullity of all acts done which implemented the same. This includes the issuance of the new TCT No. 004-201201324 in the name of Orlina.ri

MAGSAYSAY MARITIME CORP./AIR-SEA HOLIDAY GMBH STABLE ORGANIZATION ITALIA/ MARLON R. ROÑO, *Petitioners*, -versus- ELMER V. ENANOR, *Respondent*.
G.R. No. 224115, SECOND DIVISION, June 20, 2018, REYES, JR., *J.*

Section 11, Rule 13 of the Rules of Court mandates that pleadings and papers be served and filed personally; in the instances that personal service and filing are not practicable, resort to other modes could be had, but only if the party concerned attaches a written explanation as to why personal service and filing is deemed impracticable. Even then, should the party concerned fail to attach a written explanation in his/her pleadings and papers, the Court, in its discretion, may consider the same as not filed. In the exercise of this authority, and in ruling for the liberal interpretation of the mandatory rule, the Court shall consider: (1) "the practicability of personal service;" (2) "the importance of the subject

matter of the case or the issues involved therein;" and (3) "the prima facie merit of the pleading sought to be expunged for violation of Section 11.

FACTS:

Respondent was employed by the petitioners as a utility galley onboard the vessel "AIDADIVA" from his embarkation on August 30, 2013 until his repatriation back to the Philippines sometime in January 2014. Respondent figured in an incident that occurred in the vessel's kitchen the same month of his repatriation, and which resulted to a fracture of his right ring finger. This prompted him to file an action against Magsaysay Maritime Corp., Air-Sea Holiday GMBH Stable Organization Italia, and Marlon R. Roño (petitioners) for the recovery of disability benefits, medical expenses, and attorney's fees.

The Labor Arbiter rendered a decision finding that the respondent, after continuous therapy, has already improved and, by June 23, 2014, he was "fit to work as per orthopedic standpoint as he can close his fist without difficulty and his fingers are within functional range." However, the NLRC reversed and set aside the LA decision in favor of the respondent.

Petitioners filed a petition for certiorari before the Court of Appeals. Unfortunately for the petitioners, the Court of Appeals dismissed the petition outright due to substantial defects in the pleading. The appellate court pointed out that: (1) the name of the respondent in the caption of the pleading is different from the name of the respondent in the body thereof; and (2) the petitioners failed to attach an explanation as to why the service of the petition was not made personally, which was a violation of Section 11, Rule 13 of the Rules of Court.

ISSUE:

Whether or not the Court of Appeals committed serious reversible error in dismissing outright the petitioners' petition for certiorari based on (a) an error on the name of the respondent and (b) a violation of Section 11, Rule 13 of the Rules of Court

RULING:

According to Section 11, Rule 13 of the Rules of Court, the rule is that service and filing of pleadings and other papers must, whenever practicable, be done personally. It states:

> Section 11. Priorities in modes of service and filing. — Whenever practicable, the service and filing of pleadings and other papers shall be done personally. Except with respect to papers emanating from the court, a resort to other modes must be accompanied by a written explanation why the service or filing was not done personally. A violation of this Rule may be cause to consider the paper as not filed.

In the case of *Solar Team Entertainment, Inc. vs. Ricafort*, the Court ruled that Section 11 is mandatory and that the strictest compliance therewith is exacted from both the Bench and the Bar. Court averred that preference for personal service and filing "expedite action or resolution on a pleading, motion

or other paper; and conversely, minimize, if not eliminate, delays likely to be incurred if service or filing is done by mail."

Nonetheless, this same rule is not so rigid as to exclude any exception from its application. In fact, Section 11 itself provided that whenever it is not practicable to serve and file personally, resort to service through other modes is acceptable. The only condition to the application of this exception is that the pleading served or filed should be accompanied by a written explanation as to why personal service was not practicable. Should a party, however, fail to so attach this written explanation, the same section authorizes the courts to exercise its discretion to consider a pleading or paper as not filed. To exercise this discretion, it is only upon the consideration of these factors—as determined by the courts—that they are authorized to liberally bend the mandatory character of the attachment of the written explanation required by Section 11.

In the present case, the Court of Appeals determined that the petitioners committed several infractions: first, the petitioners committed an error when they named a different person as a respondent in the body of its petition for certiorari; second, the petitioners failed to personally serve a copy of their petition for certiorari in violation of Section 11, Rule 13 of the Rules of Court; and third, they failed to attach a written explanation to the petition for resorting to a mode of service other than by personal service. Due to this, the Court of Appeals, in the exercise of its discretion, dismissed and expunged the petitioners' petition for certiorari from the Court of Appeals' docket of active cases.

An outright dismissal of the petitioners' petition for certiorari warrants a second consideration, for this case's dismissal based on technicality would work to subvert the proper imposition of justice. To begin with, in their motion for reconsideration, the petitioners explained that the mistaken use of the name Joselito Entrampas instead of the respondent's name, Elmer V. Enanor, resulted from a mere typographical error. The petitioners elaborated that they "inadvertently failed to change the name" because of the "proximity in the drafting of this petition and another Petition for Certiorari involving Joselito Entrampas as private respondent." In addition, the petitioners explained that the name Joselito Entrampas "was only mentioned once in the quoted portion of the petition." The Court finds this explanation sufficient to remove the same as basis for an outright dismissal of the case.

PHILIPPINE SAVINGS BANK, *Petitioner*, -versus-JOSEPHINE L. PAPA, *Respondent*.
G.R. No. 200469, THIRD DIVISION, January 15, 2018, MARTIRES, *J.*

In some decided cases, the Court considered filing by private courier as equivalent to filing by ordinary mail.[16] The Court opines that this pronouncement equally applies to service of pleadings and motions. Hence, to prove service by a private courier or ordinary mail, a party must attach an affidavit of the person who mailed the motion or pleading.

In this case, PSB admits that it served the copy of the motion for reconsideration to Papa's counsel via private courier. However, said motion was not accompanied by an affidavit of the person who sent it through the said private messengerial service. Moreover, PSB's explanation why it resorted to private courier failed to show its compliance with Rule 13, Section 7. Particularly, PSB failed to indicate that

no registry service was available in San Mateo, Rizal, where the office of Papa's counsel is situated, or in Makati City, where the office of PSB's counsel is located.

FACTS

Philippine Savings Bank *(PSB)* filed before the MeTC a complaint[5] for collection of sum of money against respondent Josephine L. Papa *(Papa)*. In its complaint, PSB alleged that Papa obtained a flexi-loan with a face amount of P207,600.00. When the obligation fell due, Papa defaulted in her payment. PSB averred that as of 27 March 2006, Papa's total obligation amounted to P173,000.00; and that despite repeated demands, Papa failed to meet her obligation.

On 26 October 2006, Papa filed her Answer.[6] During the trial on the merits, PSB introduced in evidence a photocopy of the promissory note,[7] which the MeTC admitted despite the vehement objection by Papa. Meanwhile, Papa chose to forego with the presentation of her evidence and manifested she would instead file a memorandum.

After the parties had submitted their respective memoranda, the case was submitted for decision.

MTC ruled in favor of PSB and against Papa. However, the RTC reversed and set aside the MeTC decision. On 10 November 2009, PSB filed its motion for reconsideration,[10] wherein it admitted that it received the copy of the 14 October 2009 RTC decision on 26 October 2009.

In its opposition to PSB's motion for reconsideration, Papa posited, among others, that the RTC decision had already attained finality. Papa explained that although PSB filed the motion for reconsideration on 10 November 2009, it appears that service of the said motion was made one (1) day late as PSB availed of a private courier service instead of the modes of service prescribed under the Rules of Court. As such, PSB's motion for reconsideration is deemed not to have been made on the date it was deposited to the private courier for mailing but rather on 11 November 2009, the date it was actually received by Papa.

Upon appeal, the CA affirmed the 14 October 2009 decision and the 14 January 2010 order of the RTC.

ISSUE

Whether or not the appellate court erred when it ruled that the RTC decision had already attained finality

HELD

PSB is correct that filing and service are distinct from each other. Indeed, filing is the act of presenting the pleading or other paper to the clerk of court; whereas, service is the act of providing a party with a copy of the pleading or paper concerned.[14]

Nevertheless, although they pertain to different acts, filing and service go hand-in-hand and must be considered together when determining whether the pleading, motion, or any other paper was filed within the applicable reglementary period. Precisely, the Rules require every motion set for hearing

to be accompanied by proof of service thereof to the other parties concerned; otherwise, the court shall not be allowed to act on it,[15] effectively making such motion as not filed.

The kind of proof of service required would depend on the mode of service used by the litigant. Rule 13, Section 13 of the Rules of Court provides:

SECTION 13. *Proof of Service*. - Proof of personal service shall consist of a written admission of the party served, or the official return of the server, or the affidavit of the party serving, containing a full statement of the date, place and manner of service. **If the service is by ordinary mail, proof thereof shall consist of an affidavit of the person mailing of facts showing compliance with section 7 of this Rule.** If service is made by registered mail, proof shall be made by such affidavit and the registry receipt issued by the mailing office. The registry return card shall be filed immediately upon its receipt by the sender, or in lieu thereof the unclaimed letter together with the certified or sworn copy of the notice given by the postmaster to the addressee. [emphasis supplied]

In some decided cases, the Court considered filing by private courier as equivalent to filing by ordinary mail.[16] The Court opines that this pronouncement equally applies to service of pleadings and motions. Hence, to prove service by a private courier or ordinary mail, a party must attach an affidavit of the person who mailed the motion or pleading.

In this case, PSB admits that it served the copy of the motion for reconsideration to Papa's counsel via private courier. However, said motion was not accompanied by an affidavit of the person who sent it through the said private messengerial service. Moreover, PSB's explanation why it resorted to private courier failed to show its compliance with Rule 13, Section 7. While PSB explained that personal service was not effected due to lack of time and personnel constraints, it did not offer an acceptable reason why it resorted to "private registered mail" instead of by registered mail. In particular, PSB failed to indicate that no registry service was available in San Mateo, Rizal, where the office of Papa's counsel is situated, or in Makati City, where the office of PSB's counsel is located Thus, the RTC is correct when it denied PSB's motion for reconsideration, which, for all intents and purposes, can be effectively considered as not filed.

Since PSB's motion for reconsideration is deemed as not filed, it did not toll the running of the 15-day reglementary period for the filing of an appeal; and considering that PSB's appeal was filed only after the expiration of the 15-day period on 10 November 2009, such appeal has not been validly perfected. As such, the subject 14 October 2009 decision of the RTC had already attained finality as early as 11 November 2009.

DEPARTMENT OF EDUCATION, *Petitioner*, - versus - NIXON Q. DELA TORRE, BENHUR Q. DELA TORRE, QUINTIN DELA TORRE (DECEASED), REPRESENTED BY HIS WIFE CATALINA DELA TORRE AND HIS CHILDREN STELLA T. NAGDALE, DWIGHT DELA TORRE, VIVIAN T. SUPANGCO, NIXON DELA TORRE AND BENHUR DELA TORRE, *Respondents*.
G.R. No. 216748, FIRST DIVISION, July 25, 2018, TIJAM, *J.*

In the case of Republic of the Philippines, represented by the Land Registration Authority v. Raymundo Viaje, et. al., We held that the OSG remains the principal counsel, despite the presence of a deputized counsel, and as such, entitled to be furnished copies of all court orders, resolutions and judgments, thus:

> *The power of the OSG to deputize legal officers of government departments, bureaus, agencies and offices to assist it in representing the government is well settled. x xx But it is likewise settled that the OSG's deputized counsel is "no more than the 'surrogate' of the Solicitor General in any particular proceeding" and the latter remains the principal counsel entitled to be furnished copies of all court orders, notices, and decisions.*

Well-settled is the rule that when a party is represented by a counsel on record, service of orders or notices must be made on the counsel on record. Service of orders or notices to the party or to any other lawyer does not bind the party and is not considered as notice under the law.

It is undisputed that the OSG was notified as to the failure of the city prosecutor to present evidence on behalf of the elementary school. *It was aware that the presentation of evidence was rescheduled numerous times for the failure of the city prosecutor to present the same. In fact, the OSG has been forewarned that the RTC will be constrained to waive the right of Cabanglasan Elementary School to present evidence if it still failed to present the same.*

Thus, Cabanglasan Elementary School already waived their right to present evidence per the RTC's Order, which it failed to challenge. Hence, the Order already became final. Since the School waived its right to present evidence, it follows that it failed to offer any, and no evidence can be considered in their favor.

FACTS:

Maria Pencerga (Maria) executed a Deed of Donation in favor of the PoblacionCabanglasan Elementary School, donating a four (4) hectare portion of the subject land. Two decades after the donation, respondents filed a civil case for recovery of possession alleging that they were co-owners of a 100,024 square meter lot sold by Maria to respondent Nixon.

Cabanglasan Elementary School was initially represented by Atty. Conrado Barroso (Atty. Barroso), a legal consultant of the former Department of Education, Culture and Sports (DECS). However, during the hearing, Atty. Barroso manifested that his Consultancy agreement with the DECS had expired and that there was an uncertainty as to its renewal. Thus, the OSG entered its appearance on behalf of the Cabanglasan Elementary School and deputized the City Prosecutor of Malaybalay City to appear on its behalf.

The RTC noted the City Prosecutor's appearance. However, the hearing was reset since the prosecutor cannot proceed with the presentation of evidence since the presentation of evidence was previously handled by Atty. Barroso. The RTC issued another Order resetting the hearing on account of the absence of the City Prosecutor. The public prosecutor again failed to appear, thus, the RTC issued an Order resetting the hearing with a warning to the public prosecutor that failure to present evidence will constrain the RTC to waive its presentation of evidence and submit the case for decision.

The hearing was again reset because the public prosecutor manifested that the documents she has to present are still in the possession of Atty. Barroso, who has not yet turned over the same. The OSG received the RTC's order cancelling the hearing.

The OSG has not yet heard of the case since then, until it received the Order declaring the elementary school's waiver for presenting its evidence and that the case was submitted for decision.

The RTC issued a Decision ruling that respondent Nixon has a better right to the possession of the subject property and ordering Cabanglasan Elementary School to vacate the premises. The CA affirmed the ruling of the RTC.

ISSUE:

Whether the petitioner has waived its right to present evidence despite the fact that it [petitioner] was not properly represented before the trial court. (YES)

RULING:

In the case of *Republic of the Philippines, represented by the Land Registration Authority v. Raymundo Viaje, et. al.*, We held that the OSG remains the principal counsel, despite the presence of a deputized counsel, and as such, entitled to be furnished copies of all court orders, resolutions and judgments, thus:

> The power of the OSG to deputize legal officers of government departments, bureaus, agencies and offices to assist it in representing the government is well settled. x xx But it is likewise settled that the OSG's deputized counsel is "no more than the 'surrogate' of the Solicitor General in any particular proceeding" and the latter remains the principal counsel entitled to be furnished copies of all court orders, notices, and decisions.

Well-settled is the rule that when a party is represented by a counsel on record, service of orders or notices must be made on the counsel on record. Service of orders or notices to the party or to any other lawyer does not bind the party and is not considered as notice under the law.

In this case, while the City Prosecutor of Malaybalay City was deputized by the OSG, the latter still remains to be the principal counsel of Cabanglasan Elementary School and hence entitled to be furnished copies of all court orders, notices, and decision. Any court order and decision sent to the deputy, acting as an agent of the Solicitor General, is not binding until it is actually received by the Solicitor General.Here, the OSG, claimed that the Cabanglasan Elementary School was not properly represented before the RTC since the OSG was not served all the notices by the RTC. As such, the petitioner cannot be deemed to have waived its right to present evidence without violating due process. Therefore, the proceedings before the RTC should be declared null and void for lack of proper representation by the OSG. **We do not agree.**

It is undisputed that the OSG was notified as to the failure of the city prosecutor to present evidence on behalf of the elementary school. It was aware that the presentation of evidence was rescheduled numerous times for the failure of the city prosecutor to present the same. In fact, the OSG has been forewarned that the RTC will be constrained to waive the right of Cabanglasan Elementary School to present evidence if it still failed to present the same.

Contrary to petitioner's allegation, the OSG was furnished the necessary orders in order for the same to exercise its supervision and control over the actuations of the public prosecutor. Notice of the RTC's warning should have put the OSG on guard as to the result of public prosecutor's failure to

present evidence. The OSG could have warned the public prosecutor to be more vigilant and zealous in handling the instant case. Also, it could have actively pursued the retrieval of the documents from the RTC or even from Atty. Barroso. Despite the OSG's notice of the RTC's Order, declaring Cabanglasan Elementary School to have waived its right to present evidence, the OSG could have filed a motion for reconsideration of the said order or even filed a petition for *certiorari* questioning the same. Instead, the OSG chose to sit idly by and let the said order attain finality.

Thus, Cabanglasan Elementary School already waived their right to present evidence per the RTC's Order, and the same already became final. Since the School waived its right to present evidence, it follows that it failed to offer any, and no evidence can be considered in their favor.

G. Summons

RAMON R. VILLARAMA, ***Petitioner*, -versus- CRISANTOMAS D. GUNO, HON. JUDGE RAMON A. CRUZ, PRESIDING JUDGE OF THE REGIONAL TRIAL COURT OF QUEZON CITY, BRANCH 223, CARMELITA YADAO GUNO and PRUDENTIAL BANK and TRUST COMPANY**, ***Respondents*.**

G.R. No. 197514, FIRST DIVISION, August 06, 2018, TIJAM, *J*.

Considering that the obligation entered into by Crisantomas and Carmelita clearly appeared to be a transaction that their conjugal partnership is liable for, they were therefore correctly made co-defendants as they had the same interests therein. Also, as the case involves an action in personam over documents entered into as regards a conjugal property, We reiterate that We deem the receipt of Carmelita of the summons as binding to her as it is to Crisantomas.

The core of the service of summons, which is the protection of the right to due process, cannot be said to have been transgressed in this case. Crisantomas failed to substantiate his claims that he failed to receive summons or that he was never notified of the proceedings. We further stress that Carmelita was able to actively participate in the proceedings and litigate their interests - which are undeniably the same, and that Crisantomas was unable to prove that he and Carmelita were already separated in fact or their marriage was otherwise annulled at that time.

FACTS:

The case stemmed from the sale of a house and lot by the Sps. Marcial and Rita Reyes (Sps. Reyes) to Crisantomas (Crisantomas) and Carmelita (Carmelita) Yadao Guno (collectively referred to as Sps. Guno). By virtue of said sale, a deed of absolute sale was entered into by the parties and eighteen (18) promissory notes were issued by Sps. Guno in favor of the Sps. Reyes.

The Sps. Reyes thereafter executed a Trust Agreement with Prudential Bank and Trust Company (Prudential) covering the promissory notes, naming their children as beneficiaries of the trust. On May 22, 1990, the Sps. Reyes executed an Amended Trust Agreement naming Petitioner Ramon Villarama (petitioner Villarama) as an irrevocable beneficiary.

The Sps. Guno obtained loans from Prudential and as security, executed promissory notes and real estate mortgages on the property. A Transfer Certificate of Title (TCT) No. 298124 was issued under their name. The Sps. Guno, however, defaulted in their payment with Prudential, prompting the latter

to foreclose the mortgage on the property and sell it in a public auction where it emerged as the highest bidder. It later consolidated its ownership over the property. A new title, TCT No. 355218 was issued in its name and it caused the eviction of the Sps. Guno and placed petitioner Villarama in possession of the property.

On November 20, 1987, the Sps. Guno lodged a complaint for annulment of foreclosure sale and title against Prudential before the RTC-Branch 95 of Quezon City. The RTC nullified the foreclosure sale for failure to comply with the requirements in Section 3 of Act No. 3135, as amended, ordered the cancellation of Prudential's title and reinstated the Sps. Guno's title to the property. The CA and this Court affirmed the RTC decision which attained finality on March 11, 1997.

Subsequently, on July 17, 1997, Villarama instituted a Complaint for Rescission of Promissory Notes, Deed of Sale of Real Property and Cancellation of Title with Damages against the Sps. Guno before the RTC-Branch 223. The RTC issued an Alias Summons to the Sps. Guno at the U.P. Law Center, Diliman, Quezon City.Carmelita filed her Answer with Counterclaim. Crisantomas, on the other hand, was declared in default for failure to file an answer. Thereafter, the RTC granted Villarama's complaint for rescission.

The said Decision was later appealed by both Carmelita and Prudential. Crisantomas, however, filed a Special Appearance with Motion to Vacate Judgment claiming that the decision was void for improper service of summons on his person, but the RTC denied the motion. Crisantomas then questioned the said order before the CA which ruled in his favor in the assailed Decision.

ISSUE:

Whether summons was validly served on Crisantomas. (YES)

RULING:

There is no dispute that service of summons upon a defendant is imperative in order that a court may acquire jurisdiction over his person. In the case of *Manotoc vs. Court of Appeals*,

> The courts' jurisdiction over a defendant is founded on a valid service of summons. Without a valid service, the court cannot acquire jurisdiction over the defendant, unless the defendant voluntarily submits to it. The defendant must be properly apprised of a pending action against him and assured of the opportunity to present his defenses to the suit. Proper service of summons is used to protect one's right to due process.

Here, as borne by the records, the alias summons was served upon Crisantomas and Carmelita at the 3rdFloor Quezon Hall, UP Diliman, Quezon City. The same was received albeit with the caveat that it was received only in so far as Carmelita was concerned. Carmelita then proceeded to participate in the proceedings and filed her answer where she raised that an earlier case involving the same documents, except for the amended trust agreement, had already been passed upon by the RTC, CA and SC in the case entitled "*Spouses Crisantomas and Carmelita Guno vs. Prudential Bank and Trust Co.*". Carmelita fully participated in the proceedings of the instant case until the rendition of judgment on May 9, 2005.

Apart from his denial, there was no additional evidence adduced in support of his claim that he was never served a copy of the summons, the decision of the case or the proceedings of the case. He actually never stated in his affidavit that he and Carmelita were separated in fact - this was merely stated in his motion as a footnoteand that their marriage was eventually annulled. Curiously, however, no dates or evidence were ever supplied as to the exact date when they were separated in fact or when their eventual annulment took place. "It is basic in the rule of evidence that bare allegations, unsubstantiated by evidence, are not equivalent to proof. In short, mere allegations are not evidence."

A review of the records will easily reveal that under no instance was it ever stated, even by Carmelita, during the proceedings before the RTC, that she and Crisantomas were separated in fact or their marriage ties have been severed, by one way or another.

An action *in personam* is an action against a person on the basis of his personal liability. The action brought by petitioner against Crisantomas and Carmelita, is without a doubt an action *in personam* as he sought the Rescission of Promissory Notes, Deed of Sale of Real Property, Cancellation of Title with Damages in connection with promissory notes and a deed of sale of real property entered into by Crisantomas and Carmelita.

It appears from the records that Crisantomas and Carmelita were married prior to the effectivity of the Family Code on August 3, 1988. As there is nothing on record evincing that they executed any marriage settlement, the regime of conjugal partnership of gains governs their property relations. All property acquired during the marriage is presumed to be conjugal unless the contrary is proved.

As the deed of sale and promissory notes were entered into during the course of their marriage, the obligations thereunder are subsumed under their conjugal partnership.

Considering that the obligation entered into by Crisantomas and Carmelita clearly appeared to be a transaction that their conjugal partnership is liable for, they were therefore correctly made co-defendants as they had the same interests therein. Also, as the case involves an action *in personam* over documents entered into as regards a conjugal property, We reiterate that We deem the receipt of Carmelita of the summons as binding to her as it is to Crisantomas.

The core of the service of summons, which is the protection of the right to due process, cannot be said to have been transgressed in this case. Crisantomas failed to substantiate his claims that he failed to receive summons or that he was never notified of the proceedings. We further stress that Carmelita was able to actively participate in the proceedings and litigate their interests - which are undeniably the same, and that Crisantomas was unable to prove that he and Carmelita were already separated in fact or their marriage was otherwise annulled at that time. As correctly noted by the RTC, the notation that the summons was "received for Atty. Yadao-Guno only" had no effect as its receipt nevertheless bound Crisantomas.

1. Nature and purpose of summons in relation to actions in personam, in rem, and quasi in rem

INTERLINK MOVIE HOUSES, INC. AND EDMER Y. LIM, *PETITIONERS,* -versus- HONORABLE COURT OF APPEALS, STATIONERY EXPRESSIONS SHOP, INC. AND JOSEPHINE LIM BON HUAN, *RESPONDENTS.*

G.R. No. 203298, THIRD DIVISION, January 17, 2018, MARTIRES, *J.*

Personal service is effected by handling a copy of the summons to the defendant in person, or, if he refuses to receive and sign for it, by tendering it to him. If the defendant is a domestic private juridical entity, service may be made on its president, managing partner, general manager, corporate secretary, treasurer, or in-house counsel. It has been held that this enumeration is exclusive. Service on a domestic private juridical entity must, therefore, be made only on the person expressly listed in Section 11, Rule 14 of the Rules of Court. If the service of summons is made upon persons other than those officers enumerated in Section 11, the same is invalid.

There is no dispute that respondent Expressions is a domestic corporation duly existing under the laws of the Republic of the Philippines, and that respondent Bon Huan is its president. Thus, for the trial court to acquire jurisdiction, service of summons to it must be made to its president, Bon Huan, or to its managing partner, general manager, corporate secretary, treasurer, or in-house counsel. It is further undisputed that the questioned second service of summons was made upon Ochotorina, who was merely one of the secretaries of Bon Huan, and clearly, not among those officers enumerated under Section 11 of Rule 14. The service of summons upon Ochotorina is thus void and, therefore, does not vest upon the trial court jurisdiction over Expressions.

FACTS:

On 22 July 2008, petitioner Interlink Movie Houses, Inc. *(Interlink),*represented by its president, petitioner Edmer Y. Lim *(Lim),* filed before the RTC a complaint for sum of money and damages against respondents Expressions Stationery Shop, Inc. *(Expressions),* a corporation duly organized and existing under the laws of the Republic of the Philippines, and Joseph Lim Bon Huan *(Bon Huan).*[4] Interlink sought from Expressions the recovery of the latter's unpaid rentals and damages resulting from its alleged breach of their lease contract.

In the Sheriff's Return,[5] dated 26 September 2008, Sheriff Benedict R. Muriel *(Sheriff Muriel)* of the RTC's Branch 167 certified that on 24 September 2008, he served the summons issued in the subject case, together with the copy of the complaint, on the respondents at the office of the defendant company's president through a certain JonalynLiwanan *(Liwanan)*. Sheriff Muriel stated that Liwanan undertook to forward the said documents to her superior.

On 5 January 2009, Interlink filed a motion to declare herein respondents in default for their failure to file their answer.

On 6 January 2009, respondents entered a special appearance through Atty. Generosa Jacinto *(Atty. Jacinto)* alleging that the service of the summons was defective and, as such, the RTC did not acquire jurisdiction over them. They further prayed that Interlink's motion for declaration of default be denied.

Thus, in its Order,[8] dated 2 March 2009, the RTC denied Interlink's motion to declare defendants in default. The trial court agreed that the summons was not served in accordance with Section 11, Rule

14 of the Rules of Court rendering such service defective. Thus, it ordered the issuance and service of summonses to the respondents.

In the Sheriff's Return,[9] dated 15 May 2009, Sheriff Muriel certified that on 11 May 2009, he served the summons on Expressions at the office of its president, Bon Huan, through a certain AmeeOchotorina *(Ochotorina)*, a person of suitable age and discretion, who introduced herself as one of the secretaries of Bon Huan. Sheriff Muriel added that Ochotorina assured him that the summons would be brought to the attention of Bon Huan. He added that he had insisted that the summons be received personally by Bon Huan, but Ochotorina refused and told him that Bon Huan was then attending to some business matters.

On 25 June 2009, Interlink filed another motion to declare defendants in default.[10] To this motion, respondent again entered a special appearance through Atty. Jacinto on 10 July 2009. The respondents alleged that the second service of the summons was still defective because Ochotorina did not work for nor was connected with the office of the president of Expressions, and that she was neither its president, managing partner, general manager, corporate secretary, treasurer, nor its in-house counsel.

In the Order,dated 10 February 2010, the RTC granted the motion to declare defendants in default and allowed Interlink to present evidence *ex parte.* The trial court was convinced that there was sufficient compliance with the rules on service of summons to a juridical entity considering that the summons was received by the assistant/secretary of the president. The trial court further stated that corporate officers are usually busy and as such, summons to corporations are usually received only by assistants or secretaries of corporate officers.

On 5 March 2010, the respondents, on special appearance through Atty. Jacinto, filed an omnibus motion wherein they prayed that the 10 February 2010 order be recalled. The respondents insisted that the second service of summons did not vest upon the trial court jurisdiction over their persons.

In its Order,dated 9 August 2010, the RTC denied the respondents' omnibus motion. Thereafter, Interlink proceeded with its *ex parte* presentation of evidence.

In its decision, the RTC ruled in favor of Interlink. It opined that Interlink was able to prove its claims against Expressions and Bon Huan. On appeal, the CA annulled the RTC decision. The appellate court ruled that the second service of summons was still defective, and the trial court did not acquire jurisdiction over the persons of the respondents, thus rendering the RTC decision void.

ISSUE:

Whether there was valid service of summons. (NO)

RULING:

It is settled that jurisdiction over a defendant in a civil case is acquired either through service of summons or through voluntary appearance in court and submission to its authority. In the absence of service or when the service of summons upon the person of the defendant is defective, the court acquires no jurisdiction over his person, and a judgment rendered against him is null and void.[18]

In actions *in personam,* such as collection for a sum of money and damages, the court acquires

jurisdiction over the person of the defendant through personal or substituted service of summons.

Personal service is effected by handling a copy of the summons to the defendant in person, or, if he refuses to receive and sign for it, by tendering it to him. If the defendant is a domestic private juridical entity, service may be made on its president, managing partner, general manager, corporate secretary, treasurer, or in-house counsel. It has been held that this enumeration is exclusive. Service on a domestic private juridical entity must, therefore, be made only on the person expressly listed in Section 11, Rule 14 of the Rules of Court. If the service of summons is made upon persons other than those officers enumerated in Section 11, the same is invalid.

There is no dispute that respondent Expressions is a domestic corporation duly existing under the laws of the Republic of the Philippines, and that respondent Bon Huan is its president. Thus, for the trial court to acquire jurisdiction, service of summons to it must be made to its president, Bon Huan, or to its managing partner, general manager, corporate secretary, treasurer, or in-house counsel. It is further undisputed that the questioned second service of summons was made upon Ochotorina, who was merely one of the secretaries of Bon Huan, and clearly, not among those officers enumerated under Section 11 of Rule 14. The service of summons upon Ochotorina is thus void and, therefore, does not vest upon the trial court jurisdiction over Expressions.

Even assuming *arguendo* that the second service of summons may be treated as a substituted service upon Bon Huan as the president of Expressions, the same did not have the effect of giving the trial court jurisdiction over the respondents.

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. In such cases, substituted service may be effected (a) by leaving copies of the summons at the defendant's residence with some person of suitable age and discretion then residing therein, or (b) by leaving the copies at defendant's office or regular place of business with a competent person in charge.[25] Because substituted service is in derogation of the usual method of service, and personal service of summons is preferred over substituted service, parties do not have unbridled right to resort to substituted service of summons.[26]

In *Manotoc v. Court of Appeals,*[27] the Court held that before a sheriff may resort to substituted service, he must first establish the impossibility of prompt personal service. To establish such impossibility, there must be at least three (3) attempts, preferably on at least two different dates, to personally serve the summons within a reasonable period of one (1) month or eventually result in failure. The sheriff must further cite why such efforts are unsuccessful.

In this case, the impossibility of prompt personal service was not shown. The 15 May 2009 sheriffs return reveals that Sheriff Muriel attempted to serve the second summons personally only once on 11 May 2009. Clearly, the efforts exerted by Sheriff Muriel were insufficient to establish that it was impossible to personally serve the summons promptly. Further, Sheriff Muriel failed to cite reasons why personal service proved ineffectual. He merely stated that Ochotorina told him that Bon Huan was then attending to business matters, and that he was assured that the summons would be brought to the attention of Bon Huan.

From the foregoing, it is clear that the trial court failed to acquire jurisdiction over the respondents either by valid service of summons. Necessarily, the proceedings before the RTC in Civil Case No. 71732 are void with respect to the respondents. Thus, the CA did not err when it nullified the 9 August 2010 and 10 February 2010 Orders, and the 15 September 2010 Decision of the RTC.

BOBIE ROSE D. V. FRIAS, AS REPRESENTED BY MARIE REGINE F. FUJITA, *Petitioner*, - versus - ROLANDO F. ALCAYDE, *Respondent*.
G.R. No. 194262, FIRST DIVISION, February 28, 2018, TIJAM, *J.*

It is elementary that courts acquire jurisdiction over the plaintiff or petitioner once the complaint or petition is filed. On the other hand, there are two ways through which jurisdiction over the defendant or respondent is acquired through coercive process - either through the service of summons upon them or through their voluntary appearance in court. ***For purposes of summons, this Court holds that the nature of a petition for annulment of judgment is in personam****.*

Where the action is in personam and the defendant is in the Philippines, as in this case, the service of summons may be done by personal or substituted service as laid out in Sections 6 and 7 of Rule 14. Indeed, the preferred mode of service of summons is personal service. ***A perusal, however, of Sheriff Tolentino's Return discloses that the following circumstances, as required in Manotoc, were not clearly-established:*** *(a) personal service of summons within a reasonable time was impossible; (b) efforts were exerted to locate the party; and (c) the summons was served upon a person of sufficient age and discretion residing at the party's residence or upon a competent person in charge of the party's office or place of business.* ***The Officer's Return likewise revealed that no diligent effort was exerted and no positive step was taken to locate and serve the summons personally on the petitioner.Thus, Sheriff Tolentino fell short of the required standards. For her failure to faithfully, strictly, and fully comply with the requirements of substituted service, the same is rendered ineffective.***

As a general proposition, one who seeks an affirmative relief is deemed to have submitted to the jurisdiction of the court. This, however, is tempered by the concept of conditional appearance, such that a party who makes a special appearance to challenge, among others, the court's jurisdiction over his person cannot be considered to have submitted to its authority. ***In this case, it is readily apparent that the petitioner did not acquiesce to the jurisdiction of the trial court.It is noteworthy that when the petitioner filed those pleadings and motions, it was only in a "special" character, conveying the fact that her appearance before the trial court was with a qualification, i.e., to defy the RTC's lack of jurisdiction over her person.***

FACTS:

Petitioner Bobie Rose D.V. Frias, as lessor, and respondent Rolando Alcayde, as lessee, entered into a Contract of Lease involving a residential house and lot located at No. 589 Batangas East, Ayala Alabang Village, Muntinlupa City, for a period of one year with a monthly rental of P30,000.00. Respondent refused to perform any of his contractual obligations, which had accumulated for 24 months in rental arrearages.

This prompted petitioner to file a Complaint for Unlawful Detainer with the MeTC Muntinlupa against the respondent. As per the Process Server's Return, Tobias N. Abellano tried to personally serve the summons to respondent, but to no avail. Through substituted service, summons was served upon respondent's caretaker, May Ann Fortiles.

The MeTC, in its Decision on July 26, 2006, ruled in favor of the petitioner and ordered respondent to vacate the subject premises and to pay the petitioner the accrued rentals at 12% legal interest, plus P10,000 in attorney's fees. Thereafter, the MeTC issued an Order, granting petitioner's Motion to execute the July 26, 2006 Decision, and denying respondent's Omnibus Motion thereto.

Respondent then filed a Petition for Annulment of Judgment with Prayer for Issuance of TRO and/or Injunction with the RTC Muntinlupa. Respondent averred that the MeTC's July 26, 2006 Decision does not bind him since the court did not acquire jurisdiction over his person. Respondent likewise averred that the MeTC lacked jurisdiction over the case for two reasons: (1) petitioners' complaint has no cause of action for failure to make a prior demand to pay and to vacate; and (2) petitioner's non-referral of the case before the *barangay*.

A copy of the petition for annulment of judgment was allegedly served to the petitioner. Based on the Officer's Return, Sheriff IV Jocelyn S. Tolentino (Sheriff Tolentino) caused the service of a Notice of Raffle and Summons together with a copy of the complaints and its annexes to the petitioner, through Sally Gonzales (Ms. Gonzales), the secretary of petitioner's counsel, Atty. Daniel S. Frias (Atty. Frias).

Petitioner, through her representative, Marie Regine F. Fujita (Ms. Fujita), filed a Preliminary Submission to Dismiss Petition - Special Appearance Raising Jurisdictional Issues (Preliminary Submission), on the ground of lack of jurisdiction over her person. She pointed out that the defect in the service of summons is immediately apparent on the Officer's Return, since it did not indicate the impossibility of a personal service within a reasonable time. It did not specify the efforts exerted by Sheriff Tolentino to locate the petitioner, and it did not certify that the person in the office who received the summons in petitioner's behalf was one with whom the petitioner had a relation of confidence ensuring that the latter would receive or would be notified of the summons issued in her name.

ISSUE:

Whether the respondent's petition for annulment of judgment should be dismissed on the ground of lack of jurisdiction over the person of the petitioner? (YES)

RULING:

It is elementary that courts acquire jurisdiction over the plaintiff or petitioner once the complaint or petition is filed. On the other hand, there are two ways through which jurisdiction over the defendant or respondent is acquired through coercive process - either through the service of summons upon them or through their voluntary appearance in court.

Nature of a petition for annulment of judgment for purposes of service of summons

For a proper perspective, it is crucial to underscore the necessity of determining first whether the action subject of this appeal is *in personam, in rem, or quasi in rem* because the rules on service of summons under Rule 14 apply according to the nature of the action.

An **action *in personam*** is a proceeding to enforce personal rights and obligations brought against the person and is based on the jurisdiction of the person. **Actions *in rem*** are actions against the thing itself. They are binding upon the whole world. In an **action *quasi in rem***, an individual is named as defendant and the purpose of the proceeding is to subject his interests therein to the obligation or loan burdening the property.

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. In a **proceeding *in rem* or *quasi in rem*,** jurisdiction over the person of the defendant is not a prerequisite to confer jurisdiction on the court, provided that the latter has jurisdiction over the res. Jurisdiction over the res is acquired either (a) by the seizure of the property under legal process, whereby it is brought into actual custody of the law; or (b) as a result of the institution of legal proceedings, in which the power of the court is recognized and made effective.

Here, respondent filed a petition to annul the MeTC's July 26, 2006 Decision, which ordered him to vacate the premises of the subject property and to pay the petitioner the accrued rentals thereon, in violation of the parties' lease contract.

Annulment of judgment, as provided for in Rule 47, is based only on the grounds of extrinsic fraud and lack of jurisdiction. Jurisprudence, however, recognizes lack of due process as an additional ground to annul a judgment. It is unlike a motion for reconsideration, appeal or even a petition for relief from judgment, because annulment is not a continuation or progression of the same case, as in fact the case it seeks to annul is already final and executory. Rather, it is an extraordinary remedy that is equitable in character and is permitted only in exceptional cases.

For purposes of summons, this Court holds that the nature of a petition for annulment of judgment is *in personam*, on the basis of the following reasons:

***First*,** a petition for annulment of judgment is an original action, which is separate, distinct and independent of the case where the judgment sought to be annulled is rendered. Thus, regardless of the nature of the original action in the decision sought to be annulled, be it *in personam*, *in rem* or *quasi in rein*, the respondent should be duly notified of the petition seeking to annul the court's decision over which the respondent has a direct or indirect interest.

***Second*,** a petition for annulment of judgment and the court's subsequent decision thereon will affect the parties alone. Any judgment therein will eventually bind only the parties properly impleaded. In this case, had the RTC granted the respondent's petition, the MeTC's July 26 2006 judgment would have been declared a nullity. This would have resulted to the following consequences: as to the respondent, he would no longer be required to pay the rentals and vacate the subject property; and, as to the petitioner, she would be deprived of her right to demand the rentals and to legally eject the respondent. Clearly, only the parties' interests would have been affected.

There was neither a valid service of summons in person nor a valid substituted service of summons over the person of the petitioner

Where the action is in *personam* and the defendant is in the Philippines, as in this case, the service of summons may be done by personal or substituted service as laid out in Sections 6 and 7 of Rule 14. Indeed, the preferred mode of service of summons is personal service. Accordingly, this Court explained the nature and enumerated the requisites of substituted service in *Manotoc v. Court of Appeals, et al.*,which We summarize and paraphrase below:

> For substituted service of summons to be available, there must be several attempts by the sheriff to personally serve the summons within a reasonable period of one (1) month which eventually resulted in failure to prove impossibility of prompt service. "Several attempts" means at least three (3) tries, preferably on at least two (2) different dates. In addition, the sheriff must cite why such efforts were unsuccessful.
> If the substituted service will be effected at defendant's house or residence, it should be left with a person of suitable age and discretion then residing therein. The sheriff must therefore determine if the person found in the alleged dwelling or residence of defendant is of legal age, what the recipient's relationship with the defendant is, and whether said person comprehends the significance of the receipt of the summons and his duty to immediately deliver it to the defendant or at least notify the defendant of said receipt of summons.
>
> If the substituted service will be done at defendant's office or regular place of business, then it should be served on a competent person in charge of the place. Thus, the person on whom the substituted service will be made must be the one managing the office or business of defendant, such as the president or manager. Such individual must have sufficient knowledge to understand the obligation of the defendant in the summons, its importance, and the prejudicial effects arising from inaction on the summons.

A perusal, however, of Sheriff Tolentino's Return discloses that the following circumstances, as required in *Manotoc*, were not clearly-established: (a) personal service of summons within a reasonable time was impossible; (b) efforts were exerted to locate the party; and (c) the summons was served upon a person of sufficient age and discretion residing at the party's residence or upon a competent person in charge of the party's office or place of business.

The Officer's Return likewise revealed that no diligent effort was exerted and no positive step was taken to locate and serve the summons personally on the petitioner. Upon having been satisfied that the petitioner was not present at her given address, Sheriff Tolentino immediately resorted to substituted service of summons by proceeding to the office of Atty. Frias, petitioner's counsel. Evidently, Sheriff Tolentino failed to show that she made several attempts to effect personal service for at least three times on at least two different dates. It is likewise evident that Sheriff Tolentino simply left the "Notice of Raffle and Summons" with Ms. Gonzales, the alleged secretary of Atty. Frias. She did not even bother to ask her where the petitioner might be. There were no details in the Officer's Return that would suggest that Sheriff Tolentino inquired as to the identity of Ms. Gonzales. There was no showing that Ms. Gonzales was the one managing the office or business of the petitioner, such as the president or manager, and that she has sufficient knowledge to understand the obligation of the petitioner in the summons, its importance, and the prejudicial effects arising from inaction on the summons.

Thus, Sheriff Tolentino fell short of the required standards. For her failure to faithfully, strictly, and fully comply with the requirements of substituted service, the same is rendered

ineffective. As such, the presumption of regularity in the performance of official functions, which is generally accorded to a sheriff's return,does not obtain in this case.

Special appearance to question a court's jurisdiction is not voluntary appearance

As a general proposition, one who seeks an affirmative relief is deemed to have submitted to the jurisdiction of the court. This, however, is tempered by the concept of conditional appearance, such that a party who makes a special appearance to challenge, among others, the court's jurisdiction over his person cannot be considered to have submitted to its authority. **In this case, it is readily apparent that the petitioner did not acquiesce to the jurisdiction of the trial court.**

The records show that the petitioner never received any copy of the respondent's petition to annul the final and executory judgment of the MeTC in the unlawful detainer case. As explained earlier, the copy of the said petition which was served to Ms. Gonzales was defective under the Rules of Court. Consequently, in order to question the trial court's jurisdiction, the petitioner filed several pleadings and motions. However, in all these pleadings and motions, the petitioner never faltered in declaring that the trial court did not acquire jurisdiction over her person, due to invalid and improper service of summons. **It is noteworthy that when the petitioner filed those pleadings and motions, it was only in a "special" character, conveying the fact that her appearance before the trial court was with a qualification, *i.e.*, to defy the RTC's lack of jurisdiction over her person.**

To recapitulate, the jurisdiction over the person of the petitioner was never vested with the RTC despite the mere filing of the petition for annulment of judgment. The manner of substituted service by the process server was apparently invalid and ineffective. As such, there was a violation of due process. Thus, as the essence of due process lies in the reasonable opportunity to be heard and to submit any evidence the defendant may have in support of her defense, the petitioner must be properly served the summons of the court. Regrettably, as had been discussed, the Constitutional right of the petitioner to be properly served the summons and be notified has been utterly overlooked by the officers of the trial court.

2. Rule 14

H. Motions

1. In general (Rule 15)

REPUBLIC OF THE PHILIPPINES, *Petitioner*, -versus- ALVIN C. DIMARUCOT and NAILYN TAÑEDO-DIMARUCOT, ***Respondents*.** G.R. No. 202069, SECOND DIVISION, March 07, 2018, CAGUIOA, *J*.

1. It is true that this Court has ruled that "certiorari, as a special civil action will not lie unless a motion for reconsideration is first filed before the respondent tribunal, to allow it an opportunity to correct its assigned errors." However, this general rule is subject to well-defined exceptions. The Republic invokes the fourth exception that the filing of a motion for reconsideration of the September 2010 RTC Order would have been useless as it was based on the earlier August 2010 RTC Order.

Clearly, the Republic's direct resort to the CA via certiorari was warranted under the circumstances, as it was led to believe that seeking reconsideration of the September 2010 RTC Order would have been a useless exercise. ***The CA thus erred when it caused the outright dismissal of the CA Petition solely on the basis of the Republic's failure to file a prior motion for reconsideration.***

2. To be sure, the 3-day notice rule was established *not* for the benefit of movant but for the adverse party, in order to avoid surprises and grant the latter sufficient time to study the motion and enable it to meet the arguments interposed therein. The duty to ensure receipt by the adverse party at least three days before the proposed hearing date necessarily falls on the movant.**Nevertheless, considering the nature of the case and the issues involved therein, the Court finds that relaxation of the Rules was called for.**

Here, the State's policy of upholding the sanctity of marriage takes precedence over strict adherence to Rule 15, for the finality of the RTC Decision necessarily entails the permanent severance of Alvin and Nailyn's marital ties. Hence, the RTC should have exercised its discretion, as it did have such discretion, and set the MR for hearing on a later date with due notice to the parties to allow them to fully thresh out the Republic's assigned errors.

FACTS:

Respondents were married and they had two children. It appears, however, that Alvin filed a Petition for Declaration of Absolute Nullity of Marriage (RTC Petition) before the RTC on September 22, 2009.In the RTC Petition, Alvin alleged that Nailyn suffers from psychological incapacity which renders her incapable of complying with the essential obligations of marriage. Hence, Alvin prayed that his marriage with Nailyn be declared null and void pursuant to Article 36 of the Family Code.

The Provincial Prosecutor was deputized by the Office of the Solicitor General (OSG) to assist in the case.On July 2, 2010, the RTC, through Presiding Judge Ismael P. Casabar (Judge Casabar), rendered a Decision declaring Respondents' marriage null and void.

On July 27, 2010, the Republic, through the OSG, filed a Motion for Reconsideration (MR). However, the Notice of Hearing annexed to the MR erroneously set the same for hearing on July 6, 2010 (instead of August 6, 2010 as the OSG later explained).The RTC denied the Republic's MR through the August 2010 RTC Order. Thus, on September 1, 2010, the Republic filed a Notice of Appeal of even date, which was denied in the September 2010 RTC Order.

Subsequently, on October 22, 2010, the Republic filed a Petition for *Certiorari* (CA Petition) before the CA, ascribing grave abuse of discretion on the part of the RTC for issuing the August and September 2010 RTC orders.

The Republic claimed that its MR substantially complied with the requirements of Sections 4, 5 and 6 of Rule 15 governing motions. Hence, the RTC should not have treated said MR as a mere scrap of paper solely because of the misstatement of the proposed hearing date in the Notice of Hearing appended thereto, considering that the RTC is "not without any discretion" to set the MR for hearing on a different date.

The CA, however, dismissed the petition. The CA held that the CA Petition warrants outright dismissal

because it was filed without the benefit of a motion for reconsideration — an indispensable requirement for the filing of a petition for *certiorari* under Rule 65.

The Republic filed an MR of the CA decision, and it further argued that the RTC should not have denied its Notice of Appeal, since appeal is precisely the proper remedy to assail the August 2010 RTC Order pursuant to Section 9, Rule 37 of the Rules and Section 20 (2) of the Rules on Declaration of Absolute Nullity of Void Marriages and Annulment of Voidable Marriages. But the CA denied the same.

ISSUE:

1. Whether the CA erred in dismissing the Republic's petition for *certiorari* for failure to file a prior motion for reconsideration of the RTC's order. (NO)
2. Whether the strict compliance with Rule 15 of the Rules of Court should be waived in the interest of justice. (YES)

RULING:

1.

It is true that this Court has ruled that "*certiorari*, as a special civil action will not lie unless a motion for reconsideration is first filed before the respondent tribunal, to allow it an opportunity to correct its assigned errors." However, this general rule is subject to well-defined exceptions, thus:

> Moreover, while it is a settled rule that a special civil action for certiorari under Rule 65 will not lie unless a motion for reconsideration is filed before the respondent court; there are well-defined exceptions established by jurisprudence, such as [i] where the order is a patent nullity, as where the court *a quo* has no jurisdiction; [ii] 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; [iii] 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; [iv] where, under the circumstances, a motion for reconsideration would be useless; [v] where petitioner was deprived of due process and there is extreme urgency for relief; [vi] 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; [vii] where the proceedings in the lower court are a nullity for lack of due process; [viii] where the proceedings were ex parte or in which the petitioner had no opportunity to object; and [ix] where the issue raised is one purely of law or where public interest is involved.

The Republic invokes the fourth exception above, and argues that the filing of a motion for reconsideration of the September 2010 RTC Order would have been useless as it was based on the earlier August 2010 RTC Order. The Court agrees.

To recall, the denial of the Republic's Notice of Appeal through the September 2010 RTC Order was premised on the RTC's earlier finding that the MR was a *pro-forma* motion due to non-compliance with Rule 15. As well, it is necessary to emphasize that the September 2010 RTC Order explicitly states that the RTC Decision had "attained finality" because the Republic's MR did not toll the Republic's period to appeal.

Clearly, the Republic's direct resort to the CA *via certiorari* was warranted under the circumstances, as it was led to believe that seeking reconsideration of the September 2010 RTC Order would have been a useless exercise. **The CA thus erred when it caused the outright dismissal of the CA Petition solely on the basis of the Republic's failure to file a prior motion for reconsideration.**

2.

The Republic concedes that it misstated the proposed hearing date in the Notice of Hearing attached to its MR. It argues, however, that this misstatement does not serve as sufficient basis to treat its MR as a mere scrap of paper, considering that said Notice of Hearing fulfilled the purpose of Rule 15, that is, "**to afford the adverse parties a chance to be heard before [the MR] is resolved by the [RTC]**."

The requirements outlined in the Rules can be summarized as follows:

i. Every written motion which cannot be acted upon without prejudicing the rights of the adverse party must be set for hearing;

ii. The adverse party must be given: (a) a copy of such written motion, and (b) notice of the corresponding hearing date;

iii. The copy of the written motion and the notice of hearing described in (ii) must be furnished to the adverse party at least three (3) days before the hearing date, unless otherwise ordered by the RTC (3-day notice rule); and

iv. No written motion that is required to be heard shall be acted upon by the receiving court without proof of service done in the manner prescribed in (iii).

Perusal of the foregoing shows that the Republic failed to comply with the first **and** third requirements.

Notably, while the Republic furnished Alvin and Nailyn's respective counsels with copies of the MR and Notice of Hearing, the Republic did so only by registered mail. As a result, Alvin received notice of the Republic's MR only on August 11, 2010. Hence, even if the RTC construed the Republic's typographical error to read August 6, 2010 instead of July 6, 2010, the Republic would have still failed to comply with the 3-day notice rule.

To be sure, the 3-day notice rule was established *not* for the benefit of movant but for the adverse party, in order to avoid surprises and grant the latter sufficient time to study the motion and enable it to meet the arguments interposed therein. The duty to ensure receipt by the adverse party at least three days before the proposed hearing date necessarily falls on the movant.

Nevertheless, considering the nature of the case and the issues involved therein, the Court finds that relaxation of the Rules was called for. It is well settled that procedural rules may be relaxed in the interest of substantial justice. Accordingly, the "strict and rigid application, [of procedural rules] which would result in technicalities that tend to frustrate rather than promote substantial justice, must always be eschewed."

Here, the State's policy of upholding the sanctity of marriage takes precedence over strict adherence to Rule 15, for the finality of the RTC Decision necessarily entails the permanent severance of Alvin and Nailyn's marital ties. Hence, the RTC should have exercised its discretion, as it did have such discretion, and set the MR for hearing on a later date with due notice to the parties to allow them to fully thresh out the Republic's assigned errors. **The CA thus erred when it affirmed the RTC in this respect.**

3. Motion to dismiss (Rule 16)

ELIZABETH M. LANSANGAN, ***Petitioner*****, -versus- ANTONIO S. CAISIP**, ***Respondent.***

G.R. No. 212987, SECOND DIVISION, August 06, 2018, PERLAS-BERNABE, *J.*

In Banares II v. Balising, it was mentioned that the non-referral of a case for barangay conciliation when so required under the law is ***not jurisdictional in nature****, and may therefore be deemed waived if not raised seasonably in a motion to dismiss or in a responsive pleading.*

Here, the ground of non-compliance with a condition precedent, i.e., undergoing prior barangay conciliation proceedings, was not invoked at the earliest opportunity, as in fact, respondent was declared in default for failure to file a responsive pleading despite due notice. Therefore, it was grave error for the courts a quo to order the dismissal of petitioner's complaint on said ground. Hence, in order to rectify the situation, the Court finds it proper that the case be reinstated and remanded to the MCTC, which is the court of origin, for its resolution on the merits.

FACTS:

This case stemmed from a Complaint for Sum of Money and Damages filed before the 2nd Municipal Circuit Trial Court of Capas-Bamban-Concepcion, Tarlac (MCTC) by petitioner against respondent Antonio Caisip (respondent)

Petitioner, a resident of Camanse Street, Purok 4, Rose Park, Concepcion, Tarlac, alleged that respondent, a resident of Barangay Sto. Niño, Concepcion, Tarlac, executed a promissory note in her favor. As respondent defaulted in his obligation under the promissory note and refused to heed petitioner's demands to comply therewith, the latter was constrained to file the said complaint.

Since respondent failed to file any responsive pleading, petitioner moved to declare him in default and for the MCTC to render judgment, which was granted. The MCTC *motu proprio* dismissed without prejudice the complaint for failure to comply with the prior referral of the dispute for barangay conciliation proceedings before the filing of a case in court.Aggrieved, she filed a petition for *certiorari* before the RTC, but the latter upheld the dismissal of the complaint. Undeterred, she appealed to the CA, which affirmed the RTC.

ISSUE:

Whether the motu proprio dismissal of the case for failure to comply with barangay conciliation proceedings is valid. (NO)

RULING:

Section 1, Rule 16 of the Rules of Court provides for the grounds that may be raised in a motion to dismiss a complaint.

As a general rule, the listed grounds must be invoked by the party-litigant at the earliest opportunity, as in a motion to dismiss or in the answer; otherwise, such grounds are deemed waived. As an exception, however, the courts may order the *motu proprio* dismissal of a case on the grounds of lack of jurisdiction over the subject matter, *litis pendentia, res judicata,* and prescription of action, pursuant to Section 1, Rule 9 of the Rules of Court.

In this case, the *motu proprio* dismissal of the complaint was anchored on petitioner's failure to refer the matter for barangay conciliation proceedings which in certain instances, is a condition precedent before filing a case in court. As Section 412 (a) of RA 7160 provides, the conduct of barangay conciliation proceedings is a pre-condition to the filing of a complaint involving any matter within the authority of the *lupon.*

Notably, in *Aquino v. Aure,* the Court clarified that ***such conciliation process is not a jurisdictional requirement, such that non-compliance therewith cannot affect the jurisdiction which the court has otherwise acquired over the subject matter or over the person of the defendant,*** *viz.*:

> Ordinarily, non-compliance with the condition precedent [of prior barangay conciliation] could affect the sufficiency of the plaintiff's cause of action and make his complaint vulnerable to dismissal on [the] ground of lack of cause of action or prematurity; but the same would not prevent a court of competent jurisdiction from exercising its power of adjudication over the case before it, where the defendants, as in this case, failed to object to such exercise of jurisdiction in their answer and even during the entire proceedings *a quo.*

Similarly, in *Banares II v. Balising,* it was mentioned that the non-referral of a case for barangay conciliation when so required under the law is ***not jurisdictional in nature,*** and may therefore be deemed waived if not raised seasonably in a motion to dismiss or in a responsive pleading.

Here, the ground of non-compliance with a condition precedent, *i.e.,* undergoing prior barangay conciliation proceedings, was not invoked at the earliest opportunity, as in fact, respondent was declared in default for failure to file a responsive pleading despite due notice. Therefore, it was grave error for the courts *a quo* to order the dismissal of petitioner's complaint on said ground. Hence, in order to rectify the situation, the Court finds it proper that the case be reinstated and remanded to the MCTC, which is the court of origin, for its resolution on the merits.

JOSE Z. MORENO, *petitioner* –versus- RENE M. KAHN, CONSUELO MORENO KAHN-HAIRE, RENE LUIS PIERRE KAHN, PHILIPPE KAHN, MA. CLAUDINE KAHN MCMAHON, and THE REGISTER OF DEEDS OF MUNTINLUPA CITY, *respondents*.

G.R. No. 217744, SECOND DIVISION, July 30, 2018, PERLAS-BERNABE, *J.*

For Article 151 of the Family Code to apply, the suit must be exclusively between or among "members of the same family." Once a stranger becomes a party to such suit, the earnest effort requirement is no longer a condition precedent before the action can prosper.

In this instance, it is undisputed that: (a) Jose and Consuelo are full-blooded siblings; and (b) Consuelo is the mother of Rene, Luis, Philippe, and Claudine, which make them nephews and niece of their uncle, Jose. It then follows that Rene, Luis, Philippe, and Claudine are considered "strangers" to Jose insofar as Article 151 of the Family Code is concerned.

FACTS:

Jose alleged that since May 1998 and in their capacity as lessees, he and his family have been occupying two (2) parcels of land co-owned by his full-blooded sister, respondent Consuelo Moreno Kahn-Haire (Consuelo) and his nephews and nieces (Consuelo's children), respondents Rene M. Kahn (Rene), Rene Luis Pierre Kahn (Luis), Philippe Kahn (Philippe), and Ma. Claudine Kahn-McMahon (Claudine; collectively, respondents).

Around April or May 2003, through numerous electronic mails (emails) and letters, respondents offered to sell to Jose the subject lands for the amount of US$200,000.00 (US$120,000.00 to be received by Consuelo and US$20,000.00 each to be received by her children), which Jose accepted. Notably, the agreement was made verbally and was not immediately reduced into writing, but the parties had the intention to eventually memorialize the same via a written document. Over the next few years, Jose made partial payments to respondents by paying off the shares of Rene, Luis, Philippe, and Claudine, leaving a remaining balance of US$120,000.00 payable to Consuelo.

However, in July 2010, Consuelo decided to "cancel" their agreement, and thereafter, informed Jose of her intent to convert the earlier partial payments as rental payments instead. In response, Jose expressed his disapproval to Consuelo's plan and demanded that respondents proceed with the sale, which the latter ignored. He then claimed that on July 26, 2011, without his consent, Consuelo, Luis, Philippe, and Claudine sold their shares over the subject lands to Rene, thereby consolidating full ownership of the subject lands to him. Consequently, TCT Nos. 181516 and 181517 were cancelled and new TCTs, *i.e.*, TCT Nos. 148026 and 148027, were issued in Rene's name. Upon learning of such sale, Jose sent a demand letter to Rene, and later on to Consuelo, Luis, Philippe, and Claudine, asserting his right to the subject lands under the previous sale agreed upon. As his demands went unheeded, Jose brought the matter to the barangay *lupon* for conciliation proceedings between him and Rene only, since Consuelo, Luis, Philippe, and Claudine are all living abroad. As no settlement was agreed upon, Jose was constrained to file the subject complaint for specific performance and cancellation of titles with damages and application for temporary restraining order and writ of preliminary injunction.

The RTC *motu proprio* ordered the dismissal of Jose's complaint for failure to allege compliance with the provision of Article 151 of the Family Code which requires earnest efforts to be made first before suits may be filed between family members. The CA affirmed the RTC ruling.

ISSUE:

(I) Whether the CA correctly affirmed the RTC's *motu proprio* dismissal of Jose's complaint. (NO)

(II) Whether Article 151 of the Family Code is applicable to this case. (NO)

RULING:

(I)

The Court held in *Heirs of Favis, Sr. v. Gonzales* that non-compliance with the earnest effort requirement under Article 151 of the Family Code is **not a jurisdictional defect** which would authorize the courts to dismiss suits filed before them *motu proprio*. Rather, it merely partakes of a condition precedent such that the non-compliance therewith constitutes a ground for dismissal of a suit should the same be invoked by the opposing party at the earliest opportunity, as in a motion to dismiss or in the answer. Otherwise, such ground is deemed waived,

In this case, a plain reading of the records shows that the RTC ordered the dismissal of Jose's complaint against respondents for his alleged failure to comply with Article 151 of the Family Code — even before respondents have filed a motion or a responsive pleading invoking such non-compliance. As such ground is not a jurisdictional defect but is a mere condition precedent, the courts *a quo* clearly erred in finding that a *motu proprio* dismissal was warranted under the given circumstances.

(II)

Even assuming *arguendo* that respondents invoked the foregoing ground at the earliest opportunity, the Court nevertheless finds Article 151 of the Family Code inapplicable to this case. For Article 151 of the Family Code to apply, the suit must be exclusively between or among "members of the same family." Once a stranger becomes a party to such suit, the earnest effort requirement is no longer a condition precedent before the action can prosper.

In this relation, Article 150 of the Family Code reads:

> Art. 150. Family relations include those:
>
> (1) Between husband and wife;
>
> (2) Between parents and children; acEHCD
>
> (3) Among other ascendants and descendants; and
>
> (4) Among brothers and sisters, whether of the full or half-blood.

In this light, case law states that Article 151 of the Family Code must be construed strictly, it being an exception to the general rule. Hence, any person having a collateral familial relation with the plaintiff other than what is enumerated in Article 150 of the Family Code is considered a stranger who, if included in a suit between and among family members, would render unnecessary the earnest efforts requirement under Article 151. *Expressiouniusestexclusioalterius*. The express mention of one person, thing, act, or consequence excludes all others.

In this instance, it is undisputed that: *(a)* Jose and Consuelo are full-blooded siblings; and *(b)* Consuelo is the mother of Rene, Luis, Philippe, and Claudine, which make them nephews and niece of their uncle, Jose. It then follows that Rene, Luis, Philippe, and Claudine are considered "strangers" to Jose insofar as Article 151 of the Family Code is concerned. In this relation, it is apt to clarify that while it was the disagreement between Jose and Consuelo that directly resulted in

the filing of the suit, the fact remains that Rene, Luis, Philippe, and Claudine were rightfully impleaded as co-defendants in Jose's complaint as they are co-owners of the subject lands in dispute. In view of the inclusion of "strangers" to the suit between Jose and Consuelo who are full-blooded siblings, the Court concludes that the suit is beyond the ambit of Article 151 of theFamily Code. Perforce, the courts *a quo* gravely erred in dismissing Jose's complaint due to non-compliance with the earnest effort requirement therein.

3. Motion for bill of particulars (Rule 12)

I. Dismissal

1. Kinds

a. With prejudice vs. without prejudice

b. Dismissals which have an effect of an adjudication on the merits

TEODORICO CASTILLO, ALICE CASTILLO, and ST. EZEKIEL SCHOOL, INC., Petitioners -versus- BANK OF THE PHILIPPINE ISLANDS, Respondent. G.R. No. 214053, FIRST DIVISION, June 6, 2018, DEL CASTILLO, *J.*

The lapse of time is considered in the dismissal of the petition since the filing of the petitioners' Withdrawal of Petition and the lack of action on respondent's part, it appears that the Petition has been rendered moot and academic, and is thus ripe for dismissal. Since the withdrawal of the Petition came upon the initiative of petitioners, respondent's inaction may be considered to be an implied concurrence or approval of the same.

FACTS:

Sometime in 1997, Prudential Bank - now Bank of the Philippine Islands (BPI), herein respondent- extended various loans to petitioners Teodorico and Alice Castillo amounting to at least ₱20 million. As security, petitioners mortgaged property covered by Transfer Certificate of Title No. 102607 (the subject property) for which corresponding deeds of real estate mortgage were executed.

Petitioners defaulted in their loan payments. BPI thus filed a Petition for Extrajudicial Foreclosure of Real Estate Mortgage before the Regional Trial Cou1t (RTC) of Malolos, Bulacan. At the auction sale held on November 26, 2008, BPI emerged as the highest bidder.

Petitioners were unable to redeem the subject property. A Certificate of Sale was thus issued in BPI's favor.

On June 23, 2009, BPI filed a Petition for *Ex Parte* Issuance of Writ of Possession[5] before the RTC Bulacan. The RTC issued a Decision[6] granting BPI's prayer for a writ of possession.

Petitioners interposed an appeal before the CA. However, the CA dismissed the appeal and affirmed the decision of the RTC.

Petitioners moved to reconsider, but the CA held its ground. Hence, the present Petition.

ISSUE:

Whether the dismissal is proper. (Yes)

RULING:

Considering the lapse of time since the filing of the petitioners' Withdrawal of Petition and the lack of action on respondent's part, it appears that the instant Petition has been rendered moot and academic, and is thus ripe for dismissal. Since the withdrawal of the Petition came upon the initiative of petitioners, respondent's inaction may be considered to be an implied concurrence or approval of the same.

CARMEN ALEDRO-RUÑA, *Petitioner*, *v.* LEAD EXPORT AND AGRO-DEVELOPMENT CORPORATION, *Respondent.*
G.R. No. 225896, THIRD DIVISION, July 23, 2018, GESMUNDO, *J.*

A judgment may be considered as one rendered on the merits when it determines the rights and liabilities of the parties based on the disclosed facts*, irrespective of formal, technical or dilatory objections; or when the judgment is rendered after a determination of which party is right,* ***as distinguished from a judgment rendered upon*** *some preliminary or formal or* ***merely technical point****. It is not required that a trial, actual hearing, or argument on the facts of the case ensued, for as long as the parties had the full legal opportunity to be heard on their respective claims and contentions.*

Here, ***the order specifically stated*** *that the dismissal* ***is with prejudice****, and as such, it is understood as an* ***adjudication on the merits****. Under Sec. 2, Rule 17, the dismissal upon motion of the plaintiff is without prejudice,* ***except otherwise specified in the order****.*

However, ***res judicata is to be disregarded if its rigid application would involve the sacrifice of justice*** *to technicality, particularly in this case where there was actually* ***no determination of the substantive issues in the first case****. There was* ***no legal declaration of the parties' rights and liabilities****.* ***The CAremanded*** *the case for further reception of evidence precisely because* ***there were substantive issues needed to be resolved.***

FACTS:

This case originated from 3 different civil cases involving 2 parcels of land registered under the name of Segundo Aledro. Segundo allegedly executed a Deed of Absolute Sale involving the same lands executed by Segundo and Mario Advento on March 24, 1981. Advento sold the subject properties to Andres Ringor. FarmingtownAgro-Developers, Inc. (FADI) leased the 2 parcels of land from Ringor for a period of 25 years.

First Case*: Civil Case No. 95-13*

On January 31, 1995, a complaint was filed by the heirs of Segundo (including herein petitioner Carmen Aledro-Ruña) against Advento and FADI before the RTC Br. 34, for Real Action over an Immovable, Declaration of Nullity of Deed, and Damages.The RTC Br. 34 dismissed the complaint. The heirs of Segundo then appealed before the CA.

Meanwhile, FADI merged with respondent Lead Export and Agro-Development Corporation, the latter as the surviving corporation. Consequently, respondent absorbed FADI's occupational and possessory rights pertaining to the subject lots.

The CA reversed and set aside the decision of the RTC Br. 34 and **remanded the case thereto**.

Allegedly, the heirs of Segundo (including petitioner), filed a **motion to dismiss** with prejudice on the ground of lack of interest to prosecute the case and to protect Advento and FADI from further prosecution respecting the subject matter of the case.The RTC Br. 34 issued an Order dismissing the case **with prejudice**. The order became final and executory.

***Second Case**: Civil Case No. 41-2005*

Another complaint was filed by Sofia, widow of Segundo before the RTC Br. 4 against Advento for Declaration of Nullity of Deed of Sale and Quieting of Title, alleging that through fraud, she and Segundo were made to believe that they were signing a contract of lease on March 24, 1981 and not a deed of absolute sale. The RTC Br. 4 rendered a decision in favor of Sofia.

***Present Case**: Civil Case No. 218-10*

Petitioner filed a case for unlawful detainer, damages and attorney's fees against respondent before the MCTC. The MCTC rendered judgment in favor of petitioner. Respondent appealed before the RTC.

The RTC reversed and set aside the MCTC decision for lack of jurisdiction. Thus, pursuant to Section 8, Rule 40 of the Rules of Court, the RTC took cognizance of the case. The RTC rendered a decision dismissing the case for lack of merit. It ruled that the case was barred by *res judicata* and thus, upheld the validity of the deeds of sale. The CA affirmed *in toto* the decision.

ISSUE:

Whether or not the case is already barred by *res judicata.* (NO)

RULING:

There is *res judicata* where the following 4 essential conditions concur, *viz.*: (1) there must be a final judgment or order; (2) the court rendering it must have jurisdiction over the subject matter and the parties; (3) it must be a judgment or order on the merits; and (4) there must be, between the two cases, identity of parties, subject matter and causes of action.

The Court, however, agrees with the petitioner that *res judicata* should be disregarded. The order of dismissal by the trial court reads:

> This treats of the Motion to Dismiss dated September 18, 2003 filed by the plaintiffs, through their counsel, Atty. Vincent Paul L. Montejo, praying this Court to grant their motion.
>
> WHEREFORE, there being no objection on the part of the defendants, through their counsel, Atty. Honesto A. Carroguis, to the dismissal of this case, the written motion adverted to above

> is hereby granted and this case is hereby **dismissed**, as prayed for by the plaintiffs, with prejudice. SO ORDERED.

A careful scrutiny of the above order shows that there was **no judgment on the merits**.

A judgment may be considered as one rendered on the merits when it determines the rights and liabilities of the parties based on the disclosed facts, irrespective of formal, technical or dilatory objections; or when the judgment is rendered after a determination of which party is right, **as distinguished from a judgment rendered upon** some preliminary or formal or **merely technical point**. It is not required that a trial, actual hearing, or argument on the facts of the case ensued, for as long as the parties had the full legal opportunity to be heard on their respective claims and contentions.

Here, **the order specifically stated** that the dismissal **is with prejudice**, and as such, it is understood as an **adjudication on the merits**. Under Sec. 2, Rule 17, the dismissal upon motion of the plaintiff is without prejudice, ***except otherwise specified in the order***.

However, ***res judicata* is to be disregarded if its rigid application would involve the sacrifice of justice** to technicality, particularly in this case where there was actually **no determination of the substantive issues in the first case**. There was **no legal declaration of the parties' rights and liabilities**. **The CAremanded** the case for further reception of evidence precisely because **there were substantive issues needed to be resolved.**

The RTC, however, dismissed the case allegedly upon motion of the plaintiffs, through one of the heirs, Nilo, who prayed that the dismissal be with prejudice. The court granted the dismissal without any sufficient legal basis other than because it was what the plaintiffs prayed for.

The Court notes that the plaintiffs' filing of the motion to dismiss is no longer a matter of right. As likewise provided under Sec. 2, Rule 17, a complaint shall not be dismissed at the plaintiff's instance save upon approval of the court and upon such terms and conditions as the court deems proper. While there was approval by the court, **the terms and conditions** upon which the prejudicial dismissal was granted **was not shown**. The order granting the dismissal did not comply with Sec. 2, Rule 17 as it did not clearly set forth therein the terms and conditions for the dismissal. Sec. 1, Rule 36 mandates that a judgment or final order determining the merits of the case shall be in writing personally and directly prepared by the judge, ***stating clearly and distinctly the facts and the law on which it is based***, signed by him, and filed with the clerk of the court.

It must be stressed that what appears to be essential to a judgment on the merits is that **it be a reasoned decision, which clearly states the facts and the law on which it is based**.Technicalities should not be permitted to stand in the way of equitably and completely resolving the rights and obligations of the parties. **Where the ends of substantial justice shall be better served, the application of technical rules of procedure may be relaxed.**

The broader interest of justice as well as the circumstances of the case justifies the relaxation of the rule on *res judicata*. The Court is not precluded from re-examining its own ruling and rectifying errors of judgment if blind and stubborn adherence to *res judicata* would involve the sacrifice of justice to technicality. This is not the first time that the principle of *res judicata* has been set aside in favor of

substantial justice, which is after all the avowed purpose of all law and jurisprudence. Therefore, petitioner is not barred from filing a subsequent case of similar nature.

2. Rule 17

ALEX RAUL B. BLAY, *Petitioner,* -versus- CYNTHIA B. BANA*, Respondent.* G.R. No. 232189, SECOND DIVISION, March 7, 2018, PERLAS-BERNABE, *J*.

Where the plaintiff moves for the dismissal of the complaint to which a counterclaim has been interpose, the dismissal shall be limited to the complaint. Such dismissal shall be without prejudice to the right of the defendant to either prosecute his counterclaim in a separate action or to have the same resolved in the same action. ***Should he opt for the first alternative, the court should render the corresponding order granting and reserving his right to prosecute his claim in a separate complaint. Should he choose to have his counterclaim disposed of in the same action wherein the complaint had been dismissed, he must manifest within 15 days from notice to him of plaintiff's motion to dismiss.***

In this case, the CA confined the application of Section 2, Rule 17 to that portion of its second sentence which states that the "dismissal shall be limited to the complaint." Evidently, the CA ignored the same provision's third sentence, which provides for the alternatives available to the defendant who interposes a counterclaim prior to the service upon him of the plaintiff's motion for dismissal. As may be clearly inferred therefrom, should the defendant desire to prosecute his counterclaim, he is required to manifest his preference therefor within fifteen (15) days from notice of the plaintiff's motion to dismiss. Failing in which, the counterclaim may be prosecuted only in a separate action.

FACTS:

Petitioner filed before the RTC a Petition for Declaration of Nullity of Marriage, seeking that his marriage to respondent be declared null and void on account of his psychological incapacity pursuant to Article 36 of the Family Code. Subsequently, respondent filed her Answer with Compulsory Counterclaim dated December 5, 2014.

However, petitioner later lost interest over the case, and thus, filed a Motion to Withdraw his petition. In her comment/opposition thereto, respondent invoked Section 2, Rule 17 of the Rules of Court, and prayed that her counterclaims be declared as remaining for the court's independent adjudication. In turn, petitioner filed his reply, averring that respondent's counterclaims are barred from being prosecuted in the same action due to her failure to file a manifestation therefor within fifteen (15) days from notice of the Motion to Withdraw which was, according to him, required by the Rules.

The RTC granted petitioner's Motion to Withdraw petition. Further, it declared respondent's counterclaim "as remaining for independent adjudication" and as such, gave petitioner fifteen (15) days to file his answer thereto. Dissatisfied, petitioner filed a motion for reconsideration, which was denied. Thus, he elevated the matter to the CA via a petition for *certiorari*. But the CA dismissed the petition.

ISSUE:

Whether the respondent's counterclaim may be maintained. (NO)

RULING:

Section 2, Rule 17 of the Rules of Court provides for the procedure relative to counterclaims in the event that a complaint is dismissed by the court at the plaintiffs instance.

As per the second sentence of the provision, *if a counterclaim has been pleaded by the defendant prior to the service upon him of the plaintiff's motion for the dismissal* - as in this case - the rule is that **the dismissal shall be limited to the complaint.** Commentaries on the subject elucidate that "[i]nstead of an 'action' shall not be dismissed, the present rule uses the term 'complaint'. A dismissal of an action is different from a mere dismissal of the complaint. For this reason, since only the complaint and not the action is dismissed, the defendant inspite of said dismissal may still prosecute his counterclaim in the same acton."

However, as stated in the third sentence of Section 2, Rule 17, *if the defendant desires to prosecute his counterclaim in the same action, he is required to file a manifestation within fifteen (15) days from notice of the motion. Otherwise, his counterclaim may be prosecuted in a separate action.* As explained by renowned remedial law expert, former Associate Justice Florenz D. Regalado, in his treatise on the matter:

> Under this revised section, where the *plaintiff* moves for the dismissal of the complaint to which a counterclaim has been interpose, the dismissal shall be limited to the complaint. Such dismissal shall be without prejudice to the right of the defendant to either prosecute his counterclaim in a separate action or to have the same resolved in the same action. **Should he opt for the first alternative, the court should render the corresponding order granting and reserving his right to prosecute his claim in a separate complaint. Should he choose to have his counterclaim disposed of in the same action wherein the complaint had been dismissed, he must manifest within 15 days from notice to him of plaintiff's motion to dismiss.** x xx

In this case, the CA confined the application of Section 2, Rule 17 to that portion of its second sentence which states that the "dismissal shall be limited to the complaint." Evidently, the CA ignored the same provision's third sentence, which provides for the alternatives available to the defendant who interposes a counterclaim prior to the service upon him of the plaintiff's motion for dismissal. As may be clearly inferred therefrom, should the defendant desire to prosecute his counterclaim, he is required to manifest his preference therefor within fifteen (15) days from notice of the plaintiff's motion to dismiss. Failing in which, the counterclaim may be prosecuted only in a separate action.

The rationale behind this rule is not difficult to discern: the passing of the fifteen (15)-day period triggers the finality of the court's dismissal of the complaint and hence, bars the conduct of further proceedings, *i.e.,* the prosecution of respondent's counterclaim, in the same action. Thus, in order to obviate this finality, the defendant is required to file the required manifestation within the aforesaid period; otherwise, the counterclaim may be prosecuted only in a separate action.

J. Pre-trial (Rule 18)

K. Intervention (Rule 19)

PATRICIA CABRIETO DELA TORRE, REPRESENTED BY BENIGNO T. CABRIETO, JR.,*Petitioner*, -versus- PRIMETOWN PROPERTY GROUP, INC., *Respondent*.G.R. No. 221932, SECOND DIVISION**,** February 14, 2018**,** PERALTA, *J.*

Under Rule 4, Section 6of the Interim Rules, it is provided that if the RTC finds the petition to be sufficient in form and substance, it shall issue, not later than five days from the filing of the petition, an Order as follows:

> *(a) appointing a Rehabilitation Receiver and fixing his bond;*
> *(b) staying enforcement of all claims, whether for money or otherwise and whether such enforcement is by court action or otherwise, against the debtor, its guarantors and sureties not solidarity liable with the debtor;*
> *(c) prohibiting the debtor from selling, encumbering, transferring, or disposing in any manner any of its properties except in the ordinary course of business;*
> *(d) prohibiting the debtor from making any payment of its liabilities outstanding as at the date of filing of the petition; x xx.*

*In this case, respondent filed a petition for rehabilitation and suspension of payments with **the RTC which issued a Stay Order on August 15, 2003**. The **initial hearing was set on September 24, 2003**; thus, **any comment or opposition to the petition should have been filed 10 days before the initial hearing** but petitioner did not file any and already barred from participating in the proceedings.*

*However, **petitioner filed a motion for leave to intervene on October 15, 2004, one year after**, praying that respondent be ordered to execute in her favor a deed of absolute sale over Unit 3306 of the Makati Prime Citadel Condominium. It bears stressing that **intervention is prohibited under Section 1, Rule 3 of the Interim Rules**. Hence, the RTC should not have entertained the petition.*

FACTS:

Respondent Primetown Property Group, Inc. is primarily engaged in holding, owning and developing real estate. Among its projects are the Century Citadel Inn, Makati, Makati Prime Century Tower and Makati Prime City. However, the ascent of respondent was arrested and its shares were brought down by the Asian financial crisis in 1997. Thus, in 2003, respondent filed a petition for corporate rehabilitation with prayer for suspension of payments and actions with the *RTC*. On August 15, 2003, the rehabilitation court issued a Stay Order.

On October 15, 2004, petitioner dela Torre filed a **Motion for Leave to Intervene**seeking judicial order for specific performance, i.e., for respondent to execute in her favor a deed of sale covering Unit 3306, Makati Prime Citadel Condominium which she bought from the former as she had allegedly fully paid the purchase price. **Respondent opposed the motion** arguing that it was **filed out of time** considering that the Stay Order was issued on August 15, 2003 and under the Interim Rules of Procedure on Corporate Rehabilitation, **any claimants and creditors shall file their claim before the rehabilitation court not later than ten days before the date of the initial hearing**; and that since the Stay Order was issued on August 15, 2003 and the publication thereof was done in September 2003 with the initial hearing on the petition set on September 24 2003, the motion for intervention should have been filed on or before September 14, 2003.The RTC granted petitioner's motion for intervention.

Respondent filed a motion for reconsideration alleging that intervenor is still liable to pay P1,902,210.48 as unpaid interest and penalty charges; and it is the *HLURB* which has exclusive and original jurisdiction over the controversies involving condominium units and not the RTC. The RTC denied the motion. The CA reversed the RTC and denied the Motion for Intervention.

ISSUE:

Whether or not the CA erred in nullifying the RTC's grant of petitioner's Motion for Intervention? (NO)

RULING:

The law on rehabilitation and suspension of actions for claims against corporations is *PD* 902-A, as amended. In January 2004, *R.A. 8799*, otherwise known as the *Securities Regulation Code*, amended Section 5 of PD 902-A, and transferred to the RTC the jurisdiction of the *SEC* over petitions of corporations, partnerships or associations to be declared in the state of suspension of payments in cases where the corporation, partnership or association possesses property to cover all its debts but foresees the impossibility of meeting them when they respectively fall due or in cases where the corporation, partnership or association has no sufficient assets to cover its liabilities, but is under the management of a rehabilitation receiver or a management committee.

On December 15, 2000, we promulgated A.M. No. 00-8-10-SC, or the *Interim Rules of Procedure on Corporate Rehabilitation*, which applies to petitions for rehabilitation filed by corporations, partnerships and associations pursuant to PD 902-A, and which is applicable in this case.

An **essential function of corporate rehabilitation** is the **Stay Order** which is a mechanism of **suspension of all actions and claims against the distressed corporationupon the due appointment of a management committee or rehabilitation receiver**.

Under Rule 4, Section 6 of the Interim Rules, it is provided that if the RTC finds the petition to be sufficient in form and substance, it shall issue, not later than five days from the filing of the petition, an Order as follows:

> (a) appointing a Rehabilitation Receiver and fixing his bond;
> (b) staying enforcement of all claims, whether for money or otherwise and whether such enforcement is by court action or otherwise, against the debtor, its guarantors and sureties not solidarity liable with the debtor;
> (c) prohibiting the debtor from selling, encumbering, transferring, or disposing in any manner any of its properties except in the ordinary course of business;
> (d) prohibiting the debtor from making any payment of its liabilities outstanding as at the date of filing of the petition; x xx.

In addition, it is also stated under the same Section that all creditors and all interested parties are directed to file and serve on the debtor a verified comment on or opposition to the petition not later than ten days before the date of the initial hearing and their failure to do so will bar them from participating in the proceedings.

In this case, respondent filed a petition for rehabilitation and suspension of payments with **the RTC which issued a Stay Order on August 15, 2003**. The **initial hearing was set on September 24, 2003**; thus, **any comment or opposition to the petition should have been filed 10 days before the initial hearing** but petitioner did not file any and already barred from participating in the proceedings.

However, **petitioner filed a motion for leave to intervene on October 15, 2004, one year after**, praying that respondent be ordered to execute in her favor a deed of absolute sale over Unit 3306 of the Makati Prime Citadel Condominium. It bears stressing that **intervention is prohibited under Section 1, Rule 3 of the Interim Rules**. Hence, the RTC should not have entertained the petition.

Clearly, while respondent is undergoing rehabilitation, the enforcement of all claims against it is stayed. Rule 2, Section 1 of the Interim Rules defines a claim as referring to all claims or demands of whatever nature or character against a debtor or its property, whether for money or otherwise. The definition is all-encompassing as it refers to all actions whether for money or otherwise.

Petitioner's prayer in intervention for respondent to execute the deed of sale in her favor for the condominium unit is a claim as defined under the *Interim Rules* which is already stayed as early as August 15, 2003. In fact, the same order also prohibited respondent from selling, encumbering, transferring or disposing in any manner of any of its properties, except in the ordinary course of business.

L. Subpoena (Rule 21)

M. Computation of time (Rule 22)

N. Modes of discovery

1. **Depositions (Rules 23 and 24)**
2. **Interrogatories to parties (Rule 25)**

NORLINA G. SIBAYAN, *PETITIONER,* -versus- ELIZABETH O. ALDA, THROUGH HER ATTORNEY-IN-FACT, RUBY O. ALDA, *RESPONDENT.*
G.R. No. 233395, THIRD DIVISION, January 17, 2018, VELASCO JR., *J.*

The nature of the proceedings before the OGCLS-BSP is summary in nature. The rationale and purpose of the summary nature of administrative proceedings is to achieve an expeditious and inexpensive determination of cases without regard to technical rules. As such, in proceedings before administrative or quasi-judicial bodies, like the OGCLS-BSP, decisions may be reached on the basis of position papers or other documentary evidence only. They are not bound by technical rules of procedure and evidence. To require otherwise would negate the summary nature of the proceedings which could defeat its very purpose.

In this light, OGCLS-BSP did not gravely abuse its discretion in denying Norlina's request for written interrogatories as the allowance of the same would not practically hasten, as it would in fact delay, the early disposition of the instant case.

FACTS:

The case stemmed from a letter-complaint filed by respondent Elizabeth O. Aida (Elizabeth), through her daughter and attorney-in-fact, Ruby O. Aida (Ruby), with the Office of Special Investigation of the BangkoSentral ng Pilipinas (OSI-BSP). Elizabeth charged Norlina, who was then the Assistant Manager and Marketing Officer of Banco De Oro Unibank, Inc. (BDO) San Fernando, La Union Branch, with unauthorized deduction of her BDO Savings Account with Account Number 0970097875, as well as for failure to post certain check deposits to the said account.[

The complaint alleged that while Elizabeth did not make any withdrawals from her BDO savings account from 2008-2009, its balance of One Million Seventy One Thousand Five Hundred Sixty One and 73/100 Pesos (P1,071,561.73) as of July 22, 2008 was reduced to only Three Hundred Thirty Four and 47/100 Pesos (P334.47) by October 31, 2008.

Further, Elizabeth claimed that two crossed manager's checks, to wit: 1) United Coconut Planters Bank (UCPB) Check No. 0000005197 in the amount of Two Million Seven Hundred Forty Three Thousand Three Hundred Forty Six Pesos (P2,743,346) issued to her by Ferdinand Oriente (Ferdinand), and 2) Bank of the Philippine Islands (BPI) Check No. 0000002688 in the amount of Two Million Two Hundred Thirty Seven Thousand Three Hundred Forty One and 891100 Pesos (P2,237,341.89) issued to her by JovelynOriente (Jovelyn) were not posted on her BDO savings account despite the fact that the said checks were deposited on October 27, 2008.

As for Norlina's defense, she argued that the charges were only meant to harass her and BDO as the latter previously filed a criminal case against Elizabeth, Ruby, and their cohorts, for theft, *estafa*, and violation of Republic Act No. 8484, otherwise known as the Access Devise Regulation Act of 1998.[7] The said case proceeded from the acts of Elizabeth and her co-defendants therein of withdrawing and laundering various amounts erroneously credited by BDO to Ruby's Visa Electron Fast Card Account (Fastcard) with Account Number 4559-6872-3866-2036, which Elizabeth opened for and in the name of Ruby on April 21, 2006.

According to Norlina, when BDO merged with Equitable PCI Bank in May 2007, the former acquired all of the latter's accounts, products and services, including the Fastcard, which functions the same way as a regular Automated Teller Machine (ATM) card but with an added feature that allows its holders to withdraw local currencies from ATMs overseas bearing the Visa Plus logo. Thus, using her Fastcard at various ATMs in Dubai, United Arab Emirates, where she was based, Ruby was able to withdraw the funds sent to her by Elizabeth, who was then working in Taiwan.

Sometime in September 2008, BDO, however, discovered that from November 15, 2007 to September 20, 2008, Ruby was able to withdraw the total amount of Sixty Four Million Two Hundred Twenty Nine Thousand Two Hundred Ninety Seven and 50/100 Pesos (P64,229,297.50) despite Elizabeth only having remitted the amount of One Million Six Hundred Forty Five Thousand Four Hundred Eighty Six Pesos (P1,645,486). BDO conducted an investigation and discovered that Ruby learned of the erroneous crediting of funds as early as November 2007 and utilized BDO's system error to successfully launder money by transferring funds withdrawn from Ruby's Fastcard Account to various bank accounts in the Philippines under the names of Elizabeth, Ruby and their friends and relatives.

After the parties' submission of their respective pleadings, the OSI-BSP issued a Resolution[15] dated June 13, 2012 finding a *prima facie* case against Norlina for Conducting Business in an Unsafe or Unsound Manner under Section 56.2[16] of Republic Act No. 8791 ("The General Banking Law of 2000"), punishable under Section 37 of Republic Act No. 7653 ("The New Central Bank Act"). The OGCLS-BSP then directed Norlina to submit her sworn answer to the formal charge filed by the OSI-BSP.

Meanwhile, on October 19, 2012, Norlina filed a Request to Answer Written Interrogatories[17] addressed to Elizabeth, Jovelyn, and Ferdinand. Norlina also filed a Motion for Production of Documents[18] praying that UCPB and BPI be ordered to produce and allow the inspection and copying or photographing of the Statements of Account pertaining to UCPB Account No. 2351047157 and BPI Account No. 85890237923, respectively, alleging that Ruby is the legal and beneficial owner of both accounts.

Elizabeth, through Ruby, and Ferdinand filed their respective Objections[19] to Norlina's request, while Jovelyn's counsel filed a Manifestation[20] stating that the former could not submit her answer since she is working overseas.

In its June 9, 2014 Order,[21] the OGCLS-BSP denied Norlina's motion for request to answer written interrogatories. In its October 25, 2016 Decision, the CA upheld the OGCLS-BSP's rulings. Hence, the instant petition.

ISSUE:

Whether or not grave abuse of discretion can be attributed to the OGCLS-BSP in denying Norlina's resort to modes of discovery. (NO)

RULING:

Technical rules of procedure and evidence are not strictly adhered to in administrative investigations

At the outset, it bears stressing that the proceeding involved in the present case is administrative in nature. Although trial courts are enjoined to observe strict enforcement of the rules on evidence, the same does not hold true for administrative bodies. The Court has consistently held that technical rules applicable to judicial proceedings are not exact replicas of those in administrative investigations.[30] Recourse to discovery procedures as sanctioned by the Rules of Court is then not mandatory for the OGCLS-BSP. Hence, We cannot subscribe to Norlina's tenacious insistence for the OGCLS-BSP to strictly adhere to the Rules of Court so as not to purportedly defeat her rights.

Furthermore, it is important to emphasize that the nature of the proceedings before the OGCLS-BSP is summary in nature. The rationale and purpose of the summary nature of administrative proceedings is to achieve an expeditious and inexpensive determination of cases without regard to technical rules.[32] As such, in proceedings before administrative or quasi-judicial bodies, like the OGCLS-BSP, decisions may be reached on the basis of position papers or other documentary evidence only. They are not bound by technical rules of procedure and evidence.[33] To require otherwise would negate the summary nature of the proceedings which could defeat its very purpose.

In this light, OGCLS-BSP did not gravely abuse its discretion in denying Norlina's request for written interrogatories as the allowance of the same would not practically hasten, as it would in fact delay, the early disposition of the instant case.

Norlina was not denied due process of law

Administrative due process cannot be fully equated with due process in its strict judicial sense. It is enough that the party is given the chance to be heard before the case against him is decided. As established by the facts, Norlina was afforded the opportunity to be heard and to explain her side before the OGCLS-BSP. She was allowed to submit her answer and all documents in support of her defense. In fact, her defense of fraud committed by Elizabeth and Ruby is sufficiently contained in the pleadings and attachments submitted by the parties to aid the OGCLS-BSP in resolving the case before it.

Evidently, the information sought to be elicited from the written interrogatories, as well as the bank documents, are already available in the records of the case. As correctly pointed out by the CA, the grant of Norlina's motions would merely delay the resolution of the case. In fine, the OGCLS-BSP's issuance of the assailed orders did not violate Norlina's right to due process and was in accord with the summary nature of administrative proceedings before the BSP. The opportunity accorded to Norlina was enough to comply with the requirements of due process in an administrative case. The formalities usually attendant in court hearings need not be present in an administrative investigation, as long as the parties are heard and given the opportunity to adduce their respective sets of evidence.

The denial of Norlina's motions to resort to modes of discovery did not, and will definitely not, equate to a denial of her right to due process. It must be stressed that Norlina's fear of being deprived of such right and to put up a proper defense is more imagined than real. Norlina was properly notified of the charges against her and she was given a reasonable opportunity to answer the accusations against her. As correctly ruled by the lower tribunals, Norlina's attempt to resort to modes of discovery is frivolous and would merely cause unnecessary delay in the speedy disposition of the case.

Thus, no error or grave abuse of discretion can be ascribed to the OGCLS-BSP in not granting Norlina's plea for written interrogatories and production of bank documents. Absent any showing that the OGCLS-BSP had acted without jurisdiction or in excess thereof or with such grave abuse of discretion as would amount to lack of jurisdiction, as in the present case, its orders dispensing with the need to resort to modes of discovery may not be corrected by *certiorari*.

3. Admission by adverse party (Rule 26)

LILIA S. DUQUE and HEIRS OF MATEO DUQUE, namely: LILIA S. DUQUE, ALMA D. BALBONA, PERPETUA D. HATA, MARIA NENITA D. DIENER, GINA D. YBAÑEZ, and GERVACIO S. DUQUE, *Petitioners,* -versus – SPOUSES BARTOLOME D. YU, JR. and JULIET O. YU and DELIA DUQUE CAPACIO, *Respondents.* G.R. No. 226130, THIRD DIVISION, February 19, 2018, VELASCO, JR., *J.*

Clearly, once a party serves a request for admission as to the truth of any material and relevant matter of fact, the party to whom such request is served has 15 days within which to file a sworn statement answering it. In case of failure to do so, each of the matters of which admission is requested shall be

deemed admitted. ***This rule, however, admits of an exception, that is, when the party to whom such request for admission is served had already controverted the matters subject of such request in an earlier pleading.*** *Otherwise stated, if the matters in a request for admission have already been admitted or denied in previous pleadings by the requested party, the latter cannot be compelled to admit or deny them anew. In turn,* ***the requesting party cannot reasonably expect a response to the request and, thereafter, assume or even demand the application of the implied admission rule*** *in Section 2, Rule 26.*

Here, the respondents served the request for admission on the petitioners to admit the genuineness and authenticity of the Deed of Donation, among other documents. But as pointed out by petitioners, the matters and documents being requested to be admitted have already been denied and controverted in the previous pleading, that is, Verified Complaint for Declaration of Non-Existence and Nullity of a Deed of Donation and Deed of Absolute Sale and Cancellation of TD. Petitioners, therefore, need not reply to the request for admission.

FACTS:

Spouses Duque were the lawful owners of a 7,000-square meter lot in Lambug, Badian, Cebu. On August 28, 1995, Spouses Duque allegedly executed a Deed of Donation over the subject property in favor of their daughter, herein respondent Delia D. Capacio (Capacio), who, in turn, sold a portion thereof to Spouses Yu. With that, Spouses Duque lodged a Verified Complaint for Declaration of Non-Existence and Nullity of a Deed of Donation and Deed of Absolute Sale and Cancellation of TD (Complaint) against the respondents before the Regional Trial Court (RTC) claiming that the signature in the Deed of Donation was forged.

Respondent Capacio admitted that the signature in the Deed of Donation was, indeed, falsified but she did not know the author thereof. Respondents Spouses Yu, for their part, refuted Spouses Duque's personality to question the genuineness of the Deed of Absolute Sale for it was their daughter who forged the Deed of Donation.

On September 26, 2008, a Motion for Admission by Adverse Party under Rule 26 of the Rules of Court (Motion for Admission) was filed by respondents Spouses Yu requesting the admission of these documents: (1) Real Estate Mortgage (REM); (2) Deed of Donation; (3) Contract of Lease; (4) TD No. 07-05616; (5) TD No. 14002-A; (6) Deed of Absolute Sale; and (7) TD No. 01-07-05886. In an Order dated October 3, 2008, Spouses Duque were directed to comment thereon but they failed to do so.

By their silence, the trial court, in an Order dated November 24, 2008, pronounced that they were deemed to have admitted the same. Thus, during trial, instead of presenting their evidence, respondents Spouses Yu moved for demurrer of evidence in view of the aforesaid pronouncement. The trial court granted the demurrer. The CA agreed with the trial court that Spouses Duque's non-compliance with the October 3, 2008 Order resulted in the implied admission of the Deed of Donation's authenticity, among other documents.

ISSUE:

Whether petitioners' failure to reply to the request for admission is tantamount to an implied admission of the authenticity and genuineness of the documents subject thereof. (NO)

RULING:

The scope of a request for admission under Rule 26 of the Rules of Court and a party's failure to comply thereto are respectively detailed in Sections 1 and 2 thereof, which read:

> "SEC. 1. Request for admission. — At any time after issues have been joined, a party may file and serve upon any other party a written request for the admission by the latter of the genuineness of any material and relevant document described in and exhibited with the request or of the truth of any material and relevant matter of fact set forth in the request. Copies of the documents shall be delivered with the request unless copies have already been furnished.
> SEC. 2. Implied admission. — Each of the matters of which an admission is requested shall be deemed admitted unless, within a period designated in the request, which shall not be less than fifteen (15) days after service thereof, or within such further time as the court may allow on motion, the party to whom the request is directed files and serves upon the party requesting the admission a sworn statement either denying specifically the matters of which an admission is requested or setting forth in detail the reasons why he cannot truthfully either admit or deny those matters."

Clearly, once a party serves a request for admission as to the truth of any material and relevant matter of fact, the party to whom such request is served has 15 days within which to file a sworn statement answering it. In case of failure to do so, each of the matters of which admission is requested shall be deemed admitted. **This rule, however, admits of an exception, that is, when the party to whom such request for admission is served had already controverted the matters subject of such request in an earlier pleading.** Otherwise stated, if the matters in a request for admission have already been admitted or denied in previous pleadings by the requested party, the latter cannot be compelled to admit or deny them anew. In turn, **the requesting party cannot reasonably expect a response to the request and, thereafter, assume or even demand the application of the implied admission rule** in Section 2, Rule 26.

Here, the respondents served the request for admission on the petitioners to admit the genuineness and authenticity of the Deed of Donation, among other documents. But as pointed out by petitioners, the matters and documents being requested to be admitted have already been denied and controverted in the previous pleading, that is, Verified Complaint for Declaration of Non-Existence and Nullity of a Deed of Donation and Deed of Absolute Sale and Cancellation of TD. Petitioners, therefore, need not reply to the request for admission.

4. Production or inspection of documents or things (Rule 27)

5. Physical and mental examination of persons (Rule 28)

6. Refusal to comply with modes of discovery (Rule 29)

O. Trial (Rule 30)

SULTAN CAWAL P. MANGONDAYA [HADJI ABDULLATIF], petitioner, -versus- NAGA AMPASO, respondent. G.R. No. 201763, FIRST DIVISION, MARCH 21, 2018, JARDELEZA, J.

When the plaintiff has evidence to prove his claim, and the defendant desires to offer defense, trial on the merits becomes necessary. The parties then will prove their respective claims and defenses by the introduction of testimonial (shuhud) and other evidence (bayyina). The statements of witnesses submitted at the pre-trial by the parties shall constitute the direct testimony as the basis for cross-examination.

FACTS:

Petitioner filed with the Shari'a District Court (SDC) a complaint against respondent Naga Ampaso for "Restitution of a Parcel of Land to the Owner and Damages." Petitioner claimed that he is the owner of a parcel of which he inherited from his mother. In 1989, respondent cultivated it under 'äda or customary law which provides that a person can live and cultivate an uncultivated land even without the owner's consent but he cannot buy it from a person who is not the owner or sell it.

In 2007, respondent informed petitioner that he will sell the land. Petitioner objected and prohibited respondent from selling the land as it violates the 'äda. In 2008, after petitioner learned that respondent already sold the land, petitioner demanded that respondent return it, but the latter refused. As a result, petitioner brought the matter before the Sultanate Community Civic Leader, Inc. for resolution. It resolved the controversy in favor of petitioner. Despite this ruling, however, respondent still refused to return the land to petitioner.

Respondent filed his answer. Respondent denied that the Sultanate Community Civic Leader, Inc. has already resolved the controversy in favor of petitioner. In fact, its alleged decision, which petitioner attached to his complaint, was a forgery. Respondent attached to his answer a joint affidavit executed by the purported members of the group attesting that they have not conducted any proceeding nor issued any decision resolving the controversy between petitioner and respondent.

The case was initially scheduled for pre-trial conference. The SDC heard respondent on his defenses and treated his answer as his motion to dismiss. The SDC ordered that after the parties filed their respective pleadings, respondent's motion to dismiss will be submitted for resolution.

Subsequently, without conducting a trial, the SDC issued its first assailed Order dismissing petitioner's complaint. Petitioner moved to reconsider the SDC's Order. After respondent filed his comment, the SDC required petitioner to submit evidence showing he is the owner of the land.

Petitioner complied with the order of the SDC. He submitted the following documents to prove his ownership of the land. Respondent filed his comment and submitted affidavits of individuals disputing and denying the pieces of evidence petitioner submitted.

On same date, the SDC issued its Order granting petitioner's motion for reconsideration, reinstating the complaint and setting the case for pre-trial conference.

Instead of conducting the scheduled pre-trial conference, the SDC issued an Order stating that the court's efforts to amicably settle the case have failed and that both parties wanted to proceed with the trial. It thus directed the parties to file their respective position papers or memoranda and submitted for resolution respondent's motion for reconsideration of the SDC's Order reinstating the petition.

Respondent filed his memorandum. He reiterated his position. For his part, petitioner repeated in his memorandum his claim over the land.

The SDC issued its second assailed Order granting respondent's motion for reconsideration. It reinstated its first assailed Order which dismissed the complaint. The SDC also denied petitioner's motion for reconsideration via its third assailed.

Hence, this petition.

ISSUE:

Whether or not the SDC violated the mandate of the law when it issued the assailed Orders without trial.

RULING:

Yes. The SDC violated the mandate of the law when it issued the assailed Orders without trial.

No pre-trial was conducted in this case. While the pre-trial conference was set and rescheduled for various reasons at least four times, none was conducted. Rather than conducting a pre-trial in order to clarify and define the issues and proceeding with the trial as both parties had wanted, the SDC dismissed the case.

Worse, the SDC's second and third assailed Orders dismissing the complaint only summarized the parties' contending arguments; they were bereft of any discussion on the factual and legal basis for the dismissal itself. Indeed, it was erroneous for the SDC to peremptorily conclude, on the basis of the parties' pleadings and their attachments, that petitioner failed to prove his claim over the land, that prescription and laches have set in, and that the 'äda, assuming it exists, is contrary to the Constitution, laws and public policy. Had the SDC proceeded with the pre-trial and trial of the case, the parties would have had the opportunity to define and clarify the issues and matters to be resolved, present all their available evidence, both documentary and testimonial, and cross-examine, test and dispel each other's evidence. The SDC would, in turn, have the opportunity to carefully weigh, evaluate, and scrutinize them and have such sufficient evidence on which to anchor its factual findings. What appears to have happened though is a cursory determination of facts and termination of the case without the conduct of full-blown proceedings before the SDC.

In view of the foregoing, we remand the case to the SDC for the conduct of pretrial and further proceedings for the reception of evidence in order for it to thoroughly examine the claims and defenses of the parties, their respective evidence and make its conclusions after trial on the merits.

P. Consolidation or severance (Rule 31)

IBM DAKSH BUSINESS PROCESS SERVICES PHILIPPINES, INC. (NOW KNOWN AS CONCENTRIX DAKSH BUSINESS PROCESS SERVICES PHILIPPINES CORPORATION, *Petitioner*, *v.* **ROSALLIE S. RIBAS**, *Respondent*.
G.R. No. 223125, FIRST DIVISION, July 11, 2018, TIJAM, *J.*

Unlike in the trial stage where the consolidation of cases is permissive and a matter of judicial discretion, in the appellate stage, the rigid policy is to make the consolidation of all cases and proceedings resting on the same set of facts, or involving identical claims or interests or parties mandatory. Regardless of whether or not there was a request therefor, consolidation should be made as a matter of course. Indeed, this "mandatory policy eliminates conflicting results concerning similar or like issues between the same parties or interests even as it enhances the administration of justice."

There is no question that the two petitions before the CA involved the exact same parties, same set of facts, and assailed the same NLRC Resolution. Further, the issues are not merely closely related but in fact, entirely identical as they both involved questions on the validity of respondent's dismissal from employment, propriety of reinstatement, and the propriety of awarding backwages.

FACTS

Petitioner is an outsourcing company engaged in customer care services with foreign clientele.[4] Rosallie S. Ribas (respondent), on the other hand, was employed by the petitioner as a customer care specialist. Respondent was issued a Show Cause Memo for her absences on March 1, 2, 5, and 6, 2011. Respondent submitted her written explanation. Respondent was then formally charged with violation of the company's code of conduct for being absent for several days without leave or proper prior notice. A hearing therefor was conducted on March 16, 2011 Thereafter, having established that respondent committed the imputed acts, she was issued a termination letter . Arguing that her dismissal was illegal, respondent filed a complaint before the Labor Arbiter (LA). However, the NLRC partially granted petitioner's motion for reconsideration. On November 8, 2013, petitioner filed a petition for *certiorari*[16] before the CA, docketed as CA-G.R. SP No. 132743, questioning NLRC's August 30, 2013 Resolution. On November 28, 2013, respondent filed her own petition for *certiorari*[17] before the CA. Interestingly, the CA did not consolidate the two petitions despite clear notice[18] given to it by petitioner in its petition.

Thus, on January 20, 2015, the CA's Eleventh Division rendered a Decision[19] in CA-G.R. SP No. 132743, denying petitioner's petition

ISSUE

Whether the CA Sixth Division err in not consolidating the petitions? (YES)

RULING

In the exercise of this Court's administrative supervision over the CA, this Court finds it proper and necessary to point out the CA's patent procedural blunder in failing to consolidate CA-G.R. SP No.

132743 and CA-G.R. SP No. 132908 despite notice. There is no question that the two petitions before the CA involved the exact same parties, same set of facts, and assailed the same NLRC Resolution. Further, the issues are not merely closely related but in fact, entirely identical as they both involved questions on the validity of respondent's dismissal from employment, propriety of reinstatement, and the propriety of awarding backwages.

Unfortunately, one of the evils sought to be prevented by the mandatory rule of consolidating such cases, has occurred – the CA rendered two conflicting and irreconcilable decisions on the matter. In the prior case, the CA affirmed the NLRC Resolution, in the subsequent case, the CA set the same aside. In the prior case, the CA ruled that there was a valid dismissal, in the subsequent, the CA ruled that it was illegal. While in both cases the CA ruled for reinstatement, in the prior case it was by reason of equity and compassion, while in the subsequent case it was simply because respondent was found to be illegally dismissed and the CA further ruled in the latter case that in case reinstatement is not feasible, separation pay should be given. Lastly, backwages were not awarded in the prior case, while the same was awarded in the subsequent case due to the finding of illegal dismissal.

Such conflict could have been avoided if only the CA had properly complied with the mandatory rule for the consolidation of petitions or proceedings relating to or arising from the same controversies.[22] Section 3(a), Rule III of the 2009 Internal Rules of the Court of Appeals has forthrightly mandated the consolidation of related cases assigned to different Justices

Thus, unlike in the trial stage where the consolidation of cases is permissive and a matter of judicial discretion, in the appellate stage, the rigid policy is to make the consolidation of all cases and proceedings resting on the same set of facts, or involving identical claims or interests or parties mandatory. Regardless of whether or not there was a request therefor, consolidation should be made as a matter of course. Indeed, this "mandatory policy eliminates conflicting results concerning similar or like issues between the same parties or interests even as it enhances the administration of justice."

Q. Demurrer to Evidence (Rule 33)

REPUBLIC OF THE PHILIPPINES, Petitioner **-versus- HON. SANDIGANBAYAN, ROMEO G. PANGANIBAN, FE L. PANGANIBAN, GERALDINE L. PANGANIBAN, ELSA P. DE LUNA AND PURITA P. SARMIENTO**, Respondents

G.R. No. 189590,FIRST DIVISION, April 23, 2018,LEONARDO-DE CASTRO, J.

A demurrer to evidence may be issued when, upon the facts and the law, the plaintiff has shown no right to relief. Where the plaintiff's evidence, together with such inferences and conclusions as may reasonably be drawn therefrom does not warrant recovery against the defendant, a demurrer to evidence should be sustained. A demurrer to evidence is likewise sustainable when, admitting every proven fact favorable to the plaintiff and indulging in his favor all conclusions fairly and reasonably inferable therefrom, the plaintiff has failed to make out one or more of the material elements of his case, or when there is no evidence to support an allegation necessary to his claim. It should be sustained where the plaintiff's evidence is prima facie insufficient for recovery.

This Court finds that the pieces of evidence adduced by petitioner Republic vis-à-vis the Ayala Alabang and Callos-Sta. Cruz properties are wholly insufficient to support the allegations of the petition for forfeiture in Civil Case No. 0192. Thus, for failure of petitioner Republic to show any right to the relief sought, this Court partly affirms the assailed resolutions.

FACTS:

On September 27, 2004, petitioner Republic, through the Ombudsman filed before public respondent Sandiganbayan a petitionfor the forfeiture of unlawfully acquired properties of private respondents Romeo, *et al*., including Geraldine Labunos Panganiban, pursuant to Section 2 of Republic Act No. 1379, entitled "*An Act Declaring Forfeiture In Favor Of The State Any Property Found To Have Been Unlawfully Acquired By Any Public Officer Or Employee And Providing For The Proceedings Therefor*."

Particularly, petitioner Republic sought the forfeiture of five real properties which are claimed to be valued at not less than P40,766,300.00, namely the ***Los Baños Property, the Sta. Cruz Property, the Ayala Alabang Property, the Los Angeles Property, and the Callos-Sta. Cruz Property as well as*** such other additional properties amounting to, or in the value of P10,236,771.60.

In seeking the forfeiture of the aforementioned properties, petitioner Republic alleged that private respondent Romeo owned the same and that they were unlawfully acquired during his incumbency as *Regional Director* at the Department of Public Works and Highways. Private respondents Fe (Romeo's wife), *Elsa* and *Purita* (Romeo's sisters), including *Geraldine* (Romeo's daughter), were made party respondents to the forfeiture case on the basic premise that they were holding said properties for and on behalf of private respondent Romeo.

Petitioner Republic anchored its prayer for forfeiture on the fact that private respondent Romeo's networth in *1986* per his *Statement of Assets, Liabilities and Networth* (SALN) was only **P455,000.00**; but in his *2001* SALN, it had already ballooned to **P13,208,590.50**. The bloat could not be explained by private respondent Romeo's Service Record showing the total amount of government salary that he earned from January 1, 1986 to December 31, 2001 to be just **P2,516,818.90** - which is P10,236,771.60 less than his stated networth by the end of 2001.

And juxtaposed with the supposed value of the five real properties, *i.e*., P40,766,300.00, the latter is way out of proportion to private respondent Romeo's 15-year accumulated income of P2,516,818.90. Petitioner Republic also took note of the fact that private respondent Romeo made eight foreign travels between 1999 and 2004; while his wife, private respondent Fe, made 28 travels abroad during the same period.

Petitioner Republic concluded that the discrepancy of P10,236,771.60, plus the aggregate P40,766,300.00 value of the five real properties, all constituted ill-gotten wealth.

ISSUES:

Whether or not the Sandiganbayan acted with grave abuse of discretion when it considered in favor of Romeo, Fe and Elsa a purported certificate of title and an alleged deed of sale which were not

formally offered in evidence, and disregarded the unrebutted evidence that romeo and fe are the beneficial owners of the subject property in Ayala Alabang. (NO)

Whether or not the Sandiganbayan acted with grave abuse of discretion when it disregarded the judicial admission of Romeo in his answer to the petition that the property in Pasadena, Los angeles, California was jointly acquired by his daughter Geraldine and wife Fe, making him a co-owner. (NO)

Whether or not the Sandiganbayan acted with grave abuse of discretion when it prematurely ruled that the subject property in Sta. Cruz, Laguna can be very well acquired by Romeo with his salaries and income. (NO)

RULING:

The petition is partly granted.

I. Petitioner Republic instituted the wrong mode of review of public respondent Sandiganbayan's assailed resolutions.

Forfeiture proceedings filed under Republic Act No. 1379 are civil in nature, thus, the proper mode of review being a petition for review on *certiorari* under Rule 45 of the Rules of Court, as amended, and not a special civil action of *certiorari* under Rule 65 thereof.

This Court has previously explained in Condes v. Court of Appeals the nature and purpose of a demurrer to evidence, to wit:

A demurrer to evidence is a motion to dismiss on the ground of insufficiency of evidence and is filed after the plaintiff rests his case. It is an objection by one of the parties in an action, to the effect that the evidence which his adversary produced, is insufficient in point of law, whether true or not, to make out a case or sustain the issue. The question in a demurrer to evidence is whether the plaintiff, by his evidence in chief, has been able to establish a *prima facie* case. (Citation omitted.)

And **an order granting demurrer to evidence is a judgment on the merits…**

Nevertheless… the Court has repeatedly favored the resolution of disputes on the merits, rather than on procedural defects, especially where the case is undeniably ingrained with immense public interest, public policy and/or deep historical repercussions, *certiorari* is allowed notwithstanding the existence and availability of the remedy of appeal. We thus take cognizance of this case and settle with finality the issues raised.

II. Substantive Matters

A demurrer to **evidence may be issued when, upon the facts and the law, the plaintiff has shown no right to relief. Where the plaintiff's evidence, together with such inferences and conclusions as may reasonably be drawn therefrom does not warrant recovery against the defendant, a demurrer to evidence should be sustained.** A demurrer to evidence is likewise sustainable when, **admitting every proven fact favorable to the plaintiff and indulging in his favor all conclusions fairly and reasonably inferable therefrom, the plaintiff has failed to make**

out one or more of the material elements of his case, or when **there is no evidence to support an allegation necessary to his claim**. It should be sustained where the plaintiff's evidence is *prima facie* insufficient for recovery.

Ayala Alabang Property

…In dismissing the forfeiture complaint as to the Ayala Alabang property, public respondent Sandiganbayan held that the evidence adduced by petitioner Republic - travel documents of private respondent Fe and the Sky Cable account documents both listing such property as the latter's given address - failed to defeat the presumed ownership of private respondent Elsa whose name appears on the TCT and the Deed of Absolute Sale pertaining to the subject property.

We agree with public respondent Sandiganbayan that the facts of the case fail to substantiate the assertion that the real owners of the Ayala Alabang property are private respondents Romeo and Fe, especially when contrasted with the Deed of Absolute Sale, Revised Tax Declaration Form and the Transfer Certificate of Title all stating therein that the owner is one Elsa P. De Luna.

…Again, Section 1, Rule 33 of the Rules of Court, as amended, provides that:

Section 1. *Demurrer to evidence*. – After the plaintiff has completed the presentation of his evidence, the defendant may move for dismissal **on the ground that upon the facts and the law the plaintiff has shown no right to relief.** If his motion is denied, he shall have the right to present evidence. If the motion is granted but on appeal the order of dismissal is reversed he shall be deemed to have waived the right to present evidence. (Emphasis supplied.)

From above, what should be resolved in a demurrer to evidence is whether or not the plaintiff is entitled to the relief based on the facts and the law. The evidence to be considered pertains to the merits of the case, which does not include technical aspects thereof, i.e., capacity to sue. But, the plaintiff's evidence is not the sole basis in resolving a demurrer to evidence. The "facts," contemplated by the rule should include all the means sanctioned by the Rules of Court in ascertaining matters in judicial proceedings, i.e., judicial admissions, matters of judicial notice, stipulations made during the pre-trial and trial, admissions, and presumptions, the only exclusion being the defendant's evidence.

Section 4, Rule 129 of the Rules of Court, as amended, provides:

Section 4. *Judicial admissions*. — An admission, verbal or written, made by a party in the course of the proceedings in the same case, does not require proof. The admission may be contradicted only by showing that it was made through palpable mistake or that no such admission was made.

In *Republic v. Sandigabayan*,[34] this Court settled that judicial admissions may be made: (a) in the pleadings filed by the parties; (b) in the course of the trial either by verbal or written manifestations or stipulations; or (C) in other stages of judicial proceedings, as in gtthe pre-trial of the case.

Hence, in the instant case, facts pleaded in the petition and answer/joint answer are deemed admissions of petitioner Republic and private respondents Romeo, et al., respectively, who are not

permitted to contradict them or subsequently take a position contrary to or inconsistent with such admissions.

Though the title to the property was initially filed in court through the Joint Answer, however, petitioner Republic failed to refute the same, and even marked it during pre-trial. Hence, petitioner Republic already admitted its genuineness and due execution. Such judicial admission was correctly considered by public respondent Sandiganbayan in resolving the demurrer to evidence. When the due execution and genuineness of an instrument are deemed admitted because of the adverse party's failure to make a specific verified denial thereof, the instrument need not be presented formally in evidence for it may be considered an admitted fact.

As to the cable television subscription and travel documents wherein private respondent Fe used the Ayala Alabang property as her given address, what they simply proved is that private respondent Fe resides in the said property, nothing more. They are not sufficient to prove that private respondents Romeo and Fe are the actual and beneficial owners of the property, much less that they unlawfully acquired it.

Los Angeles Property

…Public respondent Sandiganbayan ordered the dismissal of the petition for forfeiture as to the Los Angeles property on the ground that the two documentary evidence, Annexes "AA" and "BB," though formally offered by petitioner Republic, were mere photocopies; therefore, inadmissible in evidence.And that the latter failed to formally offer the counter-affidavit of private respondent Romeo.

In this instance, this Court disagrees with Sandiganbayan.

As similarly discussed above, the admission of private respondent Romeo in his Answer that the Los Angeles property was bought by his wife, private respondent Fe, and his daughter, Geraldine, is a judicial admission that necessarily formed part of the facts of the case, which did not require proof to be sufficiently considered in the resolution of the demurrer to evidence.

Moreover, the denial by private respondent Romeo of his ownership of the subject property is pregnant with an admission, i.e., that he has an interest in his wife's share in the property by virtue of their marital union. This is a negative pregnant, which is a form of negative expression which carries with it an affirmation or at least an implication of some kind favorable to the adverse party.

In his Answer, private respondent Romeo alleged that, "respondent reiterates that he had no participation whatsoever in the purchase of that residential house and lot located at No. 2840 Heritage Drive, Pasadena, Los Angeles, as the same was actually purchased by his daughter, Geraldine, who is U.S. based, together with her mother, Fe." On the other hand, private respondent Fe claimed in her Joint Answer that, she "vehemently denies that the residential house and lot located at No. 2840 Heritage Drive, Pasadena, Los Angeles, belongs to respondent Romeo Panganiban as the same was actually purchased by her daughter, Geraldine, who is U.S. based, and that her name as co-owner of the property was indicated to enable Geraldine to secure approval for a loan to finance [the] purchase of the property.[44]

Although private respondents Romeo and Fe aver that the former had nothing to do in the transaction, the fact that they are spouses makes the Los Angeles property part of their property regime, be it an absolute community or conjugal property of gains. Article 91 of the Family Code states that unless otherwise provided in this Chapter or in the marriage settlements, the community property shall consist of all the property owned by the spouses at the time of the celebration of the marriage or acquired thereafter.

… Based on the evidence on record, the Los Angeles property is co-owned in equal shares by private respondent Fe and Geraldine, and by law, the half share therein of respondent Fe is deemed to pertain to both private respondents Romeo and Fe as spouses.

And as a consequence of Our reversal of the resolution granting the demurrer to evidence vis-à-vis one-half of the Los Angeles property, or that portion pertaining to the undivided share of private respondent Fe, private respondents Romeo, et al., are deemed to have waived the right to present countervailing evidence **that such one-half was not unlawfully acquired.**

Callos-Sta. Cruz Laguna Property

…This Court finds that public respondent Sandiganbayan correctly dismissed the petition for forfeiture with respect to the Callos-Sta. Cruz property. Petitioner Republic's pieces of documentary evidence failed to sufficiently prove that the subject property was unlawfully acquired, or that private respondent Romeo could not have afforded the said property.

Further, petitioner Republic claims that the assailed resolutions deserve closer examination, **without actually stating upon what ground public respondent Sandiganbayan abused its discretion in granting the demurrer to evidence concerning the Callos-Sta. Cruz property.** Where a petition for *certiorari* under Rule 65 of the Rules of Court, as amended, alleges grave abuse of discretion, **the petitioner should establish that the respondent court or tribunal acted in a capricious, whimsical, arbitrary or despotic manner in the exercise of its jurisdiction as to be equivalent to lack of jurisdiction.** This is so because "grave abuse of discretion" is well-defined and not an amorphous concept that may easily be manipulated to suit one's purpose.

III. Conclusion

This Court finds that the pieces of evidence adduced by petitioner Republic vis-à-vis the Ayala Alabang and Callos-Sta. Cruz properties are **wholly insufficient** to support the allegations of the petition for forfeiture in Civil Case No. 0192. Thus, for failure of petitioner Republic to show any right to the relief sought, this Court partly affirms the assailed resolutions.

R. Judgments and final orders

1. Judgment on the pleadings (Rule 34)

2. Summary judgments (Rule 35)

HEIRS OF ERNESTO MORALES, NAMELY: ROSARIO M. DANGSALAN, EVELYN M. SANGALANG, NENITA M. SALES, ERNESTO JOSE MORALES, JR., RAYMOND MORALES, AND MELANIE MORALES, *Petitioners*, -versus- ASTRID MORALES AGUSTIN, REPRESENTED BY HER ATTORNEY-IN FACT, EDGARDO TORRES, *Respondent*. G.R. No. 224849,SECOND DIVISION, June 06, 2018, REYES, JR., *J.*

In the case of Viajar vs. Judge Estenzo,as cited in Caridao, etc., et al. vs. Hon. Estenzo, etc., et al, the Court ruled that relief by summary judgment is intended to expedite or promptly dispose of cases where the facts appear undisputed and certain from the pleadings, depositions, admissions and affidavits. But if there be a doubt as to such facts and there be an issue or issues of fact joined by the parties, neither one of them can pray for a summary judgment. Where the facts pleaded by the parties are disputed or contested, proceedings for a summary judgment cannot take the place of a trial. In other words, the crucial question is: are the issues raised by petitioners not genuine so as to justify a summary judgment?

*The propriety of issuing a summary judgment springs not only from the lack of a **genuine issue** which is raised by either party, but also from the observance of the **procedural guidelines** for the rendition of such judgment. In the case of Calubaquib et al. vs. Republic of the Phils., the Court said that the "non-observance of the procedural requirements of filing a motion and conducting a hearing on the said motion warrants the setting aside of the summary judgment."*

While the petitioners have not questioned the fact that the subject property belonged to their progenitor, Jayme, they have, however, asserted that herein respondent has "no more right of participation" over the same.

Thus, when the petitioners herein asserted that the respondent has "no more right of participation" over the subject property because the successional rights of the respondent's parents over the same has already been conveyed to the petitioners' father, the petitioners tendered a genuine issue. The truthfulness of this allegation, however, could only be ascertained through the presentation of evidence during trial, and not in a summary judgment.

More, the RTC did not only commit reversible error by rendering a summary judgment despite the presence of a genuine issue, it also committed reversible error by applying the rules on summary judgment despite the absence of any motion from any of the parties that prayed for the rule's application.

FACTS:

The respondent, Astrid Morales Agustin, is a grandchild of Jayme Morales (Jayme), who was the registered owner of a parcel of land with improvements, designated as Lot No. 9217-A, and located at Barangay Sto. Tomas, Laoag City.

The respondent initiated the instant complaint, originally together with Lydia Morales,another one of Jayme's grandchildren and the respondent's cousin, for the partition of Jayme's property. They alleged that they, together with the petitioners and their other cousins, were co-owners of the subject property by virtue of their successional rights as heirs of Jayme.

For clarity of the discussion, the heirs of Jayme and his wife, Telesfora Garzon, who both died intestate, were their four (4) children:

1. Vicente Morales, who was survived by his children: (a) herein deceased defendant **Ernesto Morales** (substituted by his heirs who are now petitioners herein); (b) Abraham Morales

(also deceased); (c) former plaintiff and, eventually, defendant **Lydia Morales** (now also deceased); and (d) original defendant Angelita Ragasa;
2. Simeon Morales, who was survived by his children: (a) herein respondent **Astrid Morales Agustin;** (b) Leonides Morales; (c) Geraldine Morales-Gaspar; and (d) Odessa Morales;
3. **Jose Morales**, who was survived by his children: (a) Victoria Geron; (b) Vicente Morales; (c); Gloria Villasenor; (d) Amalia Alejo; (e) Juliet Manuel; (f) Rommel Morales; and (g) Virgilio Morales (now deceased);
4. **Martina Morales-Enriquez**, who was survived by her children: (a) Evelina Lopez; (b) **EmeterioEnriquez**; (c) Elizabeth Somera; and (d) BernarditaAlojipan.

Ernesto Morales, as one of the heirs of Vicente Morales, filed an Answer with Motion to Dismiss and Compulsory Counter-claims. He alleged, among others, that herein respondent has no cause of action against the petitioners because herein respondent has no more right of participation over the subject property because the same has long been conveyed to Ernesto Morales (as substituted by herein petitioners) by the respondent's parents, Simeon and Leonila Morales.

Meanwhile, per the Order of the RTC dated April 22, 2009, summons to the heirs of Martina Morales-Enriquez, who were at that time residing abroad, were allowed to be served personally.They were subsequently declared to be in default.In response, one of Martina Morales-Enriquez's heirs, Emeterio Enriquez, filed a Motion to Dismiss and alleged that the RTC did not acquire jurisdiction over his person because he was not furnished with a copy of the Amended Complaint.

After a protracted hearing on motions and other incidents of the case, the RTC rendered its decision on November 22, 2013 *via* a summary judgment in favor of herein respondent.

Aggrieved, the petitioners elevated the case to the CA, which thereafter dismissed the appeal and affirmed the RTC Decision on August 13, 2015.

ISSUES:
(1) Whether or not the RTC could *motu proprio* apply the rule on Summary Judgment (NO); (2) Whether or not the RTC could validly render a decision even in the absence of proof of proper service of summons to some of the real parties in interest in a quasi *in rem* proceeding (YES)

RULING:

On the Issue of Summary Judgment

A summary judgment in this jurisdiction is allowed by Rule 35 of the Rules of Court.According to the case of *Wood Technology Corporation, et al. vs. Equitable Banking Corporation,* it is a procedure aimed at weeding out sham claims or defenses at an early stage of the litigation. It is granted to settle expeditiously a case if, on motion of either party, there appears from the pleadings, depositions, admissions, and affidavits that no important issues of fact are involved, except the amount of damages.Thus, said the Court in the case of *Viajar vs. Judge Estenzo,*as cited in *Caridao, etc., et al. vs. Hon. Estenzo, etc., et al:*

> **Relief by summary judgment is intended to expedite or promptly dispose of cases where the facts appear undisputed and certain from the pleadings, depositions, admissions and affidavits.** But if there be a doubt as to such facts and there be an issue or issues of fact joined by the parties, neither one of them can pray for a summary judgment. Where the facts pleaded by the parties are disputed or contested, proceedings for a summary judgment cannot take the place of a trial.

A reading of the foregoing would reveal that, in the application of the rules on summary judgments, the proper inquiry would be whether the affirmative defenses offered by herein petitioners before the trial court constitute genuine issues of fact requiring a full-blown trial.In other words, **the crucial question is: are the issues raised by petitioners not genuine so as to justify a summary judgment?**

In *Evangelista vs. Mercator Finance Corp.,*the Court has already defined **a genuine issue as an issue of fact which calls for the presentation of evidence, as distinguished from an issue which is fictitious or contrived, set up in bad faith and patently unsubstantial so as not to constitute a genuine issue for trial**.

More, **the propriety of issuing a summary judgment springs not only from the lack of a genuine issue which is raised by either party, but also from the observance of the procedural guidelines for the rendition of such judgment**. Thus, in *Caridao,* the Court nullified the summary judgment issued by the trial court when the rules on summary judgment was applied despite the absence of a motion from the respondent asking for the application thereof. The Court said:

> And that is not all, The nullity of the assailed Summary Judgment stems not only from the circumstances that such kind of a judgment is not proper under the state of pleadings obtaining in the instant case, but also from the failure to comply with the procedural guidelines for the rendition of such a judgment. **Contrary to the requirements prescribed by the Rules, no motion for a summary judgment was filed by private respondent.** Consequently, no notice or hearing for the purpose was ever conducted by the trial court. The trial court merely required the parties to submit their affidavits and exhibits, together with their respective memoranda, and without conducting any hearing, although the parties presented opposing claims of ownership and possession, hastily rendered a Summary Judgment. **The trial court was decidedly in error in cursorily issuing the said Judgment**.

Still, in the more recent case of *Calubaquib et al. vs. Republic of the Phils.*, the Court once more was asked to determine the propriety of the summary judgment rendered by the trial court judge in the absence of any motion filed by the parties for that purpose. In that case, the Court said that:

> **The filing of a motion and the conduct of a hearing on the motion are therefore important** because these enable the court to determine if the parties' pleadings, affidavits and exhibits in support of, or against, the motion are sufficient to overcome the opposing papers and adequately justify the finding that, as a matter of law, the claim is clearly meritorious or there is no defense to the action.

Even in the pre-trial stage of a case, a **motion** for the application of summary judgment is **necessary.**In the recent case of *Spouses Pascual vs. First Consolidated Rural Bank (BOHOL), Inc.,*JusticeBersamin pointed out that:

> To be clear, the rule only spells out that unless the motion for such judgment has earlier been filed, **the pre-trial *may be* the occasion in which the court considers the propriety of rendering judgment on the pleadings or summary judgment. If no such motion was earlier filed, the pre-trial judge may then indicate to the proper party to initiate the rendition of such judgment *by filing the necessary motion.***Indeed, such motion is required by either Rule 34 *(Judgment on the Pleadings)* or Rule 35 *(Summary Judgment)* of the *Rules of Court.* **The pre-trial judge cannot *motu proprio* render the judgment on the pleadings**

> **or summary judgment.** In the case of the motion for summary judgment, the adverse party is entitled to counter the motion.

Indeed, *Calubaquib* even proceeded further in saying that the "**non-observance of the procedural requirements of filing a motion and conducting a hearing on the said motion warrants the setting aside of the summary judgment**."

While the petitioners have not questioned the fact that the subject property belonged to their progenitor, Jayme, they have, however, asserted that herein respondent has "no more right of participation" over the same.

Thus, when the petitioners herein asserted that the respondent has "no more right of participation" over the subject property because the successional rights of the respondent's parents over the same has already been conveyed to the petitioners' father, the petitioners tendered a genuine issue. The truthfulness of this allegation, however, could only be ascertained through the presentation of evidence during trial, and not in a summary judgment.

More, **the RTC did not only commit reversible error by rendering a summary judgment despite the presence of a genuine issue, it also committed reversible error by applying the rules on summary judgment despite the absence of any motion from any of the parties that prayed for the rule's application**.

On the Procedural Issue of Improper Service of Summons

The partition of real estate is an action quasi *in rem.*Jurisprudence is replete with pronouncements that, for the court to acquire jurisdiction in actions quasi *in rem,* it is necessary only that it has jurisdiction over the *res.* In the case of *Macasaet vs. Co, Jr.,*the Court stated that "**[j]urisdiction over the defendant in an action *in rem* or quasi *in rem* is not required, and the court acquires jurisdiction over an action as long as it acquires jurisdiction over the *res* that is the subject matter of the action**."

In the case of *De Pedro v. Romansan Development Corporation,* the Court clarified that while this is so, "to satisfy the requirements of due process, jurisdiction over the parties in *in rem* and quasi *in rem* actions is required."Thus, regardless of the nature of the action, proper service of summons is imperative and that a decision rendered without proper service of summons suffers a defect in jurisdiction.

According to *De Pedro,* the court may acquire jurisdiction over the thing by actually or constructively seizing or placing it under the court's custody.In the landmark case of *El Banco Español Filipino vs. Palanca,* the Court has already ruled that:

> Jurisdiction over the property which is the subject of the litigation may result either from a seizure of the property under legal process, whereby it is brought into the actual custody of the law, or **it may result from the institution of legal proceedings wherein, under special provisions of law, the power of the court over the property is recognized and made effective.**

In this case, the filing of the complaint before the RTC which sought to partition the subject property effectively placed the latter under the power of the court.

In sum, the Court finds sufficiency in the trial court's decision with regard to the summons directed against the warring heirs—as submitted by the respondent, but also finds error in the trial court's refusal to delve into the genuine issue concerning the partition of the subject property—as submitted by the petitioners. In the end, only a full-blown trial on the merits of each of the parties' claims—and not a mere summary judgment—could write *finis* on this family drama.

HOME DEVELOPMENT MUTUAL FUND (HDMF), *petitioner* –versus- GLOBE ASIATIQUE REALTY HOLDINGS CORPORATION, DELFIN S. LEE, in his capacity as the President of the Corporation, and TESSIE G. WANG, *respondents*.
G.R. No. 209424, EN BANC, July 31, 2018, BERSAMIN, *J.*

Considering that the January 30, 2012 partial summary judgment was interlocutory, the remedy could not be an appeal, for only a final judgment or order could be appealed. Section 1, Rule 41 of the Rules of Court makes this clear enough by expressly forbidding an appeal from being taken from such interlocutory judgment or order.

Consequently, the interlocutory January 30, 2012 summary judgment could be assailed only through certiorari under Rule 65 of the Rules of Court. Thus, the HDMF properly instituted the special civil action for certiorari to assail and set aside the resolutions dated January 30, 2012 and December 11, 2012 of the Makati RTC.

FACTS:

In 2008, Globe Asiatique, through its president Delfin Lee, entered into a Window I-Contract to Sell (CTS) Real Estate Mortgage (REM) with Buy-back Guaranty take out mechanism with the HDMF, also known as the Pag-Ibig Fund, for its XeveraBacolor Project in Pampanga. Globe Asiatique and HDMF also executed various Funding Commitment Agreements (FCAs) and Memoranda of Agreement (MOAs).

Under the FCAs, Delfin Lee warranted that the loan applicants that Globe Asiatique would allow to pre-process, and whose housing loans it would approve, were existing buyers of its real estate and qualified to avail themselves of loans from HDMF under the Pag-Ibig Fund; and that in the event of a default of the three-month payment on the amortizations by said members or any breach of warranties, Globe Asiatique would buy back the CTS/REM accounts during the first two years of the loan.

The parties further agreed that Globe Asiatique would collect the monthly amortizations on the loans obtained by its buyers in the first two years of the loan agreements and remit the amounts collected to HDMF through a Collection Servicing Agreement (CSA).

On June 10, 2008, Delfin Lee proposed the piloting of a Special Other Working Group (OWG) Membership Program for its XeveraBacolor Project while the FCA was in effect. The OWG Membership Program would comprise of HDMF members who were not formally employed but derived income from non-formal sources (*e.g.*, practicing professionals, self-employed members, Overseas Filipino Workers (OFWs), and entrepreneurs).

More FCAs were executed between the parties. According to HDMF, the aggregate amount of P7,007,806,000.00 was released to Globe Asiatique in a span of two years from 2008 to September 24, 2010, representing a total of 9,951 accounts.

In the course of its regular validation of buyers' membership eligibilities for taking out loans for the Xevera Project, HDMF allegedly discovered some fraudulent transactions and false representations purportedly committed by Globe Asiatique, its owners, officers, directors, employees, and agents/representatives, in conspiracy with HDMF employees.

As a result, HDMF revoked the authority of Globe Asiatique under the FCA; suspended all take-outs for new housing loans; required the buy-back of the fraudulent accounts; and cancelled the release of funds to Globe Asiatique in August 2010.

About a month later, Globe Asiatique discontinued remitting the monthly amortization collections from all borrowers of Xevera.

Finally, HDMF terminated the CSA with Globe Asiatique on August 31, 2010.

Meanwhile, HDMF continued its post take-out validation of the borrowers, and discovered more fraudulent transactions and false representations under the OWG Membership Program.

Globe Asiatique and Delfin Lee initiated the complaint for specific performance and damages against HDMF the case was assigned to Branch 58 of the Makati RTC. Globe Asiatique and Delfin Lee thereby sought to compel HDMF to accept the proposed replacements of the buyers/borrowers who had become delinquent in their amortizations, asserting that HDMF's inaction to accept the replacements had forced Globe Asiatique to default on its obligations under the MOA and FCAs.

Globe Asiatique and Delfin Lee filed a *Motion for Summary Judgment*, which the Makati RTC, after due proceedings, resolved on January 30, 2012, disposing thusly:

> **WHEREFORE**, premises considered, a Summary Judgment is hereby rendered declaring that:
>
> 1. Plaintiff *(sic)* have proven their case by preponderance of evidence. **As such, they are entitled to specific performance and right to damages as prayed for in the Complaint, except that the exact amount of damages will have to be determined during trial proper**.

Aggrieved, the HDMF brought its petition for *certiorari*.

On October 7, 2013, the CA promulgated its decision dismissing the HDMF petition. The CA opined that the HDMF had availed itself of the wrong remedy to assail the January 30, 2012 summary judgment and the December 11, 2012 resolution of the Makati RTC.

ISSUE:

Whether or not the HDMF availed itself of the proper remedy to assail the summary judgment rendered by the Makati RTC. (YES)

RULING

In the Civil Case, Globe Asiatique and Delfin Lee specifically **averred separate causes of action against the HDMF, including that for damages**. Thus, they prayed for several reliefs.

Granting the motion for summary judgment, the Makati RTC ultimately disposed:

> **WHEREFORE**, premises considered, a Summary Judgment is hereby rendered declaring that:
>
> 1. Plaintiffs have proven their case by preponderance of evidence. **As such, they are entitled to specific performance and right to damages as prayed for in the Complaint, except that the exact amount of damages will have to be determined during trial proper**.
>
> xxx xxxxxx
>
> **Let this case be set for the presentation of evidence on the exact amount of damages that plaintiffs are entitled on March 12, 2012 at 8:30 in the morning**.
>
> SO ORDERED.

As the foregoing shows, the Makati RTC set the case for the presentation of evidence to establish the other claims of Globe Asiatique and Delfin Lee stated in their complaint for specific performance. **The claims related to damages, which, being still essential parts of the case, would still have to be established and adjudicated on their merits.** Although the recovery of the damages was dependent on the determination that the HDMF had breached its contract with Globe Asiatique, it could not yet be said that the Makati RTC had fully disposed of the case through the summary judgment considering that there were still other reliefs sought by Globe Asiatique and Delfin Lee yet to be tried and determined either way. Under the circumstances, the summary judgment was, properly speaking, but an *interlocutory judgment* of the Makati RTC.

A partial summary judgment like that rendered on January 30, 2012 by the Makati RTC was in the category of a **separate judgment**. Such judgment did not adjudicate damages, and still directed that further proceedings be had in order to determine the damages to which Globe Asiatique and Delfin Lee could be entitled.

Worthy to emphasize is that the rendition of a summary judgment does not always result in the full adjudication of all the issues raised in a case. In such event, a partial summary judgment is rendered in the context of Section 4, Rule 35. Clearly, such a partial summary judgment — because it does not put an end to the action at law by declaring that the plaintiff either has or has not entitled himself to recover the remedy he sues for — cannot be considered a final judgment. It remains to be an interlocutory judgment or order, instead of a final judgment, and is not to be dealt with and resolved separately from the other aspects of the case.

Considering that the January 30, 2012 partial summary judgment was interlocutory, the remedy could not be an appeal, for only a final judgment or order could be appealed. Section 1, Rule 41 of the *Rules of Court* makes this clear enough by expressly forbidding an appeal from being taken from such interlocutory judgment or order.

Consequently, the interlocutory January 30, 2012 summary judgment could be assailed only through *certiorari* under Rule 65 of the *Rules of Court*. Thus, the HDMF properly instituted the special civil action for *certiorari* to assail and set aside the resolutions dated January 30, 2012 and December 11, 2012 of the Makati RTC.

3. Rendition and entry of judgments and final orders (Rule 36)

ARMANDO GO, *PETITIONER*, -versus- EAST OCEANIC LEASING AND FINANCE CORPORATION, *RESPONDENT.*
G.R. Nos. 206841-42, FIRST DIVISION, January 19, 2018, DEL CASTILLO, *J.*

Section 1, Rule 36 of the Rules of Court states that A judgment or final order determining the merits of the case shall be in writing personally and directly prepared by the judge, stating dearly and distinctly the facts and the law on which it is based, signed by him, and filed with the clerk of court.

In this case, a review of the records shows that the RTC had failed to clearly and distinctly state the facts and the law on which it based its ruling insofar as Go's civil liability to East Oceanic is concerned. There is absolutely no discussion at all in the assailed Decision as to the RTC's ruling in the collection case, particularly, on how it arrived at its conclusion finding Go liable to pay East Oceanic "the sum of P2,814,054.86 plus 6% interest to be computed from the time of the filing of the complaint."

FACTS:

On March 22, 1995, petitioner Armando Go (Go) obtained a loan from respondent East Oceanic Leasing and Finance Corporation (East Oceanic) in the amount of P14,062,888.00,[3] payable in monthly instalments of P169,287.00 until fully paid, as evidenced by a Promissory Note[4] that Go executed on the same day.

Notably, Go's loan application was approved on the basis of the report and recommendation of Theodore Sy (Sy), then East Oceanic's Managing Director, which specified that the purpose of the loan was for the upgrading of the bus fleet and replacement of old units of Oriental Bus Lines, a bus company owned by Go.[5]

Go subsequently issued six post-dated checks in favor of East Oceanic, all drawn from his account at the Development Bank of the Philippines - Ormoc Branch (DBP). Unfortunately, the checks were all dishonored by the DBP upon presentment for payment with the reason "Account Under Garnished" stamped at the back of the checks and as shown by the check return slips.[13] East Oceanic duly informed Go of the dishonor of said checks and demanded that he make good or pay the same, but the latter failed to do so.

By reason of the dishonored checks, Go's Joan became due and demandable with an outstanding balance of P2,814,054.84, excluding interest and other charges, based on a Statement of Account[15] dated January 24, 1996.[16]

Thus, on February 7, 1996, East Oceanic filed a Complaint[17] against Go before the RTC for collection of a sum of money with prayer for preliminary attachment. The case was docketed as Civil Case No. CEB-18366 (collection case).

While the collection case was pending, East Oceanic filed a Complaint for Damages[21] dated April 14, 1998 with the RTC against Sy, alleging that the corporation suffered a loss in the amount of P3,000,000.00 due to the latter's false report and recommendation pertaining to the real purpose of

Go's loan application, *i.e.*, to pay off an existing loan to Sto. Niño de Cebu Finance Corporation, as well as his financial status.[22] The case was docketed as Civil Case No. CEB-21918 (damages case).

In its Decision dated July 16, 2012, the RTC rendered judgment in favor of East Oceanic ordering the defendant Sy to pay plaintiff the following damages: a) P3,000,000.00 as actual damages with 6% interest computed from the time of the filing of the case; b) P300,000.00 as attorney's fees; and, c) P30,000.00 as x xx litigation expenses. In addition, it ordered the defendant Go to pay plaintiff the sum of P2,814,054.84 plus 6% interest to be computed from the time of the filing of the complaint.

Go moved for reconsideration,[27] arguing that the RTC Decision is contrary to law because it failed to cite any factual and/or legal basis as to his civil liability to East Oceanic.[28] The RTC, however, denied the motion in its Order dated April 8, 2013.

As a consequence, Go filed the present Petition for Review on *Certiorari* before the Court, assailing the RTC's July 16, 2012 Decision and April 8, 2013 Order.

ISSUE:

Whether the assailed RTC Decision is void for having no basis in fact and in law as regards his civil liability to East Oceanic. (YES)

RULING:

The Constitution expressly provides that "'[n]o decision shall be rendered by any court without expressing therein *clearly and distinctly* the facts and the law on which it is based. No petition for review or motion for reconsideration of a decision of the court shall be refused due course or denied without stating the basis therefor."[29]

This constitutional mandate is reflected in Section 1, Rule 36 of the Rules of Court which states that:

> Sec 1. Rendition of judgments and final orders. - A judgment or final order determining the merits of the case shall be in writing personally and directly prepared by the judge, stating dearly and distinctly the facts and the law on which it is based, signed by him, and filed with the clerk of court.

The Court, too, issued Administrative Circular No. 1 dated January 28, 1988 which required all judges to make ''complete findings of facts in their decisions, scrutinize closely the legal aspects of the case in the light of the evidence presented, and avoid the tendency to generalize and to form conclusions without detailing the facts from which such conclusions are deduced."

In this case, a review of the records shows that the RTC had failed to *clearly and distinctly* state the facts and the law on which it based its ruling insofar as Go's civil liability to East Oceanic is concerned. There is absolutely no discussion at all in the assailed Decision as to the RTC's ruling in the collection case, particularly, on how it arrived at its conclusion finding Go liable to pay East Oceanic "the sum of P2,814,054.86 plus 6% interest to be computed from the time of the filing of the complaint."

The RTC resolved all the issues that it had enumerated in the assailed Decision. The only problem is that the issues it resolved pertain *exclusively* to the damages case, when it was tasked to decide all

the issues in *both* the damages case and the collection case. Simply put, the RTC failed to include in its listing (and to resolve) the issues relating to the collection case which are expressly provided in the Pre-Trial Order.

Given these circumstances, **the assailed Decision is void insofar as the collection case is concerned**, as it contained neither an analysis of the evidence of East Oceanic and Go as regards the outstanding balance of the latter's loan obligation, nor a reference to any legal basis in reaching its conclusion as to Go's civil liability to East Oceanic.[43] Clearly, the RTC failed to meet the standard set forth in Section 14, Article VIII of the Constitution, and in so doing, deprived Go of his right to due process "since he was not accorded a fair opportunity to be heard by a fair and responsible magistrate."

S. Post-judgment remedies

1. Motion for new trial or reconsideration

a. Rule 37

PHILIPPINE DEPOSIT INSURANCE CORPORATION, *Petitioner*, -versus- MANU GIDWANI, ***Respondent*.** G.R. No. 234616, Third Division, June 20, 2018, Velasco, Jr., J.

A motion for reconsideration may be granted if (1) the damages awarded are excessive, (2) the evidence is insufficient to justify the decision or final order, or (3) the decision or final order is contrary to law. The judicial or quasi-judicial body concerned may arrive at any of the three enumerated conclusions even without requiring additional evidence. To be sure, the introduction of newly discovered additional evidence is a ground for new trial or a de novo appreciation of the case, but not for the filing of a motion for reconsideration. Judicial proceedings even prohibit the practice of introducing new evidence on reconsideration since it potentially deprives the opposing party of his or her right to due process. While quasi-judicial bodies in administrative proceedings may extend leniency in this regard and allow the admission of evidence offered on reconsideration or on appeal,this is merely permissive and does not translate to a requirement of attaching additional evidence to support motions for reconsideration.

FACTS:

Pursuant to several resolutions of the Monetary Board of the BangkoSentral ng Pilipinas, the rural banks owned and controlled by the Legacy Group of Companies were ordered closed and thereafter placed under the receivership of petitioner Philippine Deposit Insurance Corporation.

Respondent Manu, together with his wife ChampaGidwani and 86 other individuals, represented themselves to be owners of 471 deposit accounts with the Legacy Banks and filed claims with PDIC. The claims were processed and granted, resulting in the issuance of 683 Landbank of the Philippines checks in favor of the 86 individuals, excluding the spouses Gidwani, in the aggregate amount of P98,733,690.21.

Two diagonal lines appeared in each of the Landbank checks, indicating that they were crossed-checks "Payable to the Payee's Account Only." Despite these explicit instructions, the individuals did not deposit the crossed checks in their respective bank accounts. Rather, the face value of all the checks were credited to a single account with Rizal Commercial Banking Corporation (RCBC)-RCBC Account No. 1-419-86822-8, owned by Manu.

PDIC alleges that it only discovered the foregoing circumstance when the checks were cleared and returned to it. This prompted PDIC to conduct an investigation on the true nature of the deposit

placements of the 86 individuals. Based on available blank documents, they allegedly did not have the financial capacity to deposit the amounts recorded under their names, let alone make the deposits in various Legacy Banks located nationwide. It is PDIC's contention, therefore, that with willful malice and intent to circumvent the law, the Gidwani spouses made it appear that the deposits for which the insurance was paid were owned by 86 distinct individuals when, in truth and in fact, all the deposits were maintained for the sole benefit of the Gidwani spouses.

Pursuant to its mandate to safeguard the deposit insurance fund against illegal schemes and machinations, PDIC, on November 6, 2012, lodged a criminal complaint docketed as I.S. No. XVI-INV-12K-00480, before the DOJ Task Force on Financial Fraud for estafa through falsification under the Revised Penal Code and for money laundering as defined in Section 4(a) of AMLA against the Gidwani spouses and the 86 other individuals.

In their counter-affidavits, the Gidwani spouses denied the charges against them, particularly on being owners of the accounts in question. In brief, they claimed that there was no falsification committed by them since what was stated about the 86 individuals being the owners of their respective accounts was true.

On January 14, 2014, the DOJ Task Force promulgated a Resolutiondismissing the Complaint. PDIC's motion for reconsideration was denied through the DOJ Task Force's Resolution dated December 3, 2014. Unperturbed, PDIC interposed a petition for review with the Office of the SOJ. However, then Undersecretary of Justice Jose F. Justininano likewise denied PDIC's appeal. Based on the Justiniano Resolution, PDIC failed to overcome the presumption of ownership over the subject deposits. On June 3, 2016, then SOJ Emmanuel Caparas, however, overturned the Justianio Resolution through his own ruling granting PDIC's motion for reconsideration. SOJ Caparas ratiocinated that, on the charge of estafa through falsification, the individual depositors committed false pretenses when they made it appear that they were the legitimate owners of the subject bank accounts with the Legacy Banks, which information was used in the processing of the insurance claims with PDIC, even when in truth and in fact, the accounts were owned and controlled by Manu.

Aggrieved, several of the respondents filed their respective motions for reconsideration of the Caparas Resolution. Meanwhile, herein respondent Manu immediately elevated the matter to the CA, ascribing grave abuse of discretion on the part of SOJ Caparas in finding probable cause to charge him with estafa and for violation of the AMLA.

On November 29, 2016, SOJ Vitaliano N. Aguirre granted the motions for reconsideration of several of Manu's co-respondents a quo, reinstating the Justiniano Resolution.

The CA reversed the Caparas Resolution and held that SOJ Caparas gravely abused his discretion when he reversed and set aside the earlier resolutions of the DOJ Task Force and of SOJ Justiniano even though no new evidence was offered by PDIC to support its allegations against Manu and his co-respondents. PDIC moved for reconsideration from this adverse ruling, but the CA affirmed its earlier ruling. Thus, the present petition.

ISSUE:

Whether the CA erred in taking cognizance of respondent Manu Gidwani's petition for certiorari under Rule 65 of the 1997 Rules of Civil Procedure to assail the Caparas Resolution despite his failure to file a motion for reconsideration with the DOJ prior to the filing of the petition for certiorari.

RULING:

Yes. The filing of a motion for reconsideration is not mere formality, but an opportunity for a judicial or quasi-judicial body to correct imputed errors, in fact or in law, in its findings and conclusions.The office of the motion is *precisely* to grant the investigating body, the DOJ in this case,

the opening to give a second hard look at the matter at hand, and to determine if its previous ruling is in accord with evidence on record and statute.

In resolving the motion for reconsideration lodged with his office and in exercising jurisdiction, SOJ Caparas has the power and discretion to make his own personal assessment of the pleadings and evidence subject of review. He is not bound by the rulings of his predecessors because there is yet to be a final resolution of the issue; the matter is still *pending* before his office after all. To hold otherwise would render the filing of the motion a futile exercise, and the recourse, pointless.

That no new evidence was offered by PDIC on reconsideration is of no moment. For under Section 13 of Department Circular No. 70 of the DOJ, otherwise known as the 2000 National Prosecutorial Service Rule on Appeal (2000 NPS Rules), the party aggrieved by the ruling of the SOJ during the preliminary investigation may file a motion for reconsideration within a non-extendible period of ten (10) days from notice. Quite conspicuous, however, is that the 2000 NPS Rules does not specify the grounds for filing the said motion. In this regard, the Court refers to Rule 1, Section 4 of the Rules of Court for guidance, as it can be applied in a suppletory character. Thus, even though the 2000 NPS Rules is lacking in specifics insofar as the grounds for a motion for reconsideration is concerned, Rule 37 of the Rules of Court bridges the breach.

Under Rule 37 of the Rules of Court, a motion for reconsideration may be granted if (1) the damages awarded are excessive, (2) the evidence is insufficient to justify the decision or final order, or (3) the decision or final order is contrary to law. The judicial or quasi-judicial body concerned may arrive at any of the three enumerated conclusions even without requiring additional evidence. To be sure, the introduction of newly discovered additional evidence is a ground for new trial or a *de novo* appreciation of the case, but not for the filing of a motion for reconsideration. Judicial proceedings even prohibit the practice of introducing new evidence on reconsideration since it potentially deprives the opposing party of his or her right to due process. While quasi-judicial bodies in administrative proceedings may extend leniency in this regard and allow the admission of evidence offered on reconsideration or on appeal,this is merely permissive and does not translate to a requirement of attaching additional evidence to support motions for reconsideration.

NG CHING TING, *Petitioner*, *v.* **PHILIPPINE BUSINESS BANK, INC.** *Respondent*.
G.R. No. 224972, SECOND DIVISION, July 09, 2018, REYES, JR., ***J.***

In Social Security System vs. Isip,[44] it was held that the "belated filing of the motion for reconsideration rendered the decision of the Court of Appeals final and executory. A judgment becomes final and executory by operation of law. Finality becomes a fact when the reglementary period to appeal lapses and no appeal is perfected within such period."

In the instant case, there are two (2) Certifications[48] issued by the Caloocan Central Post Office, confirming that the registered mails which contained copies of the order of dismissal were sent to the respondent and its counsel and were duly received by Bilan on September 23, 2011. Thus, when respondent filed its motion for reconsideration twenty-four days after receipt, the order of dismissal dated August 11, 2011 had already attained finality and therefore the RTC gravely abused its discretion in setting it aside.

FACTS

Philippine Business Bank, Inc. (respondent) filed a Complaint[3] for Recovery of Sum of Money against Jonathan Lim (Jonathan), Carolina Lim (Carolina) and Ng Ching Ting (petitioner) also known as

Richard Ng. The petitioner, through counsel, filed a Motion[6] to Dismiss. The RTC issued an Order,[10] denying the motion to dismiss. Almost a year thereafter, the RTC issued an Order[12] dated August 11, 2011, *motu proprio* dismissing the case by reason of inaction of both parties. Subsequently, a Motion for Reconsideration[14] dated October 17, 2011 was filed by the respondent bank, asseverating that they are still interested in pursuing the case and explained that the reason for their inaction was due to the resignation of its two (2) in-house counsels.

The petitioner filed an Opposition[15] to the motion for reconsideration.

The RTC granted the respondent's motion for reconsideration. The CA affirmed the Order.

ISSUE

Whether the Motion for Reconsideration was filed out of time (YES)

RULING

In *Fortich vs. Corona*,[24] the Court elaborated on the significance of the of the rules of procedure, *viz*.:

Procedural rules, we must stress, should be treated with utmost respect and due regard since they are designed to facilitate the adjudication of cases to remedy the worsening problem of delay in the resolution of rival claims and in the administration of justice. The requirement is in pursuance to the bill of rights inscribed in the Constitution which guarantees that all persons shall have a right to the speedy disposition of their cases before all judicial, quasi-judicial and **administrative bodies**, the adjudicatory bodies and the parties to a case are thus enjoined to abide strictly by the rules.

In this case, the respondent cannot simply lay the blame on the resignation of its in-house counsels since it is incumbent upon it, as the complainant, to promptly hire new lawyers to represent it in the proceedings. Much vigilance and diligence are expected of it considering that it is the one who initiated the action. Upon the resignation of its in house counsels, it should have taken immediate steps to hire replacements so it may be able to keep up with the pending incidents in the case. Surely, it cannot expect the court to wait until it has settled its predicament. It must take prompt action to keep pace with the proceedings. As it was, however, the respondent dilly-dallied for almost a year until the court, *motu proprio*, ordered the dismissal of the case for failure to prosecute.

It must be pointed out that based on the Certification[41] issued by the Caloocan Central Post Office, the respondent received the copy of the Order dated August 11, 2011 on September 23, 2011. From this date, it had only fifteen (15) days to file a motion for reconsideration.[42] Based on its own admission, however, it only filed a motion for reconsideration on October 17, 2011[43] or twenty-four (24) days after receipt of the notice of the order of dismissal, which was nine (9) days beyond the 15-day period to file the same. At that time, the order of dismissal had already lapsed into finality and is already beyond the jurisdiction or discretion of any court to modify or set aside.

In *Social Security System vs. Isip*,[44] it was held that the "belated filing of the motion for reconsideration rendered the decision of the Court of Appeals final and executory. A judgment becomes final and executory by operation of law. Finality becomes a fact when the reglementary period to appeal lapses and no appeal is perfected within such period."

To stress, the finality of the decision comes by operation of law and there is no need for any judicial declaration or performance of an act before such takes effect. That the judgment or order becomes final by *operation of law* means that no positive act is required before this consequence takes place. It can only be stalled if the proper legal remedy is taken with the prescriptive period. After this period, "the court loses jurisdiction over the case and not even an appellate court would have the power to review a judgment that has acquired finality."[47]

In the instant case, there are two (2) Certifications[48] issued by the Caloocan Central Post Office, confirming that the registered mails which contained copies of the order of dismissal were sent to the respondent and its counsel and were duly received by Bilan on September 23, 2011. Thus, when respondent filed its motion for reconsideration twenty-four days after receipt, the order of dismissal dated August 11, 2011 had already attained finality and therefore the RTC gravely abused its discretion in setting it aside.

b. Remedy against denial and fresh-period rule

2. Appeals

UNITED COCONUT PLANTERS BANK, *Petitioner*, -versus-SPOUSES WALTER UY AND LILY UY, *Respondents*. G.R. No. 204039, THIRD DIVISION, January 10, 2018, MARTIRES, *J.*

When a case is appealed, the appellate court has the power to review the case in its entirety. When UCPB appealed the present controversy before the SC, the latter was not merely limited to determine whether the CA accurately set UCPB's liability against the spouses Uy. It is also empowered to determine whether the CA's determination of liability was correct in the first place. This is especially true considering that the issue of the nature of UCPB's liability is closely intertwined and inseparable from the determination of the amount of its actual liability.

FACTS:

Prime Town Property Group, Inc. (PPGI) and E. Ganzon Inc. were the joint developers of the Kiener Hills Mactan Condominium Project (Kiener Hills). Respondent spouses Walter and Lily Uy (spouses Uy) entered into a Contract to Sell with PPGI for a unit in Kiener Hills.

PPGI and petitioner United Coconut Planters Bank (UCPB) executed a Memorandum of Agreement (MOA) and Sale of Receivables and Assignment of Rights and Interests. By virtue of the said agreements, PPGI transferred the right to collect the receivables of the buyers, which included the spouses Uy's unit in Kiener Hills.

The Housing and Land Use Regulatory Board Regional Office (HLURB Regional Office) received the spouses Uy's complaint for sum of money and damages against PPGI and UCPB. They claimed that in spite of their full payment of the purchase price, PPGI failed to complete the construction of their units in Kiener Hills.

The HLURB Regional Office found that UCPB cannot be solidarily liable with PPGI. By contrast, the HLURB-Board of Commissioners (HLURB Board) reversed and set aside the decision of the HLURB Regional Office and found UCPB solidarily liable with PPGI. The Office of the President (OP) affirmed the decision of the HLURB Board.

On appeal, the Court of Appeals (CA) ruled that UCPB is not solidarily liable with PPGI. It noted the pronouncements of the CA in *United Coconut Planters Bank v. O'Halloran (O'Halloran)*, where it was held that the assignment of receivables did not make UCPB the debtor with respect to the construction, development, and delivery of the subject condominium units. Nonetheless, the CA held that UCPB was jointly liable with PPGI.

In the present petition, UCPB does not contest the CA's conclusion that it is jointly liable with PPGI to the unit owners of Kiener Hills. It, however, assails that the CA erred in computing its actual liability because it was only bound to refund the amount it had actually received. Meanwhile, the spouses Uy argued that *O'Halloran* is not binding pursuant to the doctrine of stare decisis because they were decided by the CA and not by the Supreme Court (SC). UCPB countered that the only issue to be resolved in the present petition is the actual amount of its liability. It pointed out that the issues the spouses Uy raised were already ventilated before the CA, whose decision had become final and executory after the spouses Uy failed to appeal the same. It believed that the spouses Uy should have filed their own appeal to assail the issues they found questionable.

ISSUE:

Whether the SC is empowered to determine the correctness of the CA's determination of liability. (YES)

RULING:

When a case is appealed, the appellate court has the power to review the case in its entirety. The appealed case is thrown wide open for review by that court, which is thus necessarily empowered to come out with a judgment as it thinks would be a just determination of the controversy. Given this power, the appellate court has the authority to either affirm, reverse, or modify the appealed decision of the trial court. To withhold from the appellate court its power to render an entirely new decision would violate its power of review and would, in effect, render it incapable of correcting patent errors committed by the lower courts.

When UCPB appealed the present controversy before the SC, the latter was not merely limited to determine whether the CA accurately set UCPB's liability against the spouses Uy. It is also empowered to determine whether the CA's determination of liability was correct in the first place. This is especially true considering that the issue of the nature of UCPB's liability is closely intertwined and inseparable from the determination of the amount of its actual liability.

In any case, while the application of the doctrine of *stare decisis* to *O'Halloran* was improper, several SC cases also support the conclusion that UCPB is only jointly liable with PPGI.

BEN LINE AGENCIES PHILIPPINES, INC., rep. by RICARDO J. JAMANDRE, *Petitioner*, -versus- CHARLES M.C. MADSON and ALFREDO P. AMORADO, *Respondents*. G.R. No. 195887, THIRD DIVISION, January 10, 2018, MARTIRES, *J.*

Sections 5 and 6 of the NPS Rules provide that failure to attach clear and legible copies of the resolutions sought to be reviewed constitutes sufficient ground to dismiss the petition. However, in Air Philippines, the SC ruled that a petition lacking an essential pleading or part of the case record may still be given

due course or reinstated (if earlier dismissed) upon showing that petitioner later submitted the documents required, or that it will serve the higher interests of justice that the case be decided on the merits. Here, Ben Line initially failed to submit clear and legible copies of the resolutions of the OCP when it filed its petition for review before the DOJ. However, in its motion for reconsideration, Ben Line had already attached clear and legible copies of the resolutions appealed from. Hence, the DOJ should have reinstated the petition for review.

FACTS:

Petitioner Ben Line Agencies Philippines, Inc. (Ben Line) is a domestic corporation engaged in maritime business. The vessel M/V Ho Feng, owned and operated by Ben Line's foreign principal, had to discharge shipment. As such, it needed to hire a crane capable of lifting heavy shipment.

Upon Ben Line's inquiry, AALTAFIL Incorporated (AALTAFIL) offered its crane. However, Ben Line was subsequently informed that the equipment had been leased to ACE Logistics, Inc. (ACE). A contract was entered into between Ben Line and ACE for the sub-leasing of the crane, and Ben Line made payments to both AALTAFIL and ACE (respondents) in consonance with the payment terms agreed upon.

When the vessel was ready to discharge the cargo, problems arose with the crane operator and the crane itself. Hence, Ben Line was constrained to look for substitutes. It hired Renato Escarpe of Asian Terminals, Inc. (ATI) as a crane operator and leased ATI's floating crane barge.

Ben Line repeatedly made demands for a refund from respondents, but the same were refused. Believing it was deceived into renting a less worthy crane, Ben Line filed a complaint-affidavit against respondents before the National Bureau of Investigation (NBI). The NBI issued a resolution recommending the prosecution of respondents for *estafa*, and the case was forwarded to the Office of the Prosecutor (OCP) of Manila.

The OCP issued a resolution recommending the dismissal of the complaint for insufficiency of evidence. Aggrieved, Ben Line filed a petition for review before the Department of Justice (DOJ). Noting the failure to attach clear copies of the assailed resolution, the DOJ denied Ben Line's petition for review. It further opined that the right to appeal has been lost due to failure to comply with the prevailing rules.

Ben Line moved for reconsideration. In its motion, Ben Line attached clear and legible copies of the resolutions appealed from. It also pointed out that the copies initially attached in its petition for review before the DOJ were provided by the OCP. Nonetheless, the motion for reconsideration was denied. Ben Line's petition for *certiorari* and motion for reconsideration before the Court of Appeals were similarly denied.

ISSUE:

Whether the DOJ acted with grave abuse of discretion in dismissing Ben Line's appeal only on procedural grounds. (YES)

RULING:

Section 5 of the 2000 National Prosecution Service Rule on Appeal (NPS Rules) provides that "[t]he petition shall be accompanied by legible duplicate original or certified true copies of the complaint, affidavit/sworn statements and other evidence submitted by the parties during the preliminary investigation/reinvestigation." Under Section 6 of the NPS Rules, failure to comply with the requirements of Section 5 constitutes sufficient ground to dismiss the petition.

However, in *Air Philippines Corporation v. Zamora* (*Air Philippines*), the Supreme Court (SC) ruled that mere failure to attach legible copies does not *ipso facto* warrant the dismissal of a complaint or a petition. It declared that "a petition lacking an essential pleading or part of the case record may still be given due course or reinstated (if earlier dismissed) upon showing that petitioner later submitted the documents required, or that it will serve the higher interests of justice that the case be decided on the merits."

Here, Ben Line initially failed to submit clear and legible copies of the resolutions of the OCP when it filed its petition for review before the DOJ. However, in its motion for reconsideration, Ben Line had already attached clear and legible copies of the resolutions appealed from.

Hence, while the DOJ correctly acted when it dismissed the petition for review, it was remiss in its duty to ensure that cases before it should be resolved on its merits when it denied Ben Line's motion for reconsideration. In accordance with the pronouncements of the SC in *Air Philippines* and in order that the substantial issues of the case be fully ventilated, the DOJ should have reinstated the petition for review.

a. Judgments and final orders subject to appeal

BENEDICTO V. YUJUICO, *Petitioner*, -versus- FAR EAST BANK AND TRUST COMPANY (NOW BANK OF THE PHILIPPINE ISLANDS), SUBSTITUTED BY PHILIPPINE INVESTMENT ONE (SPV-AMC), INC., *Respondent.*

G.R. No. 186196, SECOND DIVISION, August 15, 2018, CAGUIOA, *J.*

Verches vs. Rios explains that the party, who is barred from appealing and claiming that he has not recovered enough, must have recovered a judgment upon a claim which is indivisible and, after its rendition, has coerced by execution full or partial satisfaction. Thus, having elected to collect from the judgment by execution, he has ratified it, either in toto or partially, and should be estopped from prosecuting an appeal inconsistent with his collection of the amount adjudged to him.

In fine, the claim must be one which is indivisible and there must be an execution of the judgment, either partially or fully. Indeed, the claim of respondent against GTI and petitioner Yujuico is indivisible since it cannot be split up and made the basis for several causes of action. However, there is yet no execution of the RTC Decision, either fully or partially. Respondent merely acceded to the directive of the RTC "to acknowledge and confirm its obligation to convert the restructured Omnibus Credit Line of GTI from Philippine Peso loan account into a US Dollar denominated loan obligation."

FACTS:

The CA Decision narrates the following antecedent facts of the case:

Appellant then Far East Bank and Trust Company approved the renewal of appellee GTI Sportswear Corporation's Omnibus Credit Line (OCL). This was secured by a Comprehensive Surety Agreement executed by appellee Benedicto V. Yujuico in his personal capacity. He was also the president of appellee GTI.

Later, negotiations were undertaken to settle appellee GTI's trust receipt obligation under the OCL. During these negotiations, appellee GTI made known to appellant bank its request for the conversion of its peso loan to US dollar-denominated loan. Although exchange of communications transpired, no definite agreement on the said conversion was put into writing.

Few years after, appellees filed against appellant bank a Complaint for Specific Performance. Appellees alleged that during the signing of a loan restructuring agreement, they were assured by the officers of appellant bank that after a few payments on its obligation, appellee GTI's peso loan would be converted to US dollars. Hence, appellees prayed that appellant bank be directed to convert GTI's loan to US dollars retroactively effective October 1, 1996.

In its Answer, appellant bank denied that it made assurances to appellees that it would approve the latter's request for conversion of the peso loan to US dollar.

The Regional Trial Court ruled that appellant bank indeed agreed to convert to US dollar appellee GTI's peso loan obligation. The conversion also resulted in the novation of appellee GTI's loan obligation. As a result, appellee Yujuico was accordingly released from his obligations as surety.

In its Motion for Reconsideration, appellant bank manifested that it acknowledges and confirms its obligation to convert the restructured Omnibus Line of plaintiff GTI Sportswear from a peso account into a US Dollar denominated loan obligation. In support thereof, it attached therewith the Statement of Account of appellee GTI under the restructured Omnibus Line on the basis of the prevailing peso-dollar rate of exchange.

Appellant bank likewise filed an appeal before the CA. The CA partially granted the appeal. The CA ruled that the Omnibus Credit Line and the Loan Restructuring Agreement between appellee GTI and appellant bank were not novated and appellee Yujuico remained to be liable as a surety under the Comprehensive Surety Agreement.

ISSUE:

Whether the CA has legal basis to entertain the appeal as respondent had already performed a partial execution of the Decision of the RTC which prevents and/or precludes respondent from questioning and/or appealing the judgment/Decision of the RTC (YES)

RULING:

Petitioner Yujuico takes the position that pursuant to the leading case of *Verches v. Rios*, "in converting the restructured Omnibus Credit Line/loan of GTI Sportswear Corporation from Philippine Peso to United States Dollar denominated, respondent has clearly and definitely partially executed the judgment/decision of the Trial Court and/or has voluntarily acquiesced or ratified partially the execution of the judgment/decision of the Trial Court."

Petitioner Yujuico entirely misses the import of the Court's ruling in *Verches*, which is reproduced below:

Plaintiffs complaint is founded upon an indivisible cause of action to recover the sum of P2,400 arising out of a fraudulent breach of a contract, upon which the lower court rendered judgment in favor of the plaintiff for the sum of P1,000, from which the plaintiff appealed for allegedly being erroneous. After his appeal was taken and perfected, the plaintiff filed a motion in this court for leave to have an execution issued out of the court below on the judgment in his favor against the defendant for P1,000. That motion was granted by the vacation Justice.

The plaintiff, having applied to this court for leave to issue an execution out of the lower court on his judgment for P1,000, and, through coercion, having collected that judgment and receipted for it in full, ought not to be heard in this Court to say that the judgment of the lower court was erroneous. It may be, as plaintiff claims, that in the collection of a judgment for P1,000 on an execution, it never was his purpose or intent to waive or abandon his appeal from that judgment.

His cause of action being indivisible, and the judgment from which plaintiffs appeal was taken having been satisfied by an execution issued on his own motion, there is nothing left from which to appeal. Upon an indivisible cause of action, plaintiff, through an execution, cannot collect a judgment in his favor and at the same time prosecute an appeal from that judgment upon the ground that it was erroneous and should have been for more money.

The party, who is barred from appealing and claiming that he has not recovered enough, must have recovered a judgment upon a claim which is indivisible and, after its rendition, has coerced by execution full or partial satisfaction. Thus, having elected to collect from the judgment by execution, he has ratified it, either *in toto* or partially, and should be estopped from prosecuting an appeal inconsistent with his collection of the amount adjudged to him.

In fine, the claim must be one which is indivisible and there must be an execution of the judgment, either partially or fully. Indeed, the claim of respondent against GTI and petitioner Yujuico is indivisible since it cannot be split up and made the basis for several causes of action. However, there is yet no execution of the RTC Decision, either fully or partially. Respondent merely acceded to the directive of the RTC "to acknowledge and confirm its obligation to convert the restructured Omnibus Credit Line of x xx GTI from Philippine Peso loan account into a US Dollar denominated loan obligation."In fact, the RTC, while it recognized that GTI is indebted to respondent, ruled that "[t]he liquidation of this obligation is however subject to a condition that the respondent bank must first comply with its obligation to convert the Peso loan account into a US Dollar denominated loan and thereafter compute the outstanding obligation of GTI and petitioner Yujuico to it." Even in the Motion for Reconsideration filed by respondent wherein it manifested its acceptance of and willingness to abide by the RTC directive, respondent alleged that "with the submission of the computation of the outstanding obligation of GTI and petitioner Yujuico pursuant to the Statement of Account it attached, they should now be directed to pay respondent under the restructured Omnibus Line plus the stipulated interests and penalty charges thereon from October 31, 2004 until the same is fully paid in US dollar currency."

Thus, GTI or petitioner Yujuico has not been coerced by execution to satisfy the RTC judgment; and respondent is not precluded to appeal the resolution of the RTC that there is novation and petitioner Yujuico is released from his obligation as a surety. Additionally, respondent questioned the release of petitioner Yujuico as surety and the ruling on the presence of novation in the said Motion for Reconsideration.

b. Matters not appealable; available remedies

ANALYN DE LOS SANTOS AND SPOUSES RAPHAEL LOPEZ AND ANALYN DE LOS SANTOS-LOPEZ, ***Petitioners*****, -versus- JOEL LUCENIO AND ALL OTHER PERSONS CLAIMING RIGHTS AND AUTHORITY UNDER HIM**, ***Respondents***.G.R. No. 215659, FIRST DIVISION, March 19, 2018, DEL CASTILLO, *J.*

An issue not alleged in the complaint nor raised before the trial court cannot be raised for the first time on appeal as this goes against the basic rules of fair play, justice, and due process. In the same way, a defense not pleaded in the answer cannot also be raised for the first time on appeal.

From respondent Joel's Answer, Pre-Trial Brief, and assignment of errors in his Appellant's Brief, it is apparent that the issue of whether the GSIS complied with the Maceda Law or not was never brought to the attention of the MTC and the RTC. Respondents' contention that the MTC and the RTC should have taken judicial notice of the Maceda Law is untenable as the issue of compliance with the MacedaLaw is a factual matter, which should have been alleged or raised as a defense in the Answer. And since respondent Joel failed to allege such matters in his Answer, there was no reason for the MTC, as well as the RTC, to resolve the issue and apply the Maceda Law.

FACTS:

Petitioners Teresita de los Santos and Spouses Analyn de los Santos-Lopez and Raphael Lopez filed before the MTC of Biñan, Laguna, a **Complaint for Ejectment/Unlawful Detainer with Damages**, against respondents Joel Lucenio and all persons claiming rights and authority under him. Petitioners alleged that in 2010, a Deed of Conditional Sale was executed by the GSIS over the subject property in favor of Teresita; that despite demand by petitioners, respondent Joel refused to vacate the subject property; and that petitioners filed a complaint against respondent Joel before the *Barangay LupongTagapamayapa* but the same was unavailing as the parties failed to reach an amicable settlement.

In his **Answer**, respondent Joel raised as a defense lack of cause of action. He alleged that in 1995, his sister obtained a housing loan from the GSIS to purchase the subject property, and subsequently acquired ownership over it; that he then availed of the condonation or amnesty program offered by the GSIS for the unpaid amortizations of his sister; that he was deprived of due process as the GSIS executed a Deed of Conditional Sale in favor of petitioners without first acting on his offer to purchase the property;

MTC rendered a Decision in favor of petitioners, finding that the latter had a better right over the subject property as they acquired an inchoate right of ownership by virtue of the Deed of Conditional Sale executed by GSIS.

Joel appealed the MTC Decision to the RTC, which affirmed the findings of the MTC. Joel moved for reconsideration but the RTC denied the same. Thereafter, the RTC issued Orders granting petitioners' Motion for Immediate Execution and Urgent Motion for Issuance of Break Open Order.

Unfazed, Joel elevated the matter to the CA via a Petition for Review under Rule 42 of the Rules of Court. For the first time, Joel raised, as an issue the alleged failure of the GSIS to comply with the provisions under RA No. 6552, otherwise known as the Maceda Law. He alleged that his sister's contract had not been cancelled and that she had not received the cash surrender value of the payments made on the subject property.

CA reversed the ruling of the RTC for failure of the GSIS to issue a notarized notice of cancellation and to refund the cash surrender value of the payments made on the subject property. Petitioners moved for reconsideration, arguing that the CA erred in allowing respondent Joel to change his theory on appeal. In any case, petitioners attached a copy of the notarized cancellation of the contract from the GSIS to dispute the allegation of respondent Joel. CA issued a Resolution denying petitioners' Motion for Reconsideration for lack of merit.

ISSUE:

Whether or not CA committed grave abuse of discretion when it allowed respondent Joel to change his theory for the first time in his petition for review? (YES)

RULING:

Section 15, Rule 44 of the Rules of Court provides:

> Section 15. *Questions that may be raised an appeal*. – Whether or not the appellant has filed a motion for new trial in the court below, he may include in his assignment of errors any question of law or fact that has been raised in the court below and which is within the issues framed by the parties.

This provision embodies the settled principle that, on appeal, the parties are not allowed to change their **"theory of the case,"** which is defined in Black's Law Dictionary as:

> A comprehensive and orderly menial arrangement of principle and facts, conceived and constructed for the purpose of securing a judgment or decree of a court in favor of a litigant; the particular line of reasoning of either party to a suit, the purpose being to bring together certain facts of the case in a logical sequence and to correlate them in a way that produces in the decision maker's mind a definite result or conclusion favored by the advocate.

In other words, an issue not alleged in the complaint nor raised before the trial court cannot be raised for the first time on appeal as this goes against the basic rules of fair play, justice, and due process. In the same way, a defense not pleaded in the answer cannot also be raised for the first time on appeal.

In *Peña v. Spouses Tolentino*, the Court explained that –

> This rule affirms that 'courts of justice have no jurisdiction or power to decide a question not in issue.' Thus, a judgment that goes beyond the issues and purports to adjudicate something on which the court did not hear the parties is not only irregular but also extrajudicial and invalid. The legal theory under which the controversy was *heard* and *decided* in the trial court

should be the *same* theory under which the *review on appeal* is conducted. Otherwise, prejudice will result to the adverse party.

From respondent Joel's Answer, Pre-Trial Brief, and assignment of errors in his Appellant's Brief, it is apparent that the issue of whether the GSIS complied with the Maceda Law or not was never brought to the attention of the MTC and the RTC. Respondents' contention that the MTC and the RTC should have taken judicial notice of the Maceda Law is untenable as the issue of compliance with the Maceda Law is a factual matter, which should have been alleged or raised as a defense in the Answer. And since respondent Joel failed to allege such matters in his Answer, there was no reason for the MTC, as well as the RTC, to resolve the issue and apply the Maceda Law.

Accordingly, the CA Decision must be set aside and the RTC Decision must be reinstated. Respondents, therefore, must vacate the premises and pay petitioners the amount of P5,000.00 per month as reasonable compensation for the continued use and occupation of the subject property from May 16, 2010, the date of the demand to vacate, until respondents actually vacate the subject property and the amount of P20,000.00 as and for attorney's fees, plus costs of suit.

In addition, the reasonable compensation for the use and occupation of the subject property shall incur a legal rate of interest of 6% *per annum* from May 16, 2010, when the demand to vacate was made, up to the finality of this Decision. Thereafter, an interest, of 6% *per annum* shall be imposed on the total amount due until full payment is made in accordance with *Nacar v. Gallery Frames* and *BangkoSentral ng Pilipinas*-Monetary Board Circular No. 799, Series of 2013.

c. Doctrine of finality/immutability of judgment

PEOPLE OF THE PHILIPPINES, Plaintiff-Appellee -versus-LINO ALEJANDRO y PIMENTEL, Accused-Appellant. G.R. No. 223099, FIRST DIVISION, January 11, 2018, TIJAM, *J*

A mere manifestation also will not suffice in assailing a judgment of acquittal. A petition for certiorari under Rule 65 of the Rules should have been filed. A judgment of acquittal may only be assailed in a petition for certiorari under Rule 65 of the Rules. If the petition, regardless of its nomenclature, merely calls for an ordinary review of the findings of the court a quo, the constitutional right of the accused against double jeopardy would be violated.

In this case, the acquittal was not even questioned on the basis of grave abuse of discretion. It was only through a supposed mere manifestation of the prosecutor, a copy of which was not in the records, that the RTC was apprised of the supposed mistake it committed.

FACTS:

Accused-appellant was charged with two counts of rape, defined and penalized under Article 266-A, paragraph 1(a) of the Revised Penal Code, in relation to Republic Act No. 8369[3], of a 12-year old minor, AAA.[4] Upon arraignment, accused-appellant entered a plea of not guilty and trial ensued. On July 26, 2011, the RTC promulgated a Decision acquitting the accused-appellant. On the same day,

however, the RTC recalled the said decision and issued an Order stating that upon manifestation of Assistant Provincial Prosecutor Roderick Cruz that there were Orders that were inadvertently placed in the record of Criminal Case No. Br. 20-4979 involving the same accused but different private complainant-victim, XXX, which if considered will result in a different verdict.

Accused-appellant filed a Motion for Reconsideration[10] arguing that a judgment of acquittal is immediately final and executory and can neither be withdrawn nor modified, because to do so would place an accused-appellant in double jeopardy. RTC denied the motion in an Order stating: "Admittedly, the Court erroneously declared in its Decision that private complainant AAA did not testify in Court. When in truth and in fact said private complainant took the witness stand on September 3, 2008 as evidenced by the Order dated September 3, 2008 which was mistakenly captioned as Crim. Case No. 4979 instead of Crim. Cases Nos. Br. 20- 6096 & 6097 and as a result thereof, the Order dated September 3, 2008 was erroneously attached by the Court employee to the records of another criminal case entitled People of the Philippines versus Lino Alejandro, wherein the private complainant is a certain xxx."

A Joint Decision[13] dated July 26, 2011 was rendered by the RTC, finding accused-appellant guilty of two counts of rape. Accused-appellant appealed to the CA, but the CA dismissed the appeal.

ISSUE:

Whether or not a manifestation is sufficient to assail a judgment of acquittal (NO)

RULING:

A mere manifestation also will not suffice in assailing a judgment of acquittal. A petition for *certiorari* under Rule 65 of the Rules should have been filed. A judgment of acquittal may only be assailed in a petition for *certiorari* under Rule 65 of the Rules. If the petition, regardless of its nomenclature, merely calls for an ordinary review of the findings of the court *a quo*, the constitutional right of the accused against double jeopardy would be violated.

In *People v. Laguio, Jr.,* [25] this Court stated that the only instance when double jeopardy will not attach is when the RTC acted with grave abuse of discretion, thus:

x xx The only instance when double jeopardy will not attach is when the trial court acted with grave abuse of discretion amounting to lack or excess of jurisdiction, such as where the prosecution was denied the opportunity to present its case or where the trial was a sham. However, while *certiorari* may be availed of to correct an erroneous acquittal, the petitioner in such an extraordinary proceeding must clearly demonstrate that the trial court blatantly abused its authority to a point so grave as to deprive it of its very power to dispense justice.[26]

In this case, the acquittal was not even questioned on the basis of grave abuse of discretion. It was only through a supposed mere manifestation of the prosecutor, a copy of which was not in the records, that the RTC was apprised of the supposed mistake it committed.

A similar instance had been ruled upon by this Court in *Argel* v. *Judge Pascua,* [27] where the Judge was sanctioned for gross ignorance of the law for recalling a judgment of acquittal, thus:

Too elementary is the rule that a decision once final is no longer susceptible to amendment or alteration except to correct errors which are clerical in· nature, to clarify any ambiguity caused by an omission or mistake in the dispositive portion or to rectify a travesty of justice brought about by a *moro-moro* or mock trial.*1âwphi1* A final decision is the law of the case and is immutable and unalterable regardless of any claim of error or incorrectness.

In criminal cases, a judgment of acquittal is immediately final upon its promulgation. It cannot be recalled for correction or amendment except in the cases already mentioned nor withdrawn by another order reconsidering the dismissal of the case since the inherent power of a court to modify its order or decision does not extend to a judgment of acquittal in a criminal case.

REPUBLIC OF THE PHILIPPINES, REPRESENTED BY THE DEPARTMENT OF PUBLIC WORKS AND HIGHWAYS, -versus- HEIRS OF CIRILO GOTENGCO, *Respondent*. G.R. No. 226355, THIRD DIVISION, January 24, 2018, GESMUNDO, *J.*

What is applicable in the present case is the ruling in Urtula v. Republic, where the Court stood faithfully with the doctrine of res judicata and immutability of judgments. InUrtula, the court declared that the civil action for collection of legal interest was already barred by res judicata pursuant to Section 3, Rule 67 of the Rules of Court, which directs the defendant in an expropriation case to present all objections and defences; otherwise, they are deemed waived.

Clearly, Gotengco, in the same manner as Urtula, is already barred by res judicata to claim legal interest for failure to timely raise his objection thereto. Borrowing the words of the Court in Urtula, "[a]s the issue of interest could have been raised in the former case but was not raised, res judicata blocks the recovery of interest in the present case. It is settled that a former judgment constitutes a bar, as between the parties, not only as to matters expressly adjudged, but all matters that could have been adjudged at the time. It follows that interest upon the unrecoverable interest, which plaintiff also seeks, cannot, likewise, be granted."

FACTS:

In 1977, the Republic, through the Department of Public Works and Highways, expropriated the property of respondents Cirilo Gotengco, Emilia de Jesus, and Preciosa Garcia for the constructing the Manila South Expressway Extension, now known as the South Luzon Expressway. The expropriation complaint was filed before the RTC of Calamba City, Laguna which rendered a Partial Decision and ordered the Republic to pay Gotengco P29 million, de Jesus P37.5 million, and Garcia P49.7 million. Upon motion for reconsideration by the Republic, the trial court adjusted the amount of just compensation, and ordered payment of P26 to Gotengco, P40 to de Jesus, and P49.7 to Garcia.

After the Modified Partial Decision had lapsed into finality, Gotengco, de Jesus, and Garcia, jointly moved for its execution, which the RTC approved. The Republic paid Gotengco the amount of P20,669,365, leaving a balance of P5,576,494 left to pay Gotengco.

Nine years after the promulgation of the Modified Partial Decision, Gotengco filed a Motion pleading for the payment of accrued interest on the just compensation, computed from the date of finality of judgment until fully paid. Republic having filed no opposition thereto, the RTC granted the motion

and ordered Republic to pay Gotengco the balance of the just compensation with interest at 6% per annum counted from the date of the actual taking, until fully paid, to which Republic posed no motion for reconsideration.

Subsequently, Gotengco filed a Motion for Writ of Execution Re Payment of Interest to the RTC, which Republic opposed. It contended that Gotengco was already estopped by laches from claiming legal interest because he failed to raise such matter as early as when the Partial Decision was rendered and waited until it has lapsed into finality. The RTC however granted the motion and amended the Modified Partial Decision. The RTC determined the interest rate was inadvertently excluded and the Modified Partial Decision had to be amended and modified in the interest of justice.

After the denial of its motion for reconsideration, the Republic filed before the CA a petition for *certiorari* through Rule 65 of the Rules of Court imputing grave abuse of discretion on the part of the trial court for modifying a judgment, which has become final and executory. It opined that the RTC exceeded its judicial authority and completely disregarded the well-settled principle of immutability of judgments in modifying the Modified Partial Decision, which had attained finality.

The CA denied the petition ruling that payment of interest is a matter of law as provided in Section 10, Rule 67 of the Rules of Court and it is against public policy to not impose legal interest. The CA, citing *Apo Fruits Corporation and Hijo Plantation, Inc. v. Land Bank of the Philippines*, concluded that while the judgment has become final and executory, the court may modify the judgment and impose legal interest. The CA explained that for just compensation to be considered as "just", the payment must be prompt and there must be necessity of the payment of interest to compensate for any delay in the payment of compensation for property already taken.

ISSUE

Whether the RTC violated the well-settled doctrine of immutability of judgments in modifying its own decision that had already attained finality to the extent that it granted interest. (YES)

RULING:

It is a well-established rule that a judgment, once it has attained finality, can never be altered, amended, or modified, even if the alteration, amendment or modification is to correct an erroneous of judgment. This is the principle of immutability of judgments—to put an end to what would be an endless litigation.In the interest of society as a whole, litigation must come to an end. But this tenet admits several exceptions, these are: (1) the correction of clerical errors; (2) the so-called*nunc pro tunc* entries which cause no prejudice to any party; (3) void judgments; and (4) whenever circumstances transpire after the finality of the decision rendering its execution unjust and inequitable.

Based on the foregoing, the case does not fall within any of the aforesaid exceptions. For the *first* and *second* exceptions, the imposition of the 6% legal interest is neither a mere clerical error nor a*nunc pro tunc* entry because it imposed a considerable burden on the part of Republic.. Indeed, the modification imposed a substantial change on the assailed judgment. As regards the *third* exception, there was neither an allegation nor proof that the judgment was void for what was sought for was the inclusion of the 6% legal interest that was purportedly overlooked by the trial court that ought to have been imposed. Anent the *fourth* exception, there were no supervening events that would

render its execution unjust and inequitable. Therefore, the surrounding circumstances of the present case do not warrant the Court's exercise of its ultimate power to abandon the long-held standing rule of immutability of judgments.

Contrary to our ruling in *Apo Fruits*, the exception to the immutability of judgment does not apply to the present case. In *Apo Fruits*, we underscore, lest it may cause confusion, that although the assailed decision became final and executory and an entry of judgment was issued after the lapse of 15 days from the issuance of the assailed decision, as to the petitioners, the motion for reconsideration was timely filed as it was filed within 15 days from their receipt of the assailed judgment—a decisive circumstance that does not obtain in the present case.

In *Apo Fruits*, the RTC categorically ordered the government, to pay just compensation with legal interest. Here, the RTC, as early as in the Partial Decision and even in the subsequent Modified Partial Decision, never adjudicated the payment of such legal interest—it was clear at its inception that legal interest was not imposed. Yet, despite the apparent adverse decision to impose no legal interest, Gotengco chose to acquiesce. It was only after nine long years from finality of the assailed Modified Partial Decision when Gotengco filed his motion for reconsideration. Clearly, estoppel by laches has set in against him. His belated action in asserting his right within a reasonable time to dispute the assailed judgment in the guise of this Court's protection from miscarriage of justice cannot be disregarded.

What is applicable in the present case is the ruling in *Urtula v. Republic*, where the Court stood faithfully with the doctrine of *res judicata* and immutability of judgments. In*Urtula*, the civil action for collection of legal interest subsequently filed by the defendant was dismissed because the Court, in its judgment in the expropriation case previously promulgated ordering the government to pay Urtula just compensation, failed to award legal interest. According to the Court, the civil action for collection of legal interest was already barred by *res judicata* pursuant to Section 3, Rule 67 of the Rules of Court, which directs the defendant in an expropriation case to present all objections and defences; otherwise, they are deemed waived.

Clearly, Gotengco, in the same manner as Urtula, is already barred by *res judicata* to claim legal interest for failure to timely raise his objection thereto. Borrowing the words of the Court in *Urtula*, "[a]s the issue of interest could have been raised in the former case but was not raised, *res judicata* blocks the recovery of interest in the present case. It is settled that a former judgment constitutes a bar, as between the parties, not only as to matters expressly adjudged, but all matters that could have been adjudged at the time. It follows that interest upon the unrecoverable interest, which plaintiff also seeks, cannot, likewise, be granted."

To affirm the ruling of the appellate court would violate the doctrine of immutability and inalterability of a final judgment and would concede to the evils the doctrine seeks to prevent, namely: (1) to avoid delay in the administration of justice and thus, procedurally, to make orderly the discharge of judicial business and (2) to put an end to judicial controversies, at the risk of occasional errors, which is precisely why courts exist. Indeed, to rule otherwise would trivialize the time-honored principle of procedural law.

PEOPLE OF THE PHILIPPINES, thru Private Complainant BRIAN VICTOR BRITCHFORD, Petitioner -versus-. SALVADOR ALAPAN, Respondent. G.R. No. 199527, THIRD DIVISION, JANUARY 10, 2018, MARTIRES, J:

The doctrine of immutability of judgment precludes modification of a final and executory judgment. This is a fundamental principle in our justice system, without which there would be no end to litigations. The MTC decision has long attained finality and that none of the aforementioned exceptions to the doctrine finds application in this case.

The interest of the private complainant is limited only to the civil liability arising from the crime. Petitioner could not appeal the imposition of fine as penalty which was not even questioned by the People through the OSG.

FACTS:

Spouses Alapan borrowed ₱400,000.00 from petitioner Brian Victor Britchford with a promise that they would pay the said amount within three months. To secure the indebtedness, respondent issued eight postdated checks.

When the checks matured, petitioner deposited then at the Philippine National Bank Olongapo City branch. One week thereafter, PNB informed petitioner that the checks were dishonored for the reason that the account against which the checks were drawn was closed. Petitioner immediately informed respondent of the dishonor of the checks.

On their part, the Spouses Alapan averred that their account was closed only on the last week of October 2005 because they suffered business reverses. They nonetheless stated that they were willing to settle their monetary obligation.

In an Information, respondent Salvador Alapan and his wife Myrna Alapan were charged with 8 counts of violation of B.P. Blg. 22. Upon arraignment they pleaded not guilty.

The MTC Zambales convicted respondent of 8 counts of violation of B.P. Big. 22. It imposed a penalty of fine instead of imprisonment considering that respondent's act of issuing the bounced checks was not tainted with bad faith and that he was a first-time offender. On the other hand, the MTC acquitted Myrna because she did not participate in the issuance of the dishonored checks.

After the MTC judgment became final and executory, a writ of execution was issued. The writ, however, was returned unsatisfied. Petitioner thus filed a Motion to Impose Subsidiary Penalty for respondent's failure to pay the fine imposed by the MTC.

The MTC denied the motion on the ground that subsidiary imprisonment in case of insolvency was not imposed in the judgment of conviction.

Aggrieved, petitioner filed an appeal before RTC Zambales

TheRTC dismissed the appeal for lack of jurisdiction. It held that respondent could not be made to undergo subsidiary imprisonment because the judgment of conviction did not provide for such

penalty in case of non-payment of fine. The RTC further opined that the MTC decision which already attained finality could no longer be altered or modified. It disposed the case in this wise:

Undeterred, petitioner filed a petition for review before the CA.

The CA dismissed the petition. It ruled that the petition was filed without the intervention of the Office of the Solicitor General which was contrary to the Administrative Code. Hence, this petition.

ISSUES

1. Whether respondent may undergo subsidiary imprisonment for failure to pay
2. Whether petitioner may assail the penalty imposed in the judgment of conviction;

RULING:

1. No. The judgment of conviction did not provide subsidiary imprisonment in case of failure to pay the penalty of fine. The final and executory decision of the MTC can no longer be modified. The time-honored **doctrine of immutability of judgment precludes modification of a final and executory judgment**:

A decision that has acquired finality becomes immutable and unalterable. This quality of **immutability precludes the modification of a final judgment, even if the modification is meant to correct erroneous conclusions of fact and law**. And this postulate holds true whether the modification is made by the court that rendered it or by the highest court in the land. The orderly administration of justice requires that, at the risk of occasional errors, the judgments/resolutions of a court must reach a point of finality set by the law. The noble purpose is to write finis to dispute once and for all. This is a fundamental principle in our justice system, without which there would be no end to litigations. Utmost respect and adherence to this principle must always be maintained by those who exercise the power of adjudication. Any act, which violates such principle, must immediately be struck down. Indeed, the principle of conclusiveness of prior adjudications is not confined in its operation to the judgments of what are ordinarily known as courts, but extends to all bodies upon which judicial powers had been conferred.

The only **exceptions to the rule on the immutability of final judgments are (1) the correction of clerical errors, (2) the so-called nunc pro tune entries which cause no prejudice to any party, and (3) void Judgments.**

There is no doubt that the MTC decision has long attained finality and that none of the aforementioned exceptions finds application in this case. Hence, the MTC decision stands and any other question involving the said decision must now be put to rest.

2. No. Petitioner lacks legal standing to question the trial court's order.
In the appeal of criminal cases before the Court of Appeals or the Supreme Court, the authority to represent the People is vested solely in the Solicitor General. This power is expressly provided in Section 35, Book IV, Title III, Chapter 12 of the Revised Administrative Code.

Jurisprudence has already settled that **the interest of the private complainant is limited only to the civil liability arising from the crime**.

Thus, the penalty of fine and the imposition of subsidiary imprisonment in case of nonpayment thereof pertain to the criminal aspect of the case. On the other hand, the indemnification for the face value of the dishonored checks refers to the civil aspect of the case. Consequently petitioner could not appeal the imposition of fine as penalty which was not even questioned by the People through the OSG.

CITIBANK, N. A., *Petitioner, v.* PRISCILA B. ANDRES AND PEDRO S. CABUSAY, JR., *Respondents*.
G.R. No. 197074, FIRST DIVISION, September 12, 2018, JARDELEZA, *J*

The doctrine of immutability of judgment provides that once a final judgment is executory, it becomes immutable and unalterable. It cannot be modified in any respect by any court. The purpose of the doctrine is first, to avoid delay in the administration of justice and thus, procedurally, to make orderly the discharge of judicial business, and second, to put an end to judicial controversies, at the risk of occasional errors, which is precisely why courts exist.

FACTS:

Respondents Priscila B. Andres (Andres) and Pedro S. Cabusay, Jr. (Cabusay) [collectively, respondents] were employed as Reconciliation Officer and Speed Collect Officer, respectively, of the Speed Collect Unit of petitioner Citibank, N.A. (petitioner). The Speed Collect Unit is in charge of implementing, monitoring, and documenting the collection and crediting of payments made by petitioner's clients. On November 5, 2002, one of petitioner's clients complained that the check payments from its customers were not credited to their account. This prompted petitioner to launch an internal investigation where respondents voluntarily submitted themselves to a fact-finding interview. After the interview, petitioner referred the matter to its Internal Investigation Unit, the Citigroup Security Investigative Services (CSIS).

The CSIS conducted an investigation and submitted a report detailing the alleged misdeeds committed by respondents. Eulalia M. Herrera (Herrera), Vice-President of petitioner's Human Resources Department, then met with respondents separately. She informed respondents that full-blown administrative proceedings will be conducted to determine the appropriate actions against them, if any, based on the CSIS report. Herrera also informed respondents that if they are found guilty of misconduct, their employment may be terminated, and the termination will be reported to the *Bangko Sentral ng Pilipinas.* In order to avoid such a result, Cabusay and Andres opted to file their respective resignation letters.

Respondents thereafter filed a complaint for constructive dismissal with claims for moral and exemplary damages, and attorney's fees against petitioner before the Labor Arbiter (LA). The LA, however, dismissed respondents' complaint. Consequently, respondents filed an appeal with the NLRC. The NLRC First Division reversed the LA Decision and ruled in respondents' favor. Petitioner filed a motion for reconsideration, but it was denied by the NLRC First Division. The NLRC First

Division mailed a copy of its December Resolution to petitioner through Herrera and its counsel of record, the Ponce Enrile Reyes & Manalastas Law Offices (PECABAR).

Meanwhile, on January 25, 2008, the Romulo Mabanta Buenaventura Sayoc & De Los Angeles Law Offices (RMBSA) entered its appearance as collaborating counsel for petitioner. PECABAR subsequently withdrew its appearance as counsel for petitioner, with the latter's consent, on February 19, 2008.

In due course, the NLRC First Division issued an Entry of Judgment. Respondents promptly moved for the execution of the NLRC ruling. Petitioner then filed an urgent motion to set aside finality of judgment. Due to the inhibition from the case of Commissioner Romeo L. Go of the NLRC First Division, the re-raffle of the case was indorsed. The Chairman of the NLRC later endorsed the case to the NLRC Second Division.

Petitioner alleged in its urgent motion to set aside finality of judgment that while a copy of the December Resolution was sent to PECABAR, its present counsel, RMBSA, did not similarly receive a copy. The NLRC Second Division accepted RMBSA's claim that it did not receive copies of the December Resolution, Entry of Judgment, and Notice of Hearing of the NLRC First Division. Respondents filed a motion for reconsideration, but this was denied. Thus, they filed a petition for *certiorari* before the CA to assail the ruling of the NLRC Second Division.

A few days after respondents filed the First CA Petition, petitioner also filed a petition for *certiorari* assailing the October Decision and December Resolution of the NLRC First Division before the CA (the Second CA Petition) The First CA Petition was raffled to the Special Fifteenth Division of the CA, while the Second CA Petition was raffled to its Special Eleventh Division. The Special Fifteenth Division granted the First CA petition. The Special Eleventh Division also granted the Second CA Petition.

ISSUE:

Whether the December Resolution and the Entry of Judgment issued by the NLRC First Division should be set aside. (YES)

RULING:

Ideally, the CA should have consolidated the respective petitions filed before it by petitioner and respondents. Applying the case of *Serrano v. Ambassador Hotel, Inc.*:

Rather than rely on the interested party to register a motion to consolidate or the Justice to whom the case is assigned, it is best that it should be the Clerk of Court and the Division Clerks of Court of the CA who should be responsible for the review and consolidation of similarly intertwined cases.

This, unfortunately, was not done. Indeed, the First and Second CA Petitions questioned different rulings of the NLRC that were issued by different NLRC divisions. Nonetheless, they involved the same parties and closely-related subjects. We are now presented with a dilemma. If we grant the

petition before us, then all is well for petitioner because it would mean that the Second CA Petition was rightfully acted upon by the Special Eleventh Division of the CA. However, if we deny this petition and uphold the ruling of the Special Fifteenth Division of the CA, then petitioner could not have appealed the October Decision and December Resolution of the NLRC, and the Special Eleventh Division of the CA could not have reversed and set aside the same. In effect, we would be disregarding a final and executory decision, which is what the Decision of the CA is, with respect to the Second CA Petition.

The doctrine of immutability of judgment provides that once a final judgment is executory, it becomes immutable and unalterable. It cannot be modified in any respect by any court. The purpose of the doctrine is *first,* to avoid delay in the administration of justice and thus, procedurally, to make orderly the discharge of judicial business, and *second,* to put an end to judicial controversies, at the risk of occasional errors, which is precisely why courts exist.

Nonetheless, there are exceptions to the foregoing doctrine. These are: *first,* the correction of clerical errors; *second, nunc pro tunc* entries which cause no prejudice to any party; *third,* void judgments; and *fourth,* whenever circumstances transpire after the finality of the decision rendering its execution unjust and inequitable.

None of the exceptions obtain in this case. Hence, the decision of the CA on the second petition was respected as final and executory.

d. Modes of appeal from judgments or final orders of various courts (Rules 40, 41, 42, 43, and 45)

KIM LIONG, *Petitioner*, -versus- PEOPLE OF THE PHILIPPINES, *Respondent*. G.R. No. 200630, THIRD DIVISION, June 04, 2018, LEONEN, *J.*

Petitions for review on certiorari may only raise questions of law.

It is true that this rule is subject to ***exceptions****. This Court may review factual issues if any of the following is present:*

(1) [W]hen the findings are grounded entirely on speculation, surmises or conjectures; (2) when the inference made is manifestly mistaken, absurd or impossible; (3) when there is grave abuse of discretion; (4) when the judgment is based on a misapprehension of facts; (5) when the findings of facts are conflicting; (6) when in making its findings the Court of Appeals went beyond the issues of the case, or its findings are contrary to the admissions of both the appellant and the appellee; (7) when the findings are contrary to the trial court; (8) when the findings are conclusions without citation of specific evidence on which they are based; (9) when the facts set forth in the petition as well as in the petitioner's main and reply briefs are not disputed by the respondent; (10) when the findings of fact are premised on the supposed absence of evidence and contradicted by the evidence on record; and (11) when the Court of Appeals manifestly overlooked certain relevant facts not disputed by the parties, which, if properly considered, would justify a different conclusion.

Nevertheless, this Court finds that none of the exceptions applies in this case. *Even if this Court considers the facts as alleged by petitioner, it will still arrive at the conclusion that the trial court judge did not gravely abuse his discretion in deeming petitioner's right to cross-examination as waived. Therefore, the Court of Appeals did not err in denying petitioner's Petition for Certiorari.*

FACTS:

In an Information dated January 28, 2002, Liong was charged with estafa for allegedly failing to return to Equitable PCI Bank, despite demand, a total of US$50,955.70, which was erroneously deposited in his dollar account. Liong was arraigned pleading not guilty to the charge.

The initial presentation of the prosecution's evidence was set on December 19, 2005. However, on that day, private prosecutor Atty. Aceray Pacheco (Atty. Pacheco) requested a resetting, which was granted by the trial court. The December 19, 2005 hearing was reset to January 26, 2006.

On January 26, 2006, the hearing was again reset to March 30, 2006. The March 30, 2006 hearing was likewise reset, this time, on the instance of a certain Atty. Villaflor, also one of the private prosecutors. The initial presentation of the prosecution's evidence was, thus, moved to June 8, 2006.

The first prosecution witness, Antonio Dela Rama (Dela Rama), was finally presented as scheduled on June 8, 2006. His direct examination was terminated on January 25, 2007, and the initial date for his cross-examination was set on March 15, 2007. On March 15, 2007, Atty. Danilo Banares (Atty. Banares) appeared as collaborating counsel of Atty. JovitPonon (Atty. Ponon), Liong's counsel of record. Atty. Banares then moved for the resetting of the hearing to Apri119, 2007.

On April 19, 2007, the hearing was again reset on the instance of Liong because Atty. Ponon was allegedly a fraternity brother of the private prosecutor, Atty. Pacheco. Thus, Liong terminated the services of Atty. Ponon and the hearing was reset to June 28, 2007.

On July 31, 2008, the hearing was again reset to October 16, 2008 because Dela Rama had suffered a stroke.

On February 5, 2009, Atty. Banares failed to appear in court. Liong subsequently filed a Motion to Suspend Proceedings and, eventually, a Motion to Dismiss. The hearing was reset to May 7, 2009, which seems to have been cancelled again.

On August 27, 2009, Atty. Banares again failed to appear in court. Thus, private prosecutor Atty. Ma. JulphaManingas moved that Liong be declared to have waived his right to cross-examine Dela Rama.The Motion was granted by the trial court.

ISSUES:

1) Whether or not the trial court gravely abused its discretion in declaring as waived petitioner Kim Liong's right to cross-examine prosecution witness Antonio Dela Rama (NO)

2) Whether or not this Petition for Review on Certiorari should be denied for raising factual issues. (YES)

RULING:

This Petition must be denied.

I. When an accused is given the opportunity to cross-examine a witness but fails to avail of it, the accused shall be deemed to have waived this right.

The fundamental rights of the accused are provided in Article III, Section 14 of the Constitution:

Section 14. (1) No person shall be held to answer for a criminal offense without due process of law.

(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. (Underscoring supplied)

"To meet the witnesses face to face" is the right of confrontation. Subsumed in this right to confront is the right of an accused to cross-examine the witnesses against him or her, i.e., to propound questions on matters stated during direct examination, or connected with it.[40] The cross-examination may be done "with sufficient fullness and freedom to test [the witness'] accuracy and truthfulness and freedom from interest or bias, or the reverse, and to elicit all important facts bearing upon the issue."[41]

Rule 115 of the Rules of Court with its lone section is devoted entirely to the rights of the accused during trial. Rule 115, Section 1(f) on the right to cross-examine provides:

Section 1. *Rights of accused at the trial*. — In all criminal prosecutions, the accused shall be entitled to the following rights:

. . . .

(f) To confront and cross-examine the witnesses against him at the trial. Either party may utilize as part of its evidence the testimony of a witness who is deceased, out of or can not with due diligence be found in the Philippines, unavailable, or otherwise unable to testify, given in another case or proceeding, judicial or administrative, involving the same parties and subject matter, the adverse party having the opportunity to cross-examine him.

Denying an accused the right to cross-examine will render the testimony of the witness incomplete and inadmissible in evidence. "[W]hen cross-examination is not and cannot be done or completed due to causes attributable to the party offering the witness, the uncompleted testimony is thereby rendered incompetent."

However, like any right, the right to cross-examine may be waived. It "is a personal one which may be waived expressly or impliedly by conduct amounting to a renunciation of the right of cross-examination."**When an accused is given the opportunity to cross-examine a witness but fails to avail of it, the accused shall be deemed to have waived this right.**The witness' testimony given during direct examination will remain on record. If this testimony is used against the accused, there will be no violation of the right of confrontation.

In *People v. Narca*, the trial court deferred to another date the cross examination of the prosecution witness on the instance of the accused. However, in the interim, the prosecution witness was murdered. Thus, the accused moved that the testimony of the prosecution witness be stricken off the record for lack of cross-examination. This Court rejected the argument, finding that the accused waived their right to cross-examine the prosecution witness when they moved for postponement. It said that "mere *opportunity and not actual* cross-examination is the essence of the right to cross-examine."

In *Gimenez v. Nazareno*, the accused, after arraignment but before trial, escaped from his detention center. Trial ensued despite his absence and the accused was subsequently convicted of murder. On appeal, the accused contended that the testimonies against him should be stricken off the record because he failed to exercise his right to cross-examine the witnesses against him. Rejecting this contention, this Court held that an escapee who has been tried *in absentia* does not retain the rights to confront and cross-examine the witnesses against him. These rights are personal and "by his failure to appear during the trial of which he had notice," this Court said that the accused "virtually waived these rights."

II. Petitions for review on certiorari may only raise questions of law; exceptions.

…As pointed out by respondent, the matters raised in this Petition are questions of fact not proper in a Rule 45 petition. This Court is not a trier of facts, and rightfully so. This Court, as the court of last resort, should focus more on performing "the functions assigned to it by the fundamental charter and immemorial tradition." **The rule, therefore, is that petitions for review on certiorari may only raise questions of law.**

It is true that this rule is subject to **exceptions**. This Court may review factual issues if any of the following is present:

(1) [W]hen the findings are grounded entirely on speculation, surmises or conjectures; (2) when the inference made is manifestly mistaken, absurd or impossible; (3) when there is grave abuse of discretion; (4) when the judgment is based on a misapprehension of facts; (5) when the findings of facts are conflicting; (6) when in making its findings the Court of Appeals went beyond the issues of the case, or its findings are contrary to the admissions of both the appellant and the appellee; (7)

when the findings are contrary to the trial court; (8) when the findings are conclusions without citation of specific evidence on which they are based; (9) when the facts set forth in the petition as well as in the petitioner's main and reply briefs are not disputed by the respondent; (10) when the findings of fact are premised on the supposed absence of evidence and contradicted by the evidence on record; and (11) when the Court of Appeals manifestly overlooked certain relevant facts not disputed by the parties, which, if properly considered, would justify a different conclusion.

Nevertheless, this Court finds that none of the exceptions applies in this case. Even if this Court considers the facts as alleged by petitioner, it will still arrive at the conclusion that the trial court judge did not gravely abuse his discretion in deeming petitioner's right to cross-examination as waived. Therefore, the Court of Appeals did not err in denying petitioner's Petition for Certiorari.

…Petitioner was given more than enough opportunity to cross-examine witness Dela Rama. Contrary to his allegation, **five (5) of the cancellations are attributable to him.** For instance, the March 15, 2007 hearing was cancelled on petitioner's motion because Atty. Banares appeared as collaborating counsel for his counsel of record, Atty. Ponon. The next hearing set on April 19, 2007 was again cancelled because petitioner terminated the services of Atty. Ponon who was allegedly a fraternity brother of one of the private prosecutors, Atty. Pacheco. On April 17, 2008, petitioner was allegedly indisposed and did not attend the hearing. On February 5, 2009, petitioner had no counsel. Finally, on August 27, 2009, petitioner again had no counsel and Presiding Judge Morallos deemed petitioner's right to cross-examine Dela Rama as waived.

Of course, there were cancellations due to the absence of either the prosecutor or witness Dela Rama himself. There was even one hearing, which was cancelled because Presiding Judge Morallos was on leave. However, even after Dela Rama suffered a stroke, he attended the hearings on February 5, 2009 and August 27, 2009, with the hearings only to be cancelled because petitioner did not have his counsel with him. These show that petitioner failed to aggressively exercise his rights to confront and cross-examine witness Dela Rama. The absence of counsel during the February 5, 2009 and August 27, 2009 hearings was never explained.

Petitioner had the habit of frequently changing counsels. In an Order issued as early as October 8, 2003, former Presiding Judge Pastoral admonished petitioner for "again" changing his counsel during pre-trial, thus, delaying the proceedings.

…When the accused abuses its option to choose his counsel as in this case, he can be deemed to have waived his right to confrontation and cross-examination. **The pattern of postponements and changes of counsel in this case is so obvious and patent.** Petitioner should have been dissuaded by any of the lawyers, unless they, too, connived in such an amateurish strategy, which wastes the time and resources of our judicial system.

All told, Presiding Judge Morallos did not gravely abuse his discretion in deeming as waived petitioner's right to cross-examine prosecution witness Dela Rama. The Court of Appeals correctly denied petitioner's Petition for Certiorari. Dela Rama's testimony given during direct examination shall remain on record. We sustain both courts.

ANGEL FUELLAS DIZON, *Petitioner*, -versus- PEOPLE OF THE PHILLIPINES, *Respondent*.
G.R. No. 227577, SECOND DIVISION, January 24, 2018, PERLAS-BERNABE, *J.*

To recount, petitioner timely filed a Notice of Appeal before the RTC on January 6, 2015, which reads:

> *Accused, with the assistance of the Public Attorney's Office, through the undersigned Public Attorney, respectfully serves notice that he is appealing the Decision rendered in Criminal Cases No. 09-272518-23 which was promulgated on December 23, 2014 for being contrary to law, established jurisprudence, and evidence adduced during trial.*

To recount, petitioner timely filed a Notice of Appeal before the RTC. Notably, petitioner did not specify that his appeal be taken to the CA. This was precisely because it was not even his duty to designate to which court his appeal should be taken. Case law states that "[i]n the notice of appeal[,] it is not even required that the appellant indicate the court to which its appeal is being interposed. The requirement is merely directory and failure to comply with it or error in the court indicated is not fatal to the appeal", as it should be in this case.

FACTS:

Six separate Informations were filed before the RTC of Manila charging petitioner Angel FuellasDizon of the crime of Malversation of Public Funds through Falsification of Public Documents. Petitioner was an employee of the Manila Traffic and Parking Bureau, holding the position of Clerk II, hence, a government and/or public employee, entrusted in the collection of parking fees from various establishments with the corresponding obligation to remit the collections made by him and submit the triplicate copy of the official receipt to the City Treasurer of Manila.

The RTC found petitioner guilty of six counts of Malversation of Public Funds through Falsification of Public Documents. Aggrieved, petitioner filed a Notice of Appeal before the RTC. Accordingly, the RTC ordered the case to "be elevated to the Appellate Tribunal for appropriate action." As it turned out; the records were transmitted by the RTC to the CA, which, in turn, sent petitioner a Notice to File Appellant's Brief. Petitioner subsequently noticed that his appeal was erroneously taken to the CA instead of the*Sandiganbayan*, which has appellate over his case pursuant to Section 4 (c) of RA 8249. Thus, to rectify the error, he filed the Motion to Endorse Case to the *Sandiganbayan*, as well as the appellant's brief, before the CA.

In a resolution, the CA denied petitioner's Motion to Endorse, and consequently, dismissed his appeal for having been erroneously filed. Petitioner moved for reconsideration, which was, however, denied; hence, the instant petition.

ISSUE

Whether the CA erred in dismissing petitioner's Motion to Endorse the case to the Sandiganbayan. (YES)

RULING:

It is undisputed that petitioner is a low-ranking public officer having a salary grade below 27, whose appeal from the RTC's ruling convicting him of six counts of Malversation of Public Funds through Falsification of Public Documents falls within the appellate jurisdiction of the *Sandiganbayan*, pursuant to Section 4 (c) of RA 8249 (prior to its amendment by RA 10660) which reads:

> Section 4. Section 4 of the same decree is hereby further amended to read as follows:
>
> xxxx
>
> c. Civil and criminal cases filed pursuant to and in connection with Executive Order Nos. 1, 2, 14 and 14-A, issued in 1986.
>
> "In cases where none of the accused are occupying positions corresponding to salary grade '27' or higher, as prescribed in the said Republic Act No. 6758, or military or PNP officers mentioned above, exclusive original jurisdiction thereof shall be vested in the proper regional trial court, metropolitan trial court, municipal trial court and municipal circuit trial court as the case may be, pursuant to their respective jurisdiction as provided in *Batas Pambansa Blg*. 129, as amended.
>
> "The *Sandiganbayan* shall exercise exclusive appellate jurisdiction over final judgments, resolutions or orders or regional trial courts whether in the exercise of their own original jurisdiction or of their appellate jurisdiction as herein provided.
>
> x xxx

This notwithstanding, the Court finds that the foregoing error is not primarily attributable to petitioner, since the duty to transmit the records to the proper court devolves upon the RTC

To recount, petitioner timely filed a Notice of Appeal before the RTC on January 6, 2015, which reads:

> Accused, with the assistance of the Public Attorney's Office, through the undersigned Public Attorney, respectfully serves notice that he is appealing the Decision rendered in Criminal Cases No. 09-272518-23 which was promulgated on December 23, 2014 for being contrary to law, established jurisprudence, and evidence adduced during trial.

To recount, petitioner timely filed a Notice of Appeal before the RTC. Notably, petitioner did not specify that his appeal be taken to the CA. This was precisely because it was not even his duty to designate to which court his appeal should be taken. Case law states that "[i]n the notice of appeal[,] it is not even required that the appellant indicate the court to which its appeal is being interposed. The requirement is merely directory and failure to comply with it or error in the court indicated is not fatal to the appeal", as it should be in this case.

In the case of *Ulep v. People*, the SC held that it was the trial court which was duty bound to forward the records of the case to the proper forum. Thus, in*Ulep*, the Court granted the plea of the accused therein to remand the case to the RTC for transmission to the *Sandiganbayan*:

> x xx[P]etitioner's failure to designate the proper forum for her appeal was inadvertent. The omission did not appear to be a dilatory tactic on her part. Indeed, petitioner had more to lose had that been the case as her appeal could be dismissed outright for lack of jurisdiction — which was exactly what happened in the CA.
>
> The trial court, on the other hand, was duty bound to forward the records of the case to the proper forum, the *Sandiganbayan*. It is unfortunate that the RTC judge concerned ordered the pertinent records to be forwarded to the wrong court, to the great prejudice of petitioner. Cases involving government employees with a salary grade lower than 27 are fairly common, albeit regrettably so. The judge was expected to know and should have known the law and the rules of procedure. He should have known when appeals are to be taken to the CA and when they should be forwarded to the *Sandiganbayan*. He should have conscientiously and

carefully observed this responsibility especially in cases such as this where a person's liberty was at stake.

Indeed, the Court finds no reason why the same ruling should not be made in this case. As earlier mentioned, petitioner duly filed his appeal before the RTC, absent any indication that his case be appealed to either the CA or the *Sandiganbayan*. As noted in *Ulep*, since cases involving government employees with a salary grade lower than 27 are fairly common, the RTC was expected to know that petitioner's case should have been appealed to the *Sandiganbayan*. Unfortunately, the records were wrongly transmitted by the RTC to the CA. Petitioner, however, took the liberty to rectify this error by filing the Motion to Endorse, which the CA nonetheless denied pursuant to Section 2, Rule 50 of the Rules of Court.

At any rate, the Court observes that petitioner had raised substantial arguments in his appeal, which altogether justify the relaxation of the rules.

GOVERNMENT SERVICE INSURANCE SYSTEM BOARD OF TRUSTEES AND CRISTINA V. ASTUDILLO, *Petitioners*, -versus-THE HON. COURT OF APPEALS - CEBU CITY AND FORMER JUDGE MA. LORNA P. DEMONTEVERDE, *Respondents*.G.R. No. 230953, SECOND DIVISION, June 20, 2018, PERALTA, *J.*

It should be emphasized that the resort to a liberal application, or suspension of the application of procedural rules, must remain as the exception to the well-settled principle that rules must be complied with for the orderly administration of justice. While procedural rules may be relaxed in the interest of justice, it is well settled that these are tools designed to facilitate the adjudication of cases. The relaxation of procedural rules in the interest of justice was never intended to be a license for erring litigants to violate the rules with impunity. Liberality in the interpretation and application of the rules can be invoked only in proper cases and under justifiable causes and circumstances.

FACTS:

Private respondent, retired Judge Ma. Lorna P. Demonteverde served in the government agencies for a total of 32 years. On June 30, 1995, she joined the Judiciary as Presiding Judge of the MTCC of Bacolod City until her retirement on February 22, 2011. She requested from the GSIS a refund of the retirement premiums she paid under P.D. No. 1146 and R.A. No. 660 in excess of the retirement premiums that she should pay under R.A. No. 910, the law on retirement benefits for Judges and Justices. However, instead of issuing a refund only of the excess of the contributions paid, the GSIS, refunded to her the amount of P16,836.60 representing her retirement premiums under R.A. No. 660.

Demonteverde filed with the Supreme Court her retirement application under R.A. No. 910 She likewise filed an application with the GSIS for retirement benefits under R.A. No. 8291. The manager of the GSIS Bacolod informed her that the retirement laws covering her service in the government from July 1, 1963 to June 29, 1995 were P.D. No. 1146,R.A. No. 660, and R.A. No. 1616. The GSIS thus returned the application of Demonteverde so that she may choose from the modes of retirement enumerated. On May 18, 2012, GSIS Bacolod informed her of the COC's issuance of Resolution No. 021-2012 denying her request to retire under R.A. No. 8291. She then appealed the COC's Resolution

to the GSIS Board of Trustees (GSIS BOT) which was granted. Demonteverde filed a Motion for Execution of the Decision of the GSIS BOT.

However, on January 6, 2014, Demonteverde filed a Partial Motion for Reconsideration and Withdrawal of Motion for Execution. She questioned the accrual date of her retirement benefits under R.A. No. 8291, arguing that the date of her retirement should be the date when she reached sixty (60) years of age, even when she was still in active government service at that time. She likewise denied receiving a copy of the GSIS BOT Decision, and denied that the later Notice of Decision dated November 19, 2013 contained a copy of the GSIS BOT Decision. GSIS BOT denied Demonteverde's Partial MR and Withdrawal of Motion for Execution, for allegedly having been filed out of time.

Demonteverde filed before the CA a Petition for Certiorari, Mandamus, and Prohibition under Rule 65 which was dismissed on the ground that the course of action taken was erroneous as the proper mode of appeal from a decision of a quasi-judicial agency such as the GSIS is by filing a verified petition for review with the CA under Rule 43. Upon Demonteverde's motion for reconsideration, the CA reversed itself. It agreed with Demonteverde that the case may be classified as an exception to the general rule that certiorari is not a substitute for a lost appeal.

ISSUE:

Whether the CA acted with grave abuse of discretion amounting to lack or excess of jurisdiction in issuing its Resolution reinstating the Petition for Certiorari, Prohibition and Mandamus.

RULING:

Court resolves to grant the instant petition.

There is a preliminary need to address the GSIS-BOT's argument that Demonteverde should have filed an appeal under Rule 43 of the Rules of Court instead of filing the certiorari suit before the CA. A special civil action under Rule 65 of the Rules of Court will not be a cure for failure to timely file an appeal under Rule 43 of the Rules of Court. Rule 65 is an independent action that cannot be availed of as a substitute for the lost remedy of an ordinary appeal, especially if such loss or lapse was occasioned by one's own neglect or error in the choice of remedies.

Nonetheless, the general rule that an appeal and a certiorari are not interchangeable admits of exceptions. This Court has, before, treated a petition for certiorari as a petition for review on certiorari, particularly: (1) if the petition for certiorari was filed within the reglementary period within which to file a petition for review on certiorari; (2) when errors of judgment are averred; and (3) when there is sufficient reason to justify the relaxation of rules.

In the instant case, the CA itself, in its June 19, 2014 Resolution, initially dismissed Demonteverde's special civil action for certiorari, reasoning that Demonteverde had the remedy of appeal under Rule 43 of the Rules of Court. The CA even categorically ruled that the present circumstances in Demonteverde's case did not warrant the application of the exceptions to the general rule provided by Rule 43, thereafter proceeding to identify the aforementioned procedural defects in the petition.

Yet, when the CA reversed itself and reinstated the latter's Petition for Certiorari, Mandamus, and Prohibition it failed to substantiate its decision to grant the said motion. Apart from Demonteverde's bare allegations in her pleadings and her own testimony that her case falls under the exception to the general rule that if appeal is available, certiorari is not a remedy**, there is nothing on record that would warrant the grant of her motion for reconsideration and the setting aside of the CA's June 19, 2014 Resolution.**

A reading of the CA's assailed Resolution reveals that Demonteverde's motion was approved hastily. While the CA appears to have ruled on the merits of Demonteverde's motion, its ratiocination merely consists of two paragraphs and it summarily made a conclusion that Demonteverde's case may be classified as an exception to the general rule that certiorari is not a substitute for a lost appeal. In doing so, the CA did not clearly and distinctly explain how it reached such conclusion.

Demonteverde's claim of public policy as a justification of her inability to comply with the general rule on appeal is unacceptable in the absence of legal and factual bases for its invocation. Demonteverde failed to substantiate through clear and well-established grounds exactly how her case warrants a deviation from the general rule that a writ of certiorari will not issue where the remedy of appeal is available to an aggrieved party. Moreover, Demonteverde failed to overcome in her petition the presumption of regularity in the performance of official functions of public officers. Applying this to the instant case, there is nothing dubious about the GSIS BOT's denial of her Partial Motion for Reconsideration and Withdrawal of Motion for Execution on the ground that the said motion was filed out of time. Thus, the CA should have dismissed her petition outright on the ground of erroneous cause of action as the remedies of appeal and certiorari under Rule 65 are mutually exclusive and not alternative or cumulative.

EDITHA S. MEDINA, RAYMOND A. DALANDAN, and CLEMENTE A. DALANDAN, as their Attorney-in-Fact, *petitioners* –versus- SPS. NICOMEDES and BRIGIDA LOZADA, *respondents*.
G.R. No. 185303, SECOND DIVISION, August 1, 2018, CAGUIOA, *J.*

It bears emphasis that the general rule is that a writ of certiorari will not issue where the remedy of appeal is available to the aggrieved party. The remedies of appeal in the ordinary course of law and that of certiorari under Rule 65 are mutually exclusive and not alternative or cumulative. Time and again, the High Court has reminded members of the bench and bar that the special civil action of Certiorari cannot be used as a substitute for a lost appeal.

In the case at bar, the assailed Orders dismissing the Complaint on the ground of res judicata and denying the Motion for Reconsideration are final orders and completely dispose of the case. Appeal, and not a special civil action for certiorari, is the correct remedy to elevate said final orders. The manner of appealing said final orders is provided under Rule 41 of the 1997 Rules of Civil Procedure, as amended. The instant Petition for Certiorari cannot be used by petitioners as a substitute for a lost appeal. Accordingly, when a party adopts an improper remedy, the petition may be dismissed outright.

FACTS:

A Complaint was filed by the plaintiffs (herein petitioners) against the defendants (herein private respondents).

A Motion to Dismiss with Motion to Punish for Contempt dated 10 May 2007 was filed by the defendants on the grounds that the cause of action is barred by prior judgment; plaintiffs have absolutely no cause of action; the court has no more jurisdiction over the subject matter of the action; plaintiffs and their counsel are guilty of blatant forum shopping; and the action has prescribed. Plaintiffs filed their Vehement Opposition dated 11 June 2007.

Respondent Judge issued the first assailed Order dated 27 July 2007 dismissing the case on the ground of *res judicata*.

The petitioners argue that the Order dated July 27, 2007 of the RTC, dismissing their action for Quieting of Title and Reconveyance on the ground of *res judicata*, and the Order dated December 28, 2007, denying the motion for reconsideration of the earlier Order, are mere interlocutory Orders and are not final Orders because their action was not adjudged on its merits and an Order denying a motion for reconsideration is not appealable.

On the other hand, the respondents argue that an Order granting a motion to dismiss is final, being an adjudication on the merits, so that the proper remedy is appeal; and the Order granting a motion to dismiss becomes final 15 days from receipt thereof with prejudice to the re-filing of the same case once such Order achieves finality. They further argue that *certiorari* proceedings cannot be used as substitute for a lost appeal.

The petitioners filed a petition for *certiorari* before the CA.

The CA in its Decision dismissed the petition. The CA reasoned out that the assailed Orders dismissing the Complaint in *Civil Case No. 07-0041* on the ground of *res judicata* and denying the Motion for Reconsideration are **final orders and completely dispose of the case**. Appeal, and not a special civil action for *certiorari*, is the correct remedy to elevate said final orders.

ISSUE:

Whether the CA erred in dismissing the petition for review by *certiorari* under Rule 65. (NO)

RULING:

An order or a judgment is deemed final when it finally disposes of a pending action, so that nothing more can be done with it in the trial court. In other words, the order or judgment ends the litigation in the lower court. An order of dismissal, whether correct or not, is a final order. It is not interlocutory because the proceedings are terminated; it leaves nothing more to be done by the lower court. Therefore, the remedy of the plaintiff is to appeal the order.

Where appeal is available to the aggrieved party, the action for *certiorari* will not be entertained. Remedies of appeal and *certiorari* are mutually exclusive, not alternative or successive. Hence, *certiorari* is not and cannot be a substitute for an appeal, especially if one's own negligence or error in one's choice of remedy occasioned such loss or lapse. One of the requisites of *certiorari* is that there be no available appeal or any plain, speedy and adequate remedy. The special civil action for *certiorari* is a limited form of review and is a remedy of last recourse. Where an appeal is available, *certiorari* will not prosper, even if the ground therefor is grave abuse of discretion.

It bears emphasis that the general rule is that a writ of *certiorari* will not issue where the remedy of appeal is available to the aggrieved party. The remedies of appeal in the ordinary course of law and that of *certiorari* under Rule 65 are mutually exclusive and not alternative or cumulative. Time and again, the High Court has reminded members of the bench and bar that the special civil action of *Certiorari* cannot be used as a substitute for a lost appeal.

In the case at bar, the assailed Orders dismissing the Complaint on the ground of *res judicata* and denying the Motion for Reconsideration are final orders and completely dispose of the case. Appeal, and not a special civil action for *certiorari*, is the correct remedy to elevate said final orders. The manner of appealing said final orders is provided under Rule 41 of the 1997 Rules of Civil Procedure, as amended. The instant Petition for *Certiorari* cannot be used by petitioners as a substitute for a lost appeal. Accordingly, when a party adopts an improper remedy, the petition may be dismissed outright.

i. Period of appeal

EDITHA B. ALBOR, *PETITIONER*, -versus- COURT OF APPEALS, NERVA MACASIL JOINED BY HER HUSBAND RUDY MACASIL AND NORMA BELUSO, JOINED BY HER HUSBAND NOLI BELUSO, *RESPONDENTS.*
G.R. No. 196598, THIRD DIVISION, January 17, 2018, MARTIRES, *J.*

Section 4, Rule 43 of the Rules of Court provides that "Upon proper motion and the payment of the full amount of the docket fee before the expiration of the reglementary period, the Court of Appeals may grant an additional period of fifteen (15) days only within which to file the petition for review. No further extension shall be granted except for the most compelling reason and in no case to exceed fifteen (15) days." While the CA enjoys a wide latitude of discretion in granting a first motion for extension of time, its authority to grant a further or second motion for extension of time is delimited by two conditions: First, there must exist a most compelling reason for the grant of a further extension; and second, in no case shall such extension exceed fifteen (15) days.

So narrow is the discretion accorded to the CA in granting a second extension of time that the word "most" was utilized to underscore the compelling reason demanded by the rule. In this case, Editha maintains that the filing of the second motion for extension of time was prompted by the sudden withdrawal of her previous counsel. The CA, however, did not appreciate such predicament as a most compelling reason to grant her plea for further extension of time. On this score, the Court similarly finds no compelling reason to deviate from the sound conclusion of the CA.

FACTS:

Editha was the agricultural lessee of a 1.60 hectare riceland portion and a 1.5110 hectare sugarland portion of Lot 2429 located at Barangay Dinginan, Roxas City. Lot 2429 was covered by Transfer Certificate of Title (*TCT*) No. RT-108 (522),[4] registered in the name of Rosario Andrada (*Rosario*), married to Ramon Gardose. As agricultural lessee, Editha had been paying rent to the agricultural lessors, the heirs of Rosario. On 22 September 2000, the Municipal Agrarian Reform Officer (*MARO*) of Roxas City, invited Editha to appear before the MARO office on 20 October 2000. Editha heeded

the invitation and there met respondents who informed her that they had purchased Lot 2429 from the heirs of Rosario. No Deed of Sale, however, was shown to Editha.

On 7 November 2000, Editha was able to obtain from the Clerk of Court of the Regional Trial Court (*RTC*) in Roxas City, a document entitled "Extra-Judicial Settlement with Deed of Sale," purportedly executed by the heirs of Rosario. It appears that on 6 June 1997, the heirs of Rosario adjudicated unto themselves Lot 2429 and thereupon sold the same to respondents for P600,000.00. Asserting that she had the right to redeem Lot 2429 from respondents, Editha lodged a complaint for redemption of landholding and damages before the Provincial Agrarian Reform Adjudicator (*PARAD*).

In the main, Editha alleged that under Section 12 of Republic Act (*R.A.*) No. 3844,[5] as amended by R.A. No. 6389, she had the right to redeem Lot 2429 within 180 days from notice in writing of the sale which shall be served by the vendee on all lessees affected and on the Department of Agrarian Reform upon registration of the sale. Considering that the said extrajudicial settlement with deed of sale had not yet been registered with the Register of Deeds of Roxas City, her 180-period for redemption did not commence. Thus, she prayed that judgment be rendered declaring her entitled to redeem the said lot, at the price of P60,000.00.

On their part, respondents asserted that prior to the actual sale of Lot 2429, Editha knew that the selling price was P600,000.00 and not P60,000.00, as misleadingly alleged in her complaint. Respondents stated that on 21 April 1997,[6] a certain Atty. Alejandro Del Castillo, together with Eva Gardose-Asis, representing the heirs of Rosario, conferred with Editha and her son Bonifacio Alborabout the impending sale of Lot 2429. During the conference, Editha was apprised of her right of preemption, and Lot 2429 was offered to her for the price of P600,000.00. This notwithstanding, Editha did not exercise her preemptive right to buy the lot; consequently, the sale was consummated between the heirs of Rosario and respondents on 6 June 1997.

In its 30 June 2003 decision,[7] the PARAD found that Editha was not properly notified of the sale. While the PARAD sustained Editha's right of redemption, it nevertheless resolved to dismiss her complaint after finding that only P216,000.00 was consigned as redemption price. On 10 November 2008, Editha's erstwhile counsel, Atty. Fredicindo A. Talabucon (*Atty. Talabucon*), received a copy of the DARAB's 8 October 2008 decision which affirmed *in toto*the PARAD's ruling.

On 25 November 2008, Editha filed before the CA a motion for extension of time[9] to file a Rule 43 petition for review. She prayed for an additional fifteen (15) days, or from 25 November 2008 until 10 December 2008.

Shortly thereafter, on 3 December 2008, a motion to withdraw as counsel,[10]dated 28 November 2008, was filed by Atty. Talabucon. It was alleged that Editha decided to engage the services of another counsel and for said reason, Atty. Talabucon was withdrawing his appearance. Editha signified her conformity to the motion to withdraw as counsel.

On 9 December 2008, Editha's new counsel, Atty. Ferdinand Y. Samillano (*Atty. Samillano*), filed with the CA a notice of appearance[11] and at the same time moved for an extension of thirty (30) days, or from 10 December 2008 until 9 January 2009, within which to file the petition for review. The second motion for extension of time was grounded on heavy workload and the need for more time to study the case.

In the assailed resolution, dated 24 September 2009, the CA dismissed Editha's petition for review for having been filed out of time. The appellate court ratiocinated that while it may grant Editha's first motion for extension of fifteen (15) days within which to file the petition, it was devoid of authority to grant her second motion for extension which asked for an additional time of thirty (30) days. In her bid to undo the CA resolutions, Editha comes before this Court via a Rule 65 petition for certiorari.

ISSUE:

Whether or not the CA erred in dismissing Editha's petition for review for having been filed out of time. (NO)

RULING:

Editha availed of the wrong mode of appeal in bringing her case before this Court.

The proper remedy of a party aggrieved by a decision of the CA is a petition for review under Rule 45; and such is not similar to a petition for certiorari under Rule 65 of the Rules of Court. As provided in Rule 45 of the Rules of Court, decisions, final orders or resolutions of the CA in any case, i.e., regardless of the nature of the action or proceedings involved, may be appealed to this Court by filing a petition for review, which in essence is a continuation of the appellate process over the original case.

On the other hand, a special civil action under Rule 65 is a limited form of review and is a remedy of last recourse.[13] It is an independent action that lies only where there is no appeal nor plain, speedy and adequate remedy in the ordinary course of law. Certiorari will issue only to correct errors of jurisdiction, not errors of procedure or mistakes in the findings or conclusions of the lower court.[14] As long as the court *a quo* acts within its jurisdiction, any alleged errors committed in the exercise of its discretion will amount to nothing more than mere errors of judgment, correctible by an appeal or a petition for review under Rule 45 of the Rules of Court.

The 24 September 2009 and 15 February 2011 resolutions of the CA were final and appealable judgments. In particular, the resolution dated 24 September 2009 dismissed Editha's Rule 43 petition for review, while the resolution dated 15 February 2011 denied her motion for reconsideration of the earlier resolution. The assailed resolutions disposed of Editha's appeal in a manner that left nothing more to be done by the CA with respect to the said appeal.[16]Hence, Editha should have filed an appeal before this Court by way of a petition for review on certiorari under Rule 45, not a petition for certiorari under Rule 65.

Even if the Court looks beyond Editha's procedural misstep, her petition must fail.

Editha imputes grave abuse of discretion on the part of the CA and argues that it was too technical and constricted in applying the rules of procedure. She insists that Section 4, Rule 43 of the Rules of Court admits of an exception, as the said provision states that a second extension may be granted for compelling reason.

It is doctrinally entrenched that the right to appeal is a statutory right and the one who seeks to avail of that right must comply with the statute or rules. The requirements for perfecting an appeal within the reglementary period specified in the law must be strictly followed as they are considered indispensable interdictions against needless delays. Moreover, the perfection of appeal in the manner and within the period set by law is not only mandatory but jurisdictional as well.[21] The failure to perfect the appeal within the time prescribed by the Rules of Court unavoidably renders the judgment final as to preclude the appellate court from acquiring the jurisdiction to review the judgment.

Section 4, Rule 43 of the Rules of Court provides that "Upon proper motion and the payment of the full amount of the docket fee before the expiration of the reglementary period, the Court of Appeals may grant an additional period of fifteen (15) days only within which to file the petition for review. No further extension shall be granted except for the most compelling reason and in no case to exceed fifteen (15) days."

The provision is straightforward. While the CA enjoys a wide latitude of discretion in granting a first motion for extension of time, its authority to grant a further or second motion for extension of time is delimited by two conditions: *First*, there must exist a most compelling reason for the grant of a further extension; and *second*, in no case shall such extension exceed fifteen (15) days.

So narrow is the discretion accorded to the CA in granting a second extension of time that the word "most" was utilized to underscore the compelling reason demanded by the rule. Editha maintains that the filing of the second motion for extension of time was prompted by the sudden withdrawal of her previous counsel. The CA, however, did not appreciate such predicament as a most compelling reason to grant her plea for further extension of time. On this score, the Court similarly finds no compelling reason to deviate from the sound conclusion of the CA.

LAND BANK OF THE PHILIPPINES, *Petitioner*, -versus-. HEREDEROS DE CIRIACO CHUNACO DISTILERIA, INC., *Respondent*. G.R. No. 206992, Third Division, June 11, 2018, Gesmundo, J.

As the taking of property under R.A. No. 6657 is an exercise of the power of eminent domain by the State, the valuation of property or determination of just compensation in eminent domain proceedings is essentially a judicial function, which is vested with the courts and not with administrative agencies. Consequently, the SAC can properly take cognizance of any petition for determination of just compensation.

FACTS:
Herederos De Ciriaco ChunacoDistileria, Inc. was the owner of several parcels of land with an aggregate area of 22.587 hectares situated at Barangay Masarawag, Guinobatan, Albay. These lands are covered by 12 *TCT* Nos. T-63245, T-63227, T-63230, T-63246, T-63231, T-63233, T-63226, T-63229, T-63572, T-63575, T-63573 and T-63232.

In November 2001, respondent voluntarily offered for sale the subject lots to the Republic of the Philippines under the Comprehensive Agrarian Reform Program (*CARP*). Land Bank of the Philippines, by virtue of its mandate under Republic Act (R.A.) No. 6657, came up with the CARP

compensation for the subject lands and offered the same to respondent in the amount of P957,991.30. Upon receipt of the valuation of the properties, respondent rejected the offered compensation.

Hence, 12 cases for preliminary administrative determination of just compensation covering the said parcels of land were conducted by the Provincial Agrarian Reform Adjudicator of Albay, Branch 1. During trial, petitioner insisted that the compensation of the subject lands should only be P957,991.30. On the other hand, respondent countered that the subject lands were worth P195,410.07 per hectare.

On February 17, 2004, the PARAD issued its Decision and ruled in favor of the respondent. The said decision was received by petitioner on February 24, 2004. After 13 days, or on March 9, 2004, petitioner filed a Motion for Reconsideration which was, however, denied. The said resolution was received by petitioner on April 6, 2004.

On April 12, 2004, petitioner filed a Petition for Judicial Determination of Just Compensation before the RTC of Legaspi City, Branch 3, acting as SAC, and docketed as Civil Case No. 04-04. It argued that the PARAD erroneously arrived at the amount for the just compensation without considering the formula set forth by the *DAR*.

On July 27, 2004, the PARAD issued an Orderdeclaring that the February 17, 2004 decision was final and executory. On September 10, 2004, a Writ of Executionwas issued by the PARAD.

On October 12, 2004, petitioner filed a petition for *certiorari* before the DARAB. However, the petition was denied for being filed beyond the fifteen (15)-day reglementary period. Hence, the PARAD decision on the just compensation already became final and executory. A Motion for Reconsideration was filed but it was likewise denied.

Undaunted, petitioner filed a petition for *certiorari* before the CA. However, the said petition was denied. It held that the Decision of the PARAD already attained finality because the petition for judicial determination of just compensation was belatedly filed in the RTC-SAC, beyond the 15-day reglementary period. It added that the fresh fifteen (15)-day period under *Neypes v. Court of Appeals*is not applicable in administrative proceedings. Hence, this petition.

ISSUE:

Whether a fresh 15-day period is available to commence an action in the Special Agrarian Court.

RULING:

Yes. *The petition for judicial determination of just compensation was timely filed.*

As the taking of property under R.A. No. 6657 is an exercise of the power of eminent domain by the State, the valuation of property or determination of just compensation in eminent domain proceedings is essentially a judicial function, which is vested with the courts and not with administrative agencies. Consequently, the SAC can properly take cognizance of any petition for determination of just compensation. Section 57 of R.A. No. 6657 vests on the RTC-SAC the original and exclusive jurisdiction over all petitions for the determination of just compensation to landowners. Any effort to transfer such jurisdiction to the adjudicators and to convert the original

jurisdiction of the RTCs into appellate jurisdiction would be contrary to Section 57 and therefore would be void.The DAR has no authority to qualify or undo the RTC-SAC's jurisdiction over the determination of just compensation under R.A. No. 6657. Thus, the 15-day reglementary period under Section 11, Rule XIII of the DARAB Rules cannot be sustained. The RTC-SAC cannot simply be reduced to an appellate court which reviews administrative decisions of the DAR within a short period to appeal.

When the PARAD denied its motion for reconsideration on the preliminary determination of just compensation, petitioner did not anymore appeal before the DARAB. Instead, it timely filed a petition for judicial determination of just compensation before the RTC-SAC. Thus, the administrative proceedings on the determination of just compensation were terminated.

It was only when the PARAD ordered the execution of its decision and issued the writ of execution, even though there was a timely petition for judicial determination of just compensation before the RTC-SAC, that petitioner sought refuge from the DARAB. Evidently, petitioner's cause of action is essentially to stop the enforcement of the decision of the PARAD because of a pending petition before the RTC-SAC.

FRANCIS M. ZOSA, NORA M. ZOSA AND MANUEL M. ZOSA, JR., ***Petitioners***, **- *versus* - CONSILIUM, INC.**, ***Respondent***.
G.R. No. 196765, FIRST DIVISION, September 19, 2018, LEONARDO-DE CASTRO, *C.J.*

Though litigations should, as much as possible, be decided on their merits and not on technicalities, this does not mean, however, that procedural rules are to be belittled to suit the convenience of a party. Indeed, the primordial policy is a faithful observance of the Rules of Court, and their relaxation or suspension should only be for persuasive reasons and only in meritorious cases. If the Court were to admit the tendered excuse, i.e., the negligence of the counsel's clerk as compelling or sufficient explanation for the belated payment of the appeal fee, we would be putting a premium on such lackadaisical attitude and negating a considerable sum of our jurisprudence that affirmed dismissals of appeals or notices of appeal for nonpayment of the full appellate docket fees.

FACTS:

On January 17, 2001, a complaint for Declaration of Nullity of Deed of Sale and TCT No. T-113390, and Quieting of Title was filed before the RTC by herein petitioners (Zosas) against Rosario Paypa, Rollyben R. Paypa and Rubi R. Paypa (Paypas). Respondent Consilium, Inc. was allowed to intervene therein on the ground that it had purchased the subject property in good faith from the Paypas. RTC ruled in favor of the Zosas. Consilium filed a Notice of Appeal, alleging to have received the Decision of the RTC on October 10, 2007. Note that the corresponding appeal fee was paid only on October 31, 2007, or six days from October 25 which was the last day to perfect an appeal. It explained that such omission was sheer inadvertence. It insisted that such "inadvertence" was a case of excusable negligence. RTC resolved to deny due course thereto.

Consilium moved for the reconsideration The Zosas sought the outright denial of Consilium's MR on the ground that it was set for hearing beyond the 10-day period prescribed in Section 5, Rule 15 of the Rules of Court. RTC treated the motion as a mere scrap of paper. Upon receipt of the Order,

Consilium sought clarification as to its import. RTC issued an Order explaining that under established jurisprudence, any motion that does not comply with Sec. 5 of Rule 16 of the 1997 Rules of Civil Procedure is a mere scrap of paper. Furthermore, a motion that fails to comply with the mandatory provision of Rule 15, Section 5 is pro forma which do not merit the attention of the court. And finally, the motion for reconsideration aside from being a mere scrap of paper is also pro forma as the motion reiterates issues already passed upon by the court.

The CA reversed the RTC Order. It held that the "liberal application of the Rules is warranted since the rights of the parties were not affected even if the hearing of said MR was originally set by petitioner beyond the 10-day period required by the Rules. The Zosas received a copy of the MR in question. They were certainly not denied an opportunity to study the arguments in the said motion as they filed an opposition to the same. With respect to the late payment of appeal fee, CA said that jurisprudence is replete with cases which gave due course to an appeal even if the appellate docket fees were filed out of time

ISSUE:

Whether or not Consilium extended a reasonable and compelling reason to justify the Court of Appeals' relaxation of the mandatory application of the rules on appeals and motions.

RULING:

Sections 4 and 13, Rule 41 of the Rules of Court, as amended provide:

> Section 4. Appellate Court Docket and Other Lawful Fees. — Within the period for taking an appeal, the appellant shall pay to the clerk of the court which rendered the judgment or final order appealed from, the full amount of the appellate court docket and other lawful fees. Proof of payment of said fees shall be transmitted to the appellate court together with the original record or the record on appeal.
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> x x x x
>
> Section 13. Dismissal of Appeal. — Prior to the transmittal of the original record or the record on appeal to the appellate court, the trial court may, motu proprio or on motion, dismiss the appeal for having been taken out of time or for nonpayment of the docket and other lawful fees within the reglementary period.

The Court has consistently upheld the dismissal of an appeal or notice of appeal for failure to pay the full docket fees within the period for taking the appeal. Time and again, this Court has consistently held that the payment of docket fees within the prescribed period is mandatory for the perfection of an appeal. Without such payment, the appellate court does not acquire jurisdiction over the subject matter of the action and the decision sought to be appealed from becomes final and executory. Exceptions to the aforecited general rule on the timely payment of appellate docket fees involve exceptionally meritorious reasons why the appellate docket fees were not timely paid – the substantive merits of the case, a cause not entirely attributable to the fault or negligence of the party favored by the suspension of the rules, the existence of a special or compelling circumstance, etc.

If the Court were to admit the tendered excuse, i.e., the negligence of the counsel's clerk as compelling or sufficient explanation for the belated payment of the appeal fee, we would be putting a premium on such lackadaisical attitude and negating a considerable sum of our jurisprudence that affirmed dismissals of appeals or notices of appeal for non-payment of the full appellate docket fees. In

addition, categorizing the "lapse in memory" as compelling reason would set a bad precedent wherein such negligence of an appellant's counsel or his clerk is sufficient to relax the jurisdictional requirements for the perfection of an appeal.

As to the defective notice of hearing in Consilium's motion for reconsideration, Section 5, Rule 15 of the Rules of Court reads:

> Section 5. Notice of hearing. — The notice of hearing shall be addressed to all parties concerned, and shall specify the time and date of the hearing which must not be later than ten (10) days after the filing of the motion.

Herein, it is clear that the notice of hearing in Consilium's motion for reconsideration failed to comply with the requisites set forth in the aforequoted rule. In fact, Consilium's counsel, Atty. Gaviola, admitted to purposely defying the 10-day requirement as he would not be available to attend any hearing within the 10-day period from the filing of said motion.

ii. Perfection of appeal

NARCISO VICTORIANO, *Petitioner*, *v.* JUNIPER DOMINGUEZ, *Respondent*.
G.R. No. 214794, SECOND DIVISION, July 23, 2018, REYES, JR., *J.*

Analyzing the procedural errors committed in the petition, vis-á-vis the substance and gravity of the case, ***the Court rejects the strict application of the technical rules of procedure, in order to give way to a just resolution of the case on the merits.*** *This stems from the oft-repeated rule that the dismissal of an appeal purely on technical grounds is frowned upon. Significantly,* ***rules of procedure ought not to be applied in a very rigid****, technical sense, but must be used to help secure, and not override substantial justice. After all, the court's primary duty is to render or dispense justice.*

*In fact, in Hadji-Sirad v. Civil Service Commission, the Court enumerated the reasons that may provide a justification for the suspension of a strict adherence to procedural rules. These include (i) "****matters of life, liberty, honor or property****; (ii) the existence of special or compelling circumstances; (iii) the merits of the case; (iv) a cause not entirely attributable to the fault or negligence of the party favored by the suspension of the rules; (v) a lack of any showing that the review sought is merely frivolous and dilatory; and (vi) a showing that the other party will not be unjustly prejudiced thereby.*

Verily, the merits of case, involving as it does the imposition of the supreme penalty of dismissal on a government employee, thereby ***depriving him of his very livelihood****,* ***warrant a departure from a strict and rigid application of the rules*** *of court.*

FACTS:

On January 29, 2003, the Spouses Victoriano purchased a house and lot from the PNB in Bontoc, Mountain Province. Petitioner Narciso Victoriano was an employee of the Bureau of Fire Protection. The sale was processed by Vasquez, Branch Manager of the PNB in Bontoc. The parties signed a Deed of Sale (**January Deed of Sale**), which indicated a purchase price of Php 150,000.

The parties again **executed another Deed of Sale** (**February Deed of Sale**) involving the same property, but this time changing the purchase price to reflect the higher amount of Php 850,000. Both

Deeds of Sale included a proviso stating that the payment of taxes shall be shouldered by the buyer. The Spouses Victoriano**submitted** the **January Deed of Sale** to the BIR for taxation purposes.

Respondent Dominguez filed criminal and administrative complaints before the Office of the Deputy Ombudsman for the Military and Other Law Enforcement Offices (OMB MOLEO) against the Spouses Victoriano and Vasquez for Falsification of Public Documents Defrauding the Government of Taxes Due. According to Dominguez, the parties **deliberately executed two separate deeds** of sale covering the same subject property **to evade the payment of correct taxes**.

The OMB MOLEO issued a Joint Resolutiondismissing the Complaint. Upon motion, the OMB MOLEO issued a Joint Order reconsidering its earlier ruling and **found petitioner guilty**. Dissatisfied, petitioner filed a Petition for Review with the CA.

The CA dismissed the Petition outright, due to the following fatal infirmities found therein, *viz*.:

i. the statement of material dates is incomplete;
ii. there is no explanation as to why the preferred mode of personal service was not resorted to, per Rule 13, Sec. 11, Rules of Court;
iii. the Verification does not state that the allegations in the petition are true and correct of the affiant's personal knowledge and based on authentic records, pursuant to Rule 7, Sec. 4, Rules of Court;
iv. the Certification on non-forum shopping does not state that to the best knowledge of the affiant, no such other action is pending;
v. the notarization of the Verification/Certification and the Affidavit of Service failed to comply with Sees. 6 and 12, Rule II of the 2004 Rules on Notarial Practice, as amended by A.M. No. 02-8-13-SC dated February 19, 2008, there being no properly accomplished jurat showing that the affiants exhibited before the notary public competent evidence (at least one current identification document issued by an official agency bearing the photograph and signature of the affiant) of their identity; and
vi. the petitioner's counsel's 'IBP NO. 792254', with no date of issuance indicated, does not appear to be updated.

ISSUE:

Whether or not the CA erred in dismissing the petition outright due to technical grounds. (YES)

RULING:

Analyzing the procedural errors committed in the petition, *vis-á-vis* the substance and gravity of the case, **the Court rejects the strict application of the technical rules of procedure, in order to give way to a just resolution of the case on the merits.** This stems from the oft-repeated rule that the dismissal of an appeal purely on technical grounds is frowned upon. Significantly, **rules of procedure ought not to be applied in a very rigid**, technical sense, but must be used to help secure, and not override substantial justice. After all, the court's primary duty is to render or dispense justice.

In fact, in *Hadji-Sirad v. Civil Service Commission*, the Court enumerated the reasons that may provide a justification for the suspension of a strict adherence to procedural rules. These include (i) "**matters of life, liberty, honor or property**; (ii) the existence of special or compelling circumstances; (iii) the merits of the case; (iv) a cause not entirely attributable to the fault or negligence of the party favored

by the suspension of the rules; (v) a lack of any showing that the review sought is merely frivolous and dilatory; and (vi) a showing that the other party will not be unjustly prejudiced thereby.

Verily, the merits of case, involving as it does the imposition of the supreme penalty of dismissal on a government employee, thereby **depriving him of his very livelihood**, **warrant a departure from a strict and rigid application of the rules** of court.

Besides, the perceived errors pointed out by the CA, may be excused on the basis of substantial compliance with the rules.

The Failure to Include a Complete Statement of Material Dates May Be Excused, insofar as The Date of the Receipt of the Assailed Ruling is Specified, and the Petition was Actually Filed on Time

Significantly, Section 6 of Rule 43 mandates that the petitioner must state the specific material dates showing that his/her petition was filed within the period fixed. Remarkably, the inclusion of a complete statement of material dates in a petition for review is essential to allow the Court to determine whether the petition was indeed filed within the period fixed in the rules.

However, in *Capin-Cadiz v. Brent Hospital and Colleges, Inc*., the Court excused therein petitioner's failure to indicate the date when the assailed decision was received. The Court ruled that the said error is not fatal, since the important date that must be alleged in the petition is the date when the petitioner received the resolution denying his/her motion for reconsideration.

A perusal of the Petition for Review shows that Victoriano clearly specified that he received the assailed OMB MOLEO resolution denying his motion for reconsideration on October 7, 2013. More importantly, the records show that the petition was filed by registered mail on October 21, 2013, or well-within the 15-day reglementary period. Accordingly, Victoriano is deemed to have substantially complied with the rules. His failure to indicate the date when he received the other orders and resolutions of the OMB MOLEO may be dispensed with in the interest of justice.

The Failure to Attach an Affidavit of Explanation as to Why Personal Service was not Resorted to May be Excused If Personal Service is Impracticable and Difficult

Indeed, Section 11, Rule 13 requires the personal service and filing of all pleadings. However, the strict requirement of attaching a written explanation on why the pleading was not served personally is susceptible of exceptions. In *Spouses Ello v. CA*, and *Peñoso v. Dona*, the Court enumerated the grounds that may excuse the absence of a written explanation, to wit: "(i) the practicability of personal service; (ii) the importance of the subject matter of the case, or the issues involved therein; and (iii) the *prima facie* merit of the pleading sought to be expunged." In the same vein, in *Pagadora v. Ilao*, the Court considered the distance between the appellant and the appellate court, as a justifiable excuse for the failure to personally serve the pleadings.

Applying the aforementioned jurisprudential tenets to the case at bar, Victoriano's failure to attach a written explanation shall also be excused. The Court takes note of the distance between Bontoc, Mountain Province (where Victoriano resides) and the CA. Certainly, the distance between these two places rendered prompt personal service of the petition impracticable and difficult.

The Statement in the Verification "That the Allegations Are True and Correct of the Affiant's Personal Knowledge" Constitutes Sufficient Compliance with the Rule

Notably, a pleading may be verified in any of the following ways, (i) based on one's own personal knowledge; (ii) or based on authentic records; (iii) or both, as the circumstances may warrant. This rule was underscored in *Hun Hyung Park v. Eung Won Choi*, where the Court affirmed the validity of a verification, which merely stated that the contents of the petition for review are true and correct to the best of the petitioner's personal knowledge. The Court excused the petitioner's failure to attest that the contents of the petition are also based on authentic records.

Needless to say, a verification is a formal requirement, and is not jurisdictional. It is mainly intended to secure an assurance that matters alleged are done in good faith or are true and correct, and not of mere speculation. Resultantly, Victoriano's failure to indicate that the allegations are true and correct based on authentic records, may be excused, inasmuch as he already attested to the truth and correctness of the allegations based on his personal knowledge.

The Certification of Non-Forum Shopping Which Failed to State that There is No Other Similar Action Pending in Any Other Court or Tribunal, Shall Be Excused.

Remarkably, a similar Certification was excused by the Court in *Santos v. Litton Mills Incorporated and/or Atty. Mariño*. In *Santos*, the Court held that the petitioner's undertaking that she has not filed a similar case before any other court or tribunal, and that she would inform the court if she learns of a pending case similar to the one she had filed therein, was more than substantial compliance with the requirements of the Rules. It has been held that "with respect to the contents of the certification[,] x xx the rule on substantial compliance may be availed of."Applying this to the case at bar, Victoriano's assurance in his Certification that he had not filed any other case in court, shall likewise constitute substantial compliance with the rule on the Certification against non-forum shopping.

A Community Tax Certificate Constitutes Sufficient Proof of Identity If the Affiant is Personally Known By The Notary Public

Indeed, as a general rule, the affiant must present his/her identification card issued by an official agency, bearing his/her photograph and signature. However, this is not an iron-clad rule. Particularly, in *Coca-Cola Bottlers Phils., Inc. v. Dela Cruz, et al*., the Court allowed the presentation of the affiant's community tax certificate in lieu of other competent evidence of identity. According to the Court, a glitch in the evidence of the affiant's identity should not defeat his petition, and may be overlooked in the interest of substantial justice, taking into account the merits of the case.

Furthermore, in *Reyes v. Glaucoma Research Foundation, Inc., et al*., the Court ruled that competent evidence of identity is not required in cases where the affiant is personally known to the notary public.Specifically, the Court categorically stated that "[i]f the notary public knows the affiants personally, he need not require them to show their valid identification cards."

Thus, it is all too apparent that Victoriano's Community Tax Certificate constituted sufficient proof of his identity, considering that he was personally known by the Notary Public, being a longtime client of the latter.

The Counsel's Inadvertence Shall Not Prejudice His Client, provided that He Immediately Rectifies Such Minor Defect

Although the IBP Number was inadvertently omitted, this mistake was immediately rectified in Victoriano's Motion for Reconsideration. His counsel subsequently indicated the date and place of the issuance of his IBP number, which was shown to have been updated.

All told, the facts show that Victoriano substantially complied with the Rules of Court. With this, the strict and rigid application of the rules shall give way to the promotion of substantial justice. Courts are reminded to temper their propensity to dismiss cases on sheer technical errors. After all, it must be remembered that a "litigation is not a game of technicalities." "Lawsuits unlike duels are not to be won by a rapier's thrust. Technicality, when it deserts its proper office as an aid to justice and becomes its great hindrance and chief enemy, deserves scant consideration from courts."

iii. Issues to be raised

ALICIA C. GALINDEZ, *Petitioner*, -versus- SALVACION FIRMALAN; THE HON. OFFICE OF THE PRESIDENT THROUGH THE HON. OFFICE OF THE EXECUTIVE SECRETARY; AND THE REGIONAL EXECUTIVE DIRECTOR, DENR-REGION IV, *Respondent*.

G.R. No. 187186, THIRD DIVISION, June 06, 2018, LEONEN, *J.*

Findings of fact by the Director of Lands shall be conclusive when approved by the Department of Environment and Natural Resources Secretary and supported by substantial evidence. In Solid Homes v. Payawal,the Court explained that administrative agencies are considered specialists in the fields assigned to them; hence, they can resolve problems in their respective fields "with more expertise and dispatch than can be expected from the legislature or the courts of justice."Thus, the Court has consistently accorded respect and even finality to the findings of fact of administrative bodies, in recognition of their expertise and technical knowledge over matters falling within their jurisdiction.

Moreover, Rule 43, Section 10 of the Rules of Civil Procedure provides that findings of fact of a quasi-judicial agency, when supported by substantial evidence, shall be binding on the Court of Appeals. Consequently, the Court of Appeals did not err in upholding the findings of fact of the Department of Environment and Natural Resources and of the Office of the President.

FACTS:

On May 16, 1949, SalvacionFirmalan (Firmalan) filed an application with the Bureau of Lands for a 150-mparcel of land in Barrio Capaclan, Romblon, Romblon. On April 25, 1967, or almost 18 years after filing her first application, Firmalan filed another application. Her second application was for Lot No. 915 Cad-311-D in Romblon Cadastre and was docketed as MSA No. (V-6) 23. Lot No. 915 had an area of 325 mand included the 150-mlot subject of Firmalan's first application.The Acting District Land Officer recommended the approval of Firmalan's second application.

Alicia filed a protest to Firmalan's second application. She claimed that from November 1951, she and her family had been in constant possession of a portion of the 325-mlot covered by Firmalan's second application. She also claimed that she had built a house and planted coconut trees on the lot which Firmalan applied for.

On July 11, 1978, Land Inspector Mabini Fabreo (Inspector Fabreo) reported to the Director of Lands that after conducting an ocular inspection and investigation, he discovered that the lot covered by Firmalan's second application was occupied by Felipe Gaa, Sr. (Gaa) and Elmer Galindez (Elmer), son of Alicia, not Firmalan.

On March 11, 1985, Supervising Land Examiner Dionico F. Gabay (Examiner Gabay) of the Bureau of Lands opined that between Firmalan and Alicia, Firmalan had the superior right over the lot in question because she was the rightful applicant, while Alicia obtained possession of the lot through trickery and willful defiance of the law.

On August 27, 1990, the Department of Environment and Natural Resources Regional Executive Director (the Regional Executive Director) concluded that Firmalan filed her miscellaneous sales application over the disputed portion of Lot No. 915 earlier than Alicia. The Regional Executive Director upheld Firmalan's right to acquire the portion of Lot No. 915, reasoning out that Firmalan's first application on May 16, 1949 was given due course even if records showed that no subsequent actions were taken. Alicia moved for the reconsideration of the Regional Executive Director's August 27, 1990 Order, but her motion was denied in the subsequent Regional Executive Director's November 15, 1991 Order.

Alicia then appealed her case before the Department of Environment. and Natural Resources, but on June 29, 1998,the Department of Environment and Natural Resources Secretary affirmed the Regional Executive Director's Orders. Alicia moved for the reconsideration of this Decision, but on March 28, 2005,the Department of Environment and Natural Resources Secretary denied her motion.

On April 19, 2005,Alicia appealed the Department of Environment and Natural Resources' decisions before the Office of the President. On January 31, 2006, the Office of the President denied the appeal and affirmed the Department of Environment and Natural Resources' decisions. Alicia moved for the reconsideration of the Office of the President's January 31, 2006 Decision, but on June 1, 2006,the Office of the President denied her motion for reconsideration.

Alicia filed an appealbefore the Court of Appeals. On November 27, 2008, the Court of Appealsdenied her appeal and upheld the decision of the Office of the President.

ISSUE:

Whether or not the Court of Appeals erred for upholding the ruling of the Office of the President when it supposedly showed bias and was unsubstantiated by evidence (NO)

RULING:

In *Solid Homes v. Payawal*,this Court explained that administrative agencies are considered specialists in the fields assigned to them; hence, they can resolve problems in their respective fields "with more expertise and dispatch than can be expected from the legislature or the courts of justice."Thus, this Court has consistently accorded respect and even finality to the findings of fact of administrative bodies, in recognition of their expertise and technical knowledge over matters falling within their jurisdiction.

Moreover, Rule 43, Section 10 of the Rules of Civil Procedure provides that findings of fact of a quasi-judicial agency, when supported by substantial evidence, shall be binding on the Court of Appeals. Consequently, the Court of Appeals did not err in upholding the findings of fact of the Department of Environment and Natural Resources and of the Office of the President.

e. Review of judgments or final orders of the COA, COMELEC, CSC, and the Ombudsman

JEROME R. CANLAS, *Petitioner*, -versus- GONZALO BENJAMIN A. BONGOLAN, ELMER NONNATUS A. CADANO, MELINDA M. ADRIANO, RAFAEL P. DELOS SANTOS, CORAZON G. CORPUZ, DANILO C. JAVIER, AND JIMMY B. SARONA, *Respondents*.G.R. No. 199625, THIRD DIVISION, June 06, 2018, LEONEN, J.

The exoneration of public officers by the Ombudsman in a charge alleging grave misconduct and a violation of Republic Act No. 3019, Section 3(g) is generally unappealable. However, if it is shown that the Ombudsman acted with grave abuse of discretion, then the complainant may file a Rule 65 Petition with the proper court. Furthermore, any appeal to the Supreme Court from such a case cannot be initiated by one who does not stand to be benefited or injured by the results of the suit.

It is incumbent upon Canlas to prove that the Ombudsman gravely abused her discretion such that she acted whimsically, arbitrarily, or grossly as to amount to a refusal to perform her duty.

However, Canlas did not argue that the Ombudsman committed grave abuse of discretion in the case at bar. What Canlas contends is that the Office of the Ombudsman's October 12, 2010 Decision is still appealable because respondents are being accused of an offense penalized with dismissal from service.

FACTS:

On March 19, 1993, the National Housing Authority and R-II Builders, Inc. (R-II) executed a Joint Venture Agreement to implement the Smokey Mountain Development and Reclamation Project (the Project), with the former as government implementing agency and the latter as developer. The Manila Harbour Centre Port Terminal, Inc. (Harbour Centre) is covered by the Project.

Aside from being the developer, R-II was also responsible for sourcing the funding for the Project's Phase 1 through securitization, or the issuance of secured instruments backed by assets. To support the Project's securitization and to make the security instruments more appealing to investors, National Housing Authority and R-II engaged Home Guaranty Corporation (Home Guaranty) to act as guarantor.

On September 26, 1994, National Housing Authority, R-II, Home Guaranty, and the Philippine National Bank entered into the Smokey Mountain Asset Pool Formation Trust Agreement (Trust Agreement), which provided for the mechanics to implement the Joint Venture Agreement.

In the Trust Agreement, the parties agreed to employ the "asset-backed securitization method" to finance the Project.Under this method, Philippine National Bank, as the trustee of the asset pool, would issue to investors Regular Smokey Mountain Asset Pool Participation Certificates (Participation Certificates). These Participation Certificates were subject to government redemption

and interest, and were guaranteed by Home Guaranty.The assets in the asset pool were used as securities for the Participation Certificates.

On the same day they executed the Trust Agreement, the parties also executed a Contract of Guaranty.Under the Contract of Guaranty, the trustee of the asset pool was authorized to execute a Deed of Assignment and Conveyance of the entire asset pool in favor of Home Guaranty should the latter be called to pay the total outstanding value of the matured Participation Certificates.

On October 24, 2002, the Participation Certificates matured. At this point, Planters Development Bank (Planters Bank) had become the trustee.

Because of the asset pool's inability to pay for the Participation Certificates, Planters Bank called on Home Guaranty's guaranty.

On February 6, 2003, Home Guaranty's Board of Directors approved the call. R-II did not object to it.

Thus, on July 30, 2004, Planters Bank transferred the entire asset pool properties to Home Guaranty through a Deed of Assignment and Conveyance.

To recover its exposure, Home Guaranty published a Notice of Saleon July 21, 2006 in the Philippine Daily Inquirer, seeking to sell the properties in the asset pool.

In response to this Notice of Sale, Alfred Wong King Wai (Wong) proposed to purchase two (2) lots in the asset pool located in Manila Harbour Centre, covered by Transfer Certificate of Title (TCT) Nos. 233421 and 233422 with a combined area of 28,926 square meters.

Wong offered to pay P14,000.00 per square meter. However, this price was reduced to P13,300.00 per square meter because Home Guaranty allowed a 5% cash discount as an incentive for spot cash purchases. Thus, on July 21, 2008, Home Guaranty soldthe lots to Wong for P384,715,800.00, or P13,300.00 per square meter.

Canlas claimed that the Home Guaranty Officers were guilty of grave misconduct and of entering into a contract grossly disadvantageous to the government under Section 3(g) of Republic Act No. 3019. He alleged that the lots were sold below their actual or appraised fair market value, and that the government suffered damages in the amount ranging from P121,489,200.00 to P309,508,200.00.

In the Office of the Ombudsman's October 12, 2010 Decision,the complaint was dismissed for lack of proof that the questioned transaction was disadvantageous to the government.

Canlas elevated the matter to the Court of Appealsafter the Office of the Ombudsman denied his Motion for Reconsideration in its December 29, 2010 Order.

In its August 11, 2011 Decision,the Court of Appeals affirmed the finding of the Office of the Ombudsman and dismissed the appeal.

ISSUES:

(1) Whether or not Jerome R. Canlas has the legal standing to file the administrative case (NO); (2) Whether or not the Office of the Ombudsman's October 12, 2010 Decision dismissing the complaint is appealable (NO)

RULING:

Canlas has no standing to file the instant appeal. There is no showing that Canlas filed the instant case as an authorized representative of R-II or Harbour Centre, or that he was authorized by these two (2) entities to file the instant case. He only admitted that he was connected to these two (2) entities in his Consolidated Reply dated September 28, 2012 and in his Memorandum dated May 30, 2013, after respondents had pointed out this circumstance.

In his personal capacity, there is no showing that he stands to be benefited or injured by the finding of guilt of respondents. He is not a party to the Trust Agreement or the Contract of Guaranty. Neither did he allege that he invested in the Project nor was he a holder of any Participation Certificate. He did not claim to own any of the properties in the asset pool, or to have any claim in the properties covered by the contract of sale between Home Guaranty and Wong.

Assuming Canlas has the legal standing to question the ruling of the Ombudsman, he may only do so if the Ombudsman acted with grave abuse of discretion amounting to lack or excess of jurisdiction. Generally, a decision by the Ombudsman absolving respondents is unappealable. However, if it is shown that the Ombudsman acted with grave abuse of discretion, then the complainant may file a Rule 65 Petition with the proper court. In *Dagan v. Office of the Ombudsman*:

> However, petitioner is not left without any remedy. In *Republic v. Francisco*, we ruled that decisions of administrative or quasi administrative agencies which are declared by law final and unappealable are subject to judicial review if they fail the test of arbitrariness, or upon proof of gross abuse of discretion, fraud or error of law. When such administrative or quasi-judicial bodies grossly misappreciate evidence of such nature as to compel a contrary conclusion, the Court will not hesitate to reverse the factual findings. **Thus, the decision of the Ombudsman may be reviewed, modified or reversed via petition for certiorari under Rule 65 of the Rules of Court, on a finding that it had no jurisdiction over the complaint, or of grave abuse of discretion amounting to excess or lack of jurisdiction**.
>
> ....
>
> Basic is the rule that the findings of fact of the Office of the Ombudsman are conclusive when supported by substantial evidence and are accorded due respect and weight, especially when, as in this case, they are affirmed by the Court of Appeals. It is only when there is grave abuse of discretion by the Ombudsman that a review of factual findings may aptly be made. In reviewing administrative decisions, it is beyond the province of this Court to weigh the conflicting evidence, determine the credibility of witnesses, or otherwise substitute its judgment for that of the administrative agency with respect to the sufficiency of evidence. It is not the function of this Court to analyze and weigh the parties' evidence all over again except when there is serious ground to believe that a possible miscarriage of justice would thereby result.
>
> Grave abuse of discretion implies a capricious and whimsical exercise of judgment tantamount to lack of jurisdiction. The Ombudsman's exercise of power must have been done in an arbitrary or despotic manner - which must be so patent and gross as to amount to an evasion of a positive duty or a virtual refusal to perform the duty enjoined or to act at all in contemplation of law - in order to exceptionally warrant judicial intervention.

It is incumbent upon Canlas to prove that the Ombudsman gravely abused her discretion such that she acted whimsically, arbitrarily, or grossly as to amount to a refusal to perform her duty.

However, Canlas did not argue that the Ombudsman committed grave abuse of discretion in the case at bar. What Canlas contends is that the Office of the Ombudsman's October 12, 2010 Decision is still appealable because respondents are being accused of an offense penalized with dismissal from service.

However, in determining whether the Office of the Ombudsman's October 12, 2010 Decision is appealable, the deciding factor is the penalty imposed by the Ombudsman in the decision itself. It is not determined by the penalty imposed for the offense as provided under the law.

Thus, even if grave misconduct is punishable by dismissal under the rules, it is the decision that determines whether it is appealable or unappealable to the higher courts. If the Ombudsman finds that respondents are not guilty and imposes no penalty, the decision is unappealable.

Respondents were absolved by the Ombudsman from Canlas' administrative charges. Thus, this finding is unappealable.

f. Review of judgments or final orders of quasi-judicial agencies

GERALDINE C. ORNALES, ROSENDO R. EGUIA, VINCENT U. VERGARA, RODOLFO A. DE CASTRO, JR., and RAMIRO V. MAGNAYE, *Petitioners,* - versus - OFFICE OF THE DEPUTY OMBUDSMAN FOR LUZON, ROBERTO RICALDE, MODESTO DE LEON, ALICIA MANGUBAT, and LENELITA BALBOA, *Respondents*

G.R. No. 214312, THIRD DIVISION, September 05, 2018, LEONEN, J.

This Court has repeatedly pronounced that the Office of the Ombudsman's orders and decisions in criminal cases may be elevated to this Court (SC) in a Rule 65 petition, while its orders and decisions in administrative disciplinary cases may be raised on appeal to the Court of Appeals. Hence, the Court of Appeals did not err in denying the petition (under Rule 43) questioning public respondent's finding of probable cause for lack of jurisdiction.

FACTS:

On September 9, 2002 the Chief Executive Officer of Amellar Solutions, wrote to then Mayor Raul Bendaña of Lemery, Batangas with an offer to automate various municipal operations. The Sangguniang Bayan issued a Resolution authorizing Bendaña to enter into an P8,250,000.00 loan agreement with Land Bank of the Philippines (Landbank) for the computerization of the municipality's revenue collection system.

Bendaña issued an Administrative Order forming a Technical Evaluation Committee on Computerization (Committee) to evaluate the unsolicited computerization proposals received by the municipality. They recommended that a proprietary computerization package be procured through direct contracting. It also recommended adopting Amellar Solutions' proposal since its "proposal

does not have any suitable equivalent capable of delivering the same benefits and advantage already enjoyed by at least fifteen (15) local government units nationwide."

The Sangguniang Bayan issued another Resolution authorizing Bendaña to "acquire a proprietary information technology project for Lemery, Batangas; source the appropriate funds; contract a loan or enter into a financing scheme; and enter into a contract with Amellar Solutions through direct contracting (single source procurement) procedure." Bendaña and Amellar Solutions executed an agreement for the computerization of Lemery's revenue generation system.

On November 14, 2005, Roberto Ricalde, Modesto De Leon, Alicia Mangubat, and Lenelita Balboa filed a complaint affidavit before the Office of the Ombudsman. They accused members of the Sangguniang Bayan of violating Republic Act No. 3019, or the Anti-Graft and Corrupt Practices Act, and Republic Act No. 9184, or the Government Procurement Reform Act, when they authorized Bendaña to enter into a direct contract with Amellar Solutions.

The Office of the Deputy Ombudsman issued a Joint Resolution, indicting the Sangguniang Bayan members for violating Article 177 of the Revised Penal Code and Section 3, paragraphs (e) and (g) of Republic Act No. 3019. It also recommended that they be found guilty of grave misconduct.

Ornales, Eguia, Vergara, De Castro, and Magnaye assailed the Office of the Deputy Ombudsman's Resolution with a Petition for Certiorari filed before the Court of Appeals.

The Court of Appeals dismissed the petition for lack of jurisdiction.

ISSUE:

Whether the CA has jurisdiction (NONE)

RULING:

In *Fabian vs Desierto*, the Court held that appeals from decisions of the Office of the Ombudsman in administrative disciplinary cases should be taken to the Court of Appeals under Rule 43 of the 1997 Rules of Civil Procedure. In so holding, the Court en Banc declared unconstitutional Section 27 of Republic Act 6770 or the Ombudsman Act of 1989, which provided that decisions of the Office of the Ombudsman may be appealed to the Supreme Court by way of a petition for review on certiorari under Rule 45 of the Rules of Court. Such provision was held violative of Section 30, Article VI of the Constitution, as it expanded the jurisdiction of the Supreme Court without its advice and consent.

Thus, it held that "under the present Rule 45, appeals may be brought through a petition for review on certiorari, but only from judgments and final orders of the courts enumerated in Section 1 thereof. Appeals from judgments and final orders of quasi-judicial agencies are now required to be brought to the Court of Appeals on a verified petition for review, under the requirements and conditions in Rule 43 which was precisely formulated and adopted to provide for a uniform rule of appellate procedure for quasi-judicial agencies." The Office of the Ombudsman is a quasi-judicial agency falling under Rule 43. "It is suggested, however, that the provisions of Rule should apply only to 'ordinary quasi-judicial agencies,' but not to the Office of the Ombudsman which is a 'high constitutional body.' We see no reason for this distinction for, if hierarchical rank should be a criterion, that proposition thereby disregards the fact that Rule 43 even includes the Office of the President and the Civil Service

Commission, although the latter is even an independent constitutional commission, unlike the Office of the Ombudsman, which is a constitutionally-mandated but statutorily-created body."

Thus, as a quasi-judicial agency, decisions of the Office of the Ombudsman in administrative disciplinary cases may only be appealed to the Court of Appeals through a Rule 43 petition.

While Republic Act No. 6770 may have been silent on the remedy available to a party aggrieved with the Office of the Ombudsman's finding of probable cause in a criminal case, *Tirol, Jr. v. Del Rosario* clarified that the remedy in this instance is not an appeal, but a petition for certiorari under Rule 65 of the Rules of Court **before this Court.**

This Court has repeatedly pronounced that the Office of the Ombudsman's orders and decisions in criminal cases may be elevated **to this Court** in a Rule 65 petition, while its orders and decisions in administrative disciplinary cases may be raised on appeal to the Court of Appeals. Hence, the Court of Appeals did not err in denying the petition questioning public respondent's finding of probable cause for lack of jurisdiction. Thus, petitioners' failure to avail of the correct procedure with respect to the criminal case renders public respondent's decision final.

OFFICE OF THE OMBUDSMAN, *Petitioner*, *v.* **ELMER M. PACURIBOT**, *Respondent*.

G.R. No. 193336, FIRST DIVISION, September 26, 2018, LEONARDO-DE CASTRO, *C.J.*

Respondent cannot successfully rely on Section 12, Rule 43 of the Rules of Court which provides:

SEC. 12. Effect of appeal. - The appeal shall not stay the award, judgment, final order or resolution sought to be reviewed unless the Court of Appeals shall direct otherwise upon such terms as it may deem just.

In the first place, the Rules of Court may apply to cases in the Office of the Ombudsman ***suppletorily only*** *when the procedural matter is not governed by any specific provision in the Rules of Procedure of the Office of the Ombudsman. Here, Section 7, Rule III of the Rules of Procedure of the Office of the Ombudsman, as amended, is categorical, an appeal shall not stop the decision from being executory.*

FACTS:
Respondent, Municipal Treasurer of El Salvador, Province of Misamis Oriental, was administratively charged by his wife before the Ombudsman of Immorality and Conduct Unbecoming of Public Officer allegedly for fathering two children with another woman. After the proceedings, the Ombudsman rendered its Decisionagainst respondent.

Respondent filed his Motion for Partial Reconsideration. However, in compliance to the directive of the Ombudsman, the Bureau of Local Government Finance, ordered the suspension of respondent from his office for a period of nine months.

Respondent filed before the Court of Appeals a Petition for *Certiorari* under Rule 65 of the Rules of Court, with a prayer for a temporary restraining order. The Court of Appeals issued a Resolution denying respondent's application for the issuance of the TRO. However it later promulgated its assailed Decision finding respondent's petition meritorious and, thus, setting aside the Ombudsman's directive for the immediate implementation of respondent's suspension. The Court of Appeals likewise denied the Ombudsman's motion for reconsideration. The Ombudsman, hence, interposed the present Petition, through the Office of the Solicitor General.

ISSUE:

Whether or not there was grave abuse of discretion on the part of the Ombudsman when it ordered the immediate execution of its July 23, 2008 Decision in OMB-M-A-07-029-B, suspending respondent for nine months for Immorality or Disgraceful and Immoral Conduct even before finality of said decision. (YES)

RULING:

At the outset, the death of respondent during the pendency of the instant case has not rendered moot and academic the issue under consideration x xx

Jurisdiction over an administrative case is not lost by the 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 implications. x xx

As to the merits of the present Petition, **jurisprudence has long settled with finality that the penalty imposed by the Ombudsman in an administrative case is immediately executory and that the filing or pendency of an appeal from such decision shall not stay its execution.** x xx

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 such officer. x xx

The Ombudsman's decision imposing the penalty of suspension for one year is *immediately executory pending appeal.* It cannot be stayed by the mere filing of an appeal to the CA. This rule is similar to that provided under Section 47 of the Uniform Rules on Administrative Cases in the Civil Service.

In the case of *In the Matter to Declare in Contempt of Court Hon. Simeon A. Datumanong, Secretary of the DPWH,* we held:

The Rules of Procedure of the Office of the Ombudsman are clearly procedural and no vested right of the petitioner is violated as he is considered preventively suspended while his case is on appeal. Moreover**, in the event he wins on appeal, he shall be paid the salary and such other emoluments that he did not receive by reason of the suspension or removal.** Besides, there is no such thing as a vested interest in an office, or even an absolute right to hold office. Excepting constitutional offices which provide for special immunity as regards salary and tenure, no one can be said to have any vested right in an office. x xx

Respondent cannot successfully rely on Section 12, Rule 43 of the Rules of Court which provides:SEC. 12. *Effect of appeal.* - The appeal shall not stay the award, judgment, final order or resolution sought to be reviewed unless the Court of Appeals shall direct otherwise upon such terms as it may deem just.

In the first place, the Rules of Court may apply to cases in the Office of the Ombudsman suppletorily only when the procedural matter is not governed by any specific provision in the Rules of Procedure of the Office of the Ombudsman. Here, Section 7, Rule III of the Rules of Procedure of the Office of the Ombudsman, as amended, is categorical, an appeal shall not stop the decision from being executory.

Moreover, Section 13(8), Article XI of the Constitution authorizes the Office of the Ombudsman to promulgate its own rules of procedure. In this connection, Sections 18 and 27 of the Ombudsman Act of 1989 also provide that the Office of the Ombudsman has the power to "promulgate its rules of procedure for the effective exercise or performance of its powers, functions and duties" and to amend or modify its rules as the interest of justice may require. For the CA to issue a preliminary injunction that will stay the penalty imposed by the Ombudsman in an administrative case would be to encroach on the rule-making powers of the Office of the Ombudsman under the Constitution and RA 6770 as the injunctive writ will render nugatory the provisions of Section 7, Rule III of the Rules of Procedure of the Office of the Ombudsman.

Clearly, Section 7, Rule III of the Rules of Procedure of the Office of the Ombudsman supersedes the discretion given to the CA in Section 12, Rule 43 of the Rules of Court when a decision of the Ombudsman in an administrative case is appealed to the CA. The provision in the Rules of Procedure of the Office of the Ombudsman that a decision is immediately executory is a special rule that prevails over the provisions of the Rules of Court. *Specialisderogatgenerali.* When two rules apply to a particular case that which was specially designed for the said case must prevail over the other. x xx

Thus, in the present Petition, the Ombudsman correctly asserted that its July 23, 2008 Decision in OMB-M-A-07-029-B is immediately executory even pending reconsideration or appeal and finality of said decision, pursuant to Section 7 of Rule III of the Rules of Procedure of the Office of the Ombudsman, as amended by Administrative Order No. 17 dated September 15, 2003.

SALVADOR P. ALMAGRO, BASILIO M. CRUZ, FRANCISCO M. JULIANO, ARTURO L. NOVENARIO AND THE HEIRS OF DEMOSTHENES V. CAÑETE, ***Petitioners***, ***v.*** **PHILIPPINE AIRLINES, INC., LUCIO TAN AND JOSE ANTONIO GARCIA**, ***Respondents***.
G.R. No. 204803,FIRST DIVISION, September 12, 2018, JARDELEZA, *J.*

Although the parties are not exactly the same, the concept of conclusiveness of judgment still applies because jurisprudence does not dictate absolute identity but only substantial identity of parties. There is substantial identity of parties when there is a community of interest between a party in the first case and a party in the second case, even if the latter was not impleaded in the first case.

Applying the case of Rodriguez, ALPAP and petitioners "share an identity of interest from which flowed an identity of relief sought, namely, the reinstatement of the terminated ALPAP members to their former positions."

FACTS:

This case arose out of the labor dispute in the 1990's between PAL and Airline Pilots Association of the Philippines (ALPAP), the legitimate labor organization and exclusive bargaining agent of all PAL's commercial pilots.

On December 9, 1997, ALPAP filed a notice of strike before the National Conciliation and Mediation Board on grounds of unfair labor practice and union-busting by PAL (strike case). The Department of Labor and Employment (DOLE) Secretary (Secretary) assumed jurisdiction over the labor dispute on December 23, 1997. Despite the assumption of jurisdiction by the Secretary, ALPAP declared and commenced a strike on June 5, 1998. After failed conciliation efforts, the Secretary issued a return-to-work order (return-to-work order) on June 7, 1998 addressed to all striking officers and members of ALPAP. The strike, however, continued until June 26, 1998 when ALPAP's officers and members attempted to report for work. The employees who attempted to return to work signed PAL's logbook for "Return to Work Returnees/Compliance" (PAL security logbook) on June 26, 1998. PAL, however, refused to accept these returning employees on the ground that the deadline imposed by the return-to-work order on June 9, 1998 had already lapsed.

This refusal of PAL to accept ALPAP's officers and members back to work prompted ALPAP to file an illegal lockout case against PAL with the NLRC. With the Secretary still exercising jurisdiction over the dispute, the illegal lockout case was consolidated with the strike case in the DOLE. In a Resolution, the Secretary: (1) declared the loss of employment status of all officers and members who participated in the strike in defiance of the return-to-work order; and (2) dismissed the illegal lockout case against PAL. This Resolution was questioned by ALPAP.

On January 13, 2003, ALPAP filed a motion with the Secretary to determine who among its officers and members should be reinstated or deemed to have lost their employment with PAL for their actual participation in the strike. ALPAP claimed that PAL dismissed all its members indiscriminately, including those who did not participate in the strike. The Secretary denied the motion on the ground that G.R. No. 152306 has determined with finality that "the erring pilots have lost their employment status" and "because these pilots have filed cases to contest such loss before another forum. In *Airline Pilots Association of the Philippines v. Philippine Airlines, Inc (Airline Pilots),* this Court affirmed the CA's finding and further declared that there is no necessity to conduct a proceeding to identify the

participants in the illegal strike. The records of the case reveal the names of the pilots who returned only after June 9, 1998 or the deadline imposed in the return-to-work order.

On August 25, 2000, the Labor Arbiter rendered a Decision in petitioners' favor.

The NLRC affirmed the Labor Arbiter's Decision. It ruled that petitioners acted in a concerted effort with the union, despite being on official leave. When the case was brought up before the CA via petition for *certiorari* under Rule 65 of the Rules of Court, the CA initially issued *certiorari* in favor of petitioners. The CA found that petitioners proved that they were on official leave of absence when (1) ALPAP staged the strike on June 5, 1998; and (2) when the strikers were ordered to return to work. On the other hand, PAL failed to adduce evidence that petitioners were among the strikers on that date. Their signatures on the logbook cannot be deemed to be admissions of their involvement in the strike because these are not clear and unequivocal statements.

Upon PAL's motion for reconsideration, the CA promulgated its Amended Decision reversing its earlier ruling. It took judicial notice of this Court's ruling in *Airline Pilots,* and declared that the signatures in the PAL security logbook of the pilots who attempted to belatedly comply with the Secretary's return-to-work order on June 26, 1998 sufficiently established that they are the strikers who defied the return-to-work order.

ISSUE:

Whether the CA committed error in finding that the NLRC committed no grave abuse of discretion (NO)

Whether petitioners are bound by the findings in *Airline Pilots* that the signatories in the PAL security logbook on June 26, 1998 participated in the strike and defied the Secretary's return-to-work order (YES)

RULING:

In labor disputes, grave abuse of discretion may be ascribed to the NLRC when: (1) its findings and conclusions are not supported by substantial evidence or in total disregard of evidence material to, or even decisive of, the controversy; (2) it is necessary to prevent a substantial wrong or to do substantial justice; (3) the findings of the NLRC contradict those of the Labor Arbiter; and (4) it is necessary to arrive at a just decision of the case.

Measured by these standards, the CA, in its Amended Decision, did not err when it found no grave abuse of discretion on the part of the NLRC.

Res judicata under the concept of conclusiveness of judgment is embodied in the third paragraph of Section 47, Rule 39 of the Rules of Civil Procedure. Otherwise known as "preclusion of issues" or "collateral estoppel," the doctrine of conclusiveness of judgment bars the relitigation of any right, fact, or matter in issue directly adjudicated or necessarily involved in the determination of an action before a competent court in which judgment is rendered on the merits and conclusively settled by the judgment therein. This applies to the parties and their privies regardless of whether the claim, demand, purpose, or subject matter of the two actions is the same. Thus, if a particular point or

question is in issue in the second action, and the judgment will depend on the determination of that particular point or question, a former judgment between the same parties or their privies will be final and conclusive in the second *if that same point or question was in issue and adjudicated in the first suit.*

Conclusiveness of judgment applies where there is identity of parties in the first and second cases, but there is no identity of causes of action. Simply put, conclusiveness of judgment bars the relitigation of particular facts or issues in another litigation between the same parties on a different claim or cause of action.

Here, the rule on conclusiveness of judgment also applies because the determination of who participated in the illegal strike subject of the return-to work order, and who defied the return-to-work order has long been declared settled in *Airline Pilots.* In this case, it is undisputed that all petitioners signed PAL's logbook for return to work returnees/return to work compliance. They are thus covered by the Court's finding that those who participated in the strike had lost their employment Hence, this question cannot be raised again here.

Furthermore, although the parties are not exactly the same, the concept of conclusiveness of judgment still applies because jurisprudence does not dictate absolute identity but only substantial identity of parties. There is substantial identity of parties when there is a community of interest between a party in the first case and a party in the second case, even if the latter was not impleaded in the first case. As this Court explained in *Rodriguez,* ALPAP and petitioners "share an identity of interest from which flowed an identity of relief sought, namely, the reinstatement of the terminated ALPAP members to their former positions."

In sum, the doctrines of conclusiveness of judgment and *stare decisis* warrant the denial of the petition. The CA correctly determined that the NLRC did not commit grave abuse of discretion in affirming the Labor Arbiter's Decision. Both the Labor Arbiter's and the NLRC's Decisions were based on substantial evidence. The logbook presented by PAL in this case, having the weight accorded to it by this Court in *Airline Pilots* and *Rodriguez,* serves as substantial evidence in proving that petitioners defied the return-to-work order. Thus, it cannot be said that grave abuse of discretion attended the administrative agencies' disposition of the consolidated complaints.

g. Dismissal, reinstatement, and withdrawal of appeal

RIZAL COMMERCIAL BANKING CORPORATION, *Petitioner,* -versus – F. FRANCO TRANSPORT, INC., REPRESENTED BY ITS PRESIDENT, MA. LIZA FRANCO-CRUZ, *Respondent.*
G.R. No. 191202, FIRST DIVISION, November 21, 2018, BERSAMIN, J.

Section 13, 14 Rule 41 of the Rules of Court empowers the RTC to dismiss appeals by notice of appeal, but such dismissal is based on only ***two grounds****, namely: (a) the* ***appeal is taken out of time****; or (b) the* ***non-payment of the docket and other fees within the reglementary period****.*

As pointed out in Ortigas & Company Limited Partnership v. Velasco, the RTC has no power to disallow an appeal on any other ground; ***hence, the RTC could not anchor its disallowance of the notice of appeal on any of the grounds stated in Rule 50 of the Rules of Court****, the determination of such grounds being addressed solely to the sound discretion of the CA as the appellate court.*

In this connection, ***the dismissal of the appeal by the RTC on the ground that the judgment or order appealed from was not appealable was done in grave abuse of discretion amounting to lack or excess of jurisdiction****, for it could only be made by the CA as the appellate court.*

Nonetheless, the Court notes that the controversy has been pending since May 2001. ***To simply uphold the CA's order to the RTC to give due course to the respondent's appeal could only prolong the proceedings*** *and delay the awaited resolution of the case. Any further delay is unacceptable because no less than this Court, through the resolutions promulgated on January 14, 2004 and February 11, 2004 in G.R. No. 160925, had already sustained the RTC's directive for the implementation of the writ of possession.*

FACTS:

F. Franco Transport, Inc. obtained loans from Rizal Commercial Banking Corporation (RCBC), in the amounts of P25,063,750.00 and P7,093,750.00. To secure the payment of said loans, F. Franco Transport executed a real estate mortgage over the subject property. When F. Franco Transport defaulted in the payment of said loan, RCBC instituted extra-judicial foreclosure proceedings on the subject property. In the ensuing public auction, said property was sold to RCBC as the highest bidder therein. F. Franco Transport failed to redeem the property.

RCBC filed before the Manila RTC a petition for the issuance of a writ of possession. Public respondent Judge granted the petition.

F. Franco Transport filed before the court a quo a "Very Urgent Motion to Quash Writ of Execution" manifesting that efforts were being exerted by it to amicably settle the issue with RCBC. F. Franco Transport, in any event, expressed its willingness to move out of the subject property within 120 days.

On 14 November 2001, public respondent Judge ordered that the execution of the writ of possession be suspended pending resolution of F. Franco Transport's motion dated 12 November 2001. After observing that the 120-day extension prayed for by F. Franco Transport had already expired, public respondent Judge, on 8 February 2002, denied F. Franco Transport's 12 November 2001 motion for being moot and academic.

Aggrieved, F. Franco Transport filed a petition for certiorari and prohibition before this Court assailing the order issued by public respondent. On 4 August 2003, the CA denied the petition for certiorari and prohibition filed by F. Franco Transport. Unperturbed, F. Franco Transport elevated the matter to the Supreme Court on a petition for review on certiorari but the Court denied the same.

RCBC filed before the court a quo an Ex-Parte Motion for Issuance of Writ of Possession. Public respondent granted the motion.

On 3 March 2006, F. Franco Transport filed a Motion for Reconsideration with Prayer to Hold in Abeyance the Issuance of an Alias Writ of Possession. Thereafter, or on 21 June 2006, F. Franco Transport also filed a Motion to Recall Alias Writ of Possession.

Subsequently, or on 10 October 2006, public respondent issued a writ of possession, directing public respondent anew to place RCBC in physical possession of the subject property.

On 9 November 2006, petitioner filed a Motion to Resolve Pending Motion RE: Motion to Recall Alias Writ of Possession dated 21 June 2006 with Motion to Hold in Abeyance the Implementation of the Alias Writ of Possession dated 10 October 2006. In her **Order dated 26 February 2007**, public respondent denied petitioner's 9 November 2006 motion. Anent F. Franco Transport's motion to recall alias writ of possession, public respondent denied the same as there was no alias writ of possession to be recalled when F. Franco Transport filed its motion to recall on 22 June 2006 considering that the alias writ was issued only on 10 October 2006.

F. Franco Transport filed a Notice of Appeal from public respondent Judge's 26 February 2007 Order. The lower court emphasized that the 26 February 2007 Order could not be the subject of any appeal since its issuance was merely incidental to the execution of a final order.

The CA granted the petition for certiorari, and directed the RTC to give due course to the notice of appeal of the respondent. It opined that the determination of whether an appeal was proper or not was outside the province of the RTC as the trial court but pertained instead to the CA as the appellate court where the intended appeal would be taken.

ISSUES:

Whether or not the CA erred in ordering the RTC to give due course to the respondent's notice of appeal. (YES)

RULING:

Appeal is an essential part of our judicial process. It is a statutory right that must be exercised only in the manner and in accordance with the provisions of law. It is, however, not a natural right, and is not part of due process. It is merely a statutory privilege and, therefore, the party appealing must comply with all the requirements provided by law.

Although the power to dismiss an appeal exists in both the trial and the appellate courts, the only difference being in the time and the reason for the exercise of the power, the CA ruled that the RTC's dismissal of the respondent's notice of appeal was tainted with jurisdictional error. We concur thereon with the CA.

Section 13, 14 Rule 41 of the Rules of Court empowers the RTC to dismiss appeals by notice of appeal, but such dismissal is based on only **two grounds**, namely: (a) the **appeal is taken out of time**; or (b) the **non-payment of the docket and other fees within the reglementary period**.

As pointed out in Ortigas & Company Limited Partnership v. Velasco, the RTC has no power to disallow an appeal on any other ground; **hence, the RTC could not anchor its disallowance of the notice of appeal on any of the grounds stated in Rule 50 of the Rules of Court**, the determination of such grounds being addressed solely to the sound discretion of the CA as the appellate court.

The determination of whether or not a case is appealable pertains to the appellate court. If the rule were otherwise, the trial court whose own judgment or ruling is sought to be reviewed, modified or reversed may be afforded the way to forestall the review, modification or reversal of the judgment or ruling no matter how erroneous or improper it is. In this connection, **the dismissal of the appeal by the RTC on the ground that the judgment or order appealed from was not appealable was**

done in grave abuse of discretion amounting to lack or excess of jurisdiction, for it could only be made by the CA as the appellate court.

Nonetheless, the Court notes that the controversy has been pending since May 2001. To simply uphold the CA's order to the RTC to give due course to the respondent's appeal could only prolong the proceedings and delay the awaited resolution of the case. Any further delay is unacceptable because no less than this Court, through the resolutions promulgated on January 14, 2004 and February 11, 2004 in G.R. No. 160925, had already sustained the RTC's directive for the implementation of the writ of possession issued by the RTC. It is high time that the petitioner be allowed to recover possession of the property covered by the writ of possession.

An examination of the submissions of the parties herein clearly shows that the respondent had no valid reason to further delay the implementation of the alias writ of possession. This is enough to warrant the immediate authorization for such implementation. Rule 13

DR. GIL J. RICH, *Petitioner*, -versus- GUILLERMO PALOMA III, ATTY. EVARISTA TARCE and ESTER L. SERVACIO, ***Respondents***.G.R. No. 210538, SECOND DIVISION, March 07, 2018, REYES, JR., *J*.

Indeed, consistent with the ruling in De Leon, the guiding principle in the resolution of the foregoing issues is that if the citations found in the appellants brief could sufficiently enable the CA to locate expeditiously the portions of the records referred to, then there is substantial compliance with the requirements of Section 13, Rule 44 of the Rules of Court.

In this case, the CA did not exercise the discretion to dismiss the appeal based on the absence of "a subject index with page of reference and compliant statement of facts" in the appellant's brief. Clearly, the CA did not find that the tenets of justice and fair play were disregarded by this omission. Rather, the CA chose to decide the case on the merits, which impliedly found the appellant's brief to be substantially sufficient insofar as the guiding principle mentioned above is concerned.

FACTS:

Sometime in 1997, Dr. Gil Rich (petitioner) lent P1,000,000.00 to his brother, Estanislao Rich (Estanislao). The agreement was secured by a real estate mortgage over a 1000-square-meter parcel of land with improvements. When Estanislao failed to make good on his obligations under the loan agreement, the petitioner foreclosed on the subject property. The petitioner was declared the highest bidder in the public auction, and subsequently, was issued a Certificate of Sale as purchaser/mortgagee.

Without the petitioner's knowledge, however, and prior to the foreclosure, it appeared from the records that on January 24, 2005, Estanislao entered into an agreement with Maasin Traders Lending Corporation (MTLC), where loans and advances amounting to P2.6 million were secured by a real estate mortgage over the same property.

On the strength of this document, respondent Ester L. Servacio (Servacio), as president of MTLC, exercised equitable redemption after the foreclosure proceedings. On March 15, 2006, respondent

Paloma III, again as sheriff of the RTC, issued a Deed of Redemption in favor of MTLC.

The deed then became the subject of the complaint filed before the RTC by the petitioner against respondent Servacio.The case was called for pre-trial. Unfortunately, neither defendant Servacio nor her lawyer appeared, and as a result of which, defendant Servacio was "declared as in default." The petitioner thus presented his evidence *ex parte*. The RTC rendered a decision in favor of the petitioner. Aggrieved, Servacio appealed the case to the CA, and the latter reversed the decision of the RTC.

Petitioner contends that respondent Servacio violated Section 13, Rule 44 of the Rules of Court when the latter's Appellant's Brief, which was submitted to the CA, "failed to contain a subject index with page of reference and compliant statement of facts." This omission, according to the petitioner, should be enough to warrant a reversal of the CA decision.

ISSUE:

Whether the appeal to the CA should have been dismissed for failure to comply with the rules. (NO)

RULING:

The Court, in *De Leon vs. Court of Appeals*, has already ruled that the grounds for dismissal of an appeal under Section 1 of Rule 50 of the Rules of Court are discretionary upon the CA. It said that:

> x xx Rule 50, Section 1 which provides specific grounds for dismissal of appeal manifestly "confers a power and does not impose a duty." "What is more, it is directory, not mandatory." With the exception of Sec. 1(b), the grounds for the dismissal of an appeal are directory and not mandatory, and it is not the ministerial duty of the court to dismiss the appeal. The discretion, however, must be a sound one to be exercised in accordance with the tenets of justice and fair play having in mind the circumstances obtaining in each case.

Indeed, consistent with the ruling in *De Leon*, the guiding principle in the resolution of the foregoing issues is that if the citations found in the appellants brief could sufficiently enable the CA to locate expeditiously the portions of the records referred to, then there is substantial compliance with the requirements of Section 13, Rule 44 of the Rules of Court.

In this case, the CA did not exercise the discretion to dismiss the appeal based on the absence of "a subject index with page of reference and compliant statement of facts" in the appellant's brief. Clearly, the CA did not find that the tenets of justice and fair play were disregarded by this omission. Rather, the CA chose to decide the case on the merits, which impliedly found the appellant's brief to be substantially sufficient insofar as the guiding principle mentioned above is concerned.

More, it is proper to emphasize that this discretion is particularly vested unto the CA and not unto this Court. Thus, absent any grave abuse of discretion in the application of the rules, the Court could not, and would not, interfere with the CA findings. Considering too that the petitioner merely (1) quoted the provisions of the rules that the appellant's brief" violated" and (2) showed the insufficiencies in the appellant's brief, but did not present any proof of any grave abuse of discretion on the part of the CA, the Court would not now dismantle a ruling that was reached based on a discretion which was not improperly exercised.

3. Petition for relief from judgment (Rule 38)

4. Annulments of judgment (Rule 47)

BARANGAY TONGONAN, ORMOC CITY, REPRESENTED BY ITS PUNONG BARANGAY, ISAGANI R. BAÑEZ, *Petitioner*, - versus - HON. APOLINARIO M. BUAYA, ORMOC CITY, CITY GOVERNMENT OF ORMOC, THE MUNICIPALITY OF KANANGA, LEYTE, AND PHILIPPINE NATIONAL DEVELOPMENT CORP., *Respondents*. G.R. No. 204183, FIRST DIVISION, June 20, 2018, TIJAM *J.*

Similar to the rules on verification, the rules on forum shopping are designed to promote and facilitate the orderly administration of justice; hence, it should not be interpreted with such absolute literalness as to subvert its own ultimate and legitimate objectives. The requirement of strict compliance with the provisions on certification against forum shopping merely underscores its mandatory nature to the effect that the certification cannot altogether be dispensed with or its requirements completely disregarded. It does not prohibit substantial compliance with the rules under justifiable circumstances, as also in this case.

FACTS:

The instant petition has as its factual background a boundary dispute between respondents Ormoc City and the Municipality of Kananga. To settle the controversy, Ormoc City and the Municipality of Kananga entered into an Amicable Settlement. Claiming that the Amicable Settlement constitutes an illegal relinquishment of the patrimony of Ormoc City in general and of petitioner in particular, petitioner lodged a petition before the CA seeking to annul the Amicable Settlement.

Because of certain procedural defects, the petition for annulment was initially dismissed. Subsequently, the CA reinstated the petition, noting that petitioner promptly corrected the procedural infirmities besetting its petition. Only respondents Municipality of Kananga and the Philippine National Oil Company-Energy Development Corporation (PNOC-EDC) filed their respective answers, while Ormoc City filed its comment joining petitioner and imploring the CA to give the latter's amended petition due course.

CA issued its presently assailed Resolution dismissing petitioner's amended petition for failure to submit the original of the Resolution of the Barangay Council, which specifically authorized Isagani R. Bañez, the Punong Barangay, to sign the Verification and Certification Against Non-Forum Shopping and to file the instant Amended Petition in behalf of petitioner. In addition, there is no competent evidence regarding the identity of petitioner's representative. Lastly, the Verification and Certification Against Non-Forum Shopping was subscribed and sworn to before an Assistant Provincial Prosecutor. The CA, in its second assailed Resolution, denied petitioner's motion for reconsideration. Hence this petition.

ISSUE:

Whether the identified infirmities merit dismissal of petitioner's amended petition.

RULING:

There is merit in the petition.

The Court is very much aware of the necessity of submitting a petition for annulment of judgment that is verified and of submitting a sworn certification of non-forum shopping as required under Rule 47, Section 4. Nevertheless, the strict interpretation of the procedural requirements, especially when there has been substantial compliance with the rules, does not find application in the instant case.

In this case, the amended petition was in fact accompanied by a certified true copy of the Barangay Resolution authorizing then Punong Barangay Isagani R. Bañez to file the amended petition. Hence, at the time the amended petition was filed, then Punong Barangay Isagani R. Bañez had sufficient authority to file the amended petition. What is lacking, however, is the authority coming from the Barangay Council for Punong Barangay Isagani R. Bañez to likewise execute the Certification and Verification of Non-forum shopping.
Petitioner attempted to cure this defect by submitting with its motion for reconsideration a new Barangay Council Resolution issued in favor of the succeeding Punong Barangay Periander R. Bañez and a new Certification and Verification of Non-forum Shopping executed by the latter with accompanying Postal I.D. as competent proof of identity.

The Court had laid down guidelines with respect to the non-compliance with the requirements on or submission of a defective Verification and Certification of Non-forum Shopping, as follows:

x xx

2. As to verification, non-compliance therewith or a defect therein does not necessarily render the pleading fatally defective. **The court may order its submission or correction or act on the pleading if the attending circumstances are such that strict compliance with the Rule may be dispensed with in order that the ends of justice may be served thereby**.

x xx

4. As to certification against forum shopping, non-compliance therewith or a defect therein, unlike in verification, is generally not curable by its subsequent submission or correction thereof, **unless there is a need to relax the Rule on the ground of "substantial compliance" or presence of "special circumstances or compelling reasons."**

In *Mediserv, Inc. v. Court of Appeals, et al*., the Court held that the failure to submit proof of the representative's authority to sign the verification/certification on non-forum shopping on the corporation's behalf was rectified when the required document was subsequently submitted to the CA. In said case, petitioner submitted the original of the Barangay Council Resolution authorizing the succeeding Punong Barangay Periander R. Bañez to file the amended petition and to sign the certification as an attachment to its motion for reconsideration. In line with the foregoing jurisprudence, the Court finds that this act constitutes substantial compliance.

In any case, the Court finds that the ends of substantive justice is better served by the resolution of the issue on whether or not there was a valid compromise concerning the boundary dispute between Ormoc City and the Municipality of Kananga, rather than dismiss the same on procedural technicality.

5. Collateral attack on judgments

T. Execution, satisfaction, and effect of judgments (Rule 39)

FENIX (CEZA) INTERNATIONAL, INC., *Petitioner*, -versus- HON. EXECUTIVE SECRETARY, HON. SECRETARY OF FINANCE, THE COMMISSIONER OF CUSTOMS, THE DISTRICT COLLECTOR OF CUSTOMS, HON. HEAD OF THE LAND TRANSPORTATION OFFICE, and THE CAGAYAN SPECIAL ECONOMIC ZONE AUTHORITY, *Respondents*.

G.R. No. 235258, SECOND DIVISION, August 06, 2018, PERLAS-BERNABE, *J.*

Res judicata literally means "a matter adjudged; a thing judicially acted upon or decided; a thing or matter settled by judgment." It also refers to the rule that a final judgment or decree on the merits by a court of competent jurisdiction is conclusive of the rights of the parties or their privies in all later suits on points and matters determined in the former suit.

In this case, res judicata, whether through bar by prior judgment or through conclusiveness of judgment, does not apply. While the private parties in Southwing, Forerunner, and the Fenix Case are all importers of used motor vehicles, the cases filed before the Court dealt with different issues and causes of action. In particular, the Southwing and Forerunner cases dealt with the constitutionality of the ban on importation of used motor vehicles as provided under EO 156, while the Fenix Case dealt with the constitutionality of EO 418. On the other hand, the issue in the Contempt Case is limited to whether or not respondents committed indirect contempt by going against the wordings of the Writ of Execution in the Fenix Case. Clearly, Southwing, Forerunner, and the Fenix Case do not bar the Contempt Case from proceeding. In view of the inapplicability of res judicata in this case, it then necessarily follows that there was no forum shopping.

FACTS:

On December 12, 2002, then President Gloria Macapagal Arroyo (PGMA) issued Executive Order No. (EO) 156, which provided, among others, for the ban on importation of all types of used motor vehicles, except those that may be allowed under its provisions. The constitutionality of the said issuance was then questioned before the Court in *Hon. Executive Secretary v. Southwing Heavy Industries, Inc.* (Southwing) where the Court held that Section 3.1 of EO 156- which provided for the aforesaid ban was "declared VALID insofar as it applies to the Philippine territory outside the presently fenced-in former Subic Naval Base area and VOID with respect to its application to the secured fenced-in former Subic Naval Base area."Meanwhile, on April 4, 2005, PGMA issued EO 418, Section 2 of which provides a specific duty in the amount of P500,000.00 in addition to the regular rates of import duty imposed on the list of articles listed in Annex A of the EO, as classified under Section 104 of the Tariff and Customs Code, as amended.

This prompted petitioner a domestic corporation to file a petition for declaratory reliefagainst respondents before the RTC Br. 8(*Fenix Case*). Essentially, the *Fenix Case* sought for the nullity of EO 418 for being an invalid exercise of delegated legislative authority and for violating the due process and equal protection clauses in the Constitution. After due proceedings, the RTC Br. 8 promulgated a Decision declaring EO 418 void and unconstitutional. On reconsideration, however, the RTC Br. 8 issued a Resolution limiting its earlier declaration of nullity and unconstitutionality to Section 2 of

EO 418 only. Respondents elevated the matter before the Court, which in turn, issued a Minute Resolution dated November 15, 2010 affirming the RTC Br. 8 ruling. As the Court pronouncement became final and executory, the RTC Br. 8 issued a Writ of Execution dated June 14, 2011 against respondents, resulting in the Bureau of Customs (BOC) allowing the importations made by petitioner.

In the meantime, another case questioning the validity of EO 156 was filed before the Regional Trial Court of Aparri, Cagayan, Branch 6 by Forerunner Multi Resources, Inc. (Forerunner). The issue of the propriety of the issuance of injunctive relief in that case was elevated all the way to the Court in *Executive Secretary v. Forerunner Multi Resources, Inc.* (*Forerunner*) which the Court ruled against its issuance.

Alarmed by the seemingly clashing rulings of the Court, the Automotive Rebuilding Industry of Cagayan Valley sought for a dialogue with the BOC, which resulted in the enforcement of the provisions of EO 156 by the latter. According to petitioner, the BOC consequently disallowed its importations of used motor vehicles, over its vehement objections. Claiming that such disallowance is directly contradictory to the Writ of Execution issued in the *Fenix Case*, petitioner filed the instant petition for indirect contemptagainst respondents before the RTC Br. 8 (*Contempt Case*).

For respondents' part, they contend that: (*a*) the *Contempt Case* is already barred by prior judgment in *Southwing* and *Forerunner* which upheld the validity of EO 156 and further decreed that the same was not repealed by EO 418; (*b*) petitioner is guilty of forum shopping as it attempts tore-litigate an issue already settled in *Southwing* and *Forerunner*; and (*c*) there is nothing in the rulings of the RTC Br. 8 that EO 418 impliedly repealed EO 156.The RTC Br. 8 granted respondents' motion to dismiss. Thus, *res judicata* applies in the *Contempt Case*. Relatedly, the RTC Br. 8 concluded that since *res judicata* is applicable to the *Contempt Case*, then petitioner is guilty of forum shopping.Aggrieved, petitioner appealed to the CA, which affirmed the RTC.

ISSUE:

Whether res judicata applies in this Contempt case. (NO)

RULING:

Res judicata literally means "a matter adjudged; a thing judicially acted upon or decided; a thing or matter settled by judgment." It also refers to the rule that a final judgment or decree on the merits by a court of competent jurisdiction is conclusive of the rights of the parties or their privies in all later suits on points and matters determined in the former suit. It rests on the principle that parties should not to be permitted to litigate the same issue more than once; that, when a right or fact has been judicially tried and determined by a court of competent jurisdiction, or an opportunity for such trial has been given, the judgment of the court, so long as it remains unreversed, should be conclusive upon the parties and those in privity with them in law or estate.

There are two (2) distinct concepts of *res judicata*, namely: (*a*) bar by former judgment; and (*b*) conclusiveness of judgment. In *Spouses Ocampo v. Heirs of Dionisio*, the Court eloquently discussed these concepts as follows:

> There is "bar by prior judgment" when, as between the first case where the judgment was rendered and the second case that is sought to be barred, there is identity of parties, subject matter, and causes of action. In this instance, the judgment in the first case constitutes an absolute bar to the second action. Otherwise put, the judgment or decree of the court of competent jurisdiction on the merits concludes the litigation between the parties, as well as their privies, and constitutes a bar to a new action or suit involving the same cause of action before the same or other tribunal.
>
> But where there is identity of parties in the first and second cases, but no identity of causes of action, the first judgment is conclusive only as to those matters actually and directly controverted and determined and not as to matters merely involved therein. This is the concept of *res judicata* known as "conclusiveness of judgment." Stated differently, any right, fact or matter in issue directly adjudicated or necessarily involved in the determination of an action before a competent court in which judgment is rendered on the merits is conclusively settled by the judgment therein and cannot again be litigated between the parties and their privies whether or not the claim, demand, purpose, or subject matter of the two actions is the same.
>
> The bar by prior judgment requires the following elements to be present for it to operate: (*a*) a former final judgment that was rendered on the merits; (*b*) the court in the former judgment had jurisdiction over the subject matter and the parties; and (*c*) identity of parties, subject matter and cause of action between the first and second actions. In contrast, the elements of conclusiveness of judgment are identity of: (*a*) parties; and (*b*) subject matter in the first and second cases.

Meanwhile, there is forum shopping "when a party repetitively avails of several judicial remedies in different courts, simultaneously or successively, all substantially founded on the same transactions and the same essential facts and circumstances, and all raising substantially the same issues either pending in or already resolved adversely by some other court." Forum shopping is an act of malpractice that is prohibited and condemned because it trifles with the courts and abuses their processes. It degrades the administration of justice and adds to the already congested court dockets.

In this case, *res judicata*, whether through bar by prior judgment or through conclusiveness of judgment, does not apply. While the private parties in *Southwing, Forerunner*, and the *Fenix Case* are all importers of used motor vehicles, the cases filed before the Court dealt with different issues and causes of action. In particular, the *Southwing* and *Forerunner* cases dealt with the constitutionality of the ban on importation of used motor vehicles as provided under EO 156, while the *Fenix Case* dealt with the constitutionality of EO 418. On the other hand, the issue in the *Contempt Case* is limited to whether or not respondents committed indirect contempt by going against the wordings of the Writ of Execution in the *Fenix Case*. Clearly, *Southwing, Forerunner*, and the *Fenix Case* do not bar the *Contempt Case* from proceeding. In view of the inapplicability of *res judicata* in this case, it then necessarily follows that there was no forum shopping.

CARLOS GAUDENCIO M. MAÑALAC, *Complainant*, -versus- HERNAN E. BIDAN, SHERIFF IV, REGIONAL TRIAL COURT, BRANCH 53, BACOLOD CITY, *Respondent*.

A.M. No. P-18-3875, FIRST DIVISION, October 03, 2018, DEL CASTILLO, J.

In Calaunan v. Madolaria, this Court ruled that "[f]ailure to observe the requirements of Section 10(c), Rule 39 of the Rules of Court constitutes simple neglect of duty, which is a less grave offense punishable by one (1) month and one (1) day to six (6) months suspension" pursuant to Section 52(6)(1), Revised Uniform Rules on Administrative Cases in the Civil Service. Indeed, under Section 46(D)(1), Rule 10 of the Revised Rules on Administrative Cases in the Civil Service (RRACCS), which applies to the instant case, simple neglect of duty is classified as a less grave offense and 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.

At the risk of belaboring a point, while it is settled that respondent sheriffs duty to implement the writ was ministerial, it is equally settled that it was respondent sheriffs mandated duty to first demand that PI One peaceably vacate the subject lot within three working days after service of the writ.

FACTS:

The present administrative case arose from the notarized Complaint--Affidavit filed with the Office of the Court Administrator by Carlos Gaudencio M. Mañalac, for and on behalf of Philippine One Investment (SPY-AMC), Inc., against Hernan E. Bidan, Sheriff IV, Branch 53, Regional Trial Court, Bacolod City, Negros Occidental. Complainant accused respondent sheriff with gross misconduct, grave abuse of authority, and conduct prejudicial to the best interest of the service relative to his actuations in SP Case No. M-6682, entitled "In the matter of Petition for Rehabilitation with Prayer for Staying All Claims, Actions and Proceedings Against Philippine Investment One (SPV-AMC), Inc. v. Metropolitan Bank and Trust Company," and in Commercial Court Case No. 05-057, entitled "In the Matter of the Petition for Corporate Rehabilitation; Medical Associates Diagnostics Center, Inc., petitioner."

Complainant alleged that PI One was a special purpose vehicle created under Republic Act No. 9182, otherwise known as the Special Purpose Vehicle Law of 2002; that it was undergoing corporate rehabilitation before Branch 149 of the RTC Makati in SP Case No. M-6682; that in said case, RTC-Branch 149 had issued a Stay Order dated September 23, 2008, which covered, among others, Transfer Certificate of Title No. 166-2015000786 registered in its name; that it acquired the subject lot pursuant to a foreclosure proceeding because of the failure of Medical Associates Diagnostics Center, Inc. to pay off its mortgage on the subject lot; that it came into lawful possession of the subject lot by virtue of a Writ of Possession issued by Branch 61 of the RTC of Kabankalan City as shown in that court's Order of October 20, 2015; that in the afternoon of May 13, 2016, its office, received a call from its security guards stationed in the subject lot to the effect that the former owner of the property Dr. Enigardo Legislador, Jr. in the company of respondent sheriff, as well as certain civilians, and security guards, "stormed" the subject lot in an apparent illegal take-over of the same; that its in-house counsel remonstrated with respondent sheriff that it had not received any court order, notice, writ or any other process in respect to the subject lot, which at the time was under custodia legis of the RTC-Makati, hence the take-over was illegal and should not be implemented; that as an officer of the court, respondent sheriff knew, or ought to have known, that he must first serve upon the adverse

party, the court order, notice, writ or any other process before he could proceed with its implementation; that respondent sheriff knew, or ought to have known, too, that a motion for the issuance of a writ of execution always contains a notice to the adverse party; that respondent sheriffs blatant disregard of established law and procedure deprived complainant of its rights to due process, and unlawfully dispossessed it of the subject lot; that respondent sheriffs overzealous implementation of the court's processes, which was vitiated by lack of proper notice to the adverse party, constituted grave abuse of authority and conduct prejudicial to the best interest of the service.

OCA recommended that respondent sheriff be found guilty of abuse of authority and conduct prejudicial to the service, and that he be penalized with a fine of P10,000.00, plus a strong warning that a repetition of the same or similar offense shall be dealt with more severely by the Court.

ISSUE:

Whether or not the respondent sheriff erred in enforcing the writ. (YES)

RULING:

It is hornbook law that "[a] sheriff who enforces the writ without the required notice or before the expiration of the three-day period runs afoul with Section 10(c) of Rule 39." Thus it is provided -

> SECTION 10. Execution of judgments for specific act. -
>
> x x x x
>
> (c) Delivery or Restitution of Real Property. - The officer shall demand of the person against whom the judgment for the delivery or restitution of real property is rendered and all persons claiming rights under him to peaceably vacate the property within three (3) working days, and restore possession thereof to the judgment obligee; otherwise, the officer shall oust all such persons therefrom with the assistance, if necessary, of appropriate peace officers, and employing such means as may be reasonably necessary to retake possession, and place the judgment obligee in possession of such property. Any costs, damages, rents or profits awarded by the judgment shall be satisfied in the same manner as a judgment for money.

In Calaunan v. Madolaria, this Court ruled that "[f]ailure to observe the requirements of Section 10(c), Rule 39 of the Rules of Court constitutes simple neglect of duty, which is a less grave offense punishable by one (1) month and one (1) day to six (6) months suspension" pursuant to Section 52(6)(1), Revised Uniform Rules on Administrative Cases in the Civil Service. Indeed, under Section 46(D)(1), Rule 10 of the Revised Rules on Administrative Cases in the Civil Service (RRACCS), which applies to the instant case, simple neglect of duty is classified as a less grave offense and 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.

At the risk of belaboring a point, while it is settled that respondent sheriffs duty to implement the writ was ministerial, it is equally settled that it was respondent sheriffs mandated duty to first demand that PI One peaceably vacate the subject lot within three working days after service of the writ.

With respect to the proper penalty, this Court notes that the OCA had appreciated one extenuating circumstance, i.e. "[respondent's] violation of the procedure in the implementation of the writ is not so grave and absent a showing of malice and bad faith". Under Section 49(a), Rule 10 of the RRACCS, "the minimum of the penalty shall be imposed where only mitigating and no aggravating circumstances are present." Hence, suspension for one month and one day should be the appropriate imposable penalty. Even then, it has been held in some cases that suspension would not be practical as respondent's work would be left unattended, for which reason a fine may be imposed instead, so that he can perform the duties of his office without interruption. Corollary thereto, it has been held that since sheriffs are actually discharging frontline functions, the penalty of fine may be imposed in lieu of suspension from office pursuant to Section 47(1)(b), Rule 10 of the RRACCS.14

Balancing all the equities in this case, this Court takes the view that the proper imposable fine should be equivalent to respondent sheriffs salary for one month and one day, computed on the basis of his salary at the time the decision becomes final and executory, having in view Sections 47(2) and (6), Rule 10 of the RRACCS.

SPS. LARRY AND FLORA DAVIS, *Petitioners*, -versus- SPS. FLORENCIO AND LUCRESIA DAVIS, *Respondents.*GR No. 233489, THIRD DIVISION, Mar 07, 2018, VELASCO JR., *J.*

Under Section 6, Rule 39 of the Rules of Court, a "judgment may be executed within five (5) years from the date of its entry or from the date it becomes final and executory. After the lapse of such time, and before it is barred by the statute of limitations, a judgment may be enforced by action." Nonetheless, this Court held that there had been many instances where it allowed execution by motion even after the lapse of five years, upon meritorious grounds. These exceptions have one common denominator, and that is: ***the delay is caused or occasioned by actions of the judgment debtor and/or is incurred for his benefit or advantage.***

In this case, the decision sought to be enforced became final and executory on October 2, 2004. Upon the petitioners' motion, a writ of execution was issued in 2005, which was well within the said five-year period. The writ, however, was repeatedly returned unserved and unimplemented. The petitioners later discovered the reason therefor. The respondents had sold the subject property to other parties. Worse, a new title has already been issued to the latter. As such, the petitioners were compelled to file an action for annulment of title and document against these new registered owners.

Considering that the delay was not due to the fault of the petitioners but of the respondents, who deliberately sold the subject property to another to avoid the outcome of the case, it is only logical, just, and equitable that the period during which an action for annulment of title and document was being litigated upon shall be deemed to have interrupted or tolled the running of the five-year period for enforcement of a judgment by mere motion.

FACTS:

On January 29, 1991, the petitioners, as vendees, and the herein respondents Spouses Florencio and Lucresia Davis, as vendors, entered into a Contract to Sell over a 500-square meter lot in Banga, Meycauayan, Bulacan, covered by Transfer Certificate of Title (TCT) No. T-226201 (M) (subject property) for a consideration of P500,000. As agreed upon, the petitioners gave the respondents the sum of P200,000 as downpayment while the remaining balance of P300,000 was made payable in 12 equal monthly installments. The respondents agreed to execute the corresponding Deed of Absolute Sale upon full payment of the purchase price. After full payment thereof and despite repeated demands, however, the respondents failed and refused to execute the Deed of Absolute Sale to the petitioners. This prompted the latter to initiate a **Complaint for Specific Performance and Damages** against the former **before Branch 78 (Br. 78) of the RTC Malolos**. A notice of *lis pendens* was then annotated at the back.

On appeal, the CA affirmed *in toto* the aforesaid ruling in its Decisiondated August 31, 2004, which became final and executory on October 2, 2004.

Accordingly, on May 11, 2005, the petitioners moved for the execution of the February 13, 1998 Decision of the RTC Malolos (Br. 78), which was granted. A writ of execution was subsequently issued. Unfortunately, this writ was not implemented primarily because the respondents already sold the subject property and new TCT No. 421671 (M) was issued. But the notice of *lis pendens* was still carried over to the new title. The petitioners were, thus, compelled to file a**n action for annulment of title and document against the new registered owners** of the subject property **before Br. 15, RTC Malolos**, **itruled in favor of the petitioners** and declared TCT No. 421671 (M) as null and void and restored TCT No. T-226201 (M). This Decision became final and executory.

With this in view, the **petitioners filed an Urgent *Ex-Parte* Manifestation and Motion on July 13, 2016**for the implementation of the February 13, 1998 Decision of the RTC Malolos (Br. 78) by issuing a writ of execution to direct the respondents to execute a Deed of Absolute Sale in their favor pursuant to Section 10 (a), Rule 39 of the Rules of Court. In their Comment, the respondents opposed arguing that the said Decision cannot be enforced by a mere motion or by an action for revival of judgment since 10 years had already lapsed from the time it became final. In their Reply, the petitioners insisted that the period within which to move for the execution of the aforesaid Decision was deemed suspended with their filing of an action for annulment of title and document involving the subject property before the RTC Malolos (Br. 15) to enable a complete and effective relief in their favour.

RTC Malolos (Br. 78) denied the petitioners' Urgent *Ex-Parte* Manifestation and Motion explaining that the consequent filing of annulment of title involving the subject property before Br. 15 does not toll the running of the period.

ISSUE:

Whether a writ of execution in favor of petitioners to execute and implement the Decision dated February 13, 1998 should be issued. (YES)

RULING:

Under Section 6, Rule 39 of the Rules of Court, a "judgment may be executed within five (5) years from the date of its entry or from the date it becomes final and executory. After the lapse of such time, and before it is barred by the statute of limitations, a judgment may be enforced by action." Nonetheless, this Court held that there had been many instances where it allowed execution by motion even after the lapse of five years, upon meritorious grounds. These exceptions have one common denominator, and that is: *the delay is caused or occasioned by actions of the judgment debtor and/or is incurred for his benefit or advantage*.

Here, the decision sought to be enforced became final and executory on October 2, 2004. Upon the petitioners' motion, a writ of execution was issued in 2005, which was well within the said five-year period. The writ, however, was repeatedly returned unserved and unimplemented. The petitioners later discovered the reason therefor. The respondents had sold the subject property to other parties. Worse, a new title has already been issued to the latter. As such, the petitioners were compelled to file an action for annulment of title and document against these new registered owners. Fortunately, the court ruled in petitioners' favor, which ruling became final and executory on July 23, 2012. Petitioners consequently moved for its execution resulting in the cancellation of the title in the names of the new registered owners and the restoration of the title in the names of the respondents. Chronologically speaking, the motion for execution filed on July 13, 2016 was almost 12 years after the decision became final and executory. Petitioners, however, maintain that the period during which it was compelled to file another action involving the subject property just to enable a complete and effective relief in their favor should *not* be taken into account in the computation of the five-year period.

This Court sustains the petitioners' position. Considering that the delay was not due to the fault of the petitioners but of the respondents, who deliberately sold the subject property to another to avoid the outcome of the case filed against them, and which delay incurred to their benefit/advantage, it is only logical, just, and equitable that the period during which an action for annulment of title and document was being litigated upon shall be deemed to have interrupted or tolled the running of the five-year period for enforcement of a judgment by mere motion. Otherwise, the respondents were rewarded for escaping the fulfilment of their obligation. Therefore, in computing the time limited for suing out an execution, the time during which execution is stayed should be excluded, and the time will be extended by any delay occasioned by the debtor.

DANIEL A. VILLAREAL, JR. (ON BEHALF OF ORLANDO A. VILLAREAL), *Petitioner*, - versus - METROPOLITAN WATERWORKS AND SEWERAGE SYSTEM, *Respondent*. G.R. No. 232202, FIRST DIVISION, February 28, 2018, TIJAM, *J.*

A final and executory judgment may be executed by motion within five years or by action for revival of judgment within ten years reckoned from the date of entry of judgment. The date of entry, in turn, is the same as the date of finality of judgment. By jurisprudence, for execution by motion to be valid, the judgment creditor must ensure the accomplishment of two acts within the five-year prescriptive period, as follows: (a) the filing of the motion for the issuance of the writ of execution; and (b) the court's actual issuance of the writ.

Here, the RTC Branch 96 Decision dated September 27, 2002 became final and executory on December 15, 2002. *By operation of law, December 15, 2002 is likewise the date of entry of*

*judgment.**Consequently, the five-year prescriptive period for the execution of the RTC decision by mere motion must be reckoned from December 15, 2002.***

MWSS filed a Motion for Issuance of Writ of Execution of the RTC Decision on May 17, 2004. This is within five years from December 15, 2002 - the date when the decision became final and executory. Thus, the first act was accomplished. There is, however, non-compliance with the second act.

Records show that the MeTC issued an Order granting the said motion only on July 28, 2014. More than a year after the grant, or on October 26, 2015, the MeTC issued the Writ of Execution. ***Reckoned from the entry of judgment on December 15, 2002, more than 12 years have elapsed after the actual writ of execution was finally issued by the MeTC. This is clearly beyond the five-year prescriptive period within which the court may issue the writ of execution. By then, the MeTC was already stripped of its jurisdiction. Thus, the writ of execution it issued on October 26, 2015 is null and void.***

We cannot subscribe to MWSS' insistence that Orlando's filing of his Comment/Opposition to the Motion for Issuance of Writ of Execution, caused the delay in the execution of judgment. There are instances where this Court allowed execution by motion even after the lapse of five years upon meritorious grounds. These exceptions have one common denominator, i.e., the delay is caused or occasioned by actions of the judgment debtor and/or is incurred for his benefit or advantage.

Orlando merely filed a comment to MWSS' motion for the issuance of a writ of execution. He cannot be faulted in doing so. There is neither a law nor a rule which prevents him from filing a comment. Apparently, the delay was not brought about by the filing of the comment; but instead, the period within which the MeTC acted upon it.

FACTS:

The MeTC of Quezon City dismissed Civil Case No. 21293 for Unlawful Detainer, entitled "*Metropolitan Waterworks and Sewerage System v. Orlando A. Villareal and other persons claiming Rights Under Him,*" for being prematurely filed and for lack of cause of action.

On appeal by respondent Metropolitan Waterworks Sewerage System (MWSS), the **RTC Branch 96, rendered a Decision on September 27, 2002,** reversing the MeTC's judgment, and ordered that Orlando and all persons claiming rights under him to vacate the premises and surrender peacefully the possession thereof to MWSS; and to pay the amount of P2,500.00 as reasonable compensation from November 7, 1997 until the possession is restored to MWSS.

On **December 15, 2002,** the RTC Clerk of Court issued an Entry of Judgment/Order, stating that the **RTC Decision has become final and executory.**

Within a period of two years or on May 17, 2004, MWSS filed a Motion for Issuance of Writ of Execution with the MeTC.

Orlando Villareal (Orlando) filed his Comment/Opposition, praying that the motion be held in abeyance pending compliance by MWSS with the provision of Section 23 of Republic Act No. 7279, also known as the Urban Development and Housing Act of 1992.

More than 10 years from the filing of MWSS' motion for execution or on July 28, 2014, the MeTC issued an Order, granting the motion for issuance of writ of execution. The MeTC ruled that R.A. No. 7279 does not find application, since Orlando failed to prove that he falls under the category of "underprivileged and homeless citizens," who are the beneficiaries of the said Act.

On October 26, 2015, the MeTC issued a Writ of Execution, for the satisfaction of the RTC Decision dated September 27, 2002. Pursuant to the writ of execution, on April 19, 2016, the MeTC Sheriff III sent a Sheriffs Notice to Vacate and Pay to Orlando.

Daniel Villareal, Jr. (on behalf of Orlando), filed a Petition for *Certiorari* under Rule 65 with the RTC Branch 215, challenging the Writ of Execution dated October 26, 2015 and the Sheriffs Notice to Vacate and Pay. He argued that the five-year period under Section 6, Rule 39 of the Rules was violated since the execution was done more than 10 years from the finality of the RTC decision.

MWSS countered that the five-year period under the Rules within which to enforce a judgment by mere motion run only against the judgment obligee and not the court that will resolve/decide it. MWSS likewise alleged that Orlando's filing of Comment/Opposition caused the delay in the execution of judgment.

ISSUE:

Whether the writ of execution issued by the MeTC on October 26, 2015 is null and void for violating the five-year period under Section 6, Rule 39. (YES)

RULING:

Execution may be either through motion or an independent action. The two modes of execution under the Rules are available, depending on the timing when the prevailing party invoked his right to enforce the court's judgment.

Execution by motion is only available if the enforcement of the judgment was sought within five (5) years from the date of its entry. This is a matter of right. On the other hand, execution by independent action is mandatory if the five-year prescriptive period for execution by motion had already elapsed. The said judgment is reduced to a right of action which must be enforced by the institution of a complaint in a regular court. The action must be filed before it is barred by the statute of limitations which, under the Civil Code, is ten (10) years from the finality of the judgment.

Corollary, a final and executory judgment may be executed by motion within five years or by action for revival of judgment within ten years reckoned from the *date of entry of judgment*. The date of entry, in turn, is the same as the date of finality of judgment.

By jurisprudence, for execution by motion to be valid, the judgment creditor must ensure the accomplishment of two acts within the five-year prescriptive period, as follows: (a) the filing of the motion for the issuance of the writ of execution; and (b) the court's actual issuance of the writ.

Here, the RTC Branch 96 Decision dated September 27, 2002 became final and executory on December 15, 2002. By operation of law, December 15, 2002 is likewise the date of entry of

judgment. **Consequently, the five-year prescriptive period for the execution of the RTC decision by mere motion must be reckoned from December 15, 2002.**

MWSS filed a Motion for Issuance of Writ of Execution of the RTC Decision on May 17, 2004. This is within five years from December 15, 2002 - the date when the decision became final and executory. Thus, the first act was accomplished. There is, however, non-compliance with the second act.

The **five-year prescriptive period** reckoned from the entry of judgment **mentioned in Section 6, Rule 39 of the Rules, should be observed both by the winning party** who filed the motion, *i.e., judgment obligee/creditor*, **andthe court that will resolve the same.** Simply put, the winning party may file the motion for execution within the five-year period; and the court should issue the actual writ of execution pursuant to the motion within the same period. After the lapse of the five-year period, any writ issued by the court is already null and void, since the court no longer has jurisdiction over the issuance of the writ.

Records show that the MeTC issued an Order granting the said motion only on July 28, 2014. More than a year after the grant, or on October 26, 2015, the MeTC issued the Writ of Execution. **Reckoned from the entry of judgment on December 15, 2002, more than 12 years have elapsed after the *actual* writ of execution was finally issued by the MeTC. This is clearly beyond the five-year prescriptive period within which the court may issue the writ of execution. By then, the MeTC was already stripped of its jurisdiction. Thus, the writ of execution it issued on October 26, 2015 is null and void.**

We cannot subscribe to MWSS' insistence that Orlando's filing of his Comment/Opposition to the Motion for Issuance of Writ of Execution, caused the delay in the execution of judgment.

There are instances where this Court allowed execution by motion even after the lapse of five years upon meritorious grounds. These exceptions have one common denominator, *i.e., the delay is caused or occasioned by actions of the judgment debtor and/or is incurred for his benefit or advantage*.

In *Yau v. Silverio, Sr.*, We stressed that:

> [I]n computing the time limit for enforcing a final judgment, the general rule is that there should not be included the time when execution is stayed, either by agreement of the parties for a definite time, by injunction, by the taking of an appeal or writ of error so as to operate as a supersedeas, by the death of a party or otherwise. Any interruption or delay occasioned by the debtor will extend the time within which the writ may be issued without *scire facias*. Thus, the time during which execution is stayed should be excluded, and the said time will be extended by any delay occasioned by the debtor.

In this case, there is an absence of any showing on the part of MWSS that the execution of the RTC decision was stayed "*by agreement of the parties for a definite time, by injunction, by the taking of an appeal or writ of error so as to operate as a supersedeas, by the death of a party or otherwise*," or by any circumstance that would further delay its implementation.

Orlando merely filed a comment to MWSS' motion for the issuance of a writ of execution. He cannot be faulted in doing so. There is neither a law nor a rule which prevents him from filing a comment.

Apparently, the delay was not brought about by the filing of the comment; but instead, the period within which the MeTC acted upon it.

REDANTE SARTO y MISALUCHA, petitioner, -versus- PEOPLE OF THE PHILIPPINES, Respondent. G.R. No. 206284, THIRD DIVISION, February 28, 2018, MARTIRES, J.

Before the divorce decree can be recognized by our courts, the party pleading it must prove it as a fact and demonstrate its conformity to the foreign law allowing it. Proving the foreign law under which the divorce was secured is mandatory considering that Philippine courts cannot and could not be expected to take judicial notice of foreign laws. For the purpose of establishing divorce as a fact, a copy of the divorce decree itself must be presented and admitted in evidence. This is in consonance with the rule that a foreign judgment may be given presumptive evidentiary value only after it is presented and admitted in evidence.

FACTS:

Redante was charged with the crime of bigamy for allegedly contracting two (2) marriages: the first, with Maria Socorro G. Negrete (Maria Socorro), and the second, without having the first one legally terminated, with private complainant Fe R. Aguila (Fe). The charge stemmed from a criminal complaint filed by Fe against Redante

During his arraignment, Redante entered a plea of "not guilty." Pre-trial ensued wherein Redante admitted that he had contracted two marriages but interposed the defense that his first marriage had been legally dissolved by divorce obtained in a foreign country

RTC: In its judgment, the RTC found Redante guilty beyond reasonable doubt of the crime of bigamy. The trial court ratiocinated that Redante's conviction is the only reasonable conclusion for the case because of his failure to present competent evidence proving the alleged divorce decree; his failure to establish the naturalization of Maria Socorro; and his admission that he did not seek judicial recognition of the alleged divorce decree.

CA: The CA affirmed the RTC's Judgment. The appellate court ratiocinated that assuming the authenticity and due execution of the Certificate of Divorce, since the order of divorce or the divorce decree was not presented, it could not ascertain whether said divorce capacitated Maria Socorro, and consequently Redante, to remarry. It continued that Redante failed to present evidence that he had filed and had secured a judicial declaration that his first marriage had been dissolved in accordance with Philippine laws prior to the celebration of his subsequent marriage to Fe.

Hence, this petition

ISSUE:

Whether or not petitioner Redante prove the existence of the divorce as a fact?

RULING:

No. Petitioner Redante failed to prove the existence of the divorce as a fact.

To prove the divorce and the foreign law allowing it, the party invoking them must present copies thereof and comply with Sections 24 and 25, Rule 132 of the Revised Rules of Court. Pursuant to these rules, the divorce decree and foreign law may be proven through (1) an official publication or (2) or copies thereof attested to by the officer having legal custody of said documents. If the office which has custody is in a foreign country, the copies of said documents must be (a) accompanied by a certificate issued by the proper diplomatic or consular officer in the Philippine foreign service stationed in the foreign country in which the record is kept; and (b) authenticated by the seal of his office.

Applying the foregoing, the Court is convinced that Redante failed to prove the existence of the divorce as a fact or that it was validly obtained prior to the celebration of his subsequent marriage to Fe.

Aside from the testimonies of Redante and Maria Socorro, the only piece of evidence presented by the defense to prove the divorce, is the certificate of divorce allegedly issued by the registrar of the Supreme Court of British Columbia on 14 January 2008.

This certificate of divorce, however, is utterly insufficient to rebut the charge against Redante. First, the certificate of divorce is not the divorce decree required by the rules and jurisprudence. As discussed previously, the divorce decree required to prove the fact of divorce is the judgment itself as rendered by the foreign court and not a mere certification. Second, assuming the certificate of divorce may be considered as the divorce decree, it was not accompanied by a certification issued by the proper Philippine diplomatic or consular officer stationed in Canada, as required under Section 24 of Rule 132. Lastly, no copy of the alleged Canadian law was presented by the defense. Thus, it could not be reasonably determined whether the subject divorce decree was in accord with Maria Socorro's national law.

Further, since neither the divorce decree nor the alleged Canadian law was satisfactorily demonstrated, the type of divorce supposedly secured by Maria Socorro — whether an absolute divorce which terminates the marriage or a limited divorce which merely suspends it — and whether such divorce capacitated her to remarry could not also be ascertained. As such, Redante failed to prove his defense that he had the capacity to remarry when he contracted a subsequent marriage to Fe. His liability for bigamy is, therefore, now beyond question.

TEE LING KIAT, *Petitioner*, -versus- AYALA CORPORATION (substituted herein by its assignee and successor-in-interest, BIENVENIDO B.M. AMORA, JR.), *Respondent*. G.R. No. 192530, SECOND DIVISION, March 07, 2018, CAGUIOA, *J*.

Consequently, although courts can exercise their limited supervisory powers in determining whether the sheriff acted correctly in executing the judgment, they may only do so if the third-party claimant has unmistakably *established his ownership or right of possession over the subject property. Accordingly, if the third-party claimant's evidence does not persuade the court of the validity of his title or right possession thereto, the third-party claim will, and should be, denied.*

Suffice it to state that the only evidence adduced by Tee Ling Kiat to support his claim that Dewey Dee's shares in VIP have been sold to him are a cancelled check issued by Tee Ling Kiat in favor of Dewey Dee

and a photocopy of the Deed of Sale of Shares of Stock dated December 29, 1980. A photocopy of a document has no probative value and is inadmissible in evidence.

FACTS:

On January 28, 1981, Ayala Corporation instituted a *Complaintfor Sum of Money with an application for a writ of attachment* against the Spouses Dee. The complaint is with regard to the money marker line granted by Ayala Investment and Development Corporation (AIDC) in favor of Continental Manufacturing Corporation (CMC) in the maximum amount of P2,000,000.00. With Dewey Dee as the President of CMC then, the Spouses Dee executed a Surety Agreement, as guarantee for the money market line. One of CMC's availments under the money market line was evinced by a Promissory Note dated November 20, 1980 for P800,000.00 due on January 16, 1981. AIDC subsequently endorsed the Promissory Note to Ayala Corporation. CMC defaulted on its obligation under the promissory note, leading Ayala Corporation to institute a claim for sum of money against CMC and the Spouses Dee.

The RTC ruled in favor of Ayala Corporation. Having attained finality, the RTC forthwith issued a Writ of Execution against the Spouses Dee. Thereafter, a *Notice of Levy on Execution* was issued and addressed to the Register of Deeds of Antipolo City, to levy upon "the rights, claims, shares, interest, title and participation" that the Spouses Dee may have in parcels of land covered by Transfer Certificates of Title (TCT) Nos. R-24038,R-24039, and R-24040 and any improvements thereon. The parcels of land were registered in the name of Vonnel Industrial Park, Inc. (VIP). According to the Sheriffs Return, the titles over the subject properties are registered in the name of VIP, in which Dewey Dee was an incorporator.

Before the scheduled sale on execution, Tee Ling Kiat filed a *Third-Party Claim*, alleging that the respondent Dewey has no claim whatsoever over the property registered in the name of VIP and that Dewey has already sold his shares of stock of VIP to herein petitioner.

Acting on the *Third-Party Claim*, the Office of the Clerk of Court of the RTC issued a *Notice of Third-Party Claim* on March 28, 2007. Amora, who by then had substituted Ayala Corporation, posted a bond in the amount of P2,658,700.00. VIP and Tee Ling Kiat opposed the posting of the bond in an *Ex-Parte Motion*.

Nevertheless, the court approved the bond, leading VIP and Tee Ling Kiat to file an *Omnibus Motion*to declare null and void the *Notice of Levy on Execution* and all proceedings and issuances arising out of the same. In the *Omnibus Motion*, VIP and Tee Ling Kiat reiterated that Dewey Dee no longer had any interest in the levied property and that the bond was far less than the value of the property levied.

The RTC disallowed the *third-party claim* because the alleged sale of shares of stock from Dewey Dee to Tee Ling Kiat was not proven. Thereafter, Tee Ling Kiat filed a petition for *certiorari* under Rule 65 of the Rules of Court before the CA. But the CA denied the same.

ISSUE:

Whether petitioner may maintain his third-party claim. (NO)

RULING:

Here, Tee Ling Kiat imputes error on the CA by the simple expedient of arguing that he did not personally need to prove that the sale of shares of stock between Dewey Dee and himself had in fact transpired, as the duty to record the sale in the corporate books lies with VIP. Such an argument, however, fails to recognize that the very right of Tee Ling Kiat, as a third-party claimant, to institute a *terceria* is founded on his claimed title over the levied property.

Consequently, although courts can exercise their limited supervisory powers in determining whether the sheriff acted correctly in executing the judgment, they may only do so if the third-party claimant has *unmistakably* established his ownership or right of possession over the subject property. Accordingly, if the third-party claimant's evidence does not persuade the court of the validity of his title or right possession thereto, the third-party claim will, and should be, denied.

Suffice it to state that the only evidence adduced by Tee Ling Kiat to support his claim that Dewey Dee's shares in VIP have been sold to him are a cancelled check issued by Tee Ling Kiat in favor of Dewey Dee and a photocopy of the Deed of Sale of Shares of Stock dated December 29, 1980. A photocopy of a document has no probative value and is inadmissible in evidence. The records likewise do not show that Tee Ling Kiat offered any explanation as to why the original Deed of Sale of Shares of Stock could not be produced, instead alleging that because of the disputable presumption "*[t]hat the ordinary course of business has been followed*"provided in Section 3(q) of Rule 131 of the Rules of Court, then the burden is not on him to prove that he is a stockholder, but on Amora, to prove that he is not a stockholder.

This argument is off tangent. Meaning, even if it could be assumed that the sale of shares of stock contained in the photocopies had indeed transpired, such transfer is only valid as to the parties thereto, but is not binding on the corporation if the same is not recorded in the books of the corporation. Section 63 of the Corporation Code of the Philippines provides that: "**No transfer, x xx shall be valid, except as between the parties, until the transfer is recorded in the books of the corporation showing the names of the parties to the transaction, the date of the transfer, the number of the certificate or certificates and the number of shares transferred.**" Here, the records show that the purported transaction between Tee Ling Kiat and Dewey Dee has never been recorded in VIP's corporate books. Thus, the transfer, not having been recorded in the corporate books in accordance with law, is not valid or binding as to the corporation or as to third persons.

On a final note, the Court observes that the judgment for a sum of money dated November 29, 1990 obtained by Ayala Corporation was against the Spouses Dewey and Lily Dee in their personal capacities as sureties in the money market line transaction. Yet, in the execution of said judgment, the properties levied upon were registered in the name of VIP, a juridical entity with personality separate and distinct from Dewey Dee. It is a basic principle of law that money judgments are enforceable only against property incontrovertibly belonging to the judgment debtor, and certainly, a person other than the judgment debtor who claims ownership over the levied properties is not precluded from challenging the levy through any of the remedies provided for under the Rules of Court. In the pursuit of such remedies, however, the third-party must, to reiterate, unmistakably establish ownership over the levied property, which Tee Ling Kiat failed to do.

SAMSON LIM BIO HIAN,Petitioner, v.JOAQUIN LIM ENG TIAN, Respondent.G.R. No. 195472, THIRD DIVISION, January 08, 2018, MARTIRES, *J.*

A case becomes moot and academic when, by virtue of supervening events, the conflicting issue that may be resolved by the court ceases to exist. None of the exceptional circumstances are present.

It must be noted that the petition for certiorari was dismissed, the entry of judgment already effected, and the RTC had already issued a writ of execution. The question presented in this petition is merely procedural. Where a decision on the merits of a case is rendered and the same has become final and executory, the action on procedural matters or issues is thereby rendered moot and academic.

FACTS:

Petitioners Samson Lim Bio Tian and Johnson Lim Bio Tiong and respondent Joaquin Lim Eng Tian are co-owners of a parcel of land covered by TCT No. 81239. Respondent wanted to have the said land partitioned, but the petitioners refused, thus, he filed a complaint for partition.

Summons and copies of the complaint were served upon the petitioners who, in turn, filed their respective pleadings. The case was set for pre-trial and notices sent to the parties.

Only Joaquin and Johnson and their respective counsels appeared in the pre-trial. However, Johnson filed his pre-trial brief only on that day. Samson and his counsel also failed to appear. Thus, the RTC issued an order ruling that both petitioners failed to file a pre-trial brief. Joaquin was allowed to submit his evidence ex parte.

Samson moved for reconsideration of the RTC's 8 December 2008 order. He averred that the non-appearance of his counsel during the pre-trial should be excused as the latter was busy attending a seminar in Mandatory Continuing Legal Education. He did not, however, offer any reason for his own failure to appear. Johnson also filed a motion for reconsideration, arguing that he and his counsel decided to submit personally his pre-trial brief on the pre-trial date instead of by mail because they were apprehensive that the court would not receive it on time.

The RTC issued the first assailed order granting the Samson's and Johnson's motions for reconsideration. Movants were allowed to cross-examine plaintiff, Joaquin Lim Eng Lian, and the Pre-Trial Briefs submitted by the petitioners were admitted. Joaquin moved for reconsideration but the same was denied. He filed a petition for certiorari before the CA.

The CA nullified the orders of the RTC. It observed that Samson did not bother to offer any excuse for his non-appearance during the pre-trial conference nor for not filing a pre-trial brief. The appellate court added that Johnson's excuse for submitting the brief on the pre-trial date was flimsy and could not be given credence

The petitioners moved for reconsideration but were denied by the CA in a resolution, dated 9 February 2011. Undeterred, the petitioners filed a petition for review before this Court.

Meanwhile, on 21 February 2013, the RTC rendered a decisionin the action for partition and ruled that respondent, as co-owner of the parcel of land, was entitled to demand its partition. The trial

court denied the petitioners' notice of appeal because it was filed out of time. The RTC decision was affirmed by the CA and on 15 December 2016, the CA judgment became final and executory.

ISSUE

Whether this petition presents a justiciable controversy after the decision on the action for partition has already become final and executory

RULING:

No. The existence of an actual case or controversy is a necessary condition precedent to the court's exercise of its power of adjudication. An actual case or controversy exists when there is a conflict of legal rights or an assertion of opposite legal claims between the parties that is susceptible or ripe for judicial resolution. In the negative, a justiciable controversy must neither be conjectural nor moot and academic. There must be a definite and concrete dispute touching on the legal relations of the parties who have adverse legal interests. The reason is that the issue ceases to be justiciable when a controversy becomes moot and academic; otherwise, the court would engage in rendering an advisory opinion on what the law would be upon a hypothetical state of facts.

A case becomes moot and academic when, by virtue of supervening events, the conflicting issue that may be resolved by the court ceases to exist. While it is true that this court may assume jurisdiction over a case that has been rendered moot and academic by supervening events, the following instances must be present:

(1) Grave constitutional violations;

(2) Exceptional character of the case;

(3) Paramount public interest;

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

(5) The case is capable of repetition yet evading review.[11]

None of these circumstances is present in this case. It must be noted that the petition for certiorari to assail the decision in CA-G.R. SP No. 133267 was dismissed by the CA in a decision, dated 31 March 2016. Entry of Judgment was thus effected on 15 December 2016.Moreover, the RTC had already issued a writ of execution, which implementation was held in abeyance upon motion of the petitioners who conveniently used the pendency of this petition as a ground therefor. Consequently, the issue raised in this petition was rendered moot and academic by the final and executory decision in the main action for partition.

To explain further, the question presented in this petition is merely procedural, i.e., whether the defendant may be allowed to cross-examine the plaintiff after the trial court had allowed the latter

to present his evidence ex parte. It is axiomatic in this jurisdiction that where a decision on the merits of a case is rendered and the same has become final and executory, the action on procedural matters or issues is thereby rendered moot and academic. Inarguably, an adjudication of the procedural issue presented for resolution would be a futile exercise.

The petition is denied for being moot and academic.

FELICITAS L. SALAZAR, *Petitioner,* -versus – REMEDIOS FELIAS, on her own behalf and representation of the other HEIRS OF CATALINO NIVERA, *Respondents.* G.R. No. 213972, SECOND DIVISION, February 5, 2018, REYES, JR., *J.*

Indeed, the family home is a real right which is gratuitous, inalienable and free from attachment, constituted over the dwelling place and the land on which it is situated. It confers upon a particular family the right to enjoy such properties. It cannot be seized by creditors except in certain special cases. However, the claim that the property is exempt from execution for being the movant's family home is not a magic wand that will freeze the court's hand and forestall the execution of a final and executory ruling. ***It must be noted that it is not sufficient for the claimant to merely allege that such property is a family home. Whether the claim is premised under the Old Civil Code or the Family Code, the claim for exemption must be set up and proved.***

Felicitas cannot conveniently claim that the subject property is her family home, sans sufficient evidence proving her allegation. A perusal of the petition shows that aside from her bare allegation, Felicitas adduced no proof to substantiate her claim that the property sought to be executed is indeed her family home.

Interestingly, Felicitas admitted in her Motion for Reconsideration and her Petition for Annulment of Judgment that she is, and has always been a resident of Muñoz, Nueva Ecija.

FACTS:

Private respondent Remedios Felias, representing the heirs of CatalinoNivera (Heirs of Nivera) filed a Complaint for Recovery of Ownership, Possession and Damages against the Spouses Romualdo and Felisa Lastimosa. The former sought to recover from the latter four parcels of land located in Baruan, Agno, Pangasinan. During the trial of the case, Romualdo died. Consequently, on July 6, 1998, a Motion for Substitution was filed by the decedent's wife, Felisa, and their children.

On **March 16, 2004 the RTC Branch 55 rendered a Decision**, declaring the Heirs of Nivera as the absolute owners of the parcels of land in question, and thereby ordering the Heirs of Lastimosa to vacate the lands and to surrender possession thereof. The Heirs of Lastimosa did not file an appeal.

Meanwhile, Felicitas Salazar (Felicitas), daughter of Romualdo, along with Recto and Rizalina filed a Petition for Annulment of Judgment with the CA. Felicitas sought the nullification of the RTC Branch 55's Decision and the corresponding Writs of Execution and Demolition issued pursuant thereto, claiming that she was deprived of due process when she was not impleaded in the case for Recovery of Ownership, before the RTC Branch 55.

The CA dismissed the Petition for Annulment of Judgment. It held that the failure to include Felicitas in the proceedings was due to the fault of the Heirs of Lastimosa, who neglected to include her (Felicitas) in their Motion to Substitute. The CA further ratiocinated that since the RTC acquired jurisdiction over the person of the original defendants Romualdo and Felisa, the outcome of the case is binding on all their heirs or any such persons claiming rights under them.

This Court affirmed the CA decision in the Petition for Annulment of Judgment. The Court's ruling became final. Hence, the RTC Branch 55 issued an Order granting the Motion for Execution and Demolition.

The CA rendered the assailed Decision dismissing the appeal on the following grounds, to wit: (i) the Heirs of Lastimosa availed of the wrong remedy by filing an appeal, instead of a petition for certiorari under Rule 65; (ii) the matter pertaining to the non-inclusion of Felicitas is already barred by res judicata; and (iii) the execution of the decision rendered by the RTC Branch 55 is proper considering that case has long attained finality.

Felicitas claims that the Writ of Execution and Demolition issued by the RTC Branch 55 was executed against the wrong party. She points out that she was not impleaded in the case for recovery of ownership and possession, and thus the decision cannot bind her. In addition, Felicitas contends that the execution cannot continue as the Writ of Execution is being enforced **against property that is exempt from execution, as what is sought to be demolished is her family home.**

ISSUE:

Whether the CA erred in ordering the execution of the Decision dated March 16, 2004. (NO)

RULING:

The parties cannot object to the execution by raising new issues of fact or law. The only exceptions thereto are when: "(i) the writ of execution varies the judgment; (ii) there has been a change in the situation of the parties making execution inequitable or unjust; (iii) **execution is sought to be enforced against property exempt from execution**; (iv) it appears that the controversy has been submitted to the judgment of the court; (v) the terms of the judgment are not clear enough and there remains room for interpretation thereof; or (vi) it appears that the writ of execution has been improvidently issued, or that it is defective in substance, or issued against the wrong party, or that the judgment debt has been paid or otherwise satisfied, or the writ was issued without authority"

In the case at bar, there is no dispute that in as early as March 16, 2004, the RTC Branch 55 of Alaminos, Pangasinan rendered a Decision in the case for Recovery of Ownership, Possession and Damages. There is no dispute that this ruling of the RTC had become final and executory. Pursuant thereto, the lower court issued a Writ of Execution and Demolition. This notwithstanding, Felicitas seeks to prevent the execution of the same order, arguing that the writ was issued against the wrong party; and that the property sought to be executed is exempt from execution.

Indeed, the family home is a real right which is gratuitous, inalienable and free from attachment, constituted over the dwelling place and the land on which it is situated. It confers upon a particular family the right to enjoy such properties. It cannot be seized by creditors except in certain special cases. However, the claim that the property is exempt from execution for being the movant's family home is not a magic wand that will freeze the court's hand and forestall the execution of a final and

executory ruling. **It must be noted that it is not sufficient for the claimant to merely allege that such property is a family home. Whether the claim is premised under the Old Civil Code or the Family Code, the claim for exemption must be set up and proved.**

In Ramos, et al. v. Pangilinan, et al., the Court, citing Spouses Kelley, Jr. v. Planters Products, Inc., et al., laid down the rules relative to the levy on execution of the family home, viz.:

> "No doubt, a family home is generally exempt from execution provided it was duly constituted as such. There must be proof that the alleged family home was constituted jointly by the husband and wife or by an unmarried head of a family. It must be the house where they and their family actually reside and the lot on which it is situated. The family home must be part of the properties of the absolute community or the conjugal partnership, or of the exclusive properties of either spouse with the latter's consent, or on the property of the unmarried head of the family."

In addition, residence in the family home must be actual. The law explicitly mandates that the occupancy of the family home, either by the owner thereof, or by any of its beneficiaries must be actual.

Felicitas cannot conveniently claim that the subject property is her family home, sans sufficient evidence proving her allegation. A perusal of the petition shows that aside from her bare allegation, Felicitas adduced no proof to substantiate her claim that the property sought to be executed is indeed her family home.

Interestingly, Felicitas admitted in her Motion for Reconsideration and her Petition for Annulment of Judgment that she is, and has always been a resident of Muñoz, Nueva Ecija.

ANGELICA G. CRUZ, ANNA MARIE KUDO, ALBERT G. CRUZ and ARTURO G. CRUZ, *Petitioners,*- versus - MARYLOU TOLENTINO and THE OFFICE OF THE REGISTER OF DEEDS OF MANDALUYONG CITY, *Respondents.*G.R. No. 210446, FIRST DIVISION, April 18, 2018, LEONARDO-DE CASTRO, J.

For res judicata to serve as a bar to a subsequent action, the following elements must be present: (1) the judgment sought to bar the new action must be final; (2) the decision must have been rendered by a court having jurisdiction over the subject matter and the parties; (3) the disposition of the case must be a judgment on the merits; and (4) there must be as between the first and second action, identity of parties, subject matter, and causes of action.

In this case, the elements of res judicata, as a bar by prior judgment, are present. When the CA's decision was elevated to this Court, the same was denied. The motion for reconsideration being likewise denied, the Court's ruling had since become final. Petitioners had a community of interest with Purificacion since they were one in disputing the validity of the Deed of Absolute Sale. As to identity of cause of action, a reading of Tolentino's complaint for Registration of Deed of Sale reveals that the principal relief prayed for therein is for judgment to be rendered declaring the validity of the Deed of Absolute Sale. On the other hand, in petitioners' complaint for Annulment of Sale & Title, they primarily seek the nullification of the Deed of Absolute Sale

FACTS:

Alfredo Cruz is the registered owner of two parcels of land (subject property). Alfredo executed a special power of attorney (SPA) in favor of his wife Purificacion Cruz authorizing her to sell, transfer, convey and/or mortgage the subject properties. Thereafter, Alfredo passed away.

The properties were allegedly sold to Marylou Tolentino. The transaction was evinced by a **deed of absolute sale**. The deed was notarized and specifically mentioned the SPA in favor of Purificacion. A Transfer Certificate of Title was issued in favor of Tolentino.

Petitioners as heirs of Alfredo filed a complaint against Tolentino, Purificacion and the Register of Deeds of Mandaluyong City for the annulment of sale & title. This was **docketed as Civil Case No. MC00-1300.** Petitioners allege that the sale was fraudulent as they were denied of their rights to the subject property.

In her Answer, Tolentino specifically denied the averments in the complaint. She claimed that the truth of the matter relative to the subject property is narrated in the complaint she filed against Purificacion on August 26, 1999 for registration of Deed of Sale **docketed as Civil CaseNo. MC 99-843.** In Civil Case No. MC 99-843, Tolentino sought the validation of the Deed of Absolute Sale. Tolentino pointed out that the Deed of Absolute Sale subject matter of the aforesaid case is the same Deed of Absolute Sale involved in the present case. Moreover, the parties are the same, i.e., Tolentino is the plaintiff in Civil Case No. MC 99-843, while Purificacion is the defendant in Civil Case No. MC 99-843. Petitioners, who are the plaintiffs in the present case, are the heirs of Alfredo. When Purificacion died, it is petitioners-heirs who substituted for her to appeal. Tolentino argued that the complaint in Civil Case No. MC00-1300 was dismissible on the grounds of res judicata.

Civil Case No. MC 99-843 has already been decided with finality.

ISSUE

Whether the complaint of the heirs of Alfredo is dismissible on the ground of res judicata (Yes)

RULING

For res judicata to serve as a bar to a subsequent action, the following elements must be present: (1) the judgment sought to bar the new action must be final; (2) the decision must have been rendered by a court having jurisdiction over the subject matter and the parties; (3) the disposition of the case must be a judgment on the merits; and (4) there must be as between the first and second action, identity of parties, subject matter, and causes of action. Should identity of parties, subject matter, and causes of action be shown in the two cases, res judicata in its aspect as a "bar by prior judgment" would apply. If as between the two cases, only identity of parties can be shown, but not identical causes of action, then res judicata as "conclusiveness of judgment" applies.

In this case, the elements of res judicata, as a bar by prior judgment, are present.

The trial court in Civil Case No. MC 99-843 already decreed that the Deed of Absolute Salewas valid and legal. Petitioners, as substitute appellants in lieu of the deceased Purificacion, appealed the decision to the Court of Appeals. The CA affirmed the trial courts ruling. When the CA's decision was elevated to this Court, the same was denied. The motion for reconsideration being likewise denied, Court's ruling had since become final.

As to identity of parties, only substantial identity of parties is required. Tolentino and Purificacion - the defendants in Civil Case No. MC00-1300 - are the plaintiff and defendant, respectively, in Civil Case No. MC 99-843. On the other hand, petitioners - the plaintiffs in Civil Case No. MC00-1300 - were originally not parties to Case No. MC 99-843, but they later substituted Purificacion in said case after she died. More importantly, petitioners had a community of interest with Purificacion since they were one in disputing the validity of the Deed of Absolute Sale.

As to identity of cause of action, a reading of Tolentino's complaint for Registration of Deed of Salereveals that the principal relief prayed for therein is for judgment to be rendered declaring the validity of the Deed of Absolute Sale. On the other hand, in petitioners' complaint for Annulment of Sale & Title, they primarily seek the nullification of the Deed of Absolute Sale

The records of the case also reveal that the following pieces of documentary evidence were offered by the parties in both cases: (1) the complaint in Civil Case No. MC 99-843; (2) the SPA in favor of Purificacion; (3) the Deed of Absolute Sale dated July 9, 1992; (4) the Deed of Absolute Sale dated December 1, 1992; (5) TCT No. 461194; (6) TCT No. 461195; and (7) TCT No. 6724.

NATIONAL ELECTRIFICATION ADMINISTRATION (NEA), *Petitioner,*-versus - MAGUINDANAO ELECTRIC COOPERATIVE, INC., REPRESENTED BY MAGUINDANAO ELECTRIC COOPERATIVE-PALMA AREA (MAGELCO-PALMA), REPRESENTED BY ATTY. LITTIE SARAH A. AGDEPPA, ANTONIO U. ACUB, EDGAR L. LA VEGA, RET. JUDGE TERESITA CARREON LLABAN, EMILY LLABAN, ARMANDO C. LLABAN, AUDIE D. MACASARTE, WILFREDO Q. LLABAN, EVANGELINE A. VARILLA, CORAZON TUMANG, and PRESCILLA LANO, *Respondents.* G.R. Nos. 192595-96, FIRST DIVISION, April 11, 2018, JARDELEZA, J.

COTABATO ELECTRIC COOPERATIVE, INC. (COTELCO), REPRESENTED BY ALEJANDRO Q. COLLADOS AS GENERAL MANAGER, *Petitioner*, , -versus - MAGUINDANAO ELECTRIC COOPERATIVE-PALMA AREA (MAGELCO-PALMA), REPRESENTED BY ATTY. LITTIE SARAH A. AGDEPPA, ANTONIO U. ACUB, EDGAR L. LA VEGA, RET. JUDGE TERESITA CARREON LLABAN EVANGELINE A. VARILLA, and CORAZON TUMANG; and MAGUINDANAO ELECTRIC COOPERATIVE, INC., REPRESENTED BY ITS PRESIDENT, DATU TUMAGANTANG ZAINAL, *Respondents.* G.R. Nos. 192676-77, FIRST DIVISION, April 11, 2018, JARDELEZA, J.

Thus, a judgment on compromise agreement, while it is final and immediately executory, binds only the parties who signed the contract. Moreover, precisely because a judgment on compromise agreement has the force of res judicata, its binding effect must be seen within the parameters within which res judicata finds application

In the case, the judgment on compromise agreement is a settlement of the dispute between MAGELCO Main and MAGELCO-PALMA. It cannot affect the rights of persons who were never parties to it.

FACTS:

Maguindanao Electric Cooperative, Inc. (MAGELCO) is a duly organized cooperative with a franchise to distribute electric light, and power to certain municipalities. Its franchise also includes the authority to distribute electricity in six municipalities in Cotabato, namely Pigcawayan, Alamada, Libungan, Midsayap, Aleosan, and Pikit (PPALMA Area). Cotabato Electric Cooperative, Inc.

(COTELCO) is also a duly organized cooperative with a franchise to distribute electric light, and power to the province of Cotabato except for the PPALMA Area.

COTELCO filed before National Electrification Administration (NEA) an application for the amendment of its franchise to include the PPALMA Area. MAGELCO opposed the application. After conducting hearings, NEA granted COTELCO's application and ordered the transfer of MAGELCO's assets in the PPALMA area to COTELCO upon payment of just compensation.

MAGELCO filed before the CA a petition for review under Rule 43 (First CA case).

While the First CA case was pending, MAGELCO passed a resolution which states that the general assembly has "approved the division and separation" of MAGELCO into "two (2) separate and independent branch units, x xx the MAGUINDANAO ELECTRIC COOPERATIVE, INC., as the mother unit or main branch, and THE MAGUINDANAO ELECTRIC COOPERATIVE, INC. - (PALMA AREA), as the daughter or branch unit." Hereafter, MAGUINDANAO ELECTRIC COOPERATIVE, INC. shall be referred to as MAGELCO Main and its branch as MAGELCO-PALMA. The NEA approved the resolution subject to the outcome of the pending First CA Case.

Shortly after the commencement of MAGELCO-PALMA's operations, MAGELCO Main filed before the RTC Branch an action for injunction and prohibition against the NEA Administrator and MAGELCO-PALMA. The action sought the annulment of MAGELCO's division for being contrary to law and asked the RTC to order MAGELCO-PALMA to return to MAGELCO Main all the properties in its possession in connection with its operation in the PPALMA Area.

However, MAGELCO Main and MAGELCO-PALMA entered into a compromise agreement. The RTC approved the compromise agreement.

Meanwhile in the First CA case, the CA affirmed the jurisdiction of NEA to rule on COTELCO's application. The Decision, however, modified the NEA ruling on the transfer of MAGELCO's assets to COTELCO upon payment of just compensation. While the CA recognized that the NEA can properly order a transfer of assets upon payment of just compensation, the NEA did not observe the proper proceedings for the exercise of its right of eminent domain.Thus, it ordered that the disposition of MAGELCO's assets in the PPALMA Area needs further proceedings and any efforts at mediation among the parties should be undertaken thereunder. The CA decision in the First CA case became final and executory. MAGELCO Main and COTELCO pursued the mediation proceedings for the proper distribution of the assets in the PPALMA Area. As early as the execution of the Interim Memorandum of Agreement, COTELCO took over MAGELCO Main's assets in the PPALMA Area. MAGELCO Main further declared the cancellation of the memorandum of agreement (by virtue of the compromise) it executed with MAGELCO-PALMA.

As part of its efforts to retain control of the PPALMA Area, MAGELCO-PALMA also filed before RTC an ex-parte motion for the issuance of a writ of execution in the injunction case (one settled through compromise) which MAGELCO Main earlier filed. The RTC granted the motion for the issuance of a writ of execution a day from filing of the motion. COTELCO filed a special civil action for certiorari before the CA challenging this issuance of writ of execution.

The CA dismissed COTELCO's petition and enjoined MAGELCO Main and MAGELCO-PALMA to comply with the terms and conditions of their compromise agreement. The CA theorized that the

judgment on compromise agreement from RTC definitively settled the issue on the disposition of the assets in the PPALMA Area. It found that the judgment had already become final and operates as res judicata in this case.

ISSUE:

Whether the compromise judgment operates as res judicata (NO)

RULING:

The law recognizes a compromise agreement as a contract through which the parties, by making reciprocal concessions, avoid litigation or put an end to one already commenced. Once judicially approved, it becomes immediately final and executory. A judgment on compromise agreement is a judgment on the merits and operates as res judicata. However, its effects must be understood within the confines of the laws on contracts and the rules pertaining to res judicata in judicial decisions.

A compromise agreement is essentially a contract. As in the case of ordinary contracts, it is binding only upon the parties. It cannot affect the rights of persons who did not sign it.

Further, res judicata also limits the effect of a judgment to the parties to a case and their privies. A judgment is conclusive only as to the parties and their successors in interest as to the matter directly adjudged or any matter that could have been raised in the action. The effect of res judicata extends only to a litigation on the same thing by the party or the successor in interest under the same title and in the same action. While res judicata may operate in cases involving a different subject matter, the parties to the latter action must involve the same parties to the previous judgment or their successors in interest. In this instance, the prior judgment is res judicata only as to the issues directly adjudged and to matters that were actually and necessarily included in such issues.

Thus, a judgment on compromise agreement, while it is final and immediately executory, binds only the parties who signed the contract. Moreover, precisely because a judgment on compromise agreement has the force of res judicata, its binding effect must be seen within the parameters within which res judicata finds application

In the case, the judgment on compromise agreement is a settlement of the dispute between MAGELCO Main and MAGELCO-PALMA. It cannot affect the rights of persons who were never parties to it. Through the compromise agreement, the parties in the RTC case agreed that MAGELCO-PALMA will have possession and control of the assets in the PPALMA Area. It must be noted that this agreement was entered into at a time when COTELCO's claim over the same properties were still being litigated before the CA. Any compromise agreement between MAGELCO Main and MAGELCO-PALMA, while it may settle the dispute between them, cannot be enforced against COTELCO whose rights were eventually recognized by the CA. The compromise agreement was a settlement of the dispute within MAGELCO as a cooperative. It cannot be deemed to have settled the claim of COTELCO who was not a party to it and whose rights arose from a different source.

A judgment on compromise agreement is immediately final and executory. This general rule, however, allows for exceptions. While a final and executory agreement is immutable and ought to be enforced, no execution will issue under the following exceptions: (1) the correction of clerical errors; (2) the so-called nunc pro tunc entries which cause no prejudice to any party; (3) void judgments; and (4) whenever circumstances transpire after the finality of the decision rendering its execution

unjust and inequitable. We rule that the last exception, the presence of a supervening event, prevents the execution of the judgment on compromise agreement.

There are two supervening events in this case preventing the execution of the judgment on compromise agreement.The first supervening event is the Decision in the First CA Case which granted COTELCO's application for the amendment of its franchise and consequently modified that of MAGELCO to exclude the PPALMA Area. Thus, the creation of any unit to handle the operations in the PPALMA Area will not only be superfluous (as it can no longer distribute electricity in the area), it will also be illegal since the CA and the NEA already amended the franchise. Second, MAGELCO Main's revocation of the memorandum of agreement and the transition plan meant that MAGELCO-PALMA will no longer be a separate unit. In legal contemplation, therefore, MAGELCO-PALMA has ceased to exist. There is thus nothing in the compromise agreement that can still be enforced considering that one party thereto has been validly dissolved.

MATEO ENCARNACION (DECEASED), SUBSTITUTED BY HIS HEIRS, NAMELY: ELSA DEPLIAN-ENCARNACION, KRIZZA MARIE D. ENCARNACION, LORETA ENCARNACION, CARMELITA E. STADERMAN, CORAZON S. ENCARNACION, RIZALINA ENCARNACION-PARONG, VICTORIA ENCARNACION-DULA, MARIA HELEN ENCARNACION-DAY, TERESITA ENCARNACION-MANALANG, GEORGE ENCARNACION, MARY MITCHIE E. EDWARDSON, ERNESTO ENCARNACION, MATEO ENCARNACION, JR., AND GRACE WAGNER, *Petitioners*, *v.* **THOMAS JOHNSON**, *Respondent*.

G.R. No. 192285, FIRST DIVISION, July 11, 2018, JARDELEZA, ***J***

In Pinausukan Seafood House, Roxas Boulevard, Inc. v. Far East Bank & Trust Company,[49] *we said that owing to the extraordinary nature and objective of the remedy of annulment of judgment or final order, there are requirements that must be complied with before the remedy is granted.* ***First****, the remedy is only available when the* ***petitioner can no longer resort to the ordinary remedies*** *of new trial, appeal, petition for relief, or other appropriate remedies through no fault of the petitioner.* ***Second****, the ground for the remedy is limited to either* ***extrinsic fraud or lack of jurisdiction*** *(although lack of due process has been cited as a ground by jurisprudence).* ***Third****, the* ***time*** *for availing the remedy is* ***set by the rules****: if based on extrinsic fraud, it must be filed within four years from the discovery of extrinsic fraud; if based on lack of jurisdiction, it must be brought before it is barred by laches or estoppel.* ***Fourth****, the petition should be* ***verified*** *and should allege with particularity the facts and law relied upon, and those supporting the petitioner's good and substantial cause of action or defense.*

Petitioners failed to show their standing to file the petition. They have also failed to comply with the first requirement.

FACTS

Respondent filed an action for breach of contract with prayer for damages and costs against spouses NarvinEdwarson (Narvin) and Mary MitchieEdwarson (also known as Mary Encarnacion; hereinafter shall be referred to as Mary), Mateo's daughter, before the Vancouver Registry of the Supreme Court of British Columbia, Canada. Respondent alleged that Narvin and Mary convinced him to invest his money and personal property in a vehicle leasing company owned by the couple, which turned out

to be a fraudulent business scheme. The Supreme Court of British Columbia gave due course to respondent's action and ordered summons to be served upon Narvin and Mary. On October 6, 2000, the Supreme Court of British Columbia issued a Mareva injunction[7] and authorized respondent, among others, to obtain orders in foreign jurisdictions which would permit its enforcement in those jurisdictions. The Supreme Court of British Columbia issued a Default Judgment[8] finding Narvin and Mary liable to respondent. On February 24, 2003, respondent filed an action for recognition and enforcement of foreign judgment with prayer for the recognition of the Mareva injunction. The RTC issued an Order[13] restraining Narvin and Mary from disposing or encumbering their assets. Thereafter, the RTC ordered the service of summonses by publication upon Narvin and Mary.[15] Despite publication, Narvin and Mary still failed to file their answer. Accordingly, on December 1, 2003, the RTC declared them in default and subsequently rendered a judgment in default in accordance with the judgment of the Supreme Court of British Columbia. Respondent filed a motion for clarificatory order[22] seeking further amendment of the writ of execution. RTC, acting on respondent's motion for clarificatory order, further amended the Writ of Execution.

On September 10, 2007, or more than two years after the February 17, 2005 Order was issued, Mateo filed a petition for annulment of judgment[27] before the CA (CA-G.R. SP No. 100483). He alleged that he is the owner of 18 properties levied in Civil Case No. 110-0-2003; that he was not made a party to the case; and that the inclusion of his properties in the levy and execution sale were made without notice to him. CA denied the petition.

ISSUE

Whether an action for annulment of judgment is the proper remedy of a third-party claimant of properties levied and sold under execution sale (NO)

RULING

An action for annulment of judgment is a remedy in law independent of the case where the judgment sought to be annulled is rendered.[45] The ultimate objective of the remedy is "to undo or set aside the judgment or final order, and thereby grant to the petitioner an opportunity to prosecute his cause or to ventilate his defense.

In *Pinausukan Seafood House, Roxas Boulevard, Inc. v. Far East Bank & Trust Company*,[49] we said that owing to the extraordinary nature and objective of the remedy of annulment of judgment or final order, there are requirements that must be complied with before the remedy is granted. *First*, the remedy is only available when the petitioner can no longer resort to the ordinary remedies of new trial, appeal, petition for relief, or other appropriate remedies through no fault of the petitioner. *Second*, the ground for the remedy is limited to either extrinsic fraud or lack of jurisdiction (although lack of due process has been cited as a ground by jurisprudence). *Third*, the time for availing the remedy is set by the rules: if based on extrinsic fraud, it must be filed within four years from the discovery of extrinsic fraud; if based on lack of jurisdiction, it must be brought before it is barred by laches or estoppel. *Fourth*, the petition should be verified and should allege with particularity the facts and law relied upon, and those supporting the petitioner's good and substantial cause of action or defense.

Petitioners failed to show their standing to file the petition. They have also failed to comply with the first requirement. The proper party to file a petition for annulment of judgment or final order need

not be a party to the judgment sought to be annulled. Nevertheless, it is essential that he is able to prove by preponderance of evidence that he is adversely affected by the judgment.

In this regard, there is another reason that militates against petitioners. The remedy of annulment of judgment is a remedy in equity so exceptional in nature that it may only be availed of when the ordinary or other appropriate remedies provided by law are wanting *without fault or neglect* on the petitioner's part.[62] It is a condition *sine qua non* that one must have availed of the proper remedies before resorting to the action for annulment of judgment.

A third-party claimant has the following cumulative remedies: (a) he may avail of "*terceria*" by serving on the levying officer making the levy an affidavit of his title, and serving also a copy to the judgment creditor; (b) he may file a case for damages against the bond issued by the judgment debtor within 120 days from the date of the filing of the bond; and (c) he may file "any proper action" to vindicate his claim to the property.

In this case, the proper recourse for petitioners is to vindicate and prove their ownership over the properties in a separate action as allowed under Section 16, Rule 39 of the Rules of Court. This is the more prudent action since respondent also asserts that the properties claimed were owned by Mary, and the CA upheld such assertion. At this juncture, we note that if we grant the petition, we would be nullifying the whole proceeding in Civil Case No. 110-0-2003 which is more than what is necessary to address the remedy being sought by petitioners.

STEPHEN I. JUEGO-SAKAI, *Petitioner*, -versus- REPUBLIC OF THE PHILIPPINES, *Respondent*.
G.R. No. 224015, SECOND DIVISION, July 23, 2018, PERALTA, *J.*

Nevertheless, as similarly held in Manalo, the SC did not yet grant petitioner's Petition for Judicial Recognition of Foreign Judgment for she has yet to comply with certain guidelines before the courts may recognize the subject divorce decree and the effects thereof. Time and again, the Court has held that the starting point in any recognition of a foreign divorce judgment is the acknowledgment that our courts do not take judicial notice of foreign judgments and laws. This means that the foreign judgment and its authenticity must be proven as facts under our rules on evidence, together with the alien's applicable national law to show the effect of the judgment on the alien himself or herself.

Since both the foreign divorce decree and the national law of the alien, recognizing his or her capacity to obtain a divorce, purport to be official acts of a sovereign authority, Section 24 of Rule 132 of the Rules of Court applies. Thus, what is required is proof, either by (1) official publications or (2) copies attested by the officer having legal custody of the documents. If the copies of official records are not kept in the Philippines, these must be (a) accompanied by a certificate issued by the proper diplomatic or consular officer in the Philippine foreign service stationed in the foreign country in which the record is kept and (b) authenticated by the seal of his office.

In the instant case, the OSG does not dispute the existence of the divorce decree, rendering the same admissible. What remains to be proven, therefore, is the pertinent Japanese Law on divorce considering that Japanese laws on persons and family relations are not among those matters that Filipino judges are supposed to know by reason of their judicial function.

FACTS:

Petitioner StephenJuego-Sakai and Toshiharu Sakai got married in Japan pursuant to the wedding rites therein. After two years, the parties, by agreement, obtained a divorce decree in said country dissolving their marriage. Thereafter, petitioner filed a Petition for Judicial Recognition of Foreign Judgment before the RTC in Camarines Norte. The RTC granted the petition and recognized the divorce between the parties as valid and effective under Philippine Laws.

The CA affirmed the decision of the RTC. However, the CA upon revisiting its findings, recalled and set aside its previous decision. According to the appellate court, the second of the following requisites under Article 26 of the Family Code is missing: (a) there is a valid marriage that has been celebrated between a Filipino citizen and a foreigner; and (b) a divorce is obtained abroad by the alien spouse capacitating him or her to remarry. This is because the divorce herein was consensual in nature, obtained by agreement of the parties, and not by Sakai alone. Thus, since petitioner, a Filipino citizen, also obtained the divorce herein, said divorce cannot be recognized in the Philippines. In addition, the CA ruled that petitioner's failure to present authenticated copies of the Civil Code of Japan was fatal to her cause.

ISSUE:

Whether the CA gravely erred under law when it held that the second requisite for the application of the second paragraph of Art 26 of the Family Code is not present because the petitioner gave consent to the divorce obtained by her Japanese husband. (Yes)

RULING:

The SC in *Republic v. Manalo* held that the fact that it was the Filipino spouse who initiated the proceeding wherein the divorce decree was granted should not affect the application nor remove him from the coverage of Paragraph 2 of Article 26 of the Family Code which states that "where a marriage between a Filipino citizen and a foreigner is validly celebrated and a divorce is thereafter validly obtained abroad by the alien spouse capacitating him or her to remarry, the Filipino spouse shall likewise have capacity to remarry under Philippine law." The SC observed that to interpret the word "obtained" to mean that the divorce proceeding must actually be initiated by the alien spouse would depart from the true intent of the legislature and would otherwise yield conclusions inconsistent with the general purpose of Paragraph 2 of Article 26, which is, specifically, to avoid the absurd situation where the Filipino spouse remains married to the alien spouse who, after a foreign divorce decree that is effective in the country where it was rendered, is no longer married to the Filipino spouse. The subject provision, therefore, should not make a distinction for a Filipino who initiated a foreign divorce proceeding is in the same place and in like circumstance as a Filipino who is at the receiving end of an alien initiated proceeding.

Applying the foregoing pronouncement to the case at hand, the Court similarly rules that despite the fact that petitioner participated in the divorce proceedings in Japan, and even if it is assumed that she initiated the same, she must still be allowed to benefit from the exception provided under Paragraph 2 of Article 26.

Nevertheless, as similarly held in *Manalo*, the SC did not yet grant petitioner's Petition for Judicial Recognition of Foreign Judgment for she has yet to comply with certain guidelines before the courts

may recognize the subject divorce decree and the effects thereof. Time and again, the Court has held that the starting point in any recognition of a foreign divorce judgment is the acknowledgment that our courts do not take judicial notice of foreign judgments and laws. This means that the foreign judgment and its authenticity must be proven as facts under our rules on evidence, together with the alien's applicable national law to show the effect of the judgment on the alien himself or herself.

Since both the foreign divorce decree and the national law of the alien, recognizing his or her capacity to obtain a divorce, purport to be official acts of a sovereign authority, Section 24 of Rule 132 of the Rules of Court applies. Thus, what is required is proof, either by (1) official publications or (2) copies attested by the officer having legal custody of the documents. If the copies of official records are not kept in the Philippines, these must be (a) accompanied by a certificate issued by the proper diplomatic or consular officer in the Philippine Foreign Service stationed in the foreign country in which the record is kept and (b) authenticated by the seal of his office.

In the instant case, the OSG does not dispute the existence of the divorce decree, rendering the same admissible. What remains to be proven, therefore, is the pertinent Japanese Law on divorce considering that Japanese laws on persons and family relations are not among those matters that Filipino judges are supposed to know by reason of their judicial function.

BANGKO SENTRAL NG PILIPINAS AND ITS MONETARY BOARD, PETITIONERS, VS. BANCO FILIPINO SAVINGS AND MORTGAGE BANK, RESPONDENT.

[G.R. No. 178696, FIRST DIVISION, July 30, 2018, LEONARDO-DE CASTRO, J.]

CASE DOCTRINE:

A judgment sought to be revived is one that is already final (and executory); therefore, it is conclusive as to the controversy between the parties up to the time of its rendition. In other words, the new action is an action the purpose of which is not to re-examine and re-try issues already decided but to revive the judgment.The cause of action of the petition for revival is the judgment to be revived,i.e., the cause of action is the decision itself and not the merits of the action upon which the judgment sought to be enforced is rendered.

FACTS:

In the present petitions, the judgment sought to be revived pertains to paragraph of the dispositive of the Court's Decision dated December 11, 1991 in G.R. Nos. 70054, 68878, 77255-58, 78766, 78767, 78894, 81303, 81304, and 90473 entitled, "Banco Filipino Savings and Mortgage Bank vs. The Monetary Board,"

In filing the petition for revival of the above-quoted decision, BFSMB alleges that its reopening was just in partial fulfillment of what the Court mandated upon CB-MB, now BSP-MB. BFSMB still had to be reorganized and put in such "condition and footing to continue in business with safety to its depositors, creditors and the general public, until its damage claims are fully settled."

BSP-MB and CB-BOL, however, counter-argue that (i) the petition for revival stated no cause of action against them because they are neither the successors-in-interest of the defunct CB-MB, nor parties to G.R. No. 70054, and further, as to CB-BOL, that the latter has no authority under Republic Act No. 7653 other than to administer, dispose and liquidate assets/liabilities of the CB not already transferred to the BSP; (ii) the judgment obligation had already been extinguished by performance, when BSP-MB reopened and reorganized BFSMB under the former's comptrollership; and (iii) the action for revival of judgment had already prescribed.

In other words, BSP-MB and CB-BOL advance the following grounds as basis for their respective motions to dismiss - failure to state cause of action, extinguishment of the obligation and prescription are valid grounds for the dismissal of an action - paragraphs (f), (g) and (h) of Section 1, Rule 16 of the Rules of Court.

Instead of settling the issue, however, the Court of Appeals (in CA-G.R. SP No. 96831) hedged and reasoned that the matter of performance, among others, "cannot be settled by simple evaluation of the petition for revival and the motion to dismiss but, require thorough thumbing of the records as well as judicious evaluation of the evidence that would be submitted by the parties during trial."

ISSUE:

Whether or not the CA correctly reasoned that the matter of performance, among others, "cannot be settled by simple evaluation of the petition for revival and the motion to dismiss but, require thorough thumbing of the records as well as judicious evaluation of the evidence that would be submitted by the parties during trial."

RULING:

No. The CA incorrectly reasoned that the matter of performance, among others, "cannot be settled by simple evaluation of the petition for revival and the motion to dismiss but, require thorough thumbing of the records as well as judicious evaluation of the evidence that would be submitted by the parties during trial."

A judgment sought to be revived is one that is already final (and executory); therefore, it is conclusive as to the controversy between the parties up to the time of its rendition. In other words, the new action is an action the purpose of which is not to re-examine and re-try issues already decided but to revive the judgment.The cause of action of the petition for revival is the judgment to be revived,i.e., the cause of action is the decision itself and not the merits of the action upon which the judgment sought to be enforced is rendered.

In these cases, the subject Decision in G.R. No. 70054 being the very cause of action of the petition for revival, it was deemed written into the petition. There is no need to go into the records of the case or await evidence to be presented at trial to determine whether or not such obligation had already been performed.

In filing the motions to dismiss, however, the Court of Appeals (in CA-G.R. SP No. 96831) considered BSP-MB to have admitted the truth of all the allegations of the petition for revival. BSP-MB should now establish by concrete and convincing evidence, in full-blown trial, any assertion to the contrary.

The general rule is that in a motion to dismiss, a defendant hypothetically admits the truth of the material allegations of the ultimate facts contained in the plaintiffs complaint. But this principle of hypothetical admission admits of exceptions. In Tan vs. Court of Appeals, this Court held:

"The flaw in this conclusion is that, while conveniently echoing the general rule that averments in the complaint are deemed hypothetically admitted upon the filing of motion to dismiss grounded on the failure to state a cause of action, it did not take into account the equally established limitations to such rule, i.e., that motion to dismiss does not admit the truth of mere epithets of fraud; nor allegations of legal conclusions; nor an erroneous statement of law; nor mere inferences or conclusions from facts not stated; nor mere conclusions of law; nor allegations of fact the falsity of which is subject to judicial notice; nor matters of evidence; nor surplusage and irrelevant matter; nor scandalous matter inserted merely to insult the opposing party; nor to legally impossible facts; nor to facts which appear unfounded by record incorporated in the pleading, or by document referred to; and, nor to general averments contradicted by more specific averments. A more judicious resolution of motion to dismiss, therefore, necessitates that the court be not restricted to the consideration of the facts alleged in the complaint and inferences fairly deducible therefrom. Courts may consider other facts within the range of judicial notice as well as relevant laws and jurisprudence which the courts are bound to take into account, and they are also fairly entitled to examine records/documents duly incorporated into the complaint by the pleader himself in ruling on the demurrer to the complaint."

BFSMB's assertions that the judgment obligation includes the following undertakings:

(1) to put BFSMB in such condition and footing to continue in business with safety to its depositors, creditors and the general public, until [its] damage claims in Civil Case Nos. 8108, 9675 and 10183 are fully settled;
(2) to approve BFSMB's proposed business plan,
(3) to put back in operational status BFSMB's nationwide branch network consisting of 89 branches and recoup its 3.8 Million depositor base; and
(4) to extend to BFSMB the same financial arrangements granted to other banks.

appear unfounded from a record incorporated in the petition, or by a document referred therein, i.e., the Decision in G.R. No. 70054.

To be sure, in G.R. No. 70054, when this Court declared null and void MB Resolution No. 75 ordering the closure of BFSMB and putting it on receivership, this Court directed the defunct CB-MB –

"To reorganize petitioner Banco Filipino Savings and Mortgage Bank and allow x xx to resume business in the Philippines under the comptrollership of both the Central Bank and the Monetary Board and under such conditions as may be prescribed by the latter in connection with its reorganization until such time that petitioner bank can continue in business with safety to its creditors, depositors and the general public."

Thus, what this Court obliged CB-MB to do was: (1) to reorganize, and (2) to reopen - BFSMB. Such reorganization and reopening, however, were imposed with conditions, to wit: (1) that they be done under the comptrollership of the CB-MB; and (2) the reorganization of BFSMB should be done under conditions to be prescribed by the CB-MB. Note further, that the comptrollership and imposition of certain conditions by CB-MB were to be accomplished within a period, i.e., "until such time that

petitioner bank can continue in business with safety to its creditors, depositors and the general public." But most importantly, nothing in the dispositive of the subject decision specified and enumerated how CB-MB was to reorganize BFSMB, or what conditions would be imposed in furtherance thereof. Hence, it cannot be said that the above-enumerated undertakings claimed by BFSMB to be accomplished by BSP-MB are supported by the Decision in G.R. No. 70054.

Consequently, it was incorrect to state that because BSP-MB and CB-BOL were deemed to have hypothetically admitted the ultimate facts of the petition for revival, they are now obligated to present clear and convincing evidence in full-blown trial to counter the admission that the judgment obligation had only been partially fulfilled. More importantly, it was grave error for the trial and appellate courts to restrict themselves to the examination of the petition for revival of judgment alone, sans the Decision in G.R. No. 70054, in determining whether or not to dismiss the petition for revival.

At any rate, the above-enumerated undertakings prayed for by BFSMB in its petition go beyond the four corners of the Decision sought to be revived. This is not allowed. An action for revival of judgment cannot modify, alter or reverse the original judgment, which is already final and executory.

To clarify, the obligation imposed upon CB-MB in the dispositive portion of the Decision in G.R. No. 70054 stemmed from what was provided in Section 29 of Republic Act No. 265, otherwise known as The Central Bank Act - that a closed bank may be reorganized or otherwise placed in such condition that it may be permitted to resume business with safety to its depositors, creditors and the general public. Specifically, We stated therein that –

"We are aware of the Central Bank's concern for the safety of Banco Filipino's depositors as well as its creditors including itself which had granted substantial financial assistance up to the time of the latter's closure. But there are alternatives to permanent closure and liquidation to safeguard those interests as well as those of the general public for the failure of Banco Filipino or any bank for that matter may be viewed as an irreversible decline of the country's entire banking system and ultimately, it may reflect on the Central Bank's own viability. For one thing, the Central Bank and the Monetary Board should exercise strict supervision over Banco Filipino. They should take all the necessary steps not violative of the laws that will fully secure the repayment of the total financial assistance that the Central Bank had already granted or would grant in the future."

From the foregoing, there is nothing in our Decision in G.R. No. 70054 which empowers the RTC and the Court of Appeals to fetter the discretion of BSP-MB regarding the conditions to impose and/or concessions to extend during the reorganization of BFSMB.

That this. Court purposely left the finer details of the reorganization and the conditions thereof to the sound discretion of then CB-MB was an acknowledgment of the fact that the CB alone was vested by statute with the power and/or authority to determine or prescribe the conditions under which such resumption of business shall take place.On this point, We agree with BSP-MB that, "the reliefs prayed for by BFSMB cannot be mandated by judicial compulsion through a mere revival of judgment considering that they lie within the discretion of the BSP-MB taking into account sound banking principles.

CASA MILAN HOMEOWNERS ASSOCIATION, INC., *Petitioner*, - versus - THE ROMAN CATHOLIC ARCHBISHOP OF MANILA and REGISTER OF DEEDS OF QUEZON CITY, *Respondents.*

G.R. No. 220042, SECOND DIVISION, September 05, 2018, CARPIO, J.

It is hornbook rule that identity of causes of action does not mean absolute identity; otherwise, a party could easily escape the operation of res judicata by changing the form of the action or relief sought. One test in ascertaining whether two suits relate to a single or common cause of action is whether the same facts or evidence would sustain both actions in that the judgment in the first case is a bar to the subsequent action.

This Court takes note of the fact that a prior judgment, LRC Case No. 07-61570, had already approved the Deed of Donation executed by Regalado in favor of RCAM. Thus, the issues in the pending action, S.C.A. No. Q-09-65019, could easily be resolved in favor of RCAM by presenting as evidence the decision approving Regalado's Deed of Donation. Subsequently, the issues in the present petition will only be resolved by using the same evidence, that is, the decision approving Regalado's Deed of Donation in favor of RCAM. Thus, the judgment in the first case, S.C.A. No. Q-09-65019, would be a bar to this petition before us.

FACTS:

B.C. Regalado & Co., Inc. (Regalado) is the owner of the lots (subject lots) of Casa Milan Subdivision in North Fairview, Quezon City. The approved subdivision plan of Casa Milan designated the subject lot as an open space or park/playground under Transfer Certificate of Title (TCT) in the name of Regalado.

The Roman Catholic Archbishop of Manila (RCAM) started constructing a church on the subject lot. According to petitioner Casa Milan Homeowner Association (Association), RCAM applied with the Housing and Land Use Regulatory Board (HLURB) for the segregation of a 4,000-square meter portion of the subject lot to be used as a parish church in Casa Milan. This was approved by the HLURB.

Notwithstanding such fact and petitioner's omission to state the date of its incorporation, petitioner alleged that the HLURB's approval was "suspicious, to say the least" because the request was purportedly without the written consent of the then non-existent homeowners' association or of a majority of the residents of Casa Milan.

During the pendency of the petition for conversion, Regalado executed a Deed of Donation over the segregated portion in favor of RCAM. This Deed of Donation was approved in **LRC Case No. 07-61570**. RCAM also commenced another case docketed as **S.C.A. No. Q-09-65019** praying to be recognized as the legal owner of the subject lot and be allowed to conduct activities on the lot.

On 3 December 2009, petitioner filed a complaint against RCAM, Regalado, the developer, and the Register of Deeds of Quezon City. The complaint had two main allegations: (1) the Deed of Donation covering a part of the open space is invalid because it was done without petitioner's written consent; and (2) RCAM was in bad faith when it built a parish church on the property without color of title.

Petitioner asserts that the Deed of Donation executed by Regalado in favor of RCAM is null and void and did not produce any legal effect because the subject lot, denominated as an "open space" under

Presidential Decree No. (P.D.) 1216, is inalienable. Petitioner cited a whereas clause of P.D. No. 1216 in defining an "open space" as "beyond the commerce of men." It states: *WHEREAS, such open spaces, roads, alleys and sidewalks in residential subdivision are for public use and are, therefore, beyond the commerce of men.*

RCAM filed a motion to dismiss on the ground of: (1) failure to state a cause of action, (2) res judicata since the deed of donation was already approved, and (3) litis pendentia.

ISSUE:

1. Whether the complaint failed to state a cause of action (YES)
2. Whether the complaint is barred by res judicata (YES)
3. Whether the complaint is barred by litis pendentia (YES)

RULING:

1. A complaint states a cause of action if it sufficiently avers the existence of the three (3) essential elements of a cause of action, namely: (a) a right in favor of the plaintiff by whatever means and under whatever law it arises or is created; (b) an obligation on the part of the named defendant to respect or not to violate such right; and (c) an act or omission on the part of the named defendant violative of the right of the plaintiff or constituting a breach of the obligation of defendant to the plaintiff for which the latter may maintain an action for recovery of damages.

   If the allegations of the complaint do not state the concurrence of these elements, the complaint becomes vulnerable to a motion to dismiss on the ground of failure to state a cause of action.

   In its complaint, petitioner alleged the following causes of action: (1) the Deed of Donation covering a part of the open space is invalid; and (2) RCAM was in bad faith when it built a parish church on the property without color of title.Despite these causes of action, however, petitioner failed to allege legal and factual bases of its asserted right over the open space.

   Petitioner's mere reliance on a whereas clause of P.D. No. 1216 to nullify a donation is unacceptable. Section 31 of P.D. No. 957, 26 as amended by Section 2 of P.D. No. 1216, is the basis for the definition of "open spaces" in residential subdivisions:

   X XX Upon their completion as certified to by the Authority, the roads, alleys, sidewalks and playgrounds **shall be donated by the owner or developer to the city or municipality** and it shall be mandatory for the local governments to accept provided, however, that the parks and playgrounds may be donated to the Homeowners Association of the project with the consent of the city or municipality concerned. No portion of the parks and playgrounds donated thereafter shall be converted to any other purpose or purposes. X XX

   In this case, petitioner's allegation that the Deed of Donation is invalid must have been based on the confusing wording of Section 31. However, jurisprudential law is clear. The transfer of ownership from the subdivision owner or developer to the local government is not

automaticbut requires a positive act from the owner or developer before the city, municipality, or homeowners' association can acquire dominion over the subdivision open spaces. Therefore, the donation made by Regalado in favor of RCAM is valid and legal because no positive act of donation has yet been made in favor of the local government or the homeowners association. The title to the open space is validly registered in the name of RCAM; thus, the disputed lot remains privately-owned by RCAM. RCAM was not in bad faith when it built a parish church on the open space because of its valid title over the subject property.

2. The two cases, although involving different parties and different causes of action, have the same underlying issue, that is, whether RCAM validly owns the subject property. The doctrine of res judicata is embodied in Section 47, Rule 39 of the Rules of Court.

   The doctrine of res judicata has two aspects. The first aspect is the effect of a judgment as a bar to the prosecution of a second action upon the same claim, demand, or cause of action. The second aspect precludes the relitigation of a particular fact or issue in another action between the same parties or their successors in interest, on a different claim or cause of action.The second aspect extends to questions "necessarily involved in an issue, and necessarily adjudicated, or necessarily implied in the final judgment, although no specific finding may have been made in reference thereto, and although such matters were directly referred to in the pleadings and were not actually or formally presented. Under this rule, if the record of the former trial shows that the judgment could not have been rendered without deciding the particular matter, it will be considered as having settled that matter as to all future actions between the parties, and if a judgment necessarily presupposes certain premises, they are as conclusive as the judgment itself x xx."

   In the case at bar, the second aspect applies. The determination of RCAM's right over the subject open space and RCAM's right to construct a parish church on the subject open space hinges on the validity of the Deed of Donation executed by Regalado to RCAM. Since the issue of ownership had been resolved in the case for the approval of the Deed of Donation, it cannot again be litigated in the instant case without virtually impeaching the correctness of the decision in the former case.

3. Litis pendentia, "a pending suit," is interposed as a ground for the dismissal of a civil action pending in court. For litis pendentia to be invoked, the concurrence of the following requisites is necessary: (a) identity of parties or at least such as represent the same interest in both actions; (b) identity of rights asserted and reliefs prayed for, the reliefs being founded on the same facts; and (c) the identity in the two cases should be such that the judgment rendered in one would, regardless of which party is successful, amount to res judicata in the other.

   Contrary to petitioner's contention and similar to this Court's ruling above regarding res judicata, there is identity in the reliefs prayed for and the facts upon which these reliefs were based. A perusal of both petitions reveals that both parties similarly pray to be recognized as the legal owner of the subject lot and to be allowed to conduct activities on the lot.

It is hornbook rule that identity of causes of action does not mean absolute identity; otherwise, a party could easily escape the operation of res judicata by changing the form of the action or relief sought. One test in ascertaining whether two suits relate to a single or common cause of action is whether the same facts or evidence would sustain both actions in that the judgment in the first case is a bar to the subsequent action.

This Court takes note of the fact that a prior judgment, **LRC Case No. 07-61570**, had already approved the Deed of Donation executed by Regalado in favor of RCAM. Thus, the issues in the pending action**, S.C.A. No. Q-09-65019**, could easily be resolved in favor of RCAM by presenting as evidence the decision approving Regalado's Deed of Donation. Subsequently, the issues in the present petition will only be resolved by using the same evidence, that is, the decision approving Regalado's Deed of Donation in favor of RCAM. Thus, the judgment in the first case, S.C.A. No. Q-09-65019, would be a bar to this petition before us.

IV. PROVISIONAL REMEDIES

A. Nature, purpose, and jurisdiction over provisional remedies

B. Preliminary attachment (Rule 57)

PHILIP SEE, *Complainant*, -versus- JUDGE ROLANDO G. MISLANG, PRESIDING JUDGE, REGIONAL TRIAL COURT, BRANCH 167, PASIG CITY, *Respondent*
A.M. No. RTJ-16-2454, Second Division, June 06, 2018, CARPIO, *J.*

As a rule, the money in the hands of public officers, although it may be due government employees, is not liable to the creditors of these employees in the process of garnishment. One reason is, that the State, by virtue of its sovereignty, may not be sued in its own courts except by express authorization by the Legislature, and to subject its officers to garnishment would be to permit indirectly what is prohibited directly. Another reason is that moneys sought to be garnished, as long as they remain in the hands of the disbursing officer of the Government, belong to the latter, although the defendant in garnishment may be entitled to a specific portion thereof.

FACTS:

On 6 December 2011, the Armed Forces of the Philippines (AFP) awarded a medical procurement contract to One Top System Resources, a sole proprietorship owned by Ruth D. Bautista (Bautista). As payment, an irrevocable letter of credit was issued by United Coconut Planters Bank (UCPB).

On 6 March 2012, Bautista and complainant entered into a Deed of Assignment whereby Bautista assigned to complainant the amount of PhP2.6 Million from the proceeds of the letter of credit. In turn, complainant would provide two units of portable x-ray machine and pay for the freight cost and other charges. Bautista also issued to complainant two postdated checks in the total amount of Three Million Five Hundred Twenty-Two Thousand Eight Hundred Ninety-Two Pesos (PhP3,522,892.00). Despite the delivery of the x-ray machines, complainant was unable to collect from Bautista. The two

checks were also dishonored for lack of sufficient funds. Complainant, through counsel, sent demand letters, but these went unheeded.

Seeking payment with damages, complainant filed with the Regional Trial Court of Pasig City a Verified Complaint with Prayer for Preliminary Attachment. Respondent granted the provisional remedy sought and a writ of preliminary attachment was issued. The AFP filed a Motion to Lift/Quash Notice of Garnishment, arguing that the medical equipment and supplies were undergoing final inspection and evaluation by the AFP Technical Inspection and Acceptance Committee. According to the AFP, because the contract price for the project was not yet due and demandable for lack of a certificate of final acceptance, the alleged earmarked money constituted public funds, which may not be attached. In the Order dated 4 January 2013, respondent denied the motion on the ground that the funds ceased to form part of the general funds of the AFP when they were allocated for payment to a private individual or entity. Instead of the AFP, Bautista filed a Motion for Reconsideration, but it was also denied by respondent.

ISSUE:

Whether respondent justifiably lifted the Writ of Preliminary Attachment he initially granted (YES)

RULING:

In *Pacific Products, Inc. v. Ong,* the Court categorically declared as illegal the garnishment of the receivable due a private entity while still in the possession of the government, thus:

x xx. By the process of garnishment, the plaintiff virtually sues the garnishee for a debt due to the defendant. The debtor stranger becomes a forced intervenor. The Director of the Bureau of Commerce and Industry, an officer of the Government of the Philippine Islands, when served with the writ of attachment, thus became a party to the action

A rule, which has never been seriously questioned, is that money in the hands of public officers, although it may be due government employees, is not liable to the creditors of these employees in the process of garnishment. One reason is, that the State, by virtue of its sovereignty, may not be sued in its own courts except by express authorization by the Legislature, and to subject its officers to garnishment would be to permit indirectly what is prohibited directly. Another reason is that moneys sought to be garnished, as long as they remain in the hands of the disbursing officer of the Government, belong to the latter, although the defendant in garnishment may be entitled to a specific portion thereof. And still another reason which covers both of the foregoing is that every consideration of public policy forbids it. *(Director of Commerce and Industry v. Concepcion,*43 Phil. 386)

When respondent granted complainant's application for preliminary attachment on 5 June 2012, Bautista was not yet paid the contract price of the medical procurement contract. In fact, AFP paid Bautista almost a year later when the contract price was deposited in the UCPB account of Bautista on 22 May 2013. Significantly, the third whereas clause of the Deed of Assignment between complainant and Bautista stipulates that the amount of PhP2.6 Million due complainant can only be drawn against the letter of credit issued to Bautista "upon presentation of documents from the AFP.

Respondent prematurely granted the application for preliminary attachment and the AFP rightfully opposed the garnishment of Bautista's receivable in its possession because the alleged earmarked money still constituted public funds at the time.

TSUNEISHI HEAVY INDUSTRIES (CEBU), INC., *Petitioner,* -versus - MIS MARITIME CORPORATION, *Respondent*G.R. No. 193572, FIRST DIVISION, April 4, 2018, JARDELEZA, J.

An attachment proceeding is for the purpose of creating a lien on the property to serve as security for the payment of the creditors' claim. Hence, where a lien already exists, as in this case a maritime lien, the same is already equivalent to an attachment.

Clearly, because Tsuneishi claims a maritime lien in accordance with the Ship Mortgage Decree, all Tsuneishi had to do is to file a proper action in court for its enforcement. The issuance of a writ of preliminary attachment on the pretext that it is the only means to enforce a maritime lien is superfluous.

X XX

In Watercraft Venture Corporation v. Wolfe, we ruled that an affidavit which does not contain concrete and specific grounds showing fraud is inadequate to sustain the issuance of the writ of preliminary attachment.

Tsuneishi is well aware of MIS' claims. It appears from the record, and as admitted by MIS in its pleadings, that the reason for its refusal to pay is its claim that its obligation should be set off against Tsuneishi's liability for the losses that MIS incurred for the unwarranted delay in the turn-over of the vessel. MIS insists that Tsuneishi is liable for the damage on the vessel. This is not an act of fraud.

FACTS:

MIS Maritime Corp (MIS) contracted Tsuneishi to dry dock and repair its vessel through an agreement. Tsuneishi rendered the required services. However, about a month later and while the vessel was still dry docked, Tsuneishi conducted an engine test. The vessel's engine emitted smoke. The parties eventually discovered that this was caused by a burnt crank journal. The crankpin also showed hairline cracks due to defective lubrication or deterioration, Tsuneishi insists that the damage was not its fault while MIS insists on the contrary

Tsuneishi billed MIS the amount of US$318,571.50 for payment of its repair and dry docking services. MIS refused to pay this amount. Instead, it demanded that Tsuneishi pay US$471,462.60 as payment for the income that the vessel lost in the six months that it was not operational and dry docked at Tsuneishi's shipyard. It also asked that its claim be set off against the amount billed by Tsuneishi. MIS further insisted that after the set off, Tsuneishi still had the obligation to pay it.

Tsuneishi claims that MIS also caused Cattleya Shipping, another company to stop its payment for the services Tsuneishi rendered for the repair and dry docking of the vessel.

Tsuneishi filed a complaint against MIS before the RTC with a prayer for a writ of preliminary attachment

Tsuneishi argued that Section 21 of the Ship Mortgage Decree provides for a maritime lien in favor of any person who furnishes repair or provides use of a dry dock for a vessel. Further, Tsuneishi and MIS' contract granted Tsuneishi the right to take possession, control and custody of the vessel in case of default of payment.

Tsuneishi also argues that MIS is fraudulent that MIS Maritime knew or ought to have known that its claim for lost revenues was unliquidated and could not be set-off or legally compensated against the dry-docking and repair bill which was liquidated and already fixed and acknowledged by the parties. Further, the act of MIS persuading Cattleya in also not paying its dues is fraudulent.

Tsuneishi also filed the Affidavit of its employee Lionel T. Bitera (Bitera Affidavit). The Bitera Affidavit stated that Tsuneishi performed dry docking and repair services for White Cattleya. It also alleged that after Tsuneishi performed all the services required, MIS and Cattleya refused to pay their obligation.

ISSUES:

1. Whether a maritime lien under the Ship Mortgage Decree may be enforeced through a preliminary attachment (No)
2. Whether Tsuneishi was able to comply with the requirements of writ of preliminary attachment (No)

RULING:

1. Section 21 of the Ship Mortgage Decree establishes a lien; the holder of the lien has the right to bring an action to seek the sale of the vessel and the application of the proceeds of this sale to the outstanding obligation. Through this lien, a person who furnishes repair, supplies, towage, use of dry dock or marine railway, or other necessaries to any vessel, in accordance with the requirements under Section 21, is able to obtain security for the payment of the obligation to him. A lienholder has the remedy of filing an action in court for the enforcement of the lien. In such action, a lienholder must establish that the obligation and the corresponding lien exist before he or she can demand that the property subject to the lien be sold for the payment of the obligation. Thus, a lien functions as a form of security for an obligation.

Liens, as in the case of a maritime lien, arise in accordance with the provision of particular laws providing for their creation, such as the Ship Mortgage Decree which clearly states that certain persons who provide services or materials can possess a lien over a vessel. The Rules of Court also provide for a provisional remedy which effectively operates as a lien. This is found in Rule 57 which governs the procedure for the issuance of a writ of preliminary attachment.

A writ of preliminary attachment is a provisional remedy issued by a court where an action is pending. In simple terms, a writ of preliminary attachment allows the levy of a property which shall then be held by the sheriff. This property will stand as security for the satisfaction of the judgment that the court may render in favor of the attaching party.

Tsuneishi's argument is rooted on a faulty understanding of a lien and a writ of preliminary attachment. As we said, a maritime lien exists in accordance with the provision of the Ship Mortgage Decree. It is enforced by filing a proceeding in court. When a maritime lien exists, this means that the party in whose favor the lien was established may ask the court to enforce it by ordering the sale of the subject property and using the proceeds to settle the obligation.

On the other hand, a writ of preliminary attachment is issued precisely to create a lien. When a party moves for its issuance, the party is effectively asking the court to attach a property and hold it liable for any judgment that the court may render in his or her favor. This is similar to what a lien does. It functions as a security for the payment of an obligation.

Clearly, because it claims a maritime lien in accordance with the Ship Mortgage Decree, all Tsuneishi had to do is to file a proper action in court for its enforcement. The issuance of a writ of preliminary attachment on the pretext that it is the only means to enforce a maritime lien is superfluous. We note that the attachment before the trial court extended to other properties other than the lien itself, such as bank accounts and real property. Clearly, what was prayed for in the proceedings below was not an attachment for the enforcement of a maritime lien but an attachment, plain and simple.

2. The record clearly shows that the Bitera Affidavit does not state that MIS has no other sufficient security for the claim sought to be enforced. This is a requirement under Section 3, Rule 57 of the Rules of Court. We cannot agree with Tsuneishi's insistence that this allegation need not be stated in the affidavit since it was already found in the complaint. The rules are clear and unequivocal. There is no basis for Tsuneishi's position. Nor is it entitled to the liberal application of the rules. Not only has Tsuneishi failed to justify its omission to include this allegation, the facts also do not warrant the setting aside of technical rules.

MIS did not act with fraud in refusing to pay the obligation. We emphasize that when fraud is invoked as a ground for the issuance of a writ of preliminary attachment under Rule 57 of the Rules of Court, there must be evidence clearly showing the factual circumstances of the alleged fraud. Fraud cannot be presumed from a party's mere failure to comply with his or her obligation. Moreover, the Rules of Court require that in all averments of fraud, the circumstances constituting it must be stated with particularity. In *Watercraft Venture Corporation v. Wolfe,* we ruled that an affidavit which does not contain concrete and specific grounds showing fraud is inadequate to sustain the issuance of the writ of preliminary attachment.

Tsuneishi is well aware of MIS' claims. It appears from the record, and as admitted by MIS in its pleadings, that the reason for its refusal to pay is its claim that its obligation should be set off against Tsuneishi's liability for the losses that MIS incurred for the unwarranted delay in the turn-over of the vessel. MIS insists that Tsuneishi is liable for the damage on the vessel. This is not an act of fraud. It is not an intentional act or a willful omission calculated to deceive and injure Tsuneishi. MIS is asserting a claim which it believes it has the right to do so under the law. Whether MIS' position is legally tenable is a different matter. It is an issue fit for the court to decide. Notably, MIS filed this as a counterclaim in the case pending before the RTC. Whether MIS is legally correct should be threshed out there.

There is a reason why a writ of preliminary attachment is available only in specific cases enumerated under Section 1 of Rule 57. As it entails interfering with property prior to a determination of actual

liability, it is issued with great caution and only when warranted by the circumstances. As we said in Ng Wee v. Tankiansee, the rules on the issuance of the writ of preliminary attachment as a provisional remedy are strictly construed against the applicant because it exposes the debtor to humiliation and annoyance

.

C. Preliminary injunction (Rule 58)

PHILIPPINE CHARITY SWEEPSTAKES OFFICE, *Petitioner*, *v.* **HON. MAXIMO M. DE LEON, PRESIDING JUDGE OF THE MAKATI CITY REGIONAL TRIAL COURT, BRANCH 143, AND PHILIPPINE GAMING AND MANAGEMENT CORPORATION**, *Respondents*.
G.R. Nos. 236577 and 236597, THIRD DIVISION, August 15, 2018, LEONEN, *J.*

For a writ of preliminary injunction to be issued, the applicant must show, by prima facie evidence, an existing right before trial, a material and substantial invasion of this right, and that a writ of preliminary injunction is necessary to prevent irreparable injury.

Respondent Philippine Gaming and Management Corporation's claim of exclusive rights, as stated in the Interim Settlement and which was brought to arbitration, pertained to its rights under the Amendments to Equipment Lease Agreement. It failed to provide proof that the Amendments to Equipment Lease Agreement was extended beyond August 21, 2018. It cannot claim that it has alleged exclusive rights to be protected and that it will suffer irreparable injury if petitioner continued with the Nationwide On-line Lottery System bidding process. This is precisely because the bidding was for the next supplier of the Nationwide On-line Lottery System for a period of five (5) years after August 21, 2018 or commencing on August 22, 2018.

FACTS:
The original contract between petitioner and respondent Philippine Gaming and Management Corporation is the Equipment Lease Agreement with a term of eight (8) years-from 1995 to 2003. The Equipment Lease Agreement was further amended, extending the term to another eight (8) years-from August 23, 2007 to August 22, 2015.

It was during the effectivity of the Amendments to Equipment Lease Agreement that petitioner "allowed Pacific Online to supply a number of lottery equipment for its Luzon operation." In 2013, while the Amendments to Equipment Lease Agreement was still in effect, petitioner and respondent Philippine Gaming and Management Corporation entered into an Interim Settlement and agreed to bring the exclusivity issue before an arbitral tribunal.

While the arbitration case was pending, petitioner and respondent Philippine Gaming and Management Corporation executed a Supplemental and Status Quo Agreement, extending the term to another three (3) years "to ensure unhampered lotto operation."

Since the extended Equipment Lease Agreement between petitioner and private respondent was about to expire in August 2018, petitioner started preparing for the bidding of the Nationwide On-line Lottery System. Claiming that it is "the exclusive supplier/lessor of lottery equipment for Luzon," and seeking to enjoin petitioner from further proceeding with the bidding process,respondent Philippine Gaming and Management Corporation applied for a temporary restraining order and a

writ of preliminary injunction. This was granted by Judge De Leon. Consequently, the Philippine Charity Sweepstakes Office filed a **Petition for Certiorari** before the Supreme Court.

ISSUE:
Whether or not respondent Presiding Judge De Leon committed grave abuse of discretion when he granted respondent Philippine Gaming and Management Corporation's application for injunctive relief? (YES)

RULING:
This Court finds that the RTC committed grave abuse of discretion in granting respondent Philippine Gaming and Management Corporation's application for injunctive relief. A Writ of Preliminary Injunction is issued "to prevent threatened or continuous irremediable injury to some of the parties before their claims can be thoroughly studied and adjudicated."

The issuance of a Writ of Preliminary Injunction is governed by Rule 58, Section 3 of the 1997 Rules of Civil Procedure:

> Section 3. *Grounds for issuance of preliminary injunction*. - A preliminary injunction may be granted when it is established:
>
> (a)That the applicant is entitled to the relief demanded, and the whole or part of such relief consists in restraining the commission or continuance of the act or acts complained of, or in requiring performance of an act or acts, either for a limited period or perpetually;
>
> (b)That the commission, continuance or non-performance of the act or acts complained of during the litigation would probably work injustice to the applicant; or
>
> (c)That a party, court, agency or a person is doing, threatening, or is attempting to do, or is procuring or suffering to be done, some act or acts probably in violation of the rights of the applicant respecting the subject of the action or proceeding, and tending to render the judgment ineffectual.

In *Department of Public Works and Highways (DPWH) v. City Advertising Ventures Corporation*, the Court held that "[f]or a writ of preliminary injunction to be issued, the applicant must show, by *prima facie* evidence, an existing right before trial, a material and substantial invasion of this right, and that a writ of preliminary injunction is necessary to prevent irreparable injury."

Respondent Philippine Gaming and Management Corporation's claim of exclusive rights, as stated in the Interim Settlement and which was brought to arbitration, pertained to its rights under the Amendments to Equipment Lease Agreement. It failed to provide proof that the Amendments to Equipment Lease Agreement was extended beyond August 21, 2018. It cannot claim that it has alleged exclusive rights to be protected and that it will suffer irreparable injury if petitioner continued with the Nationwide On-line Lottery System bidding process. This is precisely because the bidding was for the next supplier of the Nationwide On-line Lottery System for a period of five (5) years *after* August 21, 2018 or commencing on August 22, 2018.

Additionally, with the RTC's confirmation of the arbitral tribunal's Final Award, the Writ of Preliminary Injunction is deemed lifted and petitioner may now proceed with the bidding process of the Nationwide Online Lottery System for Luzon.

BUREAU OF CUSTOMS (BOC), represented by COMMISSIONER ALBERTO D. LINA, AND DEPARTMENT OF BUDGET AND MANAGEMENT-PROCUREMENT SERVICE, (DBM-PS), represented by EXECUTIVE DIRECTOR JOSE TOMAS C. SYQUIA, *petitioners* –versus- HON. PAULINO Q. GALLEGOS, in his capacity as PRESIDING JUDGE, REGIONAL TRIAL COURT, MANILA, BRANCH 47, and the purported JOINT VENTURE OF OMNIPRIME MARKETING, INC. AND INTRASOFT INTERNATIONAL, INC., represented by ANNABELLE A. MARGAROLI, *respondents*.G.R. No. 220832, FIRST DIVISION, February 28, 2018, TIJAM, *J*

In Medina v. Greenfield Dev't. Corp., the Court reiterated the following requisites to be entitled to an injunctive writ, viz.: (1) a right in esse or a clear and unmistakable right to be protected; (2) a violation of that right; (3) that there is an urgent and permanent act and urgent necessity for the writ to prevent serious damage. "While a clear showing of the right is necessary, its existence need not be conclusively established. Hence, to be entitled to the writ, it is sufficient that the complainant, shows that he has an ostensible right to the final relief prayed for in his complaint." Here, private respondent amply justified the grant of the provisional relief it prayed for before the RTC.

FACTS:

On December 20, 2006, the Association of Southeast Asian Nation (ASEAN) member-countries, including the Philippines, signed the Protocol to Establish and Implement the ASEAN Single Window (ASW Protocol), under which the member-countries agreed to develop and implement their National Single Windows (NSW) based on international standards and best practices as established in international agreements and conventions concerning trade facilitation and modernization of customs techniques and practices.

Phase One of the Philippines' NSW project (PNSW 1) started in 2009 and completed in October 2010. Thereafter, Phase Two of the PNSW with Enhanced Customs Processing System project (PNSW 2) was undertaken. It is an information technology project which is aimed at integrating the existing Electronic to Mobile Customs System and the PNSW 1 into a single system that will serve all the existing functionalities under the BOC's current electronic or mobile transaction system. Its purpose is to achieve a fully electronic, paperless, man-contact-free processing of Customs transactions while allowing traders a single submission of data and information, and for the BOC a single and synchronous processing of data and information and a single decision-making point for Customs release and clearance of cargo.

Petitioner BOC, through its procuring entity, petitioner Department of Budget and Management-Procurement Service, issued on October 15, 2014 a Request for Expression of Interest, inviting prospective bidders in the eligibility screening and to be shortlisted for the competitive bidding of the PNSW 2 project with a total approved budget for the contract of P650 Million. After the evaluation and determination of shortlisted bidders, the DBM-PS Bids and Awards Committee (BAC) issued a Notice of HRB and an Invitation to Negotiate to private respondent, as the highest bidder.

On April 23, 2015, Commissioner Lina was appointed as BOC Commissioner. He wrote a Letter dated May 6, 2015 addressed to petitioner DBM-PS Executive Director Jose Tomas C. Syquia. Commissioner Lina requested for the **discontinuance** of the procurement process of the PNSW 2 project, in line with Section 41 (c) 16 of Republic Act (R.A.) No. 9184, otherwise known as the Government Procurement Reform Act. This provision grants to the head of the procuring agency the right to reject bids for justifiable and reasonable grounds where the award of the contract will not redound to the benefit of the government. Acting upon Commissioner Lina's letter, Director Syquia issued on May 7, 2015, a Notice of Cancellation, aborting the bidding process for PNSW 2 project.

Private respondent, through a Letter dated May 22, 2015, moved for a reconsideration of the Notice of Cancellation, but the same was denied in petitioner BOC's Resolution dated July 31, 2015.

This prompted the private respondent to file a Petition for *Certiorari and Mandamus*21 with Prayer for the Issuance of a Temporary Restraining Order (TRO) and/or Writ of Preliminary Prohibitory Injunction (WPPI) and Writ of Preliminary Mandatory Injunction (WPMI), before the RTC against the petitioners. The petition prayed that a judgment be rendered annulling the decision of Director Syquia embodied in his Notice of Cancellation, made pursuant to Commissioner Lina's May 6, 2015 Letter and commanding the petitioners to refrain from cancelling, and, instead to continue the last remaining process of the competitive bidding for the PNSW 2 project, which is the signing of the contract and issuance of the Notice to Proceed.

The RTC issued a TRO in favor of the private respondent. Consequently, the RTC issued the assailed Omnibus Order, granting private respondent's application for the issuance of an injunctive writ,

ISSUE

Whether Judge Paulino Q. Gallegos (respondent Judge) gravely abused in his discretion when he issued the omnibus order and the injunctive writ. (NO)

RULING:

For *certiorari* to lie, it must be shown that the respondent Judge acted with grave abuse of discretion, or more specifically, that he exercised his power arbitrarily or despotically when he issued the omnibus order and the WPI, by reason of passion or personal hostility; and such exercise was so patent and gross as to amount to an evasion of positive duty, or to a virtual refusal to perform it or to act in contemplation of law.

The petitioners failed to show that respondent Judge gravely abused his discretion when he issued the injunctive writ, pursuant to his omnibus order. The purpose of a preliminary injunction under Section 3, Rule 58 of the Rules of Court, is to prevent threatened or continuous irremediable injury to some of the parties before their claims can be thoroughly studied and adjudicated. "Its sole aim is to preserve the *status quo* until the merits of the case can be heard fully." In *Medina v. Greenfield Dev't. Corp.*, the Court reiterated the following requisites to be entitled to an injunctive writ, *viz.*: (1) a right *in esse* or a clear and unmistakable right to be protected; (2) a violation of that right; (3) that there is an urgent and permanent act and urgent necessity for the writ to prevent serious damage. "While a clear showing of the right is necessary,

its existence need not be conclusively established. Hence, to be entitled to the writ, it is sufficient that the complainant, shows that he has an ostensible right to the final relief prayed for in his complaint." Here, private respondent amply justified the grant of the provisional relief it prayed for before the RTC.

First, private respondent as the declared highest bidder, has a right under R.A. No. 9184 and its IRR to be awarded the contract upon the BAC's determination of its compliance with and responsiveness to the terms and conditions in the Bidding Documents.

Section 38, Article XI of R.A. No. 9184 provides a time-limit within which to award a contract as a consequence of the bidding process, which is set at three (3) months from the opening of the bids. It likewise provides that the contract shall be deemed approved should there be inaction from the concerned entities. In this case, more than three (3) months have elapsed since the opening of the bids, yet the head of the procuring entity, petitioner DBM-PS, represented by Director Syquia failed to observe the parameters of the law and allowed Commissioner Lina of the BOC to exercise the discretion of canceling the bidding process.

Second, private respondent's right was violated due to the issuance of the Director Syquia's May 7, 2015 Notice of Cancellation, which was prompted by Commissioner Lina's May 6, 2015 Letter, ordering the cancellation of the procurement of PNSW 2 project. These issuances were bereft of factual and legal bases.

The right to reject any bid contemplated by Section 41 (c), 46 Article XI of R.A. No. 9184, which was invoked by Commissioner Lina to support his May 6, 2015 Letter, must be read in conjunction with the *"justifiable ground"* defined in Section 41.1 of R.A. No. 9184's IRR. A perusal of the May 6, 2015 Letter indicates that Commissioner Lina based his discretion to abandon the procurement of the PNSW 2 project simply because he intends "to conduct a thorough review of its details" such as its terms of reference, and specifications, among others. This is hardly a justifiable ground in abandoning the bidding for the said project. Likewise, a cursory reading of the May 7, 2015 Notice of Cancellation reveals that there was no proof, except for Director Syquia's bare statement, that the project is no longer economically, financially or technically feasible. Mere allegation is not evidence and is not equivalent to proof.

As can be gleaned from the aforementioned cases, it can be deduced that as a general rule, courts cannot direct government agencies entrusted with the function to accept or reject bid and awards contract, to do a particular act or to enjoin such act within its prerogative. Consequently, the bidder has no cause to complain. However, jurisprudence has carved out an exception, *i.e.*, when said government agency used its discretion or prerogative as a shield to a fraudulent award; or an unfairness or injustice is shown; or when in the exercise of its authority, it gravely abuses or exceeds its jurisdiction.

Third, there is an urgent necessity to preserve the *status quo*, considering that the unjustified cancellation would put to naught private respondent's considerable resources, time and efforts in order to hurdle the rigorous requirements in the Bidding Documents. Aside from this, the records show that the PNSW 2 project had long been overdue and our country had been lagging behind in its commitment to the ASEAN under the ASEAN Single Window Agreement signed back in December 9, 2005. To further delay the Philippines' international commitment by the mere expedient of arbitrarily canceling the procurement of the said project would create a deleterious effect in our international relations with other ASEAN members.

SM INVESTMENTS CORPORATION, *Petitioner*, -versus- MAC GRAPHICS1 CARRANZ INTERNATIONAL CORP., *Respondent*. G.R. Nos. 224131-32, June 25, 2018, CAGUIOA, J.

PRIME METROESTATE, INC., *Petitioner*, -versus- MAC GRAPHICS CARRANZ INTERNATIONAL CORP., *Respondent*. G.R. Nos. 224337-38, SECOND DIVISION, June 25, 2018, CAGUIOA, J.

The Court enumerated the requisites to justify the issuance of a WPMI in Heirs of Melencio Yu v. Court of Appeals and explained the ramifications of its issuance, to wit:

> *x xx To justify the issuance of a writ of preliminary mandatory injunction, it must be shown that: (1) the complainant has a clear legal right; (2) such right has been violated and the invasion by the other party is material and substantial; and (3) there is an urgent and permanent necessity for the writ to prevent serious damage. An injunction will not issue to protect a right not in esse, or a right which is merely contingent and may never arise since, to be protected by injunction, the alleged right must be clearly founded on or granted by law or is enforceable as a matter of law. As this Court opined in [Sps.] Dela Rosa v. Heirs of Juan Valdez:*

It is settled that a writ of preliminary injunction should be issued only to prevent grave and irreparable injury, that is, injury that is actual, substantial, and demonstrable. Here, there is no "irreparable injury" as understood in law. Rather, the damages alleged by the petitioner, namely, "immense loss in profit and possible damage claims from clients" and the cost of the billboard which is "a considerable amount of money" is easily quantifiable, and certainly does not fall within the concept of irreparable damage or injury as described in Social Security Commission v. Bayona:

> *Damages are irreparable within the meaning of the rule relative to the issuance of injunction where there is no standard by which their amount can be measured with reasonable accuracy. "An irreparable injury which a court of equity will enjoin includes that degree of wrong of a repeated and continuing kind which produce hurt, inconvenience, or damage that can be estimated only by conjecture, and not by any accurate standard of measurement." An irreparable injury to authorize an injunction consists of a serious charge of, or is destructive to, the property it affects, either physically or in the character in which it has been held and enjoined, or when the property has some peculiar quality or use, so that its pecuniary value will not fairly recompense the owner of the loss thereof. (Emphasis supplied)*

Here, any damage petitioner may suffer is easily subject to mathematical computation and, if proven, is fully compensable by damages. Thu, a preliminary injunction is not warranted.

FACTS:

Respondent Mac Graphics Carranz International Corp., which is engaged in advertising and operation of billboards and other outdoor advertising media, entered into a Contract of Lease with Pilipinas Makro, Inc. for exclusive use of the latter's billboard sites located at Makro EDSA Cubao, Quezon City and Makro Makati City for a period of 20 years.

Makro is one of the companies where SMIC, as an incorporator, has substantial interest and such interest existed at the time when Mac Graphics and Makro entered into the lease contract. SMIC owns 10% of the capital stock of Makro while Rappel Holdings, Inc., which is owned by SMIC, owns 50%.

Mac Graphics and Makro implemented the lease contract at Makro-Cubao and Makro-Makati for almost two years from its effectivity on January 15, 2007. Sometime in 2007, the majority shareholders of Makro, which included SMIC, increased their ownership of Makro to 60%.

Makro sent a letter to Mac Graphics terminating the lease contract effective immediately because of the latter's alleged failure to obtain the relevant MMDA and local government permits and to obtain a comprehensive all-risk property insurance for the sites. Makro averred that the 90 days "remedy period" of the lease contract does not apply because Mac Graphics' violation was not remediable. Mac Graphics objected to the termination. Makro and SMIC then removed Mac Graphics' billboards and other advertising media installed at Makro-Cubao and Makro-Makati. They also prevented Mac Graphics from entering the leased premises.

Mac Graphics filed before the RTC, Muntinlupa City, a Complaint for "Permanent Injunction and Declaration of Subsistence of Contract; Damages with Application for Temporary Restraining Order and/or Writ of Preliminary Injunction" against Makro and SMIC. SMIC filed its Answer and reiterated that since it is not privy or party, successor-in-interest, or assign of the lease contract, then Mac Graphics has no cause of action against it. Makro filed its Answer with Compulsory Counterclaims. Makro insisted that Mac Graphics has no cause of action against it and the termination of the lease contract was legal.

RTC issued an Order granting the application for a Writ of Preliminary Mandatory Injunction (WPMI), upon the filing of a P5 million bond. SMIC filed a motion for reconsideration while Makro filed a motion for reconsideration with motion for substitution of PMI in lieu of Makro, by reason of Makro's change of name. As of December 14, 2012, Makro amended its corporate name to "Prime MetroEstate, Inc." The RTC granted the motion for substitution but denied the motions for reconsideration. The affirmed the RTC Orders granting the WPMI.

ISSUE:

Whether the CA erred in granting the injunctive relief despite absence of: (a) a right in esse of Mac Graphics that warranted protection; (b) proof of material and substantial violation of Mac Graphics' right; and (c) grave and irreparable damage that Mac Graphics would sustain if no such injunctive writ was issued. (YES)

RULING:

As defined by Section 1, Rule 58 of the Rules of Court, a preliminary injunction is an order granted at any stage of an action or proceeding prior to judgment or final order, requiring a party or a court, agency or a person to refrain from a particular act or acts or require the performance of a particular act or acts, in which case it shall be known as a preliminary mandatory injunction.

As to the grounds for its issuance, a preliminary injunction may be granted when it is established that:

(a) the applicant is entitled to the relief demanded, and the whole or part of such relief consists in restraining the commission or continuance of the act or acts complained of, or in requiring the performance of an act or acts, either for a limited period or perpetually;

(b) the commission, continuance or non-performance of the act or acts complained of during the litigation would probably work injustice to the applicant; or

(c) a party, court, agency or a person is doing, threatening, or is attempting to do, or is procuring or suffering to be done, some act or acts probably in violation of the rights of the applicant respecting the subject of the action or proceeding, and tending to render the judgment ineffectual.68

The Court enumerated the requisites to justify the issuance of a WPMI in Heirs of Melencio Yu v. Court of Appeals and explained the ramifications of its issuance, to wit:

> x xx To justify the issuance of a writ of preliminary mandatory injunction, it must be shown that: (1) the complainant has a clear legal right; (2) such right has been violated and the invasion by the other party is material and substantial; and (3) there is an urgent and permanent necessity for the writ to prevent serious damage. An injunction will not issue to protect a right not in esse, or a right which is merely contingent and may never arise since, to be protected by injunction, the alleged right must be clearly founded on or granted by law or is enforceable as a matter of law. As this Court opined in [Sps.] Dela Rosa v. Heirs of Juan Valdez:

It is settled that a writ of preliminary injunction should be issued only to prevent grave and irreparable injury, that is, injury that is actual, substantial, and demonstrable. Here, there is no "irreparable injury" as understood in law. Rather, the damages alleged by the petitioner, namely, "immense loss in profit and possible damage claims from clients" and the cost of the billboard which is "a considerable amount of money" is easily quantifiable, and certainly does not fall within the concept of irreparable damage or injury as described in Social Security Commission v. Bayona:

> Damages are irreparable within the meaning of the rule relative to the issuance of injunction where there is no standard by which their amount can be measured with reasonable accuracy. "An irreparable injury which a court of equity will enjoin includes that degree of wrong of a repeated and continuing kind which produce hurt, inconvenience, or damage that can be estimated only by conjecture, and not by any accurate standard of measurement." An irreparable injury to authorize an injunction consists of a serious charge of, or is destructive to, the property it affects, either physically or in the character in which it has been held and enjoined, or when the property has some peculiar quality or use, so that its pecuniary value will not fairly recompense the owner of the loss thereof. (Emphasis supplied)

Here, any damage petitioner may suffer is easily subject to mathematical computation and, if proven, is fully compensable by damages. Thu, a preliminary injunction is not warranted.

Both the RTC and the CA initially determined that the pre- termination by PMI without according Mac Graphics the 90-day "remedy period" to correct the alleged violations by the latter is not justified and, in a way, invalid.

To the Court, a finding of the existence of a clear and unmistakable right in favor of Mac Graphics necessarily presupposes that PMI's pre-termination of the lease contract is not valid. Conversely, a finding that PMI's pre-termination is valid and justified necessarily renders naught whatever rights emanating from the lease contract that Mac Graphics may have.

The parties are relentless in their contrary positions on these issues. Mac Graphics admits its non-compliance with the licenses/permits and insurance stipulations in the lease contract, but justifies such breach by invoking the presence of circumstances that rendered it legally and physically impossible to comply therewith and PMI's disregard of the 90-day "remedy period." On PMI's part, the outright pre-termination of the lease contract is justified because Mac Graphics failed to obtain the stipulated licenses/permits and insurance on the commencement date of the lease contract, which is January 15, 2007. Also, the insurance obtained was not compliant and obtained beyond the 90-day "remedy period."

Clearly, PMI has presented a substantial challenge against or contradiction of Mac Graphic's position. A genuine doubt, which is more legal than factual, exists on the validity of PMI's act of pre-termination and the tenability of Mac Graphics' excuse from its non-compliance with the stipulations of the lease contract.

Given the foregoing, the Court is of the opinion, and so holds, that Mac Graphics has failed to establish prima facie a right in esse or a clear and unmistakable right, rendering the issuance of the WPMI improper. Given the legal complexity of Mac Graphic's cause of action vis-a-vis PMI's defenses, it is unclear at this point whether Mac Graphics can enforce the pre-terminated lease contract as a matter of law. There are simply too many legal and factual sub-issues that need to be threshed out before the pre-termination may be declared valid or invalid.

Also, a finding in favor of the existence of a clear and unmistakable right in favor of Mac Graphics, which the lower courts effectively made, is tantamount to a prejudgment of the legality of PMI's pre-termination of the lease contract. PMI's pre-termination has in effect been declared invalid. The existence of Mac Graphics' right consequently negates the validity of the pre-termination by PMI. How can PMI now convince the RTC that the 90-day "remedy period" is not applicable — the breach by Mac Graphics being non-remediable — given the RTC finding that "MACGRAPHICS had shown that the contract of lease was pre-terminated by MAKRO without giving it a chance to rectify or remedy any violations that MAKRO alleged to have been committed by MACGRAPHICS?" This is precisely the absurd situation that would result if there is a prejudgment of the main case as contemplated in Searth Commodities Corp. v. Court of Appeals,121 where there would be a reversal of the rule on the burden of proof since the proposition which Mac Graphics is inceptively bound to prove is already assumed.

Going to the grave and irreparable requirement for the issuance of a WPMI, both the CA and RTC found that the injuries which Mac Graphics might have sustained or would sustain as a result of the act of PMI are irreparable and cannot be remedied by a simple computation of damages.

Mac Graphics has around seven billboards in Metro Manila and two of them (those involved in this case) have been lost, resulting in the great reduction of its yearly revenue. Thus, Mac Graphics' injury, if any, is mainly loss of revenues and as such, the same can be measured with reasonable accuracy, easily quantifiable or susceptible of simple mathematical computation. The pecuniary value of such loss will fairly recompense Mac Graphics for which Mac Graphics has put its initial value at P1 million in its Complaint. Also, the presentation of the Revenue Opportunity for the Remaining Contract Period dated August 15, 2009, which represents the alleged revenue opportunities that Mac Graphics was supposed to get from the sites in dispute upon marketing to its clients based on the ongoing

market rates of other billboard sites in the same region, bolsters the finding that the damage, if any, that Mac Graphics stood to suffer is reparable.

SUMIFRU (PHILIPPINES) CORPORATION, *Petitioner,* -versus – SPOUSES DANILO CEREÑO and CERINA CEREÑO, *Respondents.* G.R. No. 218236, SECOND DIVISION, February 7, 2018, CARPIO, *J.*

The following requisites must be proved before a writ of preliminary injunction, whether mandatory or prohibitory, will be issued: (1) the applicant must have ***a clear and unmistakable right*** *to be protected, that is a right in esse; (2) there is a material and substantial invasion of such right; (3) there is an* ***urgent need for the writ to prevent irreparable injury*** *to the applicant; and (4) no other ordinary, speedy, and adequate remedy exists to prevent the infliction of irreparable injury.*

The CA did not err when it ruled that ***Sumifru failed to establish a clear and unmistakable right*** *as to necessitate the issuance of a writ of preliminary injunction. As aptly found by the CA, the spouses Cereño consistently disputed Sumifru's rights under the agreements by claiming that the agreements were already terminated.*

The CA likewise did not err when it found that ***there is no irreparable injury to be suffered by Sumifru.*** *The injury alleged by Sumifru is capable of pecuniary estimation, and any loss it may suffer, if proven, is fully compensable by damages.*

FACTS:

Sumifru is a domestic corporation engaged in the production and export of Cavendish bananas and has its principal office at Km. 20, Tibungco, Davao City. Sumifru entered into several growership agreements with respondents spouses Danilo and CerinaCereño (spouses Cereño) covering the latter's titled lands with a total land area of 56,901 square meters (sq. m.) located in Tamayong, Calinan District, Davao City.

Under the parties' PPA and GEPASAs, the spouses Cereño, as growers, undertook, among others, to sell and deliver exclusively to Sumifru the bananas produced from the contracted areas, which conform to the volume and quality specifications defined by their agreements.

Sumifru filed a Complaint for Injunction and Specific Performance with Application for Writ of Preliminary Injunction and Temporary Restraining Order against the spouses Cereño before the RTC. The complaint alleged that sometime in February 2007, the spouses Cereño flagrantly violated their PPA and GEPASAs, when they harvested the bananas without the consent of Sumifru, packed them in boxes not provided by Sumifru, and sold them to buyers other than Sumifru.

Meanwhile, the spouses Cereño filed their Answer to the Complaint. In their Answer, they claimed that their contractual obligations under the PPA and GEPASAs were no longer in force for they already terminated the agreements due to Sumifru's gross violations and serious breach thereof.

RTC denied Sumifru's application for issuance of a writ of preliminary prohibitory and mandatory injunction for lack of merit. It held that there was no urgency to issue the injuctive reliefs prayed for. The CA denied the petition of Sumifru. The CA found that Sumifru's rights under the agreements are

disputed, and the injury, which Sumifru claims it may suffer, is capable of mathematical computation and can be compensated by damages.

ISSUE:

Whether or not Petitioner is entitled to the issuance of a writ of preliminary prohibitory and mandatory injunction. (NO)

RULING:

Section 1, Rule 58 of the Rules of Court defines a **preliminary injunction** as an order granted at any stage of an action prior to the judgment or final order requiring a party, court, agency, or person to refrain from a particular act or acts. It may also require the performance of a particular act or acts, in which case it shall be known as a preliminary mandatory injunction.

The following requisites must be proved before a writ of preliminary injunction, whether mandatory or prohibitory, will be issued: (1) the applicant must have **a clear and unmistakable right** to be protected, that is a right in esse; (2) there is a material and substantial invasion of such right; (3) there is an **urgent need for the writ to prevent irreparable injury** to the applicant; and (4) no other ordinary, speedy, and adequate remedy exists to prevent the infliction of irreparable injury.

The CA did not err when it ruled that **Sumifru failed to establish a clear and unmistakable right** as to necessitate the issuance of a writ of preliminary injunction. As aptly found by the CA, the spouses Cereño consistently disputed Sumifru's rights under the agreements by claiming that the agreements were already terminated.

The CA likewise did not err when it found that **there is no irreparable injury to be suffered by Sumifru.** The injury alleged by Sumifru is capable of pecuniary estimation, and any loss it may suffer, if proven, is fully compensable by damages.

Considering that Sumifru admitted that the GEPASAs on which it anchors its right expired in 2015, there is even more reason not to issue the writ prayed for. In Thunder Security and Investigation Agency v. National Food Authority, we held that petitioner cannot lay claim to an actual, clear, and positive right as to entitle it to the issuance of a writ of preliminary injunction based on an expired service contract.

THE CITY GOVERNMENT OF BAGUIO REPRESENTED BY MAURICIO G. DOMOGAN, CITY MAYOR, CITY BUILDINGS AND ARCHITECTURE OFFICE REPRESENTED BY OSCAR FLORES, AND PUBLIC ORDER AND SAFETY DIVISION REPRESENTED BY FERNANDO MOYAEN AND CITY DEMOLITION TEAM REPRESENTED BY NAZITA BAÑEZ*, Petitioners*, -versus- ATTY. BRAIN MASWENG, REGIONAL HEARING OFFICER-NATIONAL COMMISSION ON INDIGENOUS PEOPLES-CORDILLERA ADMINISTRATIVE REGION, MAGDALENA GUMANGAN, MARION T. POOL, LOURDES C. HERMOGENO, JOSEPH LEGASPI, JOSEPH BASATAN, MARCELINO BASATAN, JOSEPHINE LEGASPI, LANSIGAN BAWAS, ALEXANDER AMPAGUEY, JULIO DALUYEN, SR., CONCEPCION PADANG AND CARMEN PANAYO, *Respondents*.

G.R. No. 195905, THIRD DIVISION, July 04, 2018, MARTIRES, *J*.

The rule requiring a motion for reconsideration to be filed before a petition for certiorari is available admits of certain exceptions. The issues had been duly raised before the NCIP. There is urgency in the petition because petitioners seek to implement its demolition orders with the goal of preserving the Busol Forest Reserve, Baguio's primary forest and watershed which involves public interest.

The petition for certiorari and the motion to dismiss had different causes of action especially since the grant or denial of the provisional remedies does not necessarily mean that the main action would have the same conclusion.

Before the preliminary injunction may be issued, first and foremost there must be a clear showing by the complainant that there is an existing right to be protected. They, however, admit that their claims for recognition are still pending before the NCIP.

FACTS:

Private respondents are the petitioners in NCIP Case No. 29-CAR-09. They prayed that their ancestral lands in the Busol Forest Reserve be identified, delineated, and recognized and that the corresponding Certificate of Ancestral Land Title be issued. The Gumangan petition sought to restrain the City Government of Baguio, et al., from enforcing demolition orders and to prevent the destruction of their residential houses pending their application for identification of their ancestral lands before the NCIP Ancestral Domains Office.

Respondent Atty. Brain Masweng NCIP-CAR Hearing Officer, issued a 72-Hour Temporary Restraining Order on the Gumangan petition. On the same date, he issued another order for a 72-Hour TRO on the Ampaguey petition. Atty. Masweng issued a writ of preliminary injunction in NCIP Case Nos. 29-CAR-097 and 31-CAR-09.

Aggrieved, petitioners filed a petition for certiorari before the CA assailing the TRO and preliminary injunction issued by Atty. Masweng in the above NCIP case.

The CA dismissed the petition for certiorari for being procedurally flawed because they did not file a motion for reconsideration before the NCIP. The appellate court elucidated that the present petition constituted forum shopping because petitioners had a pending motion to dismiss before the NCIP.

ISSUES:

1. Whether the court of appeals erred in dismissing the petition for certiorari for being procedurally defective
2. Whether or not there is forum shopping
3. Whether private respondents were entitled to injunctive relief

RULING:

1. Yes. The Court finds that exceptions exist to warrant petitioners' direct resort to a petition for certiorari before the CA notwithstanding its lack of a motion for reconsideration filed.

A petition for certiorari is resorted to whenever a tribunal, board or officer exercising judicial or quasi-judicial functions has acted without or in excess of its jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction. It is an extraordinary remedy available only when there is no appeal or any plain, speedy, and adequate remedy in the ordinary course of law.

Thus, it is axiomatic that **a motion for reconsideration is a condition precedent to the filing of a petition for certiorari**. Nonetheless, **the rule requiring a motion for reconsideration to be filed before a petition for certiorari is availableadmits of certain exceptions**: (a.) Where the order is a patent nullity, as where the court a quo has no jurisdiction; (b.) 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**; (c.) Where there is an **urgent necessity for the resolution of the question and any further delay would prejudice the interests of the Government** or the petitioner or the subject matter of the petition is perishable; (d.) Where, under the circumstances, a motion for reconsideration would be useless; (e.) Where the petitioner was deprived of due process and there is extreme urgency for relief; (f.) Where, in a criminal case, a relief from an order of arrest is urgent and the granting of such relief by the trial court is improbable; (g.) Where the proceedings in the lower court are a nullity for lack of due process; (h.)Where the proceeding was ex parte or in which the petitioner had no opportunity to object; and (i.) **Where the issue raised is one purely of law or public interest is involved.**

The issues had been duly raised before the NCIP especially considering that petitioner had presented similar arguments or opposition from the TRO initially issued by the NCIP until the grant of the writ of preliminary injunction. Second**,** there is urgency in the petition because petitioners seek to implement its demolition orders with the goal of preserving the Busol Forest Reserve, Baguio's primary forest and watershed. It cannot be gainsaid that **any delay may greatly prejudice the government as the Busol Forest Reserve may be further compromised**. Third, **the preservation of the Busol Forest Reserve involves public interest** as it would have a significant impact on the water supply for the City of Baguio.

2. No. There is no forum shopping if different reliefs are prayed for.

Forum shopping exists when a party, against whom an adverse judgment or order has been rendered in one forum, seeks a favorable opinion in another forum, other than by appeal or special civil action for certiorari - it is the institution of two or more actions or proceedings grounded on the same cause on the supposition that one or the other court would make a favorable disposition. The following are the elements of forum shopping: (a) identity of parties, or at least such parties as represent the same interests in both actions; (b) identity of rights asserted and reliefs prayed for, the relief being founded on the same facts; and (c) identity of the two preceding particulars, such that any judgment rendered in the other action will, regardless of which party is successful, amount to res judicata in the action under consideration.

The petition for certiorari filed before the CA did not amount to forum shopping despite the existence of the motion to dismiss before the NCIP. **The two actions involved different reliefs based on different facts.** In their petition, petitioners questioned the issuance of provisional remedies by the NCIP and prayed that these be dismissed for lack of a clear legal right to be protected. On the other hand, the motion to dismiss filed before the NCIP sought the dismissal of the main complaint of private respondents for the issuance of a permanent injunction to enjoin the demolition orders and/or to recognize their purported native title over the land involved.

The judgment rendered in the petition would not amount to res judicata with respect to the motion to dismiss, and vice versa. As stated, the petition for certiorari assailed the propriety of the issuance of provisional remedies while the motion to dismiss attacked the principal action of private respondents. Evidently**, the petition for certiorari and the motion to dismiss had different causes of action especially since the grant or denial of the provisional remedies does not necessarily mean that the main action would have the same conclusion**.

3. No.

A preliminary injunction is an order granted at any stage of an action or proceeding prior to the judgment or final order, requiring a party or a court, agency or a person to refrain from a particular act or acts.

Under Section 3, Rule 58 of the Rules of Court, a preliminary injunction may be granted when it is established that: (a) the applicant is entitled to the relief demanded, and the whole or part of such relief consists in restraining the commission or continuance of the act or acts complained of, or in requiring the performance of an act or acts, either for a limited period or perpetually; (b) the commission, continuance or non-performance of the act or acts complained of during the litigation would probably work injustice to the applicant; or (c) a party, court, agency or a person is doing, threatening or attempting to do; or is procuring or suffering to be done, some act or acts probably in violation of the rights of the applicant respecting the subject of the action or proceeding and tending to render the judgment ineffectual.

Thus, it **is incumbent upon private respondents to establish that their rights over the land in the Busol Forest Reserve are unequivocal and indisputable**. They, however, **admit that their claims for recognition are still pending before the NCIP; they are but mere expectations-short of the required present and unmistakable right for the grant of the issuance of the provisional remedy of injunction**.

D. Receivership (Rule 59)

BANCO FILIPINO SAVINGS AND MORTGAGE BANK, *Petitioner*, **-versus- BANGKO SENTRAL NG PILIPINAS AND THE MONETARY BOARD**, *Respondents*. G.R. No. 200678, THIRD DIVISION, June 04, 2018, LEONEN, *J.*

A bank which has been ordered closed by the BangkoSentral ng Pilipinas (BangkoSentral) is placed under the receivership of the Philippine Deposit Insurance Corporation. ***As a consequence of the receivership, the closed bank may sue and be sued only through its receiver, the Philippine Deposit Insurance Corporation.*** *Any action filed by the closed bank without its receiver may be dismissed.*

It was speculative on petitioner's part to presume that it could file this Petition without joining its receiver on the ground that Philippine Deposit Insurance Corporation might not allow the suit. At the very least, petitioner should have shown that it attempted to seek Philippine Deposit Insurance Corporation's authorization to file suit. It was possible that Philippine Deposit Insurance Corporation could have granted its permission to be joined in the suit. If it had refused to allow petitioner to file its

suit, ***petitioner still had a remedy available to it. Under Rule 3, Section 10 of the Rules of Court: petitioner could have made Philippine Deposit Insurance Corporation an unwilling co-petitioner and be joined as a respondent to this case.***

FACTS:

On December 11, 1991, this Court promulgated *Banco Filipino Savings & Mortgage Bank v. Monetary Board and Central Bank of the Philippines*, which declared void the Monetary Board's order for closure and receivership of Banco Filipino Savings & Mortgage Bank (Banco Filipino). This Court also directed the Central Bank of the Philippines and the Monetary Board to reorganize Banco Filipino and to allow it to resume business under the comptrollership of both the Central Bank and the Monetary Board. Banco Filipino subsequently filed several Complaints before the Regional Trial Court, among them a claim for damages in the total amount of P18,800,000,000.00.

On June 14, 1993, Congress passed Republic Act No. 7653,providing for the establishment and organization of BangkoSentral as the new monetary authority.

On November 6, 1993, pursuant to this Court's 1991 *Banco Filipino* Decision, the Monetary Board issued Resolution No. 427, which allowed Banco Filipino to resume its business.

In 2002, Banco Filipino suffered from heavy withdrawals, prompting it to seek the help of BangkoSentral.

In a letter, Banco Filipino asked for financial assistance of more than P3,000,000,000.00 through emergency loans and credit easement terms. BangkoSentral informed Banco Filipino that it should first comply with certain conditions imposed by Republic Act No. 7653 before financial assistance could be extended. Banco Filipino was also required to submit a rehabilitation plan approved by BangkoSentral before emergency loans

BangkoSentral informed Banco Filipino that the Monetary Board issued Resolution No. 1668 granting its request for the P25,000,000,000.00 Financial Assistance and Regulatory Reliefs to form part of its Revised Business Plan and Alternative Business Plan. The approval was also subject to certain terms and conditions, among which was the withdrawal or dismissal with prejudice to all pending cases filed by Banco Filipino against BangkoSentral and its officials.The terms also included the execution of necessary quitclaims and commitments to be given by Banco Filipino's principal stockholders, Board of Directors, and duly authorized officers "not to revive or refile such similar cases in the future."

Banco Filipino requested reconsideration of the terms and conditions of the P25,000,000,000.00 Financial Assistance and Regulatory Reliefs package, noting that the salient features of the Alternative Business Plan were materially modified.However, Banco Filipino informed BangkoSentral that it was constrained to accept the "unilaterally whittled down version of the [P25,000,000,000.00] Financial Assistance Package and Regulatory Reliefs."It, however, asserted

that it did not agree with the condition to dismiss and withdraw its cases since this would require a separate discussion.

Banco Filipino filed a Petition For Certiorari and Mandamus with prayer for issuance of a temporary restraining order and writ of preliminary injunction before the RTC. It assailed the alleged "arbitrary, capricious and illegal acts" of BangkoSentral and of the Monetary Board in coercing Banco Filipino to withdraw all its present suits in exchange of the approval of its Business Plan. In particular, Banco Filipino alleged that BangkoSentral and the Monetary Board committed grave abuse of discretion in imposing an additional condition in Resolution No. 1668 requiring it to withdraw its cases and waive all future cases since it was unconstitutional and contrary to public policy. It prayed that a writ of mandamus be issued to compel BangkoSentral and the Monetary Board to approve and implement its business plan and release its Financial Assistance and Regulatory Reliefs package.

ISSUES:

(1) Whether or not RTC has jurisdiction to take cognizance of a petition for certiorari against acts and omissions of the Monetary Board (NO)

(2) Whether or not respondents BangkoSentral ng Pilipinas and the Monetary Board should have filed a motion for reconsideration of the trial court's denial of their motion to dismiss before filing their petition for certiorari before the Court of Appeals. (In this case, NO)

(3) Whether or not the trial court validly acquired jurisdiction over respondents BangkoSentral ng Pilipinas and the Monetary Board. (NO)

However, before any of these issues can be addressed, this Court must first resolve the issue of whether or not petitioner Banco Filipino, as a closed bank under receivership, could file this Petition for Review without joining its statutory receiver, the Philippine Deposit Insurance Corporation, as a party to the case. (NO)

I. A closed bank under receivership can only sue or be sued through its receiver, the Philippine Deposit Insurance Corporation.

The relationship between the Philippine Deposit Insurance Corporation and a closed bank is fiduciary in nature. Section 30 of Republic Act No. 7653 directs the receiver of a closed bank to "immediately gather and *take charge* of all the assets and liabilities of the institution" and "administer the same for the benefit of its creditors."

The law likewise grants the receiver "the general powers of a receiver under the Revised Rules of Court." Under Rule 59, Section 6 of the Rules of Court, "a receiver shall have the power to bring and defend, in such capacity, actions in his [or her] own name."[107] Thus, Republic Act No. 7653 provides that the receiver shall also "in the name of the institution, and with the assistance of counsel as [it] may retain, institute such actions as may be necessary to collect and recover accounts and assets of, or defend any action against, the institution."[108] Considering that the receiver has the power to take

charge of *all* the assets of the closed bank and to institute for or defend *any* action against it, **only the receiver, in its fiduciary capacity, may sue and be sued on behalf of the closed bank.**

In *Balayan Bay Rural Bank v. National Livelihood Development Corporation*,[109] this Court explained that a receiver of a closed bank is tasked with the duty to hold the assets and liabilities in trust for the benefit of the bank's creditors.

As fiduciary of the insolvent bank, Philippine Deposit Insurance Corporation conserves and manages the assets of the bank to prevent the assets' dissipation. This includes the power to bring and defend any action that threatens to dissipate the closed bank's assets. *Balayan Bay Rural Bank* explained that Philippine Deposit Insurance Corporation does so, **not as the real party-in-interest, but as a representative party** X XX

The inclusion of the PDIC as a representative party in the case is therefore grounded on its statutory role as the fiduciary of the closed bank which, under Section 30 of R.A. 7653 (New Central Bank Act), is authorized to conserve the latter's property for the benefit of its creditors. X XX

In *Balayan Bay Rural Bank* summarized, thus: **[T]he legal personality of the petitioner bank is not *ipso facto* dissolved by insolvency; it is not divested of its capacity to sue and be sued after it was ordered by the Monetary Board to cease operation.** The law mandated, however, that the action should be brought through its statutory liquidator/receiver which in this case is the PDIC. The authority of the PDIC to represent the insolvent bank in legal actions emanates from the fiduciary relation created by statute which reposed upon the receiver the task of preserving and conserving the properties of the insolvent for the benefit of its creditors.

It was speculative on petitioner's part to presume that it could file this Petition without joining its receiver on the ground that Philippine Deposit Insurance Corporation might not allow the suit. At the very least, petitioner should have shown that it attempted to seek Philippine Deposit Insurance Corporation's authorization to file suit. It was possible that Philippine Deposit Insurance Corporation could have granted its permission to be joined in the suit. If it had refused to allow petitioner to file its suit, **petitioner still had a remedy available to it. Under Rule 3, Section 10 of the Rules of Court: petitioner could have made Philippine Deposit Insurance Corporation an unwilling co-petitioner and be joined as a respondent to this case.**

In any case, petitioner's verification and certification of non-forum shopping was signed by its Executive Vice Presidents Maxy S. Abad and Atty. Francisco A. Rivera, as authorized by its Board of Directors.X XX When petitioner was placed under receivership, the powers of its Board of Directors and its officers were suspended. Thus, its Board of Directors could not have validly authorized its Executive Vice Presidents to file the suit on its behalf. The Petition, not having been properly verified, is considered an unsigned pleading.[124] A defect in the certification of non-forum shopping is likewise fatal to petitioner's cause.

Considering that the Petition was filed by signatories who were not validly authorized to do so, the Petition does not produce any legal effect. **Being an unauthorized pleading, this Court never validly acquired jurisdiction over the case. The Petition, therefore, must be dismissed.**

II. Unless otherwise provided for by law and the Rules of Court, petitions for certiorari against a quasi-judicial agency are cognizable only by the Court of Appeals.

The Regional Trial Court had no jurisdiction over the Petition for Certiorari filed by petitioner against respondents.

Pursuant to Article XII, Section 20 of the Constitution, Congress constituted BangkoSentral as an independent central monetary authority. As an administrative agency, it is vested with quasi-judicial powers, which it exercises through the Monetary Board.

…**BangkoSentral's Monetary Board is a quasi-judicial agency.** Its decisions, resolutions, and orders are the decisions, resolutions, and orders of a quasi-judicial agency. Any action filed against the Monetary Board is an action against a quasi-judicial agency.

This does not mean, however, that BangkoSentral only exercises quasi-judicial functions. As an administrative agency, it likewise exercises "powers and/or functions which may be characterized as administrative, investigatory, regulatory, quasi-legislative, or quasi-judicial, or a mix of these five, as may be conferred by the Constitution or by statute."

In this case, the issue between the parties was whether the trial court had jurisdiction over petitions for certiorari against BangkoSentral and the Monetary Board. Rule 65, Section 4 of the Rules of Court provides:

Section 4. Where and when petition to be filed. — The petition shall be filed not later than sixty (60) days from notice of the judgment, order or resolution. In case a motion for reconsideration or new trial is timely filed, whether such motion is required or not, the sixty (60) day period shall be counted from notice of the denial of said motion.

The petition shall be filed in the Supreme Court or, if it relates to the acts or omissions of a lower court or of a corporation, board, officer or person, in the Regional Trial Court exercising jurisdiction over the territorial area as defined by the Supreme Court. It may also be filed in the Court of Appeals whether or not the same is in aid of its appellate jurisdiction, or in the Sandiganbayan if it is in aid of its appellate jurisdiction. **If it involves the acts or omissions of a quasi-judicial agency, unless otherwise provided by law or these Rules, the petition shall be filed in and cognizable only by the Court of Appeals. (Emphasis supplied**)

The Rules of Court categorically provide that petitions for certiorari involving acts or omissions of a quasi-judicial agency **"shall be filed in and cognizable only by the Court of Appeals."**

III. Generally, a motion for reconsideration is a sine qua non condition for the filing of a petition for certiorari. Exceptions.

The settled rule is that a motion for reconsideration is a sine qua non condition for the filing of a petition for certiorari. The purpose is to grant an opportunity to public respondent to

correct any actual or perceived error attributed to it by the re-examination of the legal and factual circumstances of the case.

…This Court, in formulating the rule in *Palomado*, declared:

The unquestioned rule in this jurisdiction is that certiorari will lie only if there is no appeal or any other plain, speedy and adequate remedy in the ordinary course of law against the acts of public respondent…

…Thus, the general rule, in all cases; "is that a motion for reconsideration is a *sine qua non* condition for the filing of a petition for certiorari." There are, however, recognized exceptions to this rule, namely:

(a) where the order is a patent nullity, as where the Court *a quo* had no jurisdiction; (b) where the questions raised in the certiorari proceeding 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; (c) 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; (d) where, under the circumstances, a motion for reconsideration would be useless; (e) where petitioner was deprived of due process and there is extreme urgency for relief; (f) 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; (g) where the proceedings in the lower court are a nullity for lack of due process; (h) where the proceedings [were] *ex parte* or in which the petitioner had no opportunity to object; and (i) where the issue raised is one purely of law or where public interest is involved.[147](Citations omitted)

In this instance, the trial court had no jurisdiction over the petition filed by petitioner against respondents, an issue which respondents properly asserted before the Court of Appeals when they filed *their* Petition for Certiorari.**They were, thus, excused from filing the requisite motion for reconsideration.**

Considering that there is sufficient basis to dismiss this Petition outright, this Court finds it unnecessary to address the other issues raised.

In sum, this Court holds that petitioner did not have the legal capacity to file this Petition absent any authorization from its statutory receiver, Philippine Deposit Insurance Corporation. Even assuming that the Petition could be given due course, it would still be denied. The Court of Appeals did not err in dismissing the action pending between the parties before the trial court since special civil actions against quasi-judicial agencies must be filed with the Court of Appeals.

E. Replevin (Rule 60)

MILAGROS P. ENRIQUEZ, *Petitioner*, *v.* **THE MERCANTILE INSURANCE CO., INC.**, *Respondent.*
G.R. No. 210950, THIRD DIVISION, August 15, 2018, LEONEN, *J.*

Forfeiture of the replevin bond, therefore, requires first, a judgment on the merits in the defendant's favor, and second, an application by the defendant for damages. Neither circumstance appears in this case. When petitioner failed to produce the van, equity demanded that Asuten be awarded only an amount equal to the value of the van. The RTC would have erred in ordering the forfeiture of the entire bond in Asuten's favor, considering that there was no trial on the merits or an application by Asuten for damages. This judgment could have been reversed had petitioner appealed the RTC's May 24, 2004 Order in Civil Case No. 10846. Unfortunately, she did not. Respondent was, thus, constrained to follow the RTC's directive to pay Asuten the full amount of the bond.

FACTS:
Enriquez filed a **Complaint for Replevin** against Wilfred Asuten before the RTC of Angeles City, Pampanga, for the recovery of her Toyota Hi-Ace van valued at P300,000.00. Asuten allegedly refused to return her van, claiming that it was given by Enriquez's son as a consequence of a gambling deal.

Enriquez applied for a **replevin bond** from Mercantile Insurance. Mercantile Insurance issued Bond No. 138 for P600,000.00, which had a period of one (1) year or until February 24, 2004. Enriquez also executed an indemnity agreement with Mercantile Insurance.

RTC issued an Order dismissing the Complaint without prejudice due to Enriquez's continued failure to present evidence. Trial court found that Enriquez did not comply with prior court orders to prove payment of her premiums on the replevin bond or to post a new bond. Thus, the RTC declared Bond No. 138 forfeited. On July 12, 2004, the RTC then held a hearing on the final forfeiture of the bond.In an Order issued on the same day, the RTC directed Mercantile Insurance to pay Asuten the amount of P600,000.00.

Due to Enriquez's failure to remit the amount to be paid on the replevin bond, Mercantile Insurance paid Asuten P600,000.00, in compliance with the RTC's Order. It was also constrained to file a **collection suit** against Enriquez with the RTC of Manila. In her defense, Enriquez argued that she could not be held liable since the replevin bond had already expired.

In its Decision, the RTC ruled in favor of Mercantile Insurance. Enriquez appealed with the CA, which affirmed the RTC's Decision, stating that under the Guidelines on Corporate Surety Bonds, the lifetime of any bond issued in any court proceeding shall be from court approval until the case is finally terminated. Thus, it found that the replevin bond and indemnity agreement were still in force and effect when Mercantile Insurance paid P600,000.00 to Asuten. Enriquez moved for reconsideration but was denied. Hence, this Petition.

ISSUE:
Whether or not petitioner should be made liable for the full amount of the bond paid by respondent, as surety, in relation to a previous case for replevin filed by petitioner? (YES)

RULING:
De Guia v. Alto Surety & Insurance, Co. requires that any application on the bond be made after hearing but before the entry of judgment. If the judgment under execution contains no directive for the surety to pay, and the proper party fails to make any claim for such directive before such judgment had become final and executory, the surety or bondsman cannot be later made liable under the bond. For this reason, a surety bond remains effective until the action or proceeding is finally decided, resolved,

or terminated. This condition is deemed incorporated in the contract between the applicant and the surety, regardless of whether they failed to expressly state it.

Civil Case No. 10846 is a rare instance where the writ of seizure is dissolved due to the dismissal without prejudice, but the bond stands because the case has yet to be finally terminated by the RTC. The peculiar circumstances in this case arose when petitioner *failed* to return the van to Asuten, despite the dismissal of her action. This is an instance not covered by the Rules of Court or jurisprudence. In its discretion, the RTC proceeded to rule on the forfeiture of the bond. As a result, respondent paid Asuten twice the value of the van withheld by petitioner. Respondent, thus, seeks to recover *this* amount from petitioner, despite the van only being worth half the amount of the bond.

Of all the provisional remedies provided in the Rules of Court, only Rule 60, Section 2 requires that the amount of the bond be *double* the value of the property. The rationale behind this requirement is that the bond functions not only to indemnify the defendant in case the property is lost, but also to answer for any damages that may be awarded by the court if the judgment is rendered in defendant's favor.

Any application of the bond in a replevin case, therefore, is premised on the judgment rendered in favor of the defendant. Thus, Section 9 and 10, Rule 60 of the Rules of Court imply that there must be a prior judgment on the merits before there can be any application on the bond. Section 20, Rule 57, as applied suppletorily to Rule 60 of the Rules of Court, likewise requires that for the defendant to be granted the *full* amount of the bond, he or she must first apply to the court for damages. These damages will be awarded only after a proper hearing.

Forfeiture of the replevin bond, therefore, requires *first,* a judgment on the merits in the defendant's favor, and *second,* an application by the defendant for damages. Neither circumstance appears in this case. When petitioner failed to produce the van, equity demanded that Asuten be awarded only an amount equal to the value of the van. The RTC would have erred in ordering the forfeiture of the *entire* bond in Asuten's favor, considering that there was no trial on the merits or an application by Asuten for damages. This judgment could have been reversed *had petitioner appealed the RTC's May 24, 2004 Order in Civil Case No. 10846.* Unfortunately, she did not. Respondent was, thus, constrained to follow the RTC's directive to pay Asuten the full amount of the bond.

This is a simple case for collection of a sum of money. Petitioner cannot substitute this case for her lost appeal in Civil Case No. 10846. It is clear from the antecedents that any losses which petitioner has suffered were due to the consequences of her actions, or more accurately, her inactions. Civil Case No. 10846, which she filed, was dismissed due to her failure to prosecute. The RTC forfeited the replevin bond which she had filed because she refused to return the property. She is now made liable for the replevin bond because she failed to appeal its forfeiture.

V. SPECIAL CIVIL ACTIONS

A. Jurisdiction and venue

B. Interpleader (Rule 62)

C. Declaratory relief and similar remedies (Rule 63)

COMMISSIONER OF INTERNAL REVENUE, *Petitioner,* -versus – STANDARD INSURANCE CO., INC., *Respondent.*
G.R. No. 219340, FIRST DIVISION, November 7, 2018, BERSAMIN, J.

An action for declaratory relief is governed by Section 1, Rule 63 of the Rules of Court. It is predicated on the attendance of several requisites, specifically: (1) the subject matter of the controversy must be a deed, will, contract or other written instrument, statute, executive order or regulation, or ordinance; (2) the terms of said documents and the validity thereof are doubtful and require judicial construction; (3) ***there must have been no breach of the documents*** *in question; (4) there must be an* ***actual justiciable controversy*** *or the "ripening seeds" of one between persons whose interests are adverse; (5) the issue must be* ***ripe for judicial determination****; and (6)* ***adequate relief is not available through other means or other forms of action or proceeding.***

The third, fourth, fifth and sixth requisites were patently wanting.

Firstly, the third requisite was not met due to ***the subject of the action (i.e., statute) having been infringed or transgressed prior to the institution of the action.***

Secondly, the apprehension of the respondent that it could be rendered technically insolvent through the imposition of the iniquitous taxes imposed by Section 108 and Section 184 of the NIRC, laws that were valid and binding, did not render the action for declaratory relief fall within the purview of an actual controversy that was ripe for judicial determination. The challenge mounted by the respondent against the tax provisions in question could be said to be ***based on a contingency that might or might not occur.*** *This is because the Congress has not yet addressed the difference in tax treatment of the life and non-life insurance policies. Under the circumstances, the respondent would not be entitled to declaratory relief because* ***its right — still dependent upon contingent legislation — was still inchoate.***

Lastly, the respondent's adequate remedy upon receipt of the FDDA for the DST deficiency for taxable year 2011 was not the action for declaratory relief but ***an appeal taken in due course to the Court of Tax Appeals.*** *By choosing the wrong remedy, the respondent lost its proper and true recourse.*

FACTS:

The respondent received from the Bureau of Internal Revenue (BIR) a Preliminary Assessment Notice (PAN) regarding its liability amounting to P377,038,679.55 arising from a deficiency in the payment of documentary stamp taxes for taxable year 2011. The respondent contested the PAN through its letter dated February 27, 2014, but the petitioner nonetheless sent to it a formal letter of demand. Although the respondent requested reconsideration on April 22, 2014, it received on December 4, 2014 the Final Decision on Disputed Assessment (FDDA) dated November 25, 2014, declaring its liability for the DST deficiency, including interest and compromise penalty.

Meanwhile, the respondent also received a demand for the payment of its deficiency income tax, value-added tax, premium tax, DST, expanded withholding tax, and fringe benefit tax for taxable year 2012 and deficiency DST for taxable year 2013.

The respondent commenced Civil Case No. 14-1330 in the RTC for the judicial determination of the constitutionality of Section 108 and Section 184 of the NIRC with respect to the taxes to be paid by non-life insurance companies.

On December 23, 2014, the RTC issued the TRO prayed for by enjoining the BIR, its agents, representatives, assignees, or any persons acting for and in its behalf from implementing the provisions of the NIRC adverted to with respect to the FDDA for the respondent's taxable year 2011, and to the pending assessments for taxable years 2012 and 2013. Later, the RTC issued the writ of preliminary injunction.

The RTC rendered the assailed judgment wherein it opined that although taxes were self-assessing, the tax system merely created liability on the part of the taxpayers who still retained the right to contest the particular application of the tax laws; and holding that the exercise of such right to contest was not considered a breach of the provision itself as to deter the action for declaratory relief.

ISSUES:

(I) Whether or not the trial court erred in taking cognizance of the instant case because a petition for declaratory relief is not applicable to contest tax assessments. (YES)

RULING:

(I)

Taxes, being the lifeblood of the Government, should be collected promptly and without hindrance or delay. Section 218 of the NIRC expressly provides that "[n]o court shall have the authority to grant an injunction to restrain the collection of any national internal revenue tax, fee or charge imposed by th[e] [NIRC]." Also, pursuant to Section 11 15 of R.A. No. 1125, as amended, the decisions or rulings of the Commissioner of Internal Revenue, among others, assessing any tax, or levying, or distraining, or selling any property of taxpayers for the satisfaction of their tax liabilities are immediately executory, and their enforcement is not to be suspended by any appeals thereof to the Court of Tax Appeals unless "in the opinion of the Court [of Tax Appeals] the collection by the Bureau of Internal Revenue or the Commissioner of Customs may jeopardize the interest of the Government and/or the taxpayer," in which case the Court of Tax Appeals "at any stage of the proceeding may suspend the said collection and require the taxpayer either to deposit the amount claimed or to file a surety bond for not more than double the amount."

In view of the foregoing, the RTC not only grossly erred in giving due course to the petition for declaratory relief, and in ultimately deciding to permanently enjoin the enforcement of the specified provisions of the NIRC against the respondent, but even worse acted without jurisdiction.

Assuming, arguendo, that the RTC had jurisdiction to act on the petition in Civil Case No. 14-1330, it nevertheless misappreciated the propriety of declaratory relief as a remedy.

An action for declaratory relief is governed by Section 1, Rule 63 of the Rules of Court. It is predicated on the attendance of several requisites, specifically: (1) the subject matter of the controversy must be a deed, will, contract or other written instrument, statute, executive order or regulation, or ordinance; (2) the terms of said documents and the validity thereof are doubtful and require judicial construction; (3) there must have been no breach of the documents in question; (4) there must be an

actual justiciable controversy or the "ripening seeds" of one between persons whose interests are adverse; (5) the issue must be ripe for judicial determination; and (6) adequate relief is not available through other means or other forms of action or proceeding.

The third, fourth, fifth and sixth requisites were patently wanting.

Firstly, the third requisite was not met due to the subject of the action (i.e., statute) having been infringed or transgressed prior to the institution of the action.

Secondly, the apprehension of the respondent that it could be rendered technically insolvent through the imposition of the iniquitous taxes imposed by Section 108 and Section 184 of the NIRC, laws that were valid and binding, did not render the action for declaratory relief fall within the purview of an actual controversy that was ripe for judicial determination. The challenge mounted by the respondent against the tax provisions in question could be said to be based on a contingency that might or might not occur. This is because the Congress has not yet addressed the difference in tax treatment of the life and non-life insurance policies. Under the circumstances, the respondent would not be entitled to declaratory relief because its right — still dependent upon contingent legislation — was still inchoate.

Lastly, the respondent's adequate remedy upon receipt of the FDDA for the DST deficiency for taxable year 2011 was not the action for declaratory relief but an appeal taken in due course to the Court of Tax Appeals. By choosing the wrong remedy, the respondent lost its proper and true recourse. Worse, the choice of the wrong remedy rendered the assessment for the DST deficiency for taxable year 2011 final as a consequence.

With not all the requisites for the remedy of declaratory relief being present, the respondent's petition for declaratory relief had no legal support and should have been dismissed by the RTC.

D. Review of judgments and final orders or resolutions of the COMELEC and COA (Rule 64 in relation to Rule 65)

E. Certiorari, prohibition, and mandamus

MARILOU PUNONGBAYAN-VISITACION, *Petitioner*, -versus-PEOPLE OF THE PHILIPPINES and CARMELITA P. PUNONGBAYAN, *Respondents*. G.R. No. 194214, THIRD DIVISION, January 10, 2018, MARTIRES, *J.*

Where an appeal is available, certiorari will not prosper. Nevertheless, this general rule admits exceptions, such as when the broader interest of justice so requires. Moreover, a petition for certiorari may be treated as an appeal if it is filed within the 15-day reglementary period for the filing of a petition for review. Here, the petition for certiorari may be treated as an appeal since it was filed within the reglementary period to file an appeal and the interest of substantial justice warrants the relaxation of the rules.

FACTS:

Petitioner Marilou Punongbayan-Visitacion (Visitacion) was the corporate secretary and assistant treasurer of St. Peter's College of Iligan City. Acting on the advice of her counsel, she wrote a letter to private respondent Carmelita P. Punongbayan (Punongbayan). In the letter, Visitacion accused Punongbayan of criminal or improper conduct. Such accusations were made known not only to the victim but also to other persons such as her staff and employees of a bank the school had transactions with.

In its judgment, the Regional Trial Court convicted Visitacion of libel. Aggrieved, Visitacion filed a petition for *certiorari* before the Court of Appeals (CA). The CA ruled that the use of an erroneous mode of appeal is cause for dismissal of the petition for *certiorari*. According to the CA, Visitacion should have filed an appeal and not a petition for *certiorari*, since at the time of the filing of the petition for *certiorari*, the period to file an appeal had yet to expire.

ISSUE:

Whether Visitacion's petition for *certiorari* may be treated as an appeal. (YES)

RULING:

One of the requisites of *certiorari* is that there be no available appeal or any plain, speedy and adequate remedy. Hence, where an appeal is available, *certiorari* will not prosper. Nevertheless, the general rule that an appeal and a *certiorari* are not interchangeable admits exceptions, to wit: (a) when public welfare and the advancement of public policy dictates; (b) when the broader interest of justice so requires; (c) when the writs issued are null and void; or (d) when the questioned order amounts to an oppressive exercise of judicial authority. In *Department of Education v. Cuanan*, liberality was exercised, and the petition for *certiorari* filed was considered as an appeal considering that it was filed within the 15-day reglementary period for the filing of a petition for review.

Here, the interest of substantial justice warrants the relaxation of the rules. *[The case did not discuss why.]*Moreoever, Visitacion's petition for *certiorari* was filed within the reglementary period to file an appeal. Hence, the petition for *certiorari* may be treated as an appeal.

AGNES COELI BUGAOISAN, *Petitioner,* -versus – OWI GROUP MANILA and MORRIS CORPORATION, *Respondents.* G.R. No. 226208, SECOND DIVISION, February 7, 2018, REYES, JR., *J.*

The supervisory jurisdiction of a court over the issuance of a writ of certiorari cannot be exercised for the purpose of reviewing the intrinsic correctness of a judgment of the lower court — on the basis either of the law or the facts of the case, or of the wisdom or legal soundness of the decision. ***Even if the findings of the court are incorrect, as long as it has jurisdiction over the case, such correction is normally beyond the province of certiorari****. Where the error is not one of jurisdiction, but an error of law or fact — a mistake of judgment — appeal is the remedy.* ***Applying this to the case at bench, the supervisory jurisdiction of the CA under Rule 65 was confined only to the determination of***

whether or not the NLRC committed grave abuse of discretion in deciding the issues brought before it on appeal.

The CA correctly affirmed the findings of the NLRC in that: (1) petitioner was illegally dismissed; and (2) petitioner was entitled to her unpaid salaries for the unexpired portion of the employment contract, damages and attorney's fees. However, it departed from the issues presented by the parties and decided by the labor tribunals when it modified the award of unpaid salaries to petitioner notwithstanding the fact that neither party ever raised as an issue the matter regarding duration of petitioner's employment contract.

Without an iota of doubt, this is a question of fact that is outside the scope of a petition for review under rule 65. The CA is not given unbridled discretion to modify factual findings of the NLRC and LA, especially when such matters have not been assigned as errors nor raised in the pleadings.

FACTS:

A complaint for constructive illegal dismissal and payment of salary for the unexpired portion of the employment period, moral and exemplary damages, and attorney's fees was filed by the petitioner against respondents OWI Group Manila, Inc. (OWI) and Morris Corporation (Morris) (collectively referred to as the respondents) and Marlene D. Alejandrino before the NLRC.

The petitioner alleged that on May 6, 2011 she responded to an advertisement that she saw from OWI regarding a job opening in Australia. OWI is the agent of Morris here in the Philippines. OWI offered petitioner full time employment after she underwent a series of three interviews and did a cooking demonstration. It was stated that her term of employment was for one year.

On October 2, 2011, petitioner was deployed to Morris' mining site in Randalls Kalgoorlie, Australia. She was tasked to prepare breakfast buffet for Morris' 85 employees all by herself. After cooking the dishes, she was also the one who was tasked to wash the dishes. Petitioner raised her concerns to the attention of Morris. Morris tried to accommodate her by transferring her to its mining site in Golden Grove, Geraldton, Western Australia. She still performed the same task only this time she had to prepare a breakfast buffet for Morris' 550 mining workers.

On the evening of November 12, 2011, while preparing the breakfast for the following day, petitioner felt a tingling sensation followed by numbness on both of her hands. Several physicians, including Morris' preferred physician, conducted a series of medical examinations on petitioner. She was diagnosed to be suffering from Bilateral CTS and was declared unfit to work for several days.

She decided to tender her resignation letter and left for the Philippines. Thus, she was repatriated and arrived in the Philippines on December 25, 2011.

Respondents were later surprised to learn that petitioner filed a labor complaint against them on January 6, 2012. She averred in her Position Paper that she was illegally dismissed and was not paid her salaries, overtime pay and medical expenses.

The Labor Arbiter (LA) ruled that the petitioner was illegally dismissed from employment. The LA awarded, among others, AUS$137,500.00 — as salary for the remaining period of her **2-year employment contract.** The NLRC sustained the findings of the LA with regard to the existence of

constructive dismissal, the solidary liability of the respondents, and the award of petitioner's salary for the unexpired portion of her two-year employment contract.

On February 24, 2016, the CA issued its first assailed Decision in favor of petitioner, the pertinent portion of which reads as follows:

> "Pursuant to the Master Employment Contract between [petitioner] and [Morris], which was submitted to the Philippine Overseas Employment Agency on 10 June 2011, the term of the contract for employment was for one (1) year. Accordingly, [petitioner] is entitled to receive total amount of AUS$56,250, which represents her salary for the unexpired portion of her one year employment contract.

On August 3, 2016, the CA issued its assailed Resolution denying petitioner's Motion for Reconsideration, the pertinent portions of which read as follows:

> "Here, it is **not clear** from the letter of offer of full time employment that [petitioner's] **employment contract was extended to two (2) years**. All the same, the absence of [petitioner's] signature in the said letter evinced the fact that [petitioner] did not accept such offer."

ISSUE:

Whether or not the CA was correct when it went beyond the issues of the case and the assigned errors raised by respondents when it filed the certiorari petition under Rule 65. (NO)

RULING:

The Rules of Court is clear and unambiguous in this regard. A petition for certiorari is governed by Rule 65 of the Revised Rules of Court, which reads:

> "Section 1. Petition for certiorari. — When any tribunal, board or officer exercising judicial or quasi-judicial functions has acted without or in excess of its or his jurisdiction, or with grave abuse of discretion amounting to lack or excess of its or his jurisdiction, and there is no appeal, or any plain, speedy, and adequate remedy in the ordinary course of law, a person aggrieved thereby may file a verified petition in the proper court, alleging the facts with certainty and praying that judgment be rendered annulling or modifying the proceedings of such tribunal, board or officer, and granting such incidental reliefs as law and justice may require"

The supervisory jurisdiction of a court over the issuance of a writ of certiorari cannot be exercised for the purpose of reviewing the intrinsic correctness of a judgment of the lower court — on the basis either of the law or the facts of the case, or of the wisdom or legal soundness of the decision. **Even if the findings of the court are incorrect, as long as it has jurisdiction over the case, such correction is normally beyond the province of certiorari**. Where the error is not one of jurisdiction, but an error of law or fact — a mistake of judgment — appeal is the remedy. **Applying this to the case at bench, the supervisory jurisdiction of the CA under Rule 65 was confined only to the determination of whether or not the NLRC committed grave abuse of discretion in deciding the issues brought before it on appeal.**

The CA correctly affirmed the findings of the NLRC in that: (1) petitioner was illegally dismissed; and (2) petitioner was entitled to her unpaid salaries for the unexpired portion of the employment contract, damages and attorney's fees. However, it departed from the issues presented by the parties and decided by the labor tribunals when it modified the award of unpaid salaries to petitioner notwithstanding the fact that neither party ever raised as an issue the matter regarding duration of petitioner's employment contract. The labor tribunals ruled that the award of unpaid salaries should be the amount corresponding to the unexpired portion of the employment contract which is two (2) years. The CA, on the other hand, modified the award on the ground that the second contract was not clear as to whether or not the original duration of one (1) year had been extended.

Without an iota of doubt, this is a question of fact that is outside the scope of a petition for review under rule 65. The CA is not given unbridled discretion to modify factual findings of the NLRC and LA, especially when such matters have not been assigned as errors nor raised in the pleadings.

With regard to the issues brought to the Court in this present petition, it bears stressing that this Court's review of a CA ruling is limited to: (i) ascertaining the correctness of the CA's decision in finding the presence or absence of grave abuse of discretion; and (ii) deciding any other jurisdictional error that attended the CA's interpretation or application of the law.

Clearly, the appellate court found no grave abuse of discretion committed by the NLRC. There being no grave abuse of discretion, the CA erred when it ruled that petitioner's employment contract with Morris was for only one (1) year.

PHILIPPINE AMUSEMENT AND GAMING CORPORATION (PAGCOR), *Petitioner*, *v.* **COURT OF APPEALS AND ANGELINE V. PAEZ**, *Respondents*.

G.R. No. 230084, THIRD DIVISION, August 20, 2018, GESMUNDO, *J.*

The acts of its former counsel did not deprive PAGCOR of due process. PAGCOR was given every opportunity to be heard but it failed to take advantage of the said opportunities. Hence, the general rule that the negligence of the counsel binds the client applies herein.

On a last note, PAGCOR's cavalier attitude towards court processes and procedure is plain to see. Its conduct before the CA and before this Court underscores this. The Court reminds PAGCOR, as we have consistently reminded countless other litigants, that ***the invocation of substantial justice is not a magic potion that will automatically compel this Court to set aside technical rules.*** *This principle is especially true when a litigant, as in the present case, shows a predilection for utterly disregarding the ROC, as well as court directives.*

FACTS:

Respondent was an employee of PAGCOR with a position of Dealer stationed at Casino Filipino-Waterfront Hotel, Lahug, Cebu City. In a random drug testing conducted by PAGCOR to all its employees, respondent allegedly tested positive for methamphetamine. Thus, in its March 30, 2006 Letter, respondent was informed that she was dismissed from the service for gross misconduct and

violation of company rules and regulations. Respondent moved for reconsideration which PAGCOR denied in its May 11, 2006 letter.

Respondent appealed her dismissal with the CSC. The CSC dismissed the appeal and affirmed her dismissal. When respondent moved for reconsideration of this resolution, the CSC reversed itself and reinstated respondent into service.

The CSC exonerated respondent from the administrative charges on account of PAGCOR's failure to comply with the requirements of Section 38 of Republic Act (R.A.) No. 9165 or the *Comprehensive Dangerous Drugs Act of 2002*. It found that respondent was not notified of the positive screening result, which should have given her a window of opportunity to impugn the result through a confirmatory testing. It held that notice of the screening test is part of her substantive rights and the absence thereof is tantamount to denial of the due process granted to her by law. Thus, it exonerated her of the administrative charges.

PAGCOR filed an MR but it was denied by the CSC.

PAGCOR filed a petition for review before the CA under Rule 43 of the ROC.

CA: Dismissed the petition.

ISSUE: Whether the CA committed grave abuse of discretion amounting to lack or excess of jurisdiction when it dismissed the petition for review of PAGCOR. (NO)

RULING:

I. The instant petition is a substitute for a lost appeal.

PAGCOR received the January 3, 2017 resolution of the CA denying its motion for reconsideration on January 11, 2017. Hence, PAGCOR had fifteen (15) days, or until January 26, 2017, to file its appeal. It let this period lapse and, instead, filed herein petition for *certiorari* on March 13, 2017. Evidently, the present petition is a substitute for the lost remedy of appeal.

II. The negligence of PAGCOR's counsel binds it. None of the recognized exceptions obtains in this case.

The petition necessarily fails even if the Court were to consider it as a petition for *certiorari*. The CA did not commit any grave abuse of discretion amounting to lack or excess of jurisdiction when it dismissed the petition for review of PAGCOR on the ground that it abandoned the same.

The Court finds in the instant case that PAGCOR failed to prove that the negligence of its former counsel was so gross that it effectively deprived it of due process.

PAGCOR argues in its petition that its failure to comply with the CA's October 22, 2015 resolution was unintentional. It contends that its failure was merely due to the heavy workload of its former counsel and an effect of the recurring water intrusion/leakage in its offices. The Court fails to see how these excuses could amount to gross negligence on the part of its former counsel. In fact, they themselves characterized it as a mere, unintentional lapse. This is simple negligence. There is simply no gross negligence to speak of in the instant case.

Further, PAGCOR was not deprived of due process. On the contrary, it was given every opportunity to be heard, which is the very essence of due process. The merits of its case were heard by the CSC. It appealed the decision of the CSC to the CA. The CA initially dismissed the case for failure to acquire jurisdiction over respondent due to PAGCOR's failure to comply with its orders regarding service of a copy of the petition to respondent and/or her counsel. When the CA reinstated the case in view of respondent's voluntary submission to its jurisdiction, PAGCOR squandered the second chance given to it by failing to comply with the CA's directive to furnish respondent with a copy of the petition. This is despite respondent volunteering the current address of her counsel through the manifestations she filed. To add salt to injury, PAGCOR let the period to appeal the January 3, 2017 resolution of the CA before this Court lapse. Instead, it filed the present petition for *certiorari* as a substitute for its lost appeal.

The acts of its former counsel did not deprive PAGCOR of due process. PAGCOR was given every opportunity to be heard but it failed to take advantage of the said opportunities. Hence, the general rule that the negligence of the counsel binds the client applies herein.

On a last note, PAGCOR's cavalier attitude towards court processes and procedure is plain to see. Its conduct before the CA and before this Court underscores this. The Court reminds PAGCOR, as we have consistently reminded countless other litigants, that the invocation of substantial justice is not a magic potion that will automatically compel this Court to set aside technical rules. This principle is especially true when a litigant, as in the present case, shows a predilection for utterly disregarding the ROC, as well as court directives.

MARIBELLE Z. NERI, *Petitioner*, *v.* **RYAN ROY YU**, *Respondent.*

G.R. No. 230831, THIRD DIVISION, September 05, 2018, PERALTA,*J.

Grave abuse of discretion refers not merely to palpable errors of jurisdiction; or to violations of the Constitution, the law and jurisprudence. It refers also to cases in which, for various reasons, there has been a gross misapprehension of facts.

A careful review of the records would show that the CA did not commit any grave abuse of discretion in the appreciation of the evidence presented by both parties. Thus, this Court finds no merit to reverse the appellate court's decision and resolution.

FACTS:

Respondent filed a Complaint before the RTC for "Sum of Money, Damages, Attorney's Fees, Etc." against one Insoy and petitioner. Respondent alleged that he and his friends, Matalam and Lao went on a leisure trip to Cebu City. Matalam planned to check out a Toyota Prado sports utility vehicle that he intended to buy from petitioner. Petitioner met the three men at the lobby of the Waterfront Hotel where they were all fetched and brought to a Toyota yard. At said yard, petitioner introduced respondent's group to Insoy, petitioner's supposed business partner in Cebu. Thereafter, respondent's group was shown different models of Toyota vehicles that the two women claimed they were authorized to sell. Since the Toyota Prado that Matalam wanted to see was not there and he was not interested in other vehicles, the group left the yard.

Petitioner joined respondent's group for lunch at Cafe Laguna in the Ayala Mall, during which, she convinced respondent and Lao to consider buying Toyota vehicles from her, saying they can get a big discount if they buy from her as a group, because it would be considered a bulk purchase. Respondent further alleged that while preparing for their trip to Davao City later that same day, petitioner convinced and accompanied them back to the Toyota yard for a second look at the vehicles there. Respondent test-drove a Toyota Grandia which petitioner claimed that she can sell to him at a discounted price of P1.2 Million under bulk purchase as Lao and Matalam already committed to purchase their respective Toyota vehicles from her. Petitioner assured respondent that her transaction is legitimate and aboveboard, and that she can immediately cause the delivery of the vehicle within a week after her receipt of the payment. Petitioner then gave respondent her personal bank account number for fund transfer in case he decides to proceed with the sales transaction. Yu's group returned to Davao City convinced by petitioner's representations.

Respondent alleged that he transferred the amount of P1.2 Mi1lion from his Account in Equitable PCI Bank to petitioner's Account in said bank. Thereafter, respondent went to see and inform petitioner of the fund transfer and after the bank's confirmation of the same, she issued respondent a receipt acknowledging payment for a Toyota Super Grandia. Petitioner then assured respondent that the vehicle will be delivered after a week. However, a week after, petitioner told respondent that the delivery of his vehicle will be delayed without giving any reason and she asked for a week's extension. After several extensions and despite repeated demands, no vehicle was delivered to respondent and petitioner started avoiding him and ignoring his calls. Consequently, respondent sought legal counsel and a demand letter was sent to petitioner. Instead of complying with her commitment, the latter denied any liability and passed on the blame to Insoy saying that respondent directly transacted with the latter. Thus, respondent filed a complaint with the RTC.

RTC: ruled in favor of respondent Yu.

CA: partially granted petitioner's appeal.

ISSUES: Whether or notthe CA is gravely mistaken by concluding that petitioner is a seller of cars and that respondent's group directly transacted with her for the purchase of their vehicle and thus should be held jointly liable with Insoy to the respondent for the amount of P1,200,000.00. (NO)

RULING:

The petition lacks merit.

The Rules of Court require that only questions of law should be raised in petitions filed under Rule 45. This court is not a trier of facts. It will not entertain questions of fact as the factual findings of the appellate courts are "final, binding[,] or conclusive on the parties and upon this [c]ourt "when supported by substantial evidence. Factual findings of the appellate courts will not be reviewed nor disturbed on appeal to this court.

However, these rules do admit exceptions. Over time, the exceptions to these rules have expanded. At present, there are ten (10) recognized exceptions that were first listed in *Medina v. Mayor Asistio, Jr .*:

(l) When the conclusion is a finding grounded entirely on speculation, surmises or conjectures; (2) When the inference made is manifestly mistaken, absurd or impossible; **(3) Where there is a grave abuse of discretion;** (4) When the judgment is based on a misapprehension of facts; (5) When the findings of fact are conflicting; (6) When the Court of Appeals, in making its findings, went beyond the issues of the case and the same is contrary to the admissions of both appellant and appellee; (7) The findings of the Court of Appeals are contrary to those of the trial court; (8) When the findings of fact are conclusions without citation of specific evidence on which they are based; (9) When the facts set forth in the petition as well as in the petitioner's main and reply briefs are not disputed by the respondents; and (10) The finding of fact of the Court of Appeals is premised on the supposed absence of evidence and is contradicted by the evidence on record.

These exceptions similarly apply in petitions for review filed before this court involving civil,labor, tax, or criminal cases.

A question of fact requires this court to review the truthfulness or falsity of the allegations of the parties. This review includes assessment of the "probative value of the evidence presented."

There is also a question of fact when the issue presented before this court is the correctness of the lower courts' appreciation of the evidence presented by the parties. In this case, the issues raised by petitioner obviously asks this Court to review the factual findings of the RTC and the CA which is not the role of this Court.

Nevertheless, the CA did not err in ruling that petitioner is engaged in the business of selling cars and that respondent's group directly transacted with her for the purchase of their vehicle, thus, petitioner is jointly liable with Insoy to respondent for the amount of P1,200,000.00. As aptly ruled by the CA:

Neri denied that she is engaged in selling Toyota vehicles and that Yu's group directly transacted with her in the purchase of their Toyota vehicles, insisting that such transaction was purely between the latter and Insoy. Neri contradicts her claim in her own testimony. x xx

It is clear from the foregoing testimonies that Yu's group, of whom only Lao is known to Neri, directly went to her and transacted directly with her for the purchase of their respective Toyota vehicles, and she was the one who ordered these vehicles for them online. Add this to the undisputed fact that Neri received their payments in her bank account and issued an acknowledgment receipt without qualification that such acknowledgment of payment was only for Insoy. The conclusion becomes inescapable that Neri transacted as a seller, not as a mere conduit or middleman or agent. x xx

It is apparent that the participation of Neri here cannot be discounted as merely accommodating Yu because in the first place Yu had no intention to buy the subject vehicle when he visited Cebu. It was through the sales talk of Neri plus the discount that she gave to YU and his group that Yu was enticed to purchase the subject vehicle. In this regard, how can Neri offer such discounts if she were not the seller?

The testimonies of Yu's witnesses point to Neri as representing herself as a seller. Yu and Hsipin Liu never spoke to Insoy. In fact, when the two Avanzas ordered by Hsipin Liu (known as Steven Lao) were not delivered a week after payments were made to them, Hsipin Liu talked to Neri regarding the status of the vehicles purchased. Neri did not reveal the cause of the delay and merely requested for an extension of another week. Neri gave assurance that she paid for the units which Lao ordered. Why would Neri go to all these trouble if she has absolutely no obligation as a seller?

Moreover, the mere act of Neri in "ordering the vehicles online" cannot overshadow her other acts in negotiating, arranging and facilitating the purchase of the subject vehicles, to wit:

(1) Neri fetched Yu and His Pin Liu (Steven Lao) at the Cebu Waterfront Hotel and brought them to the Toyota Yard;

(2) After Yu was introduced to Insoy, Yu only talked to Neri all the time while Yu was at the Toyota Yard;

(3) Neri convinced Yu and the others to buy vehicles in bulk after their visit at the Toyota Yard while having lunch at Laguna Cafe in Ayala Mall, by offering them discounts.

Again, this Court respects the factual findings of the CA. The Court of Appeals must have gravely abused its discretion in its appreciation of the evidence presented by the parties and in its factual findings to warrant a review of factual issues by this Court.Grave abuse of discretion is defined, thus:

By grave abuse of discretion is meant such capicious and whimsical exercise of judgment as is equivalent to lack of jurisdiction . The abuse of discretion must be grave as where the power is exercised in an arbitrary or despotic manner by reason of passion or personal hostility and must be

so patent and gross as to amount to an evasion of positive duty or to a virtual refusal to perform the duty enjoined by or to act at all in contemplation of law.

Grave abuse of discretion refers not merely to palpable errors of jurisdiction; or to violations of the Constitution, the law and jurisprudence. It refers also to cases in which, for various reasons, there has been a gross misapprehension of facts.

A careful review of the records would show that the CA did not commit any grave abuse of discretion in the appreciation of the evidence presented by both parties. Thus, this Court finds no merit to reverse the appellate court's decision and resolution.

1. Definitions and distinctions

2. Requisites; when and where to file (Rule 65)

NATIONAL POWER CORPORATION,*Petitioner*,-versus- THE COURT OF APPEALS, HON. JOSE D. AZARRAGA, IN HIS CAPACITY AS PRESIDING JUDGE OF BRANCH 37, REGIONAL TRIAL COURT, ILOILO CITY, AND ATTY. REX C. MUZONES, ***Respondents*.** G.R. No. 206167, FIRST DIVISION, March 19, 2018, TIJAM, *J.*

A petition for certiorari under Rule 65 of the Rules of Court is a special civil action that may be resorted to only in the absence of appeal or any plain, speedy and adequate remedy in the ordinary course of law. In the instant case, NPC has a plain, speedy and adequate remedy to appeal the CA decision, which is to file a Petition for Review on Certiorari under Rule 45 of the Rules of Court.

Here, the Decision dated April 14, 2011 of the CA dismissed the NPC's petition for being filed out of time, thus it was a final judgment rendered by the CA. There is nothing left to be done by the CA in respect to the said case. Thus, NPC should have filed an appeal by petition for review on certiorari under Rule 45 before this Court, not a petition for certiorari under Rule 65.

FACTS:

The case stemmed from a civil case filed by Spouses Romulo and Elena Javellana (Spouses Javellana) to fix lease rental and just compensation, collect sum of money and damages against NPC and National Transmission Corporation (Transco). The RTC rendered a Decision in favor of the Spouses Javellana. NPC and Transco filed their respective appeal. On the other hand, Spouses Javellana filed a Motion for Execution Pending Appeal. The RTC granted the motion for execution pending appeal.

Thereafter, Atty. Rex C. Muzones (Atty. Muzones), the counsel of the Spouses Javellana filed a Notice of Attorney's lien. Later, Transco filed a Motion to Dismiss the case in view of the extra-judicial settlement it had reached with Spouses Javellana. On his part, Atty. Muzones filed a Motion for Partial Satisfaction of Judgment and Opposition to the Motion to Dismiss.

The respondent judge issued an Order ordering NPC and Transco to pay Atty. Muzones the amount of P52,469,660.00 as his attorney's lien. The respondent judge deniedthe motion for reconsideration of Transco and the comment of NPC. Aggrieved, NPC filed a Petition for *Certiorari* with the CA assailing the RTC Orders. In its Decision, the CA dismissed NPC's petition for being filed beyond the 60-day reglementary period.

NPC filed the instant Petition for *Certiorari*under Rule 65 of the Rules of Court.

ISSUE:

Whether or not the Petition for Certiorari was proper (NO)

RULING:

A petition for *certiorari* under Rule 65 of the Rules of Court is a special civil action that may be resorted to only in the absence of appeal or any plain, speedy and adequate remedy in the ordinary course of law. In the instant case, NPC has a plain, speedy and adequate remedy to appeal the CA decision, which is to file a Petition for Review on *Certiorari* under Rule 45 of the Rules of Court.

Section 1 of Rule 45 states that "*A party desiring to appeal by certiorari from a judgment or final order or resolution of the Court of Appeals, the Sandiganbayan, the Regional Trial Court or other courts whenever authorized by law, may file with the Supreme Court a verified petition for review on certiorari. The petition shall raise only questions of law which must be distinctly set forth*."

Here, the Decision dated April 14, 2011 of the CA dismissed the NPC's petition for being filed out of time, thus it was a final judgment rendered by the CA. There is nothing left to be done by the CA in respect to the said case. Thus, NPC should have filed an appeal by petition for review on *certiorari* under Rule 45 before this Court, not a petition for *certiorari* under Rule 65.

In the case of *MalayangManggagawa ng Stay fast Phils., Inc. v. NLRC, et al*., it is stated that the existence of an appeal prohibits the parties' resort to a petition for *certiorari*, thus:

The proper remedy to obtain a reversal of judgment on the merits, final order or resolution is appeal. This holds true even if the error ascribed to the court rendering the judgment is its lack of jurisdiction over the subject matter, or the exercise of power in excess thereof, or grave abuse of discretion in the findings of fact or of law set out in the decision, order or resolution. The existence and availability of the right of appeal prohibits the resort to *certiorari* because one of the requirements for the latter remedy is that there should be no appeal.(Citation omitted and emphasis ours)

MICHAEL V. RACION, *Petitioner*, -versus- MST MARINE SERVICES PHILIPPINES, INC., ALFONSO RANJO DEL CASTILLO and/or THOME SHIP MANAGEMENT PTE. LTD., *Respondents.*
G.R. No. 219291, SECOND DIVISION, July 4, 2018, CAGUIOA, *J.*

Although the court has absolute discretion to reject and dismiss a petition for certiorari, it does so only (1) when the petition fails to demonstrate grave abuse of discretion by any court, agency, or branch of

the government; or (2) when there are procedural errors, like violations of the Rules of Court or Supreme Court Circulars. Here, the petition for certiorari was beset with procedural errors arising from violations of the Rules of Court.

First, the execution of the certificate of non-forum shopping by Racion's counsel is a defective certification. This is sufficient ground for the dismissal of the petition as settled in Suzuki v. de Guzman. Secondly, Racion failed to allege his own actual address and that of respondent Del Castillo. This is sufficient ground for the dismissal of the petition as settled in Cendaña v. Avila. Racion's claim of inadvertence is not persuasive as to give it reprieve from the strict application of the rules. Finally, Racion failed to attach the decisions of the NLRC and the LA. Thus, the SC can only but affirm the CA when it applied the rules strictly.

FACTS:

Petitioner Michael V. Racion (Racion) was hired by respondent MST Marine Services Philippines, Inc. (MST Marine). During his employment, Racion suffered an accidental fall and was found to have suffered from a left knee ligament strain. He was subsequently repatriated on medical grounds.

The Labor Arbiter (LA) dismissed Racion's complaint for lack of merit. Racion then filed an appeal with the National Labor Relations Commission (NLRC), which denied the appeal but modifed the LA's decision by directing MST Marine and/or respondent Thome Ship Management PTE. Ltd. to pay Racion the amount of Fifty Thousand Pesos (P50,000.00) as financial assistance.

Racion then filed a petition for certiorari before the Court of Appeals (CA) questioning the NLRC's decision. The CA dismissed the petition outright because it was Racion's counsel who signed the certificate on non-forum shopping, without authority from him through a Special Power of Attorney, and without any explanation for his failure to execute the certificate. The CA also ruled that Racion failed to comply with paragraph 1, Section 3, Rule 46 of the Rules of Court when he failed to indicate his own actual address and that of respondent Alfonso Ranjo Del Castillo (Del Castillo).

ISSUE:

Whether the CA erred in dismissing the petition for certiorari outright. (NO)

RULING:

Certiorari is an extraordinary, prerogative remedy and is never issued as a matter of right. Accordingly, the party who seeks to avail of it must strictly observe the rules laid down by law. The acceptance of a petition for certiorari as well as the grant of due course thereto is, in general, addressed to the sound discretion of the court. Although the court has absolute discretion to reject and dismiss a petition for certiorari, it does so only (1) when the petition fails to demonstrate grave abuse of discretion by any court, agency, or branch of the government; or (2) when there are procedural errors, like violations of the Rules of Court or Supreme Court Circulars. Here, the CA was correct in dismissing the petition for certiorari as it was beset with procedural errors arising from violations of the Rules of Court.

First, Racion failed to execute a certificate of non-forum shopping. Section 1, Rule 65 of the Rules of Court directs that a petition should be accompanied by a certificate of non-forum shopping in accordance with Section 3, Rule 46 also of the Rules of Court. The execution of the certificate by Racion's counsel is a defective certification, which amounts to non-compliance with the requirement of a certificate of non-forum shopping. This is sufficient ground for the dismissal of the petition, as has been settled in *Suzuki v. de Guzman*.

Secondly, Racion also failed to comply with the requirement in Section 3, Rule 46 on alleging the actual addresses of all the petitioners and respondents as he failed to indicate his own actual address and that of respondent Del Castillo. In *Cendaña v. Avila*, it was held that the failure to comply with the said requirement is sufficient ground for the dismissal of the petition. Racion cannot simply ask the Supreme Court (SC) to liberally apply the rules without providing any justification for it. His claim of inadvertence is flimsy, not weighty, and not persuasive as to give it reprieve from the strict application of the rules.

Finally, even if the SC were to gloss over the technical defects, Racion has not provided any basis for the SC to review the findings of the NLRC and LA as he failed to attach the decisions of these tribunals. Thus, the SC can only but affirm the CA when it applied the rules strictly.

DANILO A. LIHAYLIHAY, *Petitioner,* -versus- THE TREASURER OF THE PHILIPPINES ROBERTO C. TAN, SECRETARY OF FINANCE MARGARITO B. TEVES, SECRETARY OF THE DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES, AND THE GOVERNOR OF BANGKO SENTRAL NG PILIPINAS (BSP), *Respondents*.

G.R. No. 192223, THIRD DIVISION, July 23, 2018, LEONEN, *J.*

In Heirs of Hinog v. Melicor, it held that the Court's competence to issue writs of mandamus does not also mean that petitioner was free to come to this Court and ignore the concurrent jurisdiction of inferior courts equally competent to entertain petitions for mandamus. It is basic that "although this Court, the Court of Appeals and the Regional Trial Courts have concurrent jurisdiction to issue writs of certiorari, prohibition, mandamus, quo warranto, habeas corpus and injunction, such concurrence does not give the petitioner unrestricted freedom of choice of court forum".

As provided under Rule 65 of Rules of Court, Mandamus will not issue unless it, is shown that "there is no other plain, speedy and adequate remedy in the ordinary course of law." This is a requirement basic to all remedies under Rule 65, i.e., certiorari, prohibition, and mandamus. In this case, a writ of mandamus is equally unavailing because there is evidently another "plain, speedy and adequate remedy in the ordinary course of law." It is show in the processing of his claims by the Bureau of Internal Revenue and the Department of Finance, and their final resolution by the Secretary of Finance.

FACTS:

This resolves a Petition for Mandamus and Damages, with a Prayer for a Writ of Garnishment praying that former Treasurer of the Philippines Roberto C. Tan (Treasurer Tan), former Secretary of Finance Margarito B. Teves (Secretary Teves), the Governor of BangkoSentral ng Pilipinas, and the Secretary

of the Department of Environment and Natural Resources (collectively, respondents) be ordered to deliver to Danilo A. Lihaylihay (Lihaylihay) the amounts of P11,875,000,000,000.00 and P50,000,000,000.00, and several government lands as informer's rewards owing to Lihaylihay's alleged instrumental role in the recovery of ill-gotten wealth from former President Ferdinand E. Marcos (President Marcos), his family, and their cronies.

Lihaylihay identified himself as a "Confidential Informant of the State (CIS) pursuant to Republic Act No. 2338, duly accredited and registered as such with the Bureau of Internal Revenue (BIR) and Presidential Commission on Good Government (PCGG)." Lihaylihay particularly recalled **sending two (2) letters, both dated March 11, 1987, to Atty. Eliseo Pitargue (Atty. Pitargue), the former head of the Bureau of Internal Revenue**-Presidential Commission on Good Government Task Force, concerning information on former President Marcos' ill-gotten wealth.

Almost 20 years later, on November 29, 2006, Lihaylihay wrote to then Commissioner of Internal Revenue, Jose Mario C. Buñag (Commissioner Buñag), demanding payment of 25% informer's reward on the P118,270,243,259.00 supposedly recovered by the Philippine government through compromise agreements with the Marcoses. He also insisted on the need for the government to collect Fortune Tobacco Corporation's tax deficiencies

On January 10, 2008, Lihaylihay wrote to then President Gloria Macapagal-Arroyo (President Macapagal-Arroyo), insisting on the need to recover the Marcos' wealth that he identified and his corresponding entitlement to an informer's reward. **Lihaylihay wrote to then Department of Finance Secretary Teves on August 11, 2009, reiterating his entitlement to an informer's reward.**

On May 31, 2010, without waiting for Secretary Teves' and Treasurer Tan's official actions on his letters, Lihaylihay filed the present Petition, **dubbed a Petition for "Mandamus and Damages, with a Prayer for a Writ of Garnishment." Insisting on his entitlement to informer's rewards, he prays that Treasurer Tan and Secretary Teves be ordered to deliver to him the amount** of P11,875,000,000,000.00; **that the Secretary of Environment and Natural Resources be ordered to transfer to him several government lands**; and that the **Governor of BangkoSentral ng Pilipinas be ordered to garnish in his favor** P50,000,000,000.00 **worth of jewelry** recovered from former First Lady Imelda Romualdez Marcos.

ISSUE:

Whether or not petitioner Danilo A. Lihaylihay is entitled to a writ of mandamus to compel respondents then Treasurer of the Philippines Roberto C. Tan, then Secretary of Finance Margarito B. Teves, the Secretary of the Department of Environment and Natural Resources, and the Governor of BangkoSentral ng Pilipinas to deliver to him proceeds and properties representing 25% informer's reward pursuant to Section 1 of Republic Act No. 2338?

RULING:

A writ of mandamus will not issue unless it is shown that there is no other plain, speedy, and adequate remedy in the ordinary course of law. While this Court exercises original jurisdiction over petitions for mandamus, it will not exercise jurisdiction over those filed without exhausting administrative remedies, in violation of the doctrine of primary jurisdiction and the principle of hierarchy of courts, and when their filing amounts to an act of forum shopping.

This Petition should clearly be denied. **Rule 65, Section 3 of the 1997 Rules of Civil Procedure** spells out the parameters for the issuance of a writ of mandamus:

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

Petitioner's **legal right must have already been clearly established**. It cannot be a prospective entitlement that is yet to be settled. In Lim Tay v. Court of Appeals, this Court emphasized that "mandamus will not issue to establish a right, but only to enforce one that is already established."

Respondents **must also be shown to have actually neglected to perform the act mandated by law.** Clear in the text of Rule 65, Section 3 is the requirement that respondents "unlawfully neglect" the performance of a duty. The mere existence of a legally mandated duty or the pendency of its performance does not suffice.

The **duty subject of mandamus must be ministerial rather than discretionary.** This Court distinguished discretionary functions from ministerial duties, and related the exercise of discretion to judicial and quasi-judicial powers. In Sanson v. Barrios:

> Discretion, when applied to public functionaries, means a power or right conferred upon them by law of acting officially, under certain circumstances, according to the dictates of their own judgments and consciences, uncontrolled by the judgments or consciences of others. A purely ministerial act or duty, in contradistinction to a discretional act, is one which an officer or tribunal performs in a given state of facts, in a prescribed manner, in obedience to the mandate of legal authority, without regard to or the exercise of his own judgment, upon the propriety or impropriety of the act done. If the law imposes a duty upon a public officer, and

> gives him the right to decide how or when the duty shall be performed, such duty is discretionary and not ministerial. The duty is ministerial only when the discharge of the same requires neither the exercise of official discretion nor judgment. Mandamus will not lie to control the exercise of discretion of an inferior tribunal, when the act complained of is either judicial or quasi-judicial. It is the proper remedy when the case presented is outside of the exercise of judicial discretion.

In Heirs of Hinog v. Melicor, it held that the Court's competence to issue writs of mandamus does not also mean that petitioner was free to come to this Court and ignore the concurrent jurisdiction of inferior courts equally competent to entertain petitions for mandamus. It is basic that "although this Court, the Court of Appeals and the Regional Trial Courts have concurrent jurisdiction to issue writs of certiorari, prohibition, mandamus, quo warranto, habeas corpus and injunction, such concurrence does not give the petitioner unrestricted freedom of choice of court forum"

As provided under Rule 65 of Rules of Court, Mandamus will not issue unless it, is shown that "there is no other plain, speedy and adequate remedy in the ordinary course of law." This is a requirement basic to all remedies under Rule 65, i.e., certiorari, prohibition, and mandamus. A writ of mandamus is equally unavailing because there is evidently another "plain, speedy and adequate remedy in the ordinary course of law." Further, this, of course, is the processing of his claims by the Bureau of Internal Revenue and the Department of Finance, and their final resolution by the Secretary of Finance. Petitioner's own recollection of antecedents reveals his initial attempt at complying with the prescribed procedure with the Bureau of Internal Revenue, but also his own impatience for these pending proceedings. This Court cannot indulge his impetuosity for proceedings in progress. It cannot legitimize a manifest attempt at infringing statutorily institutionalized processes. The availability of a more basic recourse ahead of a Petition for Mandamus before this Court similarly demonstrates that petitioner failed to exhaust administrative remedies.

3. Exceptions to filing of motion for reconsideration before filing petition

REPUBLIC OF THE PHILIPPINES, *Petitioner*, -versus- ALVIN C. DIMARUCOT and NAILYN TAÑEDO-DIMARUCOT, ***Respondents*.** G.R. No. 202069, SECOND DIVISION, March 07, 2018, CAGUIOA, *J*.

1. It is true that this Court has ruled that "certiorari, as a special civil action will not lie unless a motion for reconsideration is first filed before the respondent tribunal, to allow it an opportunity to correct its assigned errors." However, this general rule is subject to well-defined exceptions. The Republic invokes the fourth exception that the filing of a motion for reconsideration of the September 2010 RTC Order would have been useless as it was based on the earlier August 2010 RTC Order.

Clearly, the Republic's direct resort to the CA via certiorari was warranted under the circumstances, as it was led to believe that seeking reconsideration of the September 2010 RTC Order would have been a useless exercise. ***The CA thus erred when it caused the outright dismissal of the CA Petition solely on the basis of the Republic's failure to file a prior motion for reconsideration.***

2. To be sure, the 3-day notice rule was established *not* for the benefit of movant but for the adverse party, in order to avoid surprises and grant the latter sufficient time to study the motion and enable it to meet the arguments interposed therein. The duty to ensure receipt by the adverse party at least three days before the proposed hearing date necessarily falls on the movant.**Nevertheless, considering the nature of the case and the issues involved therein, the Court finds that relaxation of the Rules was called for.**

Here, the State's policy of upholding the sanctity of marriage takes precedence over strict adherence to Rule 15, for the finality of the RTC Decision necessarily entails the permanent severance of Alvin and Nailyn's marital ties. Hence, the RTC should have exercised its discretion, as it did have such discretion, and set the MR for hearing on a later date with due notice to the parties to allow them to fully thresh out the Republic's assigned errors.

FACTS:

Respondents were married and they had two children. It appears, however, that Alvin filed a Petition for Declaration of Absolute Nullity of Marriage (RTC Petition) before the RTC on September 22, 2009.In the RTC Petition, Alvin alleged that Nailyn suffers from psychological incapacity which renders her incapable of complying with the essential obligations of marriage. Hence, Alvin prayed that his marriage with Nailyn be declared null and void pursuant to Article 36 of the Family Code.

The Provincial Prosecutor was deputized by the Office of the Solicitor General (OSG) to assist in the case.On July 2, 2010, the RTC, through Presiding Judge Ismael P. Casabar (Judge Casabar), rendered a Decision declaring Respondents' marriage null and void.

On July 27, 2010, the Republic, through the OSG, filed a Motion for Reconsideration (MR). However, the Notice of Hearing annexed to the MR erroneously set the same for hearing on July 6, 2010 (instead of August 6, 2010 as the OSG later explained).The RTC denied the Republic's MR through the August 2010 RTC Order. Thus, on September 1, 2010, the Republic filed a Notice of Appeal of even date, which was denied in the September 2010 RTC Order.

Subsequently, on October 22, 2010, the Republic filed a Petition for *Certiorari* (CA Petition) before the CA, ascribing grave abuse of discretion on the part of the RTC for issuing the August and September 2010 RTC orders.

The Republic claimed that its MR substantially complied with the requirements of Sections 4, 5 and 6 of Rule 15 governing motions. Hence, the RTC should not have treated said MR as a mere scrap of paper solely because of the misstatement of the proposed hearing date in the Notice of Hearing appended thereto, considering that the RTC is "not without any discretion" to set the MR for hearing on a different date.

The CA, however, dismissed the petition. The CA held that the CA Petition warrants outright dismissal because it was filed without the benefit of a motion for reconsideration — an indispensable requirement for the filing of a petition for *certiorari* under Rule 65.

The Republic filed an MR of the CA decision, and it further argued that the RTC should not have denied its Notice of Appeal, since appeal is precisely the proper remedy to assail the August 2010 RTC Order pursuant to Section 9, Rule 37 of the Rules and Section 20 (2) of the Rules on Declaration of Absolute

Nullity of Void Marriages and Annulment of Voidable Marriages. But the CA denied the same.

ISSUE:

1. Whether the CA erred in dismissing the Republic's petition for *certiorari* for failure to file a prior motion for reconsideration of the RTC's order. (NO)
2. Whether the strict compliance with Rule 15 of the Rules of Court should be waived in the interest of justice. (YES)

RULING:

1.

It is true that this Court has ruled that "*certiorari*, as a special civil action will not lie unless a motion for reconsideration is first filed before the respondent tribunal, to allow it an opportunity to correct its assigned errors." However, this general rule is subject to well-defined exceptions, thus:

> Moreover, while it is a settled rule that a special civil action for certiorari under Rule 65 will not lie unless a motion for reconsideration is filed before the respondent court; there are well-defined exceptions established by jurisprudence, such as [i] where the order is a patent nullity, as where the court *a quo* has no jurisdiction; [ii] 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; [iii] 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; [iv] where, under the circumstances, a motion for reconsideration would be useless; [v] where petitioner was deprived of due process and there is extreme urgency for relief; [vi] 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; [vii] where the proceedings in the lower court are a nullity for lack of due process; [viii] where the proceedings were ex parte or in which the petitioner had no opportunity to object; and [ix] where the issue raised is one purely of law or where public interest is involved.

The Republic invokes the fourth exception above, and argues that the filing of a motion for reconsideration of the September 2010 RTC Order would have been useless as it was based on the earlier August 2010 RTC Order. The Court agrees.

To recall, the denial of the Republic's Notice of Appeal through the September 2010 RTC Order was premised on the RTC's earlier finding that the MR was a *pro-forma* motion due to non-compliance with Rule 15. As well, it is necessary to emphasize that the September 2010 RTC Order explicitly states that the RTC Decision had "attained finality" because the Republic's MR did not toll the Republic's period to appeal.

Clearly, the Republic's direct resort to the CA *via certiorari* was warranted under the circumstances, as it was led to believe that seeking reconsideration of the September 2010 RTC Order would have been a useless exercise. **The CA thus erred when it caused the outright dismissal of the CA Petition solely on the basis of the Republic's failure to file a prior motion for reconsideration.**

2.

The Republic concedes that it misstated the proposed hearing date in the Notice of Hearing attached to its MR. It argues, however, that this misstatement does not serve as sufficient basis to treat its MR as a mere scrap of paper, considering that said Notice of Hearing fulfilled the purpose of Rule 15, that is, "**to afford the adverse parties a chance to be heard before [the MR] is resolved by the [RTC]**."

The requirements outlined in the Rules can be summarized as follows:

v. Every written motion which cannot be acted upon without prejudicing the rights of the adverse party must be set for hearing;

vi. The adverse party must be given: (a) a copy of such written motion, and (b) notice of the corresponding hearing date;

vii. The copy of the written motion and the notice of hearing described in (ii) must be furnished to the adverse party at least three (3) days before the hearing date, unless otherwise ordered by the RTC (3-day notice rule); and

viii. No written motion that is required to be heard shall be acted upon by the receiving court without proof of service done in the manner prescribed in (iii).

Perusal of the foregoing shows that the Republic failed to comply with the first **and** third requirements.

Notably, while the Republic furnished Alvin and Nailyn's respective counsels with copies of the MR and Notice of Hearing, the Republic did so only by registered mail. As a result, Alvin received notice of the Republic's MR only on August 11, 2010. Hence, even if the RTC construed the Republic's typographical error to read August 6, 2010 instead of July 6, 2010, the Republic would have still failed to comply with the 3-day notice rule.

To be sure, the 3-day notice rule was established *not* for the benefit of movant but for the adverse party, in order to avoid surprises and grant the latter sufficient time to study the motion and enable it to meet the arguments interposed therein. The duty to ensure receipt by the adverse party at least three days before the proposed hearing date necessarily falls on the movant.

Nevertheless, considering the nature of the case and the issues involved therein, the Court finds that relaxation of the Rules was called for. It is well settled that procedural rules may be relaxed in the interest of substantial justice. Accordingly, the "strict and rigid application, [of procedural rules] which would result in technicalities that tend to frustrate rather than promote substantial justice, must always be eschewed."

Here, the State's policy of upholding the sanctity of marriage takes precedence over strict adherence to Rule 15, for the finality of the RTC Decision necessarily entails the permanent severance of Alvin and Nailyn's marital ties. Hence, the RTC should have exercised its discretion, as it did have such discretion, and set the MR for hearing on a later date with due notice to the parties to allow them to fully thresh out the Republic's assigned errors. **The CA thus erred when it affirmed the RTC in this respect.**

F. Quo warranto (Rule 66)

G. Expropriation

1. Rule 67

SPOUSES CIPRIANO PAMPLONA and BIBIANA INTAC, *Petitioners*, -versus- SPOUSES LILIA I. CUETO and VEDASTO CUETO, *Respondents*. G.R. No. 204735, THIRD DIVISION, February 19, 2018, BERSAMIN, *J.*

Secondly, the admissions by Roilan and Vedasto of the petitioners' ownership of the property could not be appreciated in favor of the petitioners. That Bibiana and Lilia had entered into a contract to sell instead of a contract of sale must be well-noted. The differences between a contract to sell and a contract of sale are well-settled in jurisprudence. As early as 1951, in Sing Yee v. Santos, the SC held that:

> *x xx [a] distinction must be made between a contract of sale in which title passes to the buyer upon delivery of the thing sold and a contract to sell x xx where by agreement the ownership is reserved in the seller and is not to pass until the full payment, of the purchase price is made. In the first case, non-payment of the price is a negative resolutory condition; in the second case, full payment is a positive suspensive condition. Being contraries, their effect in law cannot be identical. In the first case, the vendor has lost and cannot recover the ownership of the land sold until and unless the contract of sale is itself resolved and set aside. In the second case, however, the title remains in the vendor if the vendee does not comply with the condition precedent of making payment at the time specified in the contract.*

The distinctions delineate why the admissions by Roilan and Vedasto were consistent with the existence of the oral contract to sell between Lilia and Bibiana.

FACTS:

Petitioners Cipriano Pamplona and BibianaIntac are the registered owners of a parcel of land situated in Batangas City. In 1989, Respondent Lilia Cueto and petitioners mutually agreed that the former would buy and the latter would sell on installment the aforementioned immovable including the house standing thereon.

Petitioners voluntarily transferred the peaceful possession of the subject property to Lilia and from the date of the agreement, the latter had remitted to the former her monthly installments through registered mail. Lilia allowed her son Rolando Cueto to reside at the subject property as Lilia had to leave for abroad. Lilia, through her son, has religiously paid the annual realty taxes on the premises, including electric and water bills.

In 1997, petitioners filed a case for unlawful detaineragainst Rolando Cueto and his wife Liza Cueto. Being indigent, spouses Rolando and Liza failed to defend themselves resulting in a judgment by default and they were finally evicted therefrom.

Lilia learned of the eviction case when she returned home from Italy; she then executed an Affidavit of Adverse Claim and registered the same with the land records of Batangas City. Through Lilia's lawyer, a written tender of payment of US$11,000 was sent to petitioners by registered mail and received by Bibiana. Earnest efforts were resorted to compromise the controversy as shown by the final demand letter sent by registered mail to petitioners. As a consequence of the latter's

unreasonable refusal to recognize respondent's just and valid demand, respondents were constrained to consign the US$11,000 as final payment to defendants. After complying with her contractual obligation, Lilia demanded from petitioners to immediately execute the necessary deed of conveyance and delivery of the owner's copy of TCT. Respondents Lilia and Vedasto thus filed a complaint for specific performance, conveyance, consignation and damages against petitioners.

In their Answer with Counterclaim, petitioners alleged that the amounts paid by the respondents were payment for the latter's indebtedness for a previous loan; that here exists no agreement duly signed by them, as in truth and in fact they never sold the said property to the respondents; that Vedasto and Rolando were allowed by petitioners to stay in the said house, by mere tolerance; and that Vedasto had recognized the petitioners' right of ownership over the property in question when he undertook to vacate the same.

The RTC held that the respondents did not prove the existence of the partially executed contract to sell involving the property; that neither documentary nor object evidence confirmed the supposed partially executed contract to sell; and that the respondents accordingly failed to support their cause of action by preponderance of evidence.

The CA reversed the RTC, and declared that the respondents presented sufficient evidence to establish that petitioner Bibiana and her sister, respondent Lilia, had entered into an oral contract to sell.

ISSUE:

Whether there was sufficient evidence to show the existence of a partially executed contract to sell.

RULING:

The existence of the partially executed contract to sell between Bibiana and Lilia was sufficiently established.

It is uncontested that Lilia sent money to Bibiana. The latter did not deny her receipt of the money. Moreover, the records showed that the parties further agreed for Vedasto and Roilan to occupy the property during the period when Lilia was remitting money to Bibiana; and that Lilia immediately took steps to protect her interests in the property once the petitioners started to deny the existence of the oral contract to sell by annotating her adverse claim on the petitioners' title and instituting this action against the latter. Thus, the respondents had adduced enough evidence to establish the existence of the partially executed contract to sell between Lilia and Bibiana.

The petitioners have contended that the sums of money received from Lilia were payments of the latter's obligations incurred in the past; that the admission by Roilan and his wife that the petitioners owned the property negated the absence of the contract to sell; and that the admission by Vedasto that the petitioners owned the property was an admission against interest that likewise belied the contract to sell between Lilia and Bibiana.

The contentions of the petitioners are factually and legally unwarranted.

To start with, it was incumbent upon Bibiana to prove her allegation in the answer that the money sent to her by Lilia was in payment of past debts. This conforms to the principle that each party must

prove her affirmative allegations. Yet, the petitioners presented nothing to establish the allegation. Without proof of the allegation, therefore, the inference to be properly drawn from Bibiana's receipt of the sums of money was that the sums of money were for the purchase of the property, as claimed by the respondents.

Secondly, the admissions by Roilan and Vedasto of the petitioners' ownership of the property could not be appreciated in favor of the petitioners. That Bibiana and Lilia had entered into a contract to sell instead of a contract of sale must be well-noted.The differences between a contract to sell and a contract of sale are well-settled in jurisprudence. As early as 1951, in *Sing Yee v. Santos,* the SC held that:

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The distinctions delineate why the admissions by Roilan and Vedasto were consistent with the existence of the oral contract to sell between Lilia and Bibiana.

Thirdly, the failure of Roilan to raise as a defense in the unlawful detainer suit against him the existence of the contract to sell between Bibiana and Lilia could not be properly construed as an admission by silence on the part of Lilia. It is basic that the rights of a party cannot be prejudiced by an act, declaration, or omission of another. As an exception to the rule, the act or declaration made in the presence and within the hearing or observation of a party who does or says nothing may be admitted as evidence against a party who fails to refute or reject it. This is known as admission by silence, and is covered by Section 32, Rule 130 of the *Rules of Court,* 4

For an act or declaration to be admissible against a party as an admission by silence, the following requirements must be present, namely: (a) the party must have heard or observed the act or declaration of the other person; (b) he must have had the opportunity to deny it; (c) he must have understood the act or declaration; (d) he must have an interest to object as he would naturally have done if the act or declaration was not true; (e) the facts are within his knowledge; and (f) the fact admitted or the inference to be drawn from his silence is material to the issue.

The first two requirements are lacking in the case of Lilia. She was not shown to have heard or seen the admissions by Vedasto and Roilan that were in writing because she was then abroad. Also, she was not shown to have had the opportunity to deny their written admissions simply because she was not a party to the written admissions. The rule on admission by silence applies to adverse statements in writing only when the party to be thereby bound was carrying on a mutual correspondence with the declarant. Without such mutual correspondence, the rule is relaxed on the theory that although the party would have immediately reacted had the statements been orally made in his presence, such prompt response can generally not be expected if the party still has to resort to a written reply.

In the context of the norms set by jurisprudence for the application of the rule on admission by silence, Lilia could not be properly held to have admitted by her silence her lack of interest in the property. On the contrary, the records reveal otherwise. Upon her return to the country, she communicated with Bibiana on the terms of payment, and immediately took steps to preserve her interest in the property by annotating the adverse claim in the land records, and by commencing this suit against the petitioners. Such affirmative acts definitively belied any claim of her being silent in the face of the assault to her interest.

PAZ E. REBADULLA, PERRAIN E. REBADULLA, JOCELYN E. REBADULLA, CLEVIS E. REBADULLA, HAZEL R. RIGUERA, ARIEL E. REBADULLA,GIOVANNI CLYDE E. REBADULLA, ROEL E. STA. MARIA, KLEINER KYLE R. STA. MARIA, and KERSCHEL R. STA. MARIA, *Petitioners*, -versus- REPUBLIC OF THE PHILIPPINES, THE SECRETARY OF PUBLIC WORKS & HIGHWAYS, and ENGR. TOMAS L. BUEN, PROJECT MANAGER, DPWH-PMO-SWIM PROJECT, *Respondents*.
G.R. No. 222159, FIRST DIVISION, January 31, 2018, TIJAM, *J.*

Zonal valuation is simply one of the indices of the fair market value of real estate; it cannot be the sole basis of "just compensation." Thus, in Leca Realty Corporation v. Republic, the Court held:

> *The zonal value may be one, but not necessarily the sole, index of the value of a realty. National Power Corporation v. ManubayAgro-Industrial held thus:*
>
> *"xxx [Market value] is not limited to the assessed value of the property or to the schedule of market values determined by the provincial or city appraisal committee. However, these values may serve as factors to be considered in the judicial valuation of the property."*
>
> *The above ruling finds support in EPZA v. Dulay in this wise:*
>
> *"Various factors can come into play in the valuation of specific properties singled out for expropriation. The values given by provincial assessors are usually uniform for very wide areas covering several barrios or even an entire town with the exception of the poblacion. Individual differences are never taken into account. The value of land is based on such generalities as its possible cultivation for rice, corn, coconuts or other crops. Very often land described as 'cogonal' has been cultivated for generations. Buildings are described in terms of only two or three classes of building materials and estimates of areas are more often inaccurate than correct. Tax values can serve as guides but cannot be absolute substitutes for just compensation. "*

FACTS:

In 1997, the Department of Public Works and Highways took parcels of land belonging to the Rebadullas for its Small Water Impounding Management Project in Northern Samar. However, no expropriation proceedings were instituted by the DPWH. The Rebadullas filed a Complaint for *mandamus* and damages before the RTC praying that the Republic pay just compensation for the taking and use of the properties. The government filed a Motion to Dismiss questioning the propriety of *mandamus* as a remedy for the payment of just compensation.

The RTC denied the Motion to Dismiss and rendered a decision ordering the Republic to pay the fair market value of the properties based on the BIR zonal valuation, 6% legal interest per *annum* from

the time of filing of the complaint until fully paid, and attorney's fees. The RTC held that while the case was one for *mandamus* and damages, the allegations in the complaint establish an action for recovery of just compensation which was the only relief available to the Rebadullas since it was no longer feasible to demand the return of the property as it was already taken and used in constructing dams for the project.

Holding that courts could exercise their discretion to determine just compensation, the RTC took judicial notice of the BIR's zonal valuation of the properties in 2002, when the case was filed in court. The CA affirmed the RTC's determination of just compensation, increasing the interest rate to twelve percent 12% per *annum*, and deleting the award of attorney's fees.

ISSUE:

Whether the BIR's zonal valuation can be the only basis for determining just compensation. (No)

RULING:

Just compensation is "the sum equivalent of the market value of the property, broadly described as the price fixed in open market by the seller in the usual and ordinary course of legal action or competition, or the fair value of the property as between one who receives and who desires to sell it, fixed at the time of the actual taking by the government." The word "just" is used to emphasize the meaning of the word "compensation" so as to convey the idea that the equivalent to be rendered for the property to be taken should be real, substantial, full and ample.

The nature and character of the land at the time of taking is thus the principal criterion in determining just compensation. All the facts as to the condition of the property and its surroundings, as well as its improvements and capabilities, must be considered. The "just"-ness of the compensation can only be attained by using reliable and actual data as bases in fixing the value of the condemned property.

In *National Power Corporation v. ManubayAgro-Industrial Development Corporation*, the recommended price of the city assessor was rejected by this Court. The opinions of the banks and the realtors as reflected in the computation of the market value of the property and in the Commissioners' Report, were not substantiated by any documentary evidence.

Similarly, in *National Power Corporation v. Diato-Bernal*, this Court rejected the valuation recommended by court-appointed commissioners whose conclusions were devoid of any actual and reliable basis. The market values of the subject property's neighboring lots were found to be mere estimates and unsupported by any corroborative documents, such as sworn declarations of realtors in the area concerned, tax declarations or zonal valuation from the BIR for the contiguous residential dwellings and commercial establishments. Thus, we ruled that a commissioners' report of land prices which is not based on any documentary evidence is manifestly hearsay and should be disregarded by the court.

In the present case, the trial court did not judiciously determine the fair market value of the subject property as it failed to consider other relevant factors such as the zonal valuation, tax declarations and current selling price supported by documentary evidence. Indeed, just compensation must not be arrived at arbitrarily, but determined after an evaluation of different factors.

Zonal valuation is simply one of the indices of the fair market value of real estate; it cannot be the sole basis of "just compensation." Thus, in *Leca Realty Corporation v. Republic*, the Court held:

> The zonal value may be one, but not necessarily the sole, index of the value of a realty. *National Power Corporation v. ManubayAgro-Industrial* held thus:
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> "Various factors can come into play in the valuation of specific properties singled out for expropriation. The values given by provincial assessors are usually uniform for very wide areas covering several barrios or even an entire town with the exception of the poblacion. Individual differences are never taken into account. The value of land is based on such generalities as its possible cultivation for rice, corn, coconuts or other crops. Very often land described as 'cogonal' has been cultivated for generations. Buildings are described in terms of only two or three classes of building materials and estimates of areas are more often inaccurate than correct. *Tax values can serve as guides but cannot be absolute substitutes for just compensation*. "

Among the factors to be considered in determining the fair market value of the property are the cost of acquisition, the current value of like properties, its actual or potential uses, and in the particular case of land, its size, shape, location, and the tax declaration thereon. The measure is not the taker's gain but the owner's loss. To be just, the compensation must be fair not only to the owner but also to the taker.

Since the determination of the value of the property is factual in nature, the Court finds a need to remand the case to the trial court to determine its value. The Government is of the view that pursuant to Rule 67 of the Rules of Court, commissioners must be appointed by the trial court to initially ascertain the just compensation, failing which the trial court's valuation will be ineffectual.

On this matter, the Court's ruling in *Republic of the Philippines v. Court of Appeals, et al*. finds application. There, the Court ruled that "when there is no action for expropriation and the case involves only a complaint for damages or just compensation, the provisions of the Rules of Court on ascertainment of just compensation (i.e., provisions of Rule 67) are no longer applicable, and a trial before commissioners is dispensable." Even so, the Court held that the appointment of commissioners was "not improper," as it was mainly meant to aid the Court in determining the just compensation and was not opposed by the parties, and the trial court had the discretion either to adopt the commissioners' valuation or to substitute its own estimate of the value based on the records.

2. Guidelines for expropriation proceedings of National Government Infrastructure Projects (Sec. 4, RA 8974)

H. Foreclosure of real estate mortgage

1. Judicial foreclosure (Rule 68)

2. Extrajudicial foreclosure (Act 3135, as amended)

3. The General Banking Law of 2000 (Sec. 47, RA 8791)

I. Partition (Rule 69)

J. Forcible entry and unlawful detainer

FATIMA O. DE GUZMAN-FUERTE, MARRIED TO MAURICE GEORGE FUERTE, *Petitioner*, -versus- SPOUSES SILVINO S.ESTOMO AND CONCEPCION C. ESTOMO, *Respondents*. G.R. No. 223399, SECOND DIVISION, April 23, 2018, PERALTA, *J.*

As the allegations in the complaint determine both the nature of the action and the jurisdiction of the court, the complaint must specifically allege the facts constituting unlawful detainer. In the absence of these factual allegations, an action for unlawful detainer is ***not*** *the proper remedy and the municipal trial court does not have jurisdiction over the case.*

A perusal of the Complaint shows that it contradicts the requirements for unlawful detainer…Paragraphs 2 and 3 make it clear that Spouses Estomo's occupancy was illegal and without Fuerte's consent. *Likewise, the Complaint did not contain an allegation that Fuerte or her predecessor-in-interest tolerated the spouses' possession on account of an express or implied contract between them. Neither was there any averment which shows any overt act on Fuerte's part indicatiVe of her permission to occupy the land.*

FACTS:

The instant case stemmed from a Complaintfor unlawful detainer filed by Fuerte against respondents *Spouses Estomo*. Fuerte alleged that Manuela Co (Co) executed a Deed of Real Estate Mortgage over the subject property in her favor. Upon Co's failure to pay the loan, Fuerte caused the foreclosure proceedings and eventually obtained ownership of the property. However, the writ of possession was returned unsatisfied since Co was no longer residing at the property and that the Spouses Estomo and their family occupied the same. It was only after the said return that Fuerte discovered and verified that the Spouses Estomo were in possession of the property. In a letter, she demanded them to vacate and surrender posession of the subject property and pay the corresponding compensation. The Spouses Estomorefused to heed to her demands.

In their Answer, the Spouses Estomo denied that they illegally occupied the subject property. They also denied the existence of the demand letter. The Spouses Estomo also prayed that the complaint be dismissed on the ground that the allegations are insufficient to establish a cause of action for unlawful detainer. By Fuerte's own allegation, the Spouses Estomo's entry to the property was unlawful from the beginning. The case cannot be considered as one for forcible entry since it was never alleged that their entry was by means of force, intimidation, threat, stealth or strategy. Lastly, prescription has already set, since Fuerte was aware that the spouses possessed the property when

they filed the complaint for annulment of deed of absolute sale and real estate mortgage against Co and Fuerte.

ISSUE:

Whether or not the CA committed reversible error in **dismissing the complaint** for unlawful detainer. (NO)

RULING:

The instant petition is devoid of merit.

Fuerte maintains that it is a hornbook rule that the purchaser of a real property from a vendor who no longer occupies the said property need not prove as an essential requisite how and the manner the present possessor came into occupation. As long as she fulfills the requisite of demand to vacate, she may bring an action for unlawful detainer against the Spouses Estomo who defied her demand.She avers that prior to the expiration of the period she granted to the spouses to vacate the premises, their occupation of the subject property was only by mere tolerance. The same became illegal upon the expiration of the said period.

In summary ejectment suits such as unlawful detainer and forcible entry, the only issue to be determined is **who between the contending parties has better possession of the contested property.** x xx

Unlawful detainer is an action to recover possession of real property from one who illegally withholds possession after the expiration or termination of his right to hold possession under any contract, express or implied. The possession of the defendant in unlawful detainer is originally legal but became illegal due to the expiration or termination of the right to possess.

A complaint sufficiently alleges a cause of action for unlawful detainer if it states the following:

(a) Initially, the possession of the property by the defendant was by contract with or by tolerance of the plaintiff;

(b) Eventually, such possession became illegal upon notice by the plaintiff to the defendant about the termination of the latter's right of possession;

(c) Thereafter, the defendant remained in possession of the property and deprived the plaintiff of its enjoyment; and

(d) Within one year from the making of the last demand to vacate the property on the defendant, the plaintiff instituted the complaint for ejectment.[16]

As the allegations in the complaint determine both the nature of the action and the jurisdiction of the court, the complaint must specifically allege the facts constituting unlawful detainer. In the absence

of these factual allegations, an action for unlawful detainer is **not** the proper remedy and the municipal trial court does not have jurisdiction over the case.

A perusal of the Complaint shows that it contradicts the requirements for unlawful detainer…Paragraphs 2 and 3 make it clear that Spouses Estomo's occupancy was illegal and without Fuerte's consent. Likewise, the Complaint did not contain an allegation that Fuerte or her predecessor-in-interest tolerated the spouses' possession on account of an express or implied contract between them. Neither was there any averment which shows any overt act on Fuerte's part indicatiye of her permission to occupy the land.

Acts of tolerance must be proved showing the overt acts indicative of his or his predecessor's tolerance or permission for them to occupy the disputed property.There should be any supporting evidence on record that would show when the respondents entered the properties or who had granted them to enter the same and how the entry was effected.Without these allegations and evidence, the bare claim regarding "tolerance" cannot be upheld.

Moreover, the demand letter supports the fact that she characterized the Spouses Estomo's possession of the subject property as unlawful from the start, to wit:

Dear Mr. & Mrs. Estomo:

We represent our client, **DR. FATIMA O. DE GUZMANFUERTE**, the absolute and registered owner in fee simple of the above premises you are **presently occupying without her consent, permission nor approval**. XXX

It is apparent from the letter that Fuerte demanded the spouses to immediately vacate the subject property, contrary to her allegation in the instant petition that she granted such period, during which she tolerated the spouses' possession. She failed to satisfy the requirement that her supposed act of tolerance was present right from the start of the possession by the Spouses Estomo. It is worth noting that the absence of the first requisite is significant in the light of the Spouses Estomo's claim that they have been occupying the property as owner thereof, and that they have filed an annulment of sale and real estate mortgage against Co and Fuerte even before the property was foreclosed.

From the foregoing, this Court finds that the complaint failed to state a cause of action for unlawful detainer. Since the complaint fell short of the jurisdictional facts to vest the court jurisdiction to effect the ejectment of respondent, **the MTCC failed to acquire jurisdiction to take cognizance of Fuerte's complaint and the CA correctly dismissed the unlawful detainer case against the Spouses Estomo.**

X XX

Without a doubt, the registered owner of real property is entitled to its possession. However, the registered owner cannot simply wrest possession thereof from whoever is in actual occupation of the property. **To recover possession, he must resort to the proper remedy, and once he chooses**

what action to file, he is required to satisfy the conditions necessary for such action to prosper. In this case, Fuerte chose the remedy of unlawful detainer to eject the Spouses Estomo, but, failed to sufficiently allege the facts which are necessary to vest jurisdiction to MTCC over an unlawful detainer case. In fine, the CA did not commit reversible error in dismissing Fuerte's complaint for unlawful detainer.

THE IGLESIA DE JESUCRISTO JERUSALEM NUEVA OF MANILA, PHILIPPINES, INC., REPRESENTED BY ITS PRESIDENT, FRANCISCO GALVEZ, *Petitioner*, -versus- LOIDA DELA CRUZ USING THE NAME CHURCH OF JESUS CHRIST, "NEW JERUSALEM" AND ALL PERSONS CLAIMING RIGHTS UNDER HER, *Respondents*.G.R. No. 208284, FIRST DIVISION, April 23, 2018, DEL CASTILLO, *J.*

The pronouncement in Co v. Militar was later reiterated in Spouses Pascual v. Spouses Coronel and in Spouses Barias v. Heirs of Bartolome Boneo, et al., wherein we consistently held the ***age-old rule*** *'that the person who has a Torrens Title over a land is entitled to possession thereof.'*

However, we cannot lose sight of the fact that the present petitioner has instituted an unlawful, detainer case against respondents. It is an established fact that ***for more than three decades, the latter have been in continuous possession of the subject property, which, as such, is in the concept of ownership and not by mere tolerance of petitioner's father.*** *Under these circumstances, petitioner cannot simply oust respondents from possession through the summary procedure of an ejectment proceeding.*

FACTS:

Petitioner is a religious corporation. Petitioner is the owner of a parcel of land covered by OCT No. 35266. Galvez is the nephew of Rosendo Gatchalian, the founder and the leader of Petitioner way back in 1940 who organized the said religious corporation and build a chapel within the subject lot. Since 1940, Miguela Gatchalian, the late mother of Galvez and her family used to occupy and possess and likewise built a house of their own in the concept of an owner with uninterrupted, peaceful, and physical possession on a certain portion of the subject lot as they were relatives and long-time members of Petitioner and were allowed by the founder [Rosendo] to occupy the same. During the lifetime of Rosendo Gatchalian, the chapel inside the subject lot was used exclusively by the members of Petitioner for worship every Sunday.

Dela Cruz used to be a member of the Petitioner. However, when Rosendo died, the members became disorganized. Since then, members who come and visit the chapel were allowed to enter the chapel and conduct their meetings and worship therein. Surprisingly, sometime in 1998, without the knowledge and consent of all the members and officers of Petitioner, Dela Cruz formed, organized, and created the name of CHURCH OF JESUS CHRIST, "NEW JERUSALEM". The organization formed by Dela Cruz was used by her as an instrument in claiming that she is the representative of the said religious organization and had the right over the subject lot.

According to the petitioner, the occupation and possession of Dela Cruz over the subject lot of Petitioner was merely tolerated because they were former members of Petitioner. A demand was sent to respondents to vacate and surrender the peaceful possession of the chapel and to stop using the subject lot of petitioner but the respondents failed and refused to vacate the same. The demand letter was personally served, but Dela Cruz refused to sign the same. Thus, petitioner was constrained to institute the instant suit.

Subsequently, Iglesia De Jesucristo Jerusalem Nueva of Manila, Philippines, Inc. (petitioner), represented by Galvez, filed before the MeTC of Malabon City a Complaint for unlawful detainer with damages against respondent Dela Cruz, using the name CHURCH OF JESUS CHRIST, "NEW JERUSALEM" and all persons claiming rights under her.

The RTC held that the disputed property is registered in the name of "The Iglesia De Jesucristo Jerusalem Nueva of Manila, Philippines, Inc."; and that the only issue to be resolved is who as between the parties is authorized to represent the registered owner of the disputed property. It finally held that De la Cruz is the duly authorized representative as evidenced by a Secretary's Certificate.

The CA upheld the RTC.

ISSUE: Whether or not petitioner Galvez is the duly authorized representative of the registered owner of the disputed property. (NO)

RULING:

The petition has no merit.

A complaint sufficiently alleges a cause of action for unlawful detainer if it recites the following: (1) the defendant's initial possession of the property was lawful, either by contact with or by tolerance of the plaintiff; (2) eventually, such possession became illegal upon the plaintiff's notice to the defendant of the termination of the latter's right of possession; (3) thereafter, the defendant remained in possession and deprived the plaintiff of the enjoyment of the property; and (4) the plaintiff instituted the complaint for ejectment within one (1) year from the last demand to vacate the property.

In this case, the MeTC, the RTC, and the CA ruled for respondents, by uniformly holding that Dela Cruz was able to show by convincing evidence that she is the duly authorized representative of the registered owner of the disputed property. Quoting the RTC, the CA agreed that it is beyond doubt or dispute that the disputed property is registered in the name of "The Iglesia de Jesucristo, Jerusalem Nueva of Manila, Philippines, Inc." and that the sole issue for resolution in the case is which party was authorized to represent the registered owner of the disputed property…

"When the defendant raises the defense of ownership in [her] pleadings and the question of possession cannot be resolved without deciding the issue of ownership, the issue of ownership shall be resolved only to determine the issue of possession."in other words, "[w]here the parties to an ejectment case raise the issue of ownership, the courts may pass upon that issue to determine who between the parties has the better right, to possess the property. However, where the issue of

ownership is inseparably linked to that of possession, adjudication of the ownership issue is not final and binding, but only for the purpose of resolving the issue or possession."

We need not repeatedly belabor the issue in an ejectment case:

x xx**The principal issue must be possession *de facto*, or actual possession, and ownership is merely ancillary to such issue.** The summary character of the proceedings is designed to quicken the determination of possession *de facto* in the interest of preserving the peace of the community, but the summary proceedings may not be proper to resolve ownership of the property. **Consequently, any issue on ownership arising in forcible entry or unlawful detainer is resolved only provisionally for the purpose of determining the principal issue of possession.** x xx

"Indeed, a title issued under the Torrens system, is entitled to all the attributes of property ownership, which necessarily includes possession."Nevertheless, **"an ejectment case will not necessarily be decided in favor of one who has presented proof of ownership of the subject property.** Key jurisdictional facts constitutive of the particular ejectment case filed must be averred in the complaint and sufficiently proven."

Quite independently of the foregoing, **what further strengthens herein respondents' posture was petitioner's utter failure to adduce proof that he merely tolerated respondents' possession of the disputed property.** In *Corpuz v. Spouses Agustin*, this Court recognized that even as the registered owner generally has the right of possession as an attribute of: ownership, nevertheless the dismissal of the complaint for unlawful detainer is justified where proof of preponderant evidence of material possession of the disputed premises has not been convincingly adduced —

x xx Petitioner is correct that as a Torrens title holder over the subject properties, he is the rightful owner and is entitled to possession thereof. However, the lower courts and the appellate court consistently found that possession of the disputed properties by respondents was in the nature of ownership, and not by mere tolerance of the elder Corpuz. **In fact, they have been in continuous, open and notorious possession of the property for more than 30 years up to this day.**

x xxx

The pronouncement in *Co v. Militar* was later reiterated in *Spouses Pascual v. Spouses Coronel* and in S*pouses Barias v. Heirs of Bartolome Boneo, et al*., wherein we consistently held the age-old rule 'that the person who has a Torrens Title over a land is entitled to possession thereof.'

However, we cannot lose sight of the fact that the present petitioner has instituted an unlawful, detainer case against respondents. It is an established fact that **for more than three decades, the latter have been in continuous possession of the subject property**, which, as such, is in the concept of ownership and not by mere tolerance of petitioner's father. Under these circumstances, **petitioner cannot simply oust respondents from possession through the summary procedure of an ejectment proceeding.**

In the case at bench, petitioner miserably failed to substantiate its claim that it merely tolerated respondents' possession of the disputed property. Indeed, "[w]ith the averment here that the respondent[s'] possession was by mere tolerance of the petitioner, the acts of tolerance **must be proved**, for bare allegation of tolerance did not suffice. At least, the petitioner should show the overt acts indicative of [its] or [its] predecessor's tolerance x xx But [it] did not adduce such evidence," as in this case. It is thus quite evident from the allegations and evidence presented by petitioner that its claim that it merely tolerated respondents' entry into and possession of the disputed property, is baseless and unsubstantiated. Furthermore, while possession is a question of fact which is generally not allowed to be raised in a Rule 45 petition, the MeTC, RTC, and CA made no finding in respect to the question of tolerance as discussed above.

1. Differentiate from accionpubliciana and accionreivindicatoria

HEIRS OF ALFONSO YUSINGCO, REPRESENTED BY THEIR ATTORNEY-IN-FACT, TEODORO K. YUSINGCO, *Petitioners*, -versus- AMELITA BUSILAK, COSCA NAVARRO, FLAVIA CURAYAG AND LIXBERTO CASTRO, *Respondents*.G.R. No. 210504, SECOND DIVISION, January 24, 2018, PERALTA, *J.*

In Amoroso v. Alegre, Jr:
Accionreivindicatoria or accion de reivindicacion is an action whereby the plaintiff alleges ownership over a parcel of land and seeks recovery of its full possession. It is a suit to recover possession of a parcel of land as an element of ownership. The judgment in such a case determines the ownership of the property and awards the possession of the property to the lawful owner. It is different from accioninterdictal or accionpubliciana where plaintiff merely alleges proof of a better right to possess without claim of title.

An action to recover a parcel of land is a real action but it is an action in personam, for it binds a particular individual only although it concerns the right to a tangible thing. Any judgment therein is binding only upon the parties properly impleaded and duly heard or given an opportunity to be heard. However, this rule admits of the exception that even a non-party may be bound by the judgment in an ejectment suit where he is any of the following: (a) trespasser, squatter or agent of the defendant fraudulently occupying the property to frustrate the judgment; (b) guest or occupant of the premises with the permission of the defendant; (c) transferee pendente lite; (d) sublessee; (e) co-lessee; or (f) member of the family, relative or privy of the defendant. In the instant case, the Court finds no cogent reason to depart from the findings and conclusions of the MTCC, as affirmed by the RTC, that respondents are mere intruders or trespassers who do not have a right to possess the subject lots.

FACTS:

On August 11, 2005, herein petitioners filed **five separate (5) Complaints for accionpubliciana and/or recovery of possession** against herein respondents and a certain Reynaldo Peralta. The suits, which were subsequently consolidated, were filed with the MTCC of Surigao City, which were later raffled to Branch 1 thereof.

Petitioners uniformly alleged in the said Complaints that they are owners of three (3) parcels of land, denominated as Lot Nos. 519, 520 and 1015, which are all located at Barangay Taft, Surigao City, that they inherited the lots from their predecessor-in-interest, Alfonso Yusingco, and that they were in possession of the said properties prior to and at the start of the Second World War, but lost possession thereof during the war. After the war, **petitioners discovered that the subject properties were occupied by several persons, which prompted petitioners to file separate cases for accionreivindicatoriaand recovery of possession against these persons.**

During the pendency of these cases, herein respondents entered different portions of the same properties and occupied them without the knowledge and consent of petitioners. Petitioners were forced to tolerate the illegal occupation of respondents as they did not have sufficient resources to protect their property at that time and also because their ownership was still being disputed in the earlier cases filed.

Subsequently, the cases which they earlier filed were decided in their favor and they were declared the owners of the subject properties. Thereafter, petitioners demanded that respondents vacate the said properties, but the latter refused.

In their Answer, respondents raised essentially similar defenses, contending, in essence, that they have been in possession of the subject properties for more than thirty (30) years and that petitioners never actually possessed the said parcels of land and that they never had title over the same; thus, petitioners' claim would be in conflict with and inferior to respondents' claim of possession.

After the issues were joined, trial ensued.

On February 25, 2011, the MTCC, Branch 1, Surigao City issued an Omnibus Judgment in favor of herein petitioners. The **MTCC held that in an earlier case for accionreivindicatoria** (Civil Case No. 1645) decided by the Court of First Instance of Surigao Del Norte on June 8, 1979 and affirmed by the CA in its Decision dated August 30, 1982 (CA-G.R. No. 66508-R), **which became final and executory** on December 18, 1986, herein **petitioners were declared the true and lawful co-owners of the subject properties**; on the other hand, evidence showed that respondents were mere intruders on the lots in question; thus, as judicially-declared owners of the said lots, petitioners are entitled to possession thereof as against respondents whose entries into the said properties are illegal.

Herein respondents filed an appeal with the RTC of Surigao City. The RTC affirmed, with modification, the Omnibus Judgment of the MTCC. Herein respondents then filed with the CA a petition for review under Rule 42 of the Rules of Court assailing the abovementioned Joint Decision of the RTC. The CA granted the petition of herein respondents.

The CA ruled that the RTC and CA Decisions used by the MTCC in holding that herein petitioners are owners of the subject properties and are, thus, entitled to legal possession thereof, are based on a

previous accionreivindicatoria, which is a suit in personam. The CA held that, being an action in personam, the judgments in the said case binds only the parties properly impleaded therein. Since respondents were not parties to the said action, the CA concluded that they could not be bound by the judgments declaring petitioners as owners of the disputed properties. Hence, petitioners' present actions to recover possession of the said properties from respondents, on the basis of the said judgments, must fail.

Aggrieved by the CA Decision, herein petitioners are now before this Court via the instant petition for review on certiorari contending that the assailed CA Decision is replete with legal infirmities.

ISSUE:

Whether or not the final and executory decisions rendered in a previous accionreivindicatoria, finding petitioners to be the lawful owners of the subject properties, are binding upon respondents?

RULING:
This Court rules in the affirmative.

At the outset, the Court finds it proper to look into the nature of the actions filed by petitioners against respondents. A perusal of the complaints filed by petitioners shows that the **actions were captioned as "AccionPubliciana and/or Recovery of Possession."** However, the **Court agrees with the ruling of the lower courts that the complaints filed were actually accionreivindicatoria.**

In a number of cases, this Court had occasion to discuss the three (3) kinds of actions available to recover possession of real property, to wit:

> (a) accioninterdictal - Accioninterdictal comprises two distinct causes of action, namely, forcible entry (detentacion) and unlawful detainer (desahuico). In forcible entry, one is deprived of physical possession of real property by means of force, intimidation, strategy, threats, or stealth whereas in unlawful detainer, one illegally withholds possession after the expiration or termination of his right to hold possession under any contract, express or implied. The two are distinguished from each other in that in forcible entry, the possession of the defendant is illegal from the beginning, and that the issue is which party has prior de facto possession while in unlawful detainer, possession of the defendant is originally legal but became illegal due to the expiration or termination of the right to possess. The jurisdiction of these two actions, which are summary in nature, lies in the proper municipal trial court or metropolitan trial court. Both actions must be brought within one year from the date of actual entry on the land, in case of forcible entry, and from the date of last demand, in case of unlawful detainer. The issue in said cases is the right to physical possession.
>
> (b) accionpubliciana - Accionpubliciana is the plenary action to recover the right of possession which should be brought in the proper regional trial court when dispossession has lasted for more than one year. It is an ordinary civil proceeding to determine the better right of possession of realty independently of title. In other words, if at the time of the filing of the complaint more than one year had elapsed since defendant had turned plaintiff out of possession or defendant's possession had become illegal, the action will be, not one of the

> forcible entry or illegal detainer, but an accionpubliciana. On the other hand, accionreivindicatoria is an action to recover ownership also brought in the proper regional trial court in an ordinary civil proceeding.
>
> and (c) **accionreivindicatoria** - Accionreivindicatoria or accion de reivindicacion is, thus, an action whereby the plaintiff alleges ownership over a parcel of land and seeks recovery of its full possession. It is a **suit to recover possession of a parcel of land as an element of ownership.** The judgment in such a case determines the ownership of the property and awards the possession of the property to the lawful owner. It is different from accioninterdictal or accionpubliciana where plaintiff merely alleges proof of a better right to possess without claim of title.

On the basis of the above discussions, it is clear that the lower courts did not err in ruling that the suits filed by petitioners are *accionreivindicatoria,* not *accionpubliciana,* as petitioners seek to recover possession of the subject lots on the basis of their ownership thereof.

The Court ruled that the **petitioners seek to recover possession of the subject lots on the basis of their ownership**. **An action to recover a parcel of land is a real action but it is an action in personam**, **for it binds a particular individual only although it concerns the right to a tangible thing. Any judgment therein is binding only upon the parties properly impleaded and duly heard or given an opportunity to be heard. However, this rule admits of the exceptionthat even a non-party may be bound by the judgment in an ejectment suit where he is any of the following:** (a) trespasser, squatter or agent of the defendant fraudulently occupying the property to frustrate the judgment; (b) guest or occupant of the premises with the permission of the defendant; (c) transferee *pendente lite;* (d) sublessee; (e) co-lessee; or (f) member of the family, relative or privy of the defendant.

In the instant case, the Court finds no cogent reason to depart from the findings and conclusions of the MTCC, as affirmed by the RTC, that respondents are mere intruders or trespassers who do not have a right to possess the subject lots. Therefore, although as a rule, any judgment is binding only upon the parties properly impleaded and duly heard or given an opportunity to be heard in a case, respondents, an intruders or trespassers are also bound by the judgment in an ejectment suit.

INTRAMUROS ADMINISTRATION, *Petitioner*, -versus- OFFSHORE CONSTRUCTION DEVELOPMENT COMPANY, *Respondent.*G.R. No. 196795, THRD DIVISION, March 7, 2018, LEONEN, *J*.

To determine the nature of the action and the jurisdiction of the court, the allegations in the complaint must be examined. The jurisdictional facts must be evident on the face of the complaint. There is a case for unlawful detainer if the complaint states the following:

> *(1) initially, possession of property by the defendant was by contract with or by tolerance of the plaintiff;*
>
> *(2) eventually, such possession became illegal upon notice by plaintiff to defendant of the termination of the latter's right of possession;*

(3) thereafter, the defendant remained in possession of the property and deprived the plaintiff of the enjoyment thereof; and

(4) within one year from the last demand on defendant to vacate the property, the plaintiff instituted the complaint for ejectment.

A review of petitioner's Complaint for Ejectment shows that all of these allegations were made.First, petitioner alleges that respondent is its lessee by virtue of three (3) Contracts of Lease. The validity of these contracts was later affirmed in a Compromise Agreement, which modified certain provisions of the previous leases but retained the original lease period. Respondent does not dispute these contracts' existence or their validity.Second, following respondent's failure to pay rentals, petitioner alleges that it has demanded that respondent vacate the leased premises.Third, respondent continues to occupy and possess the leased premises despite petitioner's demand. This is admitted by respondent, which seeks to retain possession and use of the properties to "recoup its multimillion pesos worth of investment." Fourth, petitioner filed its Complaint for Ejectment on April 28, 2010, within one (1) year of its last written demand to respondent.

Respondent's defense that its relationship with petitioner is one of concession rather than lease does not determine whether or not the Metropolitan Trial Court has jurisdiction over petitioner's complaint. The pleas or theories set up by a defendant in its answer or motion to dismiss do not affect the court's jurisdiction.

FACTS:

In 1998, Intramuros leased certain real properties of the national government, which it administered to Offshore Construction. Three (3) properties were subjects of Contracts of Lease: Baluarte De San Andres, Baluarte De San Francisco De Dilao, and Revellin De Recoletos. All three (3) properties were leased for five (5) years, from September 1, 1998 to August 31, 2003. All their lease contracts also made reference to an August 20, 1998 memorandum of stipulations, which included a provision for lease renewals every five (5) years upon the parties' mutual agreement.

Offshore Construction occupied and introduced improvements in the leased premises. However, Intramuros and the Department of Tourism halted the projects due to Offshore Construction's non-conformity with Presidential Decree No. 1616, which required 16th to 19th centuries' Philippine-Spanish architecture in the area. Consequently, Offshore Construction filed a complaint against Intramuros and the Department of Tourism before the Manila Regional Trial Court.

Eventually, the parties executed a Compromise Agreement which the Manila Regional Trial Court approved. In the Compromise Agreement, the parties affirmed the validity of the two (2) lease contracts but terminated the one over Revellin de Recoletos. The Compromise Agreement retained the five (5)-year period of the existing lease contracts and stated the areas that may be occupied by Offshore Construction.

During the lease period, Offshore Construction failed to pay its utility bills and rental fees, despite several demand letters. Intramuros tolerated the continuing occupation, hoping that Offshore Construction would pay its arrears.

To settle its arrears, Offshore Construction proposed to pay the Department of Tourism's monthly operational expenses for lights and sound equipment, electricity, and performers at the Baluarte Plano Luneta de Sta. Isabel. Intramuros and the Department of Tourism accepted the offer, and the parties executed a Memorandum of Agreement covering the period of August 15, 2004 to August 25, 2005. However, Offshore Construction continued to fail to pay its arrears.Offshore Construction received Intramuros' latest demand letter.

Intramuros filed a Complaint for Ejectment before the Manila Metropolitan Trial Court.

On July 12, 2010, Offshore Construction filed a Motion to dismiss. The MTC granted the same, it found that while a motion to dismiss is a prohibited pleading under the Rule on Summary Procedure, Offshore Construction's motion was grounded on the lack of jurisdiction over the subject matter. The MTC held that it had no jurisdiction over the complaint. While there were lease contracts between the parties, the existence of the other contracts between them made Intramuros and Offshore Construction's relationship as one of concession. Under this concession agreement, Offshore Construction undertook to develop several areas of the Intramuros District, for which it incurred expenses.

Intramuros appealed to the RTC which affirmed the decision of the MTC.

ISSUE:

Whether the MTC has jurisdiction. (YES)

RULING:

In dismissing the complaint, the Metropolitan Trial Court found that "[t]he issues . . . between the parties cannot be limited to a simple determination of who has the better right of possession of the subject premises or whether or not [petitioner] is entitled [to] rentals in arrears."[79] It held that the relationship between the parties was a "more complicated situation where jurisdiction is better lodged with the regional trial court," upon a finding that there was a concession, rather than a lease relationship between the parties.

To determine the nature of the action and the jurisdiction of the court, the allegations in the complaint must be examined. The jurisdictional facts must be evident on the face of the complaint. There is a case for unlawful detainer if the complaint states the following:

> (1) initially, possession of property by the defendant was by contract with or by tolerance of the plaintiff;
>
> (2) eventually, such possession became illegal upon notice by plaintiff to defendant of the termination of the latter's right of possession;
>
> (3) thereafter, the defendant remained in possession of the property and deprived the plaintiff of the enjoyment thereof; and

> (4) within one year from the last demand on defendant to vacate the property, the plaintiff instituted the complaint for ejectment.

A review of petitioner's Complaint for Ejectment shows that all of these allegations were made.

First, petitioner alleges that respondent is its lessee by virtue of three (3) Contracts of Lease. The validity of these contracts was later affirmed in a Compromise Agreement, which modified certain provisions of the previous leases but retained the original lease period. Respondent does not dispute these contracts' existence or their validity.

Second, following respondent's failure to pay rentals, petitioner alleges that it has demanded that respondent vacate the leased premises.

Third, respondent continues to occupy and possess the leased premises despite petitioner's demand. This is admitted by respondent, which seeks to retain possession and use of the properties to "recoup its multimillion pesos worth of investment."

Fourth, petitioner filed its Complaint for Ejectment on April 28, 2010, within one (1) year of its last written demand to respondent, made on March 18, 2010 and received by respondent on March 26, 2010. Contrary to respondent's claim, the one (1)-year period to file the complaint must be reckoned from the date of last demand, in instances when there has been more than one (1) demand to vacate.

The Metropolitan Trial Court seriously erred in finding that it did not have jurisdiction over petitioner's complaint because the parties' situation has allegedly become "more complicated" than one of lease. Respondent's defense that its relationship with petitioner is one of concession rather than lease does not determine whether or not the Metropolitan Trial Court has jurisdiction over petitioner's complaint. The pleas or theories set up by a defendant in its answer or motion to dismiss do not affect the court's jurisdiction. In *Morta v. Occidental*:

> 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."

Not even the claim that there is an implied new lease or *tacitareconduccion* will remove the Metropolitan Trial Court's jurisdiction over the complaint. To emphasize, physical possession, or *de facto* possession, is the sole issue to be resolved in ejectment proceedings. Regardless of the claims or defenses raised by a defendant, a Metropolitan Trial Court has jurisdiction over an ejectment complaint once it has been shown that the requisite jurisdictional facts have been alleged, such as in this case. Courts are reminded not to abdicate their jurisdiction to resolve the issue of physical possession, as there is a public need to prevent a breach of the peace by requiring parties to resort to legal means to recover possession of real property.

2. Rule 70

K. Contempt (Rule 71)

VI. SPECIAL PROCEEDINGS

A. Settlement of estate of deceased persons

1. Venue and process (Rule 73)

2. Summary settlement of estates (Rule 74)

3. Allowance or disallowance of wills (Rule 76)

4. Claims against the estate (Rule 86)

5. Payment of the debts of the estate (Rule 88)

6. Sales, mortgages, and other encumbrances of property of decedent (Rule 89)

7. Distribution and partition (Rule 90)

B. Escheat (Rule 91)

C. Guardianship

1. Venue (Rule 92)

2. Appointment of guardians (Rule 93)

3. General powers and duties of guardians (Rule 96)

4. Termination of guardianship (Rule 97)

D. Writ of habeas corpus

1. Rule 102

2. Writ of habeas corpus in relation to custody of minors (A.M. No. 03-0404-SC)

RENALYN A. MASBATE AND SPOUSES RENATO MASBATE AND MARLYN MASBATE, PETITIONERS, VS. RICKY JAMES RELUCIO, RESPONDENT.

[G.R. No. 235498, SECOND DIVISION, July 30, 2018, PERLAS-BERNABE, J.]

It is settled that habeas corpus may be resorted to in cases where "the rightful custody of any person is withheld from the person entitled thereto."[50] In custody cases involving minors, the writ of habeas corpus is prosecuted for the purpose of determining the right of custody over a child. The grant of the writ depends on the concurrence of the following requisites: (1) that the petitioner has the right of custody over the minor; (2) that the rightful custody of the minor is being withheld from the petitioner

by the respondents; and (3) that it is to the best interest of the minor concerned to be in the custody of petitioner and not that of the respondents

FACTS:

Queenie was born on May 3, 2012 to Renalyn and Ricky James, who had been living together with Renalyn's parents without the benefit of marriage. Three years later, the relationship ended. Renalyn went to Manila, supposedly leaving Queenie behind in the care and custody of her father, Ricky James.

Ricky James alleged that Spouses Renata and Marlyn Masbate (Renalyn's parents) took Queenie from the school where he had enrolled her. When asked to give Queenie back, Renalyn's parents refused and instead showed a copy of a Special Power of Attorney (SPA) executed by Renalyn granting full parental rights, authority, and custody over Queenie to them. Consequently, Ricky James filed a petition for habeas corpus and child custodybefore the RTC (petition a quo).

A hearing was conducted where Renalyn brought Queenie and expressed the desire for her daughter to remain in her custody.

RTC: The RTC ruled that the custody of three (3)-year-old Queenie rightfully belongs to Renalyn, citing the second paragraph of Article 213 of the Family Code, which states that "[n]o child under seven [(7)] years of age shall be separated from the mother x xx." The RTC likewise found that, while Renalyn went to Manila to study dentistry and left Queenie in the custody of her parents, her intention was to bring Queenie to Manila at a later time.

CA: The CA set aside the assailed RTC Orders and remanded the case to the lower court for determination of who should exercise custody over Queenie.The CA found that the RTC hastily dismissed the petition a quo upon Queenie's production in court, when the objective of the case was to establish the allegation that Renalyn had been neglecting Queenie, which was a question of fact that must be resolved by trial.Citing Section 18 of A.M. No. 03-04-04-SC, which states that, "after trial, the court shall render judgment awarding the custody of the minor to the proper party considering the best interests of the minor," the CA declared that the dismissal by the RTC of the petition a quo was not supported by the Rules.

Nonetheless, the CA affirmed the RTC Orders granting custody to Renalyn "pending the outcome of the case," stating that only Queenie's mother, Renalyn, has parental authority over her as she is an illegitimate child. Further, the CA declared that the RTC must thresh out Renalyn's capacity to raise her daughter, which shall, in turn, determine whether or not the tender-age presumption must be upheld, or whether Queenie's well-being is better served with her remaining in the custody of her maternal grandparents in the exercise of their substitute parental authority or with Ricky James, who was Queenie's actual custodian before the controversy.

Hence, this petition.

ISSUE:

Whether or not the CA correctly remanded the case a quo for determination of who should exercise custody over Queenie.

RULING:

Yes. The CA correctly remanded the case a quo for determination of who should exercise custody over Queenie.

It is settled that habeas corpus may be resorted to in cases where "the rightful custody of any person is withheld from the person entitled thereto."In custody cases involving minors, the writ of habeas corpus is prosecuted for the purpose of determining the right of custody over a child. The grant of the writ depends on the concurrence of the following requisites: (1) that the petitioner has the right of custody over the minor; (2) that the rightful custody of the minor is being withheld from the petitioner by the respondents; and (3) that it is to the best interest of the minor concerned to be in the custody of petitioner and not that of the respondents.

As a general rule, the father and the mother shall jointly exercise parental authority over the persons of their common children.However, insofar as illegitimate children are concerned, Article 176 of the Family Code states that illegitimate children shall be under the parental authority of their mother. Accordingly, mothers (such as Renalyn) are entitled to the sole parental authority of their illegitimate children (such as Queenie), notwithstanding the father's recognition of the child. In the exercise of that authority, mothers are consequently entitled to keep their illegitimate children in their company, and the Court will not deprive them of custody, absent any imperative cause showing the mother's unfitness to exercise such authority and care.

In addition, Article 213 of the same Code provides for the so-called tender-age presumption, stating that "no child under seven [(7)] years of age shall be separated from the mother unless the court finds compelling reasons to order otherwise."

According to jurisprudence, the following instances may constitute "compelling reasons" to wrest away custody from a mother over her child although under seven (7) years of age: neglect, abandonment, unemployment, immorality, habitual drunkenness, drug addiction, maltreatment of the child, insanity or affliction with a communicable disease.

As the records show, the CA resolved to remand the case to the RTC, ratiocinating that there is a need to establish whether or not Renalyn has been neglecting Queenie,for which reason, a trial is indispensable for reception of evidence relative to the preservation or overturning of the tender-age presumption under Article 213 of the Family Code.

In opposition, petitioners contend that the second paragraph of Article 213 of the Family Code would not even apply in this case (so as to determine Renalyn's unfitness as a mother) because the said provision only applies to a situation where the parents are married to each other. As basis, petitioners rely on the Court's ruling in Pablo-Gualberto v. Gualberto V(Pablo-Gualberto), the pertinent portion of which reads:

"In like manner, the word "shall" in Article 213 of the Family Code and Section 6 of Rule 99 of the Rules of Court has been held to connote a mandatory character. Article 213 and Rule 99 similarly contemplate a situation in which the parents of the minor are married to each other, but are separated by virtue of either a decree of legal separation or a de facto separation. x xx"

Notably, after a careful reading of Pablo-Gualberto, it has been determined that the aforequoted pronouncement therein is based on a previous child custody case, namely, Briones v. Miguel(Briones), wherein the Court pertinently held as follows:

"However, the CA erroneously applied Section 6 of Rule 99 of the Rules of Court. This provision contemplates a situation in which the parents of the minor are married to each other but are separated either by virtue of a decree of legal separation or because they are living separately de facto. In the present case, it has been established that petitioner and Respondent Loreta were never married. Hence, that portion of the CA Decision allowing the child to choose which parent to live with is deleted, but without disregarding the obligation of petitioner to support the child."

For guidance, the relevant issue in Briones for which the stated excerpt was made is actually the application of Section 6, Rule 99 of the Rules of Court insofar as it permits the child over ten years of age to choose which parent he prefers to live with.As the Court's ruling in Briones was prefaced: "the Petition has no merit. However, the assailed Decision should be modified in regard to its erroneous application of Section 6 of Rule 99 of the Rules of Court."Accordingly, since the statement in Pablo-Gualberto invoked by petitioners, i.e., that "Article 213 and Rule 99 similarly contemplate a situation in which the parents of the minor are married to each other x xx," was based on Briones, then that same statement must be understood according to its proper context – that is, the issue pertaining to the right of a child to choose which parent he prefers to live with. The reason as to why this statement should be understood in said manner is actually not difficult to discern: the choice of a child over seven (7) years of age (first paragraph of Article 213 of the Family Code) and over ten (10) years of age (Rule 99 of the Rules of Court) shall be considered in custody disputes only between married parents because they are, pursuant to Article 211 of the Family Code, accorded joint parental authority over the persons of their common children. On the other hand, this choice is not available to an illegitimate child, much more one of tender age such as Queenie (second paragraph of Article 213 of the Family Code), because sole parental authority is given only to the mother, unless she is shown to be unfit or unsuitable (Article 176 of the Family Code). Thus, since the issue in this case is the application of the exception to the tender-age presumption under the second paragraph of Article 213 of the Family Code, and not the option given to the child under the first paragraph to choose which parent to live with, petitioners' reliance on Pablo-Gualberto is grossly misplaced.

In addition, it ought to be pointed out that the second paragraph of Article 213 of the Family Code, which was the basis of the CA's directive to remand the case, does not even distinguish between legitimate and illegitimate children – and hence, does not factor in whether or not the parents are married – in declaring that "[n]o child under seven [(7)] years of age shall be separated from the mother unless the court finds compelling reasons to order otherwise." "Ubilex non distinguitnecnosdistingueredebemos. When the law makes no distinction, we (this Court) also ought not to recognize any distinction."As such, petitioners' theory that Article 213 of the Family Code is herein inapplicable – and thus, negates the need for the ordered remand – is not only premised on an erroneous reading of jurisprudence, but is also one that is fundamentally off-tangent with the law itself.

E. Change of name (Rule 103)

F. Cancellation or Correction of entries in the Civil Registry (Rule 108)

REPUBLIC OF THE PHILIPPINES, *Petitioner* -versus- FLORIE GRACE M. COTE, *Respondent.*
G.R. No. 212860, SECOND DIVISION, March 14, 2018, REYES, JR., *J.*

A decree of absolute divorce procured abroad is different from annulment as defined by our family laws. A.M. No. 02-11-10-SC only covers voidand voidablemarriages that are specifically cited and enumerated in the Family Code of the Philippines. Void and voidable marriages contemplate a situation wherein the basis for the judicial declaration of absolute nullity or annulment of the marriage exists before or at the time of the marriage. It treats the marriage as if it never existed. Divorce, on the other hand, ends a legally valid marriage and is usually due to circumstances arising after the marriage.

In this case, it was error for the RTC to use as basis for denial of petitioner's appeal Section 20 of A.M. No. 02-11-10-SC. Since Florie followed the procedure for cancellation of entry in the civil registry, a special proceeding governed by Rule 108 of the Rules of Court, an appeal from the RTC decision should be governed by Section 3of Rule 41 of the Rules of Court and not A.M. No. 02-11-10-SC. Since Rule 41 of the Rules of Court applies, a Motion for Reconsideration is not a condition precedent to the filing of an appeal.

FACTS:

On July 31, 1995, Rhomel Gagarin Cote and respondent Florie Grace Manongdo-Cote were married in Quezon City. At the time of their marriage, the spouses were both Filipinos and were already blessed with a son, Christian Gabriel Manongdo who was born in Honolulu, Hawaii, USA.

On August 23, 2002, Rhomel filed a Petition for Divorce before the Family Court of the First Circuit of Hawaii on the ground that their marriage was irretrievably broken. This was granted on August 23, 2002 by the issuance of a decree.

Seven years later, Florie commenced a petition for recognition of foreign judgment granting the divorce before the Regional Trial Court. Florie also prayed for the cancellation of her marriage contract, hence, she also impleaded the Civil Registry of Quezon City and the NSO.

The RTC granted the petition and declared Florie to be capacitated to remarry after the RTC's decision attained finality and a decree of absolute nullity has been issued. The RTC ruled, *inter alia*, that Rhomel was already an American citizen when he obtained the divorce decree. However, the RTC, believing that the petition was covered by A.M. No. 02-11-10-SC or the Rule on Declaration of Absolute Nullity of Void Marriages and Annulment of Voidable Marriages, applied Section 20 of said Rule and denied the appeal of the Republic because the notice was not preceded by a motion for reconsideration.

Petitioner then filed a petition for *certiorari* with the CA claiming that the RTC committed grave abuse of discretion, but it was denied.

ISSUE:
Whether or not the provisions of A.M. No. 02-11-10-SCapplies in a case involving recognition of a foreign decree of divorce. (NO)

RULING:

The confusion arose when the RTC denied petitioner's appeal on the ground that no prior motion for reconsideration was filed as required under Section 20 of A.M. No. 02-11-10-SC. Petitioner posits that A.M. No. 02-11-10-SC *do not* cover cases involving recognition of foreign divorce because the wording of Section 1 thereof clearly states that it shall only apply to petitions for declaration of absolute nullity of void marriages and annulment of voidable marriages, *viz*.:

Section 1. *Scope* - This Rule shall govern petitions for declaration of absolute nullity of void marriages and annulment of voidable marriages under the Family Code of the Philippines.

Rule 41 of the Rules of Court applies, a Motion for Reconsideration is not a condition precedent to the filing of an appeal.

A decree of absolute divorce procured abroad is different from annulment as defined by our family laws. A.M. No. 02-11-10-SC only covers voidand voidablemarriages that are specifically cited and enumerated in the Family Code of the Philippines. Void and voidable marriages contemplate a situation wherein the basis for the judicial declaration of absolute nullity or annulment of the marriage exists before or at the time of the marriage. It treats the marriage as if it never existed. Divorce, on the other hand, ends a legally valid marriage and is usually due to circumstances arising after the marriage.

It was error for the RTC to use as basis for denial of petitioner's appeal Section 20 of A.M. No. 02-11-10-SC. Since Florie followed the procedure for cancellation of entry in the civil registry, a special proceeding governed by Rule 108 of the Rules of Court, an appeal from the RTC decision should be governed by Section 3of Rule 41 of the Rules of Court and not A.M. No. 02-11-10-SC.

THE REPUBLIC OF THE PHILIPPINES,*Petitioner*, -versus- VIRGIE (VIRGEL) L. TIPAY, *Respondent*.G.R. No. 209527, SECOND DIVISION, February 14, 2018, REYES, JR., *J.*

It is true that initially, the changes that may be corrected under the summary procedure of Rule 108 are clerical or harmless errors. Errors that affect the civil status, citizenship or nationality of a person, are considered substantial errors that were beyond the purview of the rule.

Jurisprudence on this matter later developed, giving room for the correction of substantial errors. The Court ultimately recognized that ***substantial or controversial alterations in the civil registry are allowable in an action filed under Rule 108, as long as the issues are properly threshed out inappropriate adversarial proceedings****—effectively limiting the application of the summary procedure to the correction of clerical or innocuous errors.*

*The records show that Virgel****complied with the procedural requirements under Rule 108.*** *He* ***impleaded*** *the local civil registrar of Governor Generoso, Davao Oriental, the Solicitor General, and the Provincial Prosecutor of Davao Oriental as parties to his petition for correction of entries. The RTC then issued an order, which* ***set the case for hearing*** *on July 10, 2009. In compliance with Rule 108, Section 4, the order was* ***published for three consecutive weeks in a newspaper of general circulation*** *in the province of Davao Oriental. Additionally, the local civil registrar and the OSG were* ***notified of the petition through registered mail****. From the foregoing, it is clear that the parties who have a claim or whose interests may be affected were notified and granted an opportunity to oppose the petition.*

A hearing was scheduled for the presentation of Virgel's evidence, during which time, the deputized prosecutor of the OSG was present, and allowed to participate in the proceedings. While none of the parties questioned the veracity of Virgel's allegations, much less present any controverting evidence before the trial court, ***the RTC proceedings were clearly adversarial in nature. It dutifully complied with the requirements of Rule 108.***

FACTS:

Respondent Virgel sought the correction of several entries in his birth certificate. Attached to his petition are two copies of his birth certificate, respectively issued by the Municipal Civil Registrar of Governor Generoso, Davao Oriental and the NSO. Both copies reflect his gender as "*FEMALE*" and his first name as "*Virgie*." It further appears that the month and day of birth in the local civil registrar's copy was blank, while the NSO-issued birth certificate indicates that he was born on May 12, 1976. Virgel alleged that these entries are erroneous, and sought the correction of his birth certificate as follows: (a) his gender, from "*FEMALE*" to "*MALE*;" (b) his first name, from "*VIRGIE*" to "*VIRGEL*;" and (c) his month and date of birth to "*FEBRUARY 25, 1976*."

The petition was found sufficient in form and substance, and the case proceeded to trial. Aside from his own personal testimony, Virgel's mother, Susan L. Tipay, testified that she gave birth to a son on February 25, 1976, who was baptized as "*Virgel.*" The Certificate of Baptism, including other documentary evidence such as a medical certificate stating that Virgel is phenotypically male, were also presented to the trial court. TheRTC granted Virgel's petition.

The Republic, through the OSG, appealed and argued that **the change of Virgel's name from Virgie should have been made through a proceeding under Rule 103, and not Rule 108 of the Rules of Court**. This was premised on the assumption that the **summary procedure under Rule 108 is confined to the correction of clerical or innocuous errors,** which excludes one's name or date of birth. Since the petition lodged with the RTC was not filed pursuant to Rule 103, the Republic asserted that the trial court did not acquire jurisdiction over the case. The CA denied the Republic's appeal.

ISSUE:

Whether or not Rule 108 governs the procedure for the correction of substantial changes in the civil registry. (YES)

RULING:

It is true that initially, the changes that may be corrected under the summary procedure of Rule 108 are clerical or harmless errors. Errors that affect the civil status, citizenship or nationality of a person, are considered substantial errors that were beyond the purview of the rule.

Jurisprudence on this matter later developed, giving room for the correction of substantial errors. The Court ultimately recognized that **substantial or controversial alterations in the civil registry are allowable in an action filed under Rule 108, as long as the issues are properly threshed out inappropriate adversarial proceedings—**effectively limiting the application of the summary procedure to the correction of clerical or innocuous errors.

The Court's ruling in *Republic v. Valencia*, explained the adversarial procedure to be followed in correcting substantial errors in this wise:

> It is undoubtedly true that if the subject matter of a petition is not for the correction of clerical errors of a harmless and innocuous nature, but one involving nationality or citizenship, which is indisputably substantial as well as controverted, affirmative relief cannot be granted in a proceeding summary in nature. However, it is also true that a right in law may be enforced and a wrong may be remedied as long as the appropriate remedy is used. **This Court adheres to the principle that even substantial errors in a civil registry may be corrected and the true facts established provided the parties aggrieved by the error avail themselves of the appropriate adversary proceeding. xxx**
>
> Thus, the persons who must be made parties to a proceeding concerning the cancellation or correction of an entry in the civil register are-(l) the civil registrar, and (2) all persons who have or claim any interest which would be affected thereby. Upon the filing of the petition, it becomes the duty of the court to-(l) issue an order fixing the time and place for the hearing of the petition, and (2) cause the order for hearing to be published once a week for three (3) consecutive weeks in a newspaper of general circulation in the province. The following are likewise entitled to oppose the petition: (1) the civil registrar, and (2) any person having or claiming any interest under the entry whose cancellation or correction is sought.
>
> **If all these procedural requirements have been followed, a petition for correction and/or cancellation of entries in the record of birth even if filed and conducted under Rule 108 can no longer be described as "summary".** There can be no doubt that when an opposition to the petition is filed either by the Civil Registrar or any person having or claiming any interest in the entries sought to be cancelled and/or corrected and the opposition is actively prosecuted, the proceedings thereon become adversary proceedings.

Evidently, the Republic incorrectly argued that the petition for correction under Rule 108 is limited to changes in entries containing harmless and innocuous errors.

Most importantly, with the enactment of R.A. 9048in 2001, the local civil registrars, or the Consul General as the case may be, are now authorized to correct clerical or typographical errors in the civil registry, or make changes in the first name or nickname, without need of a judicial order. This law provided an administrative recourse for the correction of clerical or typographical errors, essentially leaving the substantial corrections in the civil registry to Rule 108.It was further amended in 2011, when R.A. 10172 was passed to expand the authority of local civil registrars and the Consul General to make changes in the day and month in the date of birth, as well as in the recorded sex of a person when it is patently clear that there was a typographical error or mistake in the entry.

Unfortunately, however, when Virgel filed the petition for correction with the RTC in 2009, R.A. 10172 was not yet in effect. **As such, to correct the erroneous gender and date of birth in Virgel's birth certificate, the proper remedy was to commence the appropriate adversarial proceedings with the RTC, pursuant to Rule 108.** The changes in the entries pertaining to the gender and date of birth are indisputably substantial corrections, outside the contemplation of a clerical or typographical error that may be corrected administratively.

The records show that Virgel**complied with the procedural requirements under Rule 108.** He **impleaded** the local civil registrar of Governor Generoso, Davao Oriental, the Solicitor General, and the Provincial Prosecutor of Davao Oriental as parties to his petition for correction of entries. The RTC then issued an order, which **set the case for hearing** on July 10, 2009. In compliance with Rule 108, Section 4, the order was **published for three consecutive weeks in a newspaper of general circulation** in the province of Davao Oriental. Additionally, the local civil registrar and the OSG were **notified of the petition through registered mail**.

The OSG entered its appearance and deputized the Office of the Provincial Prosecutor of Mati, Davao City. Accordingly, the prosecutor assigned to the case was present during the hearing but opted not to cross-examine Virgel or his mother after their respective testimonies. There was also no opposition filed against the petition of Virgel before the RTC.

From the foregoing, it is clear that the parties who have a claim or whose interests may be affected were notified and granted an opportunity to oppose the petition. Two sets of notices were sent to potential oppositors—through registered mail for the persons named in the petition, and through publication, for all other persons who are not named but may be considered interested parties.

A hearing was scheduled for the presentation of Virgel's evidence, during which time, the deputized prosecutor of the OSG was present, and allowed to participate in the proceedings. While none of the parties questioned the veracity of Virgel's allegations, much less present any controverting evidence before the trial court, **the RTC proceedings were clearly adversarial in nature. It dutifully complied with the requirements of Rule 108.**

G. Clerical error law (RA 9048)

REPUBLIC OF THE PHILIPPINES, *Petitioner,* -versus- MICHELLE SORIANO GALLO, *Respondent.*
G.R. No. 207074, THIRD DIVISION, January 17, 2018, LEONEN, *J.*

In Republic v. Mercadera:
Mercadera clarified the applications of Article 376 and Rule 103, and of Article 412 and Rule 108, thus: The "change of name" contemplated under Article 376 and Rule 103 must not be confused with Article 412 and Rule 108. A change of one's name under Rule 103 can be granted, only on grounds provided by law. In order to justify a request for change of name, there must be a proper and compelling reason for the change and proof that the person requesting will be prejudiced by the use of his official name. To assess the sufficiency of the grounds invoked therefor, there must be adversarial proceedings. In petitions for correction, only clerical, spelling, typographical and other innocuous errors in the civil registry may be raised. Considering that the enumeration in Section 2, Rule 108 also includes "changes of name," the correction of a patently misspelled name is covered by Rule 108. Suffice it to say, not all alterations allowed in one's name are confined under Rule 103. Corrections for clerical errors may be set right under Rule 108. This rule in "names," however, does not operate to entirely limit Rule 108 to the correction of clerical errors in civil registry entries by way of a summary proceeding. As explained above, Republic v. Valencia is the authority for allowing substantial errors in other entries like citizenship, civil status, and paternity, to be corrected using Rule 108 provided there is an adversary

proceeding. "After all, the role of the Court under Rule 108 is to ascertain the truths about the facts recorded therein."

Names are labels for one's identity. They facilitate social interaction, including the allocation of rights and determination of liabilities. It is for this reason that the State has an interest in one's name. The name through which one is known is generally, however, not chosen by the individual who bears it. Rather, it is chosen by one's parents. Changes to one's name can be the result of either one of two (2) motives. The first, as an exercise of one's autonomy, is to change the appellation that one was given for various reasons. The other is not an exercise to change the label that was given to a person; it is simply to correct the data as it was recorded in the Civil Registry. Correcting and changing have been differentiated, thus: To correct simply means "to make or set aright; to remove the faults or error from." To change means "to replace something with something else of the same kind or with something that serves as a substitute." Upon scrutiny of the records in this case, this Court rules that Gallo's Petition involves a mere correction of clerical errors. However, corrections which involve a change in nationality, age, or status are not considered clerical or typographical.

FACTS:

On December 7, 2010, Regional Trial Court granted herein respondent Michelle Soriano Gallo's (Gallo) **Petition for Correction of Entry** of her Certificate of Live Birth. Gallo has never been known as "Michael Soriano Gallo." She has always been female. Her parents, married on May 23, 1981, have never changed their names. For her, her Certificate of Live Birth contained errors, which should be corrected. For her, **she was not changing the name that was given to her; she was merely correcting its entry.** Gallo prayed in Special Proc. No. 2155 for the correction of her name from "Michael" to "Michelle" and of her biological sex from "Male" to "Female" under Rule 108 of the Rules of Court. In addition, Gallo asked for the inclusion of her middle name, "Soriano"; her mother's middle name, "Angangan"; her father's middle name, "Balingao"; and her parent's marriage date, May 23, 1981, in her Certificate of Live Birth, as these were not recorded.

The Regional Trial Court lent credence to the documents Gallo presented during trial and found that the corrections she sought were "harmless and innocuous." It concluded that there was a necessity to correct Gallo's Certificate of Live Birth and applied Rule 108 of the Rules of Court.

The Office of the Solicitor General appealed, alleging that the applicable rule should be Rule 103 of the Rules of Court for Petitions for Change of Name. It argued that Gallo did not comply with the jurisdictional requirements under Rule 103 because the title of her Petition and the published Order did not state her official name, "Michael Gallo." Furthermore, the published Order was also defective for not stating the cause of the change of name.

The Court of Appeals denied the Office of the Solicitor General's appeal. It found that Gallo availed of the proper remedy under Rule 108 as the corrections sought were clerical, harmless, and innocuous. It further clarified that Rule 108 is limited to the implementation of Article 412 of the Civil Code. The

Court of Appeals discussed that Rule 103, on the other hand, "governs the proceeding for changing the given or proper name of a person as recorded in the civil register." The Court of Appeals also stated that Republic Act No. 10172, "the present law on the matter, classifies a change in the first name or nickname, or sex of a person as clerical error that may be corrected without a judicial order." It applied this ruling on the inclusion of Gallo's middle name, her parents' middle names, and the latter's date of marriage, as they do not involve substantial corrections. As the petition merely involved the correction of clerical errors, the Court of Appeals held that a summary proceeding would have sufficed.

However, the Republic, through the Office of the Solicitor General, believes otherwise. For it, Gallo wants to change the name that she was given. Thus, it filed the present Petition via Rule 45 under the 1997 Rules of Civil Procedure. The Petition raises procedural errors made by the Regional Trial Court and the Court of Appeals in finding for Gallo.

ISSUE:

Whether or not Michelle Soriano Gallo's petition involves a substantive change under Rule 103 of the Rules of Court instead of mere correction of clerical errors under Rule 108?

RULING:

This Court finds for the respondent. Hers was a Petition to correct the entry in the Civil Registry.

On changes of first name**, Republic Act No. 10172, which amended Republic Act No. 9048**, is helpful in identifying the nature of the determination sought. Republic Act No. 10172 defines a clerical or typographical error as a recorded mistake, "which is visible to the eyes or obvious to the understanding." Thus:

> Section 2. Definition of Terms. — As used in this Act, the following terms shall mean: (3) "**Clerical or typographical error**" refers to a mistake committed in the performance of clerical work in writing, copying, transcribing or typing an entry in the civil register that is harmless and innocuous, such as misspelled name or misspelled place of birth, mistake in the entry of day and month in the date of birth or the sex of the person or the like, which is visible to the eyes or obvious to the understanding, and can be corrected or changed only by reference to other existing record or records: Provided, however, That no correction must involve the change of nationality, age, or status of the petitioner.

By qualifying the definition of a clerical, typographical error as a mistake "visible to the eyes or obvious to the understanding," the law recognizes that there is a factual determination made after reference to and evaluation of existing documents presented. Thus, corrections may be made even though the error is not typographical if it is "obvious to the understanding," even if there is no proof that the name or circumstance in the birth certificate was ever used. A clerical or typographical error pertains to a Mistake committed in the performance of clerical work in writing, copying, transcribing

or typing an entry in the civil register that is harmless and innocuous which is visible to the eyes or obvious to the , and can be corrected or changed only by reference to other existing record or records.

Upon scrutiny of the records in this case, **this Court rules that Gallo's Petition involves a mere correction of clerical errors.** However, corrections which involve a change in nationality, age, or status are not considered clerical or typographical.

Considering that Gallo had **shown that the reason for her petition was not to change the name** by which she is commonly known, **this Court rules that her petition is not covered by Rule 103**. Gallo is not filing the petition to change her current appellation. She is merely correcting the misspelling of her name.

Correcting and changing have been differentiated, thus: **To correct** simply means "to make or set aright; to remove the faults or error from." **To change** means "to replace something with something else of the same kind or with something that serves as a substitute."

Gallo is not attempting to replace her current appellation. She is merely correcting the misspelling of her given name. In any case, Gallo does not seek to be known by a different appellation. The lower courts have determined that she has been known as "Michelle" all throughout her life. She is merely seeking to correct her records to conform to her true given name**.**

However, Rule 108 does not apply in this case either. As stated, Gallo filed her Petition for Correction of Entry on May 13, 2010. The current law, Republic Act No. 10172, does not apply because it was enacted only on August 19, 2012. The applicable law then for the correction of Gallo's name is Republic Act No. 9048. To reiterate, **Republic Act No. 9048** was enacted on March 22, 2001 and **removed the correction of clerical or typographical errors from the scope of Rule 108.** It also dispensed with the need for judicial proceedings in case of any clerical or typographical mistakes in the civil register, or changes of first name or nickname. **Therefore, it is the civil registrar who has primary jurisdiction over Gallo's petition, not the Regional Trial Court.** Only if her petition was denied by the local city or municipal civil registrar can the Regional Trial Court take cognizance of her case.

Likewise, the prayers to enter Gallo's middle name as Soriano, the middle names of her parents as Angangan for her mother and Balingao for her father, and the date of her parents' marriage as May 23, 1981 fall under clerical or typographical errors as mentioned in Republic Act No. 9048. Under Section 2(3) of Republic Act No. 9048:

> (3) **"Clerical or typographical error"** refers to a mistake committed in the performance of clerical work in writing, copying, transcribing or typing an entry in the civil register that is harmless and innocuous, such as misspelled name or misspelled place of birth or the like, which is visible to the eyes or obvious to the understanding, and can be corrected or changed only by reference to other existing record or records: Provided, however, That no correction must involve the change of nationality, age, status or sex of the petitioner.

These **corrections may be done by referring to existing records in the civil register.** None of it involves any change in Gallo's nationality, age, status, or sex. Moreover, errors "visible to the eyes or obvious to the understanding" fall within the coverage of clerical mistakes not deemed substantial. If it is "obvious to the understanding," even if there is no proof that the name or circumstance in the birth certificate was ever used, the correction may be made. Thus, as to these corrections, Gallo should **have sought to correct them administratively** before filing a petition under Rule 108. However, the petition to correct Gallo's biological sex was rightfully filed under Rule 108 as this was a substantial change excluded in the definition of clerical or typographical errors in Republic Act No. 9048. It was **only when Republic Act No. 10172 was enacted on August 15, 2012 that errors in entries as to biological sex may be administratively corrected, provided that they involve a typographical or clerical error.** However, this is not true for all cases as corrections in entries of biological sex may still be considered a substantive matter. In Cagandahan, this Court ruled that a party who seeks a change of name and biological sex in his or her Certificate of Live Birth after a gender reassignment surgery has to file a petition under Rule 108. In that case, it was held that the change did not involve a mere correction of an error in recording but a petition for a change of records because the sex change was initiated by the petitioner.

Considering that Gallo did not first file an administrative case in the civil register before proceeding to the courts, petitioner contends that respondent failed to exhaust administrative remedies and observe the doctrine of primary jurisdiction under Republic Act No. 9048. However, Petitioner does not deny that the issue of non-compliance with these two (2) doctrines was only raised in this Court. Thus, in failing to invoke these contentions before the Regional Trial Court, it is estopped from invoking these doctrines as grounds for dismissal. Wherefore, the Petition for Correction of Entry in the Certificate of Live Birth of Michelle Soriano Gallo is granted.

VII. CRIMINAL PROCEDURE

A. General matters

1. Criminal jurisdiction; concept and requisites for exercise

2. When injunction may be issued

B. Prosecution of offenses (Rule 110)

PEOPLE OF THE PHILIPPINES,Plaintiff-Appellee, -versus-.BIENVINIDO UDANG, SR. Y SEVILLA,Accused-Appellant. G.R. No. 210161, THIRD DIVISION, January 10, 2018, LEONEN, *J.*

Based on the Informations, Udang was charged with two (2) counts of sexual abuse punished under Section 5(b) of Republic Act No. 7610. Hence, he could only be convicted of sexual abuse under the Informations filed in this case and not for rape under the Revised Penal Code. The factual allegations in the Informations determine the crime being charged.

A single act may give rise to multiple offenses. Thus, charging an accused with rape, under the Revised Penal Code, and with sexual abuse, under Republic Act No. 7610, in case the offended party is a child 12 years old and above, will not violate the right of the accused against double jeopardy. Rape and sexual abuse are two (2) separate crimes with distinct elements

FACTS:

On December 8, 2005, two (2) Informations for child abuse were filed against Udang before the Regional Trial Court of Cagayan de Oro City.

The first information accused Udang of the crime of rape: that in December 2003, at more or less 9:00 o'clock in the evening, at Lumbia, Cagayan de Oro City, the above-named accused, did then and there willfully, unlawfully, feloniously and sexually abuse one [AAA], 14 yrs. old, minor by carrying the minor, who was intoxicated after their drinking activity, inside a room and having sexual intercourse with her,contrary to and in Violation of Article 266-A in relation to Sec. 5 (b) of R.A. 7610.

The second information accused him for the crime of child abuse under RA 7610, for a similar incident wherein he had sexual intercourse with the intoxicated victim in September 2002 Udang pleaded not guilty to both charges during his arraignment.

The RTC Cagayan convicted Udang of rape under Article 266-A(1) of the Revised Penal Code, instead of sexual abuse under Section 5(b) of Republic Act No. 7610. It held that the charges can only be one for rape under the first paragraph of Article 266-A because an accused cannot be prosecuted twice for a single criminal act.

Udang appealed before the Court of Appeals, which affirmed the trial court Decisionand dismissed Udang's appeal.

The case was brought on appeal before this Court through a Notice of Appeal filed on October 23, 2013.

The Office of the Solicitor General argues that Udang was correctly convicted of two (2) counts of rape punished under Article 266-A(1) of the Revised Penal Code.

ISSUE:

Whether or not accused-appellant, BienvinidoUdang, Sr. y Sevilla, was correctly convicted of rape punished under the first paragraph of Article 266-A of the Revised Penal Code.

RULING:

No.

Based on the Informations,Udang was charged with two (2) counts of sexual abuse punished under Section 5(b) of Republic Act No. 7610. Hence, **he could only be convicted of sexual abuse under the Informations filed in this case and not for rape under the Revised Penal Code**.

Furthermore, upon examination of the evidence presented, this Court finds Udang guilty of two (2) counts of sexual abuse. Thus, the **penalty erroneously imposed on him—*reclusion perpetua* for each count of rape—should be reduced** accordingly.

Based on the Informations, the charge against Udang was "child abuse," defined in Section 3 of Republic Act No. 7610 as the maltreatment, whether habitual or not, of a child and includes any act by deeds or words which debases, degrades or demeans the intrinsic worth and dignity of a child as a human being. The allegations in the Informations stated that Udang sexually abused AAA by having sexual intercourse with her while she was intoxicated, thus, debasing, degrading and demeaning the intrinsic worth of AAA.

While the Informations stated that the acts were contrary to and in violation of Article 266-A in relation to Sec. 5 (b) of R.A. 7610, the factual allegations in the Informations determine the crime being charged.

In sum, this Court is morally convinced that Udang committed two (2) counts of sexual abuse under Section 5(b) of Republic Act No. 7610, with each count punishable by *reclusion temporal* in its medium period to *reclusion perpetua*.

As to the matter of double jeopardy, **this Court disagrees with the trial court's ruling that charging Udang with both rape, under Article 266-A(1) of the Revised Penal Code, and sexual abuse, under Section 5(b) of Republic Act No. 7610, would violate his right against double jeopardy.**

A **single criminal act may give rise to a multiplicity of offenses and where there is variance or differences between the elements of an offense in one law and another law as in the case at bar.** Prosecution for the same act is not prohibited. What is forbidden is prosecution for the same offense. Hence, the mere filing of the two (2) sets of information does not itself give rise to double jeopardy.

The provisions show **that rape and sexual abuse are two (2) separate crimes with distinct elements**. The "force, threat, or intimidation" or deprivation of reason or unconsciousness required in Article 266-A(1) of the Revised Penal Code is not the same as the "coercion or influence" required in Section 5(b) of Republic Act No. 7610. Consent is immaterial in the crime of sexual abuse because the mere act of having sexual intercourse with a child exploited in prostitution or subjected to sexual abuse is already punishable by law. However, consent exonerates an accused from a rape charge.

Petitioner was charged and convicted for violation of Section 5 (b), Article III of RA 7610, not rape. The offense for which he was convicted is punished by a special law while rape is a felony under the Revised Penal Code. The two are separate and distinct crimes. Thus, petitioner can be held liable for violation of Section 5 (b), Article III of RA 7610 despite a finding that he did not commit rape.

The only time that double jeopardy arises is when the same act has already been the subject of a previous prosecution under a law or an ordinance. This is not the situation in the present case.

C. Prosecution of civil action (Rule 111)

**PEOPLE OF THE PHILIPPINES, *Plaintiff-Appellee* -versus-
ROMEO ANTIDO y LANTAYAN a.k.a. ROMEO ANTIGO y LANTAYAN alias "JON-JON"**, *Accused-Appellant*G.R. No. 208651, SPECIAL THIRD DIVISION, RESOLUTION, March 14, 2018, PERLAS-BERNABE, *J.*

Thus, upon accused-appellant's death pending appeal of his conviction, the criminal action is extinguished inasmuch as there is no longer a defendant to stand as the accused; the civil action instituted therein for the recovery of the civil liability ex delicto is ipso facto extinguished, grounded as it is on the criminal action.

However, it is well to clarify that accused-appellant's civil liability in connection with his acts against the victim, AAA, may be based on sources other than delicts; in which case, AAA may file a separate civil action against the estate of accused-appellant, as may be warranted by law and procedural rules.

FACTS:

In a Resolution, the Court affirmed the Decision of the CA, finding Romeo Antido *y* Lantayan a.k.a. Romeo Antigo *y* Lantayan alias "Jon-Jon" guilty beyond reasonable doubt of the crime of Rape under paragraph 1 of Article 266-A in relation to paragraph 5 of Article 266-B, under RA 8353. Accordingly, he was sentenced to suffer the penalty of *reclusion perpetua* and ordered to pay private complainant: (a)₱75,000.00 as civil indemnity; (b) ₱75,000.00 as moral damages; and (c) ₱30,000.00 as exemplary damages. However, it appears that before the promulgation of the said Resolution, accused-appellant had already died, as evidenced by his Certificate of Death.

ISSUE:

Whether or not the criminal case should be dismissed by reason of the death of the accused? (YES)

RULING:

Under prevailing law and jurisprudence, accused-appellant's death prior to his final conviction by the Court renders dismissible the criminal cases against him. Article 89 (1) of the Revised Penal Code provides that criminal liability is **totally extinguished** by the death of the accused, 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.

In *People v. Culas,* the Court thoroughly explained the effects of the death of an accused pending appeal on his liabilities, as follows:

> 1. Death of the accused pending appeal of his conviction extinguishes his criminal liability[,] as well as the civil liability[,] based solely thereon. As opined by Justice Regalado, in this regard, "the death of the accused prior to final judgment terminates his criminal liability and only the civil liability directly arising from and based solely on the offense committed, *i.e.,* civil liability *ex delicto* in *sensostrictiore."*

2. Corollarily, the claim for civil liability survives notwithstanding the death of accused, if the same may also be predicated on a source of obligation other than *delict.* Article 1157 of the Civil Code enumerates these other sources of obligation from which the civil liability may arise as a result of the same act or omission:

a) Law
b) Contracts
c) Quasi-contracts
d) xxx
e) Quasi-delicts

3. Where the civil liability survives, as explained in Number 2 above, an action for recovery therefor may be pursued but only by way of filing a separate civil action and subject to Section 1, Rule 111 of the 1985 Rules on Criminal Procedure as amended. This separate civil action may be enforced either against the executor/administrator or the estate of the accused, depending on the source of obligation upon which the same is based as explained above.

4. Finally, the private offended party need not fear a forfeiture of his right to file this separate civil action by prescription, in cases where during the prosecution of the criminal action and prior to its extinction, the private-offended party instituted together therewith the civil action. In such case, the statute of limitations on the civil liability is deemed interrupted during the pendency of the criminal case, conformably with provisions of Article 1155 of the Civil Code that should thereby avoid any apprehension on a possible privation of right by prescription.

Thus, upon accused-appellant's death pending appeal of his conviction, the criminal action is extinguished inasmuch as there is no longer a defendant to stand as the accused; the civil action instituted therein for the recovery of the civil liability *ex delicto* is *ipso facto* extinguished, grounded as it is on the criminal action.

However, it is well to clarify that accused-appellant's civil liability in connection with his acts against the victim, AAA, may be based on sources other than *delicts;* in which case, AAA may file a separate civil action against the estate of accused-appellant, as may be warranted by law and procedural rules.

SUPREME TRANSPORTATION LINER, INC. AND FELIX Q. RUZ, ***Petitioners*****, -versus-ANTONIO SAN ANDRES**, ***Respondent*****.**

G.R. No. 200444, THIRD DIVISION, August 15, 2018, BERSAMIN, *J.*

The error committed by the CA emanated from its failure to take into consideration that the omission of the driver in violation of Article 365 of the Revised Penal Code could give rise not only to the obligation ex delicto, but also to the obligation based on culpa aquiliana under Article 2176 of the Civil Code. Under the factual antecedents herein, both obligations rested on the common element of negligence. Article 2177 of the Civil Code and Section 3, Rule 111 of the Rules of Court allow the injured party to prosecute both criminal and civil actions simultaneously. As clarified in Casupanan v. Laroya:

Under Section 1 of the present Rule 111, what is "deemed instituted" with the criminal action is only the action to recover civil liability arising from the crime or ex-delicto. ***All the other civil actions under Articles 32, 33, 34 and 2176 of the Civil Code are no longer "deemed instituted," and may be filed separately and prosecuted independently even without any reservation in the criminal action. The failure to make a reservation in the criminal action is not a waiver of the right to file a separate and independent civil action based on these articles of the Civil Code.*** *The prescriptive period on the civil actions based on these articles of the Civil Code continues to run even with the filing of the criminal action. Verily, the civil actions based on these articles of the Civil Code are separate, distinct and independent of the civil action "deemed instituted" in the criminal action.*

FACTS:

On November 5, 2002, Ernesto Belchez was driving a passenger bus, Mabel Tours Bus, owned by respondent Antonio San Andres, going towards the direction of Manila. While traversing Maharlika Highway, the Mabel Tours Bus sideswiped a Toyota Revo it was overtaking. The Mabel Tours Bus immediately swerved to the left lane but in the process, it hit head-on the Supreme Bus owned and registered in the name of petitioner Supreme Bus Transportation Line, Inc., and driven by petitioner Felix G. Ruz, which was negotiating in the opposite lane. Because of the strong impact of the incident, the Supreme Bus was pushed to the side of the road and the Mabel Tour Bus continuously moved until it hit a passenger jeepney that was parked on the side of the road.

A complaint for damages was instituted by respondent Antonio San Andres against petitioners alleging actual damage to Mabel Tours Bus and unrealized profits for the non-use of the Mabel Tours Bus at the time it underwent repairs.

Petitioners filed their Answer with Counterclaim. They alleged among others that plaintiff has no cause of action against them and the proximate cause of the vehicular accident is the reckless imprudence of the respondent's driver. By way of counterclaim, petitioner Supreme Transportation Liner, Inc. alleged that it suffered damages in the aggregate amount of P500,000.00 and another P100,000.00 for the medical expenses of its employees and passengers.

In the course of trial, Jessi Alvarez, Assistant for Operations of petitioner Supreme Transportation Liner, Inc., stated that he filed a criminal complaint for reckless imprudence resulting to damage to property against Ernesto Belchez. The case is now terminated and the accused was convicted because of his admission of the crime charged. In the said criminal complaint, he did not reserve their civil claim or ask the fiscal to reserve it, which, if itemized, would also be the amount of their counterclaim in the present civil action filed by respondent. He added that they did not receive any compensation for the civil aspect of the criminal case.

The RTC rendered judgment dismissing the respondent's complaint as well as the petitioners' counterclaim. The RTC indicated that the petitioners' failure to reserve the right to institute a separate civil action precluded their right to recover damages from the respondent through their counterclaim. The CA dismissed the petitioners' appeal, stating that the RTC had correctly ruled that the counterclaim could not prosper because their recourse was limited to the enforcement of the

respondent's subsidiary liability under Article 103 of the *Revised Penal Code* and to allow the counterclaim of petitioners is tantamount to double recovery of damages.

ISSUE: Whether or not petitioner's counterclaim was properly dismissed (NO)

RULING:

The CA erred. It incorrectly appreciated the nature of the petitioners' cause of action as presented in their counterclaim. We only need to look at the facts alleged in the petitioners' counterclaim to determine the correct nature of their cause of action. The purpose of an action or suit and the law to govern the suit are to be determined not by the claim of the party filing the action, made in his argument or brief, but rather by the complaint itself, its allegations and prayer for relief.

Contrary to the conclusion by the CA, the petitioners' cause of action was upon a quasi-delict. As such, their counterclaim against the respondent was based on Article 2184, in relation to Article 2180 and Article 2176, all of the *Civil Code*.

The error committed by the CA emanated from its failure to take into consideration that the omission of the driver in violation of Article 365 of the *Revised Penal Code* could give rise not only to the obligation *ex delicto*, but also to the obligation based on *culpa aquiliana* under Article 2176 of the Civil Code. Under the factual antecedents herein, both obligations rested on the common element of negligence. Article 2177 of the *Civil Code* and Section 3, Rule 111 of the *Rules of Court* allow the injured party to prosecute both criminal and civil actions simultaneously. As clarified in *Casupanan v. Laroya*:

Under Section 1 of the present Rule 111, what is "deemed instituted" with the criminal action is only the action to recover civil liability arising from the crime or *ex-delicto*. **All the other civil actions under Articles 32, 33, 34 and 2176 of the Civil Code are no longer "deemed instituted," and may be filed separately and prosecuted independently even without any reservation in the criminal action. The failure to make a reservation in the criminal action is not a waiver of the right to file a separate and independent civil action based on these articles of the Civil Code.** The prescriptive period on the civil actions based on these articles of the Civil Code continues to run even with the filing of the criminal action. Verily, the civil actions based on these articles of the Civil Code are separate, distinct and independent of the civil action "deemed instituted" in the criminal action.

The foregoing notwithstanding, the petitioners as the injured parties have to choose the remedy by which to enforce their claim in the event of favorable decisions in both actions. This is because Article 2177 of the Civil Code bars them from recovering damages twice upon the same act or omission. As ruled in *Safeguard Security Agency, Inc. v. Tangco*:

An act or omission causing damage to another may give rise to two separate civil liabilities on the part of the offender, *i.e.*, (1) civil liability *ex delicto*, under Article 100 of the Revised Penal Code; and (2) independent civil liabilities, such as those (a) not arising from an act or omission complained of as a felony, *e.g., culpa* contractual or obligations arising from law under Article 31 of the Civil Code, intentional torts under Articles 32 and 34, and *culpa aquiliana* under Article 2176 of the Civil Code;

or (b) where the injured party is granted a right to file an action independent and distinct from the criminal action under Article 33 of the Civil Code. Either of these liabilities may be enforced against the offender subject to the caveat under Article 2177 of the Civil Code that the offended party cannot recover damages twice for the same act or omission or under both causes.

As can be seen, the latest iteration of Rule 111, unlike the predecessor, no longer includes the independent civil actions under Articles 32, 33, 34, and 2176 of the *Civil Code* as requiring prior reservation to be made in a previously instituted criminal action. Had it been cautious and circumspect, the RTC could have avoided the error.

Nonetheless, we are constrained not to award outright the damages prayed for by the petitioners in their counterclaim.

Article 2177 of the *Civil Code* and the present version of Section 3, Rule 111 of the *Rules of Court*, which is the applicable rule of procedure, expressly prohibit double recovery of damages arising from the same act or omission. The petitioners' allegation that they had not yet recovered damages from the respondent was not controlling considering that the criminal case against the respondent's driver had already been concluded. It remains for the petitioners to still demonstrate that the RTC as the trial court did not award civil damages in the criminal case.

ALSONS DEVELOPMENT AND INVESTMENT CORPORATION, *Petitioner*, - *versus* - THE HEIRS OF ROMEO D. CONFESOR (ANGELITA, GERALDINE, ROMEO, JR., ROWENA, JULIANE, NICOLE, AND RUBYANNE, ALL SURNAMED CONFESOR), AND THE HONORABLE OFFICE OF THE PRESIDENT, *Respondents*.
G.R. No. 215671, FIRST DIVISION, September 19, 2018, TIJAM, *J.*

Generally, a prejudicial question comes into play only in a situation where a civil action and a criminal action are both pending and there exists in the former an issue which must be preemptively resolved before the criminal action may proceed because the resolution of the civil action is determinative juris et de jure of the guilt or innocence of the accused in the criminal case. This, however, is not an ironclad rule. It is imperative that the rationale behind the principle of prejudicial question, i.e., to avoid two conflicting decisions, be considered. Here, the two cases involved are the cancellation of IFPMA No. 21 in the case at bar and the cancellation of title and reversion case before the RTC. Applying the wisdom of previous cases, the cancellation of the IFPMA No. 21 is the logical consequence of the determination of respondents' right over the subject property.

FACTS:

It was alleged that petitioner's rights in IFPMA No. 21 can be traced from Ordinary Pasture Permit (OPP) No. 1475 issued to Magno Mateo by the Bureau of Forestry on June 23, 1953 over a pasture land. On June 28, 1960, Mateo assigned his rights to Tuason Enterprises, Inc. On March 24, 1964, Tuason Enterprises Inc. transferred its leasehold rights to petitioner. On June 26, 1992, petitioner and the DENR entered into Industrial Forest Management Agreement (IFMA) No. 21 for a period of 25 years.

IFMA No. 21 was converted to IFPMA No. 21, where the coverage area was further increased. The controversy ignited when the respondents filed a protest against petitioner before the DENR praying for the cancellation of IFPMA No. 21 on the ground that the a large portion of the land subject thereof was part of the property covered by consolidated OCT. Also asserting ownership through their predecessor-in-interest, respondents argued that the DENR had no jurisdiction to enter into the said leasehold agreement because the subject property was no longer classified as a public land.

Prior to the filing of respondent's protest, the subject property was put under investigation where it was found that there was reasonable ground to believe that OCT No. V-1344 (P-144) P-2252 is a spurious title. The report was, however, set aside by the DOJ, sustaining the validity of said title. Meanwhile, the DENR conducted its own investigation, finding that while said OCT was genuine, there were segregated certificates of title which were all fake and spurious. DENR dismissed respondents' protest against IFPMA No. 21 for lack of merit. DENR Secretary affirmed, ruling that respondents were guilty of laches. However, on appeal, the OP set aside the DENR's decision, ruling that laches does not apply to lands registered under the Torrens system. The OP, however, reversed itself, this time ruling that laches applies. OP again reversed itself, ruling that respondents have established their ownership of the subject property, reinstating thus its prior decision.

Petitioner filed a Petition for Review with a Prayer for Status Quo Order before the CA

On January 24, 2011, petitioner filed with the CA an Urgent Motion for Issuance of a Status Quo Order or Temporary Restraining Order/Writ of Preliminary Injunction in view of the pendency of Civil Case No. 7711, arguing that the said civil case is a confirmation that the State never recognized the validity of respondents' title, but it was denied. Meanwhile, Civil Case No. 7711 was ordered dismissed by the RTC. The CA then promulgated its assailed Decision affirming the OP's Decision.

In the meantime, the Republic re-filed its petition for the annulment of titles and reversion, docketed as Civil Case No. 8374 before the RTC. Petitioner now argues that the CA erred in not considering that the herein issue of whether or not to cancel IFPMA No. 21 is dependent solely on the outcome of the petition for reversion and annulment of respondents' title pending before the RTC.

ISSUE:

Whether or not the civil case for annulment of title and reversion before the RTC constitutes a prejudicial question which would operate as a bar to the action for the cancellation of IFPMA No. 21.

RULING:

Petition has merit. Generally, a prejudicial question comes into play only in a situation where a civil action and a criminal action are both pending and there exists in the former an issue which must be preemptively resolved before the criminal action may proceed because the resolution of the civil action is determinative juris et de jure of the guilt or innocence of the accused in the criminal case. This, however, is not an ironclad rule. It is imperative that the rationale behind the principle of prejudicial question, i.e., to avoid two conflicting decisions, be considered.

In the case *of Quiambao v. Hon. Osorio*, on the other hand, the Court recognized the fact that the cases involved were civil and administrative in character and thus, technically, there was no prejudicial question to speak of. In ruling, however, the Court also took into consideration the apparent intimate

relation between the two cases in that, the right of private respondents to eject petitioner from the subject property depends primarily on the resolution of the issue of whether respondents, in the first place, have the right to possess the said property, which was the issue pending in the administrative case.

Here, the two cases involved are the cancellation of IFPMA No. 21 in the case at bar and the cancellation of title and reversion case before the RTC. It is petitioner's position that said civil case between the Republic and respondents operates as a bar to the action for cancellation of IFPMA No. 21. Undeniably, whether or not IFPMA No. 21 should be cancelled at the instance of the respondents is solely dependent upon the determination of whether or not respondents, in the first place, have the right over the subject property. Respondents' right in both cases is anchored upon the Transfer Certificate of Title that they are invoking. If the RTC cancels respondents' TCT for being fake and spurious, it proceeds then that respondents do not have any right whatsoever over the subject property and thus, do not have the right to demand IFPMA No. 21's cancellation. If the RTC will rule otherwise and uphold respondents' TCT, then respondents would have every right to demand IFPMA No. 21's cancellation.

Thus, applying the wisdom laid by this Court in the case of *Quiambao*, indeed, the cancellation of the IFPMA No. 21 is the logical consequence of the determination of respondents' right over the subject property. Further, to allow the cancellation thereof at the instance of the respondents notwithstanding the possibility of finding that respondents have no right over the property subject thereof is a "sheer exercise in futility." In fine, as the outcome of the civil case is determinative of the issue in the case at bar, by the dictates of prudence, logic, and jurisprudence, the proper recourse is to wait for the resolution of the said civil case. Certainly, at this point, delving into the issue on the propriety of IFPMA No. 21's cancellation is premature.

D. Preliminary Investigation

1. Executive vs. judicial determination of probable cause

FELICIANO S. PASOK, JR., *Petitioner*, *v.* OFFICE OF THE OMBUDSMAN–MINDANAO AND REX Y. DUA, *Respondents*.G.R. No. 218413, SECOND DIVISION, June 06, 2018, CARPIO, *J.*

The Court has always adhered to the general rule upholding the non-interference by the courts in the exercise by the Office of the Ombudsman of its plenary investigative and prosecutorial powers.

In Presidential Commission on Good Government v. Desierto, we held that the Office of the Ombudsman is "empowered to determine whether there exists reasonable ground to believe that a crime has been committed and that the accused is probably guilty thereof and, thereafter, to file the corresponding information with the appropriate courts.'' This determination is done by means of a preliminary investigation.

FACTS:

Sometime in April 2005, then Municipal Mayor of Tandag, Surigao del Sur Alexander T. Pimentel issued a Memorandum dated 12 April 2005 directing private respondent Rex Y. Dua (Dua), in his capacity as Agricultural Technician II in the Office of the Municipal Agriculturist, to handle, monitor,

evaluate, and submit monthly reports on the animal dispersal program and other agricultural programs of the municipality.

In the course of Dua's field inspection and investigation of the said programs, Dua allegedly found some irregularities in the implementation of the programs by petitioner Feliciano S. Pasok, Jr. (Pasok), the Municipal Agriculturist of Tandag.

Dua filed a Complaint before the Office of the Ombudsman–Mindanao for Malversation of Public Funds and violations of RA 3019 and 6713 against Pasok. In the complaint, Dua listed down the following irregularities: Non-remittance to the LGU Trust Fund, Non-delivery to the intended beneficiaries of of the free Bacterial Leaf Blit Fungicide (BLBF), the taking of a water pump, The manipulation of the award of one unit rice harvester equipment.

Pasok denied the charges against him. Pasok claimed that Dua was motivated by malice in filing the complaint since he did not accommodate Dua's promotion from Agricultural Technician II to Agricultural Technologist due to lack of civil service eligibility, having failed the civil service examination four times.

In a Decision dated 10 March 2008, the Office of the Ombudsman–Mindanao found Pasok guilty of grave misconduct and serious dishonesty and imposed on him the penalty of dismissal from the service. The same office issued a Resolution dated 12 March 2008 which found probable cause against Pasok for violation of Section 3(e) of RA 3019.

The COA-Regional Office No. 13 submitted its first Audit Report to the Office of the Ombudsman–Mindanao. As a result of the audit reports, the Office of the Ombudsman–Mindanao issued an Order finding probable cause that Pasok violated Section 3(e) of RA 3019.

Pasok filed motions for reconsideration. The Office of the Ombudsman-Mindanao denied the motion. Hence, the instant petition.

ISSUE:

Whether or not the Office of the Ombudsman–Mindanao acted with grave abuse of discretion amounting to lack or excess of jurisdiction when it set aside its Joint-Order and found probable cause against Pasok on the basis of the COA fact-finding reports without furnishing Pasok a copy thereof or requiring him to comment thereon, thus) in violation of Pasok's right to due process. (No)

RULING:

The Court has always adhered to the general rule upholding the non-interference by the courts in the exercise by the Office of the Ombudsman of its plenary investigative and prosecutorial powers. In certiorari proceedings under Rule 65, the Court's inquiry is limited to determining whether the Office of the Ombudsman acted without or in excess of its jurisdiction, or with grave abuse of discretion.

In *Presidential Commission on Good Government v. Desierto*, we held that the Office of the Ombudsman is "empowered to determine whether there exists reasonable ground to believe that a crime has been committed and that the accused is probably guilty thereof and, thereafter, to file the corresponding

information with the appropriate courts.'' This determination is done by means of a preliminary investigation.

In *Dimayuga v. Office of the Ombudsman*, we held that the Office of the Ombudsman may, for every particular investigation, decide how best to pursue each investigation. This power gives the Office of the Ombudsman the discretion to dismiss without prejudice a preliminary investigation if it finds that the final decision of the COA is necessary for its investigation and future prosecution of the case. It may also pursue the investigation because it realizes that the decision of the COA is irrelevant or unnecessary to the investigation and prosecution of the case. Since the Office of the Ombudsman is granted such latitude, its varying treatment of similarly situated investigations cannot by itself be considered a violation of any of the parties' rights to the equal protection of the laws. Nor in the present case, can it be considered a violation of petitioner's right to due process.

The Office of the Ombudsman–Mindanao maintains that the Office of the Ombudsman's power to investigate and to prosecute is plenary and unqualified and that it has full discretion to file an information against a supposed offender. The Office of the Ombudsman–Mindanao explains that it set aside its earlier Resolution dated 12 March 2008 without prejudice to the results of the COA fact-finding investigation. Thus, after careful analysis of the reports which the COA submitted, the Office of the Ombudsman–Mindanao found sufficient basis to warrant the filing of an Information against petitioner for violation of Section 3(e) of RA 3019. Thus, the finding of probable cause was well substantiated and not tainted with grave abuse of discretion.

RURAL BANK OF MABITAC, LAGUNA, INC., REPRESENTED BY MRS. MARIA CECILIA S. TANAEL, *Petitioner*, -versus- MELANIE M. CANICON AND MERLITA L. ESPELETA, *Respondents*. G.R. No. 196015, FIRST DIVISION, June 27, 2018, JARDELEZA, J.

Once an information is filed in court, all actions including the exercise of the discretion of the prosecution are subject to the disposal of the court. This includes reinvestigation of the case, the dropping of the accused from the information, or even dismissal of the action as to the accused.

Here, the October 23, 2007 Order was issued with grave abuse of discretion because the RTC did not make an independent determination or assessment of the merits of the motion to amend information. In the September 17, 2003 Order, the court granted, without any reason or explanation. Likewise, the October 23, 2007 Order also did not indicate that Judge Baybay, in reinstating the September 17, 2003 Order, made his own examination of the facts and evidence in determining probable cause against Espeleta. As earlier stated, once the information is filed with the court, the disposition of the case is subject to the discretion of the trial court. In turn, this judicial discretion is subject to the judicial requirement that the trial court must make its own evaluation of the case. This, the trial court failed to do.

FACTS:

Petitioner filed a criminal complaint for estafa under Article 315, paragraph 1(b) of the Revised Penal Code, as amended, in relation to economic sabotage, against its employees Rica W. Aguilar, Melanie M. Canicon, and Merlita L. Espeleta. An information for estafa in relation to Presidential Decree No. 1689 was filed against Aguilar, Canicon, and Espeleta before the RTC of Biñan, Laguna, which was

later transferred to the RTC of San Pedro, Laguna. Subsequently, the RTC issued a warrant for the arrest of all three accused. Only Espeleta and Canicon were arrested, while Aguilar remains at large.

Espeleta filed an urgent motion for reinvestigation before the RTC. She claimed that the preliminary investigation was conducted hastily, thereby denying her the chance to present her evidence. Petitioner opposed the motion. Without resolving the urgent motion for reinvestigation, the RTC arraigned both Espeleta and Canicon. Both accused entered a plea of not guilty to the offense charged.

Meanwhile, Assistant Provincial Prosecutor Melchorito M. E. Lomarda conducted a reinvestigation., Prosecutor Lomarda recommended the dismissal of the case against Espeleta and the filing of an amended information. The Office of the Provincial Prosecutor filed a motion for leave to amend the information with attached amended information. The amended information dropped Espeleta from the list of those originally charged, and recommended bail for all the remaining accused. The RTC issued an order granting the provincial prosecutor's motion and admitted the amended information.

The RTC, this time through Judge Zenaida G. Laguilles, issued a Resolution which recalled and set aside the September 17, 2003 Order issued by Judge Cabuco-Andres. Judge Laguilles ruled that a procedural misstep was committed when Prosecutor Lomarda conducted the reinvestigation without prior leave of court. The seeming acquiescence of former Presiding Judge Cabuco-Andres (in admitting the amended information) will not cure the procedural infirmity committed. As such, the reinvestigation conducted without judicial imprimatur is a nullity and created no vested right.

The RTC, through Judge Rommel O. Baybay, granted private respondents' motion for reconsideration. It set aside the November 15, 2006 Resolution and reinstated the September 17, 2003 Order. The RTC held that the public prosecutor has the sole discretion to decide whether to indict a person. More, it found that reinstating the charge against Espeleta would violate her right against double jeopardy. A motion for reconsideration was filed by petitioner, but the same was denied in an Order dated April 21, 2008. Thus, it filed a petition for certiorari under Rule 65 with the CA, attributing grave abuse of discretion on the part of the RTC. The CA denied certiorari.

Petitioner insists that the CA erred in not finding that the RTC committed grave abuse of discretion in issuing the October 23, 2007 Order. First, its right to due process was violated (1) when the public prosecutor conducted a reinvestigation, and (2) when the RTC allowed the amendment of the information. The public prosecutor loses the sole discretion to determine the existence of probable cause when an information is filed in court. Hence, the prosecutor's office cannot conduct a reinvestigation without prior leave and approval by the court; the determination of probable cause is now at the sole discretion of the court. More, petitioner was not notified when the prosecutor's office conducted reinvestigation. Neither was petitioner notified when Prosecutor Lomarda filed a motion for leave to amend information and to admit amended information, in violation of the rules. According to petitioner, due process requires that it be notified by the trial court at all stages of the proceedings as it is a "party" who may be affected by the orders issued and/or judgment rendered therein. Second, petitioner also argues that the RTC (through Judge Cabuco-Andres) did not exercise the discretion required by law. Judge Cabuco-Andres merely approved the position taken by Prosecutor Lomarda without assessing the evidence on record. Such is not a valid and proper exercise of judicial discretion. Finally, petitioner alleges that as private prosecutor, it has locus standi in filing the necessary pleadings in Criminal Case No. 12508-B. Since it did not file a separate civil action or reserve its right to file the same, petitioner claims that as the party injured by the crime, it had the right to be heard on a motion that was derogatory to its interest in the civil aspect of the case.

It also alleges that it could not secure Prosecutor Lomarda's conformity because petitioner filed a criminal case against him.

ISSUE:

(1) Whether petitioner has standing to file the petition without the conformity of the OSG. (YES)

(2) Whether the present petition, which seeks the reinstatement of the original information, places Espeleta in double jeopardy. (NO)

(3) Whether the CA erred in not finding grave abuse of discretion on the RTC in issuing the October 23, 2007 Order that reinstated the September 17, 2003 Order. (YES)

RULING:

(1)

The OSG has the sole authority to represent the State in appeals of criminal cases before the Supreme Court and the CA. The rationale behind this rule is that in a criminal case, the party affected by the dismissal of the criminal action is the State and not the private complainant. The interest of the private complainant or the private offended party is limited only to the civil liability. In the prosecution of the offense, the complainant's role is limited to that of a witness for the prosecution. Thus, when a criminal case is dismissed by the trial court or if there is an acquittal, an appeal on the criminal aspect may be undertaken only by the State through the Solicitor General. The private offended party or complainant may not take such appeal; but may only do so as to the civil aspect of the case.

Nevertheless, we have recognized instances where a private complainant would have standing to file a petition for certiorari under Rule 65 against the dismissal of a criminal case. Thus, in cases where the dismissal of the criminal case is tainted with grave abuse of discretion amounting to lack or excess of jurisdiction, the aggrieved parties are both the State and the private complainant. This right of the private complainant is anchored on his interest on the civil aspect of the case that is deemed instituted in the criminal case.

In this case, the amended information dropped Espeleta as an accused after arraignment. As she is no longer included therein, the proceeding for the charge for estafa against her was effectively terminated. Notably though, the nature of the offense charged, i.e., estafa, immediately connotes civil liability and damages for which the accused may be held liable for in case of conviction, or even acquittal based on reasonable doubt. The dismissal forecloses the right of petitioner to the civil action deemed instituted in the criminal case against Espeleta because petitioner neither reserved the right to file the same nor filed a case ahead of the criminal case. As argued by petitioner, it has the standing to pursue the remedy of a petition for certiorari before the CA. Similar to the case of Dee, petitioner alleges that the October 23, 2007 Order was issued with grave abuse of discretion amounting to lack or excess of jurisdiction. We thus uphold petitioner's legal personality to file the petition.

(2)

The 1987 Constitution and its predecessors guarantee the right of the accused against double jeopardy. Section 7, Rule 117 of the Rules of Court strictly adheres to the constitutional proscription against double jeopardy and provides for the requisites in order for double jeopardy to attach:

> Sec. 7. Former conviction or acquittal, double jeopardy. –When an accused has been convicted or acquitted, or the case against him dismissed or otherwise terminated without his express consent, by a court of competent jurisdiction, upon a valid complaint or information or other formal charge sufficient in form and substance to sustain a conviction and after the accused had pleaded to the charge, the conviction or acquittal of the accused or the dismissal of the case shall be a bar to another prosecution for the offense charged, or for any attempt to commit the same or frustration thereof, or for any offense which necessarily includes or is necessarily included in the offense charged in the former complaint or information.

Double jeopardy attaches when the following elements concur: (1) a valid information sufficient in form and substance to sustain a conviction of the crime charged; (2) a court of competent jurisdiction; (3) the accused has been arraigned and had pleaded; and (4) the accused was convicted or acquitted, or the case was dismissed without his express consent. The absence of any of the requisites hinders the attachment of the first jeopardy.

The first to third elements are non-issues in this petition. There is no dispute that the original information is valid and was filed with the RTC of San Pedro, Laguna, a court of competent jurisdiction. Espeleta was arraigned under this original information. The contentious element in this case is the fourth one, i.e., whether the dismissal was with express consent of Espeleta. To recall, Espeleta was dropped as an accused when the RTC, in its September 17, 2003 Order, allowed the amendment of the original information after reinvestigation of the public prosecutor. After she was reinstated as an accused by virtue of the RTC's November 15, 2006 Resolution, Espeleta filed a motion for reconsideration. This resulted in the issuance of the October 23, 2007 Order which, for the second time, dropped her as an accused. As such, there is a need to examine whether in both instances of dismissal, jeopardy had attached.

As a rule, where the dismissal was granted upon motion of the accused, jeopardy will not attach. In this case, Espeleta's filing of the urgent motion for reinvestigation did not amount to her express consent. We have held before that the mere filing of a motion for reinvestigation cannot be equated to the accused's express consent. However, we still find that Espeleta gave her express consent when her counsel did not object to the amendment of the information. As we have held in People v. Pilpa, the dismissal of the case without any objection on the part of the accused is equivalent to the accused's express consent to its termination, which would bar a claim for violation of the right against double jeopardy.

The rule that the dismissal is not final if it is made upon accused's motion, of course, admits of exceptions such as: (1) where the dismissal is based on a demurrer to evidence filed by the accused after the prosecution has rested, which has the effect of a judgment on the merits and operates as an acquittal; and (2) where the dismissal is made, also on motion of the accused, because of the denial of his right to a speedy trial which is in effect a failure to prosecute. However, the foregoing are neither applicable nor raised in this case.

(3)

A preliminary investigation is required before the filing of a complaint or information for an offense where the penalty prescribed by law is at least four years, two months, and one day without regard to fine. The conduct of this preliminary investigation pertains to the public prosecutor, who directs and controls the prosecution of all criminal actions commenced by a complaint or information. This investigation terminates with the determination by the public prosecutor of the absence or presence of probable cause. In case of the latter, an information is filed with the proper court.

A public prosecutor's determination of probable cause for the purpose of filing an information in court is essentially an executive function. The right to prosecute vests the prosecutor with a wide range of discretion—of what and whom to charge—which depends on a wide range of factors which are best appreciated by prosecutors. It generally lies beyond the pale of judicial scrutiny. The prosecution's discretion is not boundless or infinite, however. The determination of probable cause must not be tainted with grave abuse of discretion as when the public prosecutor arbitrarily disregards the jurisprudential parameters of probable cause. In addition to this, the standing principle is that once an information is filed in court, any remedial measure must be addressed to the sound discretion of the court.

Once an information is filed in court, all actions including the exercise of the discretion of the prosecution are subject to the disposal of the court. This includes reinvestigation of the case, the dropping of the accused from the information, or even dismissal of the action as to the accused. In the landmark case of Crespo v. Mogul, we emphasized that once an information has been filed in court, the court is the best and sole judge on how to dispose of the criminal case:

> Whether the accused had been arraigned or not and whether it was due to a reinvestigation by the fiscal or a review by the Secretary of Justice whereby a motion to dismiss was submitted to the Court, the Court in the exercise of its discretion may grant the motion or deny it and require that the trial on the merits proceed for the proper determination of the case.
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> x xxx
>
> The rule therefore in this jurisdiction is that once a complaint or information is tiled in Court any disposition of the case as [to] its dismissal or the conviction or acquittal of the accused rests in the sound discretion of the Court. Although the fiscal retains the direction and control of the prosecution of criminal cases even while the case is already in Court he cannot impose his opinion on the trial court. The Court is the best and sole judge on what to do with the case before it. The determination of the case is within its exclusive jurisdiction and competence. A motion to dismiss the case filed by the fiscal should be addressed to the Court [which] has the option to grant or deny the same. It does not matter if this is done before or after the arraignment of the accused or that the motion was filed after a reinvestigation or upon instructions of the Secretary of Justice who reviewed the records of the investigation.

Here, the October 23, 2007 Order was issued with grave abuse of discretion because the RTC did not make an independent determination or assessment of the merits of the motion to amend information. In the September 17, 2003 Order, the court granted, without any reason or explanation. Likewise, the October 23, 2007 Order also did not indicate that Judge Baybay, in reinstating the September 17,

2003 Order, made his own examination of the facts and evidence in determining probable cause against Espeleta. As earlier stated, once the information is filed with the court, the disposition of the case is subject to the discretion of the trial court. In turn, this judicial discretion is subject to the judicial requirement that the trial court must make its own evaluation of the case. This, the trial court failed to do.

PEOPLE OF THE PHILIPPINES, *Petitioner*, -versus- SHELDON ALCANTARA y LI, JUNNELYN ILLO y YAN, NATIVIDAD ZULUETA y YALDUA, MA. REYNA OCAMPO y CRUZ, MAILA TO y MOVILLON, MA. VICTORIA GONZALES y DE DIOS, ELENA PASCUAL y ROQUE, MARY ANGELIN ROMERO y BISNAR and NOEMI VILLEGAS y BATHAN, *Respondents*.
G.R. No. 207040, FIRST DIVISION, July 4, 2018, TIJAM, *J.*

The determination of probable cause has two separate and distinct kinds – an executive function and a judicial function. The executive determination of probable cause concerns itself with whether there is enough evidence to support an Information being filed. The judicial determination of probable cause, on the other hand, determines whether a warrant of arrest should be issued. If the Information is valid on its face and the prosecutor made no manifest error or his finding of probable cause was not attended with grave abuse of discretion, such findings should be given weight and respect by the courts. Here, the records do not disclose that the prosecutor's finding of probable cause was done in a capricious and whimsical manner evidencing grave abuse of discretion. Hence, Judge Calpatura erred when he dismissed the case against respondents for lack of probable cause.

FACTS:

The members of the Criminal Investigation and Detection Group-Women and Children Protection Division (CIDG-WCPD) received information that Pharaoh KTV and Entertainment Centre (Pharaoh), a KTV bar, was being used as a front for sexual exploitation, wherein young students were being employed as entertainers. Members of CIDG-WCPD, with Senior Police Officer 3 Leopoldo Platilla (SPO3 Platilla) acting as the poseur-customer, went inside Pharaoh together with four other members of the entrapment team. The team then paid P5,000.00 per hour for the rent of the VIP room and P10,400.00 for each woman. The said amount allegedly entitled them to avail of "extra services" in the form of sexual intercourse with their respective selected partners. The team then proceeded to a VIP room. Upon reaching the VIP room, SPO3 Platilla asked respondent JunnelynIllo (Illo), the floor manager, if there were available rooms where they can avail the "extra services." Illo replied that the hotel rooms at the 2nd floor of the building were available. Thereafter, their selected partners arrived, still dressed in cocktail dresses, but allegedly without any underwears. SPO3 Platilla texted the overall ground commander to proceed with the raid. During the raid, respondents Illo, Sheldon Alcantara y Li, Natividad Zulueta y Yaldua, Ma. Reyna Ocampo y Cruz, Maila To y Movillon, Ma. Victoria Gonzales y De Dios, Elena Pascual y Roque, Mary Angelin Romero y Bisnar, and Noemi Villegas y Bathan, floor managers, were arrested.

A Resolution was issued by the Assistant State Prosecutor and Prosecution Attorney of the Department of Justice finding probable cause for charging respondents with violation of Section 4 (a) and (e), 13 in relation to Section 6 (c) 14 of Republic Act No. 9208, also known as the Anti-Trafficking in Persons Act of 2003. As such, an Information charging respondents with qualified trafficking of persons was filed in court.

Respondents filed an Urgent Motion for Judicial Determination of Probable Cause before the Regional Trial Court (RTC) of Makati City, Branch 145 presided by Judge Carlito B. Calpatura (Judge Calpatura). The RTC issued its Order finding no probable cause for the indictment of the respondents.

Aggrieved, the Office of the Solicitor General filed a Petition for Certiorari before the Court of Appeals (CA) alleging that Judge Calpatura gravely abused his discretion in taking cognizance of the motion to determine probable cause as the same is an executive function that belongs to the prosecutor. The CA rendered the Decision dismissing the Petition for Certiorari and affirming the RTC's ruling that no probable exist to charge the respondents. Hence, this petition.

ISSUE:

Whether Judge Calpatura was correct in ordering the dismissal of the case for lack of probable cause. (NO)

RULING:

The determination of probable cause has two separate and distinct kinds – an executive function and a judicial function. The executive determination of probable cause concerns itself with whether there is enough evidence to support an Information being filed. The judicial determination of probable cause, on the other hand, determines whether a warrant of arrest should be issued.

The determination of the judge of the probable cause for the purpose of issuing a warrant of arrest does not mean, however, that the trial court judge becomes an appellate court for purposes of assailing the determination of probable cause of the prosecutor. If the Information is valid on its face and the prosecutor made no manifest error or his finding of probable cause was not attended with grave abuse of discretion, such findings should be given weight and respect by the courts.

Here, the records do not disclose that the prosecutor's finding of probable cause was done in a capricious and whimsical manner evidencing grave abuse of discretion. As such, his finding of probable cause, being primarily lodge with him, should not be interfered with by the courts. Clearly, Judge Calpatura erred when he dismissed the case against respondents for lack of probable cause.

HOME DEVELOPMENT MUTUAL FUND (HDMF) PAG-IBIG FUND, *petitioner*–versus-
CHRISTINA SAGUN, *respondent*.
G.R. Nos. 208744 & 210095, EN BANC, July 31, 2018, BERSAMIN, *J.*

It is an established judicial policy that injunction cannot be used as a tool to thwart criminal prosecutions because investigating the criminal acts and prosecuting their perpetrators right away have always been in the interest of the public. Such policy is intended to protect the public from criminal acts.

The Pasig RTC could not feign ignorance of such policy, especially considering that the CA's previous ruling against its issuance of a writ of preliminary injunction had been affirmed by this Court with finality.

FACTS:

In 2008, Globe Asiatique, through its president Delfin Lee, entered into a Window I-Contract to Sell (CTS) Real Estate Mortgage (REM) with Buy-back Guaranty take out mechanism with the HDMF, also known as the Pag-Ibig Fund, for its XeveraBacolor Project in Pampanga. Globe Asiatique and HDMF also executed various Funding Commitment Agreements (FCAs) and Memoranda of Agreement (MOAs).

Under the FCAs, Delfin Lee warranted that the loan applicants that Globe Asiatique would allow to pre-process, and whose housing loans it would approve, were existing buyers of its real estate and qualified to avail themselves of loans from HDMF under the Pag-Ibig Fund; and that in the event of a default of the three-month payment on the amortizations by said members or any breach of warranties, Globe Asiatique would buy back the CTS/REM accounts during the first two years of the loan.

The parties further agreed that Globe Asiatique would collect the monthly amortizations on the loans obtained by its buyers in the first two years of the loan agreements and remit the amounts collected to HDMF through a Collection Servicing Agreement (CSA).

On June 10, 2008, Delfin Lee proposed the piloting of a Special Other Working Group (OWG) Membership Program for its XeveraBacolor Project while the FCA was in effect. The OWG Membership Program would comprise of HDMF members who were not formally employed but derived income from non-formal sources (*e.g.*, practicing professionals, self-employed members, Overseas Filipino Workers (OFWs), and entrepreneurs).

More FCAs were executed between the parties. According to HDMF, the aggregate amount of P7,007,806,000.00 was released to Globe Asiatique in a span of two years from 2008 to September 24, 2010, representing a total of 9,951 accounts.

In the course of its regular validation of buyers' membership eligibilities for taking out loans for the Xevera Project, HDMF allegedly discovered some fraudulent transactions and false representations purportedly committed by Globe Asiatique, its owners, officers, directors, employees, and agents/representatives, in conspiracy with HDMF employees.

As a result, HDMF revoked the authority of Globe Asiatique under the FCA; suspended all take-outs for new housing loans; required the buy-back of the fraudulent accounts; and cancelled the release of funds to Globe Asiatique in August 2010.

About a month later, Globe Asiatique discontinued remitting the monthly amortization collections from all borrowers of Xevera.

Finally, HDMF terminated the CSA with Globe Asiatique on August 31, 2010.

Meanwhile, HDMF continued its post take-out validation of the borrowers, and discovered more fraudulent transactions and false representations under the OWG Membership Program.

Upon the recommendation of the National Bureau of Investigation (NBI), the DOJ conducted its preliminary investigation against Globe Asiatique, particularly its officers on the strength of several complaints alleging the commission of the crime of syndicated *estafa* constituting economic sabotage, as defined and penalized under Article 315 (2) (a) of the *Revised Penal Code*, in relation to Presidential Decree No. 1689 (P.D. No. 1689).

Delfin Lee initiated his action for injunction on July 28, 2011 in the Pasig RTC to enjoin the DOJ from proceeding with the second DOJ case, and reiterated therein that the civil case pending in the Makati RTC constituted a **prejudicial question** vis-a-vis the second DOJ case.

The Pasig RTC, then presided by Judge Rolando Mislang, granted Delfin Lee's prayer for the issuance of the TROs and thereafter issued the writ of preliminary injunction.

Aggrieved, the DOJ filed a petition for *certiorari* on alleging that Judge Mislang had committed grave abuse of discretion in issuing the writ of preliminary injunction enjoining the filing of the information for syndicated *estafa* with respect to the first case and from proceeding with the preliminary investigation in the second case on the ground of the existence of a prejudicial question.

The CA granted the DOJ's petition for *certiorari*, and ruled that the facts and issues in the civil case pending in the Makati RTC were not determinative of the guilt or innocence of Delfin Lee in the cases filed in the DOJ; hence, it annulled and set aside the writ of preliminary injunction issued by Judge Mislang.

Much later on, Delfin Lee learned of the third and fourth criminal complaints filed in the DOJ. Again, he sought the issuance of a TRO by the Pasig RTC.

On March 21, 2013, Judge Mislang issued the second TRO enjoining the preliminary investigation of the second, third and fourth criminal complaints.

On April 10, 2013, Judge Mislang issued the writ of preliminary injunction in Civil Case No. 73115 enjoining the conduct of the preliminary investigation in the second, third and fourth criminal complaints.

Consequently, the DOJ filed another petition for *certiorari*, to annul the writ of preliminary injunction issued on April 10, 2013 by the Pasig RTC.

On June 18, 2013, the DOJ filed the intended petition for *certiorari* but inadvertently did not indicate therein the proper docket number for the case thereby causing the assignment by the CA of a new docket number, specifically C.A.-G.R. SP No. 130409. On June 26, 2013, the CA dismissed the DOJ's petition for *certiorari* in C.A.-G.R. SP No. 130409 on the ground that it had not received a motion for extension of time to file the petition.

Hence, this petition.

ISSUE

Whether or not the conduct of a preliminary investigation could be enjoined **(NO)**

RULING

It is an established judicial policy that injunction cannot be used as a tool to thwart criminal prosecutions because investigating the criminal acts and prosecuting their perpetrators right away have always been in the interest of the public. Such policy is intended to protect the public from criminal acts. The Pasig RTC could not feign ignorance of such policy, especially considering that the CA's previous ruling against its issuance of a writ of preliminary injunction had been affirmed by this Court with finality. The CA also observed then:

> [I]njunction will not lie to enjoin a criminal prosecution because public interest requires that criminal acts be immediately investigated and protected *(sic)* for the protection of society. It is only in extreme cases that injunction will lie to stop criminal prosecution. Public respondent Judge anchored his issuance of the writ on the existence of a prejudicial question. However, this Court finds that the facts and issues in the Makati civil case are not determinative of Lee's guilt or innocence in the cases filed before the DOJ. Verily public respondent Judge committed grave abuse of discretion amounting to lack of or in excess of jurisdiction when he issued the writ of preliminary injunction enjoining the DOJ from filing an information of estafa against Lee in the first DOJ case and from proceeding with the preliminary investigation in the second DOJ case. 111

We emphasize yet again that the conduct of a preliminary investigation, being executive in nature, was vested in the DOJ. As such, the injunction issued by the Pasig RTC inexcusably interfered with the DOJ's mandate under Section 3 (2), Chapter 1, Title III, Book IV of the *Administrative Code of 1987* to investigate the commission of crimes and to prosecute the offenders.

Equally worthy of emphasis is that the ruling of the CA in C.A.-G.R. SP No. 121594 attained finality after the Court reviewed such ruling in G.R. No. 201360. Considering that the petitions against the DOJ arose from the same factual milieu and sought the same relief, which was to restrain the DOJ from conducting preliminary investigations against Globe Asiatique and its officers and employees upon the complaints filed before the DOJ, and considering further that the cases involved the same parties and reprised the arguments, the **doctrine of the law of the case** certainly applied to bar a different outcome. At the very least, the Pasig RTC should have been very well instructed thereby, and should have avoided the incongruous situation of ignoring what was already the clear law of the case. The doctrine of the law of the case precludes departure in a subsequent proceeding essentially involving the same case from a rule previously made by an appellate court.

SENATOR JINGGOY EJERCITO ESTRADA, PETITIONER, VS. OFFICE OF THE OMBUDSMAN, HON. SANDIGANBAYAN, FIELD INVESTIGATION OFFICE, OFFICE OF THE OMBUDSMAN, NATIONAL BUREAU OF INVESTIGATION, AND ATTY. LEVITO D. BALIGOD, RESPONDENTS.

[G.R. No. 212761-62, EN BANC, July 31, 2018, CARPIO, J.]

CASE DOCTRINE:

There are two kinds of determination of probable cause: executive and judicial.The executive determination of probable cause, made during preliminary investigation, is a function that properly pertains to the public prosecutor who is given a broad discretion to determine whether probable cause exists and to charge the person believed to have committed the crime as defined by law. Whether or not that function has been correctly discharged by the public prosecutor, i.e., whether or not the prosecutor has made a correct ascertainment of the existence of probable cause in a case, is a matter that the trial court itself does not and may not be compelled to pass upon. The judicial determination of probable cause, on the other hand, is one made by the judge to ascertain whether a warrant of arrest should be issued against the accused.

FACTS:

Petitioners are charged as co-conspirators for their respective participation in the illegal pillaging of public funds sourced from the Priority Development Assistance Fund (PDAF) of Estrada for the years 2004 to 2012.

On 28 March 2014, the Ombudsman issued the assailed Joint Resolution finding probable cause to charge petitioners and several other respondents in the NBI and FIO Complaints for one (1) count of Plunder and eleven (11) counts of violation of Section 3(e) of RA 3019.

After considering the testimonial and documentary evidence, the Ombudsman concluded that petitioners conspired with the DBM personnel, and the heads of the Implementing Agencies (IAs), specifically National Agribusiness Corporation (NABCOR), National Livelihood Development Corporation (NLDC), and Technology Resource Center (TRC), in amassing ill-gotten wealth by diverting the PDAF of Estrada from its intended project recipients to Janet Lim Napoles (JLN)-controlled non-government organizations (NGOs), specifically Masaganang Ani Para saMagsasaka Foundation, Inc. (MAMFI) and Social Development Program for Farmers Foundation, Inc. (SDPFFI). Estrada, in particular, took advantage of his official position and amassed, accumulated, and acquired ill-gotten wealth by receiving money from Napoles, through Tuason and Labayen, in the amount of P183,793,750.00 in exchange for endorsing JLN-controlled NGOs to the IAs of his PDAF-funded projects. De Asis, for his part, participated in the conspiracy by facilitating the transfer of the checks from the IAs and depositing the same to the bank accounts of the JLN-controlled NGOs. Furthermore, the Ombudsman found that petitioners, among others, acting in concert are manifestly partial, and in evident bad faith in violation of Section 3(e) of RA 3019 in relation to Estrada's PDAF releases, coursed through NABCOR, NLDC, TRC, MAMFI, and SDPFFI.

The motions for reconsideration were denied in the Joint Order issued by the Ombudsman on 4 June 2014.

Following the denial of the petitioners' motions for reconsideration, the Ombudsman filed several Informations before the Sandiganbayan, charging petitioners with one (1) count of Plunder and eleven (11) counts of violation of Section 3(e) of RA 3019.

Thus, Estrada, De Asis, and Napoles filed their separate petitions for certiorari assailing the Joint Resolution and Joint Order of the Ombudsman before this Court.

ISSUE:

Whether or not the Ombudsman committed any grave abuse of discretion in rendering the assailed Resolution and Order ultimately finding probable cause against Estrada, De Asis, and Napoles for the charges against them.

RULING:

No. The Ombudsman did not commit any grave abuse of discretion in rendering the assailed Resolution and Order ultimately finding probable cause against Estrada, De Asis, and Napoles for the charges against them.

Both the Constitutionand RA 6770, or The Ombudsman Act of 1989, give the Ombudsman wide latitude to act on criminal complaints against public officials and government employees.As an

independent constitutional body, the Office of the Ombudsman is "beholden to no one, acts as the champion of the people, and is the preserver of the integrity of the public service."

The Supreme Court's consistent policy has been to maintain non-interference in the determination by the Ombudsman of the existence of probable cause.Since the Ombudsman is armed with the power to investigate, it is in a better position to assess the strengths or weaknesses of the evidence on hand needed to make a finding of probable cause.As the Supreme Court is not a trier of facts, the defer to the sound judgment of the Ombudsman.

This policy is based not only on respect for the investigatory and prosecutory powers granted by the Constitution to the Ombudsman, but upon practicality as well.Otherwise, innumerable petitions seeking dismissal of investigatory proceedings conducted by the Ombudsman will grievously hamper the functions of the courts, in much the same way that courts will be swamped with petitions if they had to review the exercise of discretion on the part of public prosecutors each time prosecutors decide to file an information or dismiss a complaint by a private complainant.

Nonetheless, this Court is not precluded from reviewing the Ombudsman's action when there is a charge of grave abuse of discretion. Grave abuse of discretion implies a capricious and whimsical exercise of judgment tantamount to lack of jurisdiction.The Ombudsman's exercise of power must have been done in an arbitrary or despotic manner which must be so patent and gross as to amount to an evasion of a positive duty or a virtual refusal to perform the duty enjoined by law.

Thus, for the present petition to prosper, petitioners would have to show this Court that the Ombudsman exercised its power, to determine whether there is probable cause, in an arbitrary or despotic manner which must be so patent and gross as to amount to an evasion of a positive duty or a virtual refusal to perform the duty enjoined by law. On the petitioners lie the burden of demonstrating all the facts essential to establish the right to a writ of certiorari.

Given the ample supporting evidence it has on hand, the Ombudsman's exercise of prerogative to charge Estrada with plunder and violation of Section 3(e) of RA 3019 was not whimsical, capricious, or arbitrary, as to amount to grave abuse of discretion. Estrada's bare claim to the contrary cannot prevail over such positive findings of the Ombudsman.

In the present case, the Ombudsman relied upon the same testimonial and documentary evidence relied upon by the Ombudsman in Reyes and Cambe, specifically: (a) the testimonies of the whistleblowers Luy, Sula, and Suñas; (b) the affidavits of Tuason and other co-respondents in the NBI and FIO Complaints; (c) the business ledgers prepared by Luy, showing the amounts received by Estrada, through Tuason and Labayen, as his "commission" from the so-called PDAF scam; (d) the COA Report documenting the results of the special audit undertaken on PDAF disbursements; and (e) the reports on the independent field verification conducted by the FIO. Aside from the said pieces of evidence, the Ombudsman pointed to the PDAF documents, corporate papers of JLN-controlled NGOs, and admissions made by some of Estrada's co-respondents themselves, in concluding that a person of ordinary caution and prudence would believe, or entertain an honest or strong suspicion, that plunder and violation of Section 3(e) of RA 3019 were indeed committed by Estrada, among the respondents named in the Joint Resolution.

Applying the SC's ruling in Reyes (Enrile) and Cambe (Revilla) to the present case, the Ombudsman, thus, did not abuse its discretion in holding that the same pieces of evidence, taken together, are

already sufficient to engender a well-founded belief that the crimes charged were committed and Estrada is probably guilty thereof, since it remains apparent that: (a) Estrada, a public officer, connived with Napoles and several other persons in entering into transactions involving the illegal disbursement of PDAF funds; (b) Estrada acted with manifest partiality and/or evident bad faith by repeatedly endorsing the JLN- controlled NGOs as beneficiaries of his PDAF in violation of existing laws, rules, and regulations on government procurement; (c) the PDAF-funded projects turned out to be inexistent; (d) such acts caused undue injury to the government, and at the same time, gave unwarranted benefits, advantage, or preference to the beneficiaries of the scam; and (e) Estrada, through Tuason and Labayen, was able to accumulate and acquire ill-gotten wealth amounting to at least P183,793,750.00.

Given that the Court previously unanimously ruled in Reyes that the following pieces of evidence: (a) the declarations of the whistleblowers Luy, Sula, and Suñas; (b) Tuason's verified statement which corroborated the whistleblowers' accounts; (c) the business ledgers prepared by Luy; (d) the COA Report documenting the results of the special audit undertaken on PDAF disbursements; and (e) the reports on the independent field verification conducted by the FIO, all taken together are already sufficient to engender a well-founded belief that the crimes charged were committed, specifically plunder and violation of Section 3(e) of RA 3019, and petitioners in Reyes and Cambe were probably guilty thereof, the Supreme Court shall likewise take these into account and uphold in the present case the finding of the Ombudsman as to the existence of probable cause against Estrada based on the said pieces of evidence.

Besides, the Supreme Court held in Estrada, that "the sufficiency of the evidence put forward by the Ombudsman against Sen. Estrada to establish its finding of probable cause in the 28 March 2014 Joint Resolution in OMB-C-C-13-0313 and OMB-C-C-13-0397 was judicially confirmed by the Sandiganbayan, when it examined the evidence, found probable cause, and issued a warrant of arrest against Sen. Estrada on 23 June 2014."

Estrada's defense, similar to De Asis' and Napoles', which is anchored on the absence of all the elements of the crime charged, is better ventilated during trial and not during preliminary investigation.

Moreover, as to De Asis' arguments that there is no evidence that he knowingly took part in the acts of plunder, and that he merely acted as driver, messenger, and janitor in good faith when he delivered money to Napoles' house or he picked up checks and deposited the same in banks, the Supreme Court have already ruled upon the same arguments raised by De Asis and upheld the finding of probable cause against him in the case of Cambe: "De Asis presented defenses which heavily centered on his perceived want of criminal intent, as well as the alleged absence of the elements of the crimes charged. However, such defenses are evidentiary in nature, and thus, are better ventilated during trial and not during preliminary investigation."

As to the finding of probable cause to indict Napoles for the crimes charged, and as to her argument that the NBI and FIO Complaints are defective and insufficient in form and substance as to the charges against her, the Supreme Court likewise find our ruling in Reyes applicable to this case: "Based on the evidence in support thereof, the Court is convinced that there lies probable cause against Janet Napoles for the charge of Plunder. xxx In the same manner, there is probable cause against Janet Napoles for violations of Section 3 (e) of RA 3019. xxx Furthermore, there is no merit in Janet

Napole[s'] assertion that the complaints are insufficient in form and in substance for the reason that it lacked certain particularities such as the time, place, and manner of the commission of the crimes charged.

Moreover, Justice Presbitero J. Velasco, Jr.'s dissent should not have individually assessed as inadmissible and incompetent the evidence used by the Ombudsman in finding that probable cause exists to indict petitioners for plunder and violation of Section 3(e) of RA 3019.

In De Lima v. Judge Guerrero, penned by Justice Velasco, the Court held that the admissibility of evidence, their evidentiary weight, probative value, and the credibility of the witness are matters that are best left to be resolved in a full- blown trial, not during a preliminary investigation where the technical rules of evidence are not applied nor at the stage of the determination of probable cause for the issuance of a warrant of arrest. Thus, the better alternative is to proceed to the conduct of trial on the merits and for the prosecution to present its evidence in support of its allegations.

In any event, the Supreme Court have already ruled on the arguments raised by Justice Velasco in individually refuting the evidence used by the Ombudsman in finding probable cause in the cases of Reyes and Cambe.

First, there is no basis in ruling at this stage that the whistleblowers' statements, along with those of Estrada's co-respondents, are not admissible as evidence for being hearsay and covered by the res inter alios acta rule.

Second, as to Estrada's endorsement letters, which he admittedly executed, instructing the IAs to have his PDAF-funded projects implemented by JLN-controlled NGOs, the Supreme Court held in Cambe that "the PDAF documents, consisting of the written endorsements signed by Sen. Revilla himself requesting the IAs to release his PDAF funds to the identified JLN-controlled NGOs, as well as other documents that made possible the processing of his PDAF, x xx — directly implicate him for the crimes charged, as they were nonetheless, all issued under the authority of his Office as Senator of the Republic of the Philippines. In Belgica v. Ochoa (Belgica), this Court observed that 'the defining feature of all forms of Congressional Pork Barrel would be the authority of legislators to participate in the post-enactment phases of project implementation.'

Third, as to Luy's business ledger, Luy's admission of falsification of PDAF-related documents did not cast serious doubt on its credibility, considering that in Cambe, the Supreme Court already held: "[E]ven if it is assumed that the signatures were forged, it does not mean that the legislators did not authorize such forgery."

And, fourth, as to the COA Report and FIO verifications, the Supreme Court likewise find that these evidence buttress the finding of probable cause against Estrada as they did against Revilla since the Supreme Court held in Cambe.

Thus, there is no evidence that the Ombudsman acted in capricious and whimsical exercise of judgment amounting to lack or excess of jurisdiction. No manifest error or grave abuse of discretion or bad faith can be imputed to the public prosecutor, or the Ombudsman in this case. In fine, the Ombudsman's finding of probable cause prevails over petitioners' bare allegations of grave abuse of discretion.

Accordingly, the Court must defer to the exercise of discretion of the Ombudsman, in the absence of actual grave abuse of discretion on the part of the Ombudsman.

2. Rule 112

JOHANNE EDWARD B. LABAY, *PETITIONER,* -versus- SANDIGANBAYAN, THIRD DIVISION, AND PEOPLE OF THE PHILIPPINES, *RESPONDENTS.*
G.R. Nos. 235937-40, THIRD DIVISION, July 23, 2018, VELASCO JR., J.

Section 3, Rule 112 of the Revised Rules of Criminal Procedure provides that an accused in a criminal case has the right to be informed of the charges against him, to submit a counter affidavit, and to have access to and examine all other evidence submitted by the complainant.

In several cases, the Court has held that suppression of evidence, regardless of its nature, is enough to violate the due process rights of the accused. In the present case, it was not only the prosecution's evidence which was withheld from petitioner. In denying petitioner Labay's multiple requests for copies of the complaint affidavit, the Ombudsman deprived him of his right to sufficiently and reasonably know the charges and accusations against him. This is a patent violation of his constitutional right to due process.

FACTS:
The case arose from the complaint dated May 11, 2015 filed by the Field Investigation Office I (FIO I) of the Office of the Ombudsman against petitioner Johanne Edward B. Labay (Petitioner Labay) for his participation in the alleged anomalous utilization of the Priority Development Assistance Fund (PDAF) of former Representative of the 1st District of Davao del Sur, Marc Douglas C. Cagas IV (Rep. Cagas IV).

The complaint alleged that Rep. Cagas IV, in conspiracy with other public officials and private individuals such as petitioner Labay, through the Technology Resource Center (TRC), sought the release and transfer of his PDAF in the total amount of Php6,000,000.00 to Farmer-business Development Corporation (FDC), which was led by its then president, herein petitioner Labay. However, upon field verification conducted by the FIO I, it appears that the livelihood projects funded by Rep. Cagas IV's PDAF were never implemented and were considered to be "ghost projects."[4]

In a Joint Order dated September 1, 2015, the Ombudsman directed respondents to file their respective counter-affidavits.[5] Several respondents filed their respective counter-affidavits. However, copies of this Order could not be served on petitioner Labay.[6]

According to the Ombudsman, it exerted diligent efforts to serve copies of the September 1, 2015 Joint Order on petitioner Labay through his office and at his last known address. However, the copies were returned unserved because he was no longer employed in that office and he was unknown at the given residential address. As such, the Ombudsman proceeded with the preliminary investigation without any counter-affidavit or participation from petitioner Labay.[7]

In a Resolution dated May 10, 2016,[8] the Ombudsman found probable cause to indict Rep. Cagas IV and his co-respondents, including petitioner Labay, for conspiracy in the commission of two counts

of Violation of Section 3(e) of RA 3019, one count of Malversation of Public Funds, and one count of Malversation thru Falsification.

Petitioner alleges that it was unknown to him that preliminary investigations for the charges against him were being conducted by the Ombudsman. According to him, it was only sometime in October 2016 that he learned of the cases when his daughter, Atty. Jo Blanca P.B. Labay, came across the press releases of the Ombudsman wherein petitioner was mentioned as among those who are facing charges.[9]

On October 3, 2016, Atty. Labay, on behalf of her father, attempted to secure information on the cases from the Central Records of the Ombudsman, but she was advised to submit a written request. Accordingly, Atty. Labay sent the Ombudsman a letter dated October 4, 2016 in compliance with the said directive.[10]

In a letter dated October 10, 2016, the Ombudsman replied to Atty. Labay's request and served on her copies of its May 10, 2016 Resolution. At the same time, the Ombudsman directed Atty. Labay to file a motion for reconsideration of the said Resolution within five days from receipt thereof.[11]

Accordingly, petitioner, through Atty. Labay, filed an *Omnibus Motion for Reinvestigation and Deferment of Filing of Information with Request for Copies of Complaint-Affidavit and Supporting Documents* dated November 16, 2016. In its Order dated November 25, 2016,[14] the Ombudsman denied petitioner Labay's Omnibus Motion.

Dissatisfied with this ruling, petitioner Labay filed an *Omnibus Motion for Reconsideration (of the Order dated 25 November 2016) and Deferment of Filing of Information with Reiterative Request for Copies of Complaint-Affidavit and Supporting Documents* dated January 30, 2017. The Ombudsman treated this second Omnibus Motion as a second motion for reconsideration and denied the same for lack of merit in its Order dated February 1, 2017.

On March 24, 2017, the Ombudsman filed four (4) Informations before the Sandiganbayan against petitioner Labay and his co-accused. It was only on March 28, 2017, four days after the Informations had already been filed with the Sandiganbayan, that petitioner Labay was furnished a copy of the Complaint-Affidavit and its supporting evidence.[20]

On April 4, 2017, petitioner Labay received copies of the Informations filed by the Ombudsman with the Sandiganbayan. Immediately thereafter, on April 5, 2017, petitioner Labay filed an Extremely Urgent Motion of even date, arguing that he is entitled to a reinvestigation of the case to prevent injustice against him brought about by the wrongful filing of charges without affording him his right to a complete preliminary investigation.

In the assailed Resolution dated July 10, 2017, the Sandiganbayan denied petitioner's motion. Aggrieved, petitioner filed a Motion for Partial Reconsideration[23] dated August 3, 2017. However, this was denied for lack of merit and for being *pro forma* in the second assailed Resolution dated October 19, 2017. Hence, this Petition for *Certiorari*.

ISSUE:
Whether the petitioner's constitutional right to due process was violated when he was not furnished a copy of the complaint affidavit and its attachments during the preliminary investigation. (YES)

RULING:

The right to have a preliminary investigation conducted before being bound over to trial for a criminal offense and be formally at risk of incarceration or some other penalty is not a mere formal or technical right. It is a substantive right since the accused in a criminal trial is inevitably exposed to prolonged anxiety, aggravation, humiliation, not to speak of expense, and the right to an opportunity to avoid a painful process is a valuable right.[31] It is meant to secure the innocent against hasty, malicious and oppressive prosecution and to protect him from an open and public accusation of a crime, from the trouble, expenses and anxiety of a public trial. It is also intended to protect the state from having to conduct useless and expensive trials. Indeed, to deny a person's claim to a preliminary investigation would be to deprive him the full measure of his right to due process.

Section 3, Rule 112 of the Revised Rules of Criminal Procedure provides guidelines in the conduct of preliminary investigation, to wit:

> **Section 3.** *Procedure*. - The preliminary investigation shall be conducted in the following manner:
>
> (a) The complaint shall state the address of the respondent and shall be accompanied by the affidavits of the complainant and his witnesses, as well as other supporting documents to establish probable cause. They shall be in such number of copies as there are respondents, plus two (2) copies for the official file. The affidavits shall be subscribed and sworn to before any prosecutor or government official authorized to administer oath, or, in their absence or unavailability, before a notary public, each of who must certify that he personally examined the affiants and that he is satisfied that they voluntarily executed and understood their affidavits.
>
> (b) Within ten (10) days after the filing of the complaint, the investigating officer shall either dismiss it if he finds no ground to continue with the investigation, or issue a subpoena to the respondent attaching to it a copy of the complaint and its supporting affidavits and documents.
>
> The respondent shall have the right to examine the evidence submitted by the complainant which he may not have been furnished and to copy them at his expense. If the evidence is voluminous, the complainant may be required to specify those which he intends to present against the respondent, and these shall be made available for examination or copying by the respondent at his expense.
>
> Objects as evidence need not be furnished a party but shall be made available for examination, copying, or photographing at the expense of there questing party.

> (c) Within ten (10) days from receipt of the subpoena with the complaint and supporting affidavits and documents, the respondent shall submit his counter-affidavit and that of his witnesses and other supporting documents relied upon for his defense. The counter-affidavits shall be subscribed and sworn to and certified as provided in paragraph (a) of this section, with copies thereof furnished by him to the complainant. The respondent shall not be allowed to file a motion to dismiss in lieu of a counter-affidavit.
>
> (d) If the respondent cannot be subpoenaed, or if subpoenaed, does not submit counter-affidavits within the ten (10) day period, the investigating officer shall resolve the complaint based on the evidence presented by the complainant.
>
> (e) The investigating officer may set a hearing if there are facts and issues to be clarified from a party or a witness. The parties can be present at the hearing but without th. right to examine or cross-examine. They may, however, submit to the investigating officer questions which may be asked to the party or witness concerned.
>
> The hearing shall be held within ten (10) days from submission of the counter-affidavits and other documents or from the expiration of the period for their submission. It shall be terminated within five (5) days.
>
> (f) Within ten (10) days after the investigation, the investigating officer shall determine whether or not there is sufficient ground to hold the respondent for trial. (3a)

It is clear from the foregoing that an accused in a criminal case has the right to be informed of the charges against him, to submit a counter affidavit, and to have access to and examine all other evidence submitted by the complainant.

In this case, there is no dispute that the Ombudsman was unable to serve copies of the complaint or of its September 1, 2015 Joint Order on petitioner Labay prior to or even during the preliminary investigation of the case. This was never denied by the OSP in its Comment

While the Ombudsman was correct in resolving the complaint based on the evidence presented in accordance with Paragraph (e), Section 4 of the Ombudsman Rules of Procedure, the situation, however, effectively changed when petitioner made himself available to the Ombudsman when he requested access to the case records. The Ombudsman had a clear opportunity to furnish petitioner with copies of the complaint affidavit and its supporting documents. Instead, it merely decided to furnish petitioner with a copy of its May 10, 2016 Resolution.

Even assuming that the Ombudsman was merely complying with Atty. Labay's request for information when it responded with the case titles and docket numbers of the cases pending against petitioner Labay, it should have exercised its duty to inform petitioner of the charges filed against him by furnishing him copies of the complaint affidavit and its supporting documents. Or at the very least, it should have directed and allowed petitioner to access these records at its office. This, however, was not done by the Ombudsman.

The violation of petitioner's constitutional right to due process is made even more evident when the Ombudsman unceremoniously denied his request to be furnished copies of the complaint affidavit and its supporting documents in the first omnibus motion that he filed, and reiterated in his second omnibus motion. In both orders denying the two omnibus motions, the Ombudsman seemingly

ignored petitioner's requests and effectively denied petitioner of his right to secure copies of the complaint affidavit. This should not be tolerated.

Unfortunately, the Sandiganbayan committed grave abuse of discretion when it failed to grant petitioner Labay's *Extremely Urgent Omnibus Motion* despite the glaring violations committed by the Ombudsman. The Sandiganbayan should have recognized these patent violations and ordered the remand of the case to the Ombudsman for the conduct of a proper preliminary investigation with respect to petitioner Labay's participation in the crimes charged. Instead, it chose to turn a blind eye towards the injustice committed against petitioner.

Time and again, the Court has held that suppression of evidence, regardless of its nature, is enough to violate the due process rights of the accused.[52] In the present case, it was not only the prosecution's evidence which was withheld from petitioner. In denying petitioner Labay's multiple requests for copies of the complaint affidavit, the Ombudsman deprived him of his right to sufficiently and reasonably know the charges and accusations against him. This is a patent violation of his constitutional right to due process.

Based on the foregoing, the Ombudsman's failure to furnish petitioner Labay with copies of the complaint affidavit and its supporting documents despite the latter's numerous attempts and requests to secure the same is more severe as it gravely endangers petitioner's right to liberty through no fault of his own. Undeniably, petitioner Labay's receipt of the May 10, 2016 Resolution is not equivalent to receipt of the complaint affidavit and its supporting documents

E. Arrest (Rule 113)

F. Bail (Rule 114)

RAMON "BONG" B. REVILLA, JR., *Petitioner,* -versus – SANDIGANBAYAN (FIRST DIVISION) and PEOPLE OF THE PHILIPPINES, *Respondents.*
G.R. No. 218232, EN BANC, July 24, 2018, CARPIO, J.

RICHARD A. CAMBE, *Petitioner,* -versus – SANDIGANBAYAN (FIRST DIVISION), PEOPLE OF THE PHILIPPINES, and OFFICE OF THE OMBUDSMAN, *Respondents.*
G.R. No. 218235, EN BANC, July 24, 2018, CARPIO, J.

JANET LIM NAPOLES, *Petitioners,* -versus – SANDIGANBAYAN (FIRST DIVISION), CONCHITA CARPIO MORALES, IN HER CAPACITY AS OMBUDSMAN, and PEOPLE OF THE PHILIPPINES, *Respondents.*
G.R. No. 218266, EN BANC, July 24, 2018, CARPIO, J.

PEOPLE OF THE PHILIPPINES, *Petitioners,* -versus – SANDIGANBAYAN (FIRST DIVISION), RAMON "BONG" B. REVILLA, JR., and RICHARD A. CAMBE, *Respondents.*
G.R. No. 218903, EN BANC, July 24, 2018, CARPIO, J.

PEOPLE OF THE PHILIPPINES, *Petitioners,* -versus – SANDIGANBAYAN (FIRST DIVISION), RAMON "BONG" B. REVILLA, JR., and RICHARD A. CAMBE, *Respondents.*
G.R. No. 218903, EN BANC, July 24, 2018, CARPIO, J.

RAMON "BONG" B. REVILLA, JR., *Petitioners,* -versus – SANDIGANBAYAN (FIRST DIVISION), and PEOPLE OF THE PHILIPPINES, *Respondents.*
G.R. No. 219162, EN BANC, July 24, 2018, CARPIO, J.

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

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

The grant or denial of bail in an offense punishable by reclusion perpetua, such as plunder, hinges on the issue of whether or not the evidence of guilt of the accused is strong. This requires the conduct of bail hearings.

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

> *"THE FIRST ELEMENT.* ***Accused Revilla and Cambe were public officers*** *at the time material to this case, accused Revilla being a member of the Senate of the Philippines, and accused Cambe being Revilla's Chief of Staff/Political Officer/Director III."*
>
> *"THE SECOND ELEMENT. The Court is persuaded that the prosecution has presented compelling evidence that accused Revilla amassed, accumulated or acquired ill-gotten wealth* ***by repeatedly receiving from accused Napoles or her representatives or agents, money, through accused Cambe****, and in those several occasions, accused Revilla and/or Cambe* ***made use of his or their official position, authority, connections, and influence.*** *This was established by the testimonies of the witnesses and the documents they testified to which, at this stage of the proceedings, [have] remained unrebutted, and thus, given full faith and credence by the Court."*
>
> *"THE THIRD ELEMENT. Of the Php224,512,500.00 alleged in the Information to have been plundered by accused Revilla and/or Cambe,* ***the prosecution has so far strongly proven the amount of P103,000,000.00*** *broken down below…"*

For purposes of bail, the court does not try the merits or enter into any inquiry as to the weight that ought to be given to the evidence against the accused, nor will it speculate on the outcome of the trial

or on what further evidence may be offered therein. We find that the Sandiganbayan was far from abusive of its discretion. On the contrary, its findings were based on the evidence extant in the records.

FACTS:

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

The Sandiganbayan issued warrants of arrest against Revilla, Cambe, and Napoles. On the same day, Revilla voluntarily surrendered to the Philippine National Police (PNP) and filed a Motion to Elect Detention Facilities Ad Cautelam praying for his detention at the PNP Custodial Center in Camp Crame. On 20 June 2014, Cambe also voluntarily surrendered to the Sandiganbayan.

The Sandiganbayan ordered the turnover of Revilla and Cambe to the PNP-CIDG, Camp Crame.

G.R. Nos. 218232, 218235 and 218266

Revilla filed a Petition for Bail Ad Cautelam dated 20 June 2014; Cambe filed an Application for Bail 15 dated 23 June 2014; and Napoles filed a Joint Petition for Bail dated 25 June 2014, together with co-accused Lim and De Asis. Thereafter, the Sandiganbayan conducted the bail hearings for Revilla, Cambe, and Napoles. The Sandiganbayan summarized the prosecution's evidence:

> "From 2007 to 2009, accused Revilla was allocated and utilized [Priority Development Assistance Fund (PDAF)] in the total amount of P517,000,000.00, covered by twelve (12) [Special Allotment Release Orders (SAROs)], for livelihood and agricultural projects. Revilla endorsed five (5) of Napoles' [non-governmental organization (NGOs)] as project partners.
>
> Upon release of the SARO, documents like letters signed by accused Revilla indorsing accused Napoles' NGO, MOAs signed by accused Cambe, project proposal, and foundation profile, were submitted to the IA. Subsequently, the IA released a check in the name of the NGO endorsed by Revilla. Accused Napoles had either the president of the payee NGO or anybody from his trusted employees receive the check. Accused Napoles' representative signed the IA voucher and, in return, issued a receipt to the IA in the name of the foundation. The check was then deposited to the account of the payee foundation. After it was cleared, accused Napoles had her trusted employees withdraw the proceeds of the check. The money was brought to accused Napoles, usually to her office and was disposed of at her will or upon her instruction. Part of the proceeds was used to pay the commissions of accused Revilla and Cambe.
>
> Accused Napoles' share was pegged at 32% and 40%, depending on the IA, and she used it to buy dollars and to acquire properties in the Philippines and abroad. She also made deposits in a foreign account to support her daughter Jean and accused Napoles' brother Reynald Lim in the US. To make it appear that there were implementations of the projects for which accused Revilla's PDAFs were intended, the NGOs submitted liquidation documents which were just fabricated, having only signed by Napoles' employees, children, household helpers, drivers, and security guards."

The Sandiganbayan thereafter admitted all the documentary exhibits of Revilla, Cambe, and Napoles except for Exhibits 273 to 277 of Revilla. The Sandiganbayan thereafter denied the separate

applications for bail filed by Revilla, Cambe, and Napoles. The Sandiganbayan held that the prosecution duly established with strong evidence that Revilla, Cambe, and Napoles, in conspiracy with one another, committed the crime of plunder.

Thus, Revilla, Cambe, and Napoles filed their separate petitions for certiorari assailing the Resolutions of the Sandiganbayan before this Court.

G.R. No. 218903

The Office of the Ombudsman, through the Office of the Special Prosecutor, filed a Motion to Transfer the Place of Detention of Accused Revilla, Cambe, and Napoles to the Bureau of Jail Management and Penology (BJMP) facility in Camp Bagong Diwa or other similar facilities of the BJMP. The motion states that the PNP Custodial Center is not a detention facility within the supervision of BJMP under RA 6975 and their continued detention in a non-BJMP facility affords them special treatment.

The Sandiganbayan denied the motion for failure to advance justifiable grounds for Revilla and Cambe's transfer. Thus, the Office of the Ombudsman, through the Office of the Special Prosecutor, filed a petition for certiorari before us.

G.R. No. 219162

The Office of the Ombudsman, through the Office of the Special Prosecutor, filed an Ex Parte Motion for Issuance of Writ of Preliminary Attachment/Garnishment against the monies and properties of Revilla to serve as security for the satisfaction of the amount of P224,512,500.00 alleged as ill-gotten wealth, in the event that a judgment is rendered against him for plunder.

In a Resolution dated 5 February 2015, the Sandiganbayan granted the prosecution's motion upon finding of its sufficiency both in form and substance. Thus, the Sandiganbayan issued a Writ of Attachment directed to the Acting Chief, Sheriff and Security Services of the Sandiganbayan.

Thus, Revilla filed a petition for certiorari before us assailing the Sandiganbayan Resolutions.

ISSUES:

(I) Whether or not the Sandiganbayan committed grave abuse of discretion amounting to lack or excess of jurisdiction in denying bail to Cambe and Napoles, who are charged with the crime of plunder, after finding strong evidence of their guilt. (NO)

(II) Whether or not the Sandiganbayan committed grave abuse of discretion amounting to lack and/or excess of jurisdiction when it denied the prosecution's motion to transfer the detention of Revilla and Cambe from the PNP Custodial Center to a BJMP-operated facility. (NO)

(III) Whether the Sandiganbayan committed grave abuse of discretion amounting to lack or excess of jurisdiction in ordering the issuance of the writ of preliminary attachment against Revilla's monies and properties. (NO)

RULING:

(I)

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

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

The grant or denial of bail in an offense punishable by reclusion perpetua, such as plunder, hinges on the issue of whether or not the evidence of guilt of the accused is strong. This requires the conduct of bail hearings. In the present case, we find that the Sandiganbayan did not abuse its discretion amounting to lack or excess of jurisdiction when it denied bail to Cambe and Napoles, upon a finding of strong evidence that they committed the crime of plunder in conspiracy with one another.

Plunder, defined and penalized under Section 2 of RA 7080, as amended, has the following elements: (a) that the offender is a public officer, who acts by himself or in connivance with members of his family, relatives by affinity or consanguinity, business associates, subordinates or other persons; (b) that he amasses, accumulates or acquires ill-gotten wealth through a combination or series of overt or criminal acts described in Section 1 (d) hereof; and (c) that the aggregate amount or total value of the ill-gotten wealth amassed, accumulated or acquired is at least Fifty Million Pesos (P50,000,000.00).

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

> "THE FIRST ELEMENT. Accused Revilla and Cambe were public officers at the time material to this case, accused Revilla being a member of the Senate of the Philippines, and accused Cambe being Revilla's Chief of Staff/Political Officer/Director III."
>
> "THE SECOND ELEMENT. The Court is persuaded that the prosecution has presented compelling evidence that accused Revilla amassed, accumulated or acquired ill-gotten wealth by repeatedly receiving from accused Napoles or her representatives or agents, money, through accused Cambe, and in those several occasions, accused Revilla and/or Cambe made use of his or their official position, authority, connections, and influence. This was established by the testimonies of the witnesses and the documents they testified to which, at this stage of the proceedings, [have] remained unrebutted, and thus, given full faith and credence by the Court."
>
> "THE THIRD ELEMENT. Of the Php224,512,500.00 alleged in the Information to have been plundered by accused Revilla and/or Cambe, the prosecution has so far strongly proven the amount of P103,000,000.00 broken down below…"

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

In finding strong evidence of guilt against Cambe, the Sandiganbayan considered the PDAF documents and the whistleblowers' testimonies in finding that Cambe received, for Revilla, the total amount of P103,000,000.00, in return for Revilla's endorsement of the NGOs of Napoles as the recipients of Revilla's PDAF. In finding strong evidence of guilt against Napoles, the Sandiganbayan considered the AMLC Report, as attested by witness Santos, stating that Napoles controlled the NGOs, which were the recipients of Revilla's PDAF.

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

As for the weight given by the Sandiganbayan to whistleblowers' testimonies, expert's testimony, AMLC report, the hard disk, disbursement ledger and summary of rebates, we emphasize that for purposes of bail, the court does not try the merits or enter into any inquiry as to the weight that ought to be given to the evidence against the accused, nor will it speculate on the outcome of the trial or on what further evidence may be offered therein. We find that the Sandiganbayan was far from abusive of its discretion. On the contrary, its findings were based on the evidence extant in the records.

(II)

The Rules of Court provide that an arrest is the taking of a person into custody in order that he may be bound to answer for the commission of an offense. An arrest is made by an actual restraint of a person to be arrested, or by his submission to the custody of the person making the arrest.

In the present case, both Revilla and Cambe voluntarily surrendered to the Sandiganbayan. The Sandiganbayan thereafter allowed both Revilla and Cambe to be detained in the PNP Custodial Center barracks. When by law jurisdiction is conferred on a court, all auxiliary writs, processes and other means necessary to carry it into effect may be employed by such court. Accordingly, the Sandiganbayan acted within its jurisdiction and did not abuse its discretion in ordering the commitment of Revilla and Cambe in the PNP Custodial Center.

Aside from its bare statements, the prosecution did not advance compelling reasons to justify the transfer of detention of Revilla and Cambe. The prosecution likewise failed to substantiate its allegation of special treatment towards Revilla. Absent any showing of grave abuse of discretion, the factual findings of the Sandiganbayan are binding upon the Court. We affirm the order of the Sandiganbayan directing the PNP-CIDG "to keep the accused in its custody at the aforesaid barracks (PNP Custodial Center Barracks) and not allow the accused to be moved, removed, or relocated until further orders from the court."

(III)

The grounds for the issuance of the writ of preliminary attachment have been provided in Rule 57 and Rule 127 of the Rules of Court.

Rule 127 states that the provisional remedy of attachment on the property of the accused may be availed of to serve as security for the satisfaction of any judgment that may be recovered from the accused when the criminal action is based on a claim for money or property embezzled or fraudulently misapplied or converted to the use of the accused who is a public officer, in the course of his employment as such, or when the accused has concealed, removed or disposed of his property

or is about to do so. Similarly, Rule 57 provides that attachment may issue: "x x x (b) in an action for money or property embezzled or fraudulently misapplied or converted to his own use by a public officer x x x; (c) in an action to recover the possession of property unjustly or fraudulently taken, detained or converted, when the property, or any part thereof, has been concealed, removed, or disposed of to prevent its being found or taken by the applicant or an authorized person"

It is indispensable for the writ of preliminary attachment to issue that there exists a **prima facie factual foundation** for the attachment of properties, and an adequate and fair opportunity to contest it and endeavor to cause its negation or nullification.

Thus, for the ex-parte issuance of a writ of preliminary attachment to be valid, an affidavit of merit and an applicant's bond must be filed with the court in which the action is pending. The mere filing of an affidavit reciting the facts required by Section 3, however, is not enough to compel the judge to grant the writ of preliminary attachment. Whether or not the affidavit sufficiently established facts therein stated is a question to be determined by the court in the exercise of its discretion.

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

The prosecution's evidence established a prima facie case for plunder against Revilla:

> "The COA and FIO reports tend to prima facie establish that irregularities had indeed attended the disbursement of Sen. Revilla's PDAF and that he had a hand in such anomalous releases, being the head of Office which unquestionably exercised operational control thereof. As the Ombudsman correctly observed, "[t]he PDAF was allocated to him by virtue of his position as a Senator, and therefore he exercise[d] control in the selection of his priority projects and programs. He indorsed [Napoles'] NGOs in consideration for the remittance of kickbacks and commissions from Napoles. Compounded by the fact that the PDAF-funded projects turned out to be 'ghost projects,' and that the rest of the PDAF allocation went into the pockets of Napoles and her cohorts, [there is probable cause to show that] Revilla thus unjustly enriched himself at the expense and to the damage and prejudice of the Filipino people and the Republic of the Philippines."

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

In Davao Light & Power Co., Inc. v. Court of Appeals, this Court ruled that "a hearing on a motion or application for preliminary attachment is **not generally necessary** unless otherwise directed by the trial court in its discretion."

In any case, Revilla was given an adequate and fair opportunity to contest its issuance. Also, contrary to Revilla's allegation, there is no need for a final judgment of ill-gotten wealth, and a preliminary

attachment is entirely different from the penalty of forfeiture imposed upon the final judgment of conviction under Section 2 of RA 7080.

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

EXTRA EXCEL INTERNATIONAL PHILIPPINES, INC., represented by ATTY. ROMMEL -versus-OLIVA, Complainant vs. HON. AFABLE E. CAJIGAL, Presiding Judge, Regional Trial Court, Branch 96, Quezon City, Respondent. A.M. No. RTJ-18-2523 *(Formerly OCA I.P.I No. 14-4353-RTJ),* FIRST DIVISION, June 06, 2018, DEL CASTILLO, *J.*

Basic is the principle that upon setting a case for arraignment, the accused must have either been in the custody of the law or out on bail. Another basic principle is that the judge must conduct his own personal evaluation of the facts and circumstances which gave rise to the indictment.

Indeed, in the present case, respondent Judge should not have waited for the accused to file an omnibus motion for a judicial determination of probable cause. As this Court held in Leviste v. Hon. Alameda, ***"[t]o move the court to conduct a judicial determination of probable cause is a mere superfluity, for with or without such motion, the judge is duty-bound to personally evaluate the resolution of the public prosecutor and the supporting evidence."*** *Thus, the failure of respondent Judge to comply with this fundamental precept constituted gross ignorance of the law and procedure. His failure to heed this precept resulted in the said accused's arraignment, without the accused in custody of the law.*

FACTS: This is an administrative complaint[1] for gross ignorance of the law, gross inefficiency, grave abuse of authority, and evident partiality filed by complainant Extra Excel International Philippines, Inc., through its representative Atty. Rommel V. Oliva (Atty. Oliva), against respondent Judge Afable E. Cajigal, relative to *People of the Philippines v. Ike R. Katipunan*, a criminal case.

ISSUE: Whether or not respondent Judge guilty of gross ignorance of the law, gross inefficiency, grave abuse of authority, and evident partiality. (ANSWER MUST BE QUALIFIED)

RULING:

I. **We agree with the OCA that respondent Judge's act of granting the accused's Motion for Preliminary Investigation did not constitute gross ignorance of the law.**

While the Order granting the Motion for Preliminary Investigation may not be proper inasmuch as respondent Judge based the Order on accused's bare allegation of non-receipt of notice from the Office of the Prosecutor, we opine that the same did not necessarily amount to gross ignorance of the law. **There was no showing that respondent Judge issued the Order because of the promptings of fraud, dishonesty, corruption, malice, ill-will, bad faith or a deliberate intent to do injustice.** Indeed, it is axiomatic that not all erroneous acts of judges are subject to disciplinary action. X XX

However, we do not concur with the evaluation of the OCA that respondent Judge did not err in allowing the accused to go home after his arraignment. We are neither persuaded by respondent

Judge's claim that there was no reason for him to detain the accused since there was yet no warrant issued for his arrest or that a petition for bail had been filed. **Basic is the principle that upon setting a case for arraignment, the accused must have either been in the custody of the law or out on bail.Another basic principle is that the judge must conduct his own personal evaluation of the facts and circumstances which gave rise to the indictment**, pursuant to Section 5, Rule 112 of the Rules of Court and Section 2, Article III of the 1987 Constitution.

Indeed, in the present case, respondent Judge should not have waited for the accused to file an omnibus motion for a judicial determination of probable cause. As this Court held in *Leviste v. Hon. Alameda,* **"[t]o move the court to conduct a judicial determination of probable cause is a mere superfluity, for with or without such motion, the judge is duty-bound to personally evaluate the resolution of the public prosecutor and the supporting evidence."** Thus, the failure of respondent Judge to comply with this fundamental precept constituted gross ignorance of the law and procedure. His failure to heed this precept resulted in the said accused's arraignment, without the accused in custody of the law.

Likewise in point is this Court's teaching in *Guillen v. Judge Nicolas,* where it was stressed that:

[B]y setting the cases for arraignment and trial, respondent judge must have found probable cause to hold the accused for trial. [The judge] should have proceeded to examine in writing and under oath the complainants and (the] witnesses by searching questions and answers. The records do not show that the [judge] set the case for, or conducted, such examination preparatory to issuing a warrant of arrest. Neither [was) there any subpoena or order requiring the complainants or [the] witnesses to appear in court for such examination. The inevitable conclusion is that the respondent judge skipped this procedure.

II. In addition,respondent Judge's failure to conduct a hearing on accused's Petition for Bail constitutes gross ignorance of the law.

…[I]n *Villanueva v. Judge Buaya,* therein respondent judge was held administratively liable for gross ignorance of the law for granting an *ex parte* motion for bail without conducting a hearing. Stressing the necessity of bail hearing, this Court pronounced that:

The Court has always stressed the indispensable nature of a bail hearing in petitions for bail. Where bail is a matter of discretion, the grant or the denial of bail hinges on the issue of whether or not the evidence on the guilt of the accused is strong and the determination of whether or not the evidence is strong is a matter of judicial discretion which remains with the judge. In order for the judge to properly exercise this discretion, [the judge] must first conduct a hearing to determine whether the evidence of guilt is strong. This discretion lies not in the determination of whether or not a hearing should be held, but in the appreciation and evaluation of the weight of the prosecution's evidence of guilt against the accused.

In any event, whether bail is a matter of right or discretion, a hearing for a petition for bail is required in order for the court to consider the guidelines set forth in Section 9, Rule 114 of the Rules of Court in fixing the amount of bail. This Court has repeatedly held in past cases that even if the prosecution fails to adduce evidence in opposition to an application for bail of an accused, the court may still require the prosecution to answer questions in order to ascertain, not only the strength of the State's evidence, but also the adequacy of the amount of bail.

Hence, it is altogether of no consequence that the Order granting bail "was made in the presence of the public prosecutor, and the latter made no objection or comment to the oral manifestation of the defense counsel."

III. We agree with the OCA' s finding that respondent Judge was inefficient in failing to resolve the motion for issuance of a hold departure order despite the lapse of 90 days.

We find his contention, that "there is no need to issue an HDO order [sic] because a Hold Departure Order (HDO) is based on sound judgment and judicial discretion of a Judge," unmeritorious. While it is true that the law gives respondent Judge considerable discretion whether to issue or not to issue a hold departure order, this grant of considerable discretion in no wise or manner means that respondent Judge need not resolve at all the pending motion.

Respondent Judge ought to know the difference between a judge's discretionary power to issue a hold departure order and his mandatory duty to resolve all kinds of motions within 90 days. Section 15, Article VIII of the Constitution mandates that all cases and matters must be decided or resolved by the lower courts within three (3) months or ninety (90) days from date of submission. In addition, Section 5, Canon 6 of the New Code of Conduct for the Philippine Judiciary directs judges to "perform all judicial duties, including the delivery of reserved decisions, efficiently, fairly and with reasonable promptness." Suppletorily, Rule 3.05, Canon 3 of the Code of Judicial Conduct likewise mandates:

Rule 3.05. - A judge shall dispose of the court's business promptly and decide cases within the required periods.

X XX

Thus, respondent's failure to resolve complainant's motion to issue a hold departure order constitutes gross inefficiency which warrants the imposition of an administrative sanction.

IV.We are not at all prepared to conclude that respondent Judge's denial of complainant's motion for inhibition and rescheduling the redirect examination of the prosecution's witness to an earlier date amounted to bias and partiality.

X XX

Complainant's motion for inhibition was based on (1) respondent's failure to resolve the motion to issue a hold departure order; (2) the grant of a preliminary investigation and in view of the appellate court's finding of grave abuse of discretion; (3) allowing the accused to go home after arraignment; and (4) granting bail without the conduct of a bail hearing. **While three of the four grounds stated therein are grounds for respondent Judge's administrative liability, these do not necessarily equate to bias or partiality.** Respondent Judge's reasons behind *his* actuations seem to be more a manifestation of respondent's errors in judgment rather than "bias which excites a disposition to see and report matters as they are wished for rather than as they are. "

V. Neither is respondent's Order dated December 15, 2014, setting the case for earlier dates than previously agreed indicative of bias and partiality.

In light of respondent Judge's claim that he issued the said order to promote a speedy trial, *i.e.,* that the prosecution be allowed at least to complete the presentation of its evidence prior to his retirement, so that his successor need only continue hearing the defense's evidence, this Court finds complainant's accusation in this respect quite untenable and respondent's stance more in keeping with the accused's right to speedy trial under Section 16, Article Ill of the 1987 Constitution.

VI. Finally, there is no merit in the contention of respondent Judge that Atty. Oliva lacks personality to file this administrative complaint because he was not the counsel of record of complainant in the criminal case for qualified theft.

First, we are not aware of any rule that one must be a counsel of record in another case before an administrative complaint can be filed or prosecuted. Second, contrary to the assertion of respondent Judge, Atty. Oliva was one of the counsels of record of the complainant in the qualified theft case. An examination of the records reveals that complainant was being represented by Oliva Finne and Associates Law Firm, with Atty. Malapitan as the handling lawyer.

In sum, we find respondent Judge guilty of gross ignorance of the law and procedure in failing to make a judicial determination of probable cause and in failing to conduct a hearing on the accused's application for bail in Criminal Case No. RQZN- 13-00488-CR, and gross inefficiency in failing to resolve complainant's motion for issuance of a hold departure order.

Incidentally, this is not the first time respondent Judge is being administratively sanctioned. In *Dulalia v. Judge Cajigal,* this Court had already admonished respondent Judge for his undue delay in resolving motions.

By and large, however, we take a holistic approach in the present case and we accord compassion and charity towards respondent Judge who appeared to have spent the best years of his professional life in the Judiciary. More than that, considering respondent Judge's retirement from the service on December 29, 2014, this Court believes that the imposition of a fine in the amount of ₱20,000.00 is appropriate and fair.

JANET LIM NAPOLES, *Petitioner,* -versus – SANDIGANBAYAN (THIRD DIVISION), *Respondent.*
G.R. No. 224162, EN BANC, February 6, 2018, REYES, JR., *J.*

In a demurrer to evidence, as in the case of Macapagal-Arroyo, the accused imposes a challenge on the sufficiency of the prosecution's entire evidence. The stage at which the accused may demur to the sufficiency of the prosecution's evidence is during the trial on the merits itself — particularly, after the prosecution has rested its case. ***This should be distinguished from the hearing for the petition for bail, in which the trial court does not sit to try the merits of the main case.***

The distinction between the required standards of proof precludes the application of Macapagal-Arroyo to the present case. ***The Sandiganbayan's denial of the demurrer to evidence in Macapagal-Arroyo was annulled based on the paucity of the evidence of the prosecution****, which failed to prove beyond reasonable doubt that former President GMA was the mastermind of the conspiracy to commit plunder. In other words, th****ere was a final determination of former President GMA's innocence*** *of the crime*

charged. ***This is not the case for Napoles. The issue that the Court resolved in its Decision dated November 7, 2017 was whether the Sandiganbayan gravely abused its discretion in denying Napoles' application for bail.*** *This involved a preliminary determination of her eligibility to provisional liberty.*

FACTS:

On December 20, 2017, petitioner Janet Lim Napoles (Napoles) filed a motion for the reconsideration of the Court's Decision dated November 7, 2017. The assailed decision of this Court upheld the Sandiganbayan's Resolutions dated October 16, 2015 and March 2, 2016 denying Napoles' application for bail, there being no grave abuse of discretion amounting to lack or excess of jurisdiction on the part of the Sandiganbayan.

Napoles now invokes the ruling in Macapagal-Arroyo v. People, which was promulgated on July 19, 2016. The Court in that case reversed the Sandiganbayan's denial of the demurrer to evidence in the plunder case against former President Gloria Macapagal-Arroyo (GMA) based on the prosecution's failure to specify the identity of the main plunderer, for whose benefit the ill-gotten wealth was amassed, accumulated, and acquired. According to Napoles, the ruling in Macapagal-Arroyo should have been applied to her case.

ISSUE:

Whether or not the ruling in Macapagal-Arroyo should be applied to the instant case. (NO)

RULING:

In a demurrer to evidence, as in the case of Macapagal-Arroyo, the accused imposes a challenge on the sufficiency of the prosecution's entire evidence. The stage at which the accused may demur to the sufficiency of the prosecution's evidence is during the trial on the merits itself — particularly, after the prosecution has rested its case. **This should be distinguished from the hearing for the petition for bail, in which the trial court does not sit to try the merits of the main case.** Neither does it speculate on the ultimate outcome of the criminal charge.

The Court has previously discussed in our Decision dated November 7, 2017 that the trial court is required to conduct a hearing on the petition for bail whenever the accused is charged with a capital offense. While mandatory, the hearing may be summary and the trial court may deny the bail application on the basis of evidence less than that necessary to establish the guilt of an accused beyond reasonable doubt. In this hearing, the trial court's inquiry is limited to whether there is evident proof that the accused is guilty of the offense charged. This standard of proof is clearly different from that applied in a demurrer to evidence, which measures the prosecution's entire evidence against the required moral certainty for the conviction of the accused.

The distinction between the required standards of proof precludes the application of Macapagal-Arroyo to the present case. The Sandiganbayan's denial of the demurrer to evidence in Macapagal-Arroyo was annulled based on the paucity of the evidence of the prosecution, which failed to prove beyond reasonable doubt that former President GMA was the mastermind of the conspiracy to commit plunder. In other words, there was a final determination of former President GMA's innocence of the crime charged. This is not the case for Napoles. The issue that the Court resolved in

its Decision dated November 7, 2017 was whether the Sandiganbayan gravely abused its discretion in denying Napoles' application for bail. This involved a preliminary determination of her eligibility to provisional liberty.

The resolution of this issue does not involve an inquiry as to whether there was proof beyond reasonable doubt that Napoles, or her co-accused as the case may be, was the main plunderer for whose benefit the ill-gotten wealth was amassed or accumulated. These are matters of defense best left to the discretion of the Sandiganbayan in the resolution of the criminal case. It was sufficient that the denial of her bail application was based on evidence establishing a great presumption of guilt on the part of Napoles.

G. Arraignment and plea (Rule 116)

H. Motion to quash (Rule 117)

PEOPLE OF THE PHILIPPINES, ***Plaintiff-Appellee***, **-versus-JOEL DOMINGO,*Accused-Appellant*.**
G.R. No. 204895, SECOND DIVISION, March 21, 2018, CAGUIOA, *J.*

In Salcedo v. Mendoza, the Court held: ***The moment the dismissal of a criminal case is predicated on the right of the accused to speedy trial, even if it is upon his own motion or express consent, such dismissal is equivalent to acquittal. And any attempt to prosecute the accused for the same offense will violate the constitutional prohibition that "no person shall be twice put in jeopardy of punishment for the same offense.*** *The Court reiterates and applies Salcedo. The dismissal of the cases in the February Order, predicated on the violation of the right of accused-appellant to a speedy trial, amounted to an acquittal which bars another prosecution of accused-appellant for the same offense. Thus, when the RTC reconsidered its February Order in its June Order, the RTC placed accused-appellant twice in jeopardy for the same offense and acted with grave abuse of discretion.*

Facts

Three Informations— two counts of the crime of Murder and one count of Attempted Murder—were filed against accused-appellant. The three cases were originally raffled to Branch 15 of the Regional Trial Court (RTC) of Laoag City. Subsequently, the accused through counsel filed a Motion praying for the re-raffle of these cases to another branch since proceedings had not gone beyond the pre-trial stage although they had been detained for more than a year. The Motion was granted by Branch 15, and the cases were re-raffled to Branch 14 of the same Court.

Pre-trial conference ensued. There, it was agreed that the prosecution would present its evidence in four settings of a joint trial. **The prosecution failed to present a single witness in each of those four settings. Thus, the Court in an Order dated February 7,2007 dismissed the cases and directed the release of the two accused.**

On February 14, 2007, the Office of the Provincial Prosecutor filed a Motion for Reconsideration, claiming that notices to the prosecution witnesses had not been served because they constantly transferred to other places due to persistent threats to their lives as a result of these cases. The Court granted the Motion for Reconsideration, reasoning that "the State in the present cases was deprived of its right to due process, for it was not given a fair opportunity to present its witnesses. Accordingly,

double jeopardy cannot bar the reconsideration of the assailed Order, and due process mandates that the prosecution be allowed to present its witnesses."

Accused Joel Domingo was rearrested. Thereafter, the prosecution presented its evidence.

The RTC convicted accused-appellant. The CA Decision affirmed the Joint Judgment rendered by the RTC, which found accused-appellant Joel Domingo guilty of two counts of the crime of Murder and one count of Attempted Murder.

ISSUE:

Whether or not the reconsideration by the RTC of its order of dismissal placed the accused-appellant twice in jeopardy for the same offense (YES)

RULING:

To determine whether accused-appellant's right to speedy trial was violated, "four factors must be considered: (a) length of delay; (b) the reason for the delay; (c) the defendant's assertion of his right; and (d) prejudice to the defendant."

Prejudice to the accused is determined through its effect on three interests of the accused that the right to a speedy trial is designed to protect, which are: "(i) to prevent oppressive pretrial incarceration; (ii) to minimize anxiety and concern of the accused; and (iii) to limit the possibility that the defense will be impaired."

Accused-appellant was arrested on March 3, 2005. Thus, at the time of the first setting for the prosecution's presentation of evidence, he had already been incarcerated for almost two years. As earlier stated, accused-appellant had in fact moved for the re-raffle of the case on August 10, 2006 because of the delay in the setting of the pre-trial conference which was finally granted by the judge. Accused-appellant was therefore prejudiced when the prosecution failed to present its evidence during all the settings that were given to it.

The prejudice to the accused arising from incarceration or anxiety from criminal prosecution should be weighed against the due process right of the State — which is its right to prosecute the case and prove the criminal liability of the accused for the crime charged. For the State to sustain its right to prosecute despite the existence of a delay, the following must be present: "(a) that the accused suffered no serious prejudice beyond that which ensued from the ordinary and inevitable delay; and (b) that there was no more delay than is reasonably attributable to the ordinary processes of justice."

The RTC's dismissal of the cases in its February Order was justified. Again, the public prosecutor had at least a month from the date of the pre-trial to the date of the initial presentation of evidence to contact and prepare any of his witnesses. Further, the prosecution witnesses knew of at least three of the hearing dates as they received copies of the notices and subpoenas. The Provincial Police were likewise notified of the proceedings. The excuse of the witnesses about the fear for their lives is also unsubstantiated and it was incumbent upon them to inform the RTC and the public prosecutor of their new addresses. In fact, after the dismissal of the cases, they went to the public prosecutor voluntarily. They could have done so anytime from the pre-trial until the last day given to the prosecution to present evidence. All this time, accused-appellant was incarcerated and deprived of his freedom.

The RTC had also repeatedly reminded the prosecution that it should present its evidence on the dates it was given and to which it had agreed during pre-trial. The RTC aided the prosecution by issuing subpoenas to the witnesses, which some of them received. Again, the Provincial Police was even notified. The totality of the foregoing circumstances show that the State was given more than a fair opportunity to present its case.

In instances where the State has been given every opportunity to present its evidence, yet it failed to do so, it cannot claim to have been deprived of a fair opportunity to present its evidence. **Such failure and the resulting dismissal of the case is deemed an acquittal of the accused even if it is the accused who moved for the dismissal of the case.** This is the Court's ruling in a series of cases outlined in *Salcedo v. Mendoza*, (*Salcedo*) where the Court held as follows:

In the present case, the respondent Judge dismissed the criminal case, upon the motion of the petitioner invoking his constitutional right to speedy trial because the prosecution failed to appear on the day of the trial on March 28, 1978 after it had previously been postponed twice, the first on January 25, 1978 and the second on February 22, 1978.

The effect of such dismissal is at once clear. **Following the established jurisprudence, a dismissal predicated on the right of the accused to speedy trial upon his own motion or express consent, amounts to an acquittal which will bar another prosecution of the accused for the same offense.** This is an exception to the rule that a dismissal, upon the motion or with the express consent of the accused, will not be a bar to the subsequent prosecution of the accused for the same offense as provided for in Section 9, Rule 117 of the Rules of Court. **The moment the dismissal of a criminal case is predicated on the right of the accused to speedy trial, even if it is upon his own motion or express consent, such dismissal is equivalent to acquittal. And any attempt to prosecute the accused for the same offense will violate the constitutional prohibition that "no person shall be twice put in jeopardy of punishment for the same offense"** (New Constitution, Article IV, Sec. 22). (Emphasis supplied)

The Court reiterates and applies Salcedo. The dismissal of the cases in the February Order, predicated on the violation of the right of accused-appellant to a speedy trial, amounted to an acquittal which bars another prosecution of accused-appellant for the same offense. Thus, when the RTC reconsidered its February Order in its June Order, the RTC placed accused-appellant twice in jeopardy for the same offense and acted with grave abuse of discretion.

PEOPLE OF THE PHILIPPINES,*Petitioner*,-versus-HONORABLE SANDIGANBAYAN (FOURTH DIVISION) AND CAMILO LOYOLA SABIO, ***Respondents*.**G.R. Nos. 228494-96, SECOND DIVISION, March 21, 2018, REYES, JR., *J.*

Premised on the following factual findings and conclusion, the Court finds no indication that the Sandiganbayan gravely abused its discretion when it gave a verdict of acquittal in favor of Sabio. The "grave abuse of discretion" contemplated by law involves a capricious or whimsical exercise of judgment as is equivalent to lack of jurisdiction. Petitioner failed to discharge the burden that Sandiganbayan blatantly abused its discretion in acquitting Sabio such that it was deprived of its authority to dispense justice.

An action for certiorari does not correct errors of judgment but only errors of jurisdiction. The nature of a Rule 65 petition does not entail a review of facts and law on the merits in the manner done in an appeal. Misapplication of facts and evidence, and erroneous conclusions based on evidence do not, by the mere fact that errors were committed, rise to the level of grave abuse of discretion. Even granting that the Sandiganbayan erred in weighing the sufficiency of the prosecution's evidence, such error does not necessarily amount to grave abuse of discretion.

FACTS:

Sabio, the then Chairperson of the Presidential Commission on Good Government (PCGG) with Salary Grade 30, was charged before the Sandiganbayan with (a) one count for violation of Section 3(e) of Republic Act No. 3019, as amended, otherwise known as the Anti-Graft and Corrupt Practices Act; and (b) two counts for Malversation of Public Funds as defined and penalized under Article 217[5] of the Revised Penal Code.

Upon arraignment, Sabio entered a plea of not guilty on all the three charges filed against him. After the termination of the pre-trial conference and compliance with the pre-trial order, the trial ensued between the parties.

The Sandiganbayan rendered the assailed Decision, acquitting Sabio from the charges on the ground of insufficiency of evidence. The petitioner filed its motion for reconsideration which was denied. Hence, the present petition for *certiorari.*

Petitioner argued that the petition does not place the accused at risk of double jeopardy. Though it has long been settled that the prosecution cannot appeal a decision to reverse an acquittal, the same may be questioned in an action for *certiorari* when a judgment was tainted with grave abuse of discretion amounting to lack or excess of jurisdiction, thus rendering the assailed judgment void. The petitioner argued on Sandiganbayan's capricious disregard that there was indeed a misappropriation of the money which should have been remitted to the BOT. Moreover, Sandiganbayan failed to take in consideration Sabio's blatant failure to liquidate the cash advances he received by virtue of his position as PCGG's Chairperson.

ISSUE:

Whether or not the filing of the petition for *certiorari* violated Sabio's right against double jeopardy (YES)

RULING:

The constitutionally guaranteed right against double jeopardy is enshrined in the Bill of Rights under the 1987 Constitution.This right was further embodied in Section 7 of Rule 117 of the Rules of Court on Criminal Procedure, to wit:

Sec. 7. *Former conviction or acquittal; double jeopardy*. - When an accused has been convicted or acquitted, or the case against him dismissed or otherwise terminated without his express consent by a court of competent jurisdiction, upon a valid complaint or information or other formal charge sufficient in form and substance to sustain a conviction and after the accused had pleaded to the charge, the conviction or acquittal of the accused or the dismissal of the case shall be a bar to another prosecution for the offense charged, or for any attempt to commit the same or frustration thereof, or

for any offense which necessarily includes or is necessarily included in the offense charged in the former complaint or information. x xx.

Generally, a judgment of acquittal is immediately final and executory. The prosecution cannot appeal the acquittal lest the constitutional prohibition against double jeopardy be violated.However, the rule admits of two exceptional grounds that can be challenged in a *certiorari* proceeding under Rule 65 of the Rules of Court: (1) in a judgment of acquittal rendered with grave abuse of discretion by the court; and (2) where the prosecution had been deprived of due process.

A cursory reading of the present petition for *certiorari* demonstrates a prodding to review the judgment of acquittal rendered by the Sandiganbayan on account of grave abuse of discretion. However, though enveloped on a pretext of grave abuse, the petition in actuality aims to overturn the decision of Sandiganbayan due to perceived mistake in the appreciation of facts and evidence. Unfortunately for the petitioner, the correction of this mistake does not fall within the ambit of Rule 65.

In *People v. Hon. Tria-Tirona*, the Court emphasized the limitation of review in *certiorari* proceeding:

Any error committed in the evaluation of evidence is merely an error of judgment that cannot be remedied by *certiorari*. An error of judgment is one in which the court may commit in the exercise of its jurisdiction. An error of jurisdiction is one where the act complained of was issued by the court without or in excess of jurisdiction, or with grave abuse of discretion which is tantamount to lack or in excess of jurisdiction and which error is correctible only by the extraordinary writ of *certiorari*. *Certiorari* will not be issued to cure errors by the trial court in its appreciation of the evidence of the parties, and its conclusions anchored on the said findings and its conclusions of law. Since no error of jurisdiction can be attributed to fgublic respondent in her assessment of the evidence, *certiorari* will not lie. (Citations omitted)

In this case, the prosecution was given adequate opportunity to present several witnesses and all necessary documentary evidence to prove the guilt of Sabio. However, Sandiganbayan warranted the acquittal of Sabio due to insufficiency of evidence engendering reasonable doubt on whether Sabio committed the offenses charged.

Records show that after taking into consideration the testimonies and evidence of both parties, Sandiganbayan arrived at a conclusion that the participation of Sabio with respect to the P10,350,000.00 was limited to the act of signing of the transmittal letter, checks and vouchers. The court likewise opined that the alleged untransmitted amount of P10,350,000.00 appearing in the breakdown of P50,350,000.00 as "remittance to the National Treasury for 2006" was misleading. The amount was never intended for remittance to the BOT but for the operational expenses of the PCGG. As can be inferred from the testimony of Escorpizo, the cash advance of P10,350,000.00 was put in the name of Sabio since he was the Chairperson of PCGG under the instructions of PCGG Commissioners Abcede and Conti, who in turn promised Escorpizo that they will issue a board resolution for the authorization of the cash advance. On the other hand, the charge of malversation was likewise dismissed due to the prosecution's failure to prove that Sabio failed to liquidate or settle the cash advance of P1,550,862.03 despite demand.[32] Clearly, an action for *certiorari* will not lie to reverse the judgment of acquittal which was rendered after the court's appreciation of evidence.

Premised on the following factual findings and conclusion, the Court finds no indication that the Sandiganbayan gravely abused its discretion when it gave a verdict of acquittal in favor of Sabio. The "grave abuse of discretion" contemplated by law involves a capricious or whimsical exercise of judgment as is equivalent to lack of jurisdiction. Petitioner failed to discharge the burden that Sandiganbayan blatantly abused its discretion in acquitting Sabio such that it was deprived of its authority to dispense justice.

An action for *certiorari* does not correct errors of judgment but only errors of jurisdiction. The nature of a Rule 65 petition does not entail a review of facts and law on the merits in the manner done in an appeal. Misapplication of facts and evidence, and erroneous conclusions based on evidence do not, by the mere fact that errors were committed, rise to the level of grave abuse of discretion. Even granting that the Sandiganbayan erred in weighing the sufficiency of the prosecution's evidence, such error does not necessarily amount to grave abuse of discretion.

I. Pre-trial (Rule 118)

J. Trial (Rule 119)

GERARDA H. VILLA, *Petitioner*, -versus- STANLEY FERNANDEZ, FLORENTINO AMPIL, JR., AND NOEL CABANGON, *Respondents*.

G.R. No. 219548, SECOND DIVISION, October 17, 2018, CARPIO, J.

An accused's right to "have a speedy, impartial, and public trial" is guaranteed in criminal cases by Section 14(2) of Article III of the 1987 Constitution. Its salutary objective being to assure that an innocent person may be free from the anxiety and expense of a court litigation or, if otherwise, of having his or her guilt determined within the shortest possible time compatible with the presentation and consideration of whatsoever legitimate defense he or she may interpose. Thus, the right to speedy trial is 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 one's case tried.

The CA's ruling, as supported by the records, reveals that the following circumstances delayed the proceedings against Fernandez, Ampil, and Cabangon: (1) the prosecution failed to comply with the Order of the RTC Branch 130 dated 21 September 1995, reiterated in another Order dated 27 December 1995, requiring it to secure the records of Criminal Case No. 38340(91) from the CA; (2) from Ampil's and Cabangon's arraignment on 29 November 1993 and Fernandez's arraignment on 3 December 1993, the initial trial of the case commenced only on 28 March 2005, or more than 11 years later; (3) the RTC Branch 130 resolved Ampil's motion to quash filed on 10 October 1994, and Fernandez's omnibus motion filed on 19 October 1994, only on 8 March 2005 or more than 10 years after the motions were filed; and (4) the RTC Branch 130 resolved Fernandez, Ampil, and Cabangon's Joint Motion to Dismiss filed on 5 December 2006, only on 9 January 2012, or more than five years after the motion was filed. Moreover, the RTC Branch 130, in its Order, stated the reasons for the delay of the proceedings before it, such as: (1) the dismissal from the service of Judge Hamoy; (2) Judge Sardillo's heavy workload; (3) the CA's order restraining the proceeding of the case; and (4) the Motion for Transfer of Trial Venue and

the Motion for Inhibition filed by the prosecution. Clearly, the reasons for the delay of the proceedings against Fernandez, Ampil, and Cabangon are not attributable to them.

FACTS:

The present case stemmed from the death of Leonardo "Lenny" H. Villa, a neophyte-participant at the initiation rites of the Aquila Legis Fraternity in 1991. Because of his death, an Amended Information charging 35 members of the Aquila with the crime of Homicide was filed. Out of the 35 members, 26 members were charged with homicide in Criminal Case No. C-38340(91), while 9 members were charged with homicide in Criminal Case No. C-38340. The 26 members were jointly tried, while the trial against the remaining 9 members was held in abeyance.

After the promulgation of the decision against the 26 members who were tried separately, the Regional Trial Court of Caloocan City ordered for: (a) the issuance of warrants of arrest against five of the nine members, namely: Enrico de Vera III (de Vera), Anselmo Adriano (Adriano), Marcus Joel Ramos (Ramos), Fernandez, and Cabangon; and (b) the arraignment of four of the nine members, namely: Crisanto Saruca, Jr. (Saruca), Manuel Escalona II (Escalona), Reynaldo Concepcion (Concepcion), and Ampil. All of the nine members entered a plea of not guilty.

RTC Branch 130 granted the Motion to Dismiss Criminal Case No. C-38340 against Concepcion, upon finding that the failure of the prosecution to prosecute the case for an unreasonable period of time violated his right to speedy trial. On the other hand, the RTC Branch 130 denied the separate Motions to Dismiss filed by Saruca, Escalona, and Adriano. RTC Branch 130 also denied the Motion to Dismiss filed by Ramos. The RTC Branch 130 reasoned out that the trial against the remaining eight members could now proceed, since the prosecution could already obtain the original records of the case from the CA, which already decided the appeal of the 26 members. Upon denial of their motions to dismiss, Ramos, Saruca, Escalona, and Adriano appealed to the CA. CA granted the appeal of Ramos, Saruca, Escalona, and Adriano and dismissed Criminal Case No. C-38340 against them after finding that their right to speedy trial was violated.

Fernandez, Ampil, and Cabangon filed a Joint Motion to Dismiss with the RTC Branch 130, alleging that: (1) their constitutional right to a speedy trial was violated because the suit has been pending for more than 15 years, or since the filing of the Amended Information on 15 November 1991; (2) the CA's Decision dismissing Criminal Case No. C-38340 against Ramos, Saruca, Escalona, and Adriano due to the violation of their right to speedy trial should also apply to them because they are similarly situated with Ramos, Saruca, Escalona, and Adriano; and (3) their participation in the initial stages of the trial did not preclude the filing of a motion to dismiss on the ground of violation of their right to speedy trial.

On 1 February 2012, the Court, in Villareal v. People of the Philippines (Villareal), convicted 5 of the 26 members of Aquila charged in Criminal Case No. C-3 8340(91) with reckless imprudence resulting in homicide, and affirmed the acquittal of 20 of the 26 members. The case against one of the 26 members was closed and terminated due to his death during the pendency of the case. In the same case, the Court affirmed the dismissal of Criminal Case No. C-38340 against Ramos, Saruca, Escalona, and Adriano due to violation of the right to speedy trial.

RTC Branch 130 issued an Order denying the Joint Motion to Dismiss filed by Fernandez, Ampil, and Cabangon. CA reversed the findings of the RTC Branch 130 and dismissed Criminal Case No. C-38340

against Fernandez, Ampil, and Cabangon. The CA held that the RTC Branch 130 committed grave abuse of discretion in denying the Joint Motion to Dismiss filed by Fernandez, Ampil, and Cabangon, because it failed to recognize and uphold their constitutional right to speedy trial.

ISSUES:

Whether or not the CA committed grave, serious and reversible errors in finding that the delay in the proceedings in Criminal Case No. 38340 is of such nature that violates the right of respondents to speedy trial. (NO)

RULING:

An accused's right to "have a speedy, impartial, and public trial" is guaranteed in criminal cases by Section 14(2) of Article III of the 1987 Constitution. Its salutary objective being to assure that an innocent person may be free from the anxiety and expense of a court litigation or, if otherwise, of having his or her guilt determined within the shortest possible time compatible with the presentation and consideration of whatsoever legitimate defense he or she may interpose. Thus, the right to speedy trial is 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 one's case tried. Equally applicable is the balancing test used to determine whether a person has been denied the right to speedy trial, in which the conduct of both the prosecution and the defendant is weighed, and such factors as length of the delay, reason for the delay, the assertion or non-assertion of the right, and prejudice resulting from the delay, are considered.

In the present petition, Villa insists that the right to speedy trial of Fernandez, Ampil, and Cabangon was not violated because the reasons for the delay were attributable to them, and they failed to timely invoke their right, unlike Ramos, Saruca, Escalona, and Adriano.

Contrary to Villa's assertion, the CA's ruling, as supported by the records, reveals that the following circumstances delayed the proceedings against Fernandez, Ampil, and Cabangon: (1) the prosecution failed to comply with the Order of the RTC Branch 130 dated 21 September 1995, reiterated in another Order dated 27 December 1995, requiring it to secure the records of Criminal Case No. 38340(91) from the CA; (2) from Ampil's and Cabangon's arraignment on 29 November 1993 and Fernandez's arraignment on 3 December 1993, the initial trial of the case commenced only on 28 March 2005, or more than 11 years later; (3) the RTC Branch 130 resolved Ampil's motion to quash filed on 10 October 1994, and Fernandez's omnibus motion filed on 19 October 1994, only on 8 March 2005 or more than 10 years after the motions were filed; and (4) the RTC Branch 130 resolved Fernandez, Ampil, and Cabangon's Joint Motion to Dismiss filed on 5 December 2006, only on 9 January 2012, or more than five years after the motion was filed. Moreover, the RTC Branch 130, in its Order, stated the reasons for the delay of the proceedings before it, such as: (1) the dismissal from the service of Judge Hamoy; (2) Judge Sardillo's heavy workload; (3) the CA's order restraining the proceeding of the case; and (4) the Motion for Transfer of Trial Venue and the Motion for Inhibition

filed by the prosecution. Clearly, the reasons for the delay of the proceedings against Fernandez, Ampil, and Cabangon are not attributable to them.

Moreover, the reasons for the delay in the proceedings against Ramos, Saruca, Escalona, and Adriano are similar to the reasons for the delay in the proceedings against Fernandez, Ampil, and Cabangon. In Villareal, we held that the prosecution's failure to comply with the Orders of the trial court and the inaction of the trial court for almost seven years amount to a violation of the right to speedy trial of Ramos, Saruca, Escalona, and Adriano. In this case, not only were the reasons for the delay in the proceedings against Ramos, Saruca, Escalona, and Adriano present as to Fernandez, Ampil, and Cabangon, but also more unjustifiable circumstances added delay to the proceedings against them, such as the RTC's delayed resolution of the motions to quash and motion to dismiss. Thus, there is more reason to apply our ruling in Villareal to Fernandez, Ampil, and Cabangon, and find that their right to speedy trial has been violated.

Furthermore, contrary to Villa's contention that Fernandez, Ampil, and Cabangon failed to invoke their right, Villa's petition before us states that: "[o]n 19 April 2005, Ampil filed a Manifestation vehemently objecting to the indefinite suspension of the pre-trial and trial proceedings of the case, xxx. On 09 May 2005, Fernandez, and Cabangon filed their Manifestation posting no objection to the Manifestation and/or Motion for Resumption of Hearing." Moreover, Fernandez, Ampil, and Cabangon filed with RTC Branch 130 on 5 December 2006 the Joint Motion to Dismiss invoking violation of their right to speedy trial, which Motion to Dismiss was resolved only on 9 January 2012 or five years later. In Almeda v. Office of the Ombudsman, we held that petitioner's letter and manifestations seeking the immediate resolution of her case cannot be considered late, and no waiver of her right to speedy trial or acquiescence may be attached to the same, as she was not required as a rule to follow up on her case; instead, it is the State's duty to expedite the same. Similarly in this case, we find that Fernandez, Ampil, and Cabangon timely invoked and did not waive their right to speedy trial.

ANGELITO MAGNO, *Petitioner*, -versus- PEOPLE PHILIPPINES, OF THE REPRESENTED BY THE OFFICE OF THE OMBUDSMAN THROUGH THE OFFICE OF THE SPECIAL PROSECUTOR, *Respondent.*

G.R. No. 230657, SECOND DIVISION, March 14, 2018, PERLAS-BERNABE, *J.*

In determining whether the accused has been deprived of his right to a speedy disposition of the case and to a speedy trial, four factors must be considered: (a) length of delay; (b) the reason for the delay; (c) the defendant's assertion of his right; and (d) Prejudice to the defendant.

Examining the incidents of this case vis-a-vis the aforesaid jurisprudential parameters in determining the existence of violation of such right, the Court holds that petitioner's right to speedy trial had been violated, therefore, the Motion to Dismiss filed by petitioner should be granted.

***First**, more than a decade has elapsed from the time the Information in Crim. Case No. DU-10123 was filed on May 14, 2003, until the RTC promulgated its Orders dated September 30, 2013 and November 28, 2014 dismissing the case on the ground of violation of petitioner's right to speedy trial. **Second**, it appears that the prosecution never lifted a finger to keep the proceedings in Crim. Case No. DU-10123 from stalling. **Third**, petitioner was not remiss in asserting his right to speedy trial. **Fourth**, the Court recognizes the prejudice caused to petitioner by the lengthy and unjustified delay in Crim. Case No. DU-*

10123. Even if the accused is not imprisoned prior to trial, he is still disadvantaged by restraints on his liberty and by living under a cloud of anxiety, suspicion and often, hostility.

FACTS:

On **May 14, 2003**, an Information was filed before the RTC charging, inter alia, petitioner (who was then serving as Investigative Agent IV of the National Bureau of Investigation) with Multiple Frustrated Murder and Double Attempted Murder. In the Orders dated September 25, 2003 and October 1, 2003, the RTC ruled that only the Ombudsman may prosecute the instant case, to the exclusion of any other entity/person other than those authorized under Republic Act No. 6770. The Ombudsman and Atty. Sitoy questioned the RTC's aforesaid Orders to the Court of Appeals (CA), which, in a Decision dated September 26, 2005, ruled that the private prosecutor may prosecute the case and appear for the People of the Philippines in collaboration with any lawyer deputized by the Ombudsman.

While the Private Prosecutor Case was still pending before the CA, the latter court issued a temporary restraining order (TRO), and thereafter, a preliminary injunction enjoining the RTC from implementing its Orders dated September 25, 2003 and October 1, 2003. This notwithstanding and upon motion by the prosecution, the CA clarified in a Resolution dated **January 19, 2005** that the injunctive writs do not operate to enjoin the proceedings in Crim. Case No. DU-10123, provided that it is conducted in the presence of the private prosecutor. Thus, the prosecution moved to set the case for trial and started presenting one of its witnesses on **March 29, 2005**. In the course of the prosecution's presentation of witnesses, the RTC sustained petitioner's objection on the admissibility of one of the witness's testimony, prompting the prosecution to elevate the matter to the SB (Objection Case).

Petitioner filed on **March 16, 2006** a Motion to Set Case for Continuous Hearing before the RTC, invoking his right to speedy trial. In an Order dated June 16, 2006, the RTC granted petitioner's motion, and accordingly, set the hearing on September 1, 2006. The prosecution moved for reconsideration but the same was denied in an Order dated August 18, 2006. Thus, under threat of being cited in contempt, the prosecution continued its presentation of witnesses on **September 1, 2006**. Such presentation continued all the way until **June 7, 2007** when the prosecution requested to reset the hearing to August 16, 2007 due to the handling prosecutor's illness. However, it appears that from such postponement until around early 2010, no hearings were conducted in the case.

In view of the foregoing, petitioner moved for the continuation of the trial, the hearing of which was set on April 22, 2010, which was further reset to September 2, 2010. At the **September 2, 2010** hearing, only petitioner's counsel appeared. Thus, on **September 17, 2010**, petitioner filed a Motion to Dismisson the ground of violation of his right to speedy trial. In such motion, petitioner not only pointed out the various postponements and cancellations of hearings by the prosecution from the filing of the information until 2007, but also highlighted the hibernation of the case from 2007 until his Motion to Set Case for Hearing filed in April 2010. For its part, the prosecution filed an Oppositionto petitioner's motion, and at the same time, prayed that it be allowed to present further evidence.

In an Orderdated September 30, 2013, the RTC granted petitioner's motion to dismiss on the ground of violation of the latter's right to speedy trial. It found that Crim. Case No. DU-10123 had already

been pending for thirteen (13) years and yet, remained unresolved. However, the SB set aside the RTC ruling and, accordingly, ordered the reinstatement of Crim. Case No. DU- 10123 and for the RTC to conduct further proceedings immediately.

ISSUE:

Whether or not the RTC correctly granted petitioner's Motion to Dismiss on the ground of violation of his right to speedy trial. (YES)

RULING:

An accused's right to "have a speedy, impartial, and public trial" is guaranteed in criminal cases by Section 14 (2), Article III of the 1987 Constitution.

The right of the accused to a speedy trial and to a speedy disposition of the case against him was designed to prevent the oppression of the citizen by holding criminal prosecution suspended over him for an indefinite time, and to prevent delays in the administration of justice by mandating the courts to proceed with reasonable dispatch in the trial of criminal cases. **Such right to a speedy trial and a speedy disposition of a case is violated only when the proceeding is attended by vexatious, capricious and oppressive delays. The inquiry as to whether or not an accused has been denied such right is not susceptible by precise qualification. The concept of a speedy disposition is a relative term and must necessarily be a flexible concept.**

In determining whether the accused has been deprived of his right to a speedy disposition of the case and to a speedy trial, four factors must be considered: (*a*) length of delay; (*b*) the reason for the delay; (*c*) the defendant's assertion of his right; and (*d*) Prejudice to the defendant.

Examining the incidents of this case vis-a-vis the aforesaid jurisprudential parameters in determining the existence of violation of such right, the Court holds that petitioner's right to speedy trial had been violated.

First, more than a decade has elapsed from the time the Information in Crim. Case No. DU-10123 was filed on May 14, 2003, until the RTC promulgated its Orders dated September 30, 2013 and November 28, 2014 dismissing the case on the ground of violation of petitioner's right to speedy trial. Notably, when the RTC dismissed the case, the prosecution has yet to complete the presentation of its evidence in chief.

Second, records reveal after trial was postponed on June 7, 2007 and reset to August 16, 2007, there is no showing that the August 16, 2007 setting or any hearing thereafter actually took place. During this time, it appears that the prosecution never lifted a finger to keep the proceedings in Crim. Case No. DU-10123 from stalling.

Third, petitioner was not remiss in asserting his right to speedy trial. In fact, the prosecution only moved to continue the presentation of its evidence ***after*** petitioner moved to dismiss the case on the ground of violation of his right to speedy trial.

Fourth, the Court recognizes the prejudice caused to petitioner by the lengthy and unjustified delay in Crim. Case No. DU-10123. Prejudice should be assessed in the light of the interest of the defendant that the speedy trial was designed to protect, namely: to prevent oppressive pre-trial

incarceration; to minimize anxiety and concerns of the accused to trial; and to limit the possibility that his defense will be impaired. **Of these, the most serious is the last, because the inability of a defendant adequately to prepare his case skews the fairness of the entire system. There is also prejudice if the defense witnesses are unable to recall accurately the events of the distant past. Even if the accused is not imprisoned prior to trial, he is still disadvantaged by restraints on his liberty and by living under a cloud of anxiety, suspicion and often, hostility. His financial resources may be drained, his association is curtailed, and he is subjected to public obloquy.**

CECILIA RIVAC*, Petitioner*, -versus- PEOPLE OF THE PHILIPPINES, *Respondent.*
G.R. No. 224673, SECOND DIVISION, January 22, 2018, PERLAS-BERNABE, *J.*

In Cabaries v. Maceda, the Court expounded on the novelty, nature, and parameters of this rule, to wit: A motion to reopen a case to receive further proofs was not in the old rules but it was nonetheless a recognized procedural recourse, deriving validity and acceptance from long, established usage. This lack of a specific provision covering motions to reopen was remedied by the Revised Rules of Criminal Procedure which took effect on December 1, 2000. Section 24, Rule 119 of the 2000 Revised Rules on Criminal Procedure governs the reopening of criminal cases for further trial. Section 24, Rule 119 and existing jurisprudence stress the following requirements for reopening a case: (1) the reopening must be before the finality of a judgment of conviction; (2) the order is issued by the judge on his own initiative or upon motion; (3) the order is issued only after a hearing is conducted; (4) the order intends to prevent a miscarriage of justice; and (5) the presentation of additional and/or further evidence should be terminated within thirty days from the issuance of the order.

Section 24, Rule 119 of the 2000 Revised Rules on Criminal Procedure governs the reopening of criminal cases for further trial. It states in verbatim: "At any time before finality of the judgment of conviction, the judge may, motu proprio or upon motion, with hearing in either case, reopen the proceedings to avoid a miscarriage of justice. The proceedings shall be terminated within thirty (30) days from the order granting it." In this light, the CA clearly erred in holding that: (a) it was improper for the RTC to reopen its proceedings because the latter court had already promulgated its judgment; and (b) assuming arguendo that what it did was a new trial, there were no grounds for its allowance.

FACTS:

The instant case stemmed from an Information filed before the Regional Trial Court of Laoag City, Ilocos Norte, Branch 14 (RTC), charging Rivac of the crime of Estafa. The prosecution alleged that on August 4, 2007, Rivac went to the jewelry store owned by private complainant Asuncion C. Fariñas (Fariñas) where she received from the latter several pieces of jewelry in the aggregate amount of P439,500.00, which were meant for her to sell on consignment basis, as evidenced by a document called jewelry consignment agreement (consignment document).

Fariñas and Rivac agreed that after seven (7) days, Rivac was obligated to either remit the proceeds of the sold jewelry or return the unsold jewelry to Fariñas should she fail to sell the same. However, despite the lapse of the aforesaid period, Rivac failed to perform what was incumbent upon her, causing Fariñas to send her a demand letter. This prompted Rivac to go to Fariñas's store and offer her a parcel of land covered by Original Certificate of Title (OCT) No. 0-936 as partial payment for the jewelry. However, Fariñas refused the offer as she discovered that the property was involved in a land dispute, and instead, reiterated her demand that Rivac return the pieces of jewelry or pay their value in cash.

During arraignment, Rivac pleaded "not guilty" and maintained that her liability is only civil, and not criminal, in nature. The RTC found Rivac guilty beyond reasonable doubt of the crime charged. The RTC found that the prosecution was able to establish all the elements of the crime charged, under the following circumstances: (a) Rivac received the pieces of jewelry from Fariñas, as evidenced by the consignment document which contains her signature; and (b) she failed to either return said jewelry or remit its proceeds to Fariñas after the lapse of the seven (7)-day period agreed upon by them, to the latter's prejudice.

After the promulgation of the aforesaid Judgment and **before it lapsed into finality,** Rivac**moved to reopen proceedings** on the ground that she intends to present the testimonies of Fariñas and a certain Atty. Ma. ValenieBlando (Atty. Blando) to prove the true nature of her transaction with Fariñas.

On January 6, 2011, the RTC, inter alia, partly granted the motion insofar as Fariñas's testimony was concerned, as the apparent revision of her recollection of events could not have been anticipated during the course of the trial. It, however, denied the same as to Atty. Blando's testimony, opining that there was no showing that Rivac could not present her during the trial proper. Consequently, the Court re-took Fariñas's testimony, where she "clarified" that she now remembered that the consignment document never became effective or enforceable as she did not allow Rivac to take the jewelry because she has yet to pay her outstanding loan obligation plus interest.

On April 18, 2011, the RTC affirmed its assailed Judgment. It held that Fariñas's testimony was in the nature of a recantation, which is looked upon with disfavor by the courts.

On January 11, 2016, the CA upheld Rivac's conviction. Preliminarily, it held that the RTC erred in allowing the reopening of the case, since it had already promulgated a ruling therein. In this regard, the CA opined that the RTC proceedings after the promulgation of its ruling can be likened to a new trial, which is likewise improper as the grounds for its allowance are not extant. Undaunted, Rivac moved for reconsideration, but the same was denied hence, this petition.

ISSUE:

Whether or not the CA correctly ruled that it was improper for the RTC to reopen its proceedings?

RULING:

The petition must be denied.

Section 24, Rule 119 of the 2000 Revised Rules on Criminal Procedure governs the reopening of criminal cases for further trial. It states in verbatim:

> "**At any time before finality of the judgment of conviction**, the judge may, motu proprio or upon motion, with hearing in either case, reopen the proceedings to avoid a miscarriage of justice. The proceedings shall be terminated within thirty (30) days from the order granting it."

In Cabaries v. Macedathe Court expounded on the novelty, nature, and parameters of this rule, to wit:

> A motion to reopen a case to receive further proofs was not in the old rules but it was nonetheless a recognized procedural recourse, deriving validity and acceptance from long, established usage. This lack of a specific provision covering motions to reopen was remedied by the Revised Rules of Criminal Procedure which took effect on December 1, 2000.
>
> **Section 24, Rule 119** and existing jurisprudence stress the following **requirements for reopening a case**: (1) the reopening must be before the finality of a judgment of conviction; (2) the order is issued by the judge on his own initiative or upon motion; (3) the order is issued only after a hearing is conducted; (4) the order intends to prevent a miscarriage of justice; and (5) the presentation of additional and/or further evidence should be terminated within thirty days from the issuance of the order.
>
> Generally, after the parties have produced their respective direct proofs, they are allowed to offer rebutting evidence only. However, the court, for good reasons, and in the furtherance of justice, may allow new evidence upon their original case, and its ruling will not be disturbed in the appellate court where no abuse of discretion appears. A motion to reopen may thus properly be presented only after either or both parties had formally offered and closed their evidence, but before judgment is rendered, and even after promulgation but before finality of judgment and the only controlling guideline covering a motion to reopen is the paramount interest of justice. This remedy of reopening a case was meant to prevent a miscarriage of justice.

In this light, the CA clearly erred in holding that: (a) it was improper for the RTC to reopen its proceedings because the latter court had already promulgated its judgment; and (b) assuming arguendo that what it did was a new trial, there were no grounds for its allowance.

To reiterate, a motion to reopen **may be filed even after the promulgation of a judgment** and **before the same lapses into finality**, and the only guiding parameter is to "avoid the miscarriage of justice." As such, the RTC correctly allowed the reopening of proceedings to receive Fariñas's

subsequent testimony in order to shed light on the true nature of her transaction with Rivac, and potentially, determine whether or not the latter is indeed criminally liable.

K. Judgment (Rule 120)

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee* –versus- MANUEL CORPUZ, *accused-appellant.* G.R. No. 215320. THIRD DIVISION, February 28, 2018. MARTIRES, *J*.

Entries in the police blotter are not evidence of the truth thereof but merely of the fact that the entries were made. Affidavits executed before the police or entries in such police blotters cannot prevail over the positive testimony given in open court. The entry in the police blotter is not necessarily entitled to full credit for it could be incomplete and inaccurate, sometimes from either partial suggestions or for want of suggestions or inquiries. Without the aid of such the witness may be unable to recall the connected collateral circumstances necessary for the correction of the first suggestion of his memory and for his accurate recollection of all that pertain to the subject. It is understandable that the testimony during the trial would be more lengthy and detailed than the matters stated in the police blotter.

FACTS:

Manuel was charged with two (2) counts of murder committed upon the persons of Romana P. Arcular*(Romana)* and Leonila C. Histo*(Leonila)* under two (2) Informations. Manuel, with the assistance of counsel, was arraigned and pleaded not guilty to the charges against him. Trial on the merits thereafter ensued.

On 29 October 2004, at around 2:00 o'clock in the afternoon, Leonila told Leonilo, her son-in-law, that she would go to her farm situated at Barangay Maitom, Abuyog, Leyte. Later, at around 4:00 o'clock in the afternoon, Leonilo went to the farm to check on his mother-in-law. Upon reaching the farm, he saw Manuel hacking Leonila and Romana with a bolo about 26 inches in length. Leonila was hit in the right nape, while Romana was hit in the left nape. Both victims fell to the ground. After witnessing the incident, Leonilo ran towards the house of JuaquinitoPoliquit, the Barangay Captain of Barangay Maitom. After reporting the incident and that Manuel was the assailant, Leonilo and Juaquinito proceeded to the police station where the incident was again reported.

At the time of death, Romana was 74 years old, while Leonila was 65 years old.

Manuel, in his defense, said that he was at Barangay Capilian, Abuyog, Leyte, with one Nestor Castos*(Nestor)*, and a certain Ike, who hired him to cultivate and plow his rice field. On that day, he arrived at Barangay Capilian at around 8:00 o'clock in the morning and stayed there until 4:30 p.m. He took his lunch at the said barangay. After completing his task, he walked home with Nestor and Ike and arrived at his house at Barangay Maitom, Abuyog, Leyte, at around 5:30 p.m. Manuel maintained that he only learned of the deaths of Leonila and Romana after he was apprehended by the police

The defense further submitted in evidence a copy of the police blotter taken when Leonilo and Juaquinito reported the incident to the Abuyog Police Station. In the said police blotter, it was stated that the suspect was still unknown; and that Leonilo saw the dead bodies of Leonila and Romana, without any indication about witnessing the actual hacking of the two by Manuel.

The RTC found Manuel guilty beyond reasonable doubt of two (2) counts of murder. The CA affirmed the RTC decision.

Manuel insists that the trial and appellate courts erred in ruling that the prosecution was able to prove his guilt beyond reasonable doubt. He argues that his conviction was based mainly on the testimony of Leonilo who, however, is not a credible witness. He points out that the police blotter clearly contradicts Leonilo's testimony that he actually saw Manuel hack Leonila and Romana. Thus, there is reasonable doubt on Leonilo's identification of Manuel as the person responsible for the deaths of the two victims.

ISSUE

Whether the trial and appellate courts erred in convicting accused-appelant Manuel Corpuz for the deaths of Romana Arcular and Leonila Histo despite the prosecution's failure to prove his guilt beyond reasonable doubt. (NO)

RULING

Entries in the police blotter are not evidence of the truth thereof but merely of the fact that the entries were made. Affidavits executed before the police or entries in such police blotters cannot prevail over the positive testimony given in open court. The entry in the police blotter is not necessarily entitled to full credit for it could be incomplete and inaccurate, sometimes from either partial suggestions or for want of suggestions or inquiries. Without the aid of such the witness may be unable to recall the connected collateral circumstances necessary for the correction of the first suggestion of his memory and for his accurate recollection of all that pertain to the subject. It is understandable that the testimony during the trial would be more lengthy and detailed than the matters stated in the police blotter.

In this case, Leonilo positively identified Manuel as the person who hacked the two victims. He was certain that it was Manuel whom he saw having known him for years prior to the incident.

Leonilo had no part in the apparent inconsistencies caused by the contents of the police blotter. Indeed, he merely reported what he witnessed; whether the police officer accurately recorded his report is beyond his control. Thus, the statement in the said police blotter to the effect that the suspect was unknown could in no way prevail over his positive identification of the accused-appellant as the person who hacked and killed Leonila and Romana.

As to Manuel's defense of alibi, suffice it to state that the same is an inherently weak defense which cannot prevail over the positive and credible testimony of the prosecution witness that accused-appellant has committed the crime. Further, for such defense to prosper, he must prove that he was somewhere else when the offense was committed and that he was so far away that it was not possible for him to have been physically present at the place of the crime or at its immediate vicinity at the time of its commission.

In this case, Manuel's own wife testified that at the time of the incident, he was just 200 meters away from their house in Brgy. Maitom, where Leonila and Romana were killed. Clearly,

the required physical impossibility due to distance for alibi to prosper was not sufficiently demonstrated.

L. New trial or reconsideration (Rule 121)

M. Appeal (Rules 122, 123, 124 and 125)

PEOPLE OF THE PHILIPPINES, plaintiff-appellee, -versus-. ROY MAGSANO y SAGAUINIT, accused-appellant. G.R. No. 231050, SECOND DIVISION, February 28, 2018, PERLAS-BERNABE, J.

An appeal in criminal cases opens the entire case for review and it is the duty of the reviewing tribunal to correct, cite, and appreciate errors in the appealed judgment whether they are assigned or unassigned. "The appeal confers the appellate court full jurisdiction over the case and renders such court competent to examine the records, revise the judgment appealed from, increase the penalty, and cite the proper provision of the penal law."

FACTS:

This case stemmed from two (2) Informations filed before the RTC, charging Magsano with the crimes of illegal sale and illegal possession of dangerous drugs.

RTC: The RTC found Magsano guilty beyond reasonable doubt of violating Sections 5 and 11, Article II of RA 9165.

CA: The CA affirmed in toto the conviction of Magsano. the CA observed that the seized drugs were adequately handled before, during, and after the conduct of the laboratory examination. Further, it declared that Magsano could no longer raise the issue with respect to the police officers' purported non compliance with Section 21, Article II of RA 9165 on appeal, since he failed to question the same during trial. In fact, he had every opportunity to object to the exhibits and testimonies of the prosecution, yet he did not.

Hence, this petition.

ISSUE:

Whether or not Magsano's failure to question the issue with respect to police officer's purported noncompliance with Section 21, Article II of RA 9165 on trial is fatal to the case.

RULING:

No. Magsano's failure to question the issue with respect to police officer's purported noncompliance with Section 21, Article II of RA 9165 on trial is not fatal to the case.

At the outset, it must be stressed that an appeal in criminal cases opens the entire case for review and it is the duty of the reviewing tribunal to correct, cite, and appreciate errors in the appealed judgment whether they are assigned or unassigned. "The appeal confers the appellate court

full jurisdiction over the case and renders such court competent to examine the records, revise the judgment appealed from, increase the penalty, and cite the proper provision of the penal law."

As held in People vs. Miranda (Miranda), "the fact that [an accused such as Magsano in this case] raised his objections against the integrity and evidentiary value of the [dangerous] drugs seized from him only for the first time [on appeal] x xx does not preclude [the CA], or even this Court[,] from passing upon the same." This is because "[a]n appeal in criminal cases confers upon the court full jurisdiction and renders it competent to examine the record and revise the judgment appealed from." Accordingly, "errors in an appealed judgment [of a criminal case], even if not specifically assigned, may [therefore] be corrected motu proprio by the court if the consideration of these errors is necessary to arrive at a just resolution of the case."

All told, the prosecution failed to provide justifiable grounds for the police officers' non-compliance with Section 21, Article II of RA 9165, as amended by RA 10640, as well as its IRR. Thus, even if the same only surfaced on appeal, reasonable doubt now persists in upholding the conviction of the accused. As the integrity and evidentiary value of the corpus delicti had been compromised, Magsano's acquittal is in order.

PEOPLE OF THE PHILIPPINES, plaintiff-appellee, -versus-. WILSON RAMOS y CABANATAN, accused-appellant. G.R. No. 233744, SECOND DIVISION, February 28, 2018, PERLAS-BERNABE, J.

The procedure in Section 21 of RA 9165, as amended by RA 10640, is a matter of substantive law, and cannot be brushed aside as a simple procedural technicality; or worse, ignored as an impediment to the conviction of illegal drug suspects.

FACTS:

This case stemmed from an Information filed before the RTC charging Ramos of the crime of Illegal Sale of Dangerous Drugs.

RTC: The RTC found Ramos guilty beyond reasonable doubt of the crime charged The RTC found that all the essential elements in the Illegal Sale of Dangerous Drugs have been proven.

CA: The CA affirmed in toto the RTC ruling, holding that the prosecution had shown the presence of all the elements of the crime charged. It further refused to give credence to Ramos's insistence that the arresting officers failed to observe the chain of custody rule regarding the disposition of the seized items, i.e., failure to make an inventory at the place of his arrest in the presence of a media man or a government official, as the PDEA operatives offered a justifiable explanation for the same. In view thereof, as well as the fact that the arresting officers sufficiently complied with the proper procedure in the handling of the seized items, the CA concluded that the integrity and evidentiary value of the seized items have been preserved.

Hence, this petition

ISSUE:

Whether or not the CA correctly upheld Ramos's conviction for the crime charged.

RULING:

No. The CA incorrectly upheld Ramos's conviction for the crime charged.

At the outset, it must be stressed that an appeal in criminal cases opens the entire case for review and it is the duty of the reviewing tribunal to correct, cite, and appreciate errors in the appealed judgment whether they are assigned or unassigned. "The appeal confers the appellate court full jurisdiction over the case and renders such court competent to examine the records, revise the judgment appealed from, increase the penalty, and cite the proper provision of the penal law."

After a judicious study of the case, the Court finds that the police officers committed unjustified deviations from the prescribed chain of custody rule, thereby putting into question the integrity and evidentiary value of the dangerous drugs allegedly seized from Ramos.

First, although it is true that the seized plastic sachets were marked in the presence of Ramos himself and an elected public official, i.e., Kgd. Ruiz, the same was not done in the presence of any representative from the DOJ and the media.

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.

Second, the combined weight of the seized specimens, which initially weighed 0.2934 gram during the first qualitative examination, decreased to 0.2406 during the re-examination by the second forensic chemist. These were the same items that IO1 Dealagdon identified in court as those that he had previously marked. Although the discrepancy of 0.0528 in the amounts may be considered negligible, the prosecution, nonetheless, did not even venture to explain how the discrepancy came about. As already adverted to, the saving clause "applies only (1) where the prosecution recognized the procedural lapses, and thereafter explained the cited justifiable grounds, and (2) when the prosecution established that the integrity and evidentiary value of the evidence seized had been preserved. The prosecution, thus, loses the benefit of invoking the presumption of regularity and bears the burden of proving — with moral certainty — that the illegal drug presented in court is the same drug that was confiscated from the accused during his arrest."

Verily, the procedural lapses committed by the PDEA operatives, which were unfortunately left unjustified by the State, militate against a finding of guilt beyond reasonable doubt against Ramos, as the integrity and evidentiary value of the corpus delicti had been compromised. It is well-settled that the procedure in Section 21 of RA 9165, as amended by RA 10640, is a matter of substantive law, and cannot be brushed aside as a simple procedural technicality; or worse, ignored as an impediment to the conviction of illegal drug suspects. As such, since the prosecution failed to provide justifiable grounds for non-compliance with Section 21 of RA 9165, as amended by RA 10640, as well as its IRR, Ramos's acquittal is perforce in order.

PEOPLE OF THE PHILIPPINES, *Plaintiff-Appellee*, *v.* **RICHARD DILLATAN, SR. Y PAT AND DONATO GARCIA Y DUAZO**, *Accused-Appellants*.

G.R. No. 212191, THIRD DIVISION, September 05, 2018, PERALTA, *J.*

In this case, both the trial and appellate courts found Violeta's and Henry's separate testimonies as credible. ***It is doctrinal that findings of trial courts on the credibility of witnesses deserve a high degree of respect*** *and will not be disturbed on appeal absent a clear showing that the trial court had overlooked, misunderstood or misapplied some facts or circumstances of weight and substance which could reverse a judgment of conviction.In fact, in many instances, such findings are even accorded finality.*

FACTS:

Herein private complainants, the Spouses Acob , were owners of a market stall at the public market of Sta. Rosa, Aurora, Isabela. Around 6 o'clock in the evening of February 7, 2010, the Spouses Acob, together with their son, Homer, closed their stall and proceeded home by riding together on their motorcycle. Homer was the driver, Violeta sat at the middle, while Henry sat behind her. They were approaching the entrance to their *barangay* around 6:30 p.m. when they noticed two persons, whom they later identified as herein accused-appellants, near a motorcycle. When they passed, accused-appellants rode the motorcycle and tailed them. Accused-appellants eventually caught up with them, whereupon, accused Dillatan forced them to stop and immediately declared a holdup. Violeta embraced Homer, while Dillatan grabbed her belt bag which contained P70,000.00 cash. Thereafter, Dillatan uttered, *"barilinmona."* Garcia then fired at the victims hitting, first, the left hand of Violeta. The bullet went through the left hand of Violeta and pierced Homer's chest causing the latter to fall down together with the motorcycle. Henry, on the other hand, was able to get off the motorcycle and tried to escape but Garcia also fired at him thereby hitting his right knee. Accused-appellants, thereafter, fled through their motorcycle. Several people then came to the aid of the private complainants and brought them to the hospital where Homer later expired by reason of his gunshot wound. Violeta and Henry were treated for their wounds. Accused-appellants were apprehended by police authorities later at night where they were subsequently identified by Violeta at the police station as the ones who grabbed her belt bag and shot them. A criminal complaint was subsequently filed against accused-appellants.

RTC: It held that all the elements of the crime of robbery are present in the instant case; robbery was the main purpose of accused appellants; the killing of Homer and the infliction of injuries upon Violeta and Henry are only committed on the occasion or by reason of the robbery; hence, these crimes are merged into a special complex crime of robbery with homicide, as defined and penalized under Article 294 of the Revised Penal Code *(RPC).* The RTC further held that the prosecution was able to sufficiently establish that the accused-appellants are the perpetrators of the crime when they were positively identified by Violeta.

CA: Affirmed the RTC decision.

Hence, the present petition.

ISSUE: Whether or not the RTC erred in convicting them of the crime charged, and the CA, in affirming their conviction, despite the incredibility of the testimonies of the prosecution witnesses, and the failure of the prosecution to establish the identity of the assailants. (NO)

RULING:

Robbery with homicide exists when a homicide is committed either by reason, or on occasion, of the robbery. To sustain a conviction for robbery with homicide, the prosecution must prove the following elements: (1) the taking of personal property is committed with violence or intimidation against persons; (2) the property belongs to another; (3) the taking is *animolucrandi* or with intent to gain; and (4) on the occasion or by reason of the robbery, the crime of homicide, as used in the generic sense, was committed.A conviction needs certainty that the robbery is the central 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.

Under the given facts, the Court finds no error in the findings of both the RTC and the CA that the prosecution was able to clearly establish that: (1) accused-appellants forced Homer, Henry and Violeta to stop their motorcycle; (2) Dillatan declared the holdup and grabbed the belt bag in Violeta's possession; and (3) thereafter, Garcia fired at the victims in order to preserve their possession of the stolen item and to facilitate their escape.

The Court, likewise, finds no cogent reason to disturb the rulings of both the RTC and the CA in giving credence to the testimonies of Henry and Violeta, especially, their positive and categorical identification of accused-appellants as the perpetrators of the crime. x xx

In this case, both the trial and appellate courts found Violeta's and Henry's separate testimonies as credible. It is doctrinal that findings of trial courts on the credibility of witnesses deserve a high degree of respect and will not be disturbed on appeal absent a clear showing that the trial court had overlooked, misunderstood or misapplied some facts or circumstances of weight and substance which could reverse a judgment of conviction.In fact, in many instances, such findings are even accorded finality. This is so because the assignment of value to a witness' testimony is essentially the domain of the trial court, not to mention that it is the trial judge who has the direct opportunity to observe the demeanor of a witness on the stand, which opportunity provides him the unique facility in determining whether or not to accord credence to the testimony or whether the witness is telling the truth or not.The foregoing doctrine finds application in the instant case.

Even after carefully going through the records of the case, the Court still finds no sufficient ground to disturb the findings of both the RTC and the CA.

The records show that Henry and Violeta positively, categorically and unhesitatingly identified Dillatan as the one who declared the holdup and successfully grabbed Violeta's belt bag, while Garcia was the one who fired at the victims, thereby killing Homer and wounding Henry and Violeta.x xx

N. Search and seizure (Rule 126)

JAYLORD DIMAL and ALLAN CASTILLO, Petitioners, -versus- PEOPLE OF THE PHILIPPINES, Respondent. G.R. No. 216922, SECOND DIVISION, April 18, 2018, PERALTA, *J.:*

[T]he rule now is: Where the person kidnapped is killed in the course of the detention, regardless of whether the killing was purposely sought or was merely an afterthought, the kidnapping and murder or homicide can no longer be complexed under Art. 48, nor be treated as separate crimes, but shall be punished as a special complex crime under the last paragraph of Art. 267, as amended by R.A. No. 7659.

…There is no dispute that Search Warrant No. 10-11 was applied for and issued in connection with the crime of kidnapping with murder. Asked by Judge Ong during the hearing as to what particular offense was committed, search warrant applicant P/Insp. Malixi testified that Dimal "allegedly committed the crime of kidnapping and multiple murder of Lucio and Rosemarie Pua and one Gemma Eugenio on September 6, 2010." It is not amiss to add that a search warrant that covers several counts of a certain specific offense does not violate the one-specific-offense rule.

FACTS:

At around 6:00 p.m. of September 6, 2010, Lucio Pua, Rosemarie Pua and Gemma Eugenio were scheduled to visit the compound of petitioner Jaylord A. Dimal in Echague, Isabela, to negotiate for the sale of *palay.* At around 7:30 p.m., Lucio's nephew, Edison Pua, went to Dimal's compound, asking for information as to the whereabouts of Lucio, Rosemarie and Gemma. Dimal informed Edison that they had left an hour ago. Unable to locate his relatives, Edison went to the police station in Alicia, Isabela, to report that they were missing, then proceeded to seek assistance from the police station in Echague.

On September 26, 2010, Dimal was arrested by the Echague Police. On the following day, the Echague Police filed with the Office of the Provincial Prosecutor of Ilagan, Isabela, a criminal complaint for Kidnapping for Ransom and Multiple Murder against Dimal, Castillo, Sapipi, Miranda, Marvin Guiao and Robert Baccay.

On October 8, 2010, Police Inspector *(P/lnsp.)* Roy Michael S. Malixi, a commissioned officer of the PNP filed an Application for the Issuance of a Search Warrant before the RTC Ilagan, Isabela, Branch 17, in connection with the kidnapping and multiple murder of Lucio, Rosemarie and Gemma.

ISSUES:

Whether or not the search warrant is void and its quashal imperative (NO)

RULING:

Search Warrant No. 10-11 was validly issued, but most of the items seized pursuant thereto are inadmissible in evidence, as they were neither particularly described in the warrant nor seized under the "plain view doctrine".

I. Special complex crime of kidnapping with murder

At the outset, there is no merit to petitioners' contention that the search warrant was applied for in connection with two unrelated offenses, *i.e.,* kidnapping and murder, in violation of Section 4, Rule 126 of the Rules of Court which requires that such warrant must be issued in relation to one offense.

Suffice it to state that where a person kidnapped is killed or dies as a consequence of the detention, there is **only one special complex crime** for which the last paragraph of Article 267 of the Revised Penal Code provides the maximum penalty that shall be imposed, *i.e.,* death. X XX

[T]he rule now is: Where the person kidnapped is killed in the course of the detention, regardless of whether the killing was purposely sought or was merely an afterthought, the kidnapping and murder or homicide can no longer be complexed under Art. 48, nor be treated as separate crimes, but shall be punished as a special complex crime under the last paragraph of Art. 267, as amended by R.A. No. 7659.

…There is no dispute that Search Warrant No. 10-11 was applied for and issued in connection with the crime of kidnapping with murder. Asked by Judge Ong during the hearing as to what particular offense was committed, search warrant applicant P/Insp. Malixi testified that Dimal "allegedly committed the crime of kidnapping and multiple murder of Lucio and Rosemarie Pua and one Gemma Eugenio on September 6, 2010." It is not amiss to add that a search warrant that covers several counts of a certain specific offense does not violate the one-specific-offense rule.

II. Petitioners cannot validly claim that the examining judge failed to ask searching questions, and to consider that the testimonies of the applicant and his witnesses were based entirely on hearsay, as they have no personal knowledge of the circumstances relating to the supposed disappearance or murder of the 3 victims.

The Court explained in *Del Castillo v.* People the concept of probable cause for the issuance of a search warrant:

x xx Probable cause for a search warrant is defined as such facts and circumstances which would lead a reasonably discreet and prudent man to believe that an offense has been committed and that the objects sought in connection with the offense are in the place sought to be searched. 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. Probable cause demands more than bare suspicion; it requires less than evidence which would justify conviction. The judge, in determining probable cause, is to consider the totality of the circumstances made known to him and not by a fixed and rigid formula, and must employ a flexible totality of the circumstances standard. The existence depends to a large degree upon the finding or opinion of the judge conducting the examination…

…Having in mind the foregoing principles, the Court agrees with the RTC and the CA in both ruling that Judge Ong found probable cause to issue a search warrant after a searching and probing personal examination of applicant P/Insp. Malixi and his witnesses…Their testimonies jointly and collectively show a reasonable ground to believe that the 3 victims went to Dimal's compound to sell *palay,* but were probably killed by Dimal, and that they may have left personal belongings within its premises.

Records clearly show that Judge Ong personally examined under oath applicant P/Insp. Malixi and his witnesses, Edwin, Shaira Mae and Villador, whose collective testimonies would prompt a reasonably discreet person to believe that the crime of kidnapping with murder was committed at the Felix GumpaL Compound on September 6, 2010, and that specific personal properties sought in connection with the crime could be found in the said place sought to be searched.

III. Contrary to petitioners' submission, the search warrant issued by Judge Ong identified with particularity the place to be searched, namely; (1) the house of JaylordDimal and (2) the *palay* warehouse in the premises of the Felix Gumpal Compound at Ipil Junction, Echague, Isabela.

...A description of a place to be searched is sufficient if the officer with the warrant can ascertain and identify with reasonable effort the place intended, and distinguish it from other places in the community. A designation that points out the place to be searched to the exclusion of all others, and on inquiry unerringly leads the peace officers to it, satisfies the constitutional requirement of definiteness. X XX

Moreover, the objection as to the particularity of the place to be searched was belatedly raised in petitioners' motion for reconsideration of the Order denying their Omnibus Motion to quash. The Court has consistently ruled that the omnibus motion rule under Section 8, Rule 15 is applicable to motion to quash search warrants. X XX

IV. A search warrant may be said to particularly describe the things to be seized (1) when the description therein is as specific as the circumstances will ordinarily allow; or (2) when the description expresses a conclusion of fact - not of law by which the warrant officer may be guided in making the search and seizure; (3) and when the things to be described are limited to those which bear direct relation to the offenses for which the warrant is being issued. The purpose for this requirement is to limit the articles to be seized only to those particularly described in the search warrant **in order to leave the officers of the law with no discretion regarding what items they shall seize,** to the end that no unreasonable searches and seizures will be committed.

In *Vallejo* v. *Court of Appeals,* the Court clarified that **technical precision of description is not required.** "It is only necessary that there be reasonable particularity and certainty as to the identity of the property to be searched for and seized, **so that the warrant shall not be a mere roving commission**. X XX

In Search Warrant No. 10-11, only two things were particularly described and sought to be seized in connection with the special complex crime of kidnapping with murder, namely: (1) blood-stained clothes of Gemma Eugenio consisting of a faded pink long sleeves jacket and a black tshirt, and (2) a 0.9mm caliber pistol. **Having no direct relation to the said crime, the 1,600 sacks of *palay* that were supposedly sold by the victims to Dimal and found in his warehouse, cannot be a proper subject of a search warrant** because they do not fall under the personal properties stated under Section 3 of Rule 126, to wit: (a) subject of the offense; (b) stolen or embezzled and other proceeds or fruits of the offense; or (c) those used or intended to be used as the means of committing an offense, can be the proper subject of a search warrant.

In fine, the CA committed no reversible error in upholding the denial of the Omnibus Motion to quash because all the Constitutional and procedural requisites for the issuance of a search warrant are still present…

Despite the fact that the issuance of Search Warrant No. 10-11 is valid, petitioners are correct that most items listed in the Return on the Search Warrant are inadmissible in evidence. Since only 2 items were particularly described on the face of the search warrant, namely: (1) the blood-stained clothes of Gemma Eugenio consisting of faded pink long sleeves jacket and black t-shirt; and (2) the 0.9 mm caliber pistol, the Court declares that only two articles under the Return on the Search Warrant are admissible in evidence as they could be the blood-stained clothes of Gemma subject of the warrant…

Considering that only Gemma's clothes were described in Search Warrant No. 10-11 as specific as the circumstances will allow, the Court is constrained to hold as inadequately described the blood-stained clothes of Lucio and Rosemarie. Without the aid of the applicant's witnesses who are familiar with the victims' personal belongings, any other warrant officer, like P/Insp. Macadangdang who served the search warrant, will surely be unable to identify the blood-stained clothes of Lucio and Rosemarie by sheer reliance on the face of such warrant.

The Court could have rendered a favorable ruling if the application for search warrant and supporting affidavits were incorporated by reference in Search Warrant No. 10-11, so as to enable the warrant officer to identify the specific clothes sought to be searched. This is because under American jurisprudence, an otherwise overbroad warrant will comply with the particularity requirement when the affidavit filed in support of the warrant **is physically attached to it,** and the warrant expressly refers to the affidavit and incorporates it with suitable words of reference. Conversely, a warrant which lacks any description of the items to be seized is defective and is not cured by a description in the warrant application which is not referenced in the warrant and not provided to the subject of the search.

V.For the "plain view doctrine" to apply, it is required that the following requisites are present: (a) the law enforcement officer in search of the evidence has a prior justification for an intrusion or is in a position from which he can view a particular area; (b) the discovery of evidence in plain view is inadvertent; and (c) it is immediately apparent to the officer that the item he observes may be evidence of a crime, contraband or otherwise subject to seizure…

The first requisite of the "plain view doctrine" is present in this case because the seizing officer, P/Insp. Macadangdang, has a prior justification for an intrusion into the premises of the Felix Gumpal Compound, for he had to conduct the search pursuant to a valid warrant. **However, the second and third requisites are absent, as there is nothing in the records to prove that the other items not particularly described in the search warrant were open to eye and hand, and that their discovery was unintentional.**

In fact, out of the 2 items particularly described in the search warrant, only the 2 black t-shirts with suspected blood stain possibly belonging to Gemma were retrieved, but the 9mm caliber pistol was not found. It is also not clear in this case at what instance were the items supposedly seized in plain view were confiscated in relation to the seizure of Gemma's bloodstained clothes - whether prior to, contemporaneous with or subsequent to such seizure. Bearing in mind **that once the valid portion of the search warrant has been executed, the "plain view doctrine" can no longer provide any**

basis for admitting the other items subsequently found. The Court rules that the recovery of the items seized in plain view, which could have been made after the seizure of Gemma's clothes, are invalid.

…It bears emphasis that the "immediately apparent" test does not require an unduly high degree of certainty as to the incriminating character of the evidence, but only that the seizure be presumptively reasonable, assuming that there is a probable cause to associate the property with a criminal activity. **In view thereof, the 10 pieces of spent shell of calibre 0.22 ammo cannot be admitted in evidence because they can hardly be used in a 9mm caliber pistol specified in the search warrant, and possession of such spent shells are not illegal *per se.*** Likewise, the following items supposedly seized under plain view cannot be admitted because possession thereof is **not inherently unlawful:** (a) 3 tom cloths; (b) black bag pack; (c) a piece of goldplated earing; (d) a suspected human hair; (e) a piece of embroidered cloth; (f) 3 burned tire wires; (g) empty plastic of muriatic acid; and (h) white t-shirt.

Notwithstanding the inadmissibility in evidence of the [some items], the Court sustains the validity of Search Warrant No. 10-11 and the admissibility of the items seized which were particularly described in the warrant. This is in line with the principles under American jurisprudence: (1) that the seizure of goods not described in the warrant **does not render the whole seizure illegal,** and the seizure is illegal only as to those things which was unlawful to seize; and (2) the fact that the officers, after making a legal search and seizure under the warrant, illegally made a search and seizure of other property not within the warrant **does not invalidate the first search and seizure**….

Although the Alien Certificates of Registration of Lucio and Rosemarie and the BDO Passbook in the name of Lucio are inadmissible in evidence, for not having been seized in accordance with the "plain view doctrine," these personal belongings should be **returned to the heirs of the respective victims**. Anent the live ammo of caliber 0.22 (marked as E-29 with JAM markings), which could not have been used in a 0.9mm caliber pistol, the same **shall remain in *custodia legis*** pending the outcome of a criminal case that may be later filed against petitioner Dimal. In *Alih v. Castro,* it was held that even if the search of petitioners' premises was violative of the Constitution and the firearms and ammunition taken therefrom are inadmissible in evidence, pending determination of the legality of said articles **they can be ordered to remain in *custodia legis* subject to appropriate disposition as the corresponding court may direct** in the criminal proceedings that have been or may thereafter be filed against petitioners.

PEOPLE OF THE PHILIPPINES, *Petitioner*, - versus - AMADOR PASTRANA AND RUFINA ABAD, *Respondents*. G.R. No. 196045, THIRD DIVISION, February 21, 2018, MARTIRES, *J.*

One of the constitutional requirements for the validity of a search warrant is that it must be issued based on probable cause which, under the Rules, must be in connection with one specific offense to prevent the issuance of a scatter-shot warrant. In this case, Search Warrant No. 01-118 was issued for violation of R.A. No. 8799 (The Securities Regulation Code) and for estafa (Art. 315, RPC).

The violation of Section 28.1 of the SRC and estafa are two offenses entirely different from each other and neither one necessarily includes or is necessarily included in the other. ***Thus, a person who is found liable for the violation of Section 28.1 of the SRC may, in addition, be convicted of estafa under***

the RPC. In the same manner, a person acquitted of violation of Section 28.1 of the SRC may be held liable for estafa.Hence, Search Warrant No. 01-118 is null and void for having been issued for more than one specific offense.

It is elemental that, in order to be valid, a search warrant must particularly describe the place to be searched and the things to be seized. In addition, under the Rules of Court, the following personal property may be the subject of a search warrant: (i) the subject of the offense; (ii) fruits of the offense; or (iii) those used or intended to be used as the means of committing an offense.

Here, as previously discussed, Search Warrant No. 01-118 failed to state the specific offense alleged committed by respondents. ***Consequently, it could not have been possible for the issuing judge as well as the applicant for the search warrant to determine that the items sought to be seized are connected to any crime. Moreover, even if Search Warrant No. 01-118 was issued for violation of Section 28.1 of the SRC as petitioner insists, the documents, articles, and items enumerated in the search warrant failed the test of particularity.*** *The terms used in this warrant were too all-embracing, thus, subjecting all documents pertaining to the transactions of respondents, whether legal or illegal, to search and seizure.*

In fine, Search Warrant No. 01-118 is null and void for having been issued for more than one offense and for lack of particularity in the description of the things sought for seizure.

FACTS:

The National Bureau of Investigation (NBI) Special Investigator Albert FroilanGaerlan (SI Gaerlan) filed a Sworn Application for a Search Warrant before the RTC Makati for the purpose of conducting a search of the office premises of respondents Amador Pastrana and Rufina Abad at Room 1908, 88 Corporate Center, Valero Street, Makati City.

SI Gaerlan alleged that he received confidential information that respondents were engaged in a scheme to defraud foreign investors. Some of their employees would call prospective clients abroad whom they would convince to invest in a foreign-based company by purchasing shares of stocks. Those who agreed to buy stocks were instructed to make a transfer for the payment thereof. No shares of stock, however, were actually purchased. SI Gaerlan averred that the scheme not only constituted estafa under Article 315 of the Revised Penal Code (RPC), but also a violation of Republic Act No. 8799 or the Securities Regulation Code (SRC).

Judge Tranquil Salvador, Jr. of the RTC Makati issued Search Warrant No. 01-118. Thereafter, respondent Abad moved to quash Search Warrant No. 01-118 because it was issued in connection with two (2) offenses, one for violation of the SRC and the other for estafa under the RPC, which circumstance contravened the basic tenet of the rules of criminal procedure that search warrants are to be issued only upon a finding of probable cause in connection with one specific offense. Further, Search Warrant No. 01-118 failed to describe with specificity the objects to be seized.

The RTC ruled that the search warrant was null and void because it violated the requirement that a search warrant must be issued in connection with one specific offense only. It added that the SRC alone punishes various acts, and that even estafa under the RPC contemplates multifarious settings. The RTC further opined that the search warrant and the application thereto as well as the inventory submitted thereafter were all wanting in particularization. The CA affirmed the ruling of the RTC.

Petitioner argues that violation of Section 28.1 of the SRC which reads, *"No person shall engage in the business of buying or selling securities in the Philippines as a broker or dealer, or act as a salesman, or an associated person of any broker or dealer unless registered as such with the Commission,"* and estafa are so intertwined that the punishable acts defined in one of them can be considered as including or are necessarily included in the other. Further, that operating and acting as stockbrokers without the requisite license infringe Section 28.1 of the SRC, and these specific acts of defrauding another by falsely pretending to possess power or qualification of being a stockbroker similarly constitute estafa under Article 315 of the RPC. As such, both Section 28.1 of the SRC and Article 315 of the RPC penalize the act of misrepresentation, an element common to both offenses. Thus, the issuance of a single search warrant did not violate the "one specific offense rule."

Petitioner further contends that the subject search warrant is not a general warrant because the items listed therein show a reasonable nexus to the offense of acting as stockbrokers without the required license from the SEC and that the statement, *"and other showing that these companies acted in violation of their actual registration with the SEC"* in the subject search warrant did not render the same void. The words *"and other"* only intend to emphasize that no technical description could be given to the items subject of the search warrant because of the very nature of the offense.

ISSUE:

Whether the Search Warrant No. 01-118 is null and void for having been issued for more than one offense and for lack of particularity in the description of the things sought for seizure. (YES)

RULING:

Article III, Section 2 of the Constitution guarantees every individual the right to personal liberty and security of homes against unreasonable searches and seizures. Additionally, Rule 126, Section 4 of the 2000 Rules on Criminal Procedure also provides the requisites for the issuance of a search warrant, to wit:

> SEC. 4. **Requisites for issuing search warrant.** A search warrant shall not issue except upon probable cause in connection with one specific offense to be determined personally by the judge after examination under oath or affirmation of the complainant and the witness he may produce, and particularly describing the place to be searched and the things to be seized which may be anywhere in the Philippines.

One of the constitutional requirements for the validity of a search warrant is that it must be issued based on probable cause which, under the Rules, must be in connection with one specific offense to prevent the issuance of a scatter-shot warrant. In this case, Search Warrant No. 01-118 was issued for violation of R.A. No. 8799 (The Securities Regulation Code) and for estafa (Art. 315, RPC).

First, violation of the SRC is not an offense in itself for there are several punishable acts under the said law. Even the charge of "estafa under Article 315 of the RPC" is vague for there are three ways of committing the said crime: (1) with unfaithfulness or abuse of confidence; (2) by means of false pretenses or fraudulent acts; or (3) through fraudulent means. The three ways of committing estafa may be reduced to two, i.e., (1) by means of abuse of confidence; or (2) by means

of deceit. **For these reasons alone, it can be easily discerned that Search Warrant No. 01-118 suffers a fatal defect.**

Second, petitioner insists that the warrant was issued for violation of Section 28.1 of the SRC. However, despite this belated attempt to pinpoint a provision of the SRC which respondents allegedly violated, Search Warrant No. 01-118 still remains null and void. The allegations in the application for search warrant do not indicate that respondents acted as brokers or dealers without prior registration from the SEC which is an essential element to be held liable for violation of Section 28.1 of the SRC.

Third, the violation of Section 28.1 of the SRC and estafa are two offenses entirely different from each other and neither one necessarily includes or is necessarily included in the other. An offense may be said to necessarily include another when some of the essential elements or ingredients of the former constitute the latter. And vice versa, an offense may be said to be necessarily included in another when the essential ingredients of the former constitute or form part of those constituting the latter.

The elements of estafa in general are the following: (a) that an accused defrauded another by abuse of confidence, or by means of deceit; and (b) that damage and prejudice capable of pecuniary estimation is caused the offended party or third person. On the other hand, Section 28.1 of the SRC penalizes the act of performing dealer or broker functions without registration with the SEC. For such offense, defrauding another and causing damage and prejudice capable of pecuniary estimation are not essential elements. **Thus, a person who is found liable for the violation of Section 28.1 of the SRC may, in addition, be convicted of estafa under the RPC. In the same manner, a person acquitted of violation of Section 28.1 of the SRC may be held liable for estafa.** Double jeopardy will not set in because violation of Section 28.1 of the SRC is malum prohibitum, in which there is no necessity to prove criminal intent, whereas estafa is malum in se, in the prosecution of which, proof of criminal intent is necessary.

Finally, in this case, the core of the problem is that the subject warrant did not state one specific offense. It included violation of the SRC which, as previously discussed, covers several penal provisions and estafa, which could be committed in a number of ways. **Hence, Search Warrant No. 01-118 is null and void for having been issued for more than one specific offense.**

It is elemental that, in order to be valid, a search warrant must particularly describe the place to be searched and the things to be seized. It is not, however, required that the things to be seized must be described in precise and minute detail as to leave no room for doubt on the part of the searching authorities. In addition, under the Rules of Court, the following personal property may be the subject of a search warrant: (i) the subject of the offense; (ii) fruits of the offense; or (iii) those used or intended to be used as the means of committing an offense.

Here, as previously discussed, Search Warrant No. 01-118 failed to state the specific offense alleged committed by respondents. **Consequently, it could not have been possible for the issuing judge as well as the applicant for the search warrant to determine that the items sought to be seized are connected to any crime. Moreover, even if Search Warrant No. 01-118 was issued for violation of Section 28.1 of the SRC as petitioner insists, the documents, articles, and items enumerated in the search warrant failed the test of particularity.** The terms used in this warrant were too all-embracing, thus, subjecting all documents pertaining to the transactions of respondents, whether legal or illegal, to search and seizure. Even the phrase *"and other showing that these*

companies acted in violation of their actual registration with the SEC" does not support petitioner's contention that Search Warrant No. 01-118 was indeed issued for violation of Section 28.1 of the SRC. The same could well-nigh pertain to the corporations' certificate of registration with the SEC and not just to respondents' lack of registration to act as brokers or dealers.

In fine, Search Warrant No. 01-118 is null and void for having been issued for more than one offense and for lack of particularity in the description of the things sought for seizure.

PEOPLE OF THE PHILIPPINES, *Plaintiff-Appellee*, -versus- MARCELINO CRISPO Y DESCALSO ALIAS "GOGO" AND ENRICO HERRERA Y MONTES, *Accused-Appellants.*
G.R. No. 230065, SECOND DIVISION, March 14, 2018, PERLAS-BERNABE, *J*.

*In the case of People v. Mendoza, the Court stressed that **"without the insulating presence of the representative from the media or the DOJ, or any elected public official during the seizure and marking of the seized drugs, the evils of switching, 'planting' or contamination of the evidence** that had tainted the buy-busts conducted as to **negate the integrity and credibility of the seizure and confiscation of the said drugs that were evidence herein of the corpus delicti, and thus adversely affected the trustworthiness of the incrimination of the accused.** Indeed, the presence of such witnesses would have preserved an unbroken chain of custody.*

In this case, while the inventory and photography of the seized items were made in the presence of two (2) elected public officials, i.e., Barangay Kagawads, the same were not done in the presence of representatives from either the DOJ and the media.

The law requires the presence of an elected public official, as well as representatives from the DOJ and the media to ensure that the chain of custody rule is observed and thus, remove any suspicion of tampering, switching, planting, or contamination of evidence which could considerably affect a case. However, minor deviations may be excused in situations where a justifiable reason for non-compliance is explained. In this case, despite the non-observance of the witness requirement, no plausible explanation was given by the prosecution. In fact, the poseur-buyer, PO2 Reyes, only feigned ignorance as to the reason why no representatives of the DOJ and the media were present during the inventory of the seized items.

FACTS:

The case stemmed from two (2) Informationsfiled before the RTC charging accused-appellants of the crime of Illegal Sale of Dangerous Drugs, and Crispo of the crime of Illegal Possession of Dangerous Drugs.

The prosecution alleged that at around 1:30 in the afternoon of November 19, 2012,[8] a confidential informant (CI) tipped the Manila Police District Station 4 (MPD) of the alleged illegal drug activities of a certain alias "Gogo" (later identified as Crispo) at Ma. Cristina Street, Sampaloc, Manila. Thus, after coordinating with the operatives of the Philippine Drug Enforcement Agency, the MPD organized a buy-bust operation at the said area, with Police Officer (PO) 2 Dennis Reyes (PO2 Reyes) as the poseur buyer. PO2 Reyes then signified his intention of buying *shabu,* prompting Herrera to get the marked money from him, and thereafter, approach Crispo in order to remit the money and get a sachet containing white crystalline substance from the latter. When Herrera handed over the

sachet to PO2 Reyes, the latter performed the pre-arranged signal, directly causing his backups to rush into the scene and apprehend accused-appellants. Upon frisking accused appellants, the arresting officers recovered three (3) other plastic sachets containing white crystalline substance from Crispo. The accused-appellants and the seized items were then taken to the barangay office where the arresting officers, *inter alia,* conducted the inventory and photography in the presence of two (2) barangay kagawads, as indicated in the Receipt of Property/Evidence Seized.

Accused-appellants pleaded not guilty to the crimes chargedand offered their version of the events. According to Crispo, he was just on board a tricycle going to his niece's house when suddenly, a car with five (5) policemen in civilian clothes blocked the tricycle's path. One of the policemen then poked a gun at Crispo, and told him, *"Mgapulis kami, sumama ka sapresinto."* Fearful for his life, Crispo complied. Upon arrival at the police station, the policemen demanded from him P30,000.00 for his release; otherwise, they will plant evidence against him.

The RTC found accused appellants guilty beyond reasonable doubt of the crimes charge.

CA affirmed the RTC ruling. It held that the prosecution had established beyond reasonable doubt all the elements of the crimes charged. Further, the CA ruled that the absence of representatives from the DOJ and the media during the conduct of the inventory is not fatal to the prosecution of accused-appellants, so long as the integrity and evidentiary value of the seized items are preserved.

ISSUE:

Whether or not the CA correctly upheld accused-appellants' conviction for the crimes charged. (NO)

RULING:

Here, Crispo was charged with the crimes of Illegal Sale and Illegal Possession of Dangerous Drugs, respectively defined and penalized under Sections 5 and 11, Article II of RA 9165.

Case law states that in both instances, it is essential that the identity of the prohibited drug be established with moral certainty, considering that the dangerous drug itself forms an integral part of the *corpus delicti* of the crime. Thus, in order to obviate any unnecessary doubt on the identity of the dangerous drugs, the prosecution has to show an unbroken chain of custody over the same and account for each link in the chain of custody from the moment the drugs are seized up to their presentation in court as evidence of the crime.

Section 21, Article II of RA 9165 outlines the procedure which the police officers must follow when handling the seized drugs in order to preserve their integrity and evidentiary value. Under the said section, prior to its amendment by RA 10640, the apprehending team shall, among others, **immediately after seizure and confiscation conduct a physical inventory and photograph the seized items in the presence of the accused or the person from whom the items were seized, or his representative or counsel, a representative from the media and the Department of Justice (DOJ), and any elected public official** who shall be required to sign the copies of the inventory and be given a copy of the same, and the seized drugs must be turned over to the PNP Crime Laboratory within twenty-four (24) hours from confiscation for examination.In the case of *People v. Mendoza,* the Court stressed that **"without the insulating presence of the representative from the media or the DOJ, or any elected public official during the seizure and**

marking of the seized drugs, the evils of switching, 'planting' or contamination of the evidence that had tainted the buy-busts conducted under the regime of RA 6425 *(Dangerous Drugs Act of 1972)* again reared their ugly heads as to **negate the integrity and credibility of the seizure and confiscation of the said drugs that were evidence herein of the *corpus delicti,* and thus adversely affected the trustworthiness of the incrimination of the accused.** Indeed, the presence of such witnesses would have preserved an unbroken chain of custody. "

The Court, however, clarified that under varied field conditions, strict compliance with the requirements of Section 21, Article II of RA 9165 may not always be possible. In fact, the Implementing Rules and Regulations (IRR) of RA 9165 provide that the said inventory and photography may be conducted at the nearest police station or office of the apprehending team in instances of warrantless seizure, and that **non-compliance with the requirements of Section 21, Article II of RA 9165 – under justifiable grounds – will not render void and invalid the seizure and custody over the seized items so long as the integrity and evidentiary value of the seized items are properly preserved by the apprehending officer or team.** In *People v. Almorfe,* **the Court explained that for the above-saving clause to apply, the prosecution must explain the reasons behind the procedural lapses, and that the integrity and evidentiary value of the seized evidence had nonetheless been preserved.** Also, in *People v. De Guzman,* it was emphasized that **the justifiable ground for non-compliance must be proven as a fact, because the Court cannot presume what these grounds are or that they even exist**.

After a judicious study of the case, the Court finds that the arresting officers committed unjustified deviations from the prescribed chain of custody rule, thereby putting into question the integrity and evidentiary value of the dangerous drugs allegedly seized from Crispo.

An examination of the records reveals that while the inventory and photography of the seized items were made in the presence of two (2) elected public officials, *i.e.,* Barangay Kagawads, as evidenced by their signatures on the Receipt of Property/Evidence Seized, the same were not done in the presence of representatives from either the DOJ and the media.

The law requires the presence of an elected public official, as well as representatives from the DOJ and the media to ensure that the chain of custody rule is observed and thus, remove any suspicion of tampering, switching, planting, or contamination of evidence which could considerably affect a case. However, minor deviations may be excused in situations where a justifiable reason for non-compliance is explained. In this case, despite the non-observance of the witness requirement, no plausible explanation was given by the prosecution. In fact, the poseur-buyer, PO2 Reyes, only feigned ignorance as to the reason why no representatives of the DOJ and the media were present during the inventory of the seized items

Thus, for failure of the prosecution to provide justifiable grounds or show that special circumstances exist which would excuse their transgression, the Court is constrained to conclude that the integrity and evidentiary value of the items purportedly seized from Crispo have been compromised.

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. AMADO BALUBAL Y PAGULAYAN, ACCUSED-APPELLANT.

[G.R. No. 234033, THIRD DIVISION, July 30, 2018, GESMUNDO, J.]

It is well-settled that the procedure in Sec. 21 of R.A. No. 9165 is a matter of substantive law, and cannot be brushed aside as a simple procedural technicality; or worse, ignored as an impediment to the conviction of illegal drug suspects. The significant lapses committed, as well as their failure to explain their non-compliance with the directives of the law, cast doubt on the integrity of the corpus delicti.

FACTS:

In an Information, appellant was charged with the crime of illegal sale of shabu weighing 0.07 gram. The appellant was arraigned and he pleaded not guilty to the offense charged.Thereafter, trial on the merits ensued.

RTC: The RTC found appellant guilty beyond reasonable doubt of violating Sec. 5, Art. II of R.A. No. 9165. It held that the PDEA agents involved in the buy-bust operation are presumed to have performed their duties regularly and there was absolutely no motive for them to concoct a fake buy-bust operation.

Also, the RTC ruled that the chain of custody was fully observed. It recapitulated that the inventory of the seized items prepared by IO1 Molina, was witnessed by barangay kagawads Bautista and Baggayan, and Pacallagan, who was actually a court interpreter; the heat-sealed plastic sachet was delivered by IO1 Gaayon to the PNP Regional Laboratory Office in Tuguegarao City for examination; and the contents tested positive for metamphetamine hydrochloride. The RTC concluded that the seized shabu presented in court was the same drug confiscated from appellant.

CA: The CA affirmed the ruling of the RTC. It held that the lack of surveillance before the entrapment operation was justified as the law does not require that prior surveillance be conducted before a buy-bust operation. It found appellant's arrest during the entrapment operation legal since he was caught in flagrante delicto, hence, the shabu seized from him were also admissible in evidence.

With regard to the chain of custody, the CA held that although the inventory was not witnessed by a member of the media, there was substantial compliance with Sec. 21, Art. II of R.A. No. 9165 because it was witnessed by elected barangay officials and an employee of the court, purportedly representing the DOJ. Citing People v. Gum-Oyen,the CA stated that a testimony regarding the marking of the seized items at the police station and in the presence of the appellant was sufficient compliance with the rules on the chain of custody.

Hence, this petition.

Appellant insists that the RTC and CA erred in finding him guilty of the offense charged as the buy-bust operation was invalid rendering his arrest unlawful and the alleged confiscated shabu inadmissible. He avers that there are badges of irregularity in the conduct of the alleged buy-bust operationand evidentiary gaps in the chain of custody of the alleged confiscated shabu because IO1 Gaayon only marked the alleged seized shabu at the police station, and the inventory and photography of the said confiscated item was conducted without the presence

of media and DOJ representatives, which are contrary to the mandate of Sec. 21, Art. II of R.A. No. 9165.

ISSUE:

Whether or not the CA erred in affirming the judgment of the RTC finding appellant guilty of the offense charged.

RULING:

Yes. The CA erred in affirming the judgment of the RTC finding appellant guilty of the offense charged.

The prosecution failed to prove that the police officers complied with the chain of custody rule as mandated by Sec. 21, Art. II of R.A. No. 9165 and its IRR. It also failed to present any explanation to justify its non-observance of the prescribed procedure.

Although the first link was duly observed; that is, the seized shabu was properly marked, the second link in the chain of custody lacks detail. After the appellant was arrested and informed of his constitutional rights, he was brought to the police station and the seized items consisting of one (1) heat-sealed transparent sachet, buy-bust money and cellular phone were marked, inventoried and photographed. It must be observed that during the inventory and photograph of these seized items, no representatives from the media or the DOJ were present. The inventory and photography were witnessed only by appellant, barangay kagawads Bautista and Baggayan and Pacallagan, who was neither a representative of the media nor DOJ but a court interpreter of the Municipal Circuit Trial Court of Solana-Enrile, Cagayan. Sec. 1 (A.1.6) of the chain of custody IRR explicitly provides that a representative of the National Prosecution Service of the DOJ is anyone from its employees. Certainly, Pacallagan is not one of those required by law to witness the inventory and photography of the seized shabuand sign the corresponding inventory report. It is not enough for the apprehending officers to mark the seized sachet of shabu; the buy-bust team must also conduct a physical inventory and take photographs of the confiscated shabu in the presence of these persons required by law.

In fact, IO1 Gaayon knew that Pacallagan was not a representative of the DOJ but an employee of the court on cross examination. This was corroborated by IO1 Molina in his testimony.

From the foregoing, it has been established that there was no media representative at the time of the conduct of the marking, inventory and photography, and that the person who actually witnessed the said activities was an employee of MTCC.

As stated, the failure of the apprehending team to strictly comply with the procedures under Sec. 21, Art. II of R.A. No. 9165 and its IRR does not ipso facto render the seizure and custody over the seized shabu as void and invalid provided the prosecution satisfactorily proves that there was justifiable ground for non-compliance; and the integrity and evidentiary value of the seized item was properly preserved.

Here, the prosecution did not present any justifiable ground for the non-compliance with the procedures under Sec. 21, Art. II of R.A. No. 9165. They failed to provide an explanation for the failure of the buy-bust team to secure the representatives of the media and DOJ who are required, under the law, to witness the inventory and photography of the seized items. Despite the fact that the buy-bust

operation was arranged and scheduled in advance, still the buy-bust team failed to ensure the presence of all persons required to witness the inventory and marking of the seized items.

Aside from the absence of a DOJ and media representatives, the prosecution also failed to establish the fourth link in the chain of custody. After the seized shabu was delivered by IO1 Gaayon to PSI Tuazon for laboratory analysis, no one testified on how the specimen was handled thereafter. It failed to disclose the identity of the police officer to whom custody of the seized shabu was given after the laboratory examination, and how it was handled and kept until it was presented in court.

The testimony of the forensic chemist was dispensed with. In the March 20, 2014 order of the RTC it simply stated that PSI Tuazon received the specimen submitted by the PDEA agent for laboratory examination. The testimony of PSI Tuazon was admitted by counsel for the appellant as well as the existence and due execution of the Chemistry Report No. D-50-2013. Thus, with said admission by the defense, PSI Tuazon's testimony was dispensed with.

The testimony of prosecution witness IO1 Gaayon provided details only until the time the seized drug was delivered to the forensic chemist.

There was no concrete evidence as to whom the forensic chemist delivered the seized item before its presentation in court. From the time of the completion of the laboratory examination on June 4, 2013 up to the time the confiscated shabu was offered and marked as exhibit during the preliminary conference on November 19, 2013, it was not indicated in the record who was the custodian thereof. In the Chain of Custody Form,the name, designation and signature of the supposed evidence custodian were all left blank. This casts serious doubts on the handling of the confiscated shabu as it is not clear as to whom it was delivered to pending its presentation in court. This opens the possibility that integrity and evidentiary value of the seized drug may have been compromised.

OFFICE OF THE COURT ADMINISTRATOR, *Complainant*, -versus- JUDGE FRANCISCO A. ANTE, JR. AND WILFREDO A. PASCUA, *Respondents.*
A.M. No. MTJ -12-1814 (Formerly OCA IPI No. 10-2324-MTJ), FIRST DIVISION, September 19, 2018, TIJAM, J.

As regards the issuance of search warrants outside his jurisdiction, the Court has pronounced in the very recent case of Re: Report on the Preliminary Results of the Spot Audit in the Regional Trial Court, Branch 170, Malabon City that an administrative proceeding is not the proper forum to review the search warrants issued to determine whether the compelling reasons cited therein are indeed meritorious.

FACTS:

An administrative complaint was filed against Judge Francisco A. Ante, Jr. of the MTCC in Vigan City, Ilocos Sur, for gross ignorance of the law. The said administrative complaint rooted from a joint resolution dated April 19, 2010 issued by now Retired Judge Modesto L. Quismorio, who was then the Presiding Judge of MTCC, Candon City, Ilocos Sur, in Criminal Case Nos. 4939 and 4940 entitled "*People of the Philippines v. Stephen Ronquillo and Willie Molina*," quashing Search Warrant No. 37, S' 2009 issued by Judge Ante.

In a letter-complaint dated October 1, 2010, Judge Ante charged Judge Quismorio with conduct unbecoming a judge. He found the conclusion in the said resolution malicious, unfounded, baseless and not supported by facts. He asserted that the conclusion was downright insulting and portrayed him as a judge lacking in the knowledge of the law. Judge Ante further said that as a fellow judge, Judge Quismorio should have shown respect instead of projecting himself as an all-knowing and knowledgeable judge at his expense because he was an applicant for the position of Presiding Judge of the RTC, Tagudin, Ilocos Sur.

In an Answer dated January 7, 2011, Judge Quismorio explained that the statement quoted by Judge Ante was one of the bases for declaring the invalidity of the search warrant for utter failure to observe one of the vital requirements before issuing a search warrant as mandated by Section 5 in relation to Section 4 of Rule 126 of the Rules of Court. The record of the proceedings for the application of said warrant reveals that Judge Ante failed to comply with the statutory requirement to personally examine the applicant and his witnesses in the form of searching questions and answers on the facts personally known to them pursuant to Section 4.

In a Resolution dated July 27, 2011, the Court considered the comment of Judge Quismorio as a complaint for gross ignorance of the law against Judge Ante, and directed the Office of the Court Administrator to conduct an audit of the records of MTCC, Vigan, Ilocos Sur, particularly on the cases involving the issuance of search warrants.

In OCA Memorandum dated May 21, 2012, the OCA reported that based on the audit it conducted on February 22 and 23, 2012, Judge Ante has been issuing search warrants since January 2005 may be characterized by laxity amounting to violations of Sections 2, 4, 5, and 12(b) of Rule 126. It noted that the great disparity between the number of search warrants Judge Ante issued and that of all the other courts in the Province of Ilocos over the same period showed how the applicants, who are mostly officials of the PNP, took advantage of said laxity. The audit team also took Wilfredo A. Pascua's admission, in his February 23, 2012 Affidavit, that he only transcribes the stenographic notes if a party needs a copy of the TSN.

Judge Ante was thereafter required by the Court to comment on the OCA Memorandum. Wilfredo A. Pascua, Court Stenographer was also required to show cause why no disciplinary action should be taken against him for his failure to transcribe the stenographic notes of the examinations conducted by Judge Ante.

Wiflredo A. Pascua submitted an explanation dated July 26, 2012 that as the lone stenographer of the court from 2004 to July 2007, it was impossible for him to transcribe all the stenographic notes on time. Judge Ante submitted a Comment/Explanation dated August 23, 2012 stating that the total issuance of 1,732 search warrant within a span of 8 years is only minimal and that the Rules of Court does not prescribe a limit or number of search warrants to be issued by a Judge, at a given time. Judge Ante denied that he violated Sections 2, 4, 5 and 12(b), Rule 126 because it is a matter of record that the applications for search warrants were accompanied with the proper supporting documents such as the affidavit of witnesses and the applicants.

The OCA, in its Memorandum dated May 29, 2013, recommended the dismissal from service of Judge Ante for gross ignorance of the law and grave abuse of discretion.

In a Resolution dated September 4, 2013, the Court resolved, among others, to dismiss the complaint against Judge Quismorio for utter lack of merit. Judge Ante filed a Motion for Reconsideration as regards the dismissal of the complaint against Judge Quismorio, which was denied with finality on April 7, 2014. Hence, the present petition.

ISSUE:

Whether Judge Ante's issuance of allegedly defective search warrants merit administrative sanction. (YES)

RULING:

It is elementary that not every error or mistake that a judge commits in the performance of his duties renders him liable, unless he is shown to have acted in bad faith or with deliberate intent to do an injustice. To hold otherwise would be to render judicial office untenable, for no one called upon to try the facts or interpret the law in the process of administering justice can be infallible in his judgment.

As regards the issuance of search warrants outside his jurisdiction, the Court has pronounced in the very recent case of *Re: Report on the Preliminary Results of the Spot Audit in the Regional Trial Court, Branch 170, Malabon City* that an administrative proceeding is not the proper forum to review the search warrants issued to determine whether the compelling reasons cited therein are indeed meritorious.

We find, however, Judge Ante guilty of simple neglect in monitoring the return of the search warrants ten days after the issuance of the same in compliance with the rules. Plainly, Sec. 12 of Rule 126 reads:

> **Section 12.** *Delivery of property and inventory thereof to court; return and proceedings thereon*. - (a) The officer must forthwith deliver the property seized to the judge who issued the warrant, together with a true inventory thereof duly verified under oath.
> (b) Ten (10) days after issuance of the search warrant, the issuing judge shall ascertain if the return has been made, and if none, shall summon the person to whom the warrant was issued and require him to explain why no return was made. If the return has been made, the judge shall ascertain whether section 11 of this Rule has been complied with and shall require that the property seized be delivered to him. The judge shall see to it that subsection (a) hereof has been complied with.
> (c) The return on the search warrant shall be filed and kept by the custodian of the log book on search warrants who shall enter therein the date of the return, the result, and other actions of the judge. A violation of this section shall constitute contempt of court.

As well noted by the OCA, Judge Ante merely rendered an all encompassing denial in his comment as well as a general statement that he always ordered the applicants to make a return thereof. This cannot suffice and simply cannot overturn the affirmative allegations and report made by the audit team, where the specific search warrants in which no returns were made were itemized.

Simple neglect of duly means the failure of an employee official to give proper attention to a task expected of him either signifying a "disregard of a duty resulting from carelessness or indifference." On the other hand, gross neglect of duty is characterized by want of even the slightest care, or by conscious indifference to the consequences, or by flagrant and palpable breach of duty.

Considering the circumstances, We cannot consider the neglect as gross in nature. In this case, there is no clear proof that Judge Ante's actions were colored with willful neglect or intentional wrongdoing. Good faith and absence of malice, corrupt motives or improper considerations are sufficient defenses in which a judge charged with ignorance of the law can find refuge.

Under Section 52, Rule IV of the Uniform Rules on Administrative Cases in the Civil Service, simple neglect of duty is classified as a less grave offense, punishable by suspension without pay for one (1) month and one (1) day to six (6) months for the first offense. We deem it proper to impose the penalty of three (3) months suspension without pay on Judge Ante and a stem warning that a repetition of the same or similar act will be dealt with more severely.

O. Provisional remedies in criminal cases (Rule 127)

P. Revised Guidelines on Continuous Trial (A.M. No. 15-06-10-SC)

Q. The Rule on Cybercrime Warrants (A.M. No. 17-11-03-SC)

VIII. EVIDENCE

A. General concepts

1. Proof vs. evidence

2. Burden of proof vs. burden of evidence

3. Equipoise rule

B. Admissibility

1. Requisites (Rule 128)

MARIA T. CALMA, *Petitioner*, - versus - MARILU C. TURLA, *Respondent*.
G.R. No. 221684, SECOND DIVISION, July 30, 2018, PERALTA, *J.*

Settled is the rule that the selection or removal of special administrators is not governed by the rules regarding the selection or removal of regular administrators. Courts may appoint or remove special administrators based on grounds other than those enumerated in the Rules, at their discretion. As long as the said discretion is exercised without grave abuse, higher courts will not interfere with it. The exercise of such discretion must be based on reason, equity, justice and legal principles.

We agree with the CA when it found that the RTC acted with grave abuse of discretion in removing respondent as Special Administratrix of the estate of Mariano Turla on the basis of the DNA result showing that she is not maternally related to Rufina, Mariano's wife.

Clearly, the DNA test was ordered to prove respondent's paternity, but surprisingly, the test was conducted with the alleged siblings of Rufina, which showed that respondent is not related to Rufina. While respondent was shown to be not blood related to Rufina, however, the DNA result did not at all prove that she is not a daughter of Mariano, as petitioner claims and which the RTC's order of DNA testing wanted to establish. Notably, petitioner alleges that she is Mariano's half-sister, but it baffles us

why she was not the one who underwent the DNA testing when such procedure could satisfactorily prove her contention that respondent is not Mariano's daughter.

Moreover, Section 5 of A.M. No. 06-11-5-SC, Rule on DNA evidence, provides that the grant of DNA testing application shall not be construed as an automatic admission into evidence of any component of the DNA evidence that may be obtained as a result thereof. ***Here, the DNA result was not offered in accordance with the Rules on Evidence. Therefore, we do not find the DNA test results as a valid ground for the revocation of respondent's appointment as Special Administratrix and her removal as such. Respondent's removal was not grounded on reason, justice and legal principle.***

FACTS:

Respondent Marilu Turla filed with the RTC a Petition for Letters of Administration alleging that her father, Mariano Turla, died intestate, leaving real properties located in Quezon City and Caloocan City, bank deposits and other personal properties, all with an estimated value of P3,000,000.00. Respondent claimed that she is the sole legal heir entitled to inherit and succeed to the estate of her deceased father who did not leave any other descendant or other heir entitled to the estate as his wife, Rufina de Castro, had predeceased him, and that she is entitled to be issued letters of administration. She presented her Certificate of Live Birth signed and registered by the deceased himself with the Local Civil Registrar of Manila. Thereafter, the Letter of Special Administration was issued to the respondent.

Petitioner Maria TurlaCalma claimed to be the surviving youngest half-sister of Mariano. Petitioner filed an Opposition to the petition for administration and alleged that respondent is not a daughter of Mariano. Further, the information recited in respondent's two birth certificates are false, the truth being, that Mariano and his wife Rufina did not have any child. The petitioner argued that she is entitled to the administration of the estate of her half-brother and nominated Norma Bernardino, who has been managing the business and other financial affairs of the decedent, to take charge of the management and preservation of the estate pending its distribution to the heirs.

Respondent, on the other hand, argued that her filiation had been conclusively proven by her record of birth which was duly authenticated by the Civil Registrar General of the National Statistics Office (NSO), and only the late Mariano or his wife had the right to impugn her legitimacy. The respondent stated that petitioner had no right to oppose her [respondent] appointment as Special Administratrix of Mariano's estate, since the petitioner is not Mariano's heir, and that in her capacity as the Special Administratrix of Mariano's estate, she had filed several cases against Norma and her husband. Thus, Norma is not qualified to act as an administratrix because she has an interest antagonistic to the estate.

Petitioner filed a Motion to Recall Orderappointing respondent as Special Administratrix on the ground that respondent has been collecting rentals from the properties of the decedent for her personal gain and has been filing malicious suits against the Spouses Bernardino. Respondent, on the other hand, argued that she has all the right to be appointed as Special Administratrix, since she is the legitimate daughter of the deceased Mariano and that she is able to protect and preserve the estate from Norma, the one being recommended by petitioner.

Petitioner then filed a Motion to Order DNA Testing as respondent's blood relation to Mariano is in issue. The same was granted by the RTC.

The RTC received the Report of Dr. De Ungria, Head of the DNA Analysis Laboratory, UP Natural Sciences Research Institute (NSRI), on the DNA test on the blood samples from Rufina's alleged siblings and respondent, with the following conclusion: *"Based on the results of mitochondrial DNA analysis there is no possibility that Mr. Ireneo de Castro and Ms. Basilia de Castro-Maningas [alleged siblings of Rufina] are maternal relatives of Ms. Marilu de Castro Turla."*

Thus, the RTC issued an Order, granting the Motion to Remove Marilu Turla as Special Administratrix. The Letters of Special Administration was issued in favor of Norma Bernardino, who is appointed as Special Administratrix of the estate of the deceased Mariano Turla. The RTC ruled that while respondent's birth certificate stated her father to be Mariano and her mother to be Rufina, the DNA test results conclusively showed that she is not Rufina's daughter.

ISSUE:

Whether respondent's removal as special administratrix of the estate of the deceased on the basis of the DNA result, showing that respondent is not maternally related to Rufina, the deceased's wife, was proper. (NO)

RULING:

Settled is the rule that the selection or removal of *special* administrators is not governed by the rules regarding the selection or removal of *regular* administrators. Courts may appoint or remove *special* administrators based on grounds other than those enumerated in the Rules, at their discretion. As long as the said discretion is exercised without grave abuse, higher courts will not interfere with it. The exercise of such discretion must be based on reason, equity, justice and legal principles.

We agree with the CA when it found that the RTC acted with grave abuse of discretion in removing respondent as Special Administratrix of the estate of Mariano Turla on the basis of the DNA result showing that she is not maternally related to Rufina, Mariano's wife.

Clearly, the DNA test was ordered to prove respondent's paternity, but surprisingly, the test was conducted with the alleged siblings of Rufina, which showed that respondent is not related to Rufina. While respondent was shown to be not blood related to Rufina, however, the DNA result did not at all prove that she is not a daughter of Mariano, as petitioner claims and which the RTC's order of DNA testing wanted to establish. Notably, petitioner alleges that she is Mariano's half-sister, but it baffles us why she was not the one who underwent the DNA testing when such procedure could satisfactorily prove her contention that respondent is not Mariano's daughter.

Moreover, Section 5 of A.M. No. 06-11-5-SC, Rule on DNA evidence, provides that the grant of DNA testing application shall not be construed as an automatic admission into evidence of any component of the DNA evidence that may be obtained as a result thereof. **Here, the DNA result was not offered in accordance with the Rules on Evidence. Therefore, we do not find the DNA test results as a valid ground for the revocation of respondent's appointment as Special Administratrix and her removal as such. Respondent's removal was not grounded on reason, justice and legal principle.**

The estate to be administered is that of decedent Mariano Turla. Hence, it is a grave abuse of discretion on the part of the RTC Judge to remove respondent on the ground that she is not related to Rufina Turla. True, that the respondent claims to be the daughter of the Spouses Turla. However, a finding that she is not the daughter of Rufina does not automatically mean that she is not the daughter of Mariano as well, especially since in the two versions of her birth certificate, it was Mariano who reported her birth and who signed the same as the father of the child.

Further, the DNA Test results used as a basis in removing respondent was not, at the very least, presented and offered as evidence. The rule is that after the DNA analysis is obtained, it shall be incumbent upon the parties who wish to avail of the same to offer the results in accordance with the rules of evidence. The RTC, in evaluating the DNA results upon presentation shall assess the same as evidence in keeping with Sections 7 and 8 of the Rule on DNA Evidence (A.M. No. 06-11-5-SC). At that point when the RTC used it as basis for the removal of petitioner, the DNA Test Result is not yet considered evidence, depriving respondent the opportunity to contest the same.

As we already determined, the DNA Test Result is not even material and relevant evidence in this case. Respondent's filiation with Rufina is not material in the resolution of the right of respondent to the estate of Mariano and/or to administer the same.

IRIS RODRIGUEZ, ***Petitioner*****,-versus-YOUR OWN HOME DEVELOPMENT CORPORATION (YOHDC)**, ***Respondent*****.**

G.R. No. 199451, THIRD DIVISION, August 15, 2018, LEONEN *J.*

Only private documents require proof of their due execution and authenticity before they can be received in evidence. This may require the presentation and examination of witnesses to testify on this fact. When there is no proof as to the authenticity of the writer's signature appearing in a private document, such private document may be excluded.

In the case at bar, Delos Reyes' Acknowledgement is a private document. Thus, for Iris to rely on it, she must have first proven its genuineness and authenticity by presenting the best proof available. As such, she should have presented Delos Reyes to testify on its genuineness and due execution. However, Iris merely relied on Delos Reyes' Answer and Acknowledgement on their faces. Delos Reyes neither appeared in court to attest to the allegations of his Acknowledgement or to explain his Answer, nor presented as Iris' witness.

FACTS:

YOHDC hired petitioner's husband, Tarcisius Rodriguez, as the project coordinator of its low-cost housing project. In search of a suitable land for the project, Tarcisius found a property owned by Rosa Rosillas and proceeded to negotiate with her. Rosillas was paid P1,200,000.00. However, due to Tarcisius' insistence that the amount agreed upon is P4,000,000.00, YOHDC issued two more checks. Tarcisius also requested for two more checks to pay the surveyor of Rosillas' property, Engineer Senen Delos Reyes.

YOHDC later on discovered irregularities on Rosillas' and Delos Reyes' checks after it received reports of project anomalies, such as padding of expenses and overpricing. Upon investigation, it was

found that the endorsement signatures on the checks of the intended payees, Rosillas and Delos Reyes, were different from those on file. Moreover, while the checks were for Rosillas who lived in Bulacan and for Delos Reyes who was from Mindoro, they were deposited in the same BPI accounts. During this time, Iris worked as a bank teller at BPI. This prompted YOHDC to contact Rosillas and Delos Reyes regarding the checks. Both confirmed that they never received, endorsed, encashed, or deposited any of the four checks.

Spouses Rodriguez failed to return the checks despite YOHDC's demand. After much prodding by YOHDC and with due notice to the spouses, BPI deducted the amounts of the four checks from the spouses' account, and issued a special clearing receipt to reimburse such amounts to YOHDC.

The Rodriguez Spouses filed a Complaint for Damages against YOHDC, BPI, Metrobank, Rosillas, and Delos Reyes, among others. The Regional Trial Court dismissed the case but noted that in Delos Reyes' Answer, he admitted receiving portions of the proceeds of his checks in the amount of P424,000.00. Thus, based on the principle against unjust enrichment, it ordered YOHDC to reimburse the Rodriguez Spouses P424,000.00, representing the amount that Delos Reyes had received.

On appeal, the Court of Appeals found that the principle against unjust enrichment did not apply. It did not lend credence to Delos Reyes' admission in his Answer regarding an Acknowledgement dated June 9, 1995, which he allegedly signed (Delos Reyes' Acknowledgement). It found that the document is a private document, the execution and authenticity of which were not proven as required by the rules of evidence. Instead, the Court of Appeals lent credence to the evidence presented by YOHDC, consisting of payment receipts to Delos Reyes, and Delos Reyes' duly notarized Affidavit (Delos Reyes' Affidavit), which stated that he never received, encashed, or deposited the checks.

ISSUE: Whether or not the CA was correct in not lending credence to Delos Reyes' Acknowledgment (YES)

RULING:

This Court affirms the ruling of the Court of Appeals and gives more credence to Delos Reyes' Affidavit, which is a public document.

A notarized document is presumed valid, regular, and genuine. It carries evidentiary weight with respect to its due execution. As such, it need not be proven authentic before it is admitted into evidence. On its face, it is entitled to full faith and credit, and is deemed to be in full force and effect. Absent evidence of falsity so clear, strong and convincing, and not merely preponderant, the presumption of regularity must be upheld. The burden of proof to overcome the presumption of due execution of a notarial document lies on the party contesting the same.

In *Rufina Patis Factory v. Alusitain*,this Court ruled that to contradict statements in a notarial document, there must be clear, convincing and more than merely preponderant evidence against it. A subsequent notarial document retracting the previous statement is not even sufficient:

Alusitain explains through his subsequent sworn statement that he only executed these two documents in order to obtain his retirement benefits from the SSS. His daughter, also by sworn statement, corroborates his explanation. His position does not persuade.

In order for a declarant to impugn a notarial document which he himself executed, it is not enough for him to merely execute a subsequent notarial document. What the law requires in order to contradict the facts stated in a notarial document is clear and convincing evidence. The subsequent notarial documents executed by respondent and his daughter fall short of this standard.

The rationale for this rule is to maintain public confidence in the integrity of notarized documents.

In contrast, private documents must first be authenticated before they could be admitted in evidence. In *Chua v. Court of Appeals*:

Our rule on evidence provides the procedure on how to present documentary evidence before the court, as follows: firstly, the document should be authenticated and proved in the manner provided in the rules of court; secondly, the document should be identified and marked for identification; and thirdly, it should be formally offered in evidence to the court and shown to the opposing party so that the latter may have an opportunity to object thereon.

The authentication and proof of documents are provided in Sections 20 to 24 of Rule 132 of the Rules of Court. Only private documents require proof of their due execution and authenticity before they can be received in evidence. This may require the presentation and examination of witnesses to testify on this fact. When there is no proof as to the authenticity of the writer's signature appearing in a private document, such private document may be excluded. On the other hand, public or notarial documents, or those instruments duly acknowledged or proved and certified as provided by law, may be presented in evidence without further proof, the certificate of acknowledgment being *prima facie* evidence of the execution of the instrument or document involved. There is also no need for proof of execution and authenticity with respect to documents the genuineness and due execution of which are admitted by the adverse party. These admissions may be found in the pleadings of the parties or in the case of an actionable document which may arise from the failure of the adverse party to specifically deny under oath the genuineness and due execution of the document in his pleading.

In the case at bar, Delos Reyes' Acknowledgement is a private document. Thus, for Iris to rely on it, she must have first proven its genuineness and authenticity by presenting the best proof available. As such, she should have presented Delos Reyes to testify on its genuineness and due execution. However, Iris merely relied on Delos Reyes' Answer and Acknowledgement on their faces. Delos Reyes neither appeared in court to attest to the allegations of his Acknowledgement or to explain his Answer, nor presented as Iris' witness.

Assuming that the statements in Delos Reyes' Answer are binding admissions, these admissions only pertain to the *existence* of his Acknowledgment. He neither categorically stated its genuineness and authenticity, nor admitted its allegations. Moreover, while he admitted the receipt of P424,000.00, he excluded from his admission that it was from the Metrobank checks stated in the Rodriguez Spouses' Complaint. Thus, the amount he received cannot be assumed to have been from the proceeds of his Checks or that it was payment made to him on behalf of YOHDC as these claims must still be proven.

Moreover, this Court notes that Delos Reyes never denied his notarized Affidavit's allegations even though his Acknowledgement's allegations are inconsistent with them.

Hence, this Court assumes that the Acknowledgement is in the nature of a retraction. This Court has consistently held that retractions are looked upon with disfavor because of its unreliable nature and the likely probability that it may again be repudiated.

3. Exclusionary rules

PEOPLE OF THE PHILIPPINES, *PLAINTIFF-APPELLEE*, -versus- REYNALDO ROJAS Y VILLABLANCA, JR., *ACCUSED-APPELLANT.*
G.R. No. 222563, THIRD DIVISION, July 23, 2018, BERSAMIN, J.

The failure of the arresting officers to explain the lapses in their compliance with the safeguards imposed by law for preserving the integrity of the confiscated substances as evidence of the corpus delicti entitles the accused to acquittal on the ground of failure of the State to establish guilt beyond reasonable doubt.

The arresting officers' non-adherence to the procedure laid down by Section 21, supra, entitled him to acquittal on the ground of reasonable doubt. Indeed, the State did not discharge its burden of proving Reynaldo's guilt beyond reasonable doubt. "Proof beyond reasonable doubt does not mean such a degree of proof as, excluding possibility of error, produces absolute certainty. Moral certainty only is required, or that degree of proof which produces conviction in an unprejudiced mind." Acquittal of Reynaldo should follow.

FACTS:

At around 9:00 o'clock in the evening of 11 August 2005, a civilian informant arrived at the Zamboanga City Mobile Office (ZCMO) of the Philippine National Police at Sta. Barbara, Zamboanga City and reported to SPO3 Bunac that a certain "Jung-jung" was selling *shabu* at Presa Camino Nuevo. Consequently, SPO3 Bunac informed their Acting Commander PSI Diomarie Albarico about the report and the latter instructed him to conduct a short briefing for a possible buy-bust operation against a certain "Jung-jung."

During the briefing, it was agreed that PO2 Santiago would act as the poseur-buyer, SPO3 Bunac would be the arresting officer and the rest of the buy-bust team would serve as the back-up. It was further agreed that PO2 Santiago would buy *shabu* using the P100.00 marked money with serial no. FX 030478 and the pre-arranged signal would be the removal of PO2 Santiago's bull cap.

After the briefing, the buy-bust team together with the confidential informant immediately proceeded to the target area at Presa Camino Nuevo using four (4) motorcycles. They parked their motorcycles along the highway as Presa Camino Nuevo is located at the interior portion of Canelar St. Then they walked towards the target area passing through the rip-rap along the river and the foot-bridge until they reached the house of "Jung-jung."

At the target area, the buy-bust team saw "Jung-jung," the suspected drug pusher, standing outside his house and the confidential informant approached "Jung-jung" while PO2 Santiago followed the confidential informant. The latter talked with "Jung-jung" in chavacano dialect and PO2 Santiago was introduced to "Jung-jung" informing the latter that PO2 Santiago wanted to buy *shabu*. PO2 Santiago handed the P100.00 to "Jung-jung" and the latter took from the right pocket of his jacket a sachet of

suspected *shabu* and handed it to PO2 Santiago. When PO2 received it, he executed the pre-arranged signal by removing his bull cap.

Consequently, SPO3 Bunac rushed towards PO2 Santiago and arrested "Jung-jung." SPO3 Bunac recovered from "Jung-jung" the P100.00 marked money and another one (1) heat-sealed transparent plastic sachet of suspected *shabu* from the right pocket of "Jung-jung." SPO3 Bunac called, through his hand held radio, their vehicle, LRU Alpha, in order to conduct "Jung-jung." The buy-bust team brought "Jung jung" to the highway where the LRU Alpha was waiting. On their way to their office in ZCMO, they passed by first at the Barangay Hall of Camino Nuevo for inventory. At the Barangay Hall, SPO3 Bunac conducted an inventory in the presence of "Jung-jung," Barangay Captain Antonio Delles (Delles), and the rest of the buy-bust team and he let Barangay Captain Delles sign the Inventory of Seized/Confiscated Items. Thereafter, they proceeded to their office at Sta. Barbara. It was later learned that the real nan1e of "Jung-jung" is Reynaldo Rojas, the accused-appellant in this case.

At the ZCMO, PO2 Santiago marked the sachet of suspected *shabu* subject of the buy-bust operation with his initials "AGS" which stands for Antonio Gonzales Santiago. He then turned it over to their investigator PO3 Daniel Taub (PO3 Taub). Likewise, SPO3 Bunac marked with his initials "IPB" the other sachet of suspected *shabu* found in the possession of the accused-appellant and turned it over also to investigator PO3 Taub.

The testimony of PSI Manuel was dispensed with by the parties after the defense stipulated on the following: that he is an expert in the field of chemistry; that the Regional Crime Laboratory Office-09 received on 12 August 2005 a written request from Zamboanga City Mobile Group (ZCMG) 09 for the examination of two (2) plastic sachets containing white crystalline substance suspected to be *shabu* marked with "AGS, DLT-BB" and "IPB, DLT-P," respectively, and that the Chemistry Report on the quantitative and qualitative examinations of the two (2) sachets show that the sachet with "AGS, DLT-BB" has a weight of0.0162 gram while the other sachet with "IPB, DLT-P" has a weight of 0.0145 gram and both sachets were positive to the test of the presence of methamphetamine hydrochloride or *shabu*.

In convicting the accused-appellant, the RTC considered the testimonies of the Prosecution's witnesses credible but dismissed the version of Reynaldo as ridiculous. It observed that Reynaldo's claim of frame-up and his denial were uncorroborated; and concluded that the evidence of the Prosecution proved the guilt of the accused for the crimes charged beyond reasonable doubt. On appeal, the CA affirmed Reynaldo's conviction.

In the present appeal by the accused-appellant, he insisted that the police operatives had not observed the procedural safeguards provided for by Section 21 of R.A. No. 9165 to ensure the integrity of the seized drugs; that the operatives had not coordinated with the PDEA; and that no physical inventory and no photographs of the drugs were taken in his presence and in the presence of the representative of the Department of Justice (DOJ), the media and elected officials, as directed by the law; and that such lapses were serious enough to warrant his acquittal based on reasonable doubt.

ISSUE:

Whether there was non-compliance with the chain of custody rule under Section 21 of R.A. No. 9165. (YES)

RULING:

In the prosecution of a violation of R.A. No. 9165, the State bears the burden of proving not only the elements of the offenses of sale and possession of the dangerous drugs but also of the *corpus delicti*. Corpus delicti has been defined as the body or substance of the crime and, in its primary sense, refers to the fact that a crime has actually been committed. As applied to a particular offense, it means the actual commission by someone of the particular crime charged. The *corpus delicti* is a compound fact made up of two things, namely: the existence of a certain act or result forming the basis of the criminal charge, and the existence of a criminal agency as the cause of this act or result. The dangerous drug is itself the *corpus delicti* of the violation of the law prohibiting the mere possession of the dangerous drug. Consequently, the State does not comply with the indispensable requirement of proving the *corpus delicti* when the drugs are missing, or when substantial gaps occur in the chain of custody of the seized drugs as to raise doubts on the authenticity of the evidence presented in court.[10] The substitution, or tampering, or adulteration of the seized drugs prevents the establishment of the *corpus delicti*. In view of these considerations, the duty to prove the *corpus delicti* of the crime is as essential as proving the elements of the crime itself.

The chain of custody vis-a-vis the drugs seized during entrapment is divided into four parts, each designed to contribute to the preservation of the integrity of the seized drugs as evidence. The seizure and marking, if practicable, of the seized drugs by the apprehending officer constitute the first part. Second is the turnover of the marked seized drugs by the apprehending officer to the investigating officer. The turnover of the marked seized drugs by the investigating officer to the forensic chemist for the laboratory examination is third. The turnover and submission of the marked seized drugs by the forensic chemist to the trial court make up the fourth part.

In this case, there was non-observance of the chain of custody rule which is fatal to the present case. PO3 Santiago and SPO3 Bunac gave no explanation as to why they did not mark the seized drugs right after the arrest of the accused, or even during the taking of the inventory at the Barangay Hall. Their omissions exposed the seized drugs to the possibility of switching or tampering while in transit to the police office, or to planting of evidence, the very dangers that the marking was intended to preclude. Secondly, the *unmarked* sachet of *shabu* left the hands of PO3 Santiago when the same was inventoried by SPO3 Bunac. In that situation, the two officers did nothing to ensure that the sachet of *shabu* seized by PO3 Santiago would be differentiated and segregated from the sachet of *shabu* SPO3 Bunac seized from Reynaldo's possession. The practical problem of ascertaining which of the sachets of *shabu* was involved in the illegal sale or in the illegal possession naturally arose, putting in doubt the proof of the *corpus delicti*. And, thirdly, no witness testified on the circumstances surrounding the making of the marking - whether the marking was made in the presence of Reynaldo, or of the other witnesses whose presence was required by law (namely, the representative of the Department of Justice [DOJ], an elective official, and the representative of the media). In this regard, although PO3 Santiago stated that the inventory had been taken in the presence of Reynaldo, nothing was offered to corroborate his statement. What appears in the records instead is the inventory that was not signed by Reynaldo despite the law itself requiring the accused to sign the same.

The Prosecution made it appear that the inventory was prepared by SPO3 Bunac in the presence of the Barangay Chairman. Although so required by Section 21, supra, the further presence of representatives from the DOJ and the media was not obtained despite the buy-bust operation against Reynaldo being supposedly pre-planned. Also, the witnesses of the State did not explain the absence of representatives from the DOJ and the media, and the lack of photographs of the seized drugs and the taking of the inventory.

The arresting officers' non-adherence to the procedure laid down by Section 21, *supra*, entitled him to acquittal on the ground of reasonable doubt. Indeed, the State did not discharge its burden of proving Reynaldo's guilt beyond reasonable doubt. "Proof beyond reasonable doubt does not mean such a degree of proof as, excluding possibility of error, produces absolute certainty. Moral certainty only is required, or that degree of proof which produces conviction in an unprejudiced mind." Acquittal of Reynaldo should follow.

PEOPLE OF THE PHILIPPINES, *Petitioner*, -versus- ALJON GUADAÑA *Y* ANTIQUERA, *Accused-appellant*.
G.R. No. 234160, THIRD DIVISION, July 23, 2018, REYES, JR., *J.*

Supplementing the above-quoted provision, Article II, Section 21(a) of the IRR of RA 9165 clarifies the step-by-step procedural requirements that must be observed by the arresting officers to confirm the chain of custody, to wit:

> *(a) The apprehending officer/team having initial custody and control of the drugs shall, immediately after seizure and confiscation, physically inventory and photograph the same in the presence of the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, a representative from 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;*

To recapitulate, the buy-bust operation was conducted past 9:00p.m., on a bridge that was located in a remote area. Given the surrounding circumstances, it was neither practical nor safe for the arresting team to conduct the required inventory at the place of apprehension.

With respect to the absence of the two other required witnesses, i.e., the DOJ representative and media representative, the Court agrees with the trial court that the same was reasonably justified, to wit:

> *The absence of representatives from the media and the DOJ during the inventory was explained by PO2 Dajac. Accordingly,* ***there was neither DOJ representative nor media man available in Manito, Albay because of its distance from Legazpi City****, where these representatives are staying. Besides* ***the highway connecting the Municipality of Manito and the City of Legazpi is a critical area in terms of security due to the insurgency. They tried to contact a DOJ***

> ***representative to no avail.*** *Besides fetching those representatives in Legazpi City would take time and it would delay the inventory. x xx. Said explanation justified the absence of representatives from the media and the DOJ during the inventory.*

FACTS:

During a buy-bust operation, PO2 Roger Dajac recovered from the accused-appellantAljonGuadaña a plastic sachet containing white crystalline substance suspected to be *shabu* as well as the marked money used in the said operation. The said buy-bust operation was conducted at a bridge in Purok 1, Barangay Buyo, Manito, Albay past 9:00 pm.

PO3 Leonardo Astillero,who accompanied PO2 Dajac, contacted KagawadJobertDagsil who immediately proceeded to the venue with Kagawad Roger Daguiso, along with the Chief *Tanod*. PO2 Dajac informed the barangay officials that the marking of the items would be conducted at the barangay hall because it was quite dark at the bridge. In the barangay hall, PO2 Dajac placed the suspected *shabu* and the marked money on the table. He marked the sachet with his initials "RPD 02-26-15" and signature in the presence of the accused-appellant and the barangay officials. After inventory was conducted, a certificate of inventory was issued and duly signed by the two barangay *kagawads*.

PO2 Dajac thereafter brought the confiscated drugs to the PNP Crime Laboratory in Camp Simeon, Legazpi City. At the PNP Crime Laboratory, PSI Wilfredo IdianPabustanconducted a qualitative examination on the specimen which yielded positive for methamphetamine hydrochloride or "*shabu*." PSI Pabustan turned over the s*habu* to their Evidence Custodian PO3 Maribel Bagato for safekeeping. PO3 Bagato eventually turned over the *shabu* with all the security measures undertakento PSI Pabustan who brought the same to the Court when he was called to testify.

The RTC found the accused-appellant guilty beyond reasonable doubt of the crime of illegal sale of dangerous drugs.

Invoking his innocence, the accused-appellant appealed his conviction to the CA. The CA however affirmed the judgment of the trial court. Hence, this appeal.

ISSUE:

Whether the CA erred in affirming the accused-appellant's conviction for violation of Section 5, Article II ofRA 9165. (No)

RULING:

In *Goromeo v. People*, the SC reinstated the factors that must be proven to secure a conviction for Illegal Sale of dangerous drugs, to wit:

> In order to secure the conviction of an accused charged with illegal sale of dangerous drugs, the prosecution must prove the: (*a*) identity of the buyer and the seller, the object, and the consideration; and (*b*) delivery of the thing sold and the payment.

> In this relation, it is essential that the identity of the prohibited drug be established beyond reasonable doubt. In order to obviate any unnecessary doubts on the identity of the dangerous drugs, the prosecution has to show an unbroken chain of custody over the same. It must be able to account for each link in the chain of custody over the dangerous drug from the moment of seizure up to its presentation in court as evidence of the *corpus delicti*.

Since the confiscated drugs consist the *corpus delicti* of the crime charged, a break or substantial gap in the chain of custody is fatal to the case of the prosecution. It, thus, becomes of paramount importance for the prosecution to prove that there was compliance with the chain of custody rule found in Section 21(1) of RA 9165, to wit:

> 1. The apprehending team having initial custody and control of the drugs shall, immediately after seizure and confiscation, physically inventory and photograph the same in the presence of the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, a representative from the media and the DOJ, and any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof.

Supplementing the above-quoted provision, Article II, Section 21(a) of the IRR of RA 9165 clarifies the step-by-step procedural requirements that must be observed by the arresting officers to confirm the chain of custody, to wit:

> (a) The apprehending officer/team having initial custody and control of the drugs shall, immediately after seizure and confiscation, physically inventory and photograph the same in the presence of the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, a representative from 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;

The buy-bust operation was conducted past 9:00p.m., on a bridge that was located in a remote area. Given the surrounding circumstances, it was neither practical nor safe for the arresting team to conduct the required inventory at the place of apprehension.

With respect to the absence of the two other required witnesses, *i.e.*, the DOJ representative and media representative, the Court agrees with the trial court that the same was reasonably justified, to wit:

> The absence of representatives from the media and the DOJ during the inventory was explained by PO2 Dajac. Accordingly, **there was neither DOJ representative nor media man available in Manito, Albay because of its distance from Legazpi City**, where these representatives are staying. Besides **the highway connecting the Municipality of Manito and the City of Legazpi is a critical area in terms of security due to the insurgency. They**

> **tried to contact a DOJ representative to no avail.** Besides fetching those representatives in Legazpi City would take time and it would delay the inventory. x xx. Said explanation justified the absence of representatives from the media and the DOJ during the inventory.

Although the Court strongly encourages strict compliance with the provisions of Section 21, it is also well aware that a perfect chain of custody is difficult to achieve especially in cases of buy-bust operations. It is precisely for this reason that the IRR provided a saving clause stating that non-compliance will not render void and invalid the seizure of and custody over the said items so long as there are justifiable grounds to support it. As to what constitutes "justifiable grounds", the Court's ruling in *People of the Philippines v. Vicente Sipin y De Castro* is relevant:

> The prosecution never alleged and proved that the presence of the required witnesses was not obtained for any of the following reasons, such as (1) **their attendance was impossible because the place of arrest was a remote area;** (2) their safety during the inventory and photograph of the seized drugs was threatened by an immediate retaliatory action of the accused or any person's acting for and in his/her behalf; (3) the elected official themselves were involved in the punishable acts sought to be apprehended; (4) **earnest efforts to secure the presence of a DOJ or media representative and elected public official within the period required** under Article 125 of the RPC prove futile through no fault of the arresting officers, who face the threat of being charged with arbitrary detention; or (5) time constraints and urgency of the anti-drug operations, which often rely on tips of confidential assets, prevented the law enforcers from obtaining the presence of the required witnesses even before the offenders could escape.

Time, safety, location and availability of the required witnesses are some of the factors that must be considered in determining whether or not to apply the saving clause found in Section 21. In addition to the grounds relied upon, the arresting officers must also prove that earnest efforts were made to comply with the requirements of Section 21 otherwise the presumption of regularity in the performance of official duty will not stand. In the present case, there is nothing in the records that would suggest that the arresting officers intentionally deviated from the standard conduct of official duty as provided for in the law. Moreover, it is clear that from the time the subject drug was confiscated by PO2 Dajac from the accused-appellant, the former continued to be in custody of the drugs until it was turned over to the PNP Crime Laboratory for qualitative and. quantitative examination and subsequently presented in court as evidence.

LAMBERTO MARIÑAS *Y* FERNANDO, *Petitioner*, -versus- PEOPLE OF THE PHILIPPINES, *Respondent*.
G.R. No. 232891, SECOND DIVISION, July 23, 2018, REYES, JR., *J.*

As culled from the records, the respondent was able to justify the failure of the arresting officers to mark the seized items at the place of apprehension or arrest. However, no justification was given as to the absence of the other required witnesses, i.e., an elected public official and DOJ representative. The records clearly state that aside from the petitioner and the arresting officers, only media man Nick Luares was present in the inventory.

The Court is well aware that a perfect chain of custody is almost always impossible to achieve and so it has previously ruled that minor procedural lapses or deviations from the prescribed chain of custody are excused so long as it can be shown by the prosecution that the arresting officers put in their best effort to comply with the same and the justifiable ground for non-compliance is proven as a fact.

The Court's ruling in People v. Umipang is instructive on the matter:

> *Minor deviations from the procedures under R.A. 9165 would not automatically exonerate an accused from the crimes of which he or she was convicted. This is especially true when the lapses in procedure were recognized and explained in terms of justifiable grounds. There must also be a showing that the police officers intended to comply with the procedure but were thwarted by some justifiable consideration/reason. However, when there is gross disregard of the procedural safeguards prescribed in the substantive law (R.A. 9165), serious uncertainty is generated about the identity of the seized items that the prosecution presented in evidence. This uncertainty cannot be remedied by simply invoking the presumption of regularity in the performance of official duties, for a gross, systematic, or deliberate disregard of the procedural safeguards effectively produces an irregularity in the performance of official duties. As a result, the prosecution is deemed to have failed to fully establish the elements of the crimes charged, creating reasonable doubt on the criminal liability of the accused.*

There is no question that the prosecution miserably failed to provide justifiable grounds for the arresting officers' non-compliance with Section 21 of RA 9165, as well as its IRR. The unjustified absence of an elected public official and DOJ representative during the inventory of the seized item constitutes a substantial gap in the chain of custody. There being a substantial gap or break in the chain, it casts serious doubts on the integrity and evidentiary value of the corpus delicti. As such, the petitioner must be acquitted.

FACTS:

On the 5th of October 2010, PNP San Pedro, Laguna received a report regarding a motorcycle theft in the vicinity of Barangay Cuyab, San Pedro, Laguna. Police Officers responded to the report and conducted a monitoring of the area. The police officers decided to go to the house of their asset in Barangay Cuyab and on their way to the house, while walking through an alley, they saw two male persons, one showing to the other a plastic sachet which appeared to be shabu.

The police officers immediately approached the two and introduced themselves as police officers when suddenly one person ran away and fled. PO2 Santos immediately held the other person, later identified as the petitioner. SPO2 Abutal, on the other hand, saw from the open door Hermino, inside the house, holding a plastic sachet of shabu and a pair of scissors. Another empty plastic sachet was confiscated from Hermino, which was lying on top of the table, in plain view from the open door of his house.

After the two were arrested and after informing them of their Constitutional Rights, appellants were brought to the Police Station. PO2 Santos was in possession of the plastic sachet confiscated from Mariñas, while SPO2 Abutal was in possession of the plastic sachet confiscated from Hermino, from the place of arrest to the Police Station. The confiscated plastic sachets and pair of scissors were marked at the Police Station by PO2 Santos and SPO2 Abutal, respectively. Afterwards, the confiscated items were inventoried and a certification of inventory was issued. Appellants and the

confiscated items were likewise photographed. Mediaman Nick Luares was present in the inventory also took photographs of the confiscated items and of appellants.

PO2 Santos and SPO2 Abutal prepared a Request for Laboratory Examination for seized items from appellants Mariñas and Hermino. PO2 Santos brought the request for laboratory examination and the confiscated items to the PNP Crime Laboratory at Calamba City for drug analysis. The confiscated specimen, both from Hermino and Mariñas were in the custody of PO2 Santos after marking, up to the submission to the PNP Crime Laboratory. PO2 Santos likewise personally turned over the specimen to the Receiving Clerk of the PNP Crime Laboratory. However, PO2 Eliseo Carmen was the one who signed the formal turn-over documents as PO2 Santos was not in uniform at the time.

The Forensic Chemical Officer established that she personally received the confiscated items. The two small heat-sealed plastic sachets of shabu were examined and found positive for methamphetamine hydrochloride. The same were placed into a container, sealed and marked to prevent tampering. The Forensic Chemical Officer personally retrieved the object evidence from the evidence custodian and brought the same before the court.

RTC found petitioner and his co-accused guilty beyond reasonable doubt of the crime charged. Petitioner and Hermino appealed to the CA and contending that the RTC gravely erred in convicting the accused-appellants of the crime charged despite the prosecution's failure to establish the admissibility of the allegedly seized prohibited drugs for being fruits of the poisonous tree.

The CA dismissed the petition and affirmed the RTC. Hence, this petition.

ISSUE:

Whether the CA erred in affirming petitioner's conviction for violation of Section 11, Article II of RA 9165. (Yes)

RULING:

The petitioner argues that the arresting officers marked the sachets at the police station, in clear violation of Section 21 of RA 9165 which requires *marking* of the subject sachet of drugs to be done at the place of apprehension or arrest.

The petitioner was caught in *flagrante delicto*. All the foregoing requirements for a lawful search and seizure are present in this case. The police officers had prior justification to be at the petitioner's place as they were conducting a follow-up operation on carnapping incidents in the area when they chanced upon the petitioner standing by, holding a plastic sachet containing suspected illegal drugs; when they approached petitioner and upon introducing themselves as police officers, petitioner ran away. As the crystalline substance was plainly visible, the police officers were justified in seizing them. Simply put, when the arresting officers arrested the petitioner and confiscated the subject sachet of drugs, they did so pursuant to a lawful warrantless arrest and seizure.

The Guidelines on the IRR of Section 21 of RA 9165 expressly provide that in *warrantless seizures*, the marking of the seized items shall be done immediately at the place where the drugs were seized

OR at the nearest police station OR nearest office of the apprehending officer or team, whichever is practicable.

Relevant jurisprudence on the matter also states that if seizure was made as a consequence of or pursuant to a warrantless arrest, the physical inventory and marking may be conducted at the nearest police station, as was done by the arresting officers in this case. Clearly, there was compliance with respect to venue.

It now behooves the Court to determine once and for all whether or not there was compliance with the requirements of Section 21 of RA 9165.

Section 21, Article II of RA 9165 laid down the procedure that must be observed and followed by police officers in the seizure and custody of dangerous drugs. Paragraph (1) provides a list of the witnesses required to be present during the inventory and taking of photographs and the venue where these should be conducted, to wit:

> 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.

As culled from the records, the respondent was able to justify the failure of the arresting officers to mark the seized items at the place of apprehension or arrest. However, no justification was given as to the absence of the other required witnesses, *i.e.*, an elected public official and DOJ representative. The records clearly state that aside from the petitioner and the arresting officers, only media man Nick Luares was present in the inventory.

The Court is well aware that a perfect chain of custody is almost always impossible to achieve and so it has previously ruled that minor procedural lapses or deviations from the prescribed chain of custody are excused so long as it can be shown by the prosecution that the arresting officers put in their best effort to comply with the same and the justifiable ground for non-compliance is proven as a fact.

The Court's ruling in *People v. Umipang* is instructive on the matter:

> Minor deviations from the procedures under R.A. 9165 would not automatically exonerate an accused from the crimes of which he or she was convicted. This is especially true when the lapses in procedure were recognized and explained in terms of justifiable grounds. There must also be a showing that the police officers intended to comply with the procedure but were thwarted by some justifiable consideration/reason. However, when there is gross disregard of the procedural safeguards prescribed in the substantive law (R.A. 9165), serious uncertainty is generated about the identity of the seized items that the prosecution presented in evidence. This uncertainty cannot be remedied by simply invoking the presumption of regularity in the performance of official duties, for a gross, systematic, or deliberate disregard of the procedural safeguards effectively produces an irregularity in the performance of official duties. As a result, the prosecution is deemed to have failed to fully establish the

elements of the crimes charged, creating reasonable doubt on the criminal liability of the accused.

There is no question that the prosecution miserably failed to provide justifiable grounds for the arresting officers' non-compliance with Section 21 of RA 9165, as well as its IRR. The unjustified absence of an elected public official and DOJ representative during the inventory of the seized item constitutes a substantial gap in the chain of custody. There being a substantial gap or break in the chain, it casts serious doubts on the integrity and evidentiary value of the *corpus delicti*. As such, the petitioner must be acquitted.

PEOPLE OF THE PHILIPPINES, *Petitioner*, -versus- JERRY ARBUIS *Y* COMPRADO A.K.A. "ONTET", *Accused-appellant.*
G.R. No. 234154, SECOND DIVISION, July 23, 2018, REYES, JR.,*J.*

Contrary to the accused-appellant's claim that there was a "break" in the chain of custody, a perusal of the records reveal that the arresting officers complied with the requirements of Section 21 [RA 9165]. First, it is not disputed that IO2 Laynesa had custody of the seized items from the time of seizure up to the time it was brought to the crime laboratory for examination. Second, the requirements of marking, inventory and photograph were complied with and was conducted in the presence of the accused-appellant and the required witnesses, namely: Borigas, Nisolada, andAgor. Third, the sole reason why IO2 Laynesa was unable to immediately turnover the seized item to the crime laboratory was because it was already 3:00 a.m. - clearly beyond office hours. Moreover, the seized items remained in her custody as she locked it up in the meantime and had the lone key to the drawer. The fact that she brought it to the crime laboratory for testing that very same morning negates the accused-appellant's claim that such deviation destroyed the presumption of regularity in the performance of duty.

In People v. Umipang, the Court held that minor deviations from the procedures under RA 9165 would not automatically exonerate an accused from the crimes of which he or she was convicted. This is especially true when the lapses in procedure were recognized and explained in terms of justifiable grounds. ***There must also be a showing that the police officers intended to comply with the procedure but were thwarted by some justifiable consideration/reason.*** *However, when there is gross disregard of the procedural safeguards prescribed in RA9165, serious uncertainty is generated about the identity of the seized items that the prosecution presented in evidence. This uncertainty cannot be remedied by simply invoking the presumption of regularity in the performance of official duties, for a gross, systematic, or deliberate disregard of the procedural safeguards effectively produces an irregularity in the performance of official duties. As a result, the prosecution is deemed to have failed to fully establish the elements of the crimes charged, creating reasonable doubt on the criminal liability of the accused.*

Applying the foregoing pronouncement to the case at bench, it is clear that the prosecution was not remiss in its duty to prove the arresting officers' compliance with Section 21. Thus, the presumption of regularity in the performance of official duty must be upheld.

FACTS:

On March 1, 2012, asearch warrant was implemented against accused-appellantJerry Arbuis, at the latter's residence located at Sitio Sagrada Familia, Barangay Peñafrancia, Naga City.

At around 5:20 p.m., the composite team proceeded to the target site. Upon arrival at the target site, the composite team secured the area, and waited for the arrival of the accused-appellant and the witnesses whose presence are required during searches. When the accused-appellant arrived, he was informed of the implementation of the search warrant against him. Shortly thereafter, the required witnesses arrived, namely: Rodrigo Borigas (DOJ representative), Barangay Kagawad Demetrio Nisolada (elected public official), and EutiquioAgor (media representative). After the content of the warrant was read to the accused-appellant, the composite team started to search his house. During the search, Intelligence Officer II MaileneLaynesa (IO2 Laynesa) found five plastic sachets containing white crystalline substance. She marked the plastic sachets seized from the accused-appellant. Photographs were likewise taken. Thereafter, the Certificate of Inventory were signed by the three witnesses. A receipt of property seized and Certificate of Orderly Search was likewise prepared in the presence of the accused and the three witnesses.

At around 2:00 a.m., the composite team brought the accused appellant to the Naga police station for further investigation and proper documentation. Since it was nearly 3:00 a.m., the PDEA agents went straight to the PDEA office in Pacol and rested. IO2 Laynesa locked the seized items in a drawer and kept the lone key to said lock. In the morning, IO2 Laynesa brought the seized items to the Camarines Sur Provincial Crime Laboratory Office for examination. From the time of seizure until turnover to the forensic chemist of the crime laboratory, IO2 Laynesa had full and uninterrupted custody of the drugs. Police Senior Inspector Jun Malong, the forensic chemist who received the request and the seized items and likewise performed the qualitative and quantitative examination on the specimen, found that the specimen was indeed *shabu*.

The RTC rendered a judgment of conviction. The CA affirmed the RTC. Hence, this appeal.

ISSUE:

Whether the CA was correct in affirming the conviction of the accused-appellant for violation of Section 11, Article II of RA 9165. (Yes)

RULING:

For the successful prosecution of illegal possession of dangerous drugs, the following essential elements must be established: (a) the accused is in possession of an item or object that is identified to be a prohibited or dangerous drug; (b) such possession is not authorized by law; and (c) the accused freely and consciously possesses the said drug.

The prosecution must prove beyond reasonable doubt not only every element of the crime or offense charged but must likewise establish the identity of the *corpus delicti, i.e.*, the seized drugs. To convince the Court that the identity and integrity of the *corpus delicti* has been preserved, the prosecution must prove that there was compliance with the procedure laid down in Section 21 of RA 9165, specifically the requirements from the time of seizure up to the time the seized item is presented in court as this will ultimately determine the fate of the accused.

Contrary to the accused-appellant's claim that there was a "break" in the chain of custody, a perusal of the records reveal that the arresting officers complied with the requirements of Section 21. *First*, it is not disputed that IO2 Laynesa had custody of the seized items from the time of seizure up to the time it was brought to the crime laboratory for examination. *Second*, the requirements of marking,

inventory and photograph were complied with and was conducted in the presence of the accused-appellant and the required witnesses, namely: Borigas, Nisolada, and. *Third*, the sole reason why IO2 Laynesa was unable to immediately turnover the seized item to the crime laboratory was because it was already 3:00 a.m. - clearly beyond office hours. Moreover, the seized items remained in her custody as she locked it up in the meantime and had the lone key to the drawer. The fact that she brought it to the crime laboratory for testing that very same morning negates the accused-appellant's claim that such deviation destroyed the presumption of regularity in the performance of duty.

A perfect chain of custody is almost always impossible to achieve and so the Court has previously ruled that minor procedural lapses or deviations from the prescribed chain of custody are excused so long as it can be shown by the prosecution that the arresting officers put in their best effort to comply with the same and the justifiable ground for non-compliance is proven as a fact.

In *People v. Umipang*, the Court held that minor deviations from the procedures under RA 9165 would not automatically exonerate an accused from the crimes of which he or she was convicted. This is especially true when the lapses in procedure were recognized and explained in terms of justifiable grounds. **There must also be a showing that the police officers intended to comply with the procedure but were thwarted by some justifiable consideration/reason.** However, when there is gross disregard of the procedural safeguards prescribed in RA 9165, serious uncertainty is generated about the identity of the seized items that the prosecution presented in evidence. This uncertainty cannot be remedied by simply invoking the presumption of regularity in the performance of official duties, for a gross, systematic, or deliberate disregard of the procedural safeguards effectively produces an irregularity in the performance of official duties. As a result, the prosecution is deemed to have failed to fully establish the elements of the crimes charged, creating reasonable doubt on the criminal liability of the accused.

Applying the foregoing pronouncement to the case at bench, it is clear that the prosecution was not remiss in its duty to prove the arresting officers' compliance with Section 21. Thus, the presumption of regularity in the performance of official duty must be upheld.

4. Judicial notice and judicial admissions (Rule 129)

JOSE A. BERNAS AND THE WHARTON RESOURCES GROUP (PHILIPPINES), INC., *Petitioners*, *v.* **THE ESTATE OF FELIPE YU HAN YAT, REPRESENTED BY HERO T. YU,** *Respondent*.

FELOMENA S. MEJIA (DULY SUBSTITUTED BY HEIRS CARMELITA S. PONGOL AND MAGDALENA S. TUMAMBING), *Petitioners*, *v.* **FELIPE YU HAN YAT**, *Respondent*.
G.R. No. 195908 and G.R. No. 195910, SECOND DIVISION, August 15, 2018, CAGUIOA, *J.*

Bernas asserts that the above ruling of the CA was not supported by evidence on record and was bereft of factual basis nor based on established facts. The Court, however, agrees that the CA was justified in taking judicial notice when Quezon City was established. Section 1, Rule 129 of the Rules of Court states:

> *SECTION 1. Judicial notice, when mandatory. — A court shall take judicial notice, without the introduction of evidence, of the existence and territorial extent of states, their political history, forms of government and symbols of nationality, the law of nations, the admiralty and maritime*

courts of the world and their seals, ***the political constitution and history of the Philippines, the official acts of the legislative, executive and judicial departments of the Philippines, the laws of nature, the measure of time, and the geographical divisions.***

The CA correctly held that the Quezon City was established only in 1939, upon the enactment of Commonwealth Act No. 502, the city's charter. Hence, when the survey for Psd-2498 was conducted in 1927, Quezon City did not as yet exist. Further, the property in question has always been referred to as part of the Piedad Estate. When Quezon City was created, the boundaries and limits of the city would show that Piedad Estate indeed became part of it. The foregoing disquisition persuades the Court that the annotation that Psd-2498 pertains to a parcel land in "Bayanbayanan, Mariquina" was indeed a mere inadvertent error. Therefore, the Court so holds that Yu Han Yat's title, TCT No. 30627, and Mejia and Bernas' title, TCT No. 336663, cover the same property.

FACTS:
The present case involves a parcel of land known as Lot 824-A-4, located at Brgy. MatandangBalara, Quezon City, consisting of 30,000 square meters, which is part of Piedad Estate, registered in the name of Felipe Yu Han Yat. Yu Han Yat subdivided the subject property into 60 lots. As a consequence, TCT No. 30627 was cancelled and derivative titles (Yu Han Yat TCTs), were issued in his name.

To finance his plan of developing the subject property, Yu Han Yat applied for loans with several banks using some of the Yu Han Yat TCTs as security. However, the Register of Deeds of Quezon City refused to record the same on the ground that the Yu Han Yat TCTs overlapped with the boundaries covered by another title: TCT No. 336663, registered in the name of Esperanza Nava.

Meanwhile, petitioner Mejia claimed ownership over the subject property. According to Mejia, Nava was the registered owner of the parcel of land until she sold parts of the said lot to her. Petitioner Bernas, on the other hand, claimed the subject property on the basis of a Deed of Sale executed between himself, for and on behalf of Wharton Resources Group (Philippines), Inc, and Mejia.

Because Bernas filed an Affidavit of Adverse Claim on Yu Han Yat's TCTs, Yu Han Yat filed a **Petition for Quieting of Title** before the RTC of Quezon City against the Estate of Nava, Galarosa, Mejia, Bernas, and the Register of Deeds of Quezon City (Estate of Nava, et al.). RTC issued a Decision in favor of the Estate of Nava, et al., and Wharton. Aggrieved, Yu Han Yat appealed the Decision of the RTC to the CA. In its Decision, the CA granted Yu Han Yat's appeal. Bernas, Mejia, and Wharton sought reconsideration of the CA Decision, but the same was denied by the CA. Hence, this appeal.

ISSUES:
(1) Whether petitioners complied with Rule 45 of the 1997 Rules of Civil Procedure when they filed the Petitions dated April 15, 2011 and April 20, 2011; (NO, but covered by exception)
(2) Whether the filing of the Petitions constituted forum shopping; whether Petitions are barred by *res judicata*; (NO)
(3) Whether the CA ruling that the property covered by respondent's title is the same as the property subject of TCT No. 336663 is supported by the evidence on record; (YES)
(4) Whether the case of *Manotok, et al. v. Barque* applies; (NO)
(5) Whether the CA erred when it took judicial notice of proceedings in other cases before it; (YES)

RULING:

(1) ***On whether petitioners complied with Rule 45 of the 1997 Rules of Civil Procedure when they filed the Petitions dated April 15, 2011 and April 20, 2011***

Respondent raised in its Comment that the Court should have dismissed the case because the Petition raised questions of fact which are outside the province of an appeal through Rule 45. It is true that, as a general rule, the Court is not a trier of facts, and that petitions under Rule 45 of the Rules of Court should only raise questions of law. This rule, however, is subject to exceptions. Some of the exceptions are present in this case. The rulings alone of the RTC and the CA were contradictory, to the point that they differ on their rulings on each of the issues presented in this case. Further, the CA committed grave abuse of discretion in arriving at certain factual findings and legal conclusions. The Court must perforce conduct a judicious examination of the records to arrive at a just conclusion for this case.

(2) ***On whether the filing of the Petitions constituted forum shopping, and whether the Petitions are barred by res judicata***

While there was identity of rights asserted and relief prayed for, there was no identity of parties in the case at bar. Granted that both Mejia and Bernas trace their title from Nava, this does not, by itself, make their interests identical. Bernas' and Mejia's interests remain separate, and a judgment on one will not amount to *res judicata* on the other as, for instance, Bernas could, and did, raise the defense that he was an innocent purchaser for value of the subject property and thus should not be bound by any adverse judgment should Mejia's title be found defective. The same reasoning applies to respondent's assertion that Mejia's and Bernas' claims were now barred by *res judicata* because the Heirs of Nava did not appeal.

(3) ***On whether the Court of Appeals' ruling that the property covered by respondent's title is the same as the property subject of TCT No. 336663 is supported by the evidence on record***

A careful scrutiny of the voluminous records of this case would reveal that the CA was ultimately correct that Yu Han Yat was able to establish better title over the subject property. To be sure, Yu Han Yat painstakingly traced his title, complete with documentary and testimonial evidence.

The Court is more inclined to uphold the view that the error lies in the annotation in TCT No. 8047 that it was "a transfer from TCT No. 3633/T-R," as compared with petitioners' theory that the error was in the *entire* technical descriptions contained in TCT Nos. 8047 and TCT No. 336663. In other words, the error occurred in encoding that TCT No. 8047 was "a transfer from TCT No. 3633/T-R" instead of "from TCT No. 36633."

Another evidentiary contention by Bernas purportedly establishing his better right to the subject property was that TCT No. T-10849, which was the origin of Yu Han Yat's title, was based on subdivision plan Psd-2498 which indicates that it is a plan of a lot located in "Bayanbayanan, Mariquina." Supposedly, this establishes that the land covered by Yu Han Yat's title is different from the one covered by his title. With regard to this issue, the CA ruled that:

> While it is true that, under PS 2498 (*sic*), it was stated that the property is located in Bayanbayanan, Mariquina, however, it must be noted that at the time the survey was conducted on June 11-13, 1927, the property was still under the Province of Rizal and that Quezon City was only created pursuant to Commonwealth Act No. 502, and approved on October 12, 1939. However, subsequent subdivision of Lot 824 would reveal that the property is located at Quezon City.

Bernas asserts that the above ruling of the CA was not supported by evidence on record and was bereft of factual basis nor based on established facts. The Court, however, agrees that the CA was justified in taking judicial notice when Quezon City was established. Section 1, Rule 129 of the Rules of Court states:

> SECTION 1. *Judicial notice, when mandatory*. — A court shall take judicial notice, without the introduction of evidence, of the existence and territorial extent of states, their political history, forms of government and symbols of nationality, the law of nations, the admiralty and maritime courts of the world and their seals, **the political constitution and history of the Philippines, the official acts of the legislative, executive and judicial departments of the Philippines, the laws of nature, the measure of time, and the geographical divisions.**

The CA correctly held that the Quezon City was established only in 1939, upon the enactment of Commonwealth Act No. 502, the city's charter. Hence, when the survey for Psd-2498 was conducted in 1927, Quezon City did not as yet exist. Further, the property in question has always been referred to as part of the Piedad Estate. When Quezon City was created, the boundaries and limits of the city would show that Piedad Estate indeed became part of it. The foregoing disquisition persuades the Court that the annotation that Psd-2498 pertains to a parcel land in "Bayanbayanan, Mariquina" was indeed a mere inadvertent error. Therefore, the Court so holds that Yu Han Yat's title, TCT No. 30627, and Mejia and Bernas' title, TCT No. 336663, cover the same property.

(4) ***On whether the case of Manotok, et al. v. Barque applies***

Mejia only raised the issue of compliance with the Friar Lands Act only upon her motion for reconsideration with the CA, and eventually upon appeal to this Court. Mejia is precluded from doing this, as it is well settled in jurisprudence that an issue which was neither averred in the complaint nor raised during the trial in the court below cannot be raised for the first time on appeal as it would be offensive to the basic rules of fair play, justice and due process.

(5) ***On whether the Court of Appeals erred when it took judicial notice of proceedings in other cases before it***

In further ruling in favor of Yu Han Yat, the CA held that TCT No. 336663, or the Nava TCT, was null and void by taking judicial notice of other cases decided by it. The Court rules in favor of petitioners on this ground. It is well settled that, as a general rule, courts are not authorized to take judicial notice, in the adjudication of cases pending before them, of the contents of the records of other cases, even when such cases have been tried or are pending in the same court, and notwithstanding the fact that both cases may have been heard or are actually pending before the same judge. It is true that the said rule admits of exceptions, namely:

(a) In the absence of objection, and as a matter of convenience to all parties, a court may properly treat all or any part of the original record of a case filed in its archives as read into the record of a case pending before it, when, with the knowledge of the opposing party, reference is made to it for that purpose, by name and number or in some other manner by which it is sufficiently designated; or

(b) when the original record of the former case or any part of it, is actually withdrawn from the archives by the court's direction, at the request or with the consent of the parties, and admitted as a part of the record of the case then pending.

Neither of these exceptions, however, exists in this case. The parties were not informed, much less their consent taken, of the fact that the CA would take judicial notice of these cases. Nevertheless, despite this error, the result remains that Yu Han Yat is the rightful owner of the subject property in light of the Court's ruling above that there is an overlap between the properties covered by the two TCTs in question, and that the evidence showing Yu Han Yat's title to be earlier means that Yu Han Yat holds better title.

MACTAN ROCK INDUSTRIES, INC. and ANTONIO TOMPAR, *Petitioners*, -versus-BENFREI S. GERMO, *Respondent*. G.R. No. 228799, SECOND DIVISION, January 10, 2018, PERLAS-BERNABE, *J.*

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 the theory on appeal. Here, petitioners insist that (a) the regular courts have no jurisdiction over the case as it involves an employment dispute cognizable by the NLRC; and (b) Germo had no legal personality to pursue the case as he signed the TCA not in his personal capacity, but as a representative of another entity. These constitute new theories raised for the first time on appeal, considering that in their Answer before the RTC, they admitted: (a) the lack of employer-employee relationship; and (b) the genuineness, authenticity, and due execution of the TCA. These statements in their Answer constitute judicial admissions, which are legally binding on them.

FACTS:

Respondent Benfrei S. Germo (Germo) alleged that Mactan Rock Industries, Inc. (MRII), through its President/Chief Executive Officer, Antonio Tompar (Tompar), entered into a Technical Consultancy Agreement (TCA) with him. In the TCA, they agreed that Germo shall stand as MRII's marketing consultant, who shall take charge of negotiating, perfecting sales, orders, contracts, or services of MRII, but there shall be no employer-employee relationship between them. They also agreed that Germo shall be paid on a purely commission basis, including a monthly allowance.

During the effectivity of the TCA, Germo successfully negotiated and closed with International Container Terminal Services, Inc. (ICTSI) a supply contract of 700 cubic meters of purified water per day. Accordingly, MRII commenced supplying water to ICTSI, and in turn, the latter religiously paid MRII the corresponding monthly fees. Despite the foregoing, MRII allegedly never paid Germo his rightful commissions. As such, Germo filed a civil case before the Regional Trial Court. In their Answer, MRII and Tompar (petitioners) averred that there was no employer-employee relationshipbetween MRII and Germo, as the latter was hired as a mere consultant. Nonetheless, they admitted the genuineness, authenticity, and due execution of the TCA, among other documents proving Germo's claims.

In the instant petition, petitioners insist that the regular courts have no jurisdiction over the case as the present dispute involves an employment dispute cognizable by the National Labor Relations Commission. They further insist that Germo had no legal personality to pursue the case as he signed the TCA not in his personal capacity, but as a representative of another entity.

ISSUE:

Whether petitioners may raise the said contentions in the instant petition. (NO)

RULING:

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 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. 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.

Here, the petitioners' contentions constitute new theories raised for the first time on appeal, considering that in their Answer before the RTC, they admitted the lack of employer-employee relationship between MRII and Germo, as well as the genuineness, authenticity, and due execution of the TCA.

More importantly, the statements in their Answer constitute judicial admissions, which are legallybinding on them. Case law instructs that even if such judicial admissions place a party at a disadvantageous position, he may not be allowed to rescind them unilaterally and that he must assume the consequences of such disadvantage, as in this case.

C. Object (Real) Evidence (Rule 130, A)

PEOPLE OF THE PHILIPPINES, *Plaintiff-Appellee*, *v.* ALEXIS DINDO SAN JOSE Y SUICO, *Accused-Appellants*.
G.R. No. 179148, THIRD DIVISION, July 23, 2018, BERSAMIN, *J.*

The process essential to proving the corpus delicti calls for the preservation and establishment of the chain of custody. In ***drug-related criminal prosecutions****, chain of custody specifically refers to the* ***documented various movements and custodyof the subjects of the offense*** *be they seized drugs, controlled chemicals or plant sources of dangerous drugs, and equipment for their production - from the moment of seizure or confiscation to the time of receipt in the forensic laboratory, to their safekeeping until their presentation in court as evidence and their eventual destruction.*

The documentation ***includes the inventory, the identity of the person or persons who held temporary custody thereof, the date and time when any transfer of custody was made in the course of safekeeping until presentation in court as evidence, and disposition****. The safeguards of marking, inventory and photographing are all* ***essential in establishing that such substances and articles seized or confiscated were the very same ones being delivered to and presented*** *as evidence in court.*

Yet, the testimony of poseur buyer SPO1 Edwin A. Anaviso, the State's main witness, bear out that ***no inventory and accounting of the confiscated substances were made herein at the time and at the scene of the seizure****.*

As above discussed, ***the marking of the seized substances was admittedly done only at the police office.*** *That was another critical lapse on the part of the arresting lawmen because it* ***broke the chain of custody of the corpus delicti****. The arresting officers had to explain the failure to do the marking immediately, for to dispense with the reasonable explanation was to undervalue the chain of custody as*

the means of insulating the evidence from the risks of planting, substitution or tampering. Yet, ***no explanation was tendered*** *during the trial. We cannot presume that the marking could not be done at the place of the arrest because of risks present thereat.*

FACTS:

Accused-appellant Alexis Dindo San Jose was charged with violations of Section 15 and Section 16 of R.A. No. 6425 (*Dangerous Drugs Act of 1972*), and for illegal possession of firearms and ammunition as defined and punished under P.D. No. 1866, as amended.

The prosecution presented 3 witnesses in the persons of SPO4 Yee, SPO1 Anaviso and Forensic Chemist Madria. According to the prosecution, a confidential informant known as "Bong" reported to the Regional Mobile Group, National Capital Regional Command at Camp Bagong Diwa, Taguig, Metro Manila, that an illicit drug trade was being conducted by 2 drug pushers known as "Dodong Diamond" (herein accused-appellant), and Evita Ebora.

On 24 January 2000, SPO1 Anaviso accompanied by Bong went inside the condominium unit known as Cluster 3-4 D to purchase shabu from accused-appellant. Then on 26 January 2000, a buy-bust operation was conducted with SPO1 Anaviso as *poseur buyer*. 2 small plastic bags, suspected to contain shabu, were sold by accused-appellant to SPO1 Anaviso, immediately after which accused-appellant was arrested. A super .38 caliber with scope, 1 magazine with 9 live bullets, and a .45 caliber pistol were seized in addition to another plastic sachet of shabu. Accused could not produce pertinent documents as to the lawful possession of the firearms. **The marking of the seized substances was done at the police office.** A forensic examination of the substance seized was conducted by Mayra M. Madria who found that the specimen submitted all contained shabu. The Initial Laboratory Report and Physical Science Report were submitted in evidence.

The RTC pronounced the accused guilty of the offenses charged. The CA affirmed the convictions.

ISSUE:

Whether or not proof beyond reasonable doubt was established for the offenses charged. (NO)

RULING:

In prosecutions involving narcotics and other illegal drugs, the confiscated substances and allied articles themselves constitute the ***corpus delicti*** of the offense. This is because the offense is not deemed committed unless the substances and articles subject of the accused's illegal dealing or illegal possession are themselves presented to the trial court as evidence. The fact of the existence of the substances and articles is vital to sustain a judgment of conviction beyond reasonable doubt.

The concept of *corpus delicti* - the body, foundation, or substance of a crime - consists of two elements, namely: (a) that a **certain result has been established**, for example, that a man has died in prosecution for homicide; and (b) that **some person is criminally responsible** for the result. The **Prosecution has to prove the *corpus delicti* beyond reasonable doubt** either **by direct evidence** or **by circumstantial or presumptive evidence**.Else, the accused must be set free.

The process essential to proving the *corpus delicti* calls for the preservation and establishment of the *chain of custody*. In **drug-related criminal prosecutions**, *chain of custody* specifically refers to the **documented various movements and custodyof the subjects of the offense** be they seized drugs, controlled chemicals or plant sources of dangerous drugs, and equipment for their production - from the moment of seizure or confiscation to the time of receipt in the forensic laboratory, to their safekeeping until their presentation in court as evidence and their eventual destruction.

The documentation **includes the inventory, the identity of the person or persons who held temporary custody thereof, the date and time when any transfer of custody was made in the course of safekeeping until presentation in court as evidence, and disposition**. The safeguards of marking, inventory and photographing are all **essential in establishing that such substances and articles seized or confiscated were the very same ones being delivered to and presented** as evidence in court.

Yet, the testimony of poseur buyer SPO1 Edwin A. Anaviso, the State's main witness, bear out that **no inventory and accounting of the confiscated substances were made herein at the time and at the scene of the seizure**.

Moreover, **the chain of custody in drug-related prosecutionsalways starts with the marking** of the relevant substances or articles immediately upon seizure or confiscation. This, because the succeeding handlers would be using the marking as ***reference***. The marking further serves to separate the marked substances or articles from the corpus of all other similar or related articles from the time of the seizure or confiscation from the accused until disposal at the end of the criminal proceedings, thereby obviating the hazards of switching, "planting," or contamination of the evidence. Verily, **switching, or "planting," or contamination of the evidence destroys the proof of the *corpus delicti***. The marking likewise insulates and protects innocent persons from dubious and concocted searches as well as shields the sincere apprehending officers from harassment claims based on false allegations of planting of evidence, robbery or theft.

Under the *Rules of Court*, the Prosecution assumes the burden to establish its case with evidence that is relevant, that is, ***the evidence must throw light upon, or, have a logical relation to, the facts in issue***. In all instances, the **test of relevancy** is **whether evidence will have any value, as determined by logic and experience, in proving the proposition for which it is offered, or whether it will reasonably and actually tend to prove or disprove any matter of fact in issue, or corroborate other relevant evidence**. The test of relevancy is satisfied if there is some logical connection either directly or by inference between the fact offered and the fact to be proved.

Establishing the chain of custody of the contraband in drug-related prosecutions directly fulfills the basic requirement of relevance imposed by our rules on evidence. As such, the need to preserve the *chain of custody* applies regardless of whether the prosecution is brought for a violation of R.A. No. 6425, or for violation of R.A. No. 9165.

It is true that the requirement of marking was not found in R.A. No. 6425. Even so, **the arresting team of the accused herein still had to demonstrate the relevance of the substances and articles they identified during the trial** and presented as evidence of guilt to the substances and articles seized or confiscated during the transaction with the accused. This **is accomplished only by showing an unbroken chain of custody vis-a-vis the *corpus delicti***. Without such showing, the chain of custody would be broken, and the logical connection between the substances and articles

presented in court, on one hand, and the substances and articles seized or confiscated from the accused, on the other, would be cut off.

As above discussed, **the marking of the seized substances was admittedly done only at the police office.** That was another critical lapse on the part of the arresting lawmen because it **broke the chain of custody of the *corpus delicti***. The arresting officers had to explain the failure to do the marking immediately, for to dispense with the reasonable explanation was to undervalue the chain of custody as the means of insulating the evidence from the risks of planting, substitution or tampering. Yet, **no explanation was tendered** during the trial. We cannot presume that the marking could not be done at the place of the arrest because of risks present thereat.

PEOPLE OF THE PHILIPPINES, *Plaintiff-Appellee*, *v.* MARCIANO UBUNGEN Y PULIDO, *Accused-Appellant*.
G.R. No. 225497, THIRD DIVISION, July 23, 2018, MARTIRES, *J.*

*The **chain of custody is established by testimony about every link in the chain**, from the moment the item was picked up to the time it is offered in evidence, in such a way that every person who touched the exhibit would describe how and from whom it was received, where it was and what happened to it while in the witness' possession, the condition in which it was received, and the condition in which it was delivered to the next link in the chain. These witnesses would then **describe the precautions taken** to ensure that there had been no change in the condition of the item and no opportunity for someone not in the chain to have possession of the same.*

*In particular, the following links should be established in the chain of custody of the confiscated item: **first**, the seizure and marking, if practicable, of the illegal drug recovered from the accused by the apprehending officer; **second**, the turnover of the illegal drug seized by the apprehending officer to the investigating officer; **third**, the turnover by the investigating officer of the illegal drug to the forensic chemist for laboratory examination; and **fourth**, the turnover and submission of the marked illegal drug seized from the forensic chemist to the court.*

*The only witnesses presented by the prosecution are PO1 Abubo and PO1 Bautista who both participated in the buy-bust operation allegedly conducted. While the two witnesses were able to **establish the first link** in the chain of custody with their respective testimonies regarding the arrest of Marciano and the seizure of the prohibited drug from him as well as the marking thereof, their testimonies were **insufficient to establish the remaining 3 links** in the chain of custody.*

The lapses committed by the prosecution and the law enforcers herein could not be considered minor. Indeed, establishing every link in the chain of custody is crucial to the preservation of the integrity, identity, and evidentiary value of the seized illegal drug. Failure to demonstrate compliance with even just one of these links creates reasonable doubt that the substance confiscated from the accused is the same substance offered in evidence.

FACTS:

Defendant-appellant Marciano Ubungen y Pulido was charged with the crime of violation of Section 5, Article II of R.A. No. 9165. The prosecution presented 2 witnesses, namely: PO1 Abubo, the police officer who acted as the poseur-buyer; and PO1 Bautista, a police officer detailed at the PDEA at the time material to the case, and a member of the buy-bust team.

From the testimonies, it was established that when the members of the buy-bust team arrested Marciano and recovered the marked bills, **PO1 Abubo placed the markings"JA"** on the **plastic sachet**. After the buy-bust operation, Marciano was taken to the PDEA office in San Fernando City, La Union, where they conducted an inventory and prepared the booking sheet, affidavit of arrest, request for physical examination of Marciano, and request for laboratory examination of the specimen seized from him.

Chemistry Report No. D-004-07 prepared by PI Ordoño revealed that the contents of a small heat-sealed transparent **plastic sachet marked as"A JA"** tested positive for methamphetamine hydrochloride or *shabu*. However, **PI Ordoño did not take the witness stand** to verify the contents of Chemistry Report No. D-004-07 because the RTC dispensed with her testimony in view of the defense's admission of the **stipulations** offered by the prosecution with respect to the following: (1) the specimen as indicated in the Chemistry Report; (2) the findings as stated in the Chemistry Report; and (3) the due execution and genuineness of the Chemistry Report.

The RTC found Marciano guilty. The CA affirmed the RTC.

ISSUES

Whether or not the court a quo erred in rendering a judgment of conviction despite the failure to establish every link in the chain of custody. (YES)

RULING:

Jurisprudence teaches that to secure a conviction for illegal sale of dangerous drugs under Section 5, Article II of R.A. No. 9165, the prosecution must establish the following elements: (1) the **identity of the buyer and the seller**, the **object of the sale** and its **consideration**; and (2) the **delivery of the thing sold** and the **payment** therefor.What is material is the proof that the accused peddled illicit drugs, coupled with the presentation in court of the ***corpus delicti***.

In cases of illegal sale and illegal possession of dangerous drugs, the **dangerous drug seized** from the accused constitutes the ***corpus delicti*** of the offense. Thus, it is of utmost importance that **the integrity and identity of the seized drugs** must be shown to have been duly **preserved**. The chain of custody rule performs this function as it ensures that unnecessary doubts concerning the identity of the evidence are removed.

The **chain of custody is established by testimony about every link in the chain**, from the moment the item was picked up to the time it is offered in evidence, in such a way that every person who touched the exhibit would describe how and from whom it was received, where it was and what happened to it while in the witness' possession, the condition in which it was received, and the condition in which it was delivered to the next link in the chain. These witnesses would then **describe the precautions taken** to ensure that there had been no change in the condition of the item and no opportunity for someone not in the chain to have possession of the same.

In particular, the following links should be established in the chain of custody of the confiscated item: ***first***, the seizure and marking, if practicable, of the illegal drug recovered from the accused by the apprehending officer; ***second***, the turnover of the illegal drug seized by the apprehending officer

to the investigating officer; ***third***, the turnover by the investigating officer of the illegal drug to the forensic chemist for laboratory examination; and ***fourth***, the turnover and submission of the marked illegal drug seized from the forensic chemist to the court.

With these considerations, the Court opines that the prosecution failed to establish an unbroken chain of custody of the seized drugs in violation of Section 21, Article II of R.A. No. 9165. The identity of the subject drug was therefore not established with moral certainty.

The only witnesses presented by the prosecution are PO1 Abubo and PO1 Bautista who both participated in the buy-bust operation allegedly conducted. While the two witnesses were able to **establish the first link** in the chain of custody with their respective testimonies regarding the arrest of Marciano and the seizure of the prohibited drug from him as well as the marking thereof, their testimonies were **insufficient to establish the remaining 3 links** in the chain of custody.

First, the prosecution failed to show the second link in the chain of custody as no testimony was offered relating to the transmittal of the subject sachet from the arresting officer to the investigating officer. PO1 Abubo's testimony is silent as to the name of the investigating officer to whom the seized sachet of drug was transmitted, or on whether he transmitted the confiscated item to an investigating officer in the first place. Thus, there is uncertainty as to who had custody of the sachet from the time it left the custody of PO1 Abubo.

Second, there exists serious doubt that the sachet confiscated by PO1 Abubo from Marciano is the same specimen submitted to and examined by the forensic chemist. As such, the third link in the chain of custody of the subject transparent plastic sachet was not established.

In his testimony, PO1 Abubo recalled the marking he placed on the sachet which he bought as poseur-buyer. He confirmed that the sachet presented before the RTC is the same sachet containing the illegal drug marked as "**JA.**" PO1 Abubo's testimony, however, is materially inconsistent with Chemistry Report No. D-004-07. In the said report, PI Ordoño stated that the specimen submitted to her was a plastic sachet marked as "**A JA.**" Because of this discrepancy, it could not be reasonably and safely concluded that they are one and the same. As such, there is reasonable doubt that the third link in the chain of custody was not complied with.

Finally, compliance with the fourth link in the chain of custody was not satisfactorily demonstrated by the prosecution. It must be recalled that the trial court dispensed with the testimony of PI Ordoño, the forensic chemist, in view of the stipulation entered into by the prosecution and the defense.

In *People v. Pajarin*,the Court ruled that in case of a stipulation by the parties to dispense with the attendance and testimony of the forensic chemist, it **should be stipulated** that the forensic chemist would have testified that he **took the precautionary steps required** in order **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 pending trial.**In this case, there is no record that the stipulations between the parties contain the aforesaid conditions.**

The lapses committed by the prosecution and the law enforcers herein could not be considered minor. Indeed, establishing every link in the chain of custody is crucial to the preservation of the

integrity, identity, and evidentiary value of the seized illegal drug. **Failure to demonstrate compliance with even just one of these links creates reasonable doubt that the substance confiscated from the accused is the same substance offered in evidence.**

PEOPLE OF THE PHILIPPINES, *Plaintiff-Appellee*, - versus - PATRICIA CABRELLOS *Y* DELA CRUZ, *Accused-Appellant*.
G.R. No. 229826, SECOND DIVISION, July 30, 2018, PERLAS-BERNABE, *J.*

The Implementing Rules and Regulations (IRR) of RA 9165 – which is now crystallized into statutory law with the passage of RA 10640 – provide that the said inventory and photography may be conducted at the nearest police station or office of the apprehending team in instances of warrantless seizure, and that ***non-compliance with the requirements of Section 21, Article II of RA 9165 – under justifiable grounds – will not render void and invalid the seizure and custody over the seized items so long as the integrity and evidentiary value of the seized items are properly preserved by the apprehending officer or team****.*

*From the testimony of PO3 Germodo, it is clear that the arresting officers conducted two (2) separate inventories, both of which are glaringly non-compliant with the required witnesses rule: (*a*) in the inventory conducted at the Ayungon Police Station, only a public elected official – Brgy.* Kagawad *Raul Fausto – was present; and (*b*) on the other hand, the inventory conducted at the Dumaguete Police Station was witnessed only by representatives from the DOJ and the media. To make matters worse, the arresting officers attempted to cover up such fact by preparing a single inventory sheet signed by the witnesses at different times and places. Verily, the chain of custody rule laid down by RA 9165 and its IRR contemplates a situation where the inventory conducted on the seized items is witnessed by the required personalities at the same time.*

At this point, it is well to note that the non-compliance with the required witnesses rule does not per se render the confiscated items inadmissible. However, a justifiable reason for such failure or a ***showing of any genuine and sufficient effort to secure the required witnesses*** *under Section 21, Article II of RA 9165 must be adduced.*

Thus, for failure of the prosecution to provide justifiable grounds or show that special circumstances exist which would excuse their transgression, the Court is constrained to conclude that the integrity and evidentiary value of the items purportedly seized from Cabrellos have been compromised.As such, since the prosecution failed to provide justifiable grounds for non-compliance with the provision, Cabrellos' acquittal is perforce in order.

FACTS:

This case stemmed from two (2) Informations filed before the RTC charging Patricia Cabrellos with violations of Sections 5 and 11, Article II of RA 9165.

The prosecution alleged that acting upon a tip from a confidential informant regarding Cabrellos' alleged illegal drug activities in Ayungon, Negros Oriental, the Philippine Drug Enforcement Agency (PDEA) and the Provincial Anti-Illegal Drugs Special Operations Group organized a buy-bust team, with PO3 Allen June Germodo (PO3 Germodo) acting as poseur-buyer and PO2 Glenn Corsame (PO2 Corsame) as immediate back-up.

The buy-bust team, together with the informant, then went to Cabrellos' house. The informant introduced PO3 Germodo as a *shabu* buyer. After PO3 Germodo gave Cabrellos the two (2) marked P500.00 bills, Cabrellos took out two (2) plastic sachets containing suspected *shabu* from her bag and handed it over to PO3 Germodo. Upon receipt of the sachets, PO3 Germodo placed Cabrellos under arrest, with the rest of the buy-bust team rushing to the scene. The police officers searched Cabrellos' bag and discovered seventeen (17) more sachets containing suspected *shabu* therein.

The police officers then brought Cabrellos and the seized items to the Ayungon Police Station for the conduct of photography and inventory of the seized items. However, since only a barangay *kagawad* was present at the Ayungon Police Station at that time, the police officers brought Cabrellos and the seized items to the Dumaguete Police Station wherein they conducted a second inventory, this time in the presence of a representative each from the DOJ and the media. Thereafter, the seized sachets were brought to the crime laboratory where the contents thereof were confirmed to be methamphetamine hydrochloride or *shabu*.

The RTC convicted Cabrellos of the crimes charged. It found that the prosecution was able to establish Cabrellos's guilt beyond reasonable doubt, considering that: (a) she was caught in *flagrante delicto* selling *shabu* to the poseur-buyer; and (b) in the search incidental to her arrest, she was discovered to be in possession of seventeen (17) more sachets of *shabu*.

The CA affirmed the RTC ruling. It held that the testimonies of the police officers had established the fact that Cabrellos was caught in the act of selling illegal drugs, and that in the course of her arrest, she was found in possession of more sachets containing illegal drugs. In this regard, the CA ruled that the police officers substantially complied with the chain of custody requirement as the identity and evidentiary value of the seized items were duly established and preserved.

ISSUE:

Whether Cabrellos is guilty beyond reasonable doubt of violating Sections 5 and 11, Article II of RA 9165. (NO)

RULING:

In this case, Cabrellos was charged with Illegal Sale and Illegal Possession of Dangerous Drugs, respectively defined and penalized under Sections 5 and 11, Article II of RA 9165. In both instances, case law instructs that it is essential that the identity of the prohibited drug be established with moral certainty, considering that the dangerous drug itself forms an integral part of the *corpus delicti* of the crime. Thus, in order to obviate any unnecessary doubt on the identity of the dangerous drugs, the prosecution has to show an unbroken chain of custody over the same and account for each link in the chain of custody from the moment the drugs are seized up to their presentation in court as evidence of the crime.

Section 21, Article II of RA 9165 outlines the procedure which the police officers must follow when handling the seized drugs in order to preserve their integrity and evidentiary value. Under the said section, prior to its amendment by RA 10640, the apprehending team shall, among others, **immediately after seizure and confiscation conduct a physical inventory and photograph the seized items in the presence of the accused or the person from whom the items were seized, or his representative or counsel, a representative from the media and the**

Department of Justice (DOJ), and any elected public official who shall be required to sign the copies of the inventory and be given a copy of the same, and the seized drugs must be turned over to the PNP Crime Laboratory within twenty-four (24) hours from confiscation for examination.

The Court, however, clarified that under varied field conditions, strict compliance with the requirements of Section 21, Article II of RA 9165 may not always be possible. In fact, the Implementing Rules and Regulations (IRR) of RA 9165 – which is now crystallized into statutory law with the passage of RA 10640 – provide that the said inventory and photography may be conducted at the nearest police station or office of the apprehending team in instances of warrantless seizure, and that **non-compliance with the requirements of Section 21, Article II of RA 9165 – under justifiable grounds – will not render void and invalid the seizure and custody over the seized items so long as the integrity and evidentiary value of the seized items are properly preserved by the apprehending officer or team**.

After a judicious study of the case, the Court finds that the police officers committed unjustified deviations from the prescribed chain of custody rule, thereby putting into question the integrity and evidentiary value of the dangerous drugs allegedly seized from Cabrellos.

Initially, it would appear that the arresting officers complied with the witness requirement during inventory, as seen in the Receipt of Property Seized which contains the signatures of the required witnesses, *i.e.*, a public elected official, a representative from the DOJ, and a representative from the media. However, no less than PO3 Germodo admitted in open court that they actually conducted two (2) separate inventories in different places and in the presence of different witnesses.

From the testimony of PO3 Germodo, it is clear that the arresting officers conducted two (2) separate inventories, both of which are glaringly non-compliant with the required witnesses rule: (*a*) in the inventory conducted at the Ayungon Police Station, only a public elected official – Brgy. Kagawad Raul Fausto – was present; and (*b*) on the other hand, the inventory conducted at the Dumaguete Police Station was witnessed only by representatives from the DOJ and the media. To make matters worse, the arresting officers attempted to cover up such fact by preparing a single inventory sheet signed by the witnesses at different times and places. Verily, the chain of custody rule laid down by RA 9165 and its IRR contemplates a situation where the inventory conducted on the seized items is witnessed by the required personalities at the same time.

At this point, it is well to note that the non-compliance with the required witnesses rule does not per se render the confiscated items inadmissible. However, a justifiable reason for such failure or a **showing of any genuine and sufficient effort to secure the required witnesses** under Section 21, Article II of RA 9165 must be adduced.

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 to prepare for a buy-bust operation and consequently, make the necessary arrangements beforehand knowing fully well that they would have to strictly comply with the set procedure prescribed in Section 21, Article II of RA 9165. As such, police officers are compelled not only to state the reasons for their non-compliance, but must in fact, also convince the Court that they exerted earnest efforts to comply with the mandated procedure, and that under the given circumstance, their actions were reasonable.

Thus, for failure of the prosecution to provide justifiable grounds or show that special circumstances exist which would excuse their transgression, the Court is constrained to conclude that the integrity and evidentiary value of the items purportedly seized from Cabrellos have been compromised. It is settled that in a prosecution for the Illegal Sale and Illegal Possession of Dangerous Drugs under RA 9165, the State carries the heavy burden of proving not only the elements of the offense, but also to prove the integrity of the *corpus delicti*, failing in which, renders the evidence for the State insufficient to prove the guilt of the accused beyond reasonable doubt. **As such, since the prosecution failed to provide justifiable grounds for non-compliance with the provision, Cabrellos' acquittal is perforce in order.**

PEOPLE OF THE PHILIPPINES, *Plaintiff-Appellee*, - versus - JOWIE ALLINGAG Y TORRES AND ELIZABETH ALLINGAG Y TORRES, *Accused-Appellants*.
G.R. No. 233477, SECOND DIVISION, July 30, 2018, PERALTA, *J.*

This Court opined in People v. Miranda:

> *The Court, however, clarified that under varied field conditions, strict compliance with the requirements of Section 21 of RA 9165 may not always be possible. In fact, the Implementing Rules and Regulations (IRR) of RA 9165 – which is now crystallized into statutory law with the passage of RA 10640 – provide that the said inventory and photography may be conducted at the nearest police station or office of the apprehending team in instances of warrantless seizure, and that non-compliance with the requirements of Section 21 of RA 9165– under justifiable grounds – will not render void and invalid the seizure and custody over the seized items so long as the integrity and evidentiary value of the seized items are properly preserved by the apprehending officer or team.*

However, in this case, the absence of a representative from the DOJ during the inventory of the seized items was not justifiably explained by the prosecution. A review of the transcript of stenographic notes does not yield any testimony from the arresting officers as to the reason why there was no representative from the DOJ. In his testimony, PO3 Briones merely confirmed the presence of a barangay kagawad and a representative from the media during the inventory of the seized items.

Certainly, the prosecution bears the burden of proof to show valid cause for non-compliance with the procedure laid down in Section 21 of R.A. No. 9165, as amended. Its failure to follow the mandated procedure must be adequately explained and must be proven as a fact in accordance with the Rules on Evidence. ***There being no justifiable reason for the non-compliance of Section 21 of R.A. No. 9165, the identity of the seized items has not been established beyond reasonable doubt. Thus, this Court finds it appropriate to acquit the accused-appellantsin this case.***

FACTS:

A confidential informant arrived at the Station Anti-Illegal Drugs Special Operations Task Group (SAID-SOTG),Taguig City Police Station and reported to PO3 Jowel Briones the illegal drug activities of JowieAllingag and Elizabeth Allingag. As a consequence, team leader Police Senior Inspector Jerry Amindalan made a plan and called the team that included SPO1 Sanchez, PO2 Antillion, and PO1 Balbin, among others, to conduct a briefing for a buy-bust operation. PO3 Briones was designated as poseur-buyer and PO1 Balbin was his immediate back-up.

The team then proceeded to conduct the buy-bust operation. When they reached the place, the confidential informant saw accused-appellants Jowie and Elizabeth. The confidential informant approached Jowie and Elizabeth and introduced PO3 Briones as the person who will buy *shabu*. PO3 Briones then handed the marked money to Jowie and the latter passed the same money to Elizabeth.

Thereafter, PO3 Briones made the pre-arranged signal by removing his bull cap and PO1 Balbin rushed to arrest accused-appellants Jowie and Elizabeth. PO3 Briones recovered one (1) plastic sachet of dried marijuana from Jowie and one (1) plastic sachet of *shabu* and the buy-bust money from Elizabeth. PO3 Briones then placed his markings "JVB" on the *shabu* subject of the sale and "JVB-2" on the marijuana confiscated from Jowie and "JVB-1" on the *shabu* confiscated from Elizabeth.

A certificate of inventory was then prepared and, thereafter, the team proceeded to the police station for proper turnover and documentation. At the police station, photographs of the arrested suspects, Spot Report, Request for Crime Laboratory of the specimens, Request for Drug Tests and the booking and information sheets were prepared. Thereafter, PO3 Briones and investigator PO3 Bonifacio brought the request and the confiscated items to the crime laboratory for examination.Police Chief Inspector Jocelyn Belen Julian, Forensic Chemist of the PNP Crime Laboratory, Camp Crame conducted an examination on the confiscated items marked "JVB" and "JVB-1" which tested positive for the presence of methylamphetamine hydrochloride and "JVB-2" which tested positive for marijuana.

Thus, three (3) Informations were filed against the accused-appellants for violation of Sections 5 and 11, Article II of R.A. No. 9165. Both appellants denied the allegations and claimed that they were victims of frame-up by the police officers.

The RTC found accused-appellants guilty beyond reasonable doubt of the offenses charged. According to the RTC, the police officers enjoy the presumption of regularity in the performance of their official functions and that the claim of accused-appellants that they were the subject of a frame-up has no basis. It also ruled that the elements of the crimes charged are present and that the arresting officers complied with the provisions of Section 21 of R.A. No. 9165.

The CA affirmed the decision of the RTC *in toto*. It ruled that the prosecution was able to establish the key elements for illegal possession and sale of dangerous drugs and that the bare denials of the accused-appellants cannot prevail over the positive testimonies of the police officers. It also held that non-compliance with Section 21 of R.A. No. 9165 does not automatically render void and invalid the seizure and custody over the seized item, as long as the integrity and the evidentiary value of the same were properly preserved by the apprehending officers.

The accused-appellants argued that the RTC's reliance on the presumption of regularity in the performance of duty by the police officers is misplaced since the buy-bust team failed to comply with Section 21 of R.A. No. 9165 as there was no representative from the Department of Justice (DOJ) when the inventory of the purportedly seized items was conducted. They also claim that the presence of the representative from the media during the inventory of the seized items is doubtful because the representative admitted that, upon arriving at the place of the incident, the inventory was already accomplished and that he merely signed the same because the police officers told him to do so. It is also pointed out that the testimonies of the *barangay kagawad* and the forensic chemist were not presented in court.

ISSUE:

Whether the accused-appellants are guilty beyond reasonable doubt for violating Section 5 and 11, Article II of R.A. 9165. (NO)

RULING:

In both cases under Section 5, Article II of R.A. No. 9165 (illegal sale of prohibited drugs), and Section 11, Article II of R.A. No. 9165 (illegal possession of dangerous drugs), the illicit drugs confiscated from the accused comprise the *corpus delicti* of the charges.

In *People v. Gatlabayan*, the Court held that "it is of paramount importance that the identity of the dangerous drug be established beyond reasonable doubt; and that it must be proven with certitude that the substance bought during the buy-bust operation is exactly the same substance offered in evidence before the court. In fine, the illegal drug must be produced before the court as exhibit and that which was exhibited must be the very same substance recovered from the suspect." Thus, the chain of custody carries out this purpose as it ensures that unnecessary doubts concerning the identity of the evidence are removed.

To ensure an unbroken chain of custody, Section 21(1) of R.A. No. 9165 specifies that 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. However, just recently, this Court opined in *People v. Miranda*:

> The Court, however, clarified that under varied field conditions, strict compliance with the requirements of Section 21 of RA 9165 may not always be possible. In fact, the Implementing Rules and Regulations (IRR) of RA 9165 – which is now crystallized into statutory law with the passage of RA 10640 – provide that the said inventory and photography may be conducted at the nearest police station or office of the apprehending team in instances of warrantless seizure, and that non-compliance with the requirements of Section 21 of RA 9165– under justifiable grounds – will not render void and invalid the seizure and custody over the seized items so long as the integrity and evidentiary value of the seized items are properly preserved by the apprehending officer or team. Tersely put, the failure of the apprehending team to strictly comply with the procedure laid out in Section 21 of RA 9165 and the IRR does not *ipso facto* render the seizure and custody over the items as void and invalid, provided that the prosecution satisfactorily proves that: (a) there is justifiable ground for non-compliance; and (b) the integrity and evidentiary value of the seized items are properly preserved.

However, in this case, the absence of a representative from the DOJ during the inventory of the seized items was not justifiably explained by the prosecution. A review of the transcript of stenographic notes does not yield any testimony from the arresting officers as to the reason why there was no representative from the DOJ. In his testimony, PO3 Briones merely confirmed the presence of a *barangay kagawad* and a representative from the media during the inventory of the seized items.

Certainly, the prosecution bears the burden of proof to show valid cause for non-compliance with the procedure laid down in Section 21 of R.A. No. 9165, as amended. It has the positive duty to demonstrate observance thereto in such a way that, during the proceedings before the trial court, it must initiate in acknowledging and justifying any perceived deviations from the requirements of the law. Its failure to follow the mandated procedure must be adequately explained and must be proven as a fact in accordance with the Rules on Evidence. The rules require that the apprehending officers do not simply mention a justifiable ground, but also clearly state this ground in their sworn affidavit, coupled with a statement on the steps they took to preserve the integrity of the seized item. A stricter adherence to Section 21 is required where the quantity of illegal drugs seized is miniscule since it is highly susceptible to planting, tampering, or alteration.

There being no justifiable reason for the non-compliance of Section 21 of R.A. No. 9165, the identity of the seized items has not been established beyond reasonable doubt. Thus, this Court finds it appropriate to acquit the accused-appellantsin this case.

D. Documentary Evidence (Rule 130, B)

1. Definition

2. Best Evidence rule

IVQ LAND HOLDINGS, INC., *Petitioner*, -versus- REUBEN BARBOSA, *Respondent.*
G.R. No. 193156, FIRST DIVISION, September 26, 2018, LEONARDO-DE CASTRO, C.J.

The Court reiterated in Philippine Banking Corporation v. Court of Appeals that:

> *The Best Evidence Rule provides that the court shall not receive any evidence that is merely substitutionary in its nature, such as photocopies, as long as the original evidence can be had. Absent a clear showing that the original writing has been lost, destroyed or cannot be produced in court, the photocopy must be disregarded, being unworthy of any probative value and being an inadmissible piece of evidence.*

FACTS:

On June 10, 2004, Barbosa filed a Petition for Cancellation and Quieting of Titles against Jorge Vargas III, Benito Montinola, [IVQ Land Holdings, Inc. (IVQ)], and the Register of Deeds of Quezon City, which case was docketed as Civil Case No. Q04-52842 in the RTC of Quezon City, Branch 222.

Barbosa averred that on October 4, 1978, he bought from Therese Vargas a parcel of land identified as Lot 644-C-5 located on Visayas Avenue, Culiat, Quezon City. Thereafter, Therese surrendered to Barbosa the owner's duplicate copy of her title, TCT No. 159487. Barbosa said that he took possession of the subject property and paid real estate taxes thereon in the name of Therese. Sometime in 2003, Barbosa learned that Vargas's name was cancelled and replaced with that of IVQ in the tax declaration of the subject property.

Upon investigation, Barbosa found out that the subject property was previously registered in the name of Kawilihan Corporation under TCT No. 71507. Therese acquired the subject property from Kawilihan Corporation and the date of entry of her TCT No. 159487 was November 6, 1970. On the other hand, IVQ supposedly bought the subject property from Jorge Vargas III who, in turn, acquired

it also from Kawilihan Corporation. The date of entry of Jorge's TCT No. 223019 was October 14, 1976. This title was later reconstituted and re-numbered as TCT No. RT-76391. The title of IVQ, TCT No. 253434, was issued on August 6, 2003.

Barbosa argued that even without considering the authenticity of Jorge's title, Therese's title bore an earlier date. Barbosa, thus, prayed for the trial court to issue an order directing the Office of the Register of Deeds of Quezon City to cancel Jorge's TCT No. 223019 and IVQ's TCT No. 253434 and adjudicating ownership of the subject property to him.

In their Answer to the petition, it was countered that the alleged title from where Barbosa's title was allegedly derived from was the one that was fraudulently acquired and that Barbosa was allegedly part of a syndicate that falsified titles for purposes of "land grabbing." They argued that it was questionable that an alleged lot owner would wait for 30 years before filing an action to quiet title. The Register of Deeds of Quezon City neither filed an answer to Barbosa's petition nor participated in the trial of the case.

The RTC, on June 15, 2007, granted Barbosa's petition and ordered the cancellation of IVQ's TCT No. 253434. The trial court noted that while the original copy of the Deed of Absolute Sale in favor of Barbosa was not presented during trial, Barbosa presented secondary evidence by submitting to the court a photocopy of said deed and the deed of sale in favor of his predecessor-in-interest Therese Vargas, as well as his testimony. The RTC ruled that Barbosa was able to establish the existence and due execution of the deeds of sale in his favor and that of Therese.

To impugn the decision of the RTC, IVQ filed a Motion for Reconsideration/New Trial/Reopening of Trial under the representation of a new counsel. In its Motion for Reconsideration, IVQ argued that the RTC erred in concluding that Barbosa's title is superior to its title. IVQ alleged that Barbosa submitted forged and spurious evidence before the trial court. On the other hand, in its Motion for New Trial, IVQ alleged that it was defrauded by its former counsel, Atty. Leovigildo Mijares, which fraud prevented it from fully presenting its case in court. IVQ also averred that it found newly-discovered evidence, which it could not have discovered and produced during trial.

In an Order dated November 28, 2007, the RTC denied IVQ's Motion for Reconsideration/New Trial/Reopening of Trial for lack of merit. Aggrieved, IVQ filed an appeal to the CA.

In a Decision dated December 9, 2009**,** the CA affirmed the judgment of the trial court as it found that Barbosa was able to prove his ownership of the subject property. IVQ sought reconsideration of the appellate court's ruling, but the same was denied in a Resolution dated July 30, 2010.

IVQ instituted before this Court the instant petition for review on *certiorari* on August 20, 2010, which prayed for the reversal of the above rulings of the Court of Appeals. In a Resolution dated September 29, 2010, the Court initially denied IVQ's petition. IVQ filed a Motion for Reconsideration on the denial of its petition. To prove that its title to the subject property is genuine, IVQ averred that the Deed of Absolute Sale in favor of Jorge Vargas III was notarized by Atty. Jejomar C. Binay, then a notary public for Mandaluyong. IVQ also attached a photocopy of the Deed of Absolute Sale and other pertinent documents to prove that Barbosa's claim of ownership is spurious. However, on December 15, 2010, the Court denied the said motion.

Undaunted, IVQ filed a Second Motion for Reconsideration, arguing that it was able to submit new pieces of documentary evidence that surfaced for the first time when its Motion for Reconsideration was submitted by its new counsel. Barbosa opposed the motion, countering that the same is a prohibited pleading. The Court reinstated IVQ's petition and required Barbosa to comment thereon.

Barbosa moved for a reconsideration of the said resolution. The Court treated the above motion of Barbosa as his comment to IVQ's petition and required IVQ to file a reply thereto. In its Reply, IVQ primarily argued that Barbosa did not bother to refute the allegations and the evidence on the spuriousness of his title and instead sought to divert the issue by attacking IVQ's corporate existence.

The Court, thereafter, gave due course to the petition. In its Resolution dated January 18, 2017, the Court the CA to receive evidence relative to the documents belatedly submitted by IVQ, as well as any other additional evidence that the parties may choose to submit on their behalf.

The CA then submitted to the Court its Report and Recommendation. According to the CA's Recommendation, the documentary evidence presented and offered by IVQ are insufficient to warrant a decision in its favor, either because these had already been presented before the court *a quo* or, even if they are newly offered in evidence, they are inadequate and could not overturn the SC's dismissal of IVQ's petition. Hence, IVQ's Second Motion for Reconsideration must be denied for lack of merit.

ISSUE:

Whether the CA erred in not giving weight and probative value to the submitted documents that were mere photocopies. (NO)

RULING:

Given the significance and consequence of the original copies of the documents in the outcome of this case, the same should have been presented immediately to the Court or to the CA. The fact that the originals were not so submitted is counter intuitive, dubious and even speaks of negligence on the part of IVQ.

The Court reiterated in *Philippine Banking Corporation v. Court of Appeals* that:

> The Best Evidence Rule provides that the court shall not receive any evidence that is merely substitutionary in its nature, such as photocopies, as long as the original evidence can be had. Absent a clear showing that the original writing has been lost, destroyed or cannot be produced in court, the photocopy must be disregarded, being unworthy of any probative value and being an inadmissible piece of evidence.

Moreover, we stressed in *Heirs of Prodon v. Heirs of Alvarez* that:

> The primary purpose of the Best Evidence Rule is to ensure that the exact contents of a writing are brought before the court, considering that *(a)* the precision in presenting to the court the exact words of the writing is of more than average importance, particularly as respects operative or dispositive instruments, such as deeds, wills and contracts, because a slight variation in words may mean a great difference in rights; *(b)* there is a substantial hazard of inaccuracy in the human process of making a copy by handwriting or typewriting; and *(c)* as respects oral testimony purporting to give from memory the terms of a writing, there is a special risk of error, greater than in the case of attempts at describing other situations generally. The rule further acts as an insurance against fraud. Verily, if a party is in the possession of the best evidence and withholds it, and seeks to substitute inferior

> evidence in its place, the presumption naturally arises that the better evidence is withheld for fraudulent purposes that its production would expose and defeat. Lastly, the rule protects against misleading inferences resulting from the intentional or unintentional introduction of selected portions of a larger set of writings.

In this case, IVQ offered no valid reason for the non-production of the original copies of most of the documents it submitted before the CA. Worse, in its Formal Offer of Exhibits in said court, IVQ even claimed that all the original and certified true copies of the exhibits/documents enumerated therein were attached to and were appended to form part of the records of the case through the memorandum that IVQ submitted to the Court of Appeals. This is simply untrue. We have carefully gone through the documents annexed to said memorandum and found that almost all of them were mere photocopies. Given the foregoing circumstances, the CA was justifiably cautious in doubting the credibility of the documents submitted by IVQ. That the same may have been tampered with or somehow altered in the process of being copied cannot be discounted.

All told, despite the exceptional opportunity that was granted to it, IVQ again failed to adduce sufficient and creditworthy evidence that would convince us to reconsider our previous denial of its petition.

PEOPLE OF THE PHILIPPINES, ***Plaintiff-Appellee*****, -versus-**. **BENEDICTO VEEDOR, JR. *Y* MOLOD A.K.A. "BRIX", *Accused-Appellant*.**G.R. No. 223525, FIRST DIVISION, June 25, 2018, DEL CASTILLO, *J.*

The following links must be established to ensure the preservation of the identity and integrity of the confiscated drug: 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. Failure of the authorities to immediately mark the seized drugs raises reasonable doubt on the authenticity of the corpus delicti and suffices to rebut the presumption of regularity in the performance of official duties. In this case, we find that the prosecution failed to establish the first link in the chain of custody for failure of the NBI agents to properly conduct the inventory and marking of the seized items

FACTS:

Appellant was charged with illegal possession of dangerous drugs under Section 11 Article II of RA 9165. The prosecution's version of the incident is as follows: On September 2, 2004, a team of operatives from the Reaction Arrest and Interdiction Division of the NBI, in coordination with the PDEA, served a search warrant on appellant at the latter's house. NBI agents searched the house and found a shopping bag containing suspected marijuana inside a cabinet. They also found 323 small plastic sachets of suspected marijuana in seven transparent plastic bags, several empty transparent plastic sachets, an electric sealer and a pair of scissors. SI Escurel marked the seized items with his initials and prepared the Inventory of Seized Property. Photographs of the items found in the premises were also taken. The NBI operation was witnessed by ABS-CBN's Alcantara, Barangay Chairman Francisco and Barangay Councilor Almalvez. NBI agents thereafter brought appellant to

their office where they prepared the required documents. Examinations conducted on specimen/s gave POSITIVE RESULTS for marijuana on specimens 1 and 2 only.

Appellant raised the defenses of denial and alibi. He narrated that: On September 1, 2004, two male persons, Jeric and Jeff with one male whom he does not know arrived in his house and requested him to watch DVD movie entitled 'Hell Boy'. He did not finish the movie because he went upstairs to sleep but let them finish the movie. He just reminded them to turn off the TV. At around 11:20 am on September 2, 2004, NBI agents arrested him. Barangay officials came only after his arrest. He denied any knowledge on the one kilo of marijuana. He stated that he does not know the whereabouts of Jeric and Jeff but he trusted them and let them watch DVD at his home even at midnight because these two boys are poor.

RTC found appellant guilty beyond reasonable doubt of violating Section 11, Article II of RA 9165. CA affirmed. It found that appellant was unable to discharge his burden of proving the absence of the element of animus possidendi, given that the dangerous drugs were found in a cabinet inside appellant's house and he failed to present evidence to show that his possession of said drugs was authorized by law.

ISSUE:

Whether the corpus delicti of the offense charged was proven beyond reasonable doubt, considering the inconsistency in the description of the dangerous drugs seized

RULING:

The presentation of evidence establishing the elements of the offenses of illegal sale and possession of dangerous drugs alone is insufficient to secure or sustain a conviction under RA 9165. Given the unique characteristics of dangerous drugs which render them not readily identifiable and easily susceptible to tampering, alteration or substitution, it is essential to show that the identity and integrity of the seized drugs have been preserved.

In *People v. Denoman,* the court ruled that in securing or sustaining a conviction under RA No. 9165, the intrinsic worth of these pieces of evidence, especially the identity and integrity of the corpus delicti, must definitely be shown to have been preserved. This requirement necessarily arises from the illegal drug's unique characteristic that renders it indistinct, not readily identifiable, and easily open to tampering, alteration or substitution either by accident or otherwise. Thus, remove any doubt or uncertainty on the identity and integrity of the seized drug, evidence must definitely show that the illegal drug presented in court is the same illegal drug actually recovered from the accused-appellant; otherwise, the prosecution for possession or for drug pushing under RA No. 9165 fails.

It is in this context that we highlight the utmost significance of the chain of custody requirement under Section 21, Article II of RA 9165, as amended by Republic Act No. 10640, in drug-related prosecutions. The following links must be established to ensure the preservation of the identity and integrity of the confiscated drug: 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.

Failure of the authorities to immediately mark the seized drugs raises reasonable doubt on the authenticity of the corpus delicti and suffices to rebut the presumption of regularity in the performance of official duties. In this case, we find that the prosecution failed to establish the first link in the chain of custody for failure of the NBI agents to properly conduct the inventory and marking of the seized items.

NBI agent's failure to account for and mark the 323 plastic sachets supposedly contained in the seven plastic bags marked as MEE-2 to MEE-8 which, curiously, only surfaced in the Certification issued by Forensic Chemist Aranas. In fact, the absence of a physical count and marking of said plastic sachets even prompted the public prosecutor to ask the court for permission to open Exhibits MEE-2 to MEE-8 and count the plastic sachets contained therein in open court during the direct testimony of SI Escurel. In addition, there is an inconsistency in the description of the seized dangerous drugs in the records. Regrettably, this inconsistency was not clarified by the prosecution.

Another significant point to consider is the prosecution's failure to: (a) submit the original or the duplicate original copy of the Inventory of Seized Property; and (b) include the photographs taken of appellant and the seized items in its Formal Offer of Evidence. We also draw attention to the testimony of Brgy. Chairman Francisco, a prosecution witness, who was present during the NBI operation in appellant's house. The public prosecutor repeatedly asked the same questions regarding the marijuana that Brgy. Chairman Francisco saw, and at one point, even reminded the latter that he was under oath, but the answer remained the same – **that he did not see the contents of an SM plastic bag** supposedly containing several sachets of dried marijuana leaves, a plastic container, and a plastic sealer.

Finally, we note the serious evidentiary gaps in the second, third and fourth links in the chain of custody over the seized dangerous drugs. Based on the records, the seized evidence was turned over by SI Escurel to the Forensic Chemistry Division of the NBI for a quantitative and qualitative examination. In this regard, the prosecution failed to disclose the identities of: (a) the person who had custody of the seized items after they were turned over by SI Escurel; (b) the person who turned over the items to Forensic Chemist Aranas; and (c) the person who had custody thereof after they were examined by the forensic chemist and before they were presented in court. Given the prosecution's failure to prove the indispensable element of corpus delicti, appellant must necessarily be acquitted on the ground of reasonable doubt.

3. Secondary evidence

4. Parol Evidence rule

5. Interpretation of documents

E. Testimonial Evidence (Rule 130, C)

1. Qualification of witnesses

PEOPLE OF THE PHILIPPINES, *PLAINTIFF-APPELLEE*, -versus- BENITO PALARAS Y LAPU-OS, *ACCUSED-APPELLANT*.
G.R. No. 219582, THIRD DIVISION, July 11, 2018, MARTIRES, J.

In People v. Amin, this Court did not deem as eyewitness account the testimony of the prosecution witnesses who were ten (10) meters away from the transaction. Similarly, in People v. Guzon, a police officer who admitted that he was seven (7) to eight (8) meters away from the actual transaction was not considered an eyewitness to the crime.

In this case, PO2 Bernil's testimony shows that the members of the buy-bust team apprehended accused-appellant based on the pre-arranged signal from the poseur-buyer that the transaction with accused-appellant had been consummated. However, the prosecution did not present the poseur-buyer during the trial to describe the said transaction. The records also show that it was PO2 Bernil who was tasked to monitor the movements of accused-appellant and the poseur-buyer and was positioned the closest to the subject transaction, but he was located ten (10) meters away from the transaction.

Since the poseur-buyer was not presented to testify on the details of the subject transaction, the act of accused-appellant as witnessed by the members of the buy-bust team cannot, therefore, be limited to illegal sale of drugs. It was capable of multiple explanations. It is a well-established rule that "if the inculpatory facts and circumstances are capable of two or more interpretations, one of which being consistent with the innocence of the accused and the other or others consistent with his guilt, then the evidence in view of the constitutional presumption of innocence has not fulfilled the test of moral certainty and is thus insufficient to support a conviction."

FACTS:

The Intelligence Section of the Philippine National Police of Silay City (*PNP-Silay City*) received reports that a certain Benito Palaras y Lapu-os a.k.a. "Bitoy," a resident of Sitio Matagoy, Barangay Rizal, Silay City, was actively engaged in selling *shabu* in the said area together with his brother, Joemarie Palaras, who had been previously arrested for a similar offense.

Pursuant to the said reports, P/Supt. Rosauro B. Francisco, Jr., the Chief of Police of PNP-Silay City, ordered surveillance, monitoring, and casing operation on accused-appellant. A test-buy operation was then undertaken with the use of a confidential asset, who acted as the poseur-buyer. A sachet of *shabu* was purchased by the poseur-buyer from accused-appellant for the sum of Two Hundred Fifty Pesos (P250.00). The item purchased from the accused-appellant in said test-buy was brought to the PNP Crime Laboratory of the Negros Occidental Provincial Police Office (*NOPPO*) on 14 December 2011. The contents of the said plastic sachet was "positive" for methamphetamine hydrochloride (*shabu*), a dangerous drug, as shown in Chemistry Repm1No. D-241-2011.

A buy-bust operation was thus set on 22 February 2012, to be conducted by the same police unit on accused-appellant Palaras. Two (2) P1 00-peso bills and a P50-peso bill were marked by underlining the last digit of the serial numbers on each of them. The same were subscribed to before Prosecutor Ma. Lisa Lorraine H. Atotubo as the money to be used in said buy-bust operation. This was entered in the blotter of the PNP-Silay City as Entry No. 024885.

The planned buy-bust operation was coordinated with the Philippine Drug Enforcement Agency (*PDEA*), Regional Office 6. A pre-operation report and coordination form were likewise issued. Details of the operation were planned at a short briefing in the office of the Intelligence Section of the PNP-Silay City. The members of the buy-bust operation team were PO2 Reynaldo Bernil, Jr. (*PO2 Bernil*), PO2 Ian Libo-on (*PO2 Libo-on*), and a number of civilian agents of the police unit, with PO2 Bernil as the lead police officer.

The marked bills were given by PO2 Bernil to the confidential asset, who was to act as the poseur-buyer. The poseur-buyer proceeded to Burgos Street, Barangay Rizal, Silay City, ahead of the other members of the buy bust team, to meet accused-appellant. The poseur-buyer was instructed to immediately call PO2 Bernil the moment he saw accused-appellant at the said place. Shortly after the poseur-buyer made the call that he had already seen accused-appellant in the area, the other members of the buy-bust team proceeded there. They positioned themselves a few meters away from where the poseur-buyer was, such that their presence would not be noticed by accused-appellant but sufficient for them to clearly see him and the poseur-buyer.

The poseur-buyer approached a person seated in a tricycle parked on the street. Since the farmer was a previous customer of accused-appellant, Palaras did not become suspicious. The poseur-buyer took out tram this pocket the marked bills and handed them to accused-appellant, who readily received the bills and placed them in his pocket. Accused-appellant, thereafter, took something from his pocket and gave it to the poseur-buyer. As they parted ways, the poseur-buyer gave the pre-arranged signal that the sale had already been consummated by placing his right hand on top of his head. The other members of the buy-bust team, specifically PO2 Bernil, SPO1 Rayjay Rebadomia (*SPO1 Rebadomia*), and PO2 Libo-on, hurriedly proceeded towards accused-appellant who, upon noticing the approaching police officers, attempted to escape but was promptly apprehended.

PO2 Bernil searched the body of accused-appellant and recovered from the left pocket of his pants the marked bills, as well as four (4) small heat-sealed transparent plastic sachets containing white crystalline substances. PO2 Bernil handed these transparent plastic sachets to PO2 Libo-on, who marked them as "BIT2," "BIT3," "BIT4," and "BIT5," respectively.

On the other hand, the poseur-buyer handed to PO2 Bernil a small heat-sealed transparent plastic sachet containing a crystalline substance which the former received from accused-appellant. PO2 Bernil, in turn, handed it to PO2 Libo-on which the latter marked as "BIT1," the buy-bust item.

Accused-appellant and the items recovered from him were then brought to the police station of the PNP-Silay City. An inventory was made of the seized items from accused-appellant which he signed. The said inventory was witnessed by, among others: Councilor Ireneo Celis, media representative Ed Gumban, Kagawad Noel Lacson, and DOJ representative Danilo Tumlos.

Thereafter, the marked plastic sachets were brought to the PNP Crime Laboratory NOPPO at Bacolod City, for laboratory examination.

Chemistry Report No. D-049-2012[6] was issued by Police Inspector Hernand Gutierrez Donado, forensic chemist, showed that "BIT1" had a net weight of 0.2 gram, and "BIT2," "BIT3," "BIT4," and "BIT5" had a net weight of 0.01 gram each, with an aggregate weight of 0.06 gram. Said report found

that all the aforementioned specimen tested "positive" for methamphetamine hydrochloride (*shabu*), a dangerous drug.[7]

Accused-appellant testified that on 22 February 2012, at around 4:00 P.M., he was inside a private tricycle at Kahilwayan, Brgy. 2, Silay City. While he was conversing with his friends, two armed men in civilian clothes approached him, aimed a gun at him, and handcuffed him. He resisted and asked them why he was being arrested as he had done nothing wrong. No answer was given and he was forcibly held in front of the jeep. To his surprise, one of the police officers inserted his hand on accused appellant's pocket and eventually made a search. Accused-appellant resisted the body search as his pockets had holes in them; however, the police authorities persisted.

ISSUE:

Whether or not the CA and RTC erred in finding that the evidence presented by the prosecution warranted accused-appellant's conviction for the crimes charged. (YES)

RULING:

In *People v. Amin*, this Court did not deem as eyewitness account the testimony of the prosecution witnesses who were ten (10) meters away from the transaction. Similarly, in *People v. Guzon*, a police officer who admitted that he was seven (7) to eight (8) meters away from the actual transaction was not considered an eyewitness to the crime.

In this case, PO2 Bernil's testimony shows that the members of the buy-bust team apprehended accused-appellant based on the pre-arranged signal from the poseur-buyer that the transaction with accused-appellant had been consummated. However, the prosecution did not present the poseur-buyer during the trial to describe the said transaction. The records also show that it was PO2 Bernil who was tasked to monitor the movements of accused-appellant and the poseur-buyer and was positioned the closest to the subject transaction, but he was located ten (10) meters away from the transaction.

While it is true that the non-presentation of the poseur-buyer is fatal only if there is no other eyewitness to the illicit transaction,[19] PO2 Bernil and the other members of the buy-bust team cannot be considered as eyewitnesses to the illegal sale of drugs because their distance raises doubt that they could confirm whether what transpired was actually a sale, considering the legal characterizations[20] of the act constituting the crime.

Notably, also, PO2 Bernil testified that accused-appellant was inside a tricycle when the transaction took place and it was not established that he was still able to clearly see the acts of both the poseur-buyer and accused-appellant despite the latter's position and the cover afforded by the tricycle. It can also be gleaned from the foregoing testimonies that the members of the buy-bust team primarily relied on the pre-arranged signal in order to effect the arrest.

Since the poseur-buyer was not presented to testify on the details of the subject transaction, the act of accused-appellant as witnessed by the members of the buy-bust team cannot, therefore, be limited to illegal sale of drugs. It was capable of multiple explanations. It is a well-established rule that "if the inculpatory facts and circumstances are capable of two or more interpretations, one of which being

consistent with the innocence of the accused and the other or others consistent with his guilt, then the evidence in view of the constitutional presumption of innocence has not fulfilled the test of moral certainty and is thus insufficient to support a conviction."

Consequently, the non-presentation of the poseur-buyer in this case is fatal to the prosecution's case. Without an eyewitness account to the illegal sale, the evidence of the prosecution does not satisfy the quantum of proof necessary for accused-appellant's conviction.

PEOPLE OF THE PHILIPPINES, Plaintiff-Appellee -versus-EDUARDO GOLIDAN y COTO-ONG, FRANCIS NACIONALES y FERNANDEZ, and TEDDY OGSILA y TAHIL, Accused. G.R. No. 205307
FIRST DIVISION, January 11, 2018, LEONARDO-DE CASTRO, *J.:*

In People v. Esugon, [45] it was held that:

That the witness is a child cannot be the sole reason for disqualification. The dismissiveness with which the testimonies of child witnesses were treated in the past has long been erased. Under the Rule on Examination of a Child Witness (A.M. No. 004-07-SC 15 December 2000), every child is now presumed qualified to be a witness. To rebut this presumption, the burden of proof lies on the party challenging the child's competency. Only when substantial doubt exists regarding the ability of the child to perceive, remember, communicate, distinguish truth from falsehood, or appreciate the duty to tell the truth in court will the court, motu proprio or on motion of a party, conduct a competency examination of a child.

In this case, Cherry Mae Bantiway, is a competent witness although she is suffering from cerebral palsy, citing the rule that any child can be a competent witness if he/she can perceive, and perceiving, can make known his/her perception to others and of relating truthfully facts respecting which he/she is examined.

FACTS:

Assistant City Prosecutor Elmer M. Sagsago filed three separate Informations, approved by City Prosecutor Erdolfo V. Balajadia, before the Regional Trial Court (RTC) of Baguio City against appellants Golidan, Nacionales, Ogsila, and a certain "John Doe," for rape with homicide, murder, and frustrated murder of Elizabeth Leo, NamuelAniban, and Cherry Mae Bantiway, respectively.

Based upon the evidence submitted in Court, on January 20, 1995, JennylineAniban went to her mother's house and found Elizabeth Leo lying naked on her back. There was blood on the heard and vagina of Elizabeth Leo and her nipples were cut. Beside Elizabeth Leo was the baby Namuel who was lying face down. When Jennyline turned him over, she saw his exposed brains and blood oozing from his nose. The child Cherry Mae was rushed to the hospital due to her own injuries. She suffered two external injuries on her head which were fatal.

During the trial, Cherry Mae, who was impaired by polio and could not walk, but could communicate with her through words and utterances, identified the persons who had killed and raped Elizabeth Leo, murdered Namuel, and wounded her. On July 10, 1996, in open court, Cherry Mae identified appellants Ogsila, Nacionales, and Golidan from a line up composed of 10 persons, as the ones who entered their house on January 20, 1995. Cherry Mae pointed to appellant Nacionales as the one who

struck her and Elizabeth Leo, and to appellant Ogsila as the one who struck one-year-old NamuelAniban. When asked who went on top of Elizabeth Leo, Cherry Mae pointed to appellant Golidan. The RTC found appellants guilty beyond reasonable doubt. The Court of Appeals rendered a decision **affirming** the Judgment of the RTC but with **modifications.**

ISSUE:

Whether or not Cherry Mae is a competent witness (Yes)

RULING:

We agree with the Court of Appeals. The Court of Appeals, at the outset, affirmed that the lone survivor, Cherry Mae Bantiway, is a competent witness although she is suffering from cerebral palsy, citing the rule that any child can be a competent witness if he/she can perceive, and perceiving, can make known his/her perception to others and of relating truthfully facts respecting which he/she is examined. The Court of Appeals held that even if Cherry Mae has cerebral palsy, she can still perceive and make known her perception.

In *People v. Esugon,* [45] it was held that:

That the witness is a child cannot be the sole reason for disqualification. The dismissiveness with which the testimonies of child witnesses were treated in the past has long been erased. Under the *Rule on Examination of a Child Witness* (A.M. No. 004-07-SC 15 December 2000), every child is now presumed qualified to be a witness. To rebut this presumption, the burden of proof lies on the party challenging the child's competency. Only when substantial doubt exists regarding the ability of the child to perceive, remember, communicate, distinguish truth from falsehood, or appreciate the duty to tell the truth in court will the court, *motu proprio* or on motion of a party, conduct a competency examination of a child.

The above pronouncement may also be found in *People v. Santos,*[47] where the Court held:

The trend in procedural law is to give a wide latitude to the courts in exercising control over the questioning of a child witness. Under Sections 19 to 21 of the Rules on Examination of a Child Witness, child witnesses· may testify in a narrative form and *leading questions may be allowed by the trial court in all stages of the examination if the same will further the interest of justice.* It must be borne in mind that the offended party in this case is a *6-year old* minor who was barely *five* when she was sexually assaulted. As a child of such tender years not yet exposed to the ways of the world, she could not have fully understood the enormity of the bestial act committed on her person. Indeed -

Studies show that children, particularly very young children, make the "perfect victims." They naturally follow the authority of adults as the socialization process teaches children that adults are to be respected. The child's age and developmental level will govern how much she comprehends about the abuse and therefore how much it affects her. If the child is too young to understand what has happened to her, the effects will be minimized because she has no comprehension of the consequences. *Certainly, children have more problems in providing accounts of events because they do not understand everything they experience.* They do not have enough life experiences from which to draw upon in making· sense of what they see, hear, taste, smell and feel. *Moreover, they have a limited vocabulary.*

TEODORO C. TORTONA, RODRIGO C. TORTONA, PEDRO C. TORTONA, ERNESTO C. TORTONA, AND PATRICIO C. TORTONA, *PETITIONERS*, -versus- JULIAN C. GREGORIO, FLORENTINO GREGORIO, JR., ISAGANI C. GREGORIO, CELEDONIA G. IGNACIO, TEODOCIA G. CHAN, LEONILA G. CAAMPUED, CONCORDIA G. MIJARES, ROMEO C. GREGORIO, EDNA S. TAN, NELIA S. REYES, CECILIA S. FRIEDMAN, LAMBERTO SUANTE, JULIUS SUANTE, CORAZON YASAY-GREGORIO, DONALDO Y. GREGORIO, ELMER Y. GREGORIO, AND ROY JOHN Y. GREGORIO, *RESPONDENTS.*
G.R. No. 202612, THIRD DIVISION, January 17, 2018, LEONEN, *J.*

Documents acknowledged before a notary public are presumed to have been duly executed. This presumption may be contradicted by clear and convincing evidence. A notarized Deed of Absolute Sale where the thumbmark of a party is shown to be a forgery is void.

Rule 130, Section 49 of the Revised Rules on Evidence specifies that courts may admit the testimonies of expert witnesses or of individuals possessing "special knowledge, skill, experience or training". In this case, contrary to respondents' dismissiveness towards Gomez, his performance of such tasks as taking fingerprints, even if, for a time it was his main duty, does not, per se, discount competence. A history of performing this function does not negate any "special knowledge, skill, experience or training" that Gomez possesses.

FACTS:

This case is an offshoot of a Deed of Absolute Sale allegedly entered into by sisters Rufina Casimiro (Rufina), the purported seller, and Rafaela Casimiro (Rafaela), the purported buyer. Petitioners are the heirs of Rufina, while respondents are the heirs of Rafaela.[4]
During their lifetime, Rufina and Rafaela co-owned with their other siblings two (2) parcels of land.[5] They shared in equal, undivided 1/10 shares of a parcel located in Longos, Bacoor, Cavite, covered by Original Certificate of Title (OCT) No. O-923. They also shared in equal, undivided 1/5 shares of a second parcel in Talaba, Bacoor, Cavite, covered by Transfer Certificate of Title (TCT) No. T-10058.[6]

When Rufina was still alive, she regularly collected her respective 1/10 and 1/5 shares in the income of the two (2) properties. After her death, petitioners continued to collect and receive their mother's share.[7]

Sometime in 1997, petitioners filed a complaint for recovery of real property with damages. They alleged that their cousin Emilio Casimiro (Emilio) offered them a *balato*[8] of P50,000.00 for the sale of the first parcel to the Department of Public Works and Highways. Surprised, they asked why they were not instead given their 1/10 share in the proceeds of the sale. To this, Emilio allegedly replied that according to respondents,[9] the two (2) properties had already been sold by Rufina to Rafaela during their lifetime.[10]

Petitioners proceeded to the Office of the Registry of Deeds to verify the supposed sale. They learned that OCT No. O-923, covering the first parcel, had already been cancelled on account of a Deed of Absolute Sale allegedly executed by Rufina and Rafaela on February 14, 1974. It appeared that Rufina also sold her 1/5 share over the second parcel covered by TCT No. T-10058. It also became apparent that some time after the sales of the two (2) parcels, respondents executed a Declaration of Heirship and Extrajudicial Partition. Consequently, Rufina's 1/10 and 1/5 shares in the first and second

parcels were added to the shares of the respondents, as Rafaela's heirs, thereby increasing their shares to 2/10 and 2/5, respectively.[11]
Petitioners underscored that their mother was illiterate, not even knowing how to write her own name. They alleged that she only affixed her thumbmark on documents, and whenever she did so, she was always assisted by at least one (1) of her children. Thus, they asserted that if the sales to Rafaela were genuine, they should have known about them.[12]
In support of their allegations, they presented during trial some documents,[13] collectively identified as the standard documents, supposedly bearing the authentic thumbmarks of their mother. These standard documents also showed that at least one (1) of them assisted her in executing each document.[14]

Petitioners likewise presented as witness National Bureau of Investigation fingerprint examiner Eriberto B. Gomez, Jr. (Gomez), who conducted an examination to determine the genuineness of the questioned thumbmarks in the Deed of Absolute Sale.[15] He noted that he compared the questioned thumbmarks with the genuine thumbmarks of Rufina in the standard documents. In his Technical Investigation/Identification Report FP Case No. 2000-182-A dated July 13, 2000 (First Report),[16] Gomez noted that "the purported thumbmarks of Rufina Casimiro in the alleged Deed of Absolute Sale were not identical with her standard thumbmarks in [the standard documents]" and concluded that "the thumbmarks appearing in the Deed of Absolute Sale were not impressed by Rufina Casimiro."[17]

In its May 31, 2005 Decision,[20] the Regional Trial Court concluded that the Deed of Absolute Sale was a forgery and ruled in favor of the petitioners. It found as credible the First Report, which positively showed that the questioned thumbmarks in the Deed of Absolute Sale were not Rufina's

The Court of Appeals reversed and set aside the ruling of the Regional Trial Court.[23] It found that the Deed of Absolute Sale was a notarized document and had in its favor the presumption of regularity. It also emphasized Gomez's second examination, which appeared to indicate that the thumbmarks in the standard documents prevent "positive identification."[24] Thus, according to the Court of Appeals, the Regional Trial Court's conclusions were suspect. It held that, ultimately, petitioners failed to prove "by clear and convincing evidence" that the thumbmarks found on the Deed of Absolute Sale were forged.

The Heirs of Rufina then filed the present Petition.

ISSUE:

Whether or not the Deed of Absolute Sale allegedly executed by Rufina Casimiro, as seller, and Rafaela Casimiro, as buyer, is void, as Rufina Casimiro never consented to it and with her apparent thumbmarks on it being fake. (YES)

RULING:

Notarization enables a notary public to ascertain the voluntariness of the party's act and to verify the genuineness of his or her signature.[29] Through notarization, the public and the courts may rely on the face of the instrument, without need of further examining its authenticity and due execution. It is an act that is imbued with public interest.

Notarized documents enjoy the presumption of regularity. They are accorded evidentiary weight as regards their due execution. However, any such presumption is disputable. It can be refuted by clear and convincing evidence to the contrary.

Rule 130, Section 49 of the Revised Rules on Evidence specifies that courts may admit the testimonies of expert witnesses or of individuals possessing "special knowledge, skill, experience or training". Testimonies of expert witnesses are not absolutely binding on courts. However, courts exercise a wide latitude of discretion in giving weight to expert testimonies, taking into consideration the factual circumstances of the case.

Contrary to respondents' dismissiveness towards Gomez, his performance of such tasks as taking fingerprints, even if, for a time it was his main duty, does not, per se, discount competence. A history of performing this function does not negate any "special knowledge, skill, experience or training" that Gomez possesses. Despite respondents' protestations, it remains that Gomez personally scrutinized and compared Rufina's disputed thumbmarks in the contested Deed of Absolute Sale with her authentic thumbmarks in the standard documents and detailed his findings in the First Report to which he testified before the Regional Trial Court. He expounded on his findings in the Second Report and clarified, contrary to what respondents and the Court of Appeals harp on, that the findings detailed in it are not in conflict with or otherwise discount the conclusions stated in the First Report.

In addition, the Regional Trial Court's May 31, 2005 Decision detailed the circumstances leading to the National Bureau of Investigation's examination of the contentious Deed of Absolute Sale, respondents' incessant attempts at preventing the examination, and how Gomez took the witness stand and presented his findings. The Regional Trial Court's recollection indicates, most notably, that Gomez was not handpicked by petitioners. Rather, following petitioners' request, Gomez appeared to have been designated by the National Bureau of Investigation itself to conduct the examination. Thus, any such determination of Gomez's expertise was not borne by petitioners' innate preference for him or of their insistence upon him, but by the National Bureau of Investigation's own confidence in him. This institutional reposition of confidence can only bolster Gomez's credibility.

Heirs of Gregorio v. Court of Appeals, outlined standards for establishing forgery:

> As a rule, forgery cannot be presumed and must be proved by clear, positive and convincing evidence and the burden of proof lies on the party alleging forgery. The best evidence of a forged signature in an instrument is the instrument itself reflecting the alleged forged signature. The fact of forgery can only be established by a comparison between the alleged forged signature and the authentic and genuine signature of the person whose signature is theorized upon to have been forged. Without the original document containing the alleged forged signature, one cannot make a definitive comparison which would establish forgery. A comparison based on a mere xerox copy or reproduction of the document under controversy cannot produce reliable results.

Here, petitioners submitted for comparison three (3) standard documents bearing the genuine thumbmarks of Rufina: (1) *KasulatansaBilihan ng Lote*(Exhibit "F"); (2) *KasulatangPaghahatisaLabas ng Hukumanna may LakipnaBilihan ng Lupa* (Exhibit "G"); and (3) the Residence Certificate of Rufina (Exhibit "H").[67] After examination, Gomez submitted to the Regional Trial Court his Technical Investigation/Identification Report FP Case No. 2000-182 dated July 13, 2000. The report stated that the questioned thumbmarks on the Deed of Absolute Sale do not

belong to Rufina. The questioned thumbmarks were of the "circle type" while the genuine thumbmarks of Rufina were of the "loop type."

Based on the foregoing, the petitioners were able to discharge their burden of proving forgery by clear and convincing evidence. Petitioners themselves recounted in a straightforward manner that their mother, being illiterate, never dealt with her properties without the assistance of any of her children.[86] To attest to this, they presented documents bearing the thumbmarks of their mother, where it appeared that at least one (1) of them was present to assist her.[87] These same documents, when compared with the contentious Deed of Absolute Sale, demonstrated the falsity of the thumbmarks appearing on the latter. Respondents' cause may have been supported by the general presumption that notarized documents were duly executed; however, this presumption must crumble in light of the significantly more compelling evidence presented by petitioners. As against petitioners' evidence, all that respondents presented was the testimony of the notarizing lawyer, whose own acts are clouded with suspicion.

2. Testimonial privilege

3. Admissions and confessions

PEOPLE OF THE PHILIPPINES, *Plaintiff-appellee*, -versus- MICHAEL CABUHAY, *Accused-appellant*.

G.R. No. 225590, THIRD DIVISION, July 23, 2018, MARTIRES, *J.*

In People v. Pajarin, the Court ruled that in case of a stipulation by the parties 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.

The said stipulations are wanting in this case. Here, the prosecution offered and the defense admitted that PCI Ebuen is an expert witness; that on 19 May 2009, she received two small heat-sealed transparent plastic sachets including the subject of this case, with marking "MCV/LD BUY BUST"; and that the contents of the sachet yielded positive results for methylamphetamine hydrochloride or shabu after the laboratory examination thereon.

Although herein stipulations satisfied the first requisite as stated in People v. Pajarin, they failed to cover the second and third requisites required to establish that, after the laboratory examination, there would have been no change in the condition of the seized drug and no opportunity for someone not in the chain to have possession of and to tamper with the same. Absent any testimony regarding these precautions, doubt, that the illegal drug allegedly confiscated from the accused is not the same as that presented in court, remains.

FACTS:

In two Informations, both dated 21 May 2009, Michael was indicted for violations of Sections 5 and 11, Article II of R.A. No. 9165 for illegal sale and illegal possession of dangerous drugs, respectively. On 1 July 2009, Michael, with the assistance of counsel, was arraigned and pleaded "not guilty" to the crimes charged. The prosecution presented four (4) witnesses. **The defense, however, admitted some of the stipulations offered by the prosecution with respect to the testimonies of PO3 Montero and PCI Ebuen.**

PO3 Dela Cruz testified that on 19 May 2009, at around 3:30 p.m., he was at the Caloocan City Police Station at Samson Road, Caloocan City, when their chief, Police Chief Inspector Christopher Prangan (PCI Prangan) tasked him, together with SPO1 Julio Lobrin (SPO1 Lobrin), PO3 Montero, PO3 Martinez, and PO3 George Ardedon, to plan for a possible buy-bust operation. Apparently, PCI Prangan received a telephone call from a confidential informant telling him about an ongoing sale of shabu at the BMBA Compound, Barangay 118, Caloocan City, by a certain alias "Kongkong" who was later identified as defendant-appellant Michael Cabuhay.

During the planning, PO3 Dela Cruz was designated as the poseur- buyer. For this purpose, he prepared two (2) one hundred-peso bills on which he placed the markings "LP" on each upper left portion. Thereafter, the team proceeded to the target area. When he saw Michael, PO3 Dela Cruz and the informant approached him. The informant introduced PO3 Dela Cruz to Michael as the buyer of shabu. Michael then asked him how much shabu he wanted to buy. PO3 Dela Cruz did not verbally respond; instead, he handed the marked money to Michael who accepted it and put it inside his pocket. Michael then took out one (1) plastic sachet from his right pocket and gave it to PO3 Dela Cruz. Upon receiving the sachet, PO3 Dela Cruz scratched his head, the pre-arranged signal for his team to approach. At this point, PO3 Dela Cruz introduced himself as a policeman and arrested Michael. Meanwhile, the other members of the buy-bust team arrived and assisted PO3 Dela Cruz in apprehending Michael.

After Michael's arrest, PO3 Dela Cruz and SPO1 Lobrin appraised him of his constitutional rights. Thereafter, PO3 Dela Cruz looked on as SPO1 Lobrin frisked Michael and recovered another plastic sachet containing white crystalline granules from the latter's right pocket. SPO1 Lobrin also recovered the buy-bust money from Michael. Thereafter, Michael, as well as the pieces of evidence seized from him, were brought to their office where they were turned over to the investigator. PO3 Dela Cruz identified the accused and the two (2) sachets of illegal drugs before the RTC. PO3 Martinez corroborated the testimony of PO3 Dela Cruz as regards Michael's arrest. As previously stated, the parties entered into stipulations with respect to the testimonies of PO3 Montero and PCI Ebuen. On cross-examination**, PO3 Montero admitted that he did not place his own markings on each of the sachets of illegal drugs**. He explained, **however, that he placed his markings on another plastic bag wherein he placed all of the pieces of evidence.**

On its part, the defense presented Michael himself, his mother Aurora Cabuhay (Aurora), and Conrado Bungay (Conrado), Michael's stepfather. On 18 May 2009, at around four o'clock in the afternoon, Michael was in a drinking session with his two friends in front of his house when five (5) men arrived. The men inquired about the whereabouts of one Erwin Villar, Michael's uncle. Immediately, one of the men whom Michael identified as SPO1 Lobrin frisked and handcuffed him. He was boarded in a black car and brought to the Sangandaan Police Station where he was detained. Despite his claim that nothing was taken from him, the men insisted that they were able to buy and confiscate an illegal substance from him. He only learned the following day that he was being charged for violation of Sections 5 and 11 of R.A. No. 9165. Conrado and Aurora corroborated Michael's claim that he was just drinking in front of his house when he was suddenly apprehended by several policemen.

In its decision, the RTC acquitted Michael of violation of Section 11, R.A. No. 9165 for illegal possession of dangerous drugs (Criminal Case No. C-81498), but found him guilty for violation of Section 5 of R.A. No. 9165 for illegal sale of dangerous drugs (Criminal Case No. C-81497). Aggrieved, Michael elevated an appeal before the CA. In its assailed decision, the CA dismissed Michael's appeal effectively affirming the RTC decision. Hence, this appeal.

ISSUE:

Whether the stipulations required for effective dispensation of the forensic chemist's testimony is wanting in this case?

RULING:

The appeal is meritorious. The elements necessary in every prosecution for the illegal sale of dangerous drugs are: (1) the identity of the buyer and the seller, the object and the consideration; and (2) the delivery of the thing sold and the payment. Similarly, it is essential that the transaction or sale be proved to have actually taken place coupled with the presentation in court of evidence of corpus delicti which means the actual commission by someone of the particular crime charged.

For this purpose, the Court has adopted the chain of custody rule, a method of authenticating evidence which **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.** Unfortunately, in this case, the prosecution failed to demonstrate an unbroken chain of custody.

The Court agrees with the defense. It must be recalled that the testimony of the forensic chemist PCI Ebuen was the subject of a stipulation by the prosecution and defense**. However, even after admitting the stipulations offered by the prosecution with respect to PCI Ebuen's testimony, the defense insists that the prosecution could not take refuge in it as it did not complete the chain of custody.**

In People v. Pajarin, the Court ruled that in case of a stipulation by the parties 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.

The said stipulations are wanting in this case. Here, the prosecution offered and the **defense admitted that PCI Ebuen is an expert witness;** that on 19 May 2009, she received two small heat-sealed transparent plastic sachets including the subject of this case, with marking "MCV/LD BUY BUST"; and that the contents of the sachet yielded positive results for methylamphetamine hydrochloride or shabu after the laboratory examination thereon.

Although herein stipulations satisfied the first requisite as stated in People v. Pajarin, they failed to cover the second and third requisites required to establish that, after the laboratory examination, there would have been no change in the condition of the seized drug and no opportunity for someone not in the chain to have possession of and to tamper with the same. Absent any testimony regarding these precautions, doubt, that the illegal drug allegedly confiscated from the accused is not the same as that presented in court, remains. As a result, this reasonable doubt would prevent the prosecution from overcoming the presumption of innocence in favor of the accused.

The Court had already stressed the importance of establishing the precautions taken by the forensic chemist to ensure that the identity and integrity of the seized drug would be preserved after the conduct of the laboratory examination.

To repeat, the failure to include in the stipulations the precautions taken by the forensic chemist after the conduct of the laboratory examination on the illegal drug, as well as the manner it was handled after it left her custody, renders the stipulations in her testimony ineffective in completing an unbroken chain of custody. With the prosecution's failure to establish an unbroken chain of custody, the Court is now duty bound to render a judgment of acquittal.

4. Previous conduct as evidence

5. Testimonial knowledge

6. Hearsay and exceptions to the hearsay rule

7. Opinion rule

8. Character evidence

F. Burden of proof and presumptions (Rule 131)

ALLIED BANKING CORPORATION (NOW PHILIPPINE NATIONAL BANK), *Petitioner*, *v.* **EDUARDO DE GUZMAN, SR., IN HIS CAPACITY AS SURETY TO THE VARIOUS CREDIT ACCOMMODATIONS GRANTED TO YESON INTERNATIONAL PHILIPPINES, INC.**, *Respondent*.
G.R. No. 225199, SECOND DIVISION, July 09, 2018, PERALTA, ***J.***

In Commissioner of Internal Revenue v. Metro Star Superama, Inc.,[14] citing *Barcelon, Roxas Securities, Inc. (now known as UBP Securities, Inc.) v. Commissioner of Internal Revenue*,[15] *the Court had the occasion to stress that in order to prove the fact of mailing, the second requisite above, it is important that a party proving the same present sufficient evidence thereof, such as the registry receipt issued by the Bureau of Posts or the registry return card which would have been signed by the petitioner or its authorized representative*

In the instant case, the Court finds that De Guzman sufficiently established the presence of the foregoing requisites necessary to give rise to the presumption that the mail matter he sent by registered mail was received in the regular course of mail. First, *it is undisputed that his letter of revocation was properly addressed to PNB.* Second, *in order to prove the fact of mailing, De Guzman presented an original copy of the September 4, 1991 letter of revocation, its corresponding registry receipt, as well as a Certification from the Postmaster of Muntinlupa City that the letter was posted in the post office for mailing.*

FACTS

On February 14, 1990, respondent Eduardo De Guzman, Sr., along with Dong Hee Kim, Chul Ho Shin, and Bong Il Kim, all of whom were incorporators of Yeson International Philippines, Inc., executed a Continuing Guaranty/Comprehensive Surety wherein they bound themselves, jointly and severally, to pay any and all obligations, including all accrued interest and charges, attorney's fees, and costs of litigation, obtained by the company from petitioner Allied Banking Corporation (now Philippine National Bank) *(PNB).*

On April 30, 1993, after the company's obligation became past due, the same was repackaged and consolidated. Consequently, it executed a Promissory Note in the amount of P12,500.00. Thereafter, PNB required the company's directors to execute another contract of suretyship to secure the repackaged loan. Thus, the incorporators Dong Hee Kim, Chul Ho Shin, and Bong Il Kim, together with Antonio Katigbak, executed a new Continuing Guaranty/Comprehensive Surety dated June 23, 1993. De Guzman, however, had no participation thereon. PNB filed a Complaint for Sum of Money before the Regional Trial Court *(RTC)* of Makati City against De Guzman, Dong Hee Kim, Chul Ho Shin, Bong Il Kim, and Antonio Katigbak *(Katigbak),* as sureties of the company, contending that said company failed to pay its outstanding loan of P7,335,809.99 and to return P5,349,149.71 arising from the six (6) trust receipts, plus interests and penalties, despite demand.

The RTC initially found all defendants liable as sureties and ordered them to pay the indebtedness of the company, plus interest and penalty charges. De Guzman, together with Dong Hee Kim, Chul Ho Shin, Bong Il Kim, filed a Notice of Appeal. On October 21, 2008, however, De Guzman, assisted by a new counsel, filed a Motion for Leave (1) To Withdraw Notice of Appeal and (2) To File Motion for New Trial. RTC issued an Order dated January 9, 2009, granted De Guzman's motion. During the reception of evidence, De Guzman admitted to signing the first surety agreement dated February 14,

1991, during which time, he was still a stockholder and director of the company as an accommodation to his friends. However, De Guzman exercised his right to revoke his obligation as surety by sending a letter dated September 4, 1991 to PNB.RTC affirmed its August 14, 2008 Decision, finding Dong Hee Kim, Chul Ho Shin, Bong Il Kim liable as sureties but dismissed the same as against Katigbak. CA affirmed the trial court's ruling.

ISSUE

Whether it was sufficiently proven that the first surety agreement was, indeed, revoked (YES)

RULING

On the basis of Section 3(v),[12] Rule 131, of the 1997 Rules of Court, the Court has consistently ruled that when a mail matter was sent by registered mail, there arises a disputable presumption that it was received in the regular course of mail. The facts to be proved in order to raise this presumption are: (a) that the letter was properly addressed with postage prepaid; and (b) that it was mailed.

In *Commissioner of Internal Revenue v. Metro Star Superama, Inc.,*[14] citing *Barcelon, Roxas Securities, Inc. (now known as UBP Securities, Inc.) v. Commissioner of Internal Revenue,*[15] the Court had the occasion to stress that in order to prove the fact of mailing, the second requisite above, it is important that a party proving the same present sufficient evidence thereof, such as the registry receipt issued by the Bureau of Posts or the registry return card which would have been signed by the petitioner or its authorized representative

In the instant case, the Court finds that De Guzman sufficiently established the presence of the foregoing requisites necessary to give rise to the presumption that the mail matter he sent by registered mail was received in the regular course of mail. *First,* it is undisputed that his letter of revocation was properly addressed to PNB. *Second,* in order to prove the fact of mailing, De Guzman presented an original copy of the September 4, 1991 letter of revocation, its corresponding registry receipt, as well as a Certification from the Postmaster of Muntinlupa City that the letter was posted in the post office for mailing. Undeniably, said registry receipt constitutes the piece of evidence required by the pronouncements above. The presumption, therefore, arises that the De Guzman's letter of revocation was received by PNB in the regular course of mail.

Unfortunately for PNB, moreover, it failed to overcome said presumption. The Court had consistently ruled that when a document is shown to have been properly addressed and actually mailed, there arises a presumption that the same was duly received by the addressee, and it becomes the burden of the latter to prove otherwise.[17] Here, PNB's bare, self-serving denial, and nothing more, does little to persuade. To the Court, PNB's mere denial cannot prevail over the records presented by De Guzman such as the letter of revocation, registry receipt, and certification, which constitute documentary evidence enjoying the presumption that, absent clear and convincing evidence to the contrary, these were duly received in the regular course of mail. Thus, in view of PNB's failure to discharge its burden to overcome the presumption by sufficient evidence, the courts below correctly found that De Guzman had, indeed, already revoked the first surety agreement. Consequently, PNB cannot hold De Guzman liable for the obligations of the company thereunder, nor any other obligation thereafter.

PEOPLE OF THE PHILIPPINES, *Plaintiff-appellee, -versus-* EVELYN PATRICIO Y CASTILLO, ALIAS "NINGNAY" *Accused-appellant.*
G.R. No. 202129, THIRD DIVISION, July 23, 2018, MARTIRES, *J.*

In People v. Gatlabayan, the Court had the occasion to state that it is not unaware of the drug menace besetting our country and the direct link of certain crimes to drug abuse. The unrelenting drive of our law enforcers against trafficking and use of illegal drugs and other substance is indeed commendable. Those who engage in the illicit trade of dangerous drugs and prey on the misguided members of the society, especially the susceptible youth, must be caught and properly prosecuted. Although the courts are committed to assist the government in its campaign against illegal drugs, a conviction under the Comprehensive Dangerous Drugs Act of 2002 can only be obtained after the prosecution discharges its constitutional burden to prove guilt beyond reasonable doubt.

It is true that where no improper motive can be attributed to the police officers, the presumption of regularity in the performance of official duty should prevail. The presumption of regularity in the performance of duty cannot be applied in this case given the obvious evidentiary gaps in the chain of custody. When challenged by the evidence of a flawed chain of custody, the presumption of regularity cannot prevail over the presumption of innocence of the accused.

FACTS:

The evidence for the prosecution tended to establish that in the afternoon of 23 April 2004, Police Officer 1 Rez G. Bernardez (PO1 Bernardez), then assigned at the Capiz Police Provincial Office, Roxas City, was at the vicinity of Capiz Emmanuel Hospital pursuant to a mission order for a buy-bust operation issued by Police Senior Inspector Leo Batiles (P/SInsp. Batiles). He was to act as poseur-buyer. PO1 Bernardez transacted with Evelyn through his cellular phone. They agreed to meet at 3:00 p.m. at the second floor corridor of the Capiz Emmanuel Hospital, the place chosen by Evelyn herself.

With the other members of the police team, PO1 Bernardez proceeded to the agreed place. There, PO1 Bernardez handed Evelyn a pouch containing money amounting to P20,000.00. In turn, Evelyn gave him a brown, mailing-size envelope folded and tied with a rubber band supposedly containing shabu. Immediately after the exchange, PO1 Bernardez introduced himself as a police officer and placed Evelyn under arrest. Evelyn resisted and fought back, hitting PO1 Bernardez in the nose and threw the money back at him. PO1 Jesus Galleron, who was then about two to three meters away from them, arrested Evelyn and informed her of her constitutional rights.

Thereafter, Evelyn was led to the parking area at the side of the hospital where the rest of the apprehending team converged. The brown mailing envelope was opened in front of her, revealing two (2) large transparent plastic sachets of supposed shabu, weighing 4.37 and 4.31 grams, respectively. Afterwards, Evelyn was brought to the Roxas City Police Station where she was bodily searched by two policewomen. They found another big plastic sachet of suspected shabu, weighing 4.37 grams, inside the secret pocket of her pants. The seized items were turned over to the PNP Crime

Laboratory of Iloilo City. After laboratory examination, the specimens were found positive for methamphetamine hydrochloride or shabu.

Evelyn testified that in the morning of 22 April 2004, she was in her house at Capricho II, Roxas City, preparing the clothes that she would wear for her nephew's wedding that afternoon. According to her, she only came to Roxas City to attend the wedding. In the morning of 23 April 2004, she and her driver, Louie Llena, went to Dao to look at a truck that his brother-in- law was interested in buying. From Dao, they returned to Roxas City at past 1:00 p.m. They proceeded to Gaisano Mall before going back to Capricho. While resting at home, Evelyn was distracted by a text message on her cellphone from one Ronnie Detoga (Ronnie) asking her to go to Capiz Emmanuel Hospital where he would pay the P30,000.00 loan Ronnie allegedly borrowed two months prior, and which was used as bail bond for his wife Swannie Dela Cruz. At about three o'clock in the afternoon, Evelyn proceeded to the second floor corridor of Capiz Emmanuel Hospital where Ronnie was waiting. Upon reaching the place, Ronnie handed her a pouch or "poyo" made of cloth as big as her palm. Trusting Ronnie, she did not open the pouch anymore and simply placed it inside her handbag. She then went out of the hospital through the door leading to the parking lot. To her great surprise, she saw a man standing about three arm-lengths away with a gun pointed at her. Stunned, she asked if it was a holdup. The man approached her, held her by the hand, and said, "Do not run! I will shoot you!" Thereafter, a second man arrived and took away her bag. The second man opened her bag, took the pouch that Ronnie had given

Later on, several policemen, media men, and the barangay captain arrived and poured out the contents of her bag, but no illegal drugs were found. She was then made to board a multicab and was brought to the Roxas City Police Station. Upon arriving at the Roxas City Police Station, she was ordered to enter a room where two policewomen were waiting. The policewomen made her strip naked and searched her body, and even made her bend over so they could probe her private part. Finding nothing from their search and probing, the two policewomen went out of the room. Later on, the policewomen returned with the barangay captain, and they presented to the latter a plastic sachet of suspected shabu allegedly retrieved from Evelyn. She denied ownership thereof.

Swannie Dela Cruz testified that on 23 April 2004, she was at the house of one NimfaMartirez (Nimfa) with her live-in partner, Ronnie. Batiles arrived at Nimfa's house and told them that they would set up Evelyn, alias "Ningnay," because the police had been looking for her for a long time. P/SInsp. Batiles gave Ronnie money and shabu to be used in setting her up. The shabu was placed in a brown envelope and the money in a red pouch with floral design. Later in the afternoon, Swannie heard over the radio that Evelyn was apprehended. She immediately went to Capiz Emmanuel Hospital to see Ronnie, but the latter was no longer there. Batiles, who was present, told her not to worry because Ronnie was safe in their camp at Loctugan, Roxas City. P/SInsp. Batiles then brought her to that camp. There, a certain Col. Bautista talked to her and asked her how much she needed for her bail bond, to which she responded P30,000.00. Col. Bautista offered to give her the money as reward for helping in the arrest of Evelyn. As ordered by Col. Bautista, a police officer and a companion of P/SInsp. Batiles by the name of BebotEscoltero delivered the money to them.

Jose Francisco, Jr. (Francisco) testified that he was a security guard assigned at Capiz Emmanuel Hospital; that during his tour of duty on 23 April 2004, from seven o'clock in the morning to three o'clock in the afternoon, his attention was never called regarding any buy-bust operation conducted by the police at the hospital; and that it was the practice of security guards to conduct a roving inspection of the premises. Eduardo Almario, another security guard, corroborated Francisco's testimony and attested that during his roving inspection, he did not notice any unusual incident like a buy-bust operation taking place inside the hospital's premises.

The RTC found Evelyn guilty of the crimes charged. Dissatisfied, Evelyn sought recourse before the CA. The assailed CA decision affirmed the RTC's ruling, but with modification as to the penalty imposed in Criminal Case No. C-131-04. Undaunted, Evelyn calls upon the Court to review her case.

ISSUE:

Whether the presumption of regularity in the performance of duty is unavailing?

RULING:

The presumption of regularity in the performance of duty is unavailing. It is true that **where no improper motive can be attributed to the police officers, the presumption of regularity in the performance of official duty should prevail**. Such presumption, **however, obtains only where there is no deviation from the regular performance of duty. A presumption of regularity in the performance of official duty applies when nothing in the record suggests that the law enforcers deviated from the standard conduct of official duty required by law. Conversely, where the official act is irregular on its face, the presumption cannot arise.** Hence, given the obvious evidentiary gaps in the chain of custody, the presumption of regularity in the performance of duty cannot be applied in this case. When challenged by the evidence of a flawed chain of custody, the presumption of regularity cannot prevail over the presumption of innocence of the accused.

In People v. Gatlabayan, the Court had the occasion to state that it is not unaware of the drug menace besetting our country and the direct link of certain crimes to drug abuse. The unrelenting drive of our law enforcers against trafficking and use of illegal drugs and other substance is indeed commendable. Those who engage in the illicit trade of dangerous drugs and prey on the misguided members of the society, especially the susceptible youth, must be caught and properly prosecuted. Although the courts are committed to assist the government in its campaign against illegal drugs, a conviction under the Comprehensive Dangerous Drugs Act of 2002 can only be obtained after the prosecution discharges its constitutional burden to prove guilt beyond reasonable doubt.

Otherwise, this Court, as vanguard of constitutional guarantees, is duty bound to uphold the constitutional presumption of innocence, without prejudice to how notorious or renowned a drug personality an accused is perceived to be.

All told, we find that the prosecution failed to:
(1) overcome the presumption of innocence which accused-appellant Evelyn enjoys;
(2) prove the corpus delicti of the crime;
(3) establish an unbroken chain of custody of the seized drugs; and
(4) offer any explanation as to why the provisions of Section 21, R.A. No. 9165 were not complied with. Consequently, we are constrained to acquit Evelyn based on reasonable doubt.

G. Presentation of evidence (Rule 132)

1. Examination of witnesses

2. Authentication and proof of documents

3. Offer and objection

REPUBLIC OF THE PHILIPPINES, *Petitioner,* -versus – BANAL NA PAG-AARAL, INC., *Respondent.* G.R. No. 193305, SECOND DIVISION, February 5, 2018, REYES, JR., *J.*

Under Section 9 of Batas Blg. 129, as amended by R.A. No. 7902, the CA has the power to receive evidence and perform any and all acts necessary to resolve factual issues. ***However, in case of appeals, this authority is limited to instances where the CA has granted a new trial****. In other words, the* ***CA cannot unqualifiedly admit evidence on appeal****, as it did with the document in question.* ***The rule is that, evidence which has not been formally offered shall not be considered.*** *Nevertheless, the Court, in the interest of justice and only for the most meritorious of reasons, has* ***allowed the submission of certification in petitions of this kind****, after the parties were granted the opportunity to verify the authenticity and due execution of such document.*

FACTS:

In its Decision dated July 6, 2009, the Court of Appeals (CA) dismissed Banal na Pag-aaral, Inc.'s (Banal na Pag-aaral) application for land registration on the ground of its failure to prove that the land sought to be registered is alienable and disposable.

Banal na Pag-aaral filed a motion for reconsideration and submitted a Certification issued by the DENR, declaring the subject land alienable and disposable. Considering that the Office of the Solicitor General posed no objection to such belated submission of document, the CA admitted the same. Thereafter, the CA, through its Amended Decision dated January 8, 2010, reversed its previous ruling, thus, allowing registration of the subject land.

ISSUE:

Whether the CA erred in admitting the Certification submitted by respondent? (NO)

RULING:

Under Section 9 of Batas Blg. 129, as amended by R.A. No. 7902, the CA has the power to receive evidence and perform any and all acts necessary to resolve factual issues. **However, in case of**

appeals, this authority is limited to instances where the CA has granted a new trial. In other words, the **CA cannot unqualifiedly admit evidence on appeal**, as it did with the document in question. The rule is that, evidence which has not been formally offered shall not be considered. **Nevertheless, the Court**, in the interest of justice and only for the most meritorious of reasons, has **allowed the submission of certification in petitions of this kind**, after the parties were granted the opportunity to verify the authenticity and due execution of such document. The case thus is remanded to the Court of Appeals for further proceedings in order to determine the authenticity and due execution of the aforementioned document.

H. Judicial Affidavit Rule (A.M. No. 12-8-8-SC)

LARA'S GIFT AND DECORS, INC., Petitioner, -versus- PNB GENERAL INSURERS CO., INC. AND UCPB GENERAL INSURANCE CO., INC., Respondents. G.R. Nos. 230429-30, THIRD DIVISION, January 24, 2018, VELASCO JR., J.

*The parties are mandated under **Sec. 2 of the JA Rule** to file and serve the judicial affidavits of their witnesses, together with their documentary or object evidence, not later than five days before pre-trial or preliminary conference. **Sec. 10 of the same Rule** contains a caveat that the failure to timely submit the affidavits and documentary evidence shall be deemed to be a waiver of their submission. It bears to note that Sec. 10 does not contain a blanket prohibition on the submission of additional evidence. **However, the submission of evidence beyond the mandated period in the JA Rule is strictly subject to the conditions that: a) the court may allow the late submission of evidence only once; b) the party presenting the evidence proffers a valid reason for the delay; and c) the opposing party will not be prejudiced thereby. Petitioner failed to comply with these conditions.** Specifically, the records are bereft of any justification, or "good cause," for the filing of the 2nd Supplemental Judicial Affidavit during trial instead of during the pre-trial. Petitioner merely filed and served the affidavit during without any accompanying motion setting forth any explanation and valid reason for the delay. Further, whether denominated as merely "supplemental," the fact that the affidavit introduces evidence not previously marked and identified during pre-trial qualifies it as new evidence. **Nevertheless, the Court is constrained to rule that the 2nd Supplemental Judicial Affidavit was properly admitted in evidence by the trial court because both of the parties reserved the right to present additional evidence in the Pre-Trial Order. This reservation is tantamount to a waiver of the application of Secs. 2 and 10 of the JA Rule.***

*In view of the **peculiar factual milieu surroundingthe instant case,** We rule, **pro hac vice**, that the trial court did not gravely abuse its discretion in allowing the Questioned Documents to be presented in court and in admitting the 2nd Supplemental Judicial Affidavit of petitioner's witness.*

FACTS:

The handicraft products, raw materials, and machineries and equipment of petitioner LARA'S GIFT AND DECORS, INC., were insured against fire and other allied risks with respondent PNB General

Insurers Co., Inc. (PNB Gen) and respondent UCPB General Insurance Co., Inc. (UCPB) covering the period of February 19, 2007 (4:00 p.m.) to February 18, 2008 (4:00p.m.).

Approximately four hours before the policy was about to expire, a fire broke out and razed the buildings leased by the Petitioner. Petitioner immediately claimed from the respondents for the loss and damage of its insured properties. Respondents denied petitioner's claim for coverage of liability under the insurance policy due.

Resultantly, petitioner filed a Complaint for Specific Performance and Damages against respondents before the Makati City RTC. In its Notice of Pre-Trial Conference, the RTC directed the parties to submit their respective pre-trial briefs, accompanied by the documents or exhibits intended to be presented, at least three days before the scheduled Pre-Trial Conference. During the Pre-Trial Conference, both parties made admissions and proposed stipulations of facts and issues to simplify the course of the trial. On account of the voluminous documentary exhibits to be presented, identified, and marked, the parties allotted six meetings/conferences just for the pre-marking of exhibits. After the termination of the Pre-Trial Conference, the RTC issued a Pre-Trial, in which the parties were given the opportunity to amend or correct any errors found therein within five days from receipt thereof. **In the same Order, all the parties made a reservation for the presentation of additional documentary exhibits in the course of the trial.**

Trial on the merits ensued. Among the witnesses presented by petitioner are Gina Servita (Servita) and Luis Raymond Villafuerte (Mr. Villafuerte). **During the continuation of Mr. Villafuerte's cross-examination, petitioner furnished respondents with a copy of the 2nd Supplemental Judicial Affidavit of Mrs. Villafuerte (the 1st Supplemental Judicial Affidavit of Mrs. Villafuerte was filed during the Pre-Trial for the re-marking of exhibits)**. PNB Gen, through a **Motion to Expunge**, sought to strike from the records the said 2nd Supplemental Judicial Affidavit of Mrs. Villauferte and all documents attached thereto for alleged violation of Administrative Matter No. 12-8-8-SC, otherwise known as the "Judicial Affidavit Rule" (JA Rule) and A.M. No. 03-1-09-SC, or the Guidelines to be Observed by Trial Court Judges and Clerks of Court in the Conduct of Pre-Trial and Use of Deposition-Discovery Measures (Guidelines on Pre-Trial). UCPB filed its Manifestation and Motion, adopting in toto PNB Gen's Motion. The twin Motions were set to be heard on September 19, 2014.

A day prior to the hearing of the Motion to Expunge, the re-direct examination of Mr. Villafuerte continued wherein petitioner's counsel produced the Questioned Documents in open court and asked Mr. Villafuerte to identify those documents, seeking to introduce and mark them as exhibits. Respondents immediately objected on the grounds that they were neither touched upon nor covered by the witness' cross-examination, and that the same were being introduced for the first time at this late stage of proceeding, without giving the parties opportunity to verify their relevance and authenticity. They argued that since these documents were not presented, identified, marked, and even compared with the originals during the Pre-Trial Conference, they should be excluded pursuant to the Guidelines on Pre-Trial and JA Rule. The documents are further alleged to be the same documents subject of the respondents' twin Motions to Expunge, i.e., the same Questioned

Documents which were never presented, marked, or compared during the various Pre-Trial Conferences of the case, or were never presented to the insurers and adjusters early on.

RTC issued an Order overruling the objections of respondents and allowing petitioner to propound questions relating to the Questioned Documents, without prejudice to the hearing on the motions to expunge the 2nd Supplemental Judicial Affidavit of Mrs. Villafuerte. RTC issued an omnibus order denying the Motion for Reconsideration and Motion to Expunge for lack of merit. The RTC allowed Mr. Villafuerte to testify on the contested documentary exhibits, on the ground that both the trial court and the parties are bound by the reservations made for the presentation of additional evidence, and in keeping with the interest of justice that evidence should be liberally allowed to be heard than to be suppressed, subject to the final appreciation of its weight and credence.

The Court of Appeals reversed the decision of the RTC and ruled that the RTC erred in allowing the introduction of the 2nd Supplemental Judicial Affidavit in evidence, including the attached Questioned Documents, since petitioner failed to comply with Sections 2 and 10 of the JA Rule which prohibit the presentation, marking and identification of additional exhibits during trial that were not promptly submitted during pre-trial.

ISSUE:

Whether or not the CA erred in disallowing the introduction of additional documentary exhibits during trial and the filing of the 2nd Supplemental Judicial Affidavit of Mrs. Villafuerte? (YES)

RULING:

The parties are mandated under **Sec. 2 of the JA Rule** to file and serve the judicial affidavits of their witnesses, together with their documentary or object evidence, **not later than five days before pre-trial or preliminary conference**. The documentary and testimonial evidence submitted will then be specified by the trial judge in the Pre-Trial Order. Concomitant thereto, Sec. 10 of the same Rule contains a caveat that the **failure to timely submit the affidavits and documentary evidence shall be deemed to be a waiver of their submission**. It bears to note that Sec. 10 does not contain a blanket prohibition on the submission of additional evidence. **However, the submission of evidence beyond the mandated period in the JA Rule is strictly subject to the conditions that: a) the court may allow the late submission of evidence only once; b) the party presenting the evidence proffers a valid reason for the delay; and c) the opposing party will not be prejudiced thereby.** Corollary thereto, the **Guidelines on Pre-Trial** instructs the parties to submit their respective pre-trial briefs **at least three (3) days before the pre-trial**, containing, inter alia, the documents or exhibits to be presented and to state the purposes thereof. The same rule, however, confers upon the trial court the **discretion** to allow the introduction of additional evidence during trial other than those that had been previously marked and identified during the pre-trial, provided there are valid grounds. In the case at bar, the trial court precisely exercised this discretion. It allowed the introduction of the Questioned Documents during the re-direct examination of Mr. Villafuerte upon petitioner's manifestation that the same are being presented in response to the questions propounded by PNB Gen's counsel, Atty. Mejia, during the cross-examination.

The admission of the 2nd Supplemental Judicial Affidavit is subject to the requirements laid down in Sec. 2 of the JA Rule that the parties must file with the court and serve on the adverse party the Judicial Affidavits of their witnesses not later than five days before pre-trial or preliminary conference. While the belated submission of evidence is not totally disallowed, it is still, to reiterate, subject to several conditions, which petitioner failed to comply with. Specifically, the records are bereft of any justification, or "good cause," for the filing of the 2nd Supplemental Judicial Affidavit during trial instead of during the pre-trial. Petitioner merely filed and served the affidavit during without any accompanying motion setting forth any explanation and valid reason for the delay. Further, whether denominated as merely "supplemental," the fact that the affidavit introduces evidence not previously marked and identified during pre-trial qualifies it as new evidence. **Nevertheless, the Court is constrained to rule that the 2nd Supplemental Judicial Affidavit was properly admitted in evidence by the trial court because both of the parties reserved the right to present additional evidence in the Pre-Trial Order. This reservation is tantamount to a waiver of the application of Secs. 2 and 10 of the JA Rule.**

In view of the **peculiar factual milieu surrounding the instant case**, We rule, **pro hac vice**, that the trial court did not gravely abuse its discretion in allowing the Questioned Documents to be presented in court and in admitting the 2nd Supplemental Judicial Affidavit of petitioner's witness. This notwithstanding, litigants are strictly enjoined to adhere to the provisions of the JA Rule, and to be circumspect in the contents of court documents and pleadings.

ARMANDO LAGON,*Petitioner*, -versus-HON. DENNIS A. VELASCO, IN HIS CAPACITY AS PRESIDING JUDGE OF MUNICIPAL TRIAL COURT IN CITIES OF KORONADAL, SOUTH COTABATO, AND GABRIEL DIZON, ***Respondents*.**G.R. No. 208424, SECOND DIVISION**,** February 14, 2018**,** REYES, JR.**.,** *J.*

Despite the noble purpose of the Judicial Affidavit Rule, Lagon comes to this Court bewailing the same procedural regulation as violative of his right to due process of law, in that it "forces" him to present evidence even before the plaintiff has rested his case, apparently in violation of the rule on demurrer to evidence.

Clearly, ***both the Judicial Affidavit Rule and Demurrer to Evidence can co-exist harmoniously*** *as tools for a more efficient and speedy administration of trial procedures. On the one hand, the* ***Judicial Affidavit Rule simply dispenses with the direct testimony****, thereby reducing the time at which a case stands for trial, in the same way that the* ***Demurrer to Evidence abbreviates proceedings*** *by allowing the defendant to seek* ***for an early resolution of the case should the plaintiff be unable to sufficiently prove his complaint.*** *These rules do not conflict, and when used hand in hand will lead to an efficient administration of the trial.*

Moreover, by no stretch of the imagination may it be concluded that Lagon was deprived of due process of law. ***There is nothing in the provisions of the Judicial Affidavit Rule, which prohibits a defendant from filing a demurrer to evidence****, if he truly believes that the evidence adduced by the plaintiff is insufficient. Besides, in the resolution of the demurrer to evidence, only the evidence presented by the plaintiff shall be considered and weighed by the Court.*

FACTS:

Petitioner Lagon obtained a cash loan from private respondent Dizon, in the amount of Php 300,000. In payment thereof, Lagon issued a postdated PCIBank Check in an equal amount. However, when Dizon presented the check for payment, it was dishonored for being Drawn Against Insufficient Funds. Dizon demanded payment; however, Lagon refused to pay.

On June 6, 2011, Dizon field a Complaint for Sum of Money against Lagon. During the preliminary conference, the parties were directed to file their respective pre-trial briefs within 5 days from receipt of the trial court's order. Thereafter, Judge Velasco issued a Pre-Trial Conference Order. At the initial trial, neither of the parties submitted their judicial affidavits or those of their witnesses. Hence, Judge Velasco issued the assailed Order requiring the parties to submit their respective judicial affidavits 5 days before the trial.

Lagon filed a Motion for Partial Reconsideration. Lagon requested that he be allowed to submit the judicial affidavit of his witnesses after the plaintiff shall have adduced his evidence. **Lagon claimed that Section 2 of the Judicial Affidavit Rule, which mandates the submission by both parties of their judicial affidavits before the pre-trial conference is violative of his right to due process**, hence unconstitutional. Judge Velasco denied Lagon's Motion for Partial Reconsideration.

ISSUE:

Whether or not Section 2 of the Judicial Affidavit Rule, which requires a defendant to adduce his testimony and that of his witnesses by judicial affidavits, and submit his documentary evidence before the pre-trial or preliminary conference, offends his right to due process of law. (NO)

RULING:

Article VIII, Section 5(5) of the 1987 Constitution bestows upon the Court the power to "promulgate rules concerning the protection and enforcement of constitutional rights, pleading, practice, and procedure in all courts x xx."

Seeking to eradicate the scourge of long-drawn protracted litigations, and address case congestion and delays in court, on September 4, 2012, the Court *en banc* promulgated A.M. No. 12-8-8-SC, or the Judicial Affidavit Rule.

The Judicial Affidavit Rule was particularly created to solve the following ills brought about by protracted litigations, such as, the dismissal of criminal cases due to the frustration of complainants in shuttling back and forth to court after repeated postponements; and the dearth of foreign businessmen making long-term investments in the Philippines because the courts are unable to provide ample and speedy protection to their investments, thereby keeping the people poor.

Accordingly, the Court *en banc* directed the application of the Judicial Affidavit Rule to all actions, proceedings, and incidents requiring the reception of evidence before the following tribunals:

> (i) the Metropolitan Trial Courts, the Municipal Trial Courts in Cities, the Municipal Trial Courts, the Municipal Circuit Trial Courts, and the Shari'a Circuit Courts but shall not apply to small claims cases under A.M. 08-8-7-SC;

> (ii) The Regional Trial Courts and the Shari'a District Courts;
> (iii) The Sandiganbayan, the Court of Tax Appeals, the Court of Appeals, and the Shari'a Appellate Courts;
> (iv) The investigating officers and bodies authorized by the Supreme Court to receive evidence, including the Integrated Bar of the Philippine (IBP); and
> (v) The special courts and quasi-judicial bodies, whose rules of procedure are subject to disapproval of the Supreme Court, insofar as their existing rules of procedure contravene the provisions of this Rule.

Thus, in all proceedings before the aforementioned tribunals, the parties are required to file the Judicial Affidavits of their witnesses, in lieu of their direct testimonies. Specifically, Section 2 of the Judicial Affidavit Rule ordains that:

> **Section 2.** *Submission of Judicial Affidavits and Exhibits in lieu of direct testimonies*. - (a) The parties shall file with the court and serve on the adverse party, personally or by licensed courier service, **not later than five days before pre-trial or preliminary conference or the scheduled hearing** with respect to motions and incidents, the following:
> The judicial affidavits of their witnesses, which shall take the place of such witnesses' direct testimonies; and
> The parties' documentary or object evidence, if any, which shall be attached to the judicial affidavits and marked as Exhibits A, B, C, and so on in the case of the complainant or the plaintiff, and as Exhibits 1, 2, 3, and so on in the case of the respondent or the defendant.

Incidentally, the failure to comply with Section 2 of the Judicial Affidavit Rule shall result to a waiver of the submission of the required judicial affidavits and exhibits. However, the court may, upon valid cause shown, allow the late submission of the judicial affidavit, subject to specific penalties, constituting a fine of not less than Php 1,000, nor more than Php 5,000, at the discretion of the court.

Despite the noble purpose of the Judicial Affidavit Rule, Lagon comes to this Court bewailing the same procedural regulation as violative of his right to due process of law, in that it "forces" him to present evidence even before the plaintiff has rested his case, apparently in violation of the rule on demurrer to evidence.

Clearly, **both the Judicial Affidavit Rule and Demurrer to Evidence can co-exist harmoniously** as tools for a more efficient and speedy administration of trial procedures. On the one hand, the **Judicial Affidavit Rule simply dispenses with the direct testimony**, thereby reducing the time at which a case stands for trial, in the same way that the **Demurrer to Evidence abbreviates proceedings** by allowing the defendant to seek **for an early resolution of the case should the plaintiff be unable to sufficiently prove his complaint.** These rules do not conflict, and when used hand in hand will lead to an efficient administration of the trial.

Moreover, by no stretch of the imagination may it be concluded that Lagon was deprived of due process of law. **There is nothing in the provisions of the Judicial Affidavit Rule, which prohibits a defendant from filing a demurrer to evidence**, if he truly believes that the evidence adduced by the plaintiff is insufficient. Besides, in the resolution of the demurrer to evidence, only the evidence presented by the plaintiff shall be considered and weighed by the Court.

I. Weight and sufficiency of evidence (Rule 133)

PEOPLE OF THE PHILIPPINES *Plaintiff-Appellee*, -versus-
NESTOR AÑO Y DEL REMEDIOS, *Accused-Appellant*.G.R. No. 230070, SECOND DIVISION**,** March 14, 2018**,** PERLAS-BERNABE, ***J.***

While the fact of marking and inventory of the seized item was established by the attached Inventory of Seized/Confiscated Items, the records are glaringly silent as to the presence of the required witnesses, namely, the representatives from the media and the DOJ. No such explanation was proffered by the prosecution to justify the procedural lapse. It then follows that there are unjustified gaps in the chain of custody of the items seized from Año, thereby militating against a finding of guilt beyond reasonable doubt, which resultantly warrants his acquittal. It is well-settled that the procedure under Section 21, Article II of RA 9165 is a matter of substantive law, and cannot be brushed aside as a simple procedural technicality; or worse ignored as an impediment to the conviction of illegal drug suspects.

FACTS:

The prosecution alleged that after receiving information about Año's drug activities, PO2 Ayad and two other police officers formed a buy-bust team. Thereafter, the team headed to the house of Año where PO2 Ayad knocked on the door and upon seeing Año, whispered that he "wants to score" worth P200.00. Año replied that he has drugs with him and gave PO2 Ayad a transparent plastic sachet, while the latter simultaneously handed the marked money as payment.

As Año placed the money inside his pocket, PO2 Ayad introduced himself as a policeman, causing Año to flee. Fortunately, PO2 Ayad caught Año and asked him to empty his pockets which produced the two (2) P100.00 bills. Due to the commotion caused by Año's relatives who were preventing his arrest, the team moved at a distance of around 100 meters from the place of arrest, marked the confiscated sachet, and completed the inventory thereat.

Brgy. Captain Buenviaje witnessed and signed the Inventory of Seized/Confiscated Items, photographs were also taken in the presence of Año, PO2 Ayad, and PO1 Acuin. On the same day, PO2 Ayad delivered the seized sachet to the Crime Laboratory where it was turned over to Police Inspector Forensic Villaraza for examination. The latter found the substance to be methamphetamine hydrochloride or *shabu*, a dangerous drug.

Thereafter, an Information was filed before the RTC, charging Año with violation of Section 5, Article II of RA 9165. Upon arraignment, Año pleaded not guilty. He claimed that on said date, he was at home celebrating the birthday of his nephew when suddenly, three police officers forcibly arrested him and brought him to the police station for inquiry. The following day, he learned that he was being charged of drug pushing.

RTC found Año guilty beyond reasonable doubt of Illegal Sale of Dangerous Drugs under Section 5 of RA 9165, sentencing him to suffer the penalty of life imprisonment and a fine of P500,000.00. RTC noted that the identity of Año as the seller of the illegal drug was clearly established when he was arrested *in flagrante delicto* during a buy-bust operation.

Aggrieved, Año elevated his conviction before the CA which upheld the RTC ruling. Moreover, it ruled that the apprehending officers duly complied with the chain of custody rule under Section 21 (a),

Article II of the IRR of RA 9165, as PO2 Ayad testified in detail the links in the chain of custody of the seized drug from the time of its confiscation until its presentation in court as evidence. Hence, this appeal.

ISSUE:

Whether or not Año is guilty beyond reasonable doubt of Section 5, Article II of RA 9165? (NO)

RULING:

In order to 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. It is likewise essential for a conviction that the drugs subject of the sale be presented in court and its identity established with moral certainty through an unbroken chain of custody over the same. In cases like this, the prosecution must be able to account for each link in the chain of custody over the dangerous drug from the moment of seizure up to its presentation in court as evidence of the *corpus delicti*.

In this relation, Section 21, Article II of RA 9165 provides the chain of custody rule. Under the said section, prior to its amendment by RA 10640, the apprehending team shall, among others, immediately after seizure and confiscation conduct a physical inventory and take photographs of the seized items **in the presence of the accused or the person from whom such items were seized, or his representative or counsel, a representative from the media and the Department of Justice (DOJ), and any elected public official** who shall then sign the copies of the inventory and be given a copy of the same; and the seized drugs must be turned over to the PNP Crime Laboratory within twenty-four (24) hours from confiscation for examination purposes.

The Court, however, clarified that under varied field conditions, strict compliance with the requirements of Section 21 of RA 9165 may not always be possible. In fact, the IRR of RA 9165 - which is now crystallized into statutory law with the passage of RA 10640 - provide that the failure of the apprehending team to strictly comply with the procedure laid out in Section 21 of RA 9165 and its IRR does not *ipso facto* render the seizure and custody over the items as void and invalid, provided that the prosecution satisfactorily proves that: (a) there is justifiable ground for non-compliance; **and** (b) the integrity and evidentiary value of the seized items are properly preserved. In *People v. De Guzman*, it was emphasized that **the justifiable ground for non-compliance must be proven as a fact, because the Court cannot presume what these grounds are or that they even exist**.

After a judicious study of the case, the Court finds that there are substantial gaps in the chain of custody of the seized items from Año which were unfortunately, left unjustified, thereby putting into question their integrity and evidentiary value.

While the fact of marking and inventory of the seized item was established by the attached Inventory of Seized/Confiscated Items, the records are glaringly silent as to the presence of the required witnesses, namely, the representatives from the media and the DOJ.

Here, no such explanation was proffered by the prosecution to justify the procedural lapse. It then follows that there are unjustified gaps in the chain of custody of the items seized from Año, thereby

militating against a finding of guilt beyond reasonable doubt, which resultantly warrants his acquittal. It is well-settled that the procedure under Section 21, Article II of RA 9165 is a matter of substantive law, and cannot be brushed aside as a simple procedural technicality; or worse ignored as an impediment to the conviction of illegal drug suspects.

PEOPLE OF THE PHILIPPINES, ***Plaintiff-Appellee*, *v.*** **BONIFACIO GAYLON Y ROBRIDILLO, A.K.A. "BONI"**, ***Accused-Appellant*.**G.R. No. 219086, FIRST DIVISION, March 19, 2018, DEL CASTILLO, *J.*

The non-disclosure of the justification by the members of the buy-bust team underscored the uncertainty about the identity and integrity of the shabu admitted as evidence against the accused. The unavoidable consequence of the non-disclosure of the justification was the non-establishment of the chain of custody, which, in turn, raised serious doubt on whether or not the shabu presented as evidence was the shabu supposedly sold by [Gaylon], or whether or not shabu had really been sold by him.

"When the courts are given reason to entertain reservations about the identity of the illegal drug item alleged[ly] seized from the accused, the actual crime charged is put into serious question. Courts have no alternative but to acquit on the ground of reasonable doubt."

FACTS:
Based on the testimony of PO1 Nervar, the prosecution established that a confidential informant (CI) arrived at their office and reported an ongoing illegal trade of drugs involving "*alias Boni*." A buy-bust group was formed wherein PO1 Nervar was designated as the poseur-buyer.

When the team arrived at the target area, the CI introduced PO1 Nervar to Gaylon as a buyer of *shabu*. After receiving the P300.00 buy-bust money, Gaylon got from his left pocket a plastic sachet that contained a white crystalline substance suspected to be *shabu* and gave the same to PO1 Nervar, who thereupon, removed his cap to signal that the transaction was consummated.

The rest of the buy-bust team immediately arrived. They arrested Gaylon and recovered from him the buy-bust money. PO1 Nervar marked the sachet and prepared the inventory; however, Gaylon refused to sign the same. Thereafter, they brought Gaylon to their office. PO1 Nervar also brought the seized sachet to the crime laboratory, together with a request for laboratory examination. Gaylon was also brought to the Rizal Medical Center for a drug test.

The defense presented Gaylon as its sole witness. He denied the charge against him, claiming that he was resting inside his house when police officers suddenly barged in and forcibly brought him to the police station. He knew about the accusation against him only the following day.

The defense pointed to the failure of the police officers to coordinate with the PDEA. It argued that the supposed coordination form should not be given any weight because it was faxed from a residential house and not from the PDEA. Moreover, PO1 Nervar failed to record in their logbook the serial numbers of the buy-bust money prior to the operation.

Gaylon was charged with violation of Section 5, Article II of RA 9165 in an Information filed before the RTC. Gaylon pleaded "not guilty" during his arraignment. RTC found that the prosecution had proven the existence of the elements of illegal sale of *shabu*. Thus, it sentenced Gaylon to suffer the penalty of life imprisonment and to pay a fine of P500,000.00.

Aggrieved, Gaylon appealed to the CA, arguing that the evidence proffered by the prosecution did not satisfactorily establish an unbroken chain of custody thus putting in issue the integrity, identity, and evidentiary value of the seized drug. CA, however, affirmed in full the RTC ruling. Hence, Gaylon filed the instant appeal.

ISSUE:

Whether or not the all the elements of illegal sale had been proven beyond reasonable doubt? (NO)

RULING:

Generally, the assessment by the RTC, once affirmed by the CA, is binding and conclusive upon the Court, unless there is a showing that certain facts or circumstances had been overlooked or misinterpreted that, if properly considered, would substantially affect the ruling of the case," as in this case.

In this connection, both the RTC and the CA failed to take into consideration the buy-bust team's non-compliance with Section 21, Article II of RA 9165. In particular, (1) the prosecution's failure to show that the Inventory of Seized Properties/Items was prepared in the presence of a media representative, a DOJ representative, and any elected public official who should have signed the same and received copies thereof; (2) the prosecution did not offer as evidence any photograph of the seized *shabu*; and (3) no explanation for such non-compliance was proffered by the prosecution. In short, the prosecution failed to show "that the non-compliance with the requirements was upon justifiable grounds, and that the evidentiary value of the seized items was properly preserved by the apprehending team.

The Court also notes that the only photograph submitted by the prosecution was Exhibit "J," a blurred picture of the buy-bust money, **together with what appeared to be a small plastic sachet** with the blurred marking "FNB 03/05/09" BUYBUST and an illegible signature.

In addition, PO1 Nervar also gave conflicting testimonies as to when the photograph was taken. At first, he testified that it was taken before the buy-bust operation but upon further questioning he testified that the picture was actually taken after the operation. And again, the prosecution likewise did not give any justifiable ground for this lapse.

Verily, without the State's justification for the lapses or gaps, the chain of custody so essential in the establishment of the *corpus delicti* of the offense charged against [Gaylon] was not shown to be unbroken and preserved. Thus, as explained tin *People v. Lumudag*:

The requirements were precisely designed by the law to prevent planting, or switching, or contamination of evidence, and thereby secure the suspects against malicious incriminations.

The non-disclosure of the justification by the members of the buy-bust team underscored the uncertainty about the identity and integrity of the *shabu* admitted as evidence against the accused. The unavoidable consequence of the non-disclosure of the justification was the non-establishment of the chain of custody, which, in turn, raised serious doubt on whether or not the *shabu* presented as evidence was the *shabu* supposedly sold by [Gaylon], or whether or not *shabu* had really been sold by him.

When the courts are given reason to entertain reservations about the identity of the illegal drug item allegedly seized from the accused, the actual crime charged is put into serious question. Courts have no alternative but to acquit on the ground of reasonable doubt.

To stress, the presence of the so-called insulating witnesses required under Section 21, Article II of RA 9165 should also either be present during marking or their absence should be with a valid justification. Otherwise, a lapse with respect thereto would also result in a gap in the chain of custody.

PEOPLE OF THE PHILIPPINES, *Plaintiff-Appellee*, -versus- RASHID BINASING Y DISALUNGAN, *Accused-Appellant*.

G.R. No. 221439, FIRST DIVISION, July 04, 2018, DEL CASTILLO, *J*.

As a rule, inconsistencies or discrepancies in the testimonies of witnesses on minor details do not impair the credibility of the witnesses. However, irreconcilable inconsistencies on material facts diminish, or even destroy, the veracity of their testimonies.

In this case, a careful review of the transcript of stenographic notes reveals that the prosecution's witnesses gave conflicting testimonies on material facts.

FACTS:

Appellant was charged with willfully, unlawfully and feloniously selling, trading, delivering, and giving away to the poseur-buyer, during a buy-bust operation, 2 pieces of transparent plastic sachet containing 0.02 and 0.01 gram of shabu – a dangerous drug after receipt of the marked money, contrary to Section 5 of Article II of RA. No. 9165.

During the trial, the prosecution presented the testimonies of Police Senior Inspector Charity Peralta Caceres SPO37 Allan Payla, SPO1 Roy Sabaldana, and Police Inspector Rogelio Labor.

Appellant, on the other hand, testified that while he was inside the house watching a movie with his wife and Ibrahim Sultan, six men barged inside, identifying themselves as police officers. They claimed that they were able to purchase shabu from him and conducted a search of the house but found nothing. He and Sultan were then brought to the police station. Sultan, however, was later released. Appellant, on the other hand, was asked to give P100,000.00. But since he did not have that amount of money, he was arrested and brought to the Crime Laboratory, where he was made to hold four pieces of P50.00 bills. To corroborate his testimony, appellant presented Sultan as witness.

The RTC rendered judgment finding the appellant guilty of violating Section 5, Article II of RA 9165.

The CA denied the subsequent the appeal and thus, affirmed the judgment in toto.

In assailing his conviction, appellant puts in issue the failure of the apprehending team to comply with the procedural safeguards laid down in Section 21, Article II of RA 9165 as well as the conflicting testimonies of the prosecution's witnesses.

ISSUE:

Whether or not the CA's affirmation of the conviction is proper

RULING:

No.

The **prosecution's witnesses gave conflicting testimonies** on material facts.

As a rule, inconsistencies or discrepancies in the testimonies of witnesses on minor details do not impair the credibility of the witnesses. However, irreconcilable inconsistencies on material facts diminish, or even destroy, the veracity of their testimonies.

In this case, a careful review of the transcript of stenographic notes reveals that the prosecution's witnesses gave conflicting testimonies on material facts.

As to the place where the physical inventory was done, **SPO3 Payla, the one who prepared the Seizure Receipt, testified that he marked the seized items and conducted the physical inventory in their office.**

His testimony, however, **contradicted the testimony of SPO1 Sabaldana, one of the apprehending officers who signed as a witness in the Seizure Receipt, because according to him, the physical inventory was done at the house of the suspect**.

SPO1 Sabaldana, however, testified that their pre-arranged signal was for the CI to raise his left hand. Still, PI Labor testified that their agreement was for the CI to wave his hands twice.

It must also be said that apprehending team failed to comply with Section 21, Article II of RA 9165.

In this case, the marking and physical inventory, as well as the taking of the photograph of the seized items were not done in the presence of the insulating witnesses. And since no explanation was offered to justify the non-compliance, the Court finds that the prosecution failed to show that the seized substance from the accused were the same substances offered in court. Thus, the integrity of the corpus delicti was not properly established. Although the Seizure Receipt bore the signature of the accused, his presence during the marking and the physical inventory of the seized items was likewise not established as the prosecution's witnesses failed to categorically state that the marking and the physical inventory were done in the presence of the accused or his representative or counsel.

Considering the non-compliance of the apprehending team with the procedural safeguards laid down in Section 21, Article II of RA 9165 and considering further the conflicting testimonies of the prosecution's witnesses on material facts, the Court finds that the prosecution failed to prove its case. Accordingly, the Court is constrained to acquit appellant based on reasonable doubt.

PEOPLE OF THE PHILIPPINES, *Plaintiff-Appellee*, -versus- RODEL BELMONTE Y SAA, Accused-*Appellant*.

G.R. No. 224588, THIRD DIVISION, July 04, 2018, MARTIRES, *J*.

Here, the identity of the corpus delicti was not clearly established; there was a broken chain in the custody of the confiscated items.

The conflicting testimonies of the apprehending team as to who had custody of the confiscated items from the police station to the laboratory generate uncertainty as to the whereabouts of these items that corollary thereto create doubt on whether the evidence presented before the RTC were exactly the same items seized from the accused-appellant. Accused is acquitted of the crimes charged.

FACTS:

The accused-appellant was charged before the RTC of Misamis Oriental with violation of R.A. No. 9165, that on or about 12:50 p.m. of July 3, 2010 in Cagayan de Oro City, Philippines, accused then and there willfully, unlawfully, criminally, and knowingly have in his possession, custody, and control, two heat-sealed transparent plastic sachets containing methamphetamine hydrochloride weighing 0.05 gram and 0.05 gram, respectively, accused well knowing that the substances recovered from his possession were dangerous drugs; and a second information for willfully, unlawfully, criminally, and knowingly selling and/or offering for sale, and giving away to a poseur-buyer one small heat-sealed transparent plastic sachet containing methamphetamine hydrochloride, a dangerous drug, weighing 0.04 gram, accused knowing the same to be a dangerous drug, in consideration of P500.00.

When arraigned, the accused-appellant pleaded not guilty on both charges hence, joint trial proceeded.

To prove the charges against the accused-appellant, the prosecution called to the witness stand SPO1 Gilbert Sabellina,, PO1 LinardCarna, and PO2 JonreySatur

The RTC held that the prosecution was able to prove the elements of the charges against the accused-appellant. It ruled that the testimony of Carna and Sabellina deserved full faith and credence. Moreover, in view of the conflicting versions between the police officers and that of the accused-appellant, the RTC gave credence to the former who were presumed to have regularly performed their duties, especially in the absence of any evidence that they were inspired by improper motive or were not properly performing their duties. It found that the accused-appellant's denial was not credible. The RTC noted that he did not even attempt to present a character witness to prove that he was a good person and was not engaged in any wrongdoing.

The CA did not find the accused-appellant's appeal meritorious. It ruled that, despite the fact that Sec. 21, Art. II of R.A. No. 9165 was not strictly followed, the police officers substantially complied with the requirements under the said Act and sufficiently established the crucial links in the chain of custody. Furthermore, the noncompliance with some of the requirements did not affect the evidentiary weight of the drugs seized as the chain of custody of the evidence was shown and proven to be unbroken.

ISSUE:

Whether the guilt of the accused-appellant was established beyond reasonable doubt

RULING

No. Basic in all criminal prosecutions is the presumption that the accused is innocent until the contrary is proved. Thus, the well-established jurisprudence is that the prosecution bears the burden to overcome such presumption; otherwise, the accused deserves a judgment of acquittal. The evidence of the prosecution must stand on its own strength and not rely on the weakness of the evidence of the defense. Rule 133, Sec. 2 of the Revised Rules on Evidence specifically provides that the degree of proof required to secure the accused's conviction is proof beyond reasonable doubt, which does not mean such a degree of proof as, excluding possibility of error, produces absolute certainty. Moral certainty only is required, or that degree of proof which produces conviction in an unprejudiced mind.

An appeal in criminal cases opens the entire case for review and, thus, it is the duty of the reviewing tribunal to correct, cite, and appreciate errors in the appealed judgment whether they are assigned or unassigned. It is pursuant to this Court's full jurisdiction that it scrupulously reviewed the records of these appealed cases and arrived at the conclusion that it cannot agree with the findings of the RTC and the CA.

Here, the identity of the corpus delicti was not clearly established; there was a broken chain in the custody of the confiscated items.

Carna claimed that it was at the police station that the inventory and the taking of pictures of the confiscated items took place. Records, however, do not show any inventory or pictures of the seized items. In fact, the prosecution did not offer any physical evidence to justify Carna's claim that there were an inventory and photographs of the seized items.

Sabellina admitted that, instead of an inventory and pictures taken of the seized items, the fact that there were items confiscated from the accused-appellant during the buy-bust operation was entered in the blotter. It must be noted however, that **Sec. 21(a) of the IRR of R.A. No. 9165 does not provide that the entry in the blotter relative to a buy-bust operation is a valid substitute for the requirement of an inventory and taking of photographs** of the seized items.

The prosecution witnesses were unanimous in their claim that it was Carna who was in possession of the confiscated items from the time these were seized at the crime scene to the police station. At the police station, Carna placed the markings on the seized items but, noteworthily, he could no longer distinguish the sealed sachet handed by the accused-appellant as a result of the sale transaction with the informant, with the two other sealed sachets found in the accused-appellant's right pocket, especially that the three sachets contain almost the same weight of shabu,

An established fact that casts doubt on the integrity of the seized items was that the buy-bust operation report entered in the blotter, which the apprehending team intended as substitute for the inventory required and photographs of the sachets, never mentioned whether the items were actually marked and what were the corresponding markings.

Carna firmly stated that he was in possession of the confiscated items when he and Satur went to the laboratory to submit these for examination. Carna further claimed that because he was not in uniform, it was Satur who surrendered the items to the laboratory, as confirmed by the receiving stamps on each of the requests, i.e., "Delivered by PO2 Satur." Carna's testimony however, contradicts that of Satur's who stated that he was the one who was in possession of the seized items when these were delivered to the laboratory from the police station.

It must be stressed that the "**chain of custody means the duly recorded authorized movements and custody of seized drugs or controlled chemicals or plant sources of dangerous drugs or laboratory equipment at each stage, from the time of seizure/confiscation to receipt by the forensic laboratory to safekeeping to presentation in court for destruction**. Such record of movements and custody of seized items shall include the identity and signature of the person who had temporary custody of the seized item, the date and time when such transfer of custody was made in the course of safekeeping and use in court as evidence, and the final disposition.

The **conflicting testimonies of the apprehending team as to who had custody of the confiscated items from the police station to the laboratory generate uncertainty as to the whereabouts of these items that corollary thereto create doubt on whether the evidence presented before the RTC were exactly the same items seized** from the accused-appellant.

The obvious failure of the prosecution to establish through its witnesses the manner by which the confiscated items were delivered by the forensic chemist to the RTC for presentation during the trial, reinforces the conclusion that the integrity and evidentiary value of the seized items had been compromised.

Accordingly, accused-appellant Rodel Belmonte y Saa is acquitted of the crimes charged.

PEOPLE OF THE PHILIPPINES, *Plaintiff-appellee*, -versus- ALLAN LUMAGUI Y MALIGID, *Accused-appellant*.
G.R. No. 224293, THIRD DIVISION, July 23, 2018, MARTIRES, *J.*

In consonance with this constitutional provision, it was held in People v. Arposeple that the burden of proof rests upon the prosecution and the accused must then be acquitted and set free should the prosecution not overcome the presumption of innocence in his favor. Concomitant thereto, in People v. Santos, it held that the evidence of the prosecution must stand on its own strength and not rely on the weakness of the evidence of the defense.

Rule 133, Sec. 2 of the Revised Rules on Evidence specifically provides that:
the degree of proof required to secure the accused's conviction is proof beyond reasonable doubt, which does not mean such a degree of proof that excluding possibility of error, produces absolute certainty. Only moral certainty is required, or that degree of proof which produces conviction in an unprejudiced mind.

The fact is underscored that the records of these cases are replete with proof showing the serious lapses committed by the police officers. "Serious uncertainty is generated on the identity of the shabu in view of the broken linkages in the chain of custody; thus, the presumption of regularity in the performance of official duty accorded to the apprehending officers by the courts below cannot arise."

FACTS:

Accused-appellant was charged with violation of Sec. 11, Art. II of R.A. No. 9165 in an information docketed as Criminal (Crim.) Case No. 17178-2010-C. In Crim. Case No. 17179-2010-C, accused-appellant and Antonio D. Rueda (Rueda) were charged with violation of Sec. 26, Art. II of R.A. No. 9165. After pleading not guilty to the charges against him, accused-appellant moved that the cases be consolidated as these involved the same incident. The motion was granted hence, a joint hearing of these cases was conducted.

To prove its charges, the prosecution called to the witness stand Forensic Chemist Lalaine Ong-Rodrigo (Ong-Rodrigo), Police Officer 1 Richard Cruz (PO1 Cruz) of the Philippine National Police (PNP) Cabuyao, Laguna, and PO2 Allen Llorente (PO2 Llorente) of the PNP Provincial Office, Sta. Cruz, Laguna. Accused-appellant testified on his own behalf to prove his defense. On the one hand, Rueda, who pleaded not guilty in Crim. Case 17179-2010-C, died even before the defense could start presenting its evidence, thus, the charge against him was dismissed.

The prosecution's version shows that the PNP Cabuyao, through Colonel Nestor B. dela Cueva (Col. Dela Cueva), received a complaint that Rueda, also known as "Papang," and a certain alias "Ninang" were still involved in the selling of illegal drugs. This information prompted Captain RogelSarreal (Capt. Sarreal) to form two teams that separately conducted buy-bust operations on Rueda and alias "Ninang." Senior Police Officer 1 Naredo (SPO1 Naredo), PO2 Llorente, PO1 Cruz, Capt. Sarreal, and a civilian asset composed the team assigned to the buy-bust operation on Rueda.

The team proceeded to an abandoned resort at Purok 3, Barangay Pansol, Calamba City, where the sale transaction was to take place. SPO1 Naredo, PO2 Llorente and Capt. Sarreal positioned themselves at the corner of the railroad track near the resort. The asset proceeded to the resort gate where Rueda was waiting, while PO1 Cruz positioned himself at about three to five arm-lengths away from the asset. Rueda asked the asset if he would "get" and the latter replied that he would "get worth P200.00" at the same time handing to Rueda the P200.00 marked money. When Rueda called out to someone from inside the resort to bring out one sachet, it was accused-appellant came out with a plastic sachet which he handed to Rueda who, in turn, gave it to the asset. Rueda told the asset that he had some more sachets should he want more. Immediately after the asset parted from Rueda and accused-appellant, the buy-bust team rushed to arrest Rueda and accused-appellant. PO1 Cruz handcuffed Rueda and confiscated the buy-bust money from him. After having been handed the plastic sachet sold by Rueda to the asset, PO1 Cruz marked it "AML-RMC." The buy-bust team bodily searched accused-appellant and found five plastic sachets which PO1 Cruz marked as "AML-RMC1," "AML-RMC2," "AML-RMC3," "AML-RMC4," and "AML-RMC5." It was only after the marking of the

seized items that the Pansol barangay officials were called to the crime scene and the incident was entered in the barangay blotter.

On the other hand, the defense shows that accused-appellant went to the house of Rueda at Villa Peregrina, Pansol, Calamba City, to sort out his problems at home. While accused-appellant was sleeping in Rueda's house at around 4:00p.m., he was roused by a noise from outside. As accused-appellant was about to open the door to check what was happening, two armed men in civilian clothing ordered him to lie on his stomach and asked if he was Joaquin Bordado. As accused-appellant was about to lie down, he told them that his name was Allen Lumagui. Several other persons arrived thereafter. PO2 Llorente, who was his batch mate in school, brought accused- appellant to a room where he was asked what he was doing in Rueda's house. Accused-appellant told him he had left home. PO2 Llorente's companions then asked accused-appellant the whereabouts of a gun; when he said he did not know about it, he was asked where Rueda was. Accused-appellant told them that he did not know where he went. When Rueda came home after a few minutes, he was immediately handcuffed and, together with accused-appellant, was brought to the living room where the armed men continued to ask for the whereabouts of a gun. Rueda told them that there was no gun in the house and said that they had found nothing when they searched the place. PO2 Llorente brought out a bag, poured out its contents. Thereafter, the barangay officials arrived and jotted down accused-appellant's identification card in a logbook. Rueda and accused-appellant were made to board a pick-up and were brought to the police station.

The RTC held that, although not all the requirements under Sec. 21 of R.A. No. 9165 were complied with, it believed that the integrity of the evidence had been duly preserved. **It ruled that there was no showing that the arresting officers had ill motive against accused-appellant as in fact PO2 Llorente was his friend.** The RTC further ruled that the defense failed to overcome the presumption that the police officers had performed their duty with regularity. Aggrieved with the RTC's disposition of the charges against him, accused-appellant assailed the decision before the CA. The CA found no merit in the appeal holding that criminal prosecutions involving violations of R.A. No. 9165 depend largely on the credibility of the police officers who conducted the buy-bust operation.

ISSUE:

Whether the presumption of regularity in the performance of duty prevail over the constitutional right of the accused to be presumed innocent?

RULING:

No. The appeal is meritorious.

The **presumption of regularity in the performance of duty cannot prevail over the constitutional right of the accused to be presumed innocent.** Much emphasis was given by the

RTC and the CA on the presumption of regularity in the performance of duty by the police officers in striking down accused-appellant's defense of denial and frame-up.

The presumption of innocence of an accused is a fundamental constitutional right that should be upheld at all times, viz:

> 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.

In consonance with this constitutional provision, it was held in People v. Arposeple that the **burden of proof rests upon the prosecution and the accused must then be acquitted and set free should the prosecution not overcome the presumption of innocence in his favor**. Concomitant thereto, in People v. Santos, it held that the **evidence of the prosecution must stand on its own strength and not rely on the weakness of the evidence of the defense.**

Rule 133, Sec. 2 of the Revised Rules on Evidence specifically provides that:

> the degree of proof required to secure the accused's conviction is proof beyond reasonable doubt, which does not mean such a degree of proof that excluding possibility of error, produces absolute certainty. Only moral certainty is required, or that degree of proof which produces conviction in an unprejudiced mind.

The fact is underscored that the records of these cases are replete with proof showing the serious lapses committed by the police officers. "Serious uncertainty is generated on the identity of the shabu in view of the broken linkages in the chain of custody; thus, the presumption of regularity in the performance of official duty accorded to the apprehending officers by the courts below cannot arise." Even granting that the defense presented by accused-appellant was inherently weak or that the record is bereft of any showing that there was ill motive on the part of the police officers in their conduct of the alleged buy-bust operation, these matters cannot outweigh the right of the accused to be presumed innocent, of which great premium is accorded by the fundamental law.

PEOPLE OF THE PHILIPPINES, Plaintiff-Appellee, - versus -. YYY, Accused-Appellant.

G.R. No. 234825, THIRD DIVISION, September 05, 2018, GESMUNDO, J.

Direct evidence is not a condition sine qua non to prove the guilt of an accused beyond reasonable doubt. For in the absence of direct evidence, the prosecution may resort to adducing circumstantial evidence to discharge its burden. Circumstantial evidence consists of proof of collateral facts and circumstances from which the existence of the main fact may be inferred according to reason and common experience.

To summarize, there are several circumstantial evidence that establish that YYY raped his own daughter AAA:

1. *YYY hit her on the head to make her lose consciousness;*

2. *While unconscious, YYY raped her; thus, AAA's vagina was in pain when she woke up;*

3. *YYY threatened AAA not to report the incident; otherwise, he would kill her and her family;*

4. *When she woke up, AAA positively identified YYY as the perpetrator because of his height and voice; and*

5. *The medico-legal report corroborate that AAA had healed hymenal lacerations at the 4 & 7 o'clock positions and her vagina admits a tip of a finger easily, which indicate repeated sexual intercourse. It was also established that AAA could have been raped more than ten (10) years before the examination, which covers the March 1993 incident.*

FACTS:

In two (2) informations, both dated February 8, 2005, YYY was charged with two (2) counts of rape. During his arraignment, YYY pleaded "not guilty" and, thereafter, the cases were consolidated and jointly tried.

The prosecution presented private complainant AAA, her elder sister BBB, and Dr. Mila F. Lingan-Simangan.

AAA was the daughter of YYY. At the time of the first incident, she was fifteen (15) years old. Sometime in March 1993, YYY hit her head with a broom and **she lost consciousness.** When she regained consciousness, she felt pain in her body, particularly her hands and vagina. AAA saw YYY seated in the veranda. Regarding the second incident, this allegedly happened on November 14, 2001 at night-time **while AAA was sleeping**. She claimed that when she woke up the next morning, she was naked and that YYY was seated at the veranda. AAA felt pain in her vagina. In both instances YYY allegedly threatened to kill AAA, her mother, and her siblings if she would report the incidents.

Dr.Lingan-Samangan testified that in 2004, she examined AAA who was already twenty-five (25) years old. She discovered healed hymenal lacerations at the 4 and 7 o'clock positions, which could mean that the sexual abuse happened at least a month or two months before the examination, or even more than two or ten years before. The tip of her finger was admitted to AAA's vagina, and there was laxity in the vaginal canal indicating that she was no longer a virgin at that time.

BBB testified that upon learning of the sexual abuses committed by YYY in 2002, BBB confronted her sister and the latter related to her what their father did.

YYY vehemently denied the allegations

ISSUE:

Whether YYY should be convicted based on circumstantial evidence (YES)

RULING:

It is settled that the crime of rape is difficult to prove because it is generally left unseen and very often, only the victim is left to testify for herself. However, the accused may still be proven as the culpritdespite the absence of eyewitnesses. Direct evidence is not a condition sine qua non to prove the guilt of an accused beyond reasonable doubt. For in the absence of direct evidence, the prosecution may resort to adducing circumstantial evidence to discharge its burden. Circumstantial evidence consists of proof of collateral facts and circumstances from which the existence of the main fact may be inferred according to reason and common experience. Section 4, Rule 133, of theRevised Rules of Evidence, as amended, sets forth the requirements of circumstantial evidence that is sufficient for conviction, viz.:

SEC. 4. *Circumstantial evidence, when sufficient*. Circumstantial evidence is sufficient for conviction if:

(a) There is more than one circumstance;

(b) The facts from which the inferences are derived are proven; and

(c) The combination of all the circumstances is such as to produce a conviction beyond reasonable doubt.

Here, there are several circumstantial evidence that would prove the carnal knowledge between AAA and appellant while the former was unconscious.

To summarize, there are several circumstantial evidence that establish that YYY raped his own daughter AAA:

1. YYY hit her on the head to make her lose consciousness;

2. While unconscious, YYY raped her; thus, AAA's vagina was in pain when she woke up;

3. YYY threatened AAA not to report the incident; otherwise, he would kill her and her family;

4. When she woke up, AAA positively identified YYY as the perpetrator because of his height and voice; and

5. The medico-legal report corroborate that AAA had healed hymenal lacerations at the 4 & 7 o'clock positions and her vagina admits a tip of a finger easily, which indicate repeated sexual intercourse. It was also established that AAA could have been raped more than ten (10) years before the examination, which covers the March 1993 incident.

The Court finds that the delay in reporting the incident does not weaken AAA's testimony since YYY threatened to kill her, and because YYY had moral ascendancy over AAA as he was her father. Delay

in revealing the commission of a crime such as rape does not necessarily render such charge unworthy of belief. This is because the victim may choose to keep quiet rather than expose her defilement to the harsh glare of public scrutiny. Only when the delay is unreasonable or unexplained may it work to discredit the complainant.

ANTONIO PLANTERAS, JR., *Petitioner, - versus -* PEOPLE OF THE PHILIPPINES, *Respondent.*
G.R. No. 238889, THIRD DIVISION, October 03, 2018, PERALTA, *J.*

A number of circumstantial evidence may be so credible to establish a fact from which it may be inferred, beyond reasonable doubt, that the elements of a crime exist and that the accused is its perpetrator. There is no requirement in our jurisdiction that only direct evidence may convict. After all, evidence is always a matter of reasonable inference from any fact that may be proven by the prosecution provided the inference is logical and beyond reasonable doubt. In this case, the totality of the circumstantial evidence presented by the prosecution prove beyond reasonable ground that petitioner allowed the use of his establishment in the promotion of trafficking in persons.

FACTS:

Audie Villacin directed the elements of the Regional Investigation Detective Division (RIDM) to conduct surveillance operations at X Lodge after receiving reports about the alleged trafficking in persons and sexual exploitation being committed at the said place. There were reports that pimps were offering the sexual services of young girls to various customers at the entrance/exit door of the Lodge, owned by petitioner and his wife, Christina Planteras. Subsequently, an entrapment operation was conducted by members of the Regional Special Investigation Unit, the Carbon Police Station, barangay tanods, and representatives from the Department of Social Welfare and Development (DSWD). At the Lodge, PO3 Dumaguit and PO1 Llanes were approached by Marichu Tawi who offered girls for sexual favors for the price of P300.00 each. Tawi left and when she returned, she brought with her a young girl, AAA. Petitioner was behind the reception counter when the said negotiation took place and appeared to be listening to the said transaction.

PO3 Dumaguit executed the pre-arranged signal, a "missed call" on the rest of the team. When the rest of the team arrived at the Lodge, PO3 Dumaguit announced that they are police officers and immediately thereafter, Buhisan, Tawi, petitioner and his wife, Christina, were arrested.

Two Informations were filed against Buhisan, Tawi, Christina and petitioner. On arraignment, petitioner and his co-accused all pleaded "not guilty" to their respective charges. The prosecution presented the testimonies of PO3 Dumaguit and PO2 Almohallas. The prosecution also presented the testimony of AAA to corroborate the testimonies of the said police officers. After the prosecution had rested its case, all the accused, including petitioner, filed a Demurrer to Evidence. The Demurrer was granted, but only in favor of Christina Planteras and, accordingly, the case against her was dismissed. The RTC rendered a Decision convicting petitioner, Buhisan and Tawi guilty beyond reasonable doubt of their respective charges. The CA affirmed their convictions, hence, the present petition under Rule 45 of the Rules of Court of petitioner Planteras, Jr.

ISSUE:

Whether circumstantial evidence is enough to sustain the conviction of the petitioner.

RULING:

The petition lacks merit. The Rules of Court require that only questions of law should be raised in petitions filed under Rule 45. This court is not a trier of facts. It will not entertain questions of fact as the factual findings of the appellate courts are "final, binding, or conclusive on the parties and upon this court" when supported by substantial evidence. Factual findings of the appellate courts will not be reviewed nor disturbed on appeal to this court. However, these rules do admit exceptions. At present, there are 10 recognized exceptions that were first listed *in Medina v. Mayor Asistio, Jr.*:12 When the conclusion is a finding grounded entirely on speculation, surmises or conjectures; (2) When the inference made is manifestly mistaken, absurd or impossible; (3) Where there is a grave abuse of discretion; (4) When the judgment is based on a misapprehension of facts; (5) When the findings of fact are conflicting; (6) When the Court of Appeals, in making its findings, went beyond the issues of the case and the same is contrary to the admissions of both appellant and appellee; (7) The findings of the Court of Appeals are contrary to those of the trial court; (8) When the findings of fact are conclusions without citation of specific evidence on which they are based; (9) When the facts set forth in the petition as well as in the petitioner's main and reply briefs are not disputed by the respondents; and (10) The finding of fact of the Court of Appeals is premised on the supposed absence of evidence and is contradicted by the evidence on record.

Granting that this Court shall review the factual incidents of this case, the petition must still fail.

The RTC, as affirmed by the CA, still convicted petitioner of the crime charged against him based on circumstantial evidence and the credibility of the testimonies of the witnesses presented by the prosecution. A number of circumstantial evidence may be so credible to establish a fact from which it may be inferred, beyond reasonable doubt, that the elements of a crime exist and that the accused is its perpetrator. There is no requirement in our jurisdiction that only direct evidence may convict. After all, evidence is always a matter of reasonable inference from any fact that may be proven by the prosecution provided the inference is logical and beyond reasonable doubt.

Rule 113, Section 4 of the Rules on Evidence provides three (3) requisites that should be established to sustain a conviction based on circumstantial evidence:

> Section 4. Circumstantial evidence, when sufficient. - Circumstantial evidence is sufficient for conviction if:(a)There is more than one circumstance;(b) The facts from which the inferences are derived are proven; and(c) The combination of all the circumstances is such as to produce a conviction beyond reasonable doubt.

It is indisputable that petitioner owns and manages the Lodge. Evidence was also presented to establish that the pimps, customers and prostitutes who hang out near the said place utilize the same place for their illegal activities. Petitioner's knowledge about the activities that are happening inside his establishment was also properly established by the prosecution, most notably, through the testimony of AAA. In this case, the totality of the circumstantial evidence presented by the prosecution prove beyond reasonable ground that petitioner allowed the use of his establishment in the promotion of trafficking in persons.

Also, it has been maintained in a catena of cases that when the issues involve matters of credibility of witnesses, the findings of the trial court, its calibration of the testimonies, and its assessment of the probative weight thereof, as well as its conclusions anchored on said findings, are accorded high respect, if not conclusive effect, especially if the CA adopted and confirmed these, unless some facts

or circumstances of weight were overlooked, misapprehended or misinterpreted as to materially affect the disposition of the case.

SOFIA TABUADA, NOVEE YAP, MA. LORETA NADAL, AND GLADYS EVIDENTE, *Petitioners*, *v.*ELEANOR TABUADA, JULIETA TRABUCO, LAURETA REDONDO, AND SPS. BERNAN CERTEZA & ELEANOR D. CERTEZA, *Respondents.*
G.R. No. 196510, FIRST DIVISION, September 12, 2018, BERSAMIN, *J.*:

Competent proof of a legal relationship is not limited to documentary evidence. Object and testimonial evidence may be admitted for the same purpose. Indeed, the relationship may be established by all the relevant facts and circumstances that constitute a preponderance of evidence.

FACTS:

On January 27, 2005, the petitioners commenced Civil Case No. 05- 28420 in the RTC against respondents Spouses Bernan and Eleanor Certeza (Spouses Certeza), Eleanor Tabuada, Julieta Trabuco and Laureta Redondo. The complainant included a prayer for a temporary restraining order (TRO) and for the issuance of the writ of preliminary injunction.

At the *ex parte* hearing held on September 9, 2005 to receive their evidence, the petitioners presented Sofia Tabuada, who testified that her late husband was Simeon Tabuada, the son of Loreta Tabuada and the brother-in law of defendant Eleanor Tabuada; that her co-plaintiffs were her daughters; that defendant Julieta Trabuco was the daughter of Eleanor Tabuada while Laureta Redondo was the latter's neighbor; that Loreta Tabuada had died on April 16, 1990 while her husband had died on July 18, 1997; that she received the notice sent by the Spouses Certeza regarding their land, known as Lot 4272-B-2, located at Barangay Tacas, Jaro, Iloilo City that her husband had inherited from his mother, Loreta Tabuada, and where they were residing, informing them that the land had been mortgaged to them (Spouses Certeza); that she immediately inquired from Eleanor Tabuada and Trabuco about the mortgage, and both admitted that they had mortgaged the property to the Spouses Certeza; that she was puzzled to see the signature purportedly of Loreta Tabuada on top of the name Loreta Tabuada printed on the *Mortgage of Real Rights* dated July 1, 1994 and the*Promissory Note* dated July 4, 1994 despite Loreta Tabuada having died on April 16, 1990; that the property under mortgage was the where she and her daughters were residing.

The petitioners offered for admission the following exhibits, namely: (a) the death certificate of Loreta Yulo Tabuada that indicated April 16, 1990 as the date of death; (b) Transfer Certificate of Title (TCT) No. T-82868 of the Register of Deeds of Iloilo City covering Lot No. 4272-B-2 situated in Jaro, Iloilo City and registered in the name of Loreta Tabuada; (c) the *Promissory Note* dated July 4, 1994 for P68,000.00 executed by Loreta Tabuada; (d) the *Mortgage of Real Rights* dated July 1, 1994 involving Lot No. 4272-B-2 under TCT No. T-82868 executed by Loreta Tabuada as the mortgagor; (e) the list of payments of the principal obligation subject of the real estate mortgage and the interests; and (f) the demand letter dated August 12, 2004 from the Spouses Certeza addressed to Loreta Tabuada demanding the payment of the total obligation of P415, 452.94.

RTC rendered judgment in favor of the petitioner and declared that based on the complaint and the testimony of Sofia Tabuada "Eleanor Tabuada, who [was] not the absolute owner of Lot No. 4272-B-2, and without having the legal authority to mortgage said property [had] misrepresented herself as

the deceased Loreta Tabuada and mortgaged the property without the knowledge of herein plaintiffs, and benefited from said mortgage to the detriment of the rights and interests of plaintiffs. The respondents appealed. CA reversed and set aside the decision of the RTC.

ISSUE:

Whether or not the CA seriously erred in reversing the RTC considering that there was ample evidence competently establishing the relationship of plaintiff Sofia Tabuada to the late Loreta Tabuada? (YES)

RULING:

The CA grossly erred.

Under the *Rules of Court*, evidence – as the means of ascertaining in a judicial proceeding the truth respecting a matter of fact – may be object, documentary, and testimonial. It is required that evidence, to be admissible, must be relevant and competent. But the admissibility of evidence should not be confused with its probative value. Admissibility refers to the question of whether certain pieces of evidence are to be considered at all, while probative value refers to the question of whether the admitted evidence proves an issue. Thus, a particular item of evidence may be admissible, but its evidentiary weight depends on judicial evaluation within the guidelines provided by the rules of evidence.

Although documentary evidence may be preferable as proof of a legal relationship, other evidence of the relationship that are competent and relevant may not be excluded. The preponderance of evidence, the rule that is applicable in civil cases, is also known as the greater weight of evidence. There is a preponderance of evidence when the trier of facts is led to find that the existence of the contested fact is more probable than its nonexistence. In short, the rule requires the consideration of all the facts and circumstances of the cases, regardless of whether they are object, documentary, or testimonial.

The mere discrepancy – as perceived by the CA – between the name of the deceased entered in the death certificate (Loreta Yulo Tabuada) and the name of the titleholder (Loreta H. Tabuada) did not necessarily belie or disprove the legal relationship between Sofia Tabuada and the late Loreta Tabuada. To establish filiation, the courts like the RTC herein should consider and analyze not only the relevant testimonies of witnesses who are competent but other relevant evidence as well. There was on record herein Sofia Tabuada's unchallenged declaration of her being the daughter-in-law of the registered titleholder. Also on record was the petitioners' being in the actual possession of Lot No. 4272-B-2, which they had been using as the site for their family residence. Such established circumstances indicated that the deceased Loreta Yulo Tabuada and titleholder Loreta H. Tabuada could only be one and the same person. Moreover, even the Spouses Certeza were aware that respondents Eleanor Tabuada and Tabuco were the relatives of Sofia Tabuada; and that the respective families of Eleanor Tabuada, Tabuco and Sofia Tabuada actually resided on the same lot. Verily, the facts and circumstances sufficiently and competently affirmed the legal relationship between Sofia Tabuada and the late titleholder Loreta H. Tabuada.

J. Rules on Electronic Evidence (A.M. No. 01-7-01-SC)

IX. WRIT OF AMPARO (A.M. No. 07-9-12-SC)

X. WRIT OF HABEAS DATA (A.M. No. 08-1-16-SC)

XI. RULES OF PROCEDURE ON ENVIRONMENTAL CASES (A.M. No. 09-6-8-SC)

MA. SUGAR M. MERCADO AND SPOUSES REYNALDO AND YOLANDA MERCADO, *Petitioners*, -versus- HON.JOEL SOCRATES S. LOPENA [PRESIDING JUDGE, METROPOLITAN TRIAL COURT, BRANCH 33, QUEZON CITY], HON. JOHN BOOMSRI S. RODOLFO [PRESIDING JUDGE, METROPOLITAN TRIAL COURT, BRANCH 38, QUEZON CITY], HON. REYNALDO B. DAWAY [PRESIDING JUDGE, REGIONAL TRIAL COURT, BRANCH 90, QUEZON CITY], HON. ROBERTO P. BUENAVENTURA [PRESIDING JUDGE, REGIONAL TRIAL COURT, BRANCH 86, QUEZON CITY], HON. JOSE L. BAUTISTA, JR. [PRESIDING JUDGE, REGIONAL TRIAL COURT, BRANCH 107, QUEZON CITY], HON. VITALIANO AGUIRRE II (IN HIS CAPACITY AS SECRETARY OF JUSTICE), BON. DONALD LEE (IN HIS CAPACITY AS THE CHIEF OF THE OFFICE OF THE CITY PROSECUTOR OF QUEZON CITY), KRISTOFER JAY I. GO, PETER AND ESTHER GO, KENNETH ROUE I. GO, CASEY LIM JIMENEZ, CRISTINA PALILEO, AND RUEL BALINO, *Respondents*.
G.R. No. 230170, SECOND DIVISION, June 06, 2018, CAGUIOA, *J.*

Strategic Lawsuits Against Public Participation (SLAPP) refers to an action whether civil, criminal or administrative, brought against any person, institution or any government agency or local government unit or its officials and employees, with the intent to harass, vex, exert undue pressure or stifle any legal recourse that such person, institution or government agency has taken or may take ***in the enforcement of environmental laws, protection of the environment or assertion of environmental rights****. In application, the allegation of SLAPP is set up as a defense in those cases claimed to have been filed merely as a harassment suit against environmental actions.*

In this case, the Court found no occasion to apply the foregoing rules as the Petition has no relation at all to "the enforcement of environmental laws, protection of the environment or assertion of environmental rights."R.A. No. 9262, which involves cases of violence against women and their children, is not among those laws included under the scope of A.M. No. 09-6-8-SC.

FACTS:

The root of this controversy is a domestic dispute between estranged spouses petitioner Mercado and private respondent Go. Such dispute eventually led to the filing of numerous suits by both parties against each other.

Sometime in October 2015, respondent Go filed a Petition for *Habeas Corpus* with Custody of their children, which was docketed as Civil Case No. R-QZN-15-08943. The case was raffled to and is still pending with the Regional Trial Court (RTC) of Quezon City, Branch 86, which is presided by herein public respondent Judge Roberto P. Buenaventura.

Within the period of September 2015 to November 2015, private respondents also filed the following cases against petitioners:

1. *People v. Sugar Mercado and Yolanda Mercado* (Crim. Case No. R-QZN-16-06371-CR) for violation of Republic Act (R.A.) No. 7610;
2. *People v. Yolanda Mercado* (Crim. Case No. R-QZN-16-06372-CR) for violation of R.A. No. 7610;
3. *Kristofer Go v. Sugar Mercado-Go* (NPS XV-INV-15J-11698) for Libel;
4. *Kristofer Go v. Yolanda Mercado* (NPS-XV-INV-15J-11699) for Libel;
5. *People v. Sugar Mercado* (Crim. Case No. R-QZN-16-5596-98-CR) for Physical Injuries, Oral Defamation, Slander by Deed, and Unjust Vexation; and
6. *People v. Yolanda and Reynaldo Mercado* (Crim. Case No. 16-09066-69) for Unjust Vexation, Unlawful Arrest, Slight Physical Injuries, Grave Coercion.

In addition to the foregoing, beginning February 2016, private respondents initiated the following cases:

1. *Kristofer Go and Christina Palileo v. Yolanda Mercado* (QCOCP-NOS-INV-16A-01033) for Grave Threats;
2. *Kristofer Go v. Sugar Mercado* (NPS-XV-02-INV-16C-00840) for violation of R.A. No. 10175;
3. *Kristofer Go v. Sugar Mercado* (Civil Case No. R-QZN-16-02517-CV) for Indirect Contempt; and
4. *Kristofer Go v. Sugar Mercado* (Civil Case No. R-QZN-16-07881-CV) for Indirect Contempt.

Petitioners aver that the cases filed by private respondents against them (the subject cases) are forms of Strategic Lawsuits Against Public Participation (SLAPP) intended to harass, intimidate, and silence them.Petitioners claim that the subject cases are false and baseless complaints that were filed to emotionally, psychologically, and financially drain them and ultimately to pressure them to give up custody of petitioner Mercado's minor children. Petitioners also argue that the filing of the subject cases falls within the definition of "abuse" and "violence against women" under R.A. No. 9262. In this regard, petitioners claim that public respondents committed grave abuse of discretion, amounting to lack or excess of jurisdiction, in taking cognizance of the subject cases even though petitioner Mercado is a "judicially declared victim of domestic violence" and in whose favor a PPO has been issued.

ISSUE:

Whether public respondents committed grave abuse of discretion amounting to lack or excess of jurisdiction in taking cognizance of the subject cases. (NO)

RULING:

The Petition is procedurally infirm; availability of plain, speedy, and adequate remedies

At the outset, the Court finds the filing of the instant Petition premature. For a petition for *certiorari* or prohibition to prosper, the Rules require that there be no other plain, speedy, and adequate remedy available in the ordinary course of law. Here, the cases before the public respondents are still pending. Thus, there still exists in law a plain, speedy, and adequate remedy for petitioners which is to participate in said cases and await the judgment of the RTC. And, if the RTC

renders an unfavorable judgment against petitioners, they may appeal the cases to the CA. Meanwhile, as to the complaints filed before the OCP of Quezon City, the same may be elevated via petition for review before the Secretary of Justice and thereafter to the Office of the President; if the prosecutor's finding of probable cause is ultimately upheld, the case may then proceed to trial.

The Court's rule-making power cannot be invoked through a Rule 65 petition

Petitioners invoke the power of the Court to promulgate rules of procedure, presumably to extend the relief of SLAPP to those cases filed against victims of domestic violence in the context of R.A. No. 9262.

Foremost, the rule-making power of the Court in matters of pleading, practice, and procedure in all courts is vested by Section 5(5), Article VIII of the Constitution.Hence, being plenary in nature, the Court cannot be called upon by a private citizen to exercise such power in a particular manner, especially through the vehicle of a petition for *certiorari* or prohibition, which is intended for an entirely different purpose.

Here, petitioners would want the Court to accommodate her cause of action by granting a collateral relief that is not comprehended under the provisions of Rule 65 - or any of the Rules, for that matter - which is to extend the concept of SLAPP to cases of violence against women and their children.

Prescinding therefrom, the Court finds no occasion under the circumstances to allow such a relief.

The concept of SLAPP is inapplicable to cases of domestic violence against women and children under R.A. No. 9262

The concept of SLAPP was first introduced to this jurisdiction under the Rules of Procedure for Environmental Cases (A.M. No. 09-6-8-SC).As defined therein, a SLAPP refers to

> an action whether civil, criminal or administrative, brought against any person, institution or any government agency or local government unit or its officials and employees, with the intent to harass, vex, exert undue pressure or stifle any legal recourse that such person, institution or government agency has taken or may take **in the enforcement of environmental laws, protection of the environment or assertion of environmental rights**.

In application, the allegation of SLAPP is set up as a defense in those cases claimed to have been filed merely as a harassment suit against environmental actions:

RULE 6
Strategic Lawsuit Against Public Participation

> x xxx
>
> SECTION 2. *SLAPP as a Defense; How Alleged*. - In a SLAPP filed against a person involved in the enforcement of environmental laws, protection of the environment, or assertion of environmental rights, **the defendant may file an answer interposing as a defense that the case is a SLAPP** and shall be supported by documents, affidavits, papers and other evidence; and, by way of counterclaim, pray for damages, attorney's fees and costs of suit.

The court shall direct the plaintiff or adverse party to file an opposition showing the suit is not a SLAPP, attaching evidence in support thereof, within a non-extendible period of five (5) days from receipt of notice that an answer has been filed.

The defense of a SLAPP shall be set for hearing by the court after issuance of the order to file an opposition within fifteen (15) days from filing of the comment or the lapse of the period.

RULE 19

Strategic Lawsuit Against Public Participation in Criminal Cases

SECTION 1. *Motion to Dismiss*. - Upon the filing of an information in court and before arraignment, **the accused may file a motion to dismiss on the ground that the criminal action is a SLAPP**.

SECTION 2. *Summary Hearing*. - The hearing on the defense of a SLAPP shall be summary in nature. The parties must submit all the available evidence in support of their respective positions. **The party seeking the dismissal of the case must prove by substantial evidence that his acts for the enforcement of environmental law is a legitimate action for the protection, preservation and rehabilitation of the environment.** The party filing the action assailed as a SLAPP shall prove by preponderance of evidence that the action is not a SLAPP.

Transposed to this case, the Court finds no occasion to apply the foregoing rules as the Petition has no relation at all to "the enforcement of environmental laws, protection of the environment or assertion of environmental rights."R.A. No. 9262, which involves cases of violence against women and their children, is not among those laws included under the scope of A.M. No. 09-6-8-SC.

SLAPP, as a defense, is a mere privilege borne out of procedural rules; accordingly, it may only be exercised in the manner and within the scope prescribed by the Court as a rule-making body.Here, petitioners cannot, under the guise of substantial justice, rely on a remedy that is simply not available to them. The Court takes this occasion to remind petitioners that rules of procedure are not a "one-size fits-all" tool that may be invoked in any and all instances at the whim of the litigant as this would be anathema to the orderly administration of justice.

Further on this matter, it is highly improper for petitioners to invoke SLAPP as a defense in an original action before a separate forum considering that the above rules clearly mandate that such a defense can only be invoked **in the same action and consequently, before the same court**. Here, petitioners essentially initiated an omnibus motion before the Court to dismiss all cases pending elsewhere. Such maneuver is patently repugnant to established procedure and thus cannot be sanctioned by the Court.

A. Temporary Environmental Protection Order (TEPO)

HEIRS OF TUNGED namely: ROSITA YARIS-LIWAN, VIRGIE S. ATIN-AN, BELTRAN P. SAINGAN, MABEL P. DALING, MONICA Y. DOMINGO, and ELIZABETH Q. PINONO, *petitioners*, -versus-STA. LUCIA REALTY AND DEVELOPMENT, INC. and BAGUIO PROPERTIES, INC., *respondents*.
G.R. No. 231737, EN BANC, March 6, 2018, TIJAM, *J*

Pursuant to Section 66 of the IPRA, the NCIP shall have jurisdiction over claims and disputes involving rights of ICCs/IPs only when they arise between or among parties belonging to the same ICC/IP. When such claims and disputes arise between or among parties who do not belong to the same ICC/IP, i.e., parties belonging to different ICC/IPs or where one of the parties is a non-ICC/IP, the case shall fall under the jurisdiction of the proper Courts of Justice, instead of the NCIP.

FACTS:

Petitioners are recognized Indigenous People (IP), being members of the *Ibaloi* tribe, who are the original settlers in Baguio City and Benguet Province. Respondent Sta. Lucia Realty is a real estate developer, while respondent Baguio Properties, Inc. claims to be the lot owner managing the properties of Manila Newtown Development Corporation, which covers portions of the subject land.

Environmental Case No. 8548-R entitled "Enforcement/Violations of the Provisions of the Indigenous Peoples Rights Act (IPRA) (Republic Act No. 8371); Presidential Decree (PD) No. 1586; 7 and Other Pertinent Laws with Prayer for the Issuance of Environmental Protection Order and/or Writ of Preliminary Mandatory/Prohibitory Injunction, and Writ of *Mandamus*" was filed by the petitioners against respondents.

Petitioners argued that respondents' acts of demolishing and bulldozing the subject land, which caused the destruction of small and full grown trees and sayote plants and other resources of the petitioners, violated their rights pursuant to the IPRA; violated environmental laws, specifically PD 1586, as respondents' project poses grave and/or irreparable danger to environment, life, and property, and also violated the Environmental Compliance Certificate (ECC) issued to them.

On March 2, 2017, the RTC, sitting as an environmental court, dismissed the case on the ground of lack of jurisdiction, finding that petitioners' case is grounded upon their claim of being members of the IPs and their assertion of ownership as such over their ancestral land. In ruling that it has no jurisdiction over the case, the RTC discussed the exclusive jurisdiction of the NCIP to issue CALTs/CADTs to formally recognize the rights of indigenous peoples to their ancestral lands/domains by virtue of native title. Further, the RTC ruled that even if the case is covered by A.M. No. 09-6-8-SC, the same is still dismissible considering that petitioners' right over the subject property is yet to be established as can be gleaned from their prayer for the recognition of ownership rights as IPs over the subject land.

ISSUE:

Was the court *a quo*'s outright dismissal of the case proper? (NO)

RULING:

We find that the outright dismissal of the case was not proper.

First. The court *a quo* patently erred in ruling that the NCIP has jurisdiction over the case.

Foremost, in *Unduran*, this Court had already delimited the jurisdiction of the NCIP as provided under Section 66 of the IPRA, *viz*.:

> **Pursuant to Section 66 of the IPRA, the NCIP shall have jurisdiction over claims and disputes involving rights of ICCs/IPs only when they arise between or among parties belonging to the same ICC/IP. When such claims**

> **and disputes arise between or among parties who do not belong to the same ICC/IP, *i.e.*, parties belonging to different ICC/IPs or where one of the parties is a non-ICC/IP, the case shall fall under the jurisdiction of the proper Courts of Justice, instead of the NCIP**.

Indeed, non-ICCs/IPs cannot be subjected to the special and limited jurisdiction of the NCIP even if the dispute involves rights of ICCs/IPs since the NCIP has no power and authority to decide on a controversy involving rights of non-ICCs/IPs which should be brought before the courts of general jurisdiction within the legal bounds of rights and remedies. Plainly, contrary to the court *a quo*'s conclusion, this case cannot be subjected to the NCIP's jurisdiction as respondents are clearly non-ICCs/IPs.

Second. What determines the jurisdiction of the court is the nature of the action pleaded as appearing from the allegations in the complaint. The averments therein and the character of the relief sought are the ones to be consulted.

As can be gleaned from the aforecited allegations in the Complaint, the case at bar is not an action for the claim of ownership, much less, an application for the issuance of CALTs/CADTs, contrary to the court *a quo*'s findings. Ultimately, petitioners' cause of action is grounded upon the alleged earthmoving activities and operations of the respondents within petitioners' ancestral land, which violated and continue to violate petitioners' environmental rights under the IPRA and PD 1586 as the said activities were averred to have grave and/or irreparable danger to the environment, life, and property. Clearly, such cause of action is within the jurisdiction of the RTC, sitting as a special environmental court, pursuant to AO No. 23-2008 in relation to BP 129 and A.M. No. 09-6-8-SC.

Third. The court *a quo* erred in finding that the petitioners have no legal personality to file the complaint. It is noteworthy that petitioners supported their allegations with pertinent documents such as the report and recommendation of the NCIP on petitioners' Petition for the Identification, Delineation and Recognition of Ancestral Claim and Issuance of CALTs pending before the said Commission. In the said document, the NCIP concluded that, among others, the petitioners have established themselves as the heirs of Tunged and that the subject land was proven to be part of the vast tract of land that Tunged and his successors possessed and occupied. Hence, petitioners' averments in their Complaint taken together with such supporting documents are sufficient to establish petitioners' *locus standi* in instituting this action, as well as to bring petitioners' case within the purview of the court *a quo*'s jurisdiction as conferred by the law.

Fourth. At any rate, assuming *arguendo* that the case is not within the jurisdiction of the RTC, sitting as an environmental court, the outright dismissal of the case was still not proper, especially considering that We have already established that it is the regular courts and not the NCIP, which has jurisdiction over the same. Section 3, Rule 2 of A.M. No. 09-6-8-SC explicitly states that if the complaint is not an environmental complaint, the presiding judge shall refer it to the executive judge for re-raffle to the regular court.

B. Writ of continuing mandamus

C. Writ of kalikasan

MAYOR TOMAS R. OSMEÑA, IN HIS CAPACITY AS CITY MAYOR OF CEBU,*Petitioner*,-versus-JOEL CAPILI GARGANERA, FOR AND ON HIS BEHALF, AND IN REPRESENTATION OF THE

PEOPLE OF THE CITIES OF CEBU AND TALISAY, AND THE FUTURE GENERATIONS, INCLUDING THE UNBORN, ***Respondent.***G.R. No. 231164, EN BANC, March 20, 2018, TIJAM, *J.*

Here, the present petition for writ of kalikasan under the RPEC is a separate and distinct action from R.A. 9003 and R.A. 8749. A writ of kalikasan is an extraordinary remedy covering environmental damage of such magnitude that will prejudice the life, health or property of inhabitants in two or more cities or provinces. It is designed for a narrow but special purpose: to accord a stronger protection for environmental rights, aiming, among others, to provide a speedy and effective resolution of a case involving the violation of one's constitutional right to a healthful and balanced ecology that transcends political and territorial boundaries, and to address the potentially exponential nature of large-scale ecological threats.

Given that the writ of kalikasan is an extraordinary remedy and the RPEC allows direct action to this Court and the CA where it is dictated by public welfare, this Court is of the view that the prior 30 day notice requirement for citizen suits under R.A. 9003 and R.A. 8749 is inapplicable. It is ultimately within the Court's discretion whether or not to accept petitions brought directly before it.

FACTS:

On June 15, 2015, through former Mayor Rama's directive, Inayawan landfill, a garbage disposal area of Cebu City, was formally closed. In 2016, however, under the administration of Mayor Osmeña, the Cebu City Local Government sought to temporarily open the Inayawan landfill, through a letter addressed to the Regional Director of the Environmental Management Bureau (EMB) of the DENR. In his reply letter, the Regional Director wrote that although the EMB had no authority to issue the requested notice, it interposed no objection to the proposed temporary opening of the Inayawan landfill provided that the Cebu City will faithfully comply with all its commitments and subject to regular monitoring by the EMB. Thus, in July 2016, the Inayawan landfill was officially re-opened by Acting Mayor Margot.

On September 2, 2016, a Notice of Violation and Technical Conference was issued by the EMB to Mayor Osmeña, regarding City Government's operation of the Inayawan Landfill and its violations of the ECC. The Department of Health likewise issued an Inspection Report, recommending the immediate closure of the landfill due to the lack of sanitary requirements, environmental, health and community safety issues.

On September 23, 2016, Joel CapiliGarganera for and on his behalf, and in representation of the People of the Cities of Cebu and Talisay and the future generations, including the unborn (respondent) filed a petition for writ of *kalikasan* with prayer for the issuance of a Temporary Environmental Protection Order (TEPO) before the CA.

The CA, in a Resolution dated October 6, 2016, granted a writ of *kalikasan*, required petitioner to file a verified return and a summary hearing was set for the application of TEPO.

In petitioner's verified return, he alleged that respondent failed to comply with the condition precedent which requires 30-day notice to the public officer concerned prior to the filing of a citizens suit under R.A. 9003 and R.A. 8749.

The CA granted the privilege of the writ of *kalikasan* which ordered Mayor Osmeña and/or his representatives to permanently cease and desist from dumping or disposing of garbage or solid waste at the Inayawan landfill and to continue to rehabilitate the same.

ISSUE:

Whether or not the 30-day prior notice requirement for citizen suits under R.A. 9003 and R.A. 8749 is needed prior to the filing of the instant petition(NO)

RULING:

Section 5, Rule 2 of the Rules of Procedure for Environmental Cases (RPEC), is instructive on the matter:

Section 5. *Citizen suit.*—Any Filipino citizen in representation of others, including minors or generations yet unborn, may file an action to enforce rights or obligations under environmental laws. Upon the filing of a citizen suit, the court shall issue an order which shall contain a brief description of the cause of action and the reliefs prayed for, requiring all interested parties to manifest their interest to intervene in the case within fifteen (15) days from notice thereof. The plaintiff may publish the order once in a newspaper of a general circulation in the Philippines or furnish all affected barangays copies of said order.

Citizen suits filed under R.A. No. 8749 and R.A. No. 9003 shall be governed by their respective provisions. (Underscoring Ours)

Section 1, Rule 7 of RPEC also provides:

Section 1. *Nature of the writ.*- The Writ is a remedy available to a natural or juridical person, entity authorized by law, people's organization, non-governmental organization, or any public interest group accredited by or registered with any government agency, on behalf of persons whose constitutional right to a balanced and healthful ecology is violated, or threatened with violation by an unlawful act or omission of a public official or employee, or private individual or entity, involving environmental damage of such magnitude as to prejudice the life, health or property of inhabitants in two or more cities or provinces.

Here, the present petition for writ of *kalikasan* under the RPEC is a separate and distinct action from R.A. 9003 and R.A. 8749. A writ of *kalikasan* is an extraordinary remedy covering environmental damage of such magnitude that will prejudice the life, health or property of inhabitants in two or more cities or provinces. It is designed for a narrow but special purpose: to accord a stronger protection for environmental rights, aiming, among others, to provide a speedy and effective resolution of a case involving the violation of one's constitutional right to a healthful and balanced ecology that transcends political and territorial boundaries, and to address the potentially exponential nature of large-scale ecological threats.

Moreover, Section 3, Rule 7 of RPEC allows direct resort to this Court or with any of the stations of the CA, which states:

Section 3. *Where to file*. - The petition shall be filed with the Supreme Court or with any of the stations of the Court of Appeals.

Given that the writ of *kalikasan* is an extraordinary remedy and the RPEC allows direct action to this Court and the CA where it is dictated by public welfare, this Court is of the view that the prior 30 day notice requirement for citizen suits under R.A. 9003 and R.A. 8749 is inapplicable. It is ultimately within the Court's discretion whether or not to accept petitions brought directly before it.

We affirm the CA when it ruled that the requirements for the grant of the privilege of the writ of *kalikasan* were sufficiently established.