

COMPILATION OF SUPREME COURT DECISIONS

(MARCH 2014-MARCH 2015)

REMEDIAL LAW

- **G.R. No. 196894. March 3, 2014** Jesus G. Crisologo and Nanette B. Crisoslogo Vs. JEW M Agro-Industrial Corporation

- The crux of this controversy is whether the CA correctly ruled that RTC-Br. 14 acted without grave abuse of discretion in failing to recognize Spouses Crisologo as **indispensable parties in the case for cancellation of lien.**
- In this respect, the Court agrees with Spouses Crisologo.
- In an action for the cancellation of memorandum annotated at the back of a certificate of title, the persons considered as indispensable include those whose liens appear as annotations pursuant to Section 108 of P.D. No. 1529,
- In *Southwestern University v. Laurente*, the Court held that the cancellation of the annotation of an encumbrance cannot be ordered without giving notice to the parties annotated in the certificate of title itself. It would, thus, be an error for a judge to contend that no notice is required to be given to all the persons whose liens were annotated at the back of a certificate of title.
- Here, undisputed is the fact that Spouses Crisologo's liens were indeed annotated at the back of TCT Nos. 325675 and 325676. Thus, as persons with their liens annotated, they stand to be benefited or injured by any order relative to the cancellation of annotations in the pertinent TCTs. In other words, they are as indispensable as JEW M itself in the final disposition of the case for cancellation, being one of the many lien holders.
- As indispensable parties, Spouses Crisologo should have been joined as defendants in the case pursuant to Section 7, Rule 3 of the Rules of

Court, SEC. 7. Compulsory joinder of indispensable parties. – Parties in interest without whom no final determination can be had of an action shall be joined either as plaintiffs or defendants.

- The reason behind this compulsory joinder of indispensable parties is the complete determination of all possible issues, not only between the parties themselves but also as regards other persons who may be affected by the judgment.

The rule is that a petition for certiorari under Rule 65 is proper only if there is no appeal, or any plain speedy, and adequate remedy in the ordinary course of law.

In this case, no adequate recourse, at that time, was available to Spouses Crisologo, except resorting to Rule 65.

Although Intervention under Rule 19 could have been availed of, failing to use this remedy should not prejudice Spouses Crisologo. It is the duty of RTC-Br. 14, following the rule on joinder of indispensable parties, to simply recognize them, with or without any motion to intervene. Through a cursory reading of the titles, the Court would have noticed the adverse rights of Spouses Crisologo over the cancellation of any annotations in the subject TCTs.

Neither will appeal prove adequate as a remedy since only the original parties to an action can appeal. Here, Spouses Crisologo were never impleaded. Hence, they could not have utilized appeal as they never possessed the required legal standing in the first place.

And even if the Court assumes the existence of the legal standing to appeal, it must be remembered that the questioned orders were interlocutory in character and, as such, Spouses Crisologo would have to wait, for the review by appeal, until the rendition of the judgment on the merits, which at that time may not

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be coming as speedy as practicable. While waiting, Spouses Crisologo would have to endure the denial of their right, as indispensable parties, to participate in a proceeding in which their indispensability was obvious. Indeed, appeal cannot constitute an adequate, speedy and plain remedy.

The same is also true if recourse to Annulment of Judgment under Rule 47 is made since this remedy presupposes a final judgment already rendered by a trial court.

At any rate, the remedy against an interlocutory order, not subject of an appeal, is an appropriate special civil action under Rule 65, provided that the interlocutory order is rendered without or in excess of jurisdiction or with grave abuse of discretion. Only then is certiorari under Rule 65 allowed to be resorted to.

• **G.R. No. 208660. March 5, 2014**

Peñafrancia Sugar Mill, Inc. Vs. Sugar Regulatory Administration

- The primordial issue for the Court's resolution is whether or not PENSUMIL committed forum-shopping in filing the case *a quo*.
- At this point, the Court deems it worthy to note that on November 4, 2013, and during the pendency of the instant petition, the SRA has issued Sugar Order No. 5, s. 2013-2014,

which revoked the Assailed Sugar Orders. As a result thereof, all mill companies were directed to cease from collecting the lien of ₱2.00 per LKG-Bag from all sugar production, effective immediately.

The case at bar should be dismissed for having become moot and academic.

A case or issue is considered moot and academic when it ceases to present a justiciable controversy by virtue of supervening events, so that an adjudication of the case or a declaration on the issue would be of no practical value

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

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

On the basis of the foregoing, the Court finds it appropriate to abstain from passing upon the merits of this case where legal relief is no longer needed nor called for.

• **G.R. No. 195374. March 10, 2014** Pedro Lukang Vs. Pagbilao Development Corporation and Eduardo T. Rodriguez

- Synthesized, the issues boil down to the question of whether or not the RTC committed grave abuse of discretion when it issued the May 13, 2008 Order granting the writ of preliminary injunction.

A writ of preliminary injunction is a provisional remedy which is adjunct to a main suit, as well as a preservative remedy issued to maintain the *status quo* of the things subject of the action or the relations between the parties during the pendency of the suit. The purpose of injunction is to prevent threatened or continuous irremediable injury to the parties before their claims can be thoroughly studied and educated. Its sole aim is to preserve the *status quo* until the merits of the case are fully heard.

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Thus, a writ of preliminary injunction may be issued upon the concurrence of the following essential requisites, to wit: (a) the invasion of right sought to be protected is material and substantial; (b) the right of the complainant is clear and unmistakable; and (c) there is an urgent and paramount 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.

In the present case, the Court finds the RTC grant of injunction to be in order. The pertinent parts of its order read:

It is to be emphasized that the deeds of sale between the vendors of the six parcels of land and the Pagbilao Development Corporation were executed on June 1, 1993. The **Affidavit of Adverse Claim** of Leoncia Martinez Vda. De Lukang and the **Notice of Lis Pendens** of Pedro Lukang over the six properties were **all inscribed on February 3, 1989**.

There is no question, therefore, that when the **Pagbilao Development Corporation** bought the properties from the vendors, it **had full knowledge that there were questions involving ownership of the parcels of land it bought**.

Likewise there is no question that **Pagbilao Development Corporation did not take any step to have the annotation or encumbrance in each title cancelled**.

Here, it must be noted that the annotations of adverse claim and *lis pendens* have been inscribed in the certificates of titles on the following dates February 3, 1989, November 6, 1989 and October 1, 1990, more than three (3) years before PDC bought the subject properties in 1993. It would have been

different if the adverse claims and *lis pendens* were not annotated in the titles. With PDC having been officially aware of them, there can be no grave abuse of discretion that can be attributed to the RTC for issuing the writ of preliminary injunction. There is no question that when PDC purchased the property, the petitioner and other intervenors were in **actual possession** of the property and their **claims adverse** to its predecessors-in-interest were **annotated** in the very titles of the properties. In fact, these annotations were **carried over** to PDC's title. **PDC cannot invoke its being the registered owner to dispossess the present possessors for, precisely, when it brought the properties, it was charged with the knowledge that the ownership and sale of the subject properties by its predecessors-in-interest have been questioned by their co-heirs**. Inevitably, PDC is deemed to have obtained the properties subject to the outcome of the litigation among the heirs of Arsenio.

During the hearing, Pedro and the other heirs were able to convince the RTC that they had a right over the properties which should be protected while being litigated. Convinced, the RTC made a preliminary determination that their right should be protected by a writ of preliminary injunction. Their claimed ownership and actual possession were then being violated by PDC which had started entering the premises and preparing the property for the construction of a power plant for liquefied natural gas. Unless legally stopped, such act would indeed cause irreparable damage to the petitioner and other claimants. As claimed co-owners, the petitioner and the other heirs have the right to remain in possession of the subject properties *pendente lite*. The legal or practical remedy of PDC, who gambled

With regard to the issue of the injunctive bond, the Court has time and again ruled that the posting of the bond is a condition *sine qua non* before a writ of preliminary injunction may issue.

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enjoined against any damage that he may sustain in case the court should finally decide that the applicant was not entitled thereto.

mean, however, that the injunction maybe disregarded since it becomes effective only after the bond is actually filed in court.

In fine, it is erroneous for the CA to rule that the RTC committed grave abuse of discretion simply because it failed to fix the amount of the bond. This error caused "no substantial prejudice" that would warrant the quashal of the writ of injunction. (As a matter of fact, Pedro posted a bond

in the amount of One Million Pesos (P1,000,000.00), the sufficiency or insufficiency of which was never questioned by PDC before the RTC. Hence, the Court will not discuss the sufficiency of the bond not only because the issue was not raised before the RTC but also it involves a question of fact.

- **G.R. No. 208232. March 10, 2014** Surviving Heirs of Alfredo R. Bautista, namely: Epifania G. Bautista and Zoey G. Bautista Vs. Francisco Lindo and Welhilmina Lindo, et al.

3. the issue for the Court's resolution is: whether or not the RTC erred in granting the motion for the dismissal of the case on the ground of lack of jurisdiction over the subject matter.

The core issue is whether the action filed by petitioners is one

involving title to or possession of real property or any interest therein or one incapable of pecuniary estimation.

The course of action embodied in the complaint by the present

petitioners' predecessor, Alfredo R. Bautista, is to enforce his right to repurchase the lots he formerly owned pursuant to the right of a free-patent

holder under Sec. 119 of CA 141 or the *Public Land Act*.

The Court rules that **the complaint to redeem a land subject of a free patent is a civil action incapable of pecuniary estimation.**

It is a well-settled rule that jurisdiction of the court is determined by the allegations in the complaint and the **character of the relief sought**. In this regard, the Court, in *Russell v. Vestil*, wrote that "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 RTCs would depend on the amount of the claim." But 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, hence, are incapable of pecuniary estimation. These cases are cognizable exclusively by RTCs.

Settled jurisprudence considers some civil actions as incapable of pecuniary estimation, viz:

4. Actions for specific performance;
5. Actions for support which will require the determination of the

civil status;

6. The right to support of the plaintiff;
7. Those for the annulment of decisions of lower courts;
8. Those for the rescission or reformation of contracts;
9. Interpretation of a contractual

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stipulation.
10.

The Court finds that the instant cause of action to redeem the land is one for specific performance.

The facts are clear that Bautista sold to respondents his lots which were covered by a free patent. While the deeds of sale do not explicitly contain the stipulation that the sale is subject to repurchase by the applicant within a period of five (5) years from the date of conveyance pursuant to Sec. 119 of CA 141, still, such legal provision is deemed integrated and made part of the deed of sale as prescribed by law. It is basic that the law is deemed written into every contract.

Although a contract is the law between the parties, the provisions of positive law which regulate contracts are deemed written therein and shall limit and govern the relations between the parties. Thus, it is a binding prestation in favor of Bautista which he may seek to enforce. That is precisely what he did. He filed a complaint to enforce his right granted by law to recover the lot subject of free patent. Ergo, it is clear that his action is for specific performance, or if not strictly such action, then it is akin or analogous to one of specific performance. Such being the case, his action for specific performance is incapable of pecuniary estimation and cognizable by the RTC.

At first blush, it appears that the action filed by Bautista involves title to or possession of the lots he sold to respondents. Since the total selling price is less than PhP 20,000, then the MTC, not the RTC, has jurisdiction over the case. This proposition is incorrect for the reacquisition of the lots by Bautista or herein successors-in-interests, the present petitioners, is but incidental to and an offshoot of the exercise of the right by the latter to redeem said lots pursuant to Sec. 119 of CA 141. The reconveyance of the title to petitioners is solely dependent on

the exercise of such right to repurchase the lots in question and is not the principal or main relief or remedy sought. Thus, the action of petitioners is, in reality, incapable of pecuniary estimation, and the reconveyance of the lot is merely the outcome of the performance of the obligation to return the property conformably to the express provision of CA 141.

- **G.R. No. 188191. March 12, 2014** Enrique Almero y Alcantara Vs. People of the Philippines, et al.

- **ISSUE: PERSONALITY OF A PRIVATE PERSON TO TO FILE A PETITION FOR PROHIBITION IF THE CASE AROSE FROM A CRIMINAL PROCEEDING**
- Anent the first issue, petitioner argues that in criminal cases, the offended party is the State, and that private complainants' interest is limited to the civil liability arising therefrom. Petitioner's application for probation purportedly did not involve the civil aspect of the case.

While the present petition originated from a criminal proceeding, what petitioner filed with the RTC was a special civil action, in which he himself impleaded private respondents. He cannot now belatedly change his stance to the prejudice of private respondents, who would otherwise be deprived of recourse in a civil action they did not initiate. In any case, this Court has consistently ruled that private parties may be clothed with sufficient personality if the facts show that the ends of substantial justice would be better served, and if the issues in the action could be determined in a more just, speedy and inexpensive manner.

While the rule is, as held by the Court of Appeals, only the Solicitor General may bring or defend actions on behalf of the Republic of the Philippines, or represent the People or the State in criminal proceeding pending in this Court and the Court of Appeals, the ends of substantial justice would be better served, and the

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issues in this action could be determined in a more just, speedy and inexpensive manner, by entertaining the petition at bar. As an offended party in a criminal case, private petitioner has sufficient personality and a valid grievance against Judge Adao's order granting bail to the alleged murderers of his (private petitioner's) father.

Furthermore, as offended parties in the pending criminal case before petitioner judge, it cannot be gainsaid that respondents have sufficient interest and personality as 'person(s) aggrieved' by petitioner judge's ruling on his non-disqualification to file the special civil action under sections 1 and 2 of Rule 65. Recently in line with the underlying spirit of a liberal construction of the Rules of Court in order to promote their object, as against the literal application of Rule 110, section 2, we held, overruling the implication of an earlier case, that a widow possesses the right as an offended party to file a criminal complaint for the murder of her deceased husband.

Petitioner's second and third arguments are brought by an erroneous understanding of the nature of probation and shall be discussed jointly.

Probation is not a right but a mere privilege, an act of grace and clemency conferred by the State, and may be granted by the court to a deserving defendant. Accordingly, the grant of probation rests solely upon the discretion of the court. It is to be exercised primarily for the benefit of organized society, and only incidentally for the benefit of the accused.

Aside from the goals of according expediency and liberality to the accused, the rationale for the treatment of appeal and probation as mutually exclusive remedies is that they rest on diametrically opposed legal positions. An accused applying for probation is deemed to have accepted the judgment. The application

for probation is an admission of guilt on the part of an accused for the crime which led to the judgment of conviction. This was the reason why the Probation Law was amended: precisely to put a stop to the practice of appealing from judgments of conviction – even if the sentence is probationable – for the purpose of securing an acquittal and applying for the probation only if the accused fails in his bid.

Similarly, in the present case, petitioner cannot make up his mind whether to question the judgment, or apply for probation, which is necessarily deemed a waiver of his right to appeal. While he did not file an appeal before applying for probation, he assailed the validity of the conviction in the guise of a petition supposedly assailing the denial of probation. In so doing, he attempted to circumvent P.D. No. 968, as amended by P.D. 1990, which seeks to make appeal and probation mutually exclusive remedies.

The assignment of errors in the Petition before us reflects the diametrically opposed positions taken by accused petitioner. On the one hand, he bewails the defects committed by the trial court during the promulgation of the judgment, thus casting doubt on the judgment itself. Yet in the same breath, he persists in his application for probation, despite the waiver and admission of guilt implicit in any procedure for probation – precisely the unhealthy wager the law seeks to prevent.

- **G.R. No. 183034. March 12, 2014** Sps. Fernando and Ma. Elena Santos Vs. Lolita Alcazar, rep. by her Attorney-in-Fact Delfin Chua

- The rule that the genuineness and due execution of the instrument shall be deemed admitted, unless the adverse party specifically denies them under oath, applies only to parties to such instrument.

More to the point is the fact that

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petitioners failed to deny specifically under oath the genuineness and due execution of the Acknowledgment in their Answer. The effect of this is that the genuineness and due execution of the Acknowledgment is deemed admitted. "By the admission of the genuineness and due execution [of such document] is meant that the party whose signature it bears admits that he signed it or that it was signed by another for him with his authority; that at the time it was signed it was in words and figures exactly as set out in the pleading of the party relying upon it; that the document was delivered; and that any formal requisites required by law, such as a seal, an acknowledgment, or revenue stamp, which it lacks, are waived by him. Hence, such defenses as that the signature is a forgery x x x; or that it was unauthorized x x x; or that the party charged signed the instrument in some other capacity than that alleged in the pleading setting it out x x x; or that it was never delivered x x x, are cut off by the admission of its genuineness and due execution."

"There is 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." With the consequent admission engendered by petitioners' failure to properly deny the Acknowledgment in their Answer, coupled with its proper authentication, identification and offer by the respondent, not to mention petitioners' admissions in paragraphs 4 to 6 of their Answer that they are indeed indebted to respondent, the Court believes that judgment may be had solely on the document, and there is no need to present receipts and other documents to prove the claimed indebtedness. The Acknowledgment, just as an ordinary acknowledgment receipt, is "valid and binding between the parties who executed it, as a document evidencing the loan agreement they had entered into."

The absence of rebutting evidence occasioned by petitioners' waiver of their

right to present evidence renders the Acknowledgment as the best evidence of the transactions between the parties and the consequential indebtedness incurred. Indeed, the effect of the admission is such that "a *prima facie* case is made for the plaintiff which dispenses with the necessity of evidence on his part and entitles him to a judgment on the pleadings unless a special defense of new matter, such as payment, is interposed by the defendant."

However, as correctly argued by petitioners, only Fernando may be held liable for the judgment amount of P1,456,000.00, since Ma. Elena was not a signatory to the Acknowledgment. She may be held liable only to the extent of P600,000.00, as admitted by her and Fernando in paragraph 5 of their Answer; no case against her may be proved over and beyond such amount, in the absence of her signature and an acknowledgment of liability in the Acknowledgment. The rule that the genuineness and due execution of the instrument shall be deemed admitted, unless the adverse party specifically denies them under oath, applies only to parties to the document.

- **G.R. No. 201601. March 12, 2014** Marylou Cabrera Vs. Felix Ng

- The sole issue to be resolved by the Court is whether the CA erred in affirming the RTC Order dated December 19, 2007, which denied the motion for reconsideration filed by the spouses Cabrera.

The general rule is that the **three-day notice requirement in motions** under Sections 4 and 5 of the Rules of Court is mandatory. It is an integral component of procedural due process. "The purpose of the three-day notice requirement, which was established not for the benefit of the movant but rather for the adverse party, is to avoid surprises upon the latter and to grant it sufficient time to study the motion and to enable it to meet the arguments interposed therein."

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"A motion that does not comply with the requirements of Sections 4 and 5 of Rule 15 of the Rules of Court is a worthless piece of paper which the clerk of court has no right to receive and which the court has no authority to act upon." "Being a fatal defect, in cases of motions to reconsider a decision, the running of the period to appeal is not tolled by their filing or pendency."

Nevertheless, the three-day notice requirement is not a hard and fast rule. When the adverse party had been afforded the opportunity to be heard, and has been indeed heard through the pleadings filed in opposition to the motion, the purpose behind the three-day notice requirement is deemed realized. In such case, the requirements of procedural due process are substantially complied with.

It is undisputed that the hearing on the motion for reconsideration filed by the spouses Cabrera was reset by the RTC twice with due notice to the parties; it was only on October 26, 2007 that the motion was actually heard by the RTC. At that time, more than two months had passed since the respondent received a copy of the said motion for reconsideration on August 21, 2007. The respondent was thus given sufficient time to study the motion and to enable him to meet the arguments interposed therein. Indeed, the respondent was able to file his opposition thereto on September 20, 2007.

Notwithstanding that the respondent received a copy of the said motion for reconsideration four days after the date set by the spouses Cabrera for the hearing thereof, his right to due process was not impinged as he was afforded the chance to argue his position. Thus, the RTC erred in denying the spouses Cabrera's motion for reconsideration based merely on their failure to comply with the three-day notice requirement.

- **G.R. No. 193494. March 12, 2014** Lui Enterprises, Inc. Vs. Zuellig Pharma Corporation and the Philippine Bank of

Communications

- There should be no inexplicable delay in the filing of a motion to set aside order of default. Even when a motion is filed within the required period, excusable negligence must be properly alleged and proven.

Lui Enterprises failed to show that its failure to answer the complaint within the required period was due to excusable negligence

When a defendant is served with summons and a copy of the complaint, he or she is required to answer within 15 days from the day he or she was served with summons. The defendant may also move to dismiss the complaint "[w]ithin the time for but before filing the answer."

fifteen days is sufficient time for a defendant to answer with good defenses against the plaintiff's allegations in the complaint. Thus, a defendant who fails to answer within 15 days from service of summons either presents no defenses against the plaintiff's allegations in the complaint or was prevented from filing his or her answer within the required period due to fraud, accident, mistake or excusable negligence.

In either case, the court may declare the defendant in default on plaintiff's motion and notice to defendant. The court shall then try the case until judgment without defendant's participation and grant the plaintiff such relief as his or her complaint may warrant.

A defendant declared in default loses his or her standing in court. He or she is "deprived of the right to take part in the trial and forfeits his [or her] rights as a party litigant," has no right "to present evidence [supporting his or her] allegations," and has no right to "control the proceedings [or] cross-examine witnesses." Moreover, he or she "has no right to expect that [the court] would [act] upon [his or her pleadings]" or that

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he or she "may [oppose] motions filed against him [or her]."

However, the defendant declared in default "does not [waive] all of [his or her] rights." He or she still has the right to "receive notice of subsequent proceedings." Also, the plaintiff must still present evidence supporting his or her allegations "despite the default of [the defendant]."

Default, therefore, is not meant to punish the defendant but to enforce the prompt filing of the answer to the complaint. For a defendant without good defenses, default saves him or her "the embarrassment of openly appearing to defend the indefensible."

On the other hand, for a defendant with good defenses, "it would be unnatural for him [or her] not to set x x x up [his or her defenses] properly and timely." Thus, "it must be presumed that some insuperable cause prevented him [or her] from [answering the complaint]." In which case, his or her proper remedy depends on when he or she discovered the default and whether the default judgment was already rendered by the trial court.

After notice of the declaration of default but before the court renders the default judgment, the defendant may file, under oath, a motion to set aside order of default. The defendant must properly show that his or her failure to answer was due to fraud, accident, mistake or excusable negligence. The defendant must also have a meritorious defense.

If the defendant discovers his or her default after judgment but prior to the judgment becoming final and executory, he or she may file a motion for new trial under Rule 37, Section 1, paragraph (a) of the 1997 Rules of Civil Procedure. If he or she discovers his or her default after the judgment has become final and executory, a petition for relief from judgment under Rule 38, Section 1 of the 1997 Rules of

Civil Procedure may be filed.

Appeal is also available to the defendant declared in default. He or she may appeal the judgment for being contrary to the evidence or to the law under Rule 41, Section 2 of the 1997 Rules of Civil Procedure. He or she may do so even if he or she did not file a petition to set aside order of default. A petition for certiorari may also be filed if the trial court declared the defendant in default with grave abuse of discretion.

The remedies of the motion to set aside order of default, motion for new trial, and petition for relief from judgment are mutually exclusive, not alternative or cumulative. This is to compel defendants to remedy their default at the earliest possible opportunity. Depending on when the default was discovered and whether a default judgment was already rendered, a defendant declared in default may avail of only one of the three remedies.

Thus, if a defendant discovers his or her default before the trial court renders judgment, he or she shall file a motion to set aside order of default. If this motion to set aside order of default is denied, the defendant declared in default cannot await the rendition of judgment, and he or she cannot file a motion for new trial before the judgment becomes final and executory, or a petition for relief from judgment after the judgment becomes final and executory.

Also, the remedies against default become narrower and narrower as the trial nears judgment. The defendant enjoys the most liberality from this court with a motion to set aside order of default, as he or she has no default judgment to contend with, and he or she has the whole period before judgment to remedy his or her default.

With a motion for new trial, the defendant must file the motion within the period for taking an appeal or within 15 days from notice of the default judgment. Although a

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default judgment has already been rendered, the filing of the motion for new trial tolls the reglementary period of appeal, and the default judgment cannot be executed against the defendant.

A petition for relief from judgment is filed after the default judgment has become final and executory. Thus, the filing of the petition for relief from judgment does not stay the execution of the default judgment unless a writ of preliminary injunction is issued pending the petition's resolution.

Upon the grant of a motion to set aside order of default, motion for new trial, or a petition for relief from judgment, the defendant is given the chance to present his or her evidence against that of plaintiff's. With an appeal, however, the defendant has no right to present evidence on his or her behalf and can only appeal the judgment for being contrary to plaintiff's evidence or the law.

Similar to an appeal, a petition for certiorari does not allow the defendant to present evidence on his or her behalf. The defendant can only argue that the trial court committed grave abuse of discretion in declaring him or her in default.

Thus, should a defendant prefer to present evidence on his or her behalf, he or she must file either a motion to set aside order of default, motion for new trial, or a petition for relief from judgment.

In this case, Lui Enterprises had discovered its default before the Regional Trial Court of Makati rendered judgment. Thus, it timely filed a motion to set aside order of default, raising the ground of excusable negligence.

Excusable negligence is "one which ordinary diligence and prudence could not have guarded against." The circumstances should be properly alleged and proved. In this case, we find that Lui Enterprises' failure to answer within the required

period is inexcusable.

Lui Enterprises' counsel filed its motion to dismiss four days late. It did not immediately take steps to remedy its default and took one year from discovery of default to file a motion to set aside order of default. In its motion to set aside order of default, Lui Enterprises only "conveniently blamed its x x x counsel [for the late filing of the answer]" without offering any excuse for the late filing. This is not excusable negligence under Rule 9, Section 3, paragraph (b) of the 1997 Rules of Civil Procedure. Thus, the Regional Trial Court of Makati did not err in refusing to set aside the order of default.

Lui Enterprises argued that the Regional Trial Court of Makati should have been liberal in setting aside its order of default. After it had been declared in default, Lui Enterprises filed several manifestations informing the Makati trial court of the earlier filed nullification of deed of dation in payment case which barred the filing of the interpleader case. Lui Enterprises' president, Eli L. Lui, and counsel even flew in from Davao to Makati to "formally [manifest that] a [similar] action between [Lui Enterprises] and [the Philippine Bank of Communications]" was already pending in the Regional Trial Court of Davao. However, the trial court did not recognize Lui Enterprises' standing in court.

However, the basic requirements of Rule 9, Section 3, paragraph (b) of the 1997 Rules of Civil Procedure must first be complied with. The defendant's motion to set aside order of default must satisfy three conditions. First is the time element. The defendant must challenge the default order before judgment. Second, the defendant must have been prevented from filing his answer due to fraud, accident, mistake or excusable negligence. Third, he must have a meritorious defense.

As discussed, Lui Enterprises never

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explained why its counsel failed to file the motion to dismiss on time. It just argued that courts should be liberal in setting aside orders of default. Even assuming that it had a meritorious defense and that its representative and counsel had to fly in from Davao to Makati to personally appear and manifest in court its meritorious defense, Lui Enterprises must first show that its failure to answer was due to fraud, accident, mistake or excusable negligence. This Lui Enterprises did not do.

Lui Enterprises argued that Zuellig Pharma filed the interpleader case to compel Lui Enterprises and the Philippine Bank of Communications to litigate their claims. Thus, "[d]eclaring the other claimant in default would ironically defeat the very purpose of the suit."

An interpleader complaint may be filed by a lessee against those who have conflicting claims over the rent due for the property leased. This remedy is for the lessee to protect him or her from "double vexation in respect of one liability." He or she may file the interpleader case to extinguish his or her obligation to pay rent, remove him or her from the adverse claimants' dispute, and compel the parties with conflicting claims to litigate among themselves.

In this case, Zuellig Pharma filed the interpleader case to extinguish its obligation to pay rent. Its purpose in filing the interpleader case "was not defeated" when the Makati trial court declared Lui Enterprises in default.

At any rate, an adverse claimant in an interpleader case may be declared in default. Under Rule 62, Section 5 of the 1997 Rules of Civil Procedure, a claimant who fails to answer within the required period may, on motion, be declared in default. The consequence of the default is that the court may "render judgment barring [the defaulted claimant] from any claim in respect to the subject matter." The Rules would not have allowed claimants in interpleader cases to be

declared in default if it would "ironically defeat the very purpose of the suit."

The Regional Trial Court of Makati declared Lui Enterprises in default when it failed to answer the complaint within the required period. Lui Enterprises filed a motion to set aside order of default without an acceptable excuse why its counsel failed to answer the complaint. It failed to prove the excusable negligence. Thus, the Makati trial court did not err in refusing to set aside the order of default.

The nullification of deed in dation in payment case did not bar the filing of the interpleader case. Litis pendentia is not present in this case.

Lui Enterprises allegedly filed for nullification of deed of dation in payment with the Regional Trial Court of Davao. It sought to nullify the deed of dation in payment through which the Philippine Bank of Communications acquired title over the leased property. Lui Enterprises argued that this pending nullification case barred the Regional Trial Court of Makati from hearing the interpleader case. Since the interpleader case was filed subsequently to the nullification case, the interpleader case should be dismissed.

Under Rule 16, Section 1, paragraph (e) of the 1997 Rules of Civil Procedure, a motion to dismiss may be filed on the ground of *litis pendentia*:

In this case, there is no *litis pendentia* since there is no identity of parties in the nullification of deed of dation in payment case and the interpleader case. Zuellig Pharma is not a party to the nullification case filed in the Davao trial court.

There is also no identity of rights asserted and reliefs prayed for. Lui Enterprises filed the first case to nullify the deed of dation in payment it executed in favor of the Philippine Bank of Communications. Zuellig Pharma subsequently filed the interpleader case to consign in court the

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rental payments and extinguish its obligation as lessee. The interpleader case was necessary and was not instituted to harass either Lui Enterprises or the Philippine Bank of Communications.

Thus, the pending nullification case did not bar the filing of the interpleader case.

In this case, the nullification of deed of dation in payment case was filed by Lui Enterprises against the Philippine Bank of Communications. The interpleader case was filed by Zuellig Pharma against Lui Enterprises and the Philippine Bank of Communications. A different plaintiff filed the interpleader case against Lui Enterprises and the Philippine Bank of Communications. Thus, there is no identity of parties, and the first requisite of *litis pendentia* is absent.

As discussed, Lui Enterprises filed the nullification of deed of dation in payment to recover ownership of the leased premises. Zuellig Pharma filed the interpleader case to extinguish its obligation to pay rent. There is no identity of reliefs prayed for, and the second requisite of *litis pendentia* is absent.

Since two requisites of *litis pendentia* are absent, the nullification of deed of dation in payment case did not bar the filing of the interpleader case.

• **G.R. No. 187944. March 12, 2014**

Carmencita Suarez Vs. Mr. and Mrs. Felix E. Emboy, Jr. and Marilou P. Emboy-Delantar

- **Carmencita had not amply alleged and proven that all the requisites for unlawful detainer are present in**

- **the case at bar.**

- "Without a doubt, the registered owner of real property is entitled to its possession. However, the owner cannot simply wrest possession thereof from whoever is in actual occupation of the property. To recover possession, he must resort to the proper judicial remedy and, once he chooses what action to file, he is required to satisfy the conditions necessary for such action to prosper."

In a complaint for unlawful detainer, the following key jurisdictional

facts must be alleged and sufficiently established:

(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.

In the case at bar, the first requisite mentioned above is markedly absent. Carmencita failed to clearly allege and prove how and when the respondents entered the subject lot and constructed a house upon it. Carmencita was likewise conspicuously silent about the details on who specifically permitted the respondents to occupy the lot, and how and when such tolerance came about. Instead, Carmencita cavalierly formulated a legal conclusion, *sans* factual substantiation, that (a) the respondents' initial occupation

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of the subject lot was lawful by virtue of tolerance by the registered owners, and (b) the respondents became deforciant unlawfully withholding the subject lot's possession after Carmencita, as purchaser and new registered owner, had demanded for the former to vacate the property.

It is worth noting that the absence of the first requisite assumes even more importance in the light of the respondents' claim that for decades, they have been occupying the subject lot as owners thereof.

Again, this Court stresses that to give the court jurisdiction to effect the ejectment of an occupant or deforciant on the land, it is necessary that the complaint must sufficiently show such a statement of facts as to bring the party clearly within the class of cases for which the statutes provide a remedy, without resort to parol testimony, as these proceedings are summary in nature. In short, the jurisdictional facts must appear on the face of the complaint. When the complaint fails to aver facts constitutive of forcible entry or unlawful detainer, as where it does not state how entry was effected or how and when dispossession started, the remedy should either be an *accion publiciana* or *accion reivindicatoria*.

As an exception to the general rule, the respondents' petition for nullification of the partition of Lot No. 1907-A can abate Carmencita's suit for unlawful detainer.

Carmencita's complaint for unlawful detainer is anchored upon the proposition that the respondents have been in possession of the subject lot by mere tolerance of the owners. The respondents, on the other hand, raise the defense of ownership of the subject lot and point to the pendency of Civil Case No. CEB-30548, a petition for nullification of the partition of Lot No. 1907-A, in which Carmencita and the Heirs of Vicente were impleaded as parties. Further, should

Carmencita's complaint be granted, the respondents' house, which has been standing in the subject lot for decades, would be subject to demolition. The foregoing circumstances, thus, justify the exclusion of the instant petition from the purview of the general rule.

All told, we find no reversible error committed by the CA in dismissing Carmencita's complaint for unlawful detainer. As discussed above, the jurisdictional requirement of possession by mere tolerance of the owners had not been amply alleged and proven. Moreover, circumstances exist which justify the abatement of the ejectment proceedings. Carmencita can ventilate her ownership claims in an action more suited for the purpose. The respondents, on other hand, need not be exposed to the risk of having their house demolished pending the resolution of their petition for nullification of the partition of Lot No. 1907-A, where ownership over the subject lot is likewise presented as an issue.

- **G.R. No. 201234. March 17, 2014** Heirs of Amada A. Zaulda, namely: Eleseo A. Zaulda and Rodolfo A. Zaulda Vs. Isaac Z. Zaulda

- Petition for review from the RTC to the CA is governed by Rule 42 of the Rules of Court,

In this case, the petitioners complied with the requirements laid down in the above quoted provision.

Records show that on March 10, 2010, petitioners timely filed a motion for reconsideration and/or new trial of the RTC decision (dated January 20, 2010, received by petitioners on February 25, 2010), but the same was denied in the RTC Order, dated August 4, 2010, copy of which was received by petitioners on **August 10, 2010**. Thus, they had **until August 25, 2010** within which to file a petition for review pursuant to said Section 1, Rule 42.

On **August 24, 2010**, petitioners filed

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their Motion for Extension of Time to File Petition for Review before the CA, paying the docket and other lawful fees and deposit for costs and prayed for an additional period of fifteen (15) days from August 25, 2010 or **until September 9, 2010**, within which to file the said petition.

On **September 9, 2010**, they filed the Petition for Review.

The Court notes that the petition for review before the CA was filed within the additional fifteen (15) day period prayed for in their motion for extension of time to file it, which was filed on time by registered mail. To repeat, the petition was filed on **September 9, 2010**, within the fifteen (15) day period requested in their motion for extension of time to file the petition.

As earlier stated, the Motion For Extension Of Time To File Petition For Review, which was filed through registered mail on August 24, 2010, was filed on time. It was physically in the appellate court's possession long before the CA issued its Resolution on February 11, 2011, dismissing the petition for review for being filed out of time. The record shows that **1]** the **CA** received the motion for extension of time to file petition for review on **September 13, 2010**; **2]** the **CA Division** received the motion on **September 14, 2010**; and **3]** the *ponente's* office received it on **January 5, 2011**.

Indeed, there was a delay, but it was a delay that cannot be attributed at all to the petitioners. The almost four (4) months that lapsed before the records reached the *ponente's* office was caused by the gross incompetence and inefficiency of the division personnel at the CA. It was the height of injustice for the CA to dismiss a petition just because the motion for extension reached the *ponente's* office beyond the last date prayed for. Clearly, the petitioners were

unreasonably deprived of their right to be heard on the merits because of the CA's unreasonable obsession to reduce its load. In allowing the petitioners to be fatally prejudiced by the delay in the transmittal attributable to its inept or irresponsible personnel, the CA committed an unfortunate injustice.

The petitioners could not also be faulted that the motion for extension of time was received by the CA on September 13, 2010. The rules allow parties to file a pleading by registered mail. They are not required to ensure that it would be received by the court on or before the last day of the extended period prayed for. Though no party can assume that its motion for extension would be granted, any denial thereof should be reasonable.

Granting that the petition was filed late, substantial justice begs that it be allowed and be given due course. Indeed, the merits of petitioners' cause deserve to be passed upon considering that the findings of the RTC were in complete contrast to the findings of the MCTC which declared petitioners as the lawful owners entitled to possession of the lots in question.

As regards the competent identity of the affiant in the Verification and Certification, records show that he proved his identity before the notary public through the presentation of his Office of the Senior Citizen (OSCA) identification card. Rule II, Sec. 12 of the *2004 Rules on Notarial Practice* requires a party to the instrument to present competent evidence of identity.

It is clear from the foregoing provisions that a **senior citizen card** is one of the competent identification cards recognized in the 2004 Rules on Notarial Practice. For said reason, there was compliance with the requirement. Contrary to the perception of the CA, attachment of a photocopy of the identification card in the document is not required by the 2004 Rules on Notarial Practice. Even A.M. No. 02-8-13-SC, amending Section 12 thereof,

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is silent on it. Thus, the CA's dismissal of the petition for lack of competent evidence on the affiant's identity on the attached verification and certification against forum shopping was without clear basis.

- **G.R. No. 176055. March 17, 2014** Spouses Edmundo Dela Cruz and Amelia Concio-Dela Cruz Vs. Spouses Rufino R. Capco and Marty C. Capco

- This case involves two spouses battling for the material possession of a piece of land.

Contrary to the CA's pronouncement, the Complaint sufficiently makes out a case for unlawful detainer.

The timeliness of the filing of the Complaint for unlawful detainer is not an issue in this case. Hence, the failure of the Complaint to allege when and how the spouses Capco came into possession of the property does not mean that the MeTC did not acquire jurisdiction over it. "To give the court jurisdiction to effect the ejectment of an occupant or deforciant on the land, it is necessary that the complaint should embody such a statement of facts as brings the party clearly within the class of cases for which the statutes provide a remedy, as these proceedings are summary in nature. The complaint must show enough on its face to give the court jurisdiction without resort to parol testimony.

Here, the Complaint alleged that the spouses Dela Cruz' predecessor-in-interest, Teodora, is the registered owner of the property per TCT No. 31873 and that she tolerated the spouses Capco's occupation of the lot. The spouses Dela Cruz subsequently acquired the property through conveyance and they extended the same tolerance to the spouses Capco. The spouses Dela Cruz demanded for the spouses Capco to vacate the property but to no avail; hence, they sent the latter a formal demand letter which, per the attached copy to the Complaint, is dated September 1, 2003. The Complaint was filed on October 6, 2003 or within one

year from the time the formal demand to vacate was made. Clearly, the Complaint sufficiently established a case for unlawful detainer as to vest the MeTC jurisdiction over it.

The lot occupied by the spouses Capco and the lot over which the spouses Dela Cruz claim to have a better right to possess pertain to the same property.

The CA opined that there is a need to determine if the lot occupied by the spouses Capco really forms part of the property over which the spouses Dela Cruz claim to have a better right to possess.

The Court, however, thinks otherwise.

One of the three issues defined during the preliminary conference is "whether or not the [spouses Capco] are occupying the subject property by mere tolerance of the plaintiffs". It is therefore safe to conclude that there is no dispute with respect to the identity of the property. What was clearly up for resolution before the MeTC was only the question of whether the spouses Capco are occupying the property by mere tolerance of the spouses Dela Cruz.

Moreover, the evidence submitted in this case establishes that the lot subject of this Complaint for ejectment is the same lot being occupied by the spouses Capco. As mentioned, the spouses Capco submitted tax declarations covering their house and a camarin as well as the corresponding receipts evidencing their payments of real property taxes. Notably, the declared owner of the lot on which these properties stand, as written in the receipts for the years 1995, 1996, 1997 and 1998, is Juan. Yet, the receipts for the years 2000, 2001, 2002, and 2003 no longer reflect Juan as the owner but Teodora. This change tends to support the conclusion that the lot occupied by the spouses Capco, which was previously owned by Juan, is the portion adjudicated in favor of the spouses Dela Cruz' predecessor-in-

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interest, Teodora.

The spouses Dela Cruz are able to establish by preponderance of evidence that they are the rightful possessors of the property.

"The only issue in an ejectment case is the physical possession of real property – possession *de facto* and not possession *de jure*." But "[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." Here, both parties anchor their right to possess based on ownership, *i.e.*, the spouses Dela Cruz by their own ownership while the spouses Capco by the ownership of Rufino as one of the heirs of the alleged true owner of the property. Thus, the MeTC and the RTC correctly passed upon the issue of ownership in this case to determine the issue of possession. However, it must be emphasized that "[t]he adjudication of the issue of ownership is only provisional, and not a bar to an action between the same parties involving title to the property."

- **G.R. No. 189176. March 19, 2014** Barry Lanier and Perlita Lanier Vs. People of the Philippines

- While the determination of probable cause is primarily an executive function, the Court would not hesitate to interfere if there is a clear showing that Secretary of Justice gravely abused his discretion amounting to lack or excess of jurisdiction in making his determination and in arriving at the conclusion he reached.

It is well-settled that courts of law are precluded from disturbing the findings of public prosecutors and the DOJ on the existence or non-existence of probable cause for the purpose of filing criminal informations, unless such findings are tainted with grave abuse of discretion, amounting to lack or excess of jurisdiction. The *rationale* behind the

general rule rests on the principle of separation of powers, dictating that the determination of probable cause for the purpose of indicting a suspect is properly an executive function; while the exception hinges on the limiting principle of checks and balances, whereby the judiciary, through a special civil action of *certiorari*, has been tasked by the present Constitution 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.

Judicial review of the resolution of the Secretary of Justice is limited to a determination of whether there has been a grave abuse of discretion amounting to lack or excess of jurisdiction considering that full discretionary authority has been delegated to the executive branch in the determination of probable cause during a preliminary investigation. Courts are not empowered to substitute their judgment for that of the executive branch; it may, however, look into the question of whether such exercise has been made in grave abuse of discretion.

When the Secretary of Justice concluded that there was planting of evidence based on the lone fact that the raiding team arrived ahead of the search team, he, in effect went into the merits of the defense. When he made a determination based on his own appreciation of the pieces of evidence for and against the accused, he effectively assumed the function of a trial judge in the evaluation of the pieces of evidence and, thereby, acted outside his jurisdiction.

When confronted with a motion to withdraw an Information on the ground of lack of probable cause based on a resolution of the Secretary of Justice, the bounden duty of the trial court is to make an independent assessment of the merits of such motion. Having acquired jurisdiction over the case, the trial court is not bound by such resolution but is

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required to evaluate it before proceeding farther with the trial. While the Secretary's ruling is persuasive, it is not binding on courts. When the trial court's Order rests entirely on the assessment of the DOJ without doing its own independent evaluation, the trial court effectively abdicates its judicial power and refuses to perform a positive duty enjoined by law.

The RTC clearly deferred to the finding of probable cause by the Secretary of Justice without doing its own independent evaluation. The trial court even expressed its apprehension that no prosecutor would be willing to prosecute the case should the motion to withdraw be denied. The only matter discussed by the trial court was its concurrence with the DOJ relative to the service and conduct of the search for illegal drugs. The trial court declared that the evidence is inadmissible in view of the manner the search warrant was served. Settled is the rule that the presence or absence of the elements of the crime is evidentiary in nature and is a matter of defense, the truth of which can be best passed upon after a full-blown trial on the merits.

In the case at bar, the grounds relied upon by petitioners should be fully explained and threshed out not in a preliminary investigation but during trial as the same are matters of defense involving factual issues.

At the risk of sounding repetitive, we must emphasize that the trial court, having acquired jurisdiction over the case, is not bound by such resolution but is required to evaluate it before proceeding further with the trial. While the Secretary's ruling is persuasive, it is not binding on courts.

- **G.R. No. 158916. March 19, 2014** Heirs of Cornelio Miguel Vs. Heirs of Angel Miguel

- **ISSUE:** complaint for the nullification of deeds of donation and reconveyance of property.
- While blood may be thicker than water, land has caused numerous family disputes which are

oftentimes bitter and protracted. This case is another example.

The petition fails. *Res judicata* in the concept of conclusiveness of judgment precludes the complaint in Civil Case No. 2735.

A better understanding of the fundamentals of *res judicata* and conclusiveness of judgment will explain and clarify the Court's ruling.

The following are the elements of *res judicata*:

1. (1) the judgment sought to bar the new action must be final;
2. (2) the decision must have been rendered by a court having jurisdiction over the subject matter and the parties;
3. (3) the disposition of the case must be a judgment on the merits; and
4. (4) there must be as between the first and second action, identity of parties, subject matter, and causes of action.

Under Rule 39 of the Rules of Court, *res judicata* embraces two concepts: (1) bar by prior judgment as enunciated in Section 47(b) of the said Rule and (2) conclusiveness of judgment as explained in Section 47(c) of the same Rule. Should identity of parties, subject matter, and causes of action be shown in the two cases, then *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.

The petitioners do not question the ruling

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of the Court of Appeals that there is identity of parties in Civil Case No. 1185 and Civil Case No. 2735. What the petitioners principally contend is that the judgment in Civil Case No. 1185 cannot bar Civil Case No. 2735 as the two cases involve different causes of action and different subject matters.

However, for *res judicata* in the concept of conclusiveness of judgment to apply, identity of cause of action is not required but merely identity of issue.

The claim of the petitioners that Civil Case No. 1185 was dismissed not because they have no cause of action but because they failed to state such a cause of action is wrong. The dispositive portion of the Order dated January 31, 1986 is clear: the amended complaint was "ordered dismissed **for lack of cause of action.**"

The Order dated January 31, 1986 in Civil Case No. 1185 ruled that Cornelio and the petitioners had no cause of action in connection with the reformation of the deed of donation executed by the spouses Cornelio and Nieves in favor of Angel because the said deed of donation is a simple donation and therefore not a proper subject of an action for reformation. As there can be no reformation of the deed of donation pursuant to Article 1366 of the Civil Code, the necessary implication and consequence of the Order dated January 31, 1986 in Civil Case No. 1185 is that the deed of donation stands and the identity of the property subject of the donation is that parcel of land which corresponds to the technical description in the deed of donation. In other words, the property donated under the deed of donation is that which matches the property whose metes and bounds is particularly described in the deed of donation. This is because the technical description of the land is proof of its identity. Such technical description embodies the identity of the land. In this case, the technical description in the deed of donation

pertains to Lot J of Psd. 146880. That is why the trial court in Spl. Civil Action No. 1950 ordered the issuance in Angel's name of TCT No. 11349 over Lot J of Psd. 146880. Thus, in Civil Case No. 1185 and Spl. Civil Action No. 1950, Lot J of Psd. 146880 is the property donated to Angel and registered in his name as TCT No. 11349 and, subsequently, to Angel's four children as TCT Nos. 20094, 20095, 20096, and 20097.

For purposes of conclusiveness of judgment, identity of issues means that the right, fact, or matter in issue has previously been either "directly adjudicated or necessarily involved in the determination of an action" by a competent court. In this case, the issue of the transfer pursuant to the deed of donation to Angel of Lot J of Psd. 146880 and, corollarily, his right over the said property has been necessarily involved in Civil Case No. 1185.

The petitioners engage in hair-splitting in arguing that none of the issues involved in Civil Case No. 1185 is also involved in Civil Case No. 2735. The primary issue in Civil Case No. 1185 is whether the true intention of the spouses Cornelio and Nieves as donors was to donate to Angel the property described in the deed of donation, that is, Lot J of Psd. 146880. The issue in Civil Case No. 1185 is therefore the identity of one of the properties donated by the spouses Cornelio and Nieves for which Cornelio and the petitioners sought reformation of the deed of donation. As stated above, the order of dismissal of the complaint in Civil Case No. 1185 necessarily implied that, as the deed of donation is not subject to reformation, the identity of the property subject of the donation is the property corresponding to the technical description, Lot J of Psd. 146880. On the other hand, the subject matter of Civil Case No. 2735 is the recovery of Lot J of Psd. 146880 on the petitioners' claim that a clerical error prevented the deed of donation from conforming to the true intention of the spouses Cornelio and Nieves as to the

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identity of the property they intended to donate to Angel. This boils down to the issue of the true identity of the property, which has been, as earlier stated, necessarily adjudicated in Civil Case No. 1185. Thus, the judgment in Civil Case No. 1185 on the issue of the identity of the land donated by Cornelio and Nieves to Angel is conclusive in Civil Case No. 2735, there being a similarity of parties in the said cases.

The petitioners also question the validity of the deed of donation executed by the spouses Cornelio and Nieves in favor of Angel. Indeed, that is the foundation of their claim. However, that issue had been settled with finality in Civil Case No. 1185. The petitioners who were parties against Angel in Civil Case No. 1185 cannot resurrect that issue against the privies or successors-in-interest of Angel in Civil Case No. 2735 without violating the principle of *res judicata*. In other words, Civil Case No. 2735 is barred by the conclusiveness of the judgment in Civil Case No. 1185.

As the issues of whether Lot J of Psd. 146880 is one of the properties donated by the spouses Cornelio and Nieves to Angel and whether such donation was valid have been necessarily settled in Civil Case No. 1185, they can no longer be relitigated again in Civil Case No. 2735. The Order dated January 31, 1986 effectively held that the said property had been donated to Angel. It follows that he had properly sought its registration in his name under TCT No. 11349 and he had validly partitioned and donated it to his four children who acquired TCT Nos. 20094, 20095, 20096, and 20097 in their respective names.

- **G.R. No. 193516. March 24, 2014** Vilma Macedenio Vs. Catalina Ramo, et al.

- In resolving whether to dismiss a case for violation of the rules covering certifications against forum-shopping, the courts should be mindful of the facts and merits of the case, the extant evidence,

the principles of justice, and the rules of fair play. They should not give into rigidity, indifference, indolence, or lack of depth.

The trial court in Civil Case No. 5703-R committed grave abuse of discretion in terminating or dismissing the case for failure of the parties to submit a compromise agreement. In *Goldloop Properties, Inc. v. Court of Appeals*, the Court held that dismissing the action without allowing the parties to present evidence and after ordering them to compromise is tantamount to deprivation of due process, and the "dismissal of an action for failure to submit a compromise agreement, which is not even required by any rule, is definitely a harsh action.

The Court likewise held therein that "the fact that negotiations for a compromise

agreement persisted even up to the time of the dismissal of the case strongly

demonstrates their earnest efforts to abide by the trial court's order to settle their

dispute amicably"; thus, "dismissing an action on account of the failure of the

parties to compromise, would be to render nugatory the pronounced policy of the

law to encourage compromises, and thus open the floodgates to parties refusing to

agree upon an amicable settlement by simply railroading their opposing parties'

position, or even defeating the latter's claim by the expedient of an outright DISMISSAL.

For the same reasons, the Court finds that the dismissal of Civil Case No. 7150-R was unwarranted. It is true that while it was incumbent for petitioner to have informed the trial court of Civil Case

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No. 5703-R and the pending DENR Protest, this Court is inclined to forego petitioner's failure to abide by the requirements of the 1997 Rules regarding certifications against forum-shopping, in favor of deciding the case on the basis of merit, seeing, as the Court does, that a rigid interpretation of the 1997 Rules would result in substantial injustice to petitioner. The circumstances require that substance must prevail over form, keeping in mind, as the Court has held countless times, that procedural rules are mere tools designed to facilitate the attainment of justice; their application should be relaxed when they hinder instead of promote substantial justice. Public policy dictates that court cases should as much as possible be resolved on the merits and not on technicalities. Besides, "the Rules of Civil Procedure on forum shopping are not always applied with inflexibilities.

- **G.R. Nos. 162299 & 174758. March 26, 2014** Saint Louis University, Inc., et al. Vs. Baby Nellie M. Olarez, et al./Baby Nellie M. Olarez, et al. Vs. Saint Louis University, Inc., et al.

ISSUE: INDIRECT CONTEMPT

The Olarez group argues that the CA erred in ruling that SLU and its officials were denied of due process as they were not given the opportunity to comment and be heard on the contempt charges against them.

The group's petition is bereft of merit.

Indirect contempt is defined by and punished under Section 3, Rule 71 of the *Rules of Court*, which provides:

Section 3. *Indirect contempt to be punished after charge and hearing.* — After a charge in writing has been filed, and an opportunity given to the respondent to comment thereon within such period as may be fixed by the court and to be heard by himself or counsel, a person guilty of any of the following acts

may be punished for indirect contempt:

(a) Misbehavior of an officer of a court in the performance of his official duties or in his official transactions;

(b) Disobedience of or resistance to a lawful writ, process, order, or judgment of a court, including the act of a person who, after being dispossessed or ejected from any real property by the judgment or process of any court of competent jurisdiction, enters or attempts or induces another to enter into or upon such real property, or in any manner disturbs the possession given to the person adjudged to be entitled thereto;

(c) Any abuse of or any unlawful interference with the processes or proceedings of a court not constituting direct contempt under section 1 of this Rule;

(d) Any improper conduct tending, directly or indirectly, to impede, obstruct, or degrade the administration of justice;

(e) Assuming to be an attorney or an officer of a court, and acting as such without authority;

(f) Failure to obey a subpoena duly served;

(g) The rescue, or attempted rescue, of a person or property in the custody of an officer by virtue of an order or process of a court held by him.

But nothing in this section shall be so construed as to prevent the court from issuing process to bring the respondent into court, or from holding him in custody pending such proceedings. (3a)

In contempt, the intent goes to the gravamen of the offense. Thus, the good faith or lack of it, of the alleged contemnor is considered. Where the act complained of is ambiguous or does not clearly show on its face that it is

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contempt, and is one which, if the party is acting in good faith, is within his rights, the presence or absence of a contumacious intent is, in some instances, held to be determinative of its character. A person should not be condemned for contempt where he contends for what he believes to be right and in good faith institutes proceedings for the purpose, however erroneous may be his conclusion as to his rights. To constitute contempt, the act must be done wilfully and for an illegitimate or improper purpose.

The supposed inaction of the SLU and its officials when the Olaires group visited the school on July 17, 2003 to demand their compliance with the decision was not borne out of a contumacious conduct tending, directly or indirectly, to hinder the implementation of a judgment. A conduct, to be contumacious, implies willfulness, bad faith or with deliberate intent to cause injustice, which is clearly not the case here. On the contrary, SLU was well within its rights to appeal the decision and not immediately heed the demand of the Olaires group.

- **G.R. No. 162063. March 31, 2014** Leonora A. Pascual, represented by Florebhee N. Agcaoli, Attorney-In-Fact Vs. Josefino L. Daquioag, et al.

- The writ of execution issued upon a final judgment adjudicating the ownership of land to a party may authorize putting her in possession although the judgment does not specifically direct such act.

As a general rule, a writ of execution should strictly conform to every particular of the judgment to be executed, and not vary the terms of the judgment it seeks to enforce, nor may it go beyond the terms of the judgment sought to be executed; the execution is void if it is in excess of and beyond the original judgment or award.

Admittedly, the phrase "placing the winning party, Catalina Almazan Villamor in the premises of the land in question"

was not expressly stated in the dispositive portion of the decision of the Regional Executive Director of the DENR. But the absence of that phrase did not render the directive to enforce invalid because the directive was in full consonance with the decision sought to be executed. A judgment is not confined to what appears on the face of the decision, for it embraces whatever is necessarily included therein or necessary thereto.

Upon the final finding of the ownership in the judgment in favor of Almazan Villamor, the delivery of the possession of the property was deemed included in the decision, considering that the claim itself of Pascual to the possession had been based also on ownership. In *Nazareno v. Court of Appeals*, the Court affirmed the writ of execution awarding possession of land, notwithstanding that the decision sought to be executed did not direct the delivery of the possession of the land to the winning parties.

- **G.R. No. 199595. April 2, 2014** Philippine Woman's Christian Temperance Union, Inc. Vs. Teodoro R. Yangco 2nd and 3rd Generation Heirs Foundation, Inc.

ISSUE: IMMUTABILITY OF JUDGMENT; Exceptions

On its face, it is immediately apparent that the petition merits outright dismissal in view of the doctrine of immutability attached to the Court's final and executory Resolutions dated July 21, 2010 and September 15, 2010 in G.R. No. 190193.

The doctrine postulates that 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 is made by the court that rendered it or by the Highest Court of the land. Any act which violates this principle must immediately be struck down.

While firmly ingrained as a basic

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procedural tenet in Philippine jurisprudence, immutability of final judgments was never meant to be an inflexible tool to excuse and overlook prejudicial circumstances. The doctrine must yield to practicality, logic, fairness and substantial justice. Hence, it's application admits 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.

Here, the third exception is attendant. The nullity of the RTC judgment and all subsequent rulings affirming the same, render inoperative the doctrine of immutability of judgment, and consequently justify the propriety of giving due course to the present petition.

To expound, the RTC judgment in LRC Case No. Q-18126(04) and all proceedings taken in relation thereto were void because the RTC did not acquire jurisdiction over the fundamental subject matter of TRY Foundation's petition for the issuance of a title which was in reality, a complaint for revocation of donation, an ordinary civil action outside the ambit of Section 108 of P.D. No. 1529.

The petition filed by TRY Foundation was a disguised complaint for revocation of donation.

TRY Foundation is actually seeking to recover the possession and ownership of the subject property from PWCTUI and not merely the cancellation of PWCTUI's TCT No. 20970 T-22702. The propriety of pronouncing TRY Foundation as the absolute owner of the subject property rests on the resolution of whether or not the donation made to PWCTUI has been effectively revoked when its corporate term expired in 1979. Stated otherwise, no judgment proclaiming TRY Foundation as the absolute owner of the property can

be arrived at without declaring the deed of donation revoked.

An action which seeks the recovery of property is outside the ambit of Section 108 of P.D. No. 1529.

Whether the donation merits revocation and consequently effect reversion of the donated property to the donor and/or his heirs cannot be settled by filing a mere petition for cancellation of title under Section 108 of P.D. No. 1529

The petition of TRY Foundation had the effect of reopening the decree of registration in the earlier LRC Case No. 20970 which granted PWCTUI's application for the issuance of a new owner's duplicate copy of TCT No. 20970. As such, it breached the *caveat* in Section 108 that "this section shall not be construed to give the court authority to reopen the judgment or decree of registration." The petition of TRY Foundation also violated that portion in Section 108 stating that "all petitions or motions filed under this section as well as any other provision of this decree after original registration shall be filed and entitled in the original case in which the decree of registration was entered." The petition of TRY Foundation in LRC Case No. Q-18126(04) was clearly not a mere continuation of LRC Case No. 20970.

Further, the petition filed by TRY Foundation is not within the province of Section 108 because the relief thereunder can only be granted if there is unanimity among the parties, or that there is no adverse claim or serious objection on the part of any party in interest.

Records show that in its opposition to the petition, PWCTUI maintained that it "remains and continues to be the true and sole owner in fee simple of the property" and that TRY Foundation "has no iota of right" thereto.

More so, the enumerated instances for

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amendment or alteration of a certificate of title under Section 108 are non-controversial in nature. They are limited to issues so patently insubstantial as not to be genuine issues. The proceedings thereunder are summary in nature, contemplating insertions of mistakes which are only clerical, but certainly not controversial issues.

Undoubtedly, revocation of donation entails litigious and controversial matters especially in this case where the condition supposedly violated by PWCTUI is not expressly stated in the deed of donation. Thus, it is imperative to conduct an exhaustive examination of the factual and legal bases of the parties' respective positions for a complete determination of the donor's desires. Certainly, such objective cannot be accomplished by the court through the abbreviated proceedings of Section 108.

In fact, even if it were specifically imposed as a ground for the revocation of the donation that will set off the automatic reversion of the donated property to the donor and/or his heirs, court intervention is still indispensable.

As ruled in *Vda. de Delgado v. CA*, "[a]lthough automatic reversion immediately happens upon a violation of the condition and therefore no judicial action is necessary for such purpose, still judicial intervention must be sought by the aggrieved party if only for the purpose of determining the propriety of the rescission made." In addition, where the donee denies the rescission of the donation or challenges the propriety thereof, only the final award of the court can conclusively settle whether the resolution is proper or not. Here, PWCTUI unmistakably refuted the allegation that the expiration of its corporate term in 1979 rescinded the donation.

Lastly, the issues embroiled in revocation of donation are litigable in an ordinary civil proceeding which demands stricter

jurisdictional requirements than that imposed in a land registration case.

Foremost of which is the requirement on the service of summons for the court to acquire jurisdiction over the persons of the defendants. Without a valid service of summons, the court cannot acquire jurisdiction over the defendant, unless the defendant voluntarily submits to it. Service of summons is a guarantee of one's right to due process in that he is properly apprised of a pending action against him and assured of the opportunity to present his defenses to the suit.

In contrast, jurisdiction in a land registration cases being a proceeding *in rem*, is acquired by constructive seizure of the land through publication, mailing and posting of the notice of hearing. Persons named in the application are not summoned but merely notified of the date of initial hearing on the petition.

The payment of docket fees is another jurisdictional requirement for an action for revocation which was absent in the suit filed by TRY Foundation. On the other hand, Section 111 of P.D. No. 1529 merely requires the payment of filing fees and not docket fees.

The absence of the above jurisdictional requirements for ordinary civil actions thus prevented the RTC, acting as a land registration court, from acquiring the power to hear and decide the underlying issue of revocation of donation in LRC Case No. Q-18126(04). Any determination made involving such issue had no force and effect; it cannot also bind PWCTUI over whom the RTC acquired no jurisdiction for lack of service of summons.

Conclusion

All told, the RTC, acting as a land

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registration court, had no jurisdiction over the actual subject matter contained in TRY Foundation's petition for issuance of a new title. TRY Foundation cannot use the summary proceedings in Section 108 of P.D. No. 1529 to rescind a contract of donation as such action should be threshed out in ordinary civil proceedings. In the same vein, the RTC had no jurisdiction to declare the donation annulled and as a result thereof, order the register of deeds to cancel PWCTUI's TCT No. 20970 T-22702 and issue a new one in favor of TRY Foundation.

The RTC, acting as a land registration court, should have dismissed the land registration case or re-docketed the same as an ordinary civil action and thereafter ordered compliance with stricter jurisdictional requirements. Since the RTC had no jurisdiction over the action for revocation of donation disguised as a land registration case, the judgment in LRC Case No. Q-18126(04) is null and void. Being void, it cannot be the source of any right or the creator of any obligation. It can never become final and any writ of execution based on it is likewise void. It may even be considered as a lawless thing which can be treated as an outlaw and slain at sight, or ignored wherever and whenever it exhibits its head.

Resultantly, the appellate proceedings relative to LRC Case No. Q-18126(04) and all issuances made in connection with such review are likewise of no force and effect. A void judgment cannot perpetuate even if affirmed on appeal by the highest court of the land. All acts pursuant to it and all claims emanating from it have no legal effect.

The Court Resolutions dated July 21, 2010 and September 15, 2010 do not bar the present ruling.

While PWCTUI could have still challenged the RTC's jurisdiction even on appeal, its failure to do so cannot work to its disadvantage. The issue of jurisdiction is

not lost by waiver or by estoppel; no laches will even attach to a judgment rendered without jurisdiction.

- **G.R. No. 175750-51. April 2, 2014** Silverina E. Consigna Vs. People of the Philippines

- Entrenched in jurisprudence is the dictum that the real nature of the criminal charge is determined not from the caption or preamble of the information, or from the specification of the provision of law alleged to have been violated, which are mere conclusions of law, but by the actual recital of the facts in the complaint or information.

The averments in the two (2) sets of Information against petitioner and Rusillon clearly stated facts and circumstances constituting the elements of the crime of estafa as to duly inform them of the nature and cause of the accusation, sufficient to prepare their respective defenses.

2. Contrary to the submission of petitioner, false pretense and fraudulent acts attended her transaction with Moleta. The law explicitly provides that in the prosecution for Estafa under par. (2)(a), Art. 315 of the RPC, it is indispensable that the element of deceit, consisting in the false statement or fraudulent representation of the accused, be made prior to, or at least simultaneously with the commission of the fraud, it being essential that such false statement or representation constitutes the very cause or the only motive which induced the offended party to part with his money.

The elements of estafa by means of deceit, whether committed by false pretenses or concealment, are the following: (a) there must be a false pretense, fraudulent act or fraudulent means; (b) such false pretense, fraudulent act or fraudulent means must be made or executed prior to or simultaneously with the commission of the fraud; (c) the offended party must have relied on the false pretense, fraudulent act or

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fraudulent means, that is, he was induced to part with his money or property because of the false pretense, fraudulent act or fraudulent means; and (d) as a result thereof, the offended party suffered damage.

As borne by the records, petitioner's representations were outright distortions of the truth perpetrated for the sole purpose of inducing Moleta to hand to her the amount of P320,000.00 purportedly for the Municipality of General Luna. Being the Municipal Treasurer, there was reason for Moleta to rely on petitioner's representations that money is needed for the payment of the employees' salary as well as for the construction of the gymnasium. There was also a ring of truth to the deception that the share of the municipality from the IRA is forthcoming. Added to this, petitioner's representations were even supported by the issuance of three (3) LBP checks to guarantee payment taken from the account of the municipality and signed by no less than the municipal mayor, giving the impression that the loaned amount would indeed be utilized for public purposes.

3. Anent the issue on the alleged grave abuse of discretion amounting to lack of jurisdiction committed by the court *a quo* when it took cognizance of Criminal Case No. 24182, charging petitioner for "taking advantage of her official position and the discharge of the functions as such," petitioner averred that the charge was erroneous because borrowing of money is not a function of a Municipal Treasurer under the Local Government Code.

We find such reasoning misplaced.

The following are the essential elements of violation of Sec. 3(e) of RA 3019:

1. The accused must be a public officer discharging administrative, judicial or official functions;
2. He must have acted with manifest

partiality, evident bad faith or inexcusable negligence; and

3. That his action caused any undue injury to any party, including the government, or giving any private party unwarranted benefits, advantage or preference in the discharge of his functions.

There is no doubt that petitioner, being a municipal treasurer, was a public officer discharging official functions when she misused such position to be able to take out a loan from Moleta, who was misled into the belief that petitioner, as municipal treasurer, was acting on behalf of the municipality.

In this case, it was not only alleged in the Information, but was proved with certainty during trial that the manner by which petitioner perpetrated the crime necessarily relates to her official function as a municipal treasurer. Petitioner's official function created in her favor an impression of authority to transact business with Moleta involving government financial concerns. There is, therefore, a direct relation between the commission of the crime and petitioner's office – the latter being the very reason or consideration that led to the unwarranted benefit she gained from Moleta, for which the latter suffered damages in the amount of P320,000.00. It was just fortunate that Rusillon instructed the bank to stop payment of the checks issued by petitioner, lest, the victim could have been the Municipality of General Luna.

As regards the two other elements, the Court explained in *Cabrera v. Sandiganbayan* that there are two (2) ways by which a public official violates Sec. 3(e) of R.A. No. 3019 in the performance of his functions, namely: (a) by causing undue injury to any party, including the Government; or (b) by giving any private party any unwarranted benefits, advantage or preference. The accused may be charged under either

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mode or under both.

In this case, petitioner was charged of violating Sec. 3(e) of R.A. No. 3019 under the alternative mode of "causing undue injury" to Moleta committed with evident bad faith, for which she was correctly found guilty. "Evident bad faith" connotes not only bad judgment but also palpably and patently fraudulent and dishonest purpose to do moral obliquity or conscious wrongdoing for some perverse motive or ill will. "Evident bad faith" contemplates a state of mind affirmatively operating with furtive design or with some motive of self-interest or ill will or for ulterior purposes, which manifested in petitioner's actuations and representation.

The inevitable conclusion is that petitioner capitalized on her official function to commit the crimes charged. Without her position, petitioner would not have induced Moleta to part with her money. In the same vein, petitioner could not have orchestrated a scheme of issuing postdated checks meddling with the municipality's coffers and defiling the mayor's signature.

- **G.R. No. 182153. April 7, 2014** Tung Ho Steel Enterprises Corporation Vs. Ting Guan Trading Corporation

- ***I. The Court is not precluded from ruling on the jurisdictional issue raised in the petition***
- ***A. The petition is not barred by res judicata***

Res judicata refers to the rule that a final judgment or decree on the merits by a court of competent jurisdiction is conclusive on the rights of the parties or their privies in all later suits on all points and matters determined in the former suit. For *res judicata* to apply, the final judgment must be on the merits of the case which means that the court has unequivocally determined the parties' rights and obligations with respect to the causes of action and the subject matter of the case.

Contrary to Ting Guan's position, our ruling in G.R. No. 176110 does not operate as *res judicata* on Tung Ho's appeal; G.R. No. 176110 did not conclusively rule on all issues raised by the parties in this case so that this Court would now be barred from taking cognizance of Tung Ho's petition. Our disposition in G.R. No. 176110 only dwelt on technical or collateral aspects of the case, and not on its merits. Specifically, we did not rule on whether Tung Ho may enforce the foreign arbitral award against Ting Guan in that case.

B. The appellate court cannot be ousted of jurisdiction until it finally disposes of the case

The court's jurisdiction, once attached, cannot be ousted until it finally disposes of the case. When a court has already obtained and is exercising jurisdiction over a controversy, its jurisdiction to proceed to the final determination of the case is retained.

The CA was not ousted of its jurisdiction with the promulgation of G.R. No. 176110. The July 5, 2006 decision has not yet become final and executory for the reason that there remained a pending incident before the CA – the resolution of Tung Ho's motion for reconsideration – when this Court promulgated G.R. No. 176110. In this latter case, on the other hand, we only resolved procedural issues that are divorced from the present jurisdictional question before us. Thus, what became immutable in G.R. No. 176110 was the ruling that Tung Ho's complaint is not dismissible on grounds of prematurity, nullity of the foreign arbitral award, improper venue, and the foreign arbitral award's repugnance to local public policy. This leads us to the conclusion that in the absence of any ruling on the merits on the issue of jurisdiction, *res judicata* on this point could not have set in.

C. Tung Ho's timely filing of a motion for reconsideration and of a petition

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for review on certiorari prevented the July 5, 2006 decision from attaining finality

Furthermore, under Section 2, Rule 45 of the Rules of Court, Tung Ho may file a petition for review on *certiorari* before the Court within (15) days from the denial of its motion for reconsideration filed in due time after notice of the judgment. Tung Ho's timely filing of a motion for reconsideration before the CA and of a Rule 45 petition before this Court prevented the July 5, 2006 CA decision from attaining finality. For this Court to deny Tung Ho's petition would result in an anomalous situation where a party litigant is penalized and deprived of his fair opportunity to appeal the case by faithfully complying with the Rules of Court.

II. The trial court acquired jurisdiction over the person of Ting Guan

A. Tejero was not the proper person to receive the summons

Nonetheless, we see no reason to disturb the lower courts' finding that Tejero was not a corporate secretary and, therefore, was not the proper person to receive the summons under Section 11, Rule 14 of the Rules of Court.

B. TingGuanvoluntarilyappeared before the trial court

However, we cannot agree with the **legal conclusion** that the appellate court reached, given the **established facts**. To our mind, Ting Guan voluntarily appeared before the trial court in view of the procedural recourse that it took before that court. Its voluntary appearance is equivalent to service of summons.

As a basic principle, courts look with disfavor on piecemeal arguments in motions filed by the parties. Under the omnibus motion rule, a motion attacking a

pleading, order, judgment, or proceeding shall include all objections **then available**. The purpose of this rule is to obviate multiplicity of motions and to discourage dilatory motions and pleadings. Party litigants should not be allowed to reiterate identical motions, speculating on the possible change of opinion of the courts or of the judges thereof.

In this respect, Section 1, Rule 16 of the Rules of Court requires the defendant to file a motion to dismiss within the time for, but before filing the answer to the complaint or pleading asserting a claim. Section 1, Rule 11 of the Rules of Court, on the other hand, commands the defendant to file his answer within fifteen (15) days after service of summons, unless a different period is fixed by the trial court. Once the trial court denies the motion, the defendant should file his answer within the balance of fifteen (15) days to which he was entitled at the time of serving his motion, but the remaining period cannot be less than five (5) days computed from his receipt of the notice of the denial.

Instead of filing an answer, the defendant may opt to file a motion for reconsideration. Only after the trial court shall have denied the motion for reconsideration does the defendant become bound to file his answer. If the defendant fails to file an answer within the reglementary period, the plaintiff may file a motion to declare the defendant in default. This motion shall be with notice to the defendant and shall be supported by proof of the failure.

The trial court's denial of the motion to dismiss is not a license for the defendant to file a Rule 65 petition before the CA. An order denying a motion to dismiss cannot be the subject of a petition for *certiorari* as the defendant still has an adequate remedy before the trial court – *i.e.*, to file an answer and to subsequently appeal the case if he loses the case. As exceptions, the defendant may avail of a petition for

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certiorari if the ground raised in the motion to dismiss is lack of jurisdiction over the person of the defendant or over the subject matter.

We cannot allow and simply passively look at Ting Guan's blatant disregard of the rules of procedure in the present case. The Rules of Court only allows the filing of a motion to dismiss *once*. Ting Guan's *filing of successive motions to dismiss*, under the guise of "supplemental motion to dismiss" or "motion for reconsideration", is not only improper but also dilatory. Ting Guan's belated reliance on the improper service of summons was a mere afterthought, if not a bad faith ploy to avoid the foreign arbitral award's enforcement which is still at its preliminary stage after the lapse of almost a decade since the filing of the complaint.

Furthermore, Ting Guan's failure to raise the alleged lack of jurisdiction over its person in the first motion to dismiss is fatal to its cause. Ting Guan voluntarily appeared before the RTC when it filed a motion to dismiss and a "supplemental motion to dismiss" without raising the RTC's lack of jurisdiction over its person.

- **G.R. No. 197293. April 21, 2014** Alfredo C. Mendoza Vs. People of the Philippines and Juno Cars, Inc.

- While the determination of probable cause to charge a person of a crime is the sole function of the prosecutor, the trial court may, in the protection of one's fundamental right to liberty, dismiss the case if, upon a personal assessment of the evidence, it finds that the evidence does not establish probable cause.

Although jurisprudence and procedural rules allow it, a judge must always proceed with caution in dismissing cases due to lack of probable cause, considering the preliminary nature of the evidence before it. It is only when he or she finds

that the evidence on hand absolutely fails to support a finding of probable cause that he or she can dismiss the case. On the other hand, if a judge finds probable cause, he or she must not hesitate to proceed with arraignment and trial in order that justice may be served.

- **G.R. No. 191590. April 21, 2014** Republic of the Philippines Vs. Transunion Corporation

- The sole issue for the Court's resolution is whether or not the CA correctly granted Transunion's petition for *certiorari* against the RTC's order denying the latter's motion to dismiss.

The petition is meritorious.

An order denying a motion to dismiss is an interlocutory order which neither terminates nor finally disposes of a case as it leaves something to be done by the court before the case is finally decided on the merits. Thus, as a general rule, the denial of a motion to dismiss cannot be questioned in a special civil action for *certiorari* which is a remedy designed to correct errors of jurisdiction and not errors of judgment. However, when the denial of the motion to dismiss is tainted with grave abuse of discretion, the grant of the extraordinary remedy of *certiorari* may be justified. By grave abuse of discretion is meant such capricious and whimsical exercise of judgment that 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.

In the present case, the Court finds that the RTC did not commit any grave abuse of discretion in denying Transunion's motion to dismiss considering that the latter's further reconsideration or appeal of the investigation report was not a condition precedent to the filing of the

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Republic's reversion complaint. As such, there was no violation of the rule on exhaustion of administrative remedies nor can it be said that the reversion complaint stated no cause of action.

To elaborate, the rule on exhaustion of administrative remedies provides that if a remedy within the administrative machinery can still be resorted to by giving the administrative officer concerned every opportunity to decide on a matter that comes within his jurisdiction, then such remedy should be exhausted first before the court's judicial power can be sought. The underlying principle of the rule rests on the presumption that the administrative agency, if afforded a complete chance to pass upon the matter

will decide the same correctly.

As may be gleaned from the records, **the LMB proceeding subject of Transunion's motion to dismiss was merely investigative in nature since it was conducted as a fact-finding/recommendatory procedure, meant only to determine whether or not the LMB Director should initiate reversion proceedings.** Section 15 of LC 68, which states the parameters to be observed regarding the report and recommendation resulting from the said investigation, is bereft of any indication that the remedies of reconsideration or a further appeal is available to a party disagreeing with the same,

Finally, the Court finds that there was no violation of Transunion's

right to administrative due process since, as the Republic pointed out, not only did it file an answer, but it also presented its evidence and formally offered the same. It is well-established that the touchstone of due process is the opportunity to be heard. This Transunion was unquestionably afforded

in this case, despite having been denied

the remedies of reconsideration and appeal which, however, remain unavailable, either by statute or regulation, against the investigation report and recommendation assailed herein. At any rate, lack of administrative due process, on the assumption of its truth, is not a ground for a motion to dismiss.

- **G.R. No. 188881. April 21, 2014** Republic of the Philippines Vs. Bienvenido R. Tantoco, Jr., Dominador R. Santiago, et al. Concurring and Dissenting Opinion

- **J. Bersamin**

- Petitioner Republic now raises the sole issue of whether or not the Sandiganbayan committed grave abuse of discretion in excluding the documents due to petitioner's own failure to produce them at the pre-trial.

- **We deny the petition.**

- After a careful scrutiny of the records, We find that in excluding Exhibits "MMM" to "AAAAAAA," the Sandiganbayan properly exercised its discretion over evidence formally offered by the prosecution. Nothing therein shows that the court gravely exceeded its jurisdiction.

Petitioner conveniently disregards the basic rule of evidence, namely, that the issue of the admissibility of documentary evidence arises only upon formal offer thereof. This is why objection to the documentary evidence must be made at the time it is formally offered, and not earlier.

Accordingly, the Court ruled in *Interpacific Transit, Inc. v. Aviles* as follows:

x x x. The identification of the document before it is marked as an exhibit does not constitute the formal offer of the document as evidence for the party presenting it. **Objection to the identification and marking of the document is not equivalent to objection to the document when it is formally offered in evidence. What**

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really matters is the objection to the document at the time it is formally offered as an exhibit.

xxx x

It would have been so simple for the defense to reiterate its former objection, this time seasonably, when the formal offer of exhibits was made.

It is curious that it did not, especially so since the objections to the formal offer of exhibits was made in writing. In fact, the defense filed no objection at all not only to the photocopies but to all the other exhibits of the prosecution.

For those documents introduced in evidence as proof of their contents, the assailed Resolution stated that petitioner has not made any effort whatsoever to explain why it submitted mere photocopies. When the subject of inquiry is the content of a document, submission of a certified true copy is justified only in clearly delineated instances such as the following:

- a) When the original has been lost or destroyed, or cannot be produced in court, without bad faith on the part of the offeror;
- b) When the original is in the custody or under the control of the party against whom the evidence is offered, and the latter fails to produce it after reasonable notice;
- (c) When the original consists of numerous accounts or other documents which cannot be examined in court without great loss of time and the fact sought to be established from them is only the general result of the whole; and
- (d) When the original is a public record in the custody of a public officer or is recorded in a public office.

Nothing on record shows, and petitioner itself makes no claim, that the Exhibits fall

under any of the exceptions to the Best Evidence rule. Secondary evidence of the contents of writings is admitted on the theory that the original cannot be produced by the party who offers the evidence within a reasonable time by the exercise of reasonable diligence. Even then, the general rule is that secondary evidence is still not admissible until the non- production of the primary evidence has been sufficiently accounted for.

Petitioner failed to obey the mandate of G.R. No. 90478, which remains an important case on pre-trial and discovery measures to this day; the rationale of these rules, especially on the production of documents, must be constantly kept in mind by the bar:

The message is plain. It is the duty of each contending party to lay before the court the facts in issue-fully and fairly; i.e., to present to the court *all* the material and relevant facts known to him, suppressing or concealing nothing, nor preventing another party, by clever and adroit manipulation of the technical rules of pleading and evidence, from also presenting all the facts within his knowledge.

xx xx

The truth is that "evidentiary matters" may be inquired into and learned by the parties before the trial. Indeed, it is the purpose and policy of the law that the parties - before the trial if not indeed even before the pre-trial - should discover or inform themselves of all the facts relevant to the action, not only those known to them individually, but also those known to adversaries; in other words, the *desideratum* is that civil trials should not be carried on in the dark; and the Rules of Court make this ideal possible through the deposition-discovery mechanism set forth in Rules 24 to 29. xxx.

xx xx

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x x x. (It is the precise purpose of discovery to ensure mutual knowledge of all the relevant facts on the part of all parties even before trial, this being deemed essential to proper litigation. This is why either party may compel the other to disgorge whatever facts he has in his possession; and the stage at which disclosure of evidence is made is advanced from the time of trial to the period preceding it. supplied)

After failing to submit the documentary evidence during discovery, when it was clearly ordered by both the Sandiganbayan and the Supreme Court to do so, petitioner also repeatedly failed to prove the due execution and authenticity of the documents. Having failed in its belated attempts to assuage the Sandiganbayan through the submission of secondary evidence, petitioner may not use the present forum to gain relief under the guise of Rule 65.

- **G.R. No. 181949. April 23, 2014** Heirs of Francisco Bihag, namely: Alejandra Bihag, et al. Vs. Heirs of Nicasio Bathan, namely: Primitiva Bathan, et al.

The doctrine of finality of judgment dictates that, at the risk of occasional errors, judgments or orders must become final at some point in time.

An aggrieved party is allowed a fresh period of 15 days counted from receipt of the order denying a motion for a new trial or motion for reconsideration within which to file the notice of appeal in the RTC.

In *Neypes*, the Supreme Court, in order to standardize the appeal periods provided in the Rules and to afford litigants fair opportunity to appeal their cases, declared that an aggrieved party has a fresh period

of 15 days counted from receipt of the order dismissing a motion for a new trial or motion for reconsideration, within which to file the notice of appeal in the RTC.⁵³

In light of the foregoing jurisprudence, we agree with petitioners that their Notice of Appeal was timely filed as they had a fresh 15-day period from the time they received the Order denying their Motion for Reconsideration within which to file their Notice of Appeal.

The January 5, 2007 Order has attained finality.

But while we agree with petitioners that their Notice of Appeal was erroneously denied by the RTC, we are nevertheless constrained to deny the instant Petition as the January 5, 2007 Order, denying petitioners' Notice of Appeal, has attained finality. It is a settled rule that a decision or order becomes final and executory if the aggrieved party fails to appeal or move for a reconsideration within 15 days from his receipt of the court's decision or order disposing of the action or proceeding.⁵⁴ Once it becomes final and executory, the decision or order may no longer be amended or modified, not even by an appellate court.⁵⁵

In this case, petitioners, through their counsel, received a copy of the assailed January 5, 2007 Order, under Registry Receipt No. E-0280, on January 22, 2007, as evidenced by the Certification of the assistant postmaster. As such, petitioners should have filed their motion for reconsideration within 15 days, or on or before February 6, 2007, but they did not. Instead, they filed a Petition for *Certiorari* before the Court of Appeals on October 10, 2007. At this time, the RTC's January 5, 2007 Order denying the Notice to Appeal had long become final and executory. Petitioners' mere denial of the receipt of the assailed Order cannot prevail over the Certification issued by the assistant postmaster as we have consistently declared that "[t]he best

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evidence to prove that notice was sent would be a certification from the postmaster, who should certify not only that the notice was issued or sent but also as to how, when and to whom the delivery and receipt was made.”⁵⁶

Considering that the January 5, 2007 Order has attained finality, it may no longer be modified, altered, or disturbed, even if the modification seeks to correct an erroneous conclusion by the court that rendered it.⁵⁷

- **G.R. No. 18832. April 23, 2014** Vivencio B. Villagrancia Vs. 5th Shari'a District Court and Roldan E. Mala, represented by his father, Hadji Kalam T. Mala

Shari'a District Courts have no jurisdiction over real actions where one of the parties is not a Muslim.

Respondent Fifth Shari'a District Court had no jurisdiction to hear, try, and decide Roldan's action for recovery of possession

Jurisdiction over the subject matter is “the power to hear and determine cases of the general class to which the proceedings in question belong.”³⁶ This power is conferred by law,³⁷ which may either be the Constitution or a statute. Since subject matter jurisdiction is a matter of law, parties cannot choose, consent to, or agree as to what court or tribunal should decide their disputes.³⁸ If a court hears, tries, and decides an action in which it has no jurisdiction, all its proceedings, including the judgment rendered, are void.³⁹

To determine whether a court has jurisdiction over the subject matter of the action, the material allegations of the complaint and the character of the relief sought are examined.⁴⁰

The law conferring the jurisdiction of Shari'a District Courts is the Code of the Muslim Personal Laws of the Philippines. Under Article 143 of the Muslim Code, Shari'a District Courts have concurrent original jurisdiction with “existing civil

courts” over real actions not arising from customary contracts⁴¹ wherein the parties involved are Muslims:

When ownership is acquired over a particular property, the owner has the right to possess and enjoy it.⁴³ If the owner is dispossessed of his or her property, he or she has a right of action to recover its possession from the dispossessor.⁴⁴ When the property involved is real,⁴⁵ such as land, the action to recover it is a real action;⁴⁶ otherwise, the action is a personal action.⁴⁷ In such actions, the parties involved must be Muslims for Shari'a District Courts to validly take cognizance of them.

In this case, the allegations in Roldan's petition for recovery of possession did not state that Vivencio is a Muslim. When Vivencio stated in his petition for relief from judgment that he is not a Muslim, Roldan did not dispute this claim.

When it became apparent that Vivencio is not a Muslim, respondent Fifth Shari'a District Court should have *motu proprio* dismissed the case. Under Rule 9, Section 1 of the Rules of Court, if it appears that the court has no jurisdiction over the subject matter of the action based on the pleadings or the evidence on record, the court shall dismiss the claim:

Respondent Fifth Shari'a District Court had no authority under the law to decide Roldan's action because not all of the parties involved in the action are Muslims. Thus, it had no jurisdiction over Roldan's action for recovery of possession. All its proceedings in SDC Special Proceedings Case No. 07-200 are void.

Roldan chose to file his action with the Shari'a District Court, instead of filing the action with the regular courts, to obtain “a more speedy disposition of the case.”⁴⁸ This would have been a valid argument had all the parties involved in this case been Muslims. Under Article 143 of the Muslim Code, the jurisdiction of Shari'a

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District Courts over real actions not arising from customary contracts is concurrent with that of existing civil courts. However, this concurrent jurisdiction over real actions "is applicable solely when both parties are Muslims"⁴⁹ as this court ruled in *Tomawis v. Hon. Balindong*.⁵⁰ When one of the parties is not a Muslim, the action must be filed before the regular courts.

The application of the provisions of the Civil Code of the Philippines by respondent Fifth Shari'a District Court does not validate the proceedings before the court. Under Article 175 of the Muslim Code, customary contracts are construed in accordance with Muslim law.⁵¹ Hence, Shari'a District Courts apply Muslim law when resolving real actions arising from customary contracts.

In real actions not arising from contracts customary to Muslims, there is no reason for Shari'a District Courts to apply Muslim law. In such real actions, Shari'a District Courts will necessarily apply the laws of general application, which in this case is the Civil Code of the Philippines, regardless of the court taking cognizance of the action. This is the reason why the original jurisdiction of Shari'a District Courts over real actions not arising from customary contracts is concurrent with that of regular courts.

However, as discussed, this concurrent jurisdiction arises only if the parties involved are Muslims. Considering that Vivencio is not a Muslim, respondent Fifth Shari'a District Court had no jurisdiction over Roldan's action for recovery of possession of real property. The proceedings before it are void, regardless of the fact that it applied the provisions of the Civil Code of the Philippines in resolving the action.

That Vivencio raised the issue of lack of jurisdiction over the subject matter only after respondent Fifth Shari'a District Court had rendered judgment is immaterial. A party may assail the jurisdiction of a court or tribunal over a

subject matter at any stage of the proceedings, even on appeal.⁵⁹ The reason is that "jurisdiction is conferred by law, and lack of it affects the very authority of the court to take cognizance of and to render judgment on the action."⁶⁰

That respondent Fifth Shari'a District Court served summons on petitioner Vivencio did not vest it with jurisdiction over the person of petitioner Vivencio

In this case, Roldan sought to enforce a personal obligation on Vivencio to vacate his property, restore to him the possession of his property, and pay damages for the unauthorized use of his property.⁹² Thus, Roldan's action for recovery of possession is an action *in personam*. As this court explained in *Ang Lam v. Rosillosa and Santiago*,⁹³ an action to recover the title to or possession of a parcel of land "is an action in personam, for it binds a particular individual only although it concerns the right to a tangible thing."⁹⁴ Also, in *Muñoz v. Yabut, Jr.*,⁹⁵ this court said that "a judgment directing a party to deliver possession of a property to another is in personam. It is binding only against the parties and their successors-in-interest by title subsequent to the commencement of the action."⁹⁶

This action being *in personam*, service of summons on Vivencio was necessary for respondent Fifth Shari'a District Court to acquire jurisdiction over Vivencio's person.

However, as discussed, respondent Fifth Shari'a District Court has no jurisdiction over the subject matter of the action, with Vivencio not being a Muslim. Therefore, all the proceedings before respondent Shari'a District Court, including the service of summons on Vivencio, are void.

The Shari'a Appellate Court and the Office of the Jurisconsult in Islamic law must now be organized to effectively enforce the Muslim legal system in the Philippines

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We note that Vivencio filed directly with this court his petition for *certiorari* of respondent Fifth Shari'a District Court's decision. Under the judicial system in Republic Act No. 9054,⁹⁷ the Shari'a Appellate Court has exclusive original jurisdiction over petitions for *certiorari* of decisions of the Shari'a District Courts. He should have filed his petition for *certiorari* before the Shari'a Appellate Court.

However, the Shari'a Appellate Court is yet to be organized. Thus, we call for the organization of the court system created under Republic Act No. 9054 to effectively enforce the Muslim legal system in our country. After all, the Muslim legal system – a legal system complete with its own civil, criminal, commercial, political, international, and religious laws⁹⁸ – is part of the law of the land,⁹⁹ and Shari'a courts are part of the Philippine judicial system.

- **G.R. No. 182573. April 23, 2014** Ray Shu Vs. Jaime Dee, et al.

- ***The respondents were not denied their right to due process***

- We find no merit in the respondent's claim that they were denied due process when they were not informed by the Secretary of Justice of the pendency of the petitioner's appeal.

- The essence of due process is simply the opportunity to be heard. What the law prohibits is not the absence of previous notice but its absolute absence and lack of opportunity to be heard. Sufficient compliance with the requirements of due process exists when a party is given a chance to be heard through his motion for reconsideration.²⁸

- In the present case, we do not find it disputed that the respondents filed with the Secretary of Justice a motion for reconsideration of her resolution. Therefore, any initial defect in due process, if any, was

cured by the remedy the respondents availed of.

- On the respondents' allegation that they were denied due process during the NBI investigation, we stress that the functions of this agency are merely investigatory and informational in nature. It has no judicial or quasi-judicial powers and is incapable of granting any relief to any party. It cannot even determine probable cause. The NBI is an investigative agency whose findings are merely recommendatory. It undertakes investigation of crimes upon its own initiative or as public welfare may require in accordance with its mandate. It also renders assistance when requested in the investigation or detection of crimes in order to prosecute the persons responsible.²⁹

- Since the NBI's findings were merely recommendatory, we find that no denial of the respondents' due process right could have taken place; the NBI's findings were still subject to the prosecutor's and the Secretary of Justice's actions for purposes of finding the existence of probable cause. We find it significant that the specimen signatures in the possession of Metrobank were submitted by the respondents for the consideration of the city prosecutor and eventually of the Secretary of Justice during the preliminary investigation proceedings. Thus, these officers had the opportunity to examine these signatures.

The Secretary of Justice did not commit grave abuse of discretion

Probable cause pertains to facts and circumstances sufficient to support a well-founded belief that a crime has been committed and the accused is *probably* guilty thereof.³¹

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It is well-settled that in order to arrive at a finding of probable cause, the elements of the crime charged should be present. In determining these elements for purposes of preliminary investigation, only facts sufficient to support a *prima facie* case against the respondent are required, not absolute certainty. Thus, probable cause implies mere probability of guilt, i.e., a finding based on more than bare suspicion but less than evidence that would justify a conviction.³²

The elements of falsification of public documents are as follows: (1) the offender is a private individual or a public officer or employee who did not take advantage of his official position; (2) he committed any of the acts of falsification enumerated in Article 171 of the RPC; and (3) the falsification was committed in a public, official or commercial document.³³

- In light of the discussion above, we rule that the findings of the Secretary of Justice are more in accord with the duty to determine the existence of probable cause than the findings of the city prosecutor.

The findings of the city prosecutor are not proper in a preliminary investigation but should be threshed out in a full-blown trial

That the findings of the city prosecutor should be ventilated in a full-blown trial is highlighted by the reality that the authenticity of a questioned signature cannot be determined solely upon its general characteristics, or its similarities or dissimilarities with the genuine signature.³⁸ The duty to determine the authenticity of a signature rests on the judge who must conduct an independent examination of the signature itself in order to arrive at a reasonable conclusion as to its authenticity. Thus, Section 22 of Rule 132 of the Rules of Court explicitly authorizes the court, by itself, to make a comparison of the disputed handwriting "with writings admitted or treated as

genuine by the party against whom the evidence is offered, or proved to be genuine."³⁹

Read in this light, the respondents' defense that there are striking similarities in the specimen signatures they submitted and those of the questioned deeds is a matter of evidence whose consideration is proper only in a full-blown trial. In that proper forum, the respondents can present evidence to prove their defense and controvert the questioned documents report; they can raise as issue the alleged irregularities in the conduct of the examination.

The Secretary of Justice has the power to review the findings of the city prosecutor

We also find that the CA erred in ruling that the city prosecutor's findings should be given more weight than the findings of the Secretary of Justice.

The determination of probable cause is essentially an executive function, lodged in the first place on the prosecutor who conducted the preliminary investigation. *The prosecutor's ruling is reviewable by the Secretary who, as the final determinative authority on the matter, has the power to reverse, modify or affirm the prosecutor's determination.*⁴⁰

It is well-settled that the findings of the Secretary of Justice are not subject to interference by the courts, save only when he acts with grave abuse of discretion amounting to lack or excess of jurisdiction; when he grossly misapprehends facts; when he acts in a manner so patent and gross as to amount to an evasion of positive duty or a virtual refusal to perform the duty enjoined by law; or when he acts outside the contemplation of law.

- **G.R. No. 203605. April 23, 2014** P/C Insp. Lawrence B. Cajipe, et al. Vs. People of the Philippines

- **The Issues Presented**
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- The case presents the following issues:

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- 1. Whether or not the CA erred in granting the OSG's petition for *certiorari* under Rule 65, given that the RTC's order of dismissal is a final and appealable order;
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- 2. Whether or not the CA erred in counting the prescriptive period for filing a Rule 65 petition from the time of receipt of the court order by the OSG rather than by the city prosecutor's office; and
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- 3. Whether or not the CA erred in finding grave abuse of discretion on the part of the RTC judge in holding that no probable cause exists against petitioner HPG officers and in dismissing the criminal charge against them.

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• **The Court's Rulings**

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- The Court will first resolve the procedural issues.

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- The RTC judge was within his powers to dismiss the case against petitioner HPG officers. Section 6, Rule 112 of the Rules of Criminal Procedure provides that the judge "may immediately dismiss the case if the evidence on record clearly fails to establish probable cause." The CA should have denied the People's petition for special civil action of *certiorari* that assails the correctness of the order of dismissal since Section 1 of Rule 65 provides that such action is available only when "there is no appeal, or any plain, speedy, and adequate remedy in the ordinary course of law."

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- The fact, however, is that Section 1, Rule 122 of the same rules provides that an appeal may be taken in a criminal action from a

judgment or final order like the RTC's order dismissing the case against petitioner HPG officers for lack of probable cause. It is a final order since it disposes of the case, terminates the proceedings, and leaves the court with nothing further to do with respect to the case against petitioner HPG officers. The Court had made a similar pronouncement in *Santos v. Orda, Jr.*¹¹ Of course, the People may refile the case if new evidence adduced in another preliminary investigation will support the filing of a new information against them. But that is another matter. For now, the CA clearly erred in not denying the petition for being a wrong remedy.

In case of permissible appeals from a final order in a criminal action, the public prosecutor who appears as counsel for the People in such an action and on whom a copy of the final order is thus served, may file a notice of appeal within the appropriate time since it is a notice addressed to the RTC and not to the CA. Only the Office of the Solicitor General, however, may pursue the appeal before the CA by filing the required appellant's brief or withdraw the same.

In special civil actions such as that taken by the OSG before the CA, the public prosecutor's duty, if he believes that a matter should be brought by special civil action before an appellate court, is to promptly communicate the facts and his recommendation to the OSG, advising it of the last day for filing such an action. There is no reason the OSG cannot file the petition since the People is given sixty days from notice to the public prosecutor within which to file such an action before the CA or this Court.

Since the OSG filed its petition for *certiorari* under Rule 65 on behalf of the People 112 days from receipt of the dismissal order by the city prosecutor of Paranaque, the petition was filed out of

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time. The order of dismissal is thus beyond appellate review.

• **G.R. No. 189596. April 23, 2014**

Department of Justice Vs. Teodulo Nano Alaon

ISSUE: WON THE DOJ SECRETARY MAY *MOTU PROPIO* REVIEW THE RESOLUTION OF A PROSECUTOR EVEN IN THE ABSENSE OF AN APPEAL OR A PETITION FOR REVIEW BEING FILED BY ANY AGGRIEVED PARTY;

The Secretary of Justice did not abuse his discretion when he acted on the letter request of BBB, the mother of the victim, AAA.

There is no quarrel about the Secretary of Justice's power of review over the actions of his subordinates, specifically public prosecutors. This power of review is encompassed in the Secretary of Justice's authority of supervision and control over the bureaus, offices, and agencies under him, subject only to specified guidelines.¹¹

Chapter 7, section 38, paragraph 1 of Executive Order No. 292 or The Administrative Code of 1987, defines the administrative relationship that is **supervision and control:**

Founded on the power of supervision and control over his subordinates, we do not find abuse of discretion, much more grave abuse of discretion, by the Secretary of Justice when he took cognizance of BBB's letter and treated it as a petition for review from the provincial prosecutor's resolution. It cannot be said that in this case, there was an "absence of a petition for review." There was in fact an appeal from the prosecutor's resolution, although not as described in the National Prosecution Service Rules on Appeal. There was, tersely put, an appeal that the Secretary of Justice had ample power to act upon. In fact, the Secretary of Justice acted on the letter request of BBB. What was done was not a *motu proprio* review.

Nonetheless, we agree with the appellate court's holding that Alaon was deprived of his right to procedural due process, as he was not given an opportunity to be heard on the letter-appeal of private complainant's mother.

The conduct of preliminary investigation is subject to the requirements of both substantive and procedural due process. Preliminary investigation is considered as a judicial proceeding wherein the prosecutor or investigating officer, by the nature of his functions, acts as a quasi-judicial officer.¹³ Even at the stage of petition for review before the Secretary of Justice, the requirements for substantive and procedural due process do not abate.

G.R. No. 196735. May 5, 2014 People of the Philippines Vs. Danilo Feliciano, Jr., et al.

It is in the hallowed grounds of a university where students, faculty, and research personnel should feel safest. After all, this is where ideas that could probably solve the sordid realities in this world are peacefully nurtured and debated. Universities produce hope. They incubate all our youthful dreams.

Yet, there are elements within this academic milieu that trade misplaced concepts of perverse brotherhood for these hopes. Fraternity rumbles exist because of past impunity. This has resulted in a senseless death whose justice is now the subject matter of this case. It is rare that these cases are prosecuted. It is even more extraordinary that there are credible witnesses who present themselves courageously before an able and experienced trial court judge.

This culture of impunity must stop. There is no space in this society for hooliganism disguised as fraternity rumbles. The perpetrators must stand and suffer the legal consequences of their actions. They must do so for there is an individual who now lies dead, robbed of his dreams and the dreams of his family. Excruciating grief for them will never be enough.

An information is sufficient when the accused is fully apprised of the charge against him to enable him to prepare his defense

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It is the argument of appellants that the information filed against them violates their constitutional right to be informed of the nature and cause of the accusation against them. They argue that the prosecution should not have included the phrase "wearing masks and/or other forms of disguise" in the information since they were presenting testimonial evidence that not all the accused were wearing masks or that their masks fell off.

It is enshrined in our Bill of Rights that "[n]o person shall be held to answer for a criminal offense without due process of law."¹¹¹ This includes the right of the accused to be presumed innocent until proven guilty and "to be informed of the nature and accusation against him."¹¹²

Upon a finding of probable cause, an information is filed by the prosecutor against the accused, in compliance with the due process of the law. Rule 110, Section 1, paragraph 1 of the Rules of Criminal Procedure provides that:

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

Contrary to the arguments of the appellants, the inclusion of the phrase "wearing masks and/or other forms of disguise" in the information does not violate their constitutional rights.

It should be remembered that every aggravating circumstance being alleged must be stated in the information. Failure to state an aggravating circumstance, even if duly proven at trial, will not be appreciated as such.¹¹⁵

It was, therefore, incumbent on the prosecution to state the aggravating circumstance of "wearing masks and/or other forms of disguise" in the information in order for all the evidence, introduced to that effect, to be admissible by the

trial court.

In criminal cases, disguise is an aggravating circumstance because, like nighttime, it allows the accused to remain anonymous and unidentifiable as he carries out his crimes.

Evidence as part of the *res gestae* may be admissible but have little persuasive value in this case

According to the testimony of U.P. Police Officer Salvador,¹³⁹ when he arrived at the scene, he interviewed the bystanders who all told him that they could not recognize the attackers since they were all masked. This, it is argued, could be evidence that could be given as part of the *res gestae*.

As a general rule, "[a] witness can testify only to the facts he knows of his personal knowledge; that is, which are derived from his own perception, x x x."¹⁴⁰ All other kinds of testimony are hearsay and are inadmissible as evidence. The Rules of Court, however, provide several exceptions to the general rule, and one of which is when the evidence is part of *res gestae*, thus:

Section 42. *Part of res gestae*. — Statements made by a person while a startling occurrence is taking place or immediately prior or subsequent thereto with respect to the circumstances thereof, may be given in evidence as part of *res gestae*. So, also, statements accompanying an equivocal act material to the issue, and giving it a legal significance, may be received as part of the *res gestae*

There is no doubt that a sudden attack on a group peacefully eating lunch on a school campus is a startling occurrence. Considering that the statements of the bystanders were made immediately after the startling occurrence, they are, in fact, admissible as evidence given in *res gestae*.

The statements made by the bystanders, although admissible, have little persuasive value since the bystanders could have seen the events transpiring at different vantage points and at different points in time. Even Frisco Capilo, one of the bystanders at the time of the attack,

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testified that the attackers had their masks on at first, but later on, some remained masked and some were unmasked.

When the bystanders' testimonies are weighed against those of the victims who witnessed the entirety of the incident from beginning to end at close range, the former become merely corroborative of the fact that an attack occurred. Their account of the incident, therefore, must be given considerably less weight than that of the victims.

Accused-appellants were correctly charged with murder, and there was treachery in the commission of the crime

According to the provisions of Article 248 of the Revised Penal Code, the accused-appellants were correctly charged with murder. Article 248 states:

ART. 248. *Murder*.—Any person who, not falling within the provisions of Article 246, shall kill another, shall be guilty of murder and shall be punished by *reclusion perpetua*, to death if committed with any of the following attendant circumstances:

1. With treachery, taking advantage of superior strength, with the aid of armed men, or employing means to weaken the defense, or of means or persons to insure or afford impunity;

x x x x

It is undisputed that on December 8, 1994, a group of men armed with lead pipes and baseball bats attacked Dennis Venturina and his companions, which resulted in Venturina's death.

As correctly found by the trial court and the appellate court, the offense committed against Dennis Venturina was committed by a group that took advantage of its superior strength and with the aid of armed men. The appellate court, however, incorrectly ruled out the presence of treachery in the commission of the offense.

It has been stated previously by this court that:

[T]reachery is present when the offender commits any of the crimes against persons,

employing means, methods, or forms in the execution, which tend directly and specially to insure its execution, without risk to the offender arising from the defense which the offended party might make.¹⁵²

The victims in this case were eating lunch on campus. They were not at a place where they would be reasonably expected to be on guard for any sudden attack by rival fraternity men.

The victims, who were unarmed, were also attacked with lead pipes and baseball bats. The only way they could parry the blows was with their arms. In a situation where they were unarmed and outnumbered, it would be impossible for them to fight back against the attackers. The attack also happened in less than a minute, which would preclude any possibility of the bystanders being able to help them until after the incident.

The swiftness and the suddenness of the attack gave no opportunity for the victims to retaliate or even to defend themselves. Treachery, therefore, was present in this case.

The presence of conspiracy makes all of the accused-appellants liable for murder and attempted murder

Once an express or implied conspiracy is proved, all of the conspirators are liable as co-principals regardless of the extent and character of their respective active participation in the commission of the crime or crimes perpetrated in furtherance of the conspiracy because in contemplation of law the act of one is the act of all.

The liabilities of the accused-appellants in this case arose from a single incident wherein the accused-appellants were armed with baseball bats and lead pipes, all in agreement to do the highest amount of damage possible to the victims. Some were able to run away and take cover, but the others would fall prey at the hands of their attackers. The intent to kill was already present at the moment of attack and that intent was shared by all of the accused-appellants alike when the presence of conspiracy was proven. It is, therefore, immaterial to distinguish between the seriousness of the injuries suffered by the victims to determine the respective liabilities of

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their attackers. What is relevant is only as to whether the death occurs as a result of that intent to kill and whether there are qualifying, aggravating or mitigating circumstances that can be appreciated.

A Final Note

It is not only the loss of one promising young life; rather, it is also the effect on the five other lives whose once bright futures are now put in jeopardy because of one senseless' act of bravado. There is now more honor for them to accept their responsibility and serve the consequences of their actions. There is, however, nothing that they can do to bring back Dennis Venturina or fully compensate for his senseless and painful loss.

This is not the first fraternity-related case to come to this court; neither will it be the last. Perhaps this case and many cases like it can empower those who have a better: view of masculinity: one which valorizes courage, sacrifice and honor in more life-saving pursuits.

" *Giting at dangal*" are words of the anthem of the University of the Philippines. It colors the stories of many who choose to expend their energy in order that our people will have better lives. Fraternity rumbles are an anathema, an immature and useless expenditure of testosterone. It fosters a culture that retards manhood. It is devoid of "*giting at dangal*."

This kind of shameful violence must stop.

- **Ma. Consolacion M. Nahas, doing business under the name and style-Personnel Employment and Technical Recruitment Agency Vs. Juanita L. Olarte** G.R. No. 169247. June 2, 2014

- "A party will not be allowed to make a mockery of justice by taking inconsistent positions which, if allowed, would result in brazen deception." ¹

- **Gregorio De Leon, doing business as G.D.L. Marketing Vs. Hercules Agro Industrial Corporation and/or Jesus Chua and Rumi Rungis Milk** G.R. No. 183239. June 2, 2014

- The issue for resolution is whether the CA erred when it ordered

petitioner's appellant's brief filed with it be stricken off the records.

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- We find no merit in the petition.
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- The records show that the RTC Decision dated September 23, 2005 was received by petitioner on October 4, 2005; thus, he had until October 19, 2005 within which to file an appeal or a motion for reconsideration. Petitioner, however, filed on October 19, 2005 a motion for time praying for an additional 10 days or until October 29, 2005 to file his motion for partial reconsideration. The RTC denied the motion to which we agree, since such motion is a transgression of the mandatory prohibition on the filing of a motion for extension to file a motion for reconsideration.
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- In *Habaluyas Enterprises Inc. v. Japson*:¹⁹
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- Beginning one month after the promulgation of this Resolution, the rule shall be strictly enforced that no motion for extension of time to file a motion for new trial or reconsideration may be filed with the Metropolitan or Municipal Trial Courts, the Regional Trial Courts, and the Intermediate Appellate Court. Such a motion may be filed only in cases pending with the Supreme Court as the court of last resort, which may in its sound discretion either grant or deny the extension requested.²⁰
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- In *Rollique v. Court of Appeals*,²¹ we restated the rule, thus:
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- The filing by petitioners of a motion for extension of time to file motion for reconsideration did not toll the fifteen-day period before a judgment becomes final and executory.²²

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- It has, likewise, been explicitly stated in Section 2, Rule 40 and Section 3, Rule 41 of the 1997 Rules of Civil Procedure that in appeals from municipal trial courts or regional trial courts, no motion for extension of time to file a motion for reconsideration shall be allowed.
- As the period to file a motion for reconsideration is non-extendible, petitioner's motion for extension of time to file a motion for reconsideration did not toll the reglementary period to appeal; thus, petitioner had already lost his right to appeal the September 23, 2005 decision. As such, the RTC decision became final as to petitioner when no appeal was perfected after the lapse of the prescribed period.
- The CA correctly ordered that petitioner's appellant's brief be stricken off the records. As the CA said, the parties who have not appealed in due time cannot legally ask for the modification of the judgment or obtain affirmative relief from the appellate court. A party who fails to question an adverse decision by not filing the proper remedy within the period prescribed by law loses his right to do so.²⁴ As petitioner failed to perfect his appeal within the period for doing so, the September 23, 2005 decision has become final as against him. The rule is clear that no modification of judgment could be granted to a party who did not appeal. It is enshrined as one of the basic principles in our rules of procedure, specifically to avoid ambiguity in the presentation of issues, facilitate the setting forth of arguments by the parties, and aid the court in making its determinations. It is not installed in the rules merely to make litigations laborious and tedious for the

parties. It is there for a reason.

- **Alabang Develoment Corporation Vs. Alabang Hills Village Association and Rafael Tinio** G.R. No. 187456. June 2, 2014

- Anent the first assigned error, the Court does not agree that the CA erred in relying on the case of *Columbia Pictures, Inc. v. Court of Appeals*.⁵
- The CA cited the case for the purpose of restating and distinguishing the jurisprudential definition of the terms "lack of capacity to sue" and "lack of personality to sue;" and of applying these definitions to the present case. Thus, the fact that, unlike in the instant case, the corporations involved in the *Columbia* case were foreign corporations is of no moment. The definition of the term "lack of capacity to sue" enunciated in the said case still applies to the case at bar. Indeed, as held by this Court and as correctly cited by the CA in the case of *Columbia*: "[l]ack of legal capacity to sue means that the plaintiff is not in the exercise of his civil rights, or does not have the necessary qualification to appear in the case, or does not have the character or representation he claims[;] 'lack of capacity to sue' 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. ..."⁶ In the instant case, petitioner lacks capacity to sue because it no longer possesses juridical personality by reason of its dissolution and lapse of the three-year grace period provided under Section 122 of the Corporation Code, as will be discussed below.
- With respect to the second assigned error, Section 122 of the Corporation Code provides as

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follows:

-
- SEC. 122. *Corporate liquidation.* – Every corporation whose charter expires by its own limitation or is annulled by forfeiture or otherwise, or whose corporate existence for other purposes is terminated in any other manner, shall nevertheless be continued as a body corporate for three (3) years after the time when it would have been so dissolved, for the purpose of prosecuting and defending suits by or against it and enabling it to settle and close its affairs, to dispose of and convey its property and to distribute its assets, but not for the purpose of continuing the business for which it was established.
-
- At any time during said three (3) years, said corporation is authorized and empowered to convey all of its property to trustees for the benefit of stockholders, members, creditors, and other persons in interest. From and after any such conveyance by the corporation of its property in trust for the benefit of its stockholders, members, creditors and others in interest, all interest which the corporation had in the property terminates, the legal interest vests in the trustees, and the beneficial interest in the stockholders, members, creditors or other persons in interest.
-
- Upon winding up of the corporate affairs, any asset distributable to any creditor or stockholder or member who is unknown or cannot be found shall be escheated to the city or municipality where such assets are located.
-
- Except by decrease of capital stock and as otherwise allowed by this Code, no corporation shall distribute any of its assets or

property except upon lawful dissolution and after payment of all its debts and liabilities.

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- This Court has held that:
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- It is to be noted that the time during which the corporation, through its own officers, may conduct the liquidation of its assets and sue and be sued as a corporation is limited to three years from the time the period of dissolution commences; but there is no time limit within which the trustees must complete a liquidation placed in their hands. It is provided only (Corp. Law, Sec. 78 [now Sec. 122]) that the conveyance to the trustees must be made within the three-year period. It may be found impossible to complete the work of liquidation within the three-year period or to reduce disputed claims to judgment. The authorities are to the effect that suits by or against a corporation abate when it ceased to be an entity capable of suing or being sued (7 R.C.L., Corps., par. 750); but trustees to whom the corporate assets have been conveyed pursuant to the authority of Sec. 78 [now Sec. 122] may sue and be sued as such in all matters connected with the liquidation...⁷
-
- In the absence of trustees, this Court ruled, thus:
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- ... Still in the absence of a board of directors or trustees, those having any pecuniary interest in the assets, including not only the shareholders but likewise the creditors of the corporation, acting for and in its behalf, might make proper representations with the Securities and Exchange Commission, which has primary and sufficiently broad jurisdiction in

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matters of this nature, for working out a final settlement of the corporate concerns.⁸

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- In the instant case, there is no dispute that petitioner's corporate registration was revoked on May 26, 2003. Based on the above-quoted provision of law, it had three years, or until May 26, 2006, to prosecute or defend any suit by or against it. The subject complaint, however, was filed only on October 19, 2006, more than three years after such revocation.
-
- It is likewise not disputed that the subject complaint was filed by petitioner corporation and not by its directors or trustees. In fact, it is even averred, albeit wrongly, in the first paragraph of the Complaint⁹ that "[p]laintiff is a duly organized and existing corporation under the laws of the Philippines, with capacity to sue and be sued. x x x"¹⁰
-
- Petitioner, nonetheless, insists that a corporation may still sue, even after it has been dissolved and the three-year liquidation period provided under Section 122 of the Corporation Code has passed. Petitioner cites the cases of *Gelano v. Court of Appeals*,¹¹ *Knecht v. United Cigarette Corporation*,¹² and *Pepsi-Cola Products Philippines, Inc. v. Court of Appeals*,¹³ as authority to support its position. The Court, however, agrees with the CA that in the abovesited cases, the corporations involved filed their respective complaints while they were still in existence. In other words, they already had pending actions at the time that their corporate existence was terminated.
-
- The import of this Court's ruling in the cases cited by petitioner is that the trustee of a corporation may

continue to prosecute a case commenced by the corporation within three years from its dissolution until rendition of the final judgment, even if such judgment is rendered beyond the three-year period allowed by Section 122 of the Corporation Code. However, there is nothing in the said cases which allows an already defunct corporation to initiate a suit after the lapse of the said three-year period. On the contrary, the factual circumstances in the abovesited cases would show that the corporations involved therein did not initiate any complaint after the lapse of the three-year period. In fact, as stated above, the actions were already pending at the time that they lost their corporate existence.

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- In the present case, petitioner filed its complaint not only after its corporate existence was terminated but also beyond the three-year period allowed by Section 122 of the Corporation Code. Thus, it is clear that at the time of the filing of the subject complaint petitioner lacks the capacity to sue as a corporation. To allow petitioner to initiate the subject complaint and pursue it until final judgment, on the ground that such complaint was filed for the sole purpose of liquidating its assets, would be to circumvent the provisions of Section 122 of the Corporation Code.

- **Edilberto L. Barcelona Vs. Dan Joel Lim and Richard Tan** G.R. No. 189171. June 3, 2014

- ***The appellate court has the authority***
- ***to review matters that the parties have not***
- ***specifically raised or assigned as error.***

[A]n appeal, once accepted by this Court, throws the entire case open to review, and that this Court has the authority to review

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matters not specifically raised or assigned as error by the parties, if their consideration is necessary in arriving at a just resolution of the case.⁷⁹

No violation of the right of petitioner to the speedy disposition of his case.

Petitioner filed his Notice of Appeal and Appeal Memorandum with the CSC on 27 December 2000,⁸¹ but it only issued its Resolution on 18 December 2006.

According to petitioner, he sees no justifiable reason for the six-year delay in the resolution of his appeal before the CSC.⁸² He is now asking this Court to “rectify” the wrong committed against him and his family by absolving him of the administrative charges.⁸³

Section 16, Rule III of the 1987 Philippine Constitution, reads:

Sec. 16. All persons shall have the right to a speedy disposition of their cases before all judicial, quasi-judicial, or administrative bodies.

- The right to a speedy disposition of cases is guaranteed by the Constitution. The concept of speedy disposition is flexible. The fact that it took the CSC six years to resolve the appeal of petitioner does not, by itself, automatically prove that he was denied his right to the speedy disposition of his case. After all, a mere mathematical reckoning of the time involved is not sufficient, as the facts and circumstances peculiar to the case must also be considered.⁸⁴
- The right to a speedy trial, as well as other rights conferred by the Constitution or statute, may be waived except when otherwise expressly provided by law. One's right to the speedy disposition of his case must therefore be asserted.⁹⁰ Due to the failure of petitioner to assert this right, he is considered to have waived it.

- **Avelina Abarientos Rebusquillo (substituted by her heirs, except Emelinda R. Gualvez) and Salvador A. Orosco Vs. Sps. Domingo and Emelinda Rebusquillo Gualvez and the City Assessor of Legaspi City** G.R. No. 204029. June 4, 2014

It has indeed been ruled that the declaration of heirship must be made in a special proceeding, not in an independent civil action. However, this Court had likewise held that recourse to administration proceedings to determine who heirs are is sanctioned only if there is a good and compelling reason for such recourse.⁶ Hence, the Court had allowed exceptions to the rule requiring administration proceedings as when the parties in the civil case already presented their evidence regarding the issue of heirship, and the RTC had consequently rendered judgment upon the issues it defined during the pre-trial.

in the present case, there appears to be only one parcel of land being claimed by the contending parties as the inheritance from Eulalio. It would be more practical, as *Portugal* teaches, to dispense with a separate special proceeding for the determination of the status of petitioner Avelina as sole heir of Eulalio, especially in light of the fact that **respondents spouses Gualvez admitted in court that they knew for a fact that petitioner Avelina was not the sole heir of Eulalio and that petitioner Salvador was one of the other living heirs with rights over the subject land.**

In light of the admission of respondents spouses Gualvez, it is with more reason that a resort to special proceeding will be but an unnecessary superfluity. Accordingly, the court *a quo* had properly rendered judgment on the validity of the Affidavit of Self-Adjudication executed by Avelina. As pointed out by the trial court, **an Affidavit of Self-Adjudication is only proper when the affiant is the sole heir of the decedent.** The second sentence of Section 1, Rule 74 of the

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Rules of Court is patently clear that self-adjudication is only warranted when there is only one heir:

Section 1. *Extrajudicial settlement by agreement between heirs.*—x x x **If there is only one heir**, he may adjudicate to himself the entire estate by means of an affidavit filed in the office of the register of deeds. x x x (*emphasis supplied*)

As admitted by respondents, Avelina was **not** the sole heir of Eulalio. In fact, as admitted by respondents, petitioner Salvador is one of the co-heirs by right of representation of his mother. Without a doubt, Avelina had perjured herself when she declared in the affidavit that she is “the only daughter and sole heir of spouses EULALIO ABARIENTOS AND VICTORIA VILLAREAL.”¹⁰ The falsity of this claim renders her act of adjudicating to herself the inheritance left by her father invalid. The RTC did not, therefore, err in granting Avelina’s prayer to declare the affidavit null and void and so correct the wrong she has committed.

In like manner, the Deed of Absolute Sale executed by Avelina in favor of respondents was correctly nullified and voided by the RTC. Avelina was not in the right position to sell and transfer the absolute ownership of the subject property to respondents. As she was not the sole heir of Eulalio and her Affidavit of Self-Adjudication is void, the subject property is still subject to partition. Avelina, in fine, did not have the absolute ownership of the subject property but only an aliquot portion. What she could have transferred to respondents was only the ownership of such aliquot portion. It is apparent from the admissions of respondents and the records of this case that Avelina had no intention to transfer the ownership, of whatever extent, over the property to respondents. Hence, the Deed of Absolute Sale is nothing more than a simulated contract.

In the present case, the true intention of the parties in the execution of the Deed of Absolute Sale is immediately apparent from respondents’ very own Answer to petitioners’ Complaint. As respondents themselves acknowledge, the purpose of the Deed of Absolute Sale was simply to “facilitate the titling of the [subject] property,” not to transfer the ownership of the lot to them. Furthermore, respondents concede that petitioner Salvador remains in possession of the property and that there is no indication that respondents ever took possession of the subject property after its supposed purchase. Such failure to take exclusive possession of the subject property or, in the alternative, to collect rentals from its possessor, is contrary to the principle of ownership and is a clear badge of simulation that renders the whole transaction void.¹²

Contrary to the appellate court’s opinion, the fact that the questioned Deed of Absolute Sale was reduced to writing and notarized does not accord it the quality of incontrovertibility otherwise provided by the parole evidence rule. The form of a contract does not make an otherwise simulated and invalid act valid. The rule on parole evidence is not, as it were, ironclad. Sec. 9, Rule 130 of the Rules of Court provides the exceptions:

Section 9. *Evidence of written agreements.*— x x x

However, a party may present evidence to modify, explain or add to the terms of written agreement if he puts in issue in his pleading:

(a) An intrinsic ambiguity, mistake or imperfection in the written agreement;

(b) The failure of the written agreement to express the true intent and agreement of the parties thereto;

(c) The validity of the written agreement; or

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(d) The existence of other terms agreed to by the parties or their successors in interest after the execution of the written agreement.

The term "agreement" includes wills. (*emphasis supplied*)

The failure of the Deed of Absolute Sale to express the true intent and agreement of the contracting parties was clearly put in issue in the present case. Again, respondents themselves admit in their Answer that the Affidavit of Self-Adjudication and the Deed of Absolute Sale were only executed to facilitate the titling of the property. The RTC is, therefore, justified to apply the exceptions provided in the second paragraph of Sec. 9, Rule 130 to ascertain the true intent of the parties, which shall prevail over the letter of the document. That said, considering that the Deed of Absolute Sale has been shown to be void for being absolutely simulated, petitioners are not precluded from presenting evidence to modify, explain or add to the terms of the written agreement.¹³

- **Republic of the Philippines, represented by the Anti-Money Laundering Council Vs. Rafael A. Manalo, Grace M. Oliva and Freida Z. Rivera-Yap** G.R. No. 192302. June 4, 2014

- The petition must be dismissed for having become moot and academic.
- A case or issue is considered moot and academic when it ceases to present a justiciable controversy by virtue of supervening events, so that an adjudication of the case or a declaration on the issue would be of no practical value or use. In such instance, there is no actual substantial relief which a petitioner would be entitled to, and which would be negated by the dismissal of the petition. Courts generally decline jurisdiction over such case or dismiss it on the ground of

mootness,²⁶ as a judgment in a case which presents a moot question can no longer be enforced.²⁷

- In this case, the Manila RTC's rendition of the Decision dated September 23, 2010 in Civil Case No. 03-107325, as well as the Decision dated February 11, 2011 and the Amended Decision dated May 9, 2011 in Civil Case No. 03-107308, by virtue of which the assets subject of the said cases were all forfeited in favor of the government, are *supervening events* which have effectively rendered the essential issue in this case moot and academic, that is, whether or not respondents should have been allowed by the Manila RTC to intervene on the ground that they have a legal interest in the forfeited assets. As the proceedings in the civil forfeiture cases from which the issue of intervention is merely an incident have already been duly concluded, no substantial relief can be granted to the Republic by resolving the instant petition.

- **Vergel Paulino and Ciremia Paulino Vs. CA and Republic of the Philippines, represented by the Administrator of LRA; Sps. Dr. Vergel L. Paulino & Dr. Ciremia G. Paulino Vs. Republic of the Philippines, represented by the Administrator of the LRA** G.R. Nos. 205065 & 207533. June 4, 2014

- **Procedural Issue:** *Propriety of Petition*
- *for Annulment of Judgment*

Under Section 2 of Rule 47, the only grounds for annulment of judgment are extrinsic fraud and lack of jurisdiction. Lack of jurisdiction as a ground for annulment of judgment refers to either lack of jurisdiction over the person of the defending party or over the subject matter of the claim. In case of absence, or lack, of jurisdiction, a court should not take cognizance of the case.

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In these cases, the petition for annulment was based on lack of jurisdiction over the subject matter. The rule is that where there is want of jurisdiction over a subject matter, the judgment is rendered null and void. A void judgment is in legal effect no judgment, by which no rights are divested, from which no right can be obtained, which neither binds nor bars any one, and under which all acts performed and all claims flowing out are void. It is not a decision in contemplation of law and, hence, it can never become executory. It also follows that such a void judgment cannot constitute a bar to another case by reason of *res judicata*.¹⁷

Accordingly, the Court agrees with the CA that LRA was not estopped from assailing the July 20, 2011 RTC Decision because it never attained finality for being null and void, having been rendered by a court without jurisdiction over the reconstitution proceedings.

Indeed, where a petition for annulment of a judgment or a final order of the RTC filed under Rule 47 of the Rules of Court is grounded on lack of jurisdiction over the person of the respondent or over the nature or subject of the action, the petitioner need not allege in the petition that the ordinary remedy of new trial or reconsideration of the final order or judgment or appeal therefrom is no longer available through no fault of his own, precisely because the judgment rendered or the final order issued by the RTC without jurisdiction is null and void and may be assailed any time either collaterally or in a direct action or by resisting such judgment or final order in any action or proceeding whenever it is invoked, unless barred by laches.²⁶

Substantive Issue: Jurisdiction of RTC

- *in the Reconstitution Proceedings*

From the foregoing, the following must be present for an order for reconstitution to issue: (a) that the certificate of title had been lost or destroyed; (b) that the documents presented by petitioner are

sufficient and proper to warrant the reconstitution of the lost or destroyed certificate of title; (c) that the petitioner is the registered owner of the property or had an interest therein; (d) that the certificate of title was in force at the time it was lost and destroyed; and (e) that the description, area and boundaries of the property are substantially the same as those contained in the lost or destroyed certificate of title.²⁷

In reconstitution proceedings, the Court has repeatedly ruled that before jurisdiction over the case can be validly acquired, it is a condition *sine quo non* that the certificate of title has not been issued to another person. If a certificate of title has not been lost but is in fact in the possession of another person, the reconstituted title is void and the court rendering the decision has not acquired jurisdiction over the petition for issuance of new title. The courts simply have no jurisdiction over petitions by (such) third parties for reconstitution of allegedly lost or destroyed titles over lands that are already covered by duly issued subsisting titles in the names of their duly registered owners. The existence of a prior title *ipso facto* nullifies the reconstitution proceedings. The proper recourse is to assail directly in a proceeding before the regional trial court the validity of the Torrens title already issued to the other person.²⁸

In the case at bench, the CA found that the RTC lacked jurisdiction to order the reconstitution of the original copy of TCT No. 301617, there being no lost or destroyed title over the subject real property, the respondent having duly proved that TCT No. 301617 was in the name of a different owner, Florendo, and the technical description appearing on that TCT No. 301617 was similar to the technical description appearing in Lot 939, Piedad Estate covered by TCT No. RT-55869 (42532) in the name of Antonino. In fact, TCT No. RT-55869 (42532) was already cancelled by TCT Nos. 296725 to 296728 also in the name of Antonino.

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In addition, Spouses Paulino also raised the irregularity in the issuance of TCT No. RT-558969 (42532), arguing that a reconstitution would not constitute a collateral attack on a title that was irregularly and illegally issued in the first place. They argued that it was an error on the part of the CA to deny their right to have their title reconstituted based on the fake title of Antonino. They assert that the rule, that a title issued under the Torrens System is presumed valid and, hence, is the best proof of ownership of a piece of land, does not apply where the certificate itself is faulty as to its purported origin.

The Court, however, finds the argument of Spouses Paulino specious and misplaced. It is a well settled rule that a certificate of title, once registered, cannot be impugned, altered, changed, modified, enlarged or diminished except in a direct proceeding permitted by law.³⁰ The validity of the certificate of title can be threshed out only in a direct proceeding filed for the purpose. A Torrens title cannot be attacked collaterally.

It is also a well-known doctrine that the issue as to whether the title was procured by falsification or fraud as advanced by Spouses Paulino can only be raised in an action expressly instituted for the purpose. A Torrens title can be attacked only for fraud, within one year after the date of the issuance of the decree of registration. Such attack must be direct, and not by a collateral proceeding. The title represented by the certificate cannot be changed, altered, modified, enlarged, or diminished in a collateral proceeding.³¹

Indeed, the reconstitution proceeding constituted a collateral attack on the Torrens title of Antonino. The proper recourse of the Spouses Paulino to contest the validity of the certificate of title is not through the subject petition for reconstitution, but in a proper proceeding instituted for such purpose. Even if their arguments of fraud surrounding the issuance of the title of Antonino is correct,

such allegation must be raised in a proper proceeding which is expressly instituted for that purpose.

- **Augusto C. Soliman Vs. Juanito C. Fernandez, in his capacity as receiver of SMC Pneumatics (Phils.) Inc.** G.R. No. 176652. June 4, 2014

- We find it proper to delve into the more important issue to be resolved, that is, whether the trial court was correct in dismissing the complaint of the plaintiff for failure to prosecute. We do so to avoid the invocation of procedural rules for observance of yet another rule on technicality.

- It has long been established and settled that the question of whether a case should be dismissed for failure to prosecute is mainly addressed to the sound discretion of the trial court.²⁵ Pursuant to Rule 17, Section 3 of the Rules of Court, a court can dismiss a case on the ground of failure to prosecute. The true test for the exercise of such power is whether, under the prevailing circumstances, the plaintiff is culpable for want of due diligence in failing to proceed with reasonable promptitude.²⁶ As to what constitutes "unreasonable length of time," this Court has ruled that it depends on the circumstances of each particular case and that "the sound discretion of the court" in the determination of the said question will not be disturbed, in the absence of patent abuse.²⁷ The Court, however, in the case of *Belonio v. Rodriguez*,²⁸ held that:

- The power of the trial court to dismiss an action for *non-prosequitur* is not without its limits. If a pattern or scheme to delay the disposition of the case or a wanton failure to observe the mandatory requirement of the rules on the

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part of the plaintiff is not present, as in this case, courts should not wield their authority to dismiss. Indeed, while the dismissal rests on the prerogative of the trial court, it must soundly be exercised and not be abused, as there must be sufficient reason to justify its extinctive effect on the plaintiff's cause of action. Deferment of proceedings may be tolerated so that the court, aimed at a just and inexpensive determination of the action, may adjudge cases only after a full and free presentation of all the evidence by both parties. In this regard, courts are reminded to exert earnest efforts to resolve the matters before them on the merits, and adjudicate the case in accord with the relief sought by the parties so that appeals may be discouraged; otherwise, in hastening the proceedings, they further delay the final settlement of the case.

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- Petitioner argued that the appellate court mistakenly concluded that the trial court need not immediately dismiss the case for failure of the respondent to file a motion to set the case for pre-trial. He alleged that a closer reading of the Regional Trial Court Order²⁹ would reveal that the Order simply stated that respondent did not take any step for the further prosecution of the case. He noted that "*any step for the further prosecution of the case*" is not necessarily limited to the setting of the case for pre-trial. The phrase may include an equally significant, available remedy and course of action such as a motion for a judgment on the pleadings or for summary judgment. He maintained that the failure to take any of the three (3) available courses of action prompted the trial court to conclude that the respondent has not taken any step for the further

prosecution of the case and to dismiss the same for failure to prosecute.

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- Such contention is speculative. We cannot presume that the respondent had the intention of availing of the remedies of motion for judgment on the pleadings or summary judgment but failed to file the same. The fact remains that the respondent had the option to move for pre-trial and if he fails to do so as he did, the branch clerk of court had the duty to have the case set for pre-trial. Moreover, the period of more than four (4) months or from 21 September 2004 up to 31 January 2005 may not be considered an unreasonable length of time to warrant the terminal consequence of dismissal of the case.
-
- To be sure, the dismissal of the case cannot be for respondent's "failing to take any step for further prosecution of this case" because the further step is not his, but for the clerk of court, to take.

On a final note, we emphasize that in the absence of a pattern or scheme to delay the disposition of the case or a wanton failure to observe the mandatory requirement of the rules on the part of the plaintiff, as in the case at bar, courts should decide to dispense with rather than wield their authority to dismiss.³² This is in line with the time-honoured principle that cases should be decided only after giving all parties the chance to argue their causes and defenses. Technicality and procedural imperfections should thus not serve as basis of decisions.³³

- **Charles Bumagat, et al. Vs. Regalado Arribay** G.R. No. 194818. June 9, 2014

A case involving agricultural land does not immediately qualify it as an agrarian dispute. The mere fact that the land is agricultural does *not ipso facto* make the possessor an agricultural lessee or tenant; there are conditions or requisites before he can qualify as an agricultural lessee or

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tenant, and the subject matter being agricultural land constitutes simply one condition. In order to qualify as an agrarian dispute, there must likewise exist a tenancy relation between the parties.

- **Sahar International Trading, Inc. Vs. Warner Lambert Co., LLC and Pfizer, Inc. (Philippines)** G.R. No. 194872. June 9, 2014

The sole issue for the Court's resolution is whether or not the CA was correct in issuing a writ of preliminary injunction enjoining Sahar, its agents, representatives, and assigns, during the pendency of Civil Case No. 08-424 from making, using or offering for sale, or distributing *Atopitarin* the Philippine market.

The petition is dismissed on the ground of mootness.

A case or issue is considered moot and academic when it ceases to present a justiciable controversy by virtue of supervening events, so that an adjudication of the case or a declaration on the issue would be of no practical value or use. In such instance, there is no actual substantial relief which a petitioner would be entitled to, and which would be negated by the dismissal of the petition. Courts generally decline jurisdiction over such case or dismiss it on the ground of mootness. This is because the judgment will not serve any useful purpose or have any practical legal effect because, in the nature of things, it cannot be enforced.³⁷

Applying the foregoing, the Court finds that the CA's supervening promulgation of its Decision dated November 5, 2013 in CA-G.R. CV No. 97495 – which reversed the RTC's Judgment dated March 11, 2011 in Civil Case No. 08-424 and thereby made the writ of preliminary injunction permanent – rendered the present case moot and academic. This is because the primordial issue raised in the instant petition is precisely the propriety of the aforesaid issuance. Since the writ of preliminary injunction is but an incident of the patent infringement case which had

already been resolved by the CA, ruling on its propriety would be merely an academic exercise carrying no practical effect. Accordingly, the Court is constrained to dismiss the instant petition. In this relation, it is relevant to point out that it would be premature for the Court to tackle the merits of the CA's recent decision for the reason that it is not the matter herein appealed.

- **Juliet Vitug Madarang and Romeo Bartolome, represented by his attornes-in-fact and acting in their personal capacities, Rodolfo and Ruby Bartolome Vs. Spouses Jesus D. Morales and Carolina N. Morales** G.R. No. 199283. June 9, 2014

- A petition for relief from judgment is an equitable relief granted only under exceptional circumstances.¹ To set aside a judgment through a petition for relief, parties must file the petition within 60 days from notice of the judgment and within six (6) months after the judgment or final order was entered; otherwise, the petition shall be dismissed outright.
- If the petition for relief is filed on the ground of excusable negligence of counsel, parties must show that their counsel's negligence could not have been prevented using ordinary diligence and prudence.² The mere allegation that there is excusable negligence simply because counsel was 80 years old is a prejudicial slur to senior citizens. It is based on an unwarranted stereotype of people in their advanced years. It is as empty as the bigotry that supports it.

A petition for relief from judgment must be filed within 60 days after petitioner learns of the judgment, final order, or proceeding and within six (6) months from entry of judgment or final order

This court agrees that the petition for

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relief from judgment was filed out of time. However, the trial court erred in counting the 60-day period to file a petition for relief from the date of finality of the trial court's decision. Rule 38, Section 3 of the 1997 Rules of Civil Procedure is clear that the 60-day period must be counted after petitioner learns of the judgment or final order. The period counted from the finality of judgment or final order is the six-month period. Section 3, Rule 38 of the 1997 Rules of Civil Procedure states:

Sec. 3. Time for filing petition; contents and verification. – A petition provided for in either of the preceding sections of this Rule must be verified, filed **within sixty (60) days after petitioner learns of the judgment, final order, or other proceeding to be set aside, and not more than six (6) months after such judgment or final order was entered, or such proceeding was taken;** and must be accompanied with affidavits, showing the fraud, accident, mistake or excusable negligence relied upon and the facts constituting the petitioner's good and substantial cause of action or defense, as the case may be. (Emphasis supplied)

The double period required under Section 3, Rule 38 is jurisdictional and should be strictly complied with.²⁶ A petition for relief from judgment filed beyond the reglementary period is dismissed outright. This is because a petition for relief from judgment is an exception to the public policy of immutability of final judgments.²⁷

Although petitioners filed a motion for reconsideration and amended motion for reconsideration, these motions were pro forma for not specifying the findings or conclusions in the decision that were not supported by the evidence or contrary to law.³³ Their motion for reconsideration did not toll the 15-day period to appeal.³⁴

Petitioners cannot argue that the period to

appeal should be counted from August 11, 2011, the day petitioners personally received a copy of the trial court's decision. Notice of judgment on the counsel of record is notice to the client.³⁵ Since petitioners' counsel received a copy of the decision on January 29, 2010, the period to appeal shall be counted from that date.

Thus, the decision became final 15 days after January 29, 2010, or on February 13, 2010. Petitioners had six (6) months from February 13, 2010, or until August 12, 2010, to file a petition for relief from judgment.

Since petitioners filed their petition for relief from judgment on September 24, 2010, the petition for relief from judgment was filed beyond six (6) months from finality of judgment. The trial court should have denied the petition for relief from judgment on this ground.

Failure of petitioners' former counsel to file the notice of appeal within the reglementary period is not excusable negligence

Even if we assume that petitioners filed their petition for relief from judgment within the reglementary period, petitioners failed to prove that their former counsel's failure to file a timely notice of appeal was due to a mistake or excusable negligence.

Under Section 1, Rule 38 of the 1997 Rules of Civil Procedure, a petition for relief from judgment may be filed on the ground of fraud, accident, mistake, or excusable negligence:

A petition for relief from judgment is an equitable remedy and is allowed only in exceptional cases.³⁶ It is not available if other remedies exist, such as a motion for new trial or appeal.³⁷

To set aside a judgment through a petition for relief, the negligence must be so gross

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"that ordinary diligence and prudence could not have guarded against."³⁸ This is to prevent parties from "reviv[ing] the right to appeal [already] lost through inexcusable negligence."³⁹

Petitioners argue that their former counsel's failure to file a notice of appeal within the reglementary period was "a mistake and an excusable negligence due to [their former counsel's] age."⁴⁰ This argument stereotypes and demeans senior citizens. It asks this court to assume that a person with advanced age is prone to incompetence. This cannot be done.

There is also no showing that the negligence could have been prevented through ordinary diligence and prudence. As such, petitioners are bound by their counsel's negligence.⁴¹

Petitioners had until July 9, 2010 to file a notice of appeal, considering that their former counsel received a copy of the order denying their motion for reconsideration of the trial court's decision on June 24, 2010.⁴² Since petitioners filed their notice of appeal only on August 11, 2010,⁴³ the trial court correctly denied the notice of appeal for having been filed out of time.

The Court of Appeals correctly denied the petition for *certiorari* for petitioners' failure to file a motion for reconsideration of the order denying the petition for relief from judgment

In its resolution dated July 27, 2011, the Court of Appeals denied petitioners' petition for *certiorari* for failure to file a motion for reconsideration of the order denying the petition for relief from judgment. We agree with the appellate court.

Section 1, Rule 65 of the 1997 Rules of Civil Procedure requires that no appeal or any plain, speedy, and adequate remedy in the ordinary course of law is available

to a party before a petition for *certiorari* is filed.

In this case, a motion for reconsideration of the order denying the petition for relief from judgment is the plain, speedy, and adequate remedy in the ordinary course of law. Petitioners failed to avail themselves of this remedy. Thus, the Court of Appeals correctly dismissed petitioners' petition for *certiorari*.

- **Capitol Sawmill Corporation and Columbia Wood Industries Corporation Vs. Concepcion Chua Gaw, et al.** G.R. No. 187843. June 9, 2014

- Section 1, Rule 33 of the Rules of Court provides that 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. Petitioners anchored their demurrer to evidence on respondents' lack of cause of action against the corporations, in accordance with a court ruling that properties of a corporation cannot be included in the inventory of the estate of a deceased person.
- Cause of action is defined as the act or omission by which a party violates a right of another. The existence of a cause of action is determined by the allegations in the complaint. A complaint is said to assert a sufficient cause of action if, admitting what appears solely on its face to be correct, the plaintiff would be entitled to the relief prayed for. Accordingly, if the allegations furnish sufficient basis by which the complaint can be maintained, the same should not be dismissed, regardless of the defenses that may be averred by the defendants.⁸

- **Alberto Valdez Vs. Desiderio W. Macusi, Jr., Sheriff IV, RTC, Branch 25, Tabuk, Kalinga** A.M. No. P-13-3123. June 10, 2014

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- Section 14, Rule 39 of the 1997 Rules of Civil Procedure states:

- Section 14. *Return of writ of execution.* — The writ of execution shall be returnable to the court issuing it immediately after the judgment has been satisfied in part or in full. If the judgment cannot be satisfied in full within thirty (30) days after his receipt of the writ, the officer shall report to the court and state the reason therefor. Such writ shall continue in effect during the period within which the judgment may be enforced by motion. The officer shall make a report to the court every thirty (30) days on the proceedings taken thereon until the judgment is satisfied in full, or its effectivity expires. The returns or periodic reports shall set forth the whole of the proceedings taken, and shall be filed with the court and copies thereof promptly furnished the parties.

- The 30-day period imposed for the execution of the writ after the judgment has been received by the sheriff, as well as the periodic report every 30 days, is mandatory under the rule. In *Aquino v. Martin*,¹¹ we held that it is mandatory for the sheriff to execute the judgment and make a return on the writ of execution within the period provided by the Rules of Court. Also, the sheriff must make periodic reports on partially satisfied or unsatisfied writs in accordance with the rule in order that the court and the litigants are apprised of the proceedings undertaken. Such periodic reporting on the status of the writs must be done by the sheriff regularly and consistently every 30 days until they are returned fully satisfied.

- In the present case, the records show that Sheriff Macusi submitted only one return of writ of execution in his Partial Report dated 3 May 2006 and did not file any other report to the court. Sheriff Macusi failed to implement the court order and failed to submit periodic reports of the actions he had taken on the writ “every 30 days until the judgment is satisfied in full, or its effectivity expires,” as required by the Rules. In *Dilan v. Dulfo*,¹² we held that sheriffs play an important part in the administration of justice because they are tasked to execute the final judgment of courts. If not enforced, such decisions are empty victories on the part of the prevailing parties. Clearly, Sheriff Macusi was remiss in his duties and is thus liable for simple neglect of duty.

- Simple neglect of duty is the failure to give attention to a task, or the disregard of a duty due to carelessness or indifference. Under the Revised Uniform Rules on Administrative Cases in the Civil Service,¹³ simple neglect of duty is a less grave offense punishable with suspension of one month and one day to six months for the first offense and dismissal for the second offense.¹⁴

- **Nestor T. Gadrinab Vs. Nora T. Salamanca, Antonio Talao, and Elena Lopez** G.R. No. 194560. June 11, 2014

A judgment on compromise agreement is a judgment on the merits. It has the effect of *res judicata*, and is immediately final and executory unless set aside because of falsity or vices of consent. The doctrine of immutability of judgments bars courts from modifying decisions that have already attained finality, even if the purpose of the modification is to correct errors of fact or law.

The issue in this case is whether the Court of Appeals erred in affirming the Regional Trial Court’s decision allowing the physical partition of the property despite finality of

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a previous judgment on compromise agreement involving the division of the same property.

The petition is meritorious.

The Court of Appeals erred in affirming the Regional Trial Court's decision allowing the physical partition of the property

Respondent Salamanca filed two actions for physical partition. The two parties settled the first action through a judicial compromise agreement. The same respondent filed the second action after she had determined that her co-heirs were not being cooperative in complying with the compromise agreement.

In a compromise agreement, the parties freely enter into stipulations. "[A] judgment based on a compromise agreement is a judgment on the merits"⁵² of the case. It has the effect of res judicata. These principles are impressed both in our law and jurisprudence.

This case involves "bar by prior judgment." Respondents cannot file another action for partition after final judgment on compromise had already been rendered in a previous action for partition involving the same parties and property.

This court explained in *FGU Insurance Corporation v. Regional Trial Court*⁶⁰ the doctrine of finality of judgment:

Under the doctrine of finality of judgment or immutability of judgment, a decision that has acquired finality becomes immutable and unalterable, and may no longer be modified in any respect, even if the modification is meant to correct erroneous conclusions of fact and law, and whether it be made by the court that rendered it or by the Highest Court of the land. Any act which violates this principle must immediately be struck down.⁶¹

This doctrine admits a few exceptions, usually applied to serve substantial justice:

- "The correction of clerical errors;
- the so-called nunc pro tunc entries which cause no prejudice to any party;
- void judgments; and
- whenever circumstances transpire after the finality of the decision rendering its execution unjust and inequitable."⁶²

Doctrines on bar by prior judgment and immutability of judgment apply whether judgment is rendered after a full-blown trial or after the parties voluntarily execute a compromise agreement duly approved by the court.

Because a judicial compromise agreement is in the nature of both an agreement between the parties and a judgment on the merits, it is covered by the Civil Code provisions on contracts. It can be avoided on grounds that may avoid an ordinary contract, e.g., it is not in accord with the law;⁶³ lack of consent by a party; and existence of fraud or duress.

Therefore, courts cannot entertain actions involving the same cause of action, parties, and subject matter without violating the doctrines on bar by prior judgment and immutability of judgments, unless there is evidence that the agreement was void, obtained through fraud, mistake or any vice of consent, or would disrupt substantial justice.

In this case, there was no issue as to the fact that the parties freely entered into the compromise agreement. There was also no dispute about the clarity of its terms. Some of the parties simply do not wish to abide by the compromise agreement's terms.

Likewise, respondents' argument that a supervening event, i.e. disagreement

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among the parties, was present to justify disturbance of the final judgment on compromise fails to persuade. A supervening event may justify the disturbance of a final judgment on compromise if it "brought about a material change in [the] situation"⁶⁴ between the parties. The material change contemplated must render the execution of the final judgment unjust and inequitable. Otherwise, a party to the compromise agreement has a "right to have the compromise agreement executed, according to its terms."⁶⁵

The subsequent disagreement among the parties did not cause any material change in the situation or in the relations among the parties. The situation and relations among the parties remained the same as the situation and their relations prior to the compromise agreement. They remained co-owners of the property, which they desired to partition.

Moreover, the parties voluntarily agreed to the compromise agreement, which was already stamped with judicial approval. The agreement's execution would bring about the effects desired by all parties and the most just and equitable situation for all. On the other hand, the judgment granting the second action for partition filed by respondent Salamanca was obtained with opposition.

Judges "have the ministerial and mandatory duty to implement and enforce [a compromise agreement]."⁶⁶ Absent appeal or motion to set aside the judgment, courts cannot modify, impose terms different from the terms of a compromise agreement, or set aside the compromises and reciprocal concessions made in good faith by the parties without gravely abusing their discretion.⁶⁷

"[They cannot] relieve parties from [their] obligations . . . simply because [the agreements are] . . . unwise."⁶⁸ Further, "[t]he mere fact that the Compromise Agreement favors one party does not render it invalid."⁶⁹ Courts do not have

power to "alter contracts in order to save [one party] from [the effects of] adverse stipulations. . . ."⁷⁰

Respondents have remedies if parties to the compromise agreement refuse to abide by its terms

The issue in this case involves the non-compliance of some of the parties with the terms of the compromise agreement. The law affords complying parties with remedies in case one of the parties to an agreement fails to abide by its terms.

A party may file a motion for execution of judgment. Execution is a matter of right on final judgments. Section 1, Rule 39 of the Rules of Court.

If a party refuses to comply with the terms of the judgment or resists the enforcement of a lawful writ issued, an action for indirect contempt may be filed in accordance with Rule 71 of the Rules of Court:

Since a judgment on compromise agreement is effectively a judgment on the case, proper remedies against ordinary judgments may be used against judgments on a compromise agreement. Provided these are availed on time and the appropriate grounds exist, remedies may include the following: a) motion for reconsideration; b) motion for new trial; c) appeal; d) petition for relief from judgment; e) petition for *certiorari*; and f) petition for annulment of judgment.⁷¹

Respondent Salamanca knew that the only reason for the failed compromise agreement was the non-compliance with the agreement's terms of some of her co-heirs. Particularly, it was stipulated that petitioner's removal from the property was conditioned upon payment of an amount equivalent to his share. Respondent Talao refused to abide by his own undertaking to shoulder respondent Salamanca's share. He also refused to acknowledge the appraisal of the appraiser appointed in the compromise agreement. This refusal caused the failure

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of the compromise agreement.

Instead of availing herself of the proper remedies so the compromise could be enforced and the partition could be effected, respondent Salamanca chose to move again for the partition of the property and set aside a valid and final judgment on compromise. This court cannot allow such motion to prosper without going against law and established jurisprudence on judgments.

• **Asian Construction and Development Corporation Vs. Sannaedle Company, Inc.** G.R. No. 181676. June 11, 2014

- Hence, the present petition wherein petitioner raises this sole issue for our resolution: whether or not judgment on the pleadings is proper.
- Petitioner contends that the judgment on the pleadings is not proper, because it raised special and affirmative defenses in its Answer. It asserts that with this specific denial, a genuine issue of fact had been joined to the extent that a judgment on the pleadings could not be made.

The Court finds the petition bereft of merit.

Judgment on the pleadings is governed by Section 1, Rule 34 of the 1997 Rules of Civil Procedure which reads: *Chapter 10. Judgment on the Pleadings.*

Sec. 1. Judgment on the pleadings. – Where an answer fails to tender an issue, or otherwise admits the material allegations of the adverse party's pleading, the court may, on motion of that party, direct judgment on such pleading. However, in actions for declaration of nullity or annulment of marriage or for legal separation, the material facts alleged in the complaint shall always be proved.¹⁰

Judgment on the pleadings is proper when

an answer fails to tender an issue, or otherwise admits the material allegations of the adverse party's pleading. An answer fails to tender an issue if it does not comply with the requirements of a specific denial as set out in Sections 8¹¹ and 10,¹² Rule 8 of the 1997 Rules of Civil Procedure, resulting in the admission of the material allegations of the adverse party's pleadings.¹³

Here, it is irrefutable that petitioner acknowledged having entered into a Memorandum of Agreement with respondent and that it still has an unpaid balance of US\$615,620.33.

We note that respondent's complaint for a sum of money is based mainly on the alleged failure of petitioner to pay the balance of US\$615,620.33 under the Memorandum of Agreement.

While petitioner allegedly raised affirmative defenses, i.e., defect in the certification of non-forum shopping, no legal capacity to sue and fortuitous event, the same cannot still bar respondent from seeking the collection of the unpaid balance. Other than these affirmative defenses, petitioner's denial neither made a specific denial that a Memorandum of Agreement was perfected nor did it contest the genuineness and due execution of said agreement.

• **Dr. Joel C. Mendez Vs. People of the Philippines and Court of Tax Appeals** G.R. No. 179962. June 11, 2014

Section 14, Rule 110 of the Revised Rules of Criminal Procedure governs the matter of amending the information:

Amendment or substitution. — A complaint or information may be amended, in form or in substance, without leave of court, at any time before the accused enters his plea. After the plea and during the trial, a formal amendment may only be made with leave of court and when it can be done without causing prejudice to the rights of the accused.

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However, any amendment before plea, which downgrades the nature of the offense charged in or excludes any accused from the complaint or information, can be made only upon motion by the prosecutor, with notice to the offended party and with leave of court. The court shall state its reasons in resolving the motion and copies of its order shall be furnished all parties, especially the offended party.

There is no precise definition of what constitutes a substantial amendment. According to jurisprudence, substantial matters in the complaint or information consist of the recital of facts constituting the offense charged and determinative of the jurisdiction of the court.²³ Under Section 14, however, the prosecution is given the right to amend the information, regardless of the nature of the amendment, so long as the amendment is sought before the accused enters his plea, subject to the qualification under the second paragraph of Section 14.

Once the accused is arraigned and enters his plea, however, Section 14 prohibits the prosecution from seeking a substantial amendment, particularly mentioning those that may prejudice the rights of the accused.²⁴ One of these rights is the constitutional right of the accused to be informed of the nature and cause of accusation against him, a right which is given life during the arraignment of the accused of the charge of against him. The theory in law is that since the accused officially begins to prepare his defense against the accusation on the basis of the recitals in the information read to him during arraignment, then the prosecution must establish its case on the basis of the same information.

In the present case, the amendments sought by the prosecution pertains to (i) the alleged change in the date in the commission of the crime from 2001 to 2002; (ii) the addition of the phrase "doing business under the name and style of Mendez Medical Group;" (iii) the change and/or addition of the branches of petitioner's operation; and (iv) the

addition of the phrase "for income earned." We cannot see how these amendments would adversely affect any substantial right of the petitioner as accused.

The "change" in the date from 2001 to 2002 and the addition of the phrase "for income earned"

At the outset we note that the actual year of the commission of the offense has escaped both the petitioner and prosecution. In its Motion to Amend the Information, the prosecution mistakenly stated that the information it originally filed alleged the commission of the offense as "on or about the 15th day of April, **2001**" – even if the record is clear that that the actual year of commission alleged is **2002**. The petitioner makes a similar erroneous allegation in its petition before the Court.

Interestingly, in its August 13, 2007 resolution, denying the petitioner's motion for reconsideration, the CTA implicitly ruled that there was in fact no amendment of the date in the information by correctly citing what the original information alleges. This, notwithstanding, ***the petitioner still baselessly belaboured the point in its present petition by citing the erroneous content of the prosecution's motion to amend instead of the original information itself.***²⁸ ***This kind of legal advocacy obviously added nothing but confusion to what is otherwise a simple case and another docket to the High Court's overwhelming caseload.***

That the actual date of the commission of the offense pertains to the year 2002 is only consistent with the allegation in the information on the taxable year it covers, i.e., for the taxable year 2001. Since the information alleges that petitioner failed to file his income tax return for the taxable year 2001, then the offense could only possibly be committed when petitioner failed to file his income tax return before the due date of filing, which is on April of the succeeding year, 2002.

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Accordingly, the addition of the phrase "for the income earned" before the phrase "for the taxable year 2001" cannot but be a mere formal amendment since the added phrase merely states with additional precision something that is already contained in the original information, *i.e.*, the income tax return is required to be filed precisely for the income earned for the preceding taxable year.

The addition of the phrase "doing business under the name and style of Mendez Medical Group and the change and/or addition of the branches of petitioner's operation"

Under the National Internal Revenue Code (NIRC), a resident citizen who is engaged in the practice of a profession within the Philippines is obligated to file in duplicate an income tax return on his income from all sources, regardless of the amount of his gross income.²⁹ In complying with this obligation, this type of taxpayer ought to keep only two basic things in mind: first is where to file the return; and second is when to file the return. Under Section 51 B of the NIRC, the return should "be filed with an authorized agent bank, Revenue District Officer, Collection Agent or duly authorized Treasurer of the city or municipality in which such person *has his legal residence or principal place of business in the Philippines.*"

On the other hand, under Section 51 C of the NIRC, the same taxpayer is required to file his income tax return on or before the fifteenth (15th) day of April of each year covering income for the preceding taxable year.³⁰ Failure to comply with this requirement would result in a violation of Section 255 of the NIRC

Since the petitioner operates as a sole proprietor from taxable years 2001 to 2003, the petitioner should have filed a consolidated return in his principal place of business, regardless of the number and location of his other branches. Consequently, we cannot but agree with

the CTA that the change and/or addition of the branches of the petitioner's operation in the information does not constitute substantial amendment because it does not change the prosecution's theory that the petitioner failed to file his income tax return.

In the amended information, the prosecution additionally alleged that petitioner is "doing business under the name and style of 'Weigh Less Center'/Mendez Medical Group.'" Given the nature of a sole proprietorship, the addition of the phrase "doing business under the name and style" is merely descriptive of the nature of the business organization established by the petitioner as a way to carry out the practice of his profession. As a phrase descriptive of a sole proprietorship, the petitioner cannot feign ignorance of the "entity" "Mendez Medical Group" because this entity is nothing more than the shadow of its business owner – petitioner himself.

- **Dominga B. Quito Vs. Stop and Save Corporation, as represented by Gregory David Dickenson, et al.** G.R. No. 186657. June 11, 2014

- **We find that *litis pendentia* as a ground for the dismissal of a civil action does not apply in the present case.**

-
- *Litis pendentia* refers to the situation where another action is pending between the same parties for the same cause of action so that one of these actions is unnecessary and vexatious.¹¹ The dismissal of a civil action on the ground of *litis pendentia* is based on the policy that a party is not allowed to vex another more than once regarding the same subject matter and for the same cause of action in order that possible conflicting judgments may be avoided for the sake of the stability of the rights and statuses of persons.¹²

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- To constitute *litis pendentia*, the

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following requisites must be present: (1) identity of the parties in the two actions; (2) substantial identity in the causes of action and in the reliefs sought by the parties; (3) and the identity between the two actions should be such that any judgment that may be rendered in one case, regardless of which party is successful, would amount to *res judicata* in the other.¹³

-
- Indisputably, the requisite identity of parties is met in the present case. The disputed point is whether there is substantial identity in the causes of action and in the reliefs sought in the cases for annulment of lease contract filed by Stop and Save and for unlawful detainer filed by Dominga.
-
- **We find that no substantial identity exists.**
-
- "The test to determine whether the causes of action are identical is to ascertain whether the same evidence will sustain both actions, or whether there is an identity in the facts essential to the maintenance of the two actions. If the same facts or evidence would sustain both, the two actions are considered the same, and a judgment in the first case is a bar to the subsequent action."¹⁴
-
- In the present case, while there is an identity in the facts between the two actions, involving as they do the same lease contract, the issues and the relief prayed for are different so that the causes of action remain entirely distinct from each other.
-
- In the unlawful detainer suit, the issue is who between the parties has a better right to *physical possession* over the property or

possession *de facto* and the principal relief prayed for is for Stop and Save to vacate the property for failure to pay the rent. In contrast, in the annulment of lease contract, the issue is the validity of the lease contract, where Stop and Save puts in issue Dominga's ownership.

-
- In other words, the issue of physical possession in the action for unlawful detainer cannot be identical with the issues of ownership and validity of contract in the action for annulment. From these essential differences, the lack of required identity in the causes of action for *litis pendencia* to exist cannot be denied.
-
- Since the causes of action in the subject case for unlawful detainer and annulment of lease contract are entirely different, a judgment in one case would not amount to *res judicata* in the other. "[F]or *res judicata* to bar the institution of a subsequent action[,] the following requisites must concur: (1) the former judgment must be final; (2) it must have been rendered by a court having jurisdiction of the subject matter and the parties; (3) it must be a judgment on the merits; and (4) **there must be[,] between the first and second actions[,] (a) identity of parties; (b) identity of subject matter; and (c) identity of cause of action.**"¹⁵
-

- **Virginia S. Dio and H.S. Equities, Ltd. Vs. Subic Bay Marine Exploratorium, Inc., etc.** G.R. No. 189532. June 11, 2014

Petitioners here raise the solitary issue of the propriety of the dismissal of their counterclaim on the basis of the reasoning of the lower court that the counterclaim derives its jurisdictional support from the complaint which has already been dismissed

The dismissal of the complaint resulted

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from respondents failure to append to the complaint a copy of the board resolution authorizing Desmond to sign the certificate of non-forum shopping on behalf of SBME. The subsequent dismissal of the counterclaim, in turn, erroneously proceeded from the *ratio* that since the main action has already been dismissed with finality by the appellate court, the lower court has lost its jurisdiction to grant any relief under the counterclaim.

As the rule now stands, the nature of the counterclaim notwithstanding, the dismissal of the complaint does not *ipso jure* result in the dismissal of the counterclaim, and the latter may remain for independent adjudication of the court, provided that such counterclaim, states a sufficient cause of action and does not labor under any infirmity that may warrant its outright dismissal. Stated differently, the jurisdiction of the court over the counterclaim that appears to be valid on its face, including the grant of any relief thereunder, is not abated by the dismissal of the main action. The court's authority to proceed with the disposition of the counterclaim independent of the main action is premised on the fact that the counterclaim, on its own, raises a novel question which may be aptly adjudicated by the court based on its own merits and evidentiary support.

In *Perkin Elmer Singapore Pte Ltd. v. Dakila Trading Corporation*,²⁹ a case on all fours with the present one, we expounded our ruling in *Pinga* and pointed out that the dismissal of the counterclaim due to the fault of the plaintiff is without prejudice to the right of the defendant to prosecute any pending counterclaims of whatever nature in the same or separate action, thus:

Based on the aforequoted ruling of the Court, if the dismissal of the complaint somehow eliminates the cause of the counterclaim, then the counterclaim cannot survive. Conversely, if the counterclaim itself states sufficient cause of action then it should stand independently of and survive the dismissal

of the complaint. Now, having been directly confronted with the problem of whether the compulsory counterclaim by reason of the unfounded suit may prosper even if the main complaint had been dismissed, **we rule in the affirmative.**

It bears to emphasize that petitioner's counterclaim against respondent is for damages and attorney's fees arising from the unfounded suit. While respondent's Complaint against petitioner is already dismissed, petitioner may have very well already incurred damages and litigation expenses such as attorney's fees since it was forced to engage legal representation in the Philippines to protect its rights and to assert lack of jurisdiction of the courts over its person by virtue of the improper service of summons upon it. Hence, the cause of action of petitioner's counterclaim is not eliminated by the mere dismissal of respondent's complaint.³⁰ (Emphasis theirs).

Once more, we allow the counterclaim of the petitioners to proceed independently of the complaint of the respondents.

- **Vilma Quintos, represented by her Attorney-in-Facts Fidel I. Quintos, Jr., et al. Vs. Pelagia I. Nicolas, et al.** G.R. No. 210252. June 16, 2014

- **Petitioners were not able to prove equitable**
- **title or ownership over the property**
-
- Quieting of title is a common law remedy for the removal of any cloud, doubt, or uncertainty affecting title to real property.¹² For an action to quiet title to prosper, two indispensable requisites must concur, namely: (1) the plaintiff or complainant has a legal or equitable title to or interest in the real property subject of the action; and (2) the deed, claim, encumbrance, or proceeding claimed to be casting cloud on the title must be shown to be in fact invalid or inoperative despite its prima facie appearance of validity or efficacy.¹³ In the case at bar,

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the CA correctly observed that petitioners' cause of action must necessarily fail mainly in view of the absence of the first requisite.

Their alleged open, continuous, exclusive, and uninterrupted possession of the subject property is belied by the fact that respondent siblings, in 2005, entered into a Contract of Lease with the Avico Lending Investor Co. over the subject lot without any objection from the petitioners.¹⁶ Petitioners' inability to offer evidence tending to prove that Bienvenido and Escolastica Ibarra transferred the ownership over the property in favor of petitioners is likewise fatal to the latter's claim. On the contrary, on May 28, 1998, Escolastica Ibarra executed a Deed of Sale covering half of the subject property in favor of all her 10 children, not in favor of petitioners alone.¹⁷

The counterclaim for partition is not barred by prior judgment

This brings us to the issue of partition as raised by respondents in their counterclaim. In their answer to the counterclaim, petitioners countered that the action for partition has already been barred by *res judicata*.

- The doctrine of *res judicata* provides that the judgment in a first case is final as to the claim or demand in controversy, between the parties and those privy with them, not only as to every matter which was offered and received to sustain or defeat the claim or demand, but as to any other admissible matter which must have been offered for that purpose and all matters that could have been adjudged in that case.¹⁹ It precludes parties from relitigating issues actually litigated and determined by a prior and final judgment.

In the case at bar, respondent siblings admit that they filed an action for partition docketed as Civil Case No. 02-52, which the RTC dismissed through an Order dated March 22, 2004 for the failure of the

parties to attend the scheduled hearings. Respondents likewise admitted that since they no longer appealed the dismissal, the ruling attained finality. Moreover, it cannot be disputed that the subject property in Civil Case No. 02-52 and in the present controversy are one and the same, and that in both cases, respondents raise the same action for partition. And lastly, although respondent spouses Candelario were not party-litigants in the earlier case for partition, there is identity of parties not only when the parties in the case are the same, but also between those in privity with them, such as between their successors-in-interest.²⁵

With all the other elements present, what is left to be determined now is whether or not the dismissal of Civil case No. 02-52 operated as a dismissal on the merits that would complete the requirements of *res judicata*.

In advancing their claim, petitioners cite Rule 17, Sec. 3 of the Rules of Court. Truly, We have had the occasion to rule that dismissal with prejudice under the above-cited rule amply satisfies one of the elements of *res judicata*.²⁷ It is, thus, understandable why petitioners would allege *res judicata* to bolster their claim. However, dismissal with prejudice under Rule 17, Sec. 3 of the Rules of Court cannot defeat the right of a co-owner to ask for partition at any time, provided that there is no actual adjudication of ownership of shares yet.

Pertinent hereto is Article 494 of the Civil Code. From the above-quoted provision, it can be gleaned that the law generally does not favor the retention of co-ownership as a property relation, and is interested instead in ascertaining the co-owners' specific shares so as to prevent the allocation of portions to remain perpetually in limbo. Thus, the law provides that each co-owner may demand **at any time** the partition of the thing owned in common.

Between dismissal with prejudice under

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Rule 17, Sec. 3 and the right granted to co-owners under Art. 494 of the Civil Code, the latter must prevail. To construe otherwise would diminish the substantive right of a co-owner through the promulgation of procedural rules. Such a construction is not sanctioned by the principle, which is too well settled to require citation, that a substantive law cannot be amended by a procedural rule.²⁸ This further finds support in Art. 496 of the New Civil Code, viz:

Article 496. Partition may be made by agreement between the parties or by judicial proceedings. Partition shall be governed by the Rules of Court **insofar as they are consistent with this Code.**

Thus, for the Rules to be consistent with statutory provisions, We hold that Art. 494, as cited, is an exception to Rule 17, Sec. 3 of the Rules of Court to the effect that even if the order of dismissal for failure to prosecute is silent on whether or not it is with prejudice, it shall be deemed to be without prejudice.

This is not to say, however, that the action for partition will never be barred by *res judicata*. There can still be *res judicata* in partition cases concerning the same parties and the same subject matter once the respective shares of the co-owners have been determined with finality by a competent court with jurisdiction or if the court determines that partition is improper for co-ownership does not or no longer exists.

In the case at bar wherein the co-ownership, as determined by the trial court, is still subsisting 30-70 in favor of respondent spouses Candelario. Consequently, there is no legal bar preventing herein respondents from praying for the partition of the property through counterclaim.

- **Florencio Libongcogon, et al. Vs. Phimco Industries, Inc.** G.R. No. 203332. June 18, 2014

• **The doctrine of immutability of**

final

• **judgments**

As the petitioners themselves acknowledge, the doctrine of **immutability of final judgments** admits of certain exceptions as explained in **Hulst v. PR Builders, Inc.**,³² which they cite to prove their case. One recognized exception is the existence of a supervening cause or event which renders the enforcement of a final and executory decision unjust and inequitable. In this particular case, a supervening event transpired, which must be considered in the execution of the CA decision in CA-G.R. SP No. 57988 in order not to create an injustice to or an inequitable treatment of workers who, like the petitioners, participated in a strike where this Court found the commission of illegal acts by the strikers, among them the petitioners.

- As the CA pointed out in its amended decision, the evidence in the illegal strike case clearly identified the petitioners as among the union members who, in concert with the other identified union members, blocked the points of ingress and egress of PHIMCO through a human blockade and the mounting of physical obstructions in front of the company's main gate.³³ This is a prohibited act under the law.³⁴ "For participating in illegally blocking ingress to and egress from company premises, this Court's 3rd Division declared in the illegal strike case these union members dismissed for their illegal acts in the conduct of the union's strike."³⁵

• A strike is a concerted union action for purposes of collective bargaining or for the workers' mutual benefit and protection.³⁷ It is manifested in a work stoppage whose main objective is to paralyze the operations of the employer establishment. Because of its potential adverse consequences to the striking workers and the employer, as well as the community, a strike enjoys recognition and respect only

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when it complies with the conditions laid down by law. One of these conditions, as far as union members are concerned, is the avoidance of illegal acts during the strike³⁸ such as those committed by the petitioners, in concert with the other union members, during the PHIMCO strike in 1995.³⁹

- The petitioners were in the same footing as the other union members who were identified to have committed illegal acts during the strike and whose dismissal was upheld by this Court in the illegal strike and illegal dismissal cases. Nevertheless, they would want to be spared from liability for the illegal acts they committed during the strike by invoking the doctrine of **immutability of final judgments**. This is unfair, as the CA saw it, stressing that it would create an iniquitous situation in relation to the union members who lost their employment because of the illegal acts they committed during the strike.

We appreciate the CA's concern. The petitioners were also respondents in the illegal strike case,⁴⁰ yet through the expedient of filing an illegal dismissal case separate from the main illegal dismissal action filed by PILA involving all the other union members dismissed by the company, they would go scot free for their commission of illegal acts during the strike.

It should be recalled that the CA Special 12th Division declared the petitioners to have been illegally dismissed when it issued its February 27, 2001 decision based on its finding that there was no showing at the time that they committed illegal acts during the strike. This Court's decision in the illegal strike case proved otherwise, inasmuch as the petitioners were positively found to have committed illegal acts during the strike.

Considering the substantial financial losses suffered by the company on account of

the strike, it would indeed be unjust to the company and the dismissed union members to allow the reinstatement of the petitioners and to reward them with backwages and other monetary benefits. We thus find no reversible error or grave abuse of discretion in the CA amended decision.

- **Bonifacio Peidad, represented by Maria Inspiracion Peidad-Danao Vs. Sps. Victorio Gurieza and Emeteria M. Gurieza** G.R. No. 207525. June 18, 2014

- Unlawful detainer is an action to recover possession of real property from one who unlawfully withholds possession thereof 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. The only issue to be resolved in an unlawful detainer case is the physical or material possession of the property involved, independent of any claim of ownership by any of the parties.¹⁷
- An ejectment case, based on the allegation of possession by tolerance, falls under the category of unlawful detainer. Where the plaintiff allows the defendant to use his/her property by tolerance without any contract, the defendant is necessarily bound by an implied promise that he/she will vacate on demand, failing which, an action for unlawful detainer will lie.¹⁸
- Thus, under Section 1, Rule 70 of the Rules of Court, the complaint must be filed "within one (1) year after such unlawful deprivation or withholding of possession" and must allege that: (a) the defendant originally had lawful possession of the property, either by virtue of a

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contract or by tolerance of the plaintiff; (b) eventually, the defendant's possession of the property became illegal or unlawful upon notice by the plaintiff to defendant of the expiration or the termination of the defendant's right of possession; (c) thereafter, the defendant remained in possession of the property and deprived the plaintiff the enjoyment thereof; and (d) within one (1) year from the unlawful deprivation or withholding of possession, the plaintiff instituted the complaint for ejectment.¹⁹

- **Alonzo Gipa, et al. Vs. Southern Luzon Institute as represented by its Vice-President for Operations and Corporate Secretary, Ruben G. Asuncion** G.R. No. 177425. June 18, 2014

Suffice it to say that "[c]oncomitant to the liberal interpretation of the rules of procedure should be an effort on the part of the party invoking liberality to adequately explain his failure to abide by the rules."² Those who seek exemption from the application of the rule have the burden of proving the existence of exceptionally meritorious reasons warranting such departure.³

Payment of the full amount of appellate court docket and lawful fees is mandatory and jurisdictional; Relaxation of the rule on payment of appeal fee is unwarranted in this case.

Section 4, Rule 41 of the Rules of Court provides: One et

Sec. 4. *Appellate court docket and other lawful fees.* – **Within the period for taking an appeal**, the appellant shall pay to the clerk of 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.

Here, petitioners concede that payment of the full amount of docket fees within the

prescribed period is not a mere technicality of law or procedure but a jurisdictional requirement. Nevertheless, they want this Court to relax the application of the rule on the payment of the appeal fee in the name of substantial justice and equity.

The Court is not persuaded.

The liberality which petitioners pray for has already been granted to them by the CA at the outset. It may be recalled that while petitioners paid a substantial part of the docket fees, they still failed to pay the **full** amount thereof since their payment was short of P30.00. Based on the premise that the questioned Decision of the RTC has already become final and executory due to non-perfection, the CA could have dismissed the appeal outright. But owing to the fact that only the meager amount of P30.00 was lacking and considering that the CA may opt not to proceed with the case until the docket fees are paid,⁴⁰ it still required petitioners, even if it was already beyond the reglementary period, to complete their payment of the appeal fee within 10 days from notice. Clearly, the CA acted conformably with the pronouncement made in *Camposagrado*, a case cited by petitioners, that "[a] party's failure to pay the appellate docket fee within the reglementary period confers only a discretionary and not a mandatory power to dismiss the proposed appeal. Such discretionary power should be used in the exercise of the court's sound judgment in accordance with the tenets of justice and fair play with great deal of circumspection, considering all attendant circumstances and must be exercised wisely and prudently, never capriciously, with a view to substantial justice."⁴

- **Heirs fo Paciano Yabao, Represented by Remedios Chan Vs. Paz Lentejas Van Der Kolk** G.R. No. 207266. June 25, 2014

- The Court also notes other flaws in the handling by the MTCC of the case.
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- *One.* The MTCC failed to consider the absence of any allegation in the complaint regarding the authority of Remedios Chan to institute Civil Case No. 1184 for the Heirs of Yabao. Section 4, Rule 8 of the Rules of Court provides that facts showing the capacity of a party to sue or be sued, or the authority of a party to sue or be sued in a representative capacity must be averred in the complaint. The party bringing suit has the burden of proving the sufficiency of the representative character that he claims. If a complaint is filed by one who claims to represent a party as plaintiff but who, in fact, is not authorized to do so, such complaint is not deemed filed and the court does not acquire jurisdiction over the complaint. It bears stressing that an unauthorized complaint does not produce any legal effect.²⁷
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- *Two.* The MTCC should have admitted Van der Kolk's answer, which was appended to her motion for allowance to belatedly file answer, filed on March 7, 2005 instead of declaring her in default. Record shows that the MTCC rendered the judgment of default only on December 4, 2006 and thus, it slept on Van der Kolk's said motion for 1 year and nine months, just as it also slept on the petitioners' motion to declare her in default for almost two years. This is procedurally unsound.
-
- It is within the sound discretion of the trial court to permit the defendant to file his answer and to be heard on the merits even after the reglementary period for filing the answer expires.²⁸ The rule is that the defendant's answer should be admitted where it is filed before a declaration of default and no prejudice is caused to the plaintiff.²⁹ In this case, Van der

Kolk filed the answer beyond the reglementary period but before she was declared in default, and there was no showing that she intended to delay the prompt disposition of the case. Consequently, her Answer should have been admitted.

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- The MTCC must be reminded that it is the policy of the law that every litigant should be afforded the opportunity to have his case be tried on the merits as much as possible. Hence, judgments by default are frowned upon.³⁰ It must be emphasized that a case is best decided when all contending parties are able to ventilate their respective claims, present their arguments and adduce evidence in support of their positions. By giving the parties the chance to be heard fully, the demands of due process are subserved. Moreover, it is only amidst such an atmosphere that accurate factual findings and correct legal conclusions can be reached by the courts.³¹

• **Air Transformation Office (ATO) Vs. Court of Appeals, et al.** G.R. No. 173616. June 25, 2014

- The totality of all the provisions above shows the following significant characteristics of the RTC judgment in an ejectment case appealed to it:
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- (1) The judgment of the RTC against the defendant-litigant precludes a further appeal that may be taken therefrom; and
- (2) Such judgment of the RTC is not stayed by an appeal to the RTC or, in the appellate court's discretion, suspension of its execution.
- Under the old provision, the procedure on appeal from the RTC's judgment to the Court of Appeals was, with the exception of the need for a supersedeas bond which was not applicable, virtually the same as the procedure on appeal of the MTC's judgment to the RTC. Thus, in the contemplated recourse to the Court of Appeals, the defendant, after perfecting his appeal, could also prevent the immediate execution of the judgment by

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making the periodic deposit of rentals during the pendency of the appeal and thereby correspondingly prevent restitution of the premises to the plaintiff who had already twice vindicated his claim to the property in the two lower courts. On the other hand, under the amendatory procedure introduced by the present Section 21 of Rule 70, **the judgment of the RTC shall be immediately executory and can accordingly be enforced forthwith.** It shall not be stayed by the mere continuing deposit of monthly rentals by the dispossessor during the pendency of the case in the Court of Appeals or this Court, although such execution of the judgment shall be without prejudice to that appeal taking its due course. This reiterates Section 21 of the Revised Rule on Summary Procedure which replaced the appellate procedure in, and repealed, the former Section 10, Rule 70 of the 1964 Rules of Court.

The RTC's duty to issue a writ of execution under Section 21 of Rule 70 is ministerial

and may be compelled by *mandamus*.⁴⁹ Section 21 of Rule 70 presupposes that the defendant in a forcible entry or unlawful detainer case is unsatisfied with the RTC's judgment and appeals to a higher court. It authorizes the RTC to immediately issue a writ of execution without prejudice to the appeal taking its due course.⁵⁰ The rationale of immediate execution of judgment in an ejectment case is to avoid injustice to a lawful possessor.⁵¹ Nevertheless, it should be stressed that the appellate court may stay the writ of execution should circumstances so require.⁵²

The second characteristic -- the judgment of the RTC is not stayed by an appeal taken therefrom - reinforces the first. The judgment of the RTC in an ejectment case is enforceable upon its rendition and, upon motion, immediately executory notwithstanding an appeal taken therefrom.

The execution of the RTC's judgment is **not discretionary execution** under Section 2, Rule 39 of the Rules of Court

Discretionary execution is authorized while the

trial court, which rendered the judgment sought to be executed, still has jurisdiction over the case as the period to appeal has not yet lapsed and is in possession of either the original record or the record on appeal, as the case may be, at the time of the filing of the motion for execution. It is part of the trial court's residual powers, or those powers which it retains after losing jurisdiction over the case as a result of the perfection of the appeal.⁵³ As a rule, the judgment of the RTC, rendered in the exercise of its appellate jurisdiction, being sought to be executed in a discretionary execution is stayed by the appeal to the Court of Appeals pursuant to Section 8(b), Rule 42 of the Rules of Court. On the other hand, execution of the RTC's judgment under Section 21, Rule 70 is not discretionary execution but a ministerial duty of the RTC.⁵⁴ It is not governed by Section 2, Rule 39 of the Rules of Court but by Section 4, Rule 39 of the Rules of Court on judgments not stayed by appeal. In this connection, it is not covered by the general rule, that the judgment of the RTC is stayed by appeal to the Court of Appeals under Section 8(b), Rule 42 of the Rules of Court, but constitutes an exception to the said rule. In connection with the second characteristic of the RTC judgment in an ejectment case appealed to it, the consequence of the above distinctions between discretionary execution and the execution of the RTC's judgment in an ejectment case on appeal to the Court of Appeals is that **the former may be availed of in the RTC only before the Court of Appeals gives due course to the appeal while the latter may be availed of in the RTC at any stage of the appeal to the Court of Appeals.** But then again, in the latter case, the Court of Appeals may stay the writ of execution issued by the RTC should circumstances so require.

To reiterate, despite the immediately executory nature of the judgment of the RTC in ejectment cases, which judgment is not stayed by an appeal taken therefrom, the Court of Appeals may issue a writ of preliminary injunction that will restrain or enjoin the execution of the RTC's judgment. In the exercise of such authority, the Court of Appeals should constantly be aware that the grant of a preliminary injunction in a case rests on the sound discretion of the court with the caveat that **it should be made with great caution.**⁵⁷

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A writ of preliminary injunction is an extraordinary event which must be **granted only in the face of actual and existing substantial rights**. The duty of the court taking cognizance of a prayer for a writ of preliminary injunction is to determine whether the requisites necessary for the grant of an injunction are present in the case before it. In the absence of the same, and where facts are shown to be wanting in bringing the matter within the conditions for its issuance, the ancillary writ must be struck down for having been rendered in grave abuse of discretion.⁵⁸

In this case, the decisions of the MTCC in Civil Case No. 01 (38), of the RTC in Civil Case No. 02-27292, and of the Court of Appeals in CA-G.R. SP No. 79439 unanimously recognized the right of the ATO to possession of the property and the corresponding **obligation of Miaque to immediately vacate the subject premises**. This means that the MTCC, the RTC, and the Court of Appeals all ruled that **Miaque does not have any right to continue in possession of the said premises**. It is therefore puzzling how the Court of Appeals justified its issuance of the writ of preliminary injunction with the sweeping statement that Miaque "appears to have a clear legal right to hold on to the premises leased by him from ATO at least until such time when he shall have been duly ejected therefrom by a writ of execution of judgment caused to be issued by the MTCC in Iloilo City, which is the court of origin of the decision promulgated by this Court in CA-G.R. SP No. 79439." Unfortunately, in its Resolution dated May 30, 2006 granting a writ of preliminary injunction in Miaque's favor, the Court of Appeals did not state the source or basis of Miaque's "clear legal right to hold on to the [said] premises." This is fatal.

- **Bank of the Philippine Islands Vs. Hon. Judge Agapito L. Hontanosas, Jr., et al.** G.R. No. 157163. June 25, 2014

- Injunction should not issue except upon a clear showing that the applicant has a right *in esse* to be protected, and that the acts sought to be enjoined are violative of such right. A preliminary injunction should not determine the merits of a case, or decide controverted facts, for, being

a preventive remedy, it only seeks to prevent threatened wrong, further injury, and irreparable harm or injustice until the rights of the parties can be settled.

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Civil Case No. CEB-26468 was a personal action; hence, venue was properly laid

- The CA and the RTC held that Civil Case No. CEB-26468, being for the declaration of the nullity of a contract of loan and its accompanying continuing surety agreement, and the real estate and chattel mortgages, was a personal action; hence, its filing in Cebu City, the place of business of one of the plaintiffs, was correct under Section 2, Rule 4 of the *Rules of Court*.
- The determinants of whether an action is of a real or a personal nature have been fixed by the *Rules of Court* and relevant jurisprudence. According to Section 1, Rule 4 of the *Rules of Court*, a real action is one that affects title to or possession of real property, or an interest therein. Such action is to be commenced and tried in the proper court having jurisdiction over the area wherein the real property involved, or a portion thereof, is situated, which explains why the action is also referred to as a local action. In contrast, the *Rules of Court* declares *all other actions* as personal actions.¹⁵ Such actions may include those brought for the recovery of personal property, or for the enforcement of some contract or recovery of damages for its breach, or for the recovery of damages for the commission of an injury to the person or property.¹⁶ The venue of a personal action is the place where the plaintiff or any of the principal plaintiffs resides, or where the defendant or any of the

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principal defendants resides, or in the case of a non-resident defendant where he may be found, at the election of the plaintiff,¹⁷ for which reason the action is considered a transitory one.

- Based on the aforequoted allegations of the *complaint* in Civil Case No. CEB-26468, the respondents seek the nullification of the promissory notes, continuing surety agreement, checks and mortgage agreements for being executed against their will and vitiated by irregularities, not the recovery of the possession or title to the properties burdened by the mortgages. There was no allegation that the possession of the properties under the mortgages had already been transferred to the petitioner in the meantime. Applying the determinants, Civil Case No. CEB-26468 was unquestionably a personal action
- Being a personal action, therefore, Civil Case No. CEB-26468 was properly brought in the RTC in Cebu City, where respondent XM Facultad and Development Corporation, a principal plaintiff, had its address.

• **William Co a.k.a. Xu Quing He Vs. New Prosperity Plastic Products, represented by Elizabeth Uy** G.R. No. 183994. June 30, 2014

- ven if We are to squarely resolve the issues repeatedly raised in the present petition, Co's arguments are nonetheless untenable on the grounds as follows:
- *First*, Co's charge that his right to a speedy trial was violated is baseless. Obviously, he failed to show any evidence that the alleged "vexatious, capricious and oppressive" delay in the trial was attended with malice or that the same was made without good cause or justifiable motive on the part of the prosecution. This Court has emphasized that "speedy trial"

is a relative term and necessarily a flexible concept."²⁶ In determining whether the accused's right to speedy trial was violated, the delay should be considered in view of the entirety of the proceedings.²⁷ The factors to balance are the following: (a) duration of the delay; (b) reason therefor; (c) assertion of the right or failure to assert it; and (d) prejudice caused by such delay.²⁸ Surely, mere mathematical reckoning of the time involved would not suffice as the realities of everyday life must be regarded in judicial proceedings which, after all, do not exist in a vacuum, and that particular regard must be given to the facts and circumstances peculiar to each case.²⁹ "While the Court recognizes the accused's right to speedy trial and adheres to a policy of speedy administration of justice, we cannot deprive the State of a reasonable opportunity to fairly prosecute criminals. Unjustified postponements which prolong the trial for an unreasonable length of time are what offend the right of the accused to speedy trial."³⁰

- *Second*, Co is burdened to establish the essential requisites of the first paragraph of Section 8, Rule 117 of the *Rules*, which are conditions *sine qua non* to the application of the time-bar in the second paragraph thereof, to wit: (1) the prosecution with the express conformity of the accused or the accused moves for a provisional (*sin perjuicio*) dismissal of the case; or both the prosecution and the accused move for a provisional dismissal of the case; (2) the offended party is notified of the motion for a provisional dismissal of the case; (3) the court issues an order granting the motion and dismissing the case provisionally; and (4) the

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public prosecutor is served with a copy of the order of provisional dismissal of the case.³¹ In this case, it is apparent from the records that there is no notice of any motion for the provisional dismissal of Criminal Cases Nos. 206655-59, 206661-77 and 209634 or of the hearing thereon which was served on the private complainant at least three days before said hearing as mandated by Section 4, Rule 15 of the Rules.³² The fact is that it was only in open court that Co moved for provisional dismissal "*considering that, as per records, complainant had not shown any interest to pursue her complaint.*"³³ The importance of a prior notice to the offended party of a motion for provisional dismissal is aptly explained in *People v. Lacson*:³⁴

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- x x x It must be borne in mind that in crimes involving private interests, the new rule requires that the offended party or parties or the heirs of the victims must be given adequate a priori notice of any motion for the provisional dismissal of the criminal case. Such notice may be served on the offended party or the heirs of the victim through the private prosecutor, if there is one, or through the public prosecutor who in turn must relay the notice to the offended party or the heirs of the victim to enable them to confer with him before the hearing or appear in court during the hearing. The proof of such service must be shown during the hearing on the motion, otherwise, the requirement of the new rule will become illusory. Such notice will enable the offended party or the heirs of the victim the opportunity to seasonably and effectively comment on or object to the motion on valid grounds, including:

(a) the collusion between the prosecution and the accused for the provisional dismissal of a criminal case thereby depriving the State of its right to due process; (b) attempts to make witnesses unavailable; or (c) the provisional dismissal of the case with the consequent release of the accused from detention would enable him to threaten and kill the offended party or the other prosecution witnesses or flee from Philippine jurisdiction, provide opportunity for the destruction or loss of the prosecution's physical and other evidence and prejudice the rights of the offended party to recover on the civil liability of the accused by his concealment or furtive disposition of his property or the consequent lifting of the writ of preliminary attachment against his property.³⁵

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- *Third*, there is evident want of jurisprudential support on Co's supposition that the dismissal of the cases became permanent one year after the issuance of the June 9, 2003 Order and not after notice to the offended party. When the *Rules* states that the provisional dismissal shall become permanent one year after the issuance of the order temporarily dismissing the case, it should not be literally interpreted as such. Of course, there is a vital need to satisfy the basic requirements of due process; thus, said in one case:
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- Although the second paragraph of the new rule states that the order of dismissal shall become permanent one year after the issuance thereof without the case having been revived, the provision should be construed to mean that the order of dismissal shall become permanent one year after service of the order of dismissal on the

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public prosecutor who has control of the prosecution without the criminal case having been revived. The public prosecutor cannot be expected to comply with the timeline unless he is served with a copy of the order of dismissal.³⁶

- We hasten to add though that if the offended party is represented by a private counsel the better rule is that the reckoning period should commence to run from the time such private counsel was actually notified of the order of provisional dismissal. When a party is represented by a counsel, notices of all kinds emanating from the court should be sent to the latter at his/her given address.³⁷ Section 2, Rule 13 of the *Rules* analogously provides that if any party has appeared by counsel, service upon the former shall be made upon the latter.³⁸
- *Fourth*, the contention that both the filing of the motion to revive the case and the court order reviving it must be made prior to the expiration of the one-year period is unsustainable. Such interpretation is not found in the *Rules*. Moreover, to permit otherwise would definitely put the offended party at the mercy of the trial court, which may wittingly or unwittingly not comply. Judicial notice must be taken of the fact that most, if not all, of our trial court judges have to deal with clogged dockets in addition to their administrative duties and functions. Hence, they could not be expected to act at all times on all pending decisions, incidents, and related matters within the prescribed period of time. It is likewise possible that some of them, motivated by ill-will or malice, may simply exercise their whims and caprices in not issuing the order of revival on time.

- *Fifth*, the fact that year 2004 was a leap year is inconsequential to determine the timeliness of Uy's motion to revive the criminal cases. What is material instead is Co's categorical admission that Uy is represented by a private counsel who only received a copy of the June 9, 2003 Order on July 3, 2003. Therefore, the motion was not belatedly filed on July 2, 2004. Since the period for filing a motion to revive is reckoned from the private counsel's receipt of the order of provisional dismissal, it necessarily follows that the reckoning period for the permanent dismissal is likewise the private counsel's date of receipt of the order of provisional dismissal.

- And *Sixth*, granting for the sake of argument that this Court should take into account 2004 as a leap year and that the one-year period to revive the case should be reckoned from the date of receipt of the order of provisional dismissal by Uy, We still hold that the motion to revive the criminal cases against Co was timely filed. A year is equivalent to 365 days regardless of whether it is a regular year or a leap year.³⁹ Equally so, under the Administrative Code of 1987, a year is composed of 12 calendar months. The number of days is irrelevant.

- **Parañaque Kings Enterprises, Inc. Vs. Catalina L. Santos, represented by her Attorney-in-Fact, Luz B. Protacio and David R. Raymundo** G.R. No. 194638. July 2, 2014

The threshold issue for the Court's resolution is whether or not the CA correctly upheld (a) the RTC's denial of petitioner's Motion to Cancel Pre-Trial, and (b) the dismissal of the Complaint for failure of petitioner to proceed to pre-trial as directed by the trial court.

The Court's Ruling

At the outset, it should be emphasized

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that the trial court has the discretion on whether to grant or deny a motion to postpone and/or reschedule the pre-trial conference in accordance with the circumstances obtaining in the case. This must be so as it is the trial court which is able to witness firsthand the events as they unfold during the trial of a case. Postponements, while permissible, must not be countenanced except for clearly meritorious grounds and in light of the attendant circumstances.⁶³ In this case, the RTC was able to explain to the satisfaction of the Court that the postponement of the pre-trial scheduled on July 7, 1998 was not warranted under the circumstances detailed below, *viz.*:

As far as the Court could gather, the sought postponement of the pre-trial on July 7 was **dilatory**, if movant was not trifling with this court, **because at the pre-trial scheduled on March 26, 1998 it was plaintiff-movant through counsel, Justice Emilio Gangcayco, who asked for time and was given 10 days to file motion for contempt and to strike out averments in defendants answer. Thus, pre-trial was reset to May 21, 1998. But on May 21, 1998 the pre-trial was again reset to June 11, 1998 to enable movant's counsel, Atty. Nelson Santos, to prepare for pre-trial as he was not ready for pre-trial. The scheduled pre-trial on June 11, 1998 was blocked by plaintiff's Motion for Inhibition and to vacate and/or reconsider the order of May 18, 1998.** Both counsel submitted the matter for resolution and agreed that the pre-trial likewise be scheduled in that resolution, considering that Atty. Tomacruz (counsel for defendants) may oppose the postponement of the pre-trial of the June 11 pre-trial if no date is fixed therein. (Order dated June 11, 1998) The June 11 pre-trial was accordingly reset to July 7, 1998 as the court denied the motion for inhibition and reconsideration.⁶⁴ (Emphases and underscoring supplied)

The pattern to delay the pre-trial of the instant case is quite evident from the foregoing. Petitioner clearly trifled with the

mandatory character of a pre-trial, which is a procedural device intended to clarify and limit the basic issues raised by the parties and to take the trial of cases out of the realm of surprise and maneuvering. More significantly, a pre-trial has been institutionalized as the answer to the clarion call for the speedy disposition of cases. Hailed as the most important procedural innovation in Anglo-Saxon justice in the nineteenth century, it paves the way for a less cluttered trial and resolution of the case.⁶⁵ It is, thus, mandatory for the trial court to conduct pre-trial in civil cases in order to realize the paramount objective of simplifying, abbreviating, and expediting trial.⁶⁶ Far from showing bias or prejudice, the RTC judge was merely complying with his sworn duty to administer justice without delay. It should be recalled that the Complaint was filed by petitioner on March 19, 1991.

Seven (7) years later, or in 1998, no pre-trial had been conducted as yet. Hence, the cancellation of the pre-trial on the ground of the **impending** filing of a petition for *certiorari* and prohibition, **as there was no proof at the time of the hearing that said petition was in fact filed**, was obviously a dilatory tactic designed for petitioner to control the proceedings of the court. The Court finds nothing improper, irregular or jaundiced with the trial court's course of action. As the latter aptly pointed out, **since petitioner presented no copy of the petition for *certiorari* and prohibition duly received by the appellate court, there was nothing with which it could evaluate the "merits and demerits of the proposed postponement."**⁶⁷ More importantly, even with the actual filing of the petition for *certiorari* at 2:17⁶⁸ in the afternoon of July 7, 1998, **no restraining order was issued by the CA enjoining the trial court from proceeding with the pre-trial.**⁶⁹ The appellate court correctly emphasized, in the assailed Decision dated September 22, 2010, that **the mere elevation of an interlocutory matter through a petition for**

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certiorari does not by itself merit a suspension of the proceedings before the trial court, unless a temporary restraining order or a writ of preliminary injunction has been issued.

Thus, in light of the foregoing, petitioner's refusal to proceed with the pre-trial could not be justified by the filing of the petition for *certiorari* and prohibition. Petitioner's assertion that the alleged "sham, contemptuous lies contained in respondents' Answer should be stricken off from the records"⁷³ first before the pre-trial could proceed is, at best, speculative as it was palpably anchored on the mere supposition that its petition would be granted. It bears stressing that the rules of procedure do not exist for the convenience of the litigants. These rules are established to provide order to and enhance the efficiency of the judicial system. By trifling with the rules and the court processes, and openly defying the order of the trial court to proceed to pre-trial, petitioner only has itself to blame for the dismissal of its Complaint. The dismissal is a matter within the trial court's sound discretion, which, as authorized by Section 3, Rule 17 of the Rules of Court hereunder quoted, must stand absent any justifiable reason to the contrary, as in this case:

SEC. 3. Dismissal due to fault of plaintiff. — If, for no justifiable cause, the plaintiff fails to appear on the date of the presentation of his evidence in chief on the complaint, or **to prosecute his action for an unreasonable length of time, or to comply with these Rules or any order of the court, the complaint may be dismissed upon motion of the defendant or upon the court's own motion**, without prejudice to the right of the defendant to prosecute his counterclaim in the same or in a separate action. **This dismissal shall have the effect of an adjudication upon the merits, unless otherwise declared by the court.** (Emphases supplied)

Verily, as the Court sees it, petitioner had the opportunity to present its case, yet

chose to unduly forego the same. The appellate court in CA-G.R. CV No. 92522 pointed out the crucial fact that petitioner had already submitted its pre-trial brief and its counsel was armed with a special power of attorney for the pre-trial.⁷⁴ **There was nothing that could have stopped petitioner from proceeding to pre-trial when its motion for postponement was denied.**

The trial court correctly opined that it would have been entirely different if petitioner simply objected to the proceeding and made of record its objection. But petitioner's refusal to even start with the statement of its cause is a "clear, firm and open defiance" of the directive of the court,⁷⁵ which justified the dismissal of its Complaint pursuant to Section 3, Rule 17 of the Rules of Court as above-cited. The Court finally considers that this case was elevated to the CA for four (4) times, and this is the third time that the Court has to resolve issues between the parties, at the instance of petitioner. If this case has dragged on for more than two (2) decades, surely petitioner cannot wash its hands of any responsibility therefor. The expeditious disposition of cases is as much the duty of petitioner, being the plaintiff, as the court's. Indeed, respondents, as the defendants, cannot be wearily denied of their right to the speedy disposition of the case filed against them. After more than two (2) decades, respondents certainly do not deserve the agony of going through the same issues all over again with petitioner, which could have been settled had the latter simply proceeded to pre-trial and had given the trial court the opportunity to evaluate the evidence, apply the law, and decree the proper judgment. At the end of the day, the unfortunate fault can fall on no one's hands but on petitioner's. Indeed, there is a price to pay when one trifles with the rules.

- **Land Bank of the Philippines Vs. Atlanta Industries, Inc.** G.R. No. 193796. July 2, 2014

• Preliminarily, Land Bank asserts

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that the Petition for Prohibition was improperly filed before the Manila RTC considering that the acts sought to be enjoined, *i.e.*, the public bidding for the supply of water pipes, are beyond the said court's territorial jurisdiction.³⁵ Atlanta, for its part, counter-argues that the acts of Land Bank are as much to be enjoined for causing the City Government of Iligan and its BAC to continuously violate the provisions of RA 9184, its IRR, and the PBDs in the conduct of the public bidding³⁶ and that the filing of the prohibition case in the City of Manila was in accordance with the rules on venue given that Land Bank's main office is in the City of Manila.³⁷

-
- The Court finds for Land Bank.
-
- A petition for prohibition is a special civil action that seeks for a judgment ordering the respondent to desist from continuing with the commission of an act perceived to be illegal. Section 2, Rule 65 of the Rules of Court (Rules) reads:
-
- Sec. 2. *Petition for Prohibition.* - When the proceedings of any tribunal, corporation, board, officer or person, whether exercising judicial, quasi-judicial or ministerial functions, are without or in excess of its or his jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction, and there is no appeal or any other 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 commanding the respondent to desist from further proceedings in the action or matter specified therein**, or otherwise

granting such incidental reliefs as law and justice may require.

-
- x x x x (*Emphasis supplied*)
-
- While the Court, Court of Appeals and Regional Trial Court have original concurrent jurisdiction to issue writs of *certiorari*, prohibition and mandamus, if what is assailed relates to "acts or omissions of a lower court or of a corporation, board, officer or person," the petition must be filed "in the Regional Trial Court exercising jurisdiction over the territorial area as defined by the Court."
- The foregoing rule corresponds to Section 21 (1) of Batas PambansaBlg. 129,³⁸ otherwise known as "The Judiciary Reorganization Act of 1980" (BP 129), which gives Regional Trial Courts original jurisdiction over cases of *certiorari*, prohibition, *mandamus*, *quo warranto*, *habeas corpus*, and injunction but lays down the limitation that the writs issued therein are enforceable only within their respective territorial jurisdictions.

Undoubtedly, applying the aforementioned precepts and pronouncements to the instant case, the writ of prohibition issued by the Manila RTC in order to restrain acts beyond the bounds of the territorial limits of its jurisdiction (*i.e.*, in Iligan City) is null and void.

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- **Erlinda K. Ilusorio Vs. Baguio Country Club Corp. and Anthony R. De Leon** G.R. No. 179571. July 2, 2014

- There is no dispute that the action for *mandamus* and injunction filed by Erlinda has been mooted by the removal of the cottage from the premises of BCCC. The staleness of the claims becomes more manifest considering the reliefs sought by Erlinda, *i.e.*, to provide access and to supply water and electricity to the property in dispute, are hinged on the existence of the cottage.

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Collaterally, the eventual removal of the cottage rendered the resolution of issues relating to the prayers for *mandamus* and injunction of no practical or legal effect. A perusal of the complaint, however, reveals that Erlinda did not only pray that BCCC be enjoined from denying her access to the cottage and be directed to provide water and electricity thereon, but she also sought to be indemnified in actual, moral and exemplary damages because her proprietary right was violated by the respondents when they denied her of beneficial use of the property.¹⁷ In such a case, the court should not have dismissed the complaint and should have proceeded to trial in order to determine the propriety of the remaining claims. Instructive on this point is the Court's ruling in *Garayblas v. Atienza Jr.*:

- The Court has ruled that an issue becomes moot and academic when it ceases to present a justiciable controversy so that a declaration on the issue would be of no practical use or value. In such cases, there is no actual substantial relief to which the plaintiff would be entitled to and which would be negated by the dismissal of the complaint. **However, a case should not be dismissed simply because one of the issues raised therein had become moot and academic by the onset of a supervening event, whether intended or incidental, if there are other causes which need to be resolved after trial. When a case is dismissed without the other substantive issues in the case having been resolved would be tantamount to a denial of the right of the plaintiff to due process.**¹⁸ (*Emphasis supplied*).

- It is clear enough that the issue of whether Erlinda is entitled to actual, moral and exemplary damages and attorney's fees because of BCCC's acts in denying her access and discontinuing water and electric supply to the property has not been mooted by the removal of the cottage. The acts complained of have, if true and are of good bases, already caused damage to Erlinda when the suit was commenced below. The issue of damages being sought by Erlinda against respondents should be taken up during the trial on the merits where and when the allegations of the parties may properly be addressed. A remand of this case for that purpose is necessary.

• **Neil E. Suyan Vs. People of the Philippines, et al.** G.R. No. 189644. July 2, 2014

• ISSUE

- The sole issue to be resolved in the instant case is whether the probation was validly revoked.

THE COURT'S RULING

We rule that the probation of petitioner was validly revoked.

Petitioner does not deny the fact that he has been convicted, and that he has served out his sentence for another offense while on probation. Consequently, his commission of another offense is a direct violation of Condition No. 9 of his Probation Order,³³ and the effects are clearly outlined in Section 11 of the Probation Law.

Section 11 of the Probation Law provides that the commission of another offense shall render the probation order ineffective. Section 11 states:

Sec. 11. Effectivity of Probation Order. — A probation order shall take effect upon its issuance, at which time the court shall

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inform the offender of the consequences thereof and explain that upon his failure to comply with any of the conditions prescribed in the said order or **his commission of another offense, he shall serve the penalty imposed for the offense under which he was placed on probation.** (*Emphasis supplied*)

Based on the foregoing, the CA was correct in revoking the probation of petitioner and ordering him to serve the penalty for the offense for which he was placed on probation.

As probation is a mere discretionary grant, petitioner was bound to observe full obedience to the terms and conditions pertaining to the probation order or run the risk of revocation of this privilege.³⁴ Regrettably, petitioner wasted the opportunity granted him by the RTC to remain outside prison bars, and must now suffer the consequences of his violation.³⁵ The Court's discretion to grant probation is to be exercised primarily for the benefit of organized society and only incidentally for the benefit of the accused.³⁶ Having the power to grant probation, it follows that the trial court also has the power to order its revocation in a proper case and under appropriate circumstances.³⁷

- **City of Dagupan, represented by the City Mayor Benjamin S. Lim Vs. Ester F. Maramba, represented by her Attorney-in-Fact Johnny Ferrer** G.R. No. 174411. July 2, 2014

A petition for relief from judgment under Rule 38 is an equitable remedy which allows courts to review a judgment tainted with neglect bordering on extrinsic fraud. In this case, total damages in the amount of P11 million was awarded in spite of the evidence on record. The motion for reconsideration of such judgment filed by the legal officer of the City of Dagupan inexplicably omitted the required notice for hearing. Considering the damage that would be suffered by the local government, such mistake was so glaring as to raise suspicion that it was contrived to favor the plaintiff.

The presence of "fraud, accident, mistake or excusable negligence" must be assessed from the circumstances of the case.

Excusable negligence as a ground for a petition for relief requires that the negligence be so gross "that ordinary diligence and prudence could not have guarded against it."⁷⁶ This excusable negligence must also be imputable to the party-litigant and not to his or her counsel whose negligence binds his or her client.⁷⁷ The binding effect of counsel's negligence ensures against the resulting uncertainty and tentativeness of proceedings if clients were allowed to merely disown their counsels' conduct.⁷⁸

Nevertheless, this court has relaxed this rule on several occasions such as: "(1) where [the] reckless or gross negligence of counsel deprives the client of due process of law; (2) when [the rule's] application will result in outright deprivation of the client's liberty or property; or (3) where the interests of justice so require."⁷⁹ Certainly, excusable negligence must be proven.

Fraud as a ground for a petition for relief from judgment pertains to extrinsic or collateral fraud.

On the other hand, mistake as used in Rule 38 means mistake of fact and not mistake of law.⁸² A wrong choice in legal strategy or mode of procedure will not be considered a mistake for purposes of granting a petition for relief from judgment.⁸³ Mistake as a ground also "does not apply and was never intended to apply to a judicial error which the court might have committed in the trial [since] such error may be corrected by means of an appeal."⁸⁴

Mistake can be of such nature as to cause substantial injustice to one of the parties. It may be so palpable that it borders on extrinsic fraud.

Petitioner city recounted the "mistakes, negligence, incompetence and suspicious

acts/omissions"⁸⁵ of city legal officer Atty. Roy S. Laforteza in the affidavit of merit signed by then Mayor, Benjamin S. Lim:

- a) He did not present testimonial evidence for the defense, been made,]" ⁹¹ and "she did not
b) He filed a Motion for Reconsideration of a decision showing prejudice to the City on the last
day, and did not even base his arguments on the transcript that clearly stated that the
plaintiff had presented absolutely no evidence in support of her claim for damages for the
attorney's fees; also, he did not directly attack the Decision itself, which awarded P10M as
actual damages and P500,000.00 as attorney's fees without stating clearly and distinctly
the facts on which the awards are based (because there are actually no such facts),
c) ***He filed a motion for reconsideration without the requisite notice of hearing, his
most grievous and fatal error. This resulted in the Finality of the Decision, and the
issuance of the Order of Execution.***
d) He kept the adverse decision, the denial of his Motion for Reconsideration of P500,000.00 as
Execution from this affiant, his immediate superior, attorneys fees. ⁹³ This is devious (several
times, he received - but completely ignored - the advice in the opinion of the City
Administrator that he should consult and coordinate with the City's legal counsel, Atty.
Francisco F. Baraan III) despite the already pre-emptive action he took as the City attorney.
said, I was informed of the order of execution by another lawyer. ⁹⁶ (Emphasis supplied)

Atty. Laforteza's "mistake" was fatal considering that the trial court awarded a total amount of P11 million in favor of Maramba based merely on her testimony that "the actual cost of the building through continuous improvement is Five Million (5M) more or less";⁸⁷ that her husband spent \$1,760 for a round trip business travel to the Philippines to attend to the case; and that "for his accommodation and car rental, her husband spent more or less, P10,000.00 including round trip ticket."⁸⁸

First, nowhere in the trial court's July 30, 2004 decision penned by Judge Laron did it state or refer to any document presented by Maramba to substantiate her claimed costs. In fact, the amounts she testified on did not even add up to the P10 million the court awarded as actual damages.

On the other hand, the August 25, 2005 trial court decision penned by Judge Castillo discussed that "Maramba was only able to prove the amount of P75,000.00 as the appraised value of the improvements made on the leased premises."⁸⁹ The renewal lease agreement covering the property, signed by

Maramba, clearly stated this amount.⁹⁰ The decision also explained that Maramba "was not able to show proof of the P5 million amount of improvements made on the establishment, as she was claiming to have been made[,]"⁹¹ and "she did not show any prejudicial receipt Cityher the existing the transcripts that the actual rental that made ed proof ber her claim tfer co damage for the he Decision itself, which presented 10M this ease without stating clearly and distinctly e there are actually no such facts),
US the requisite notice of the hearing's hisy in the Finality of the Decision, and the Maramba was entitled to P1 million as otional for Reconsideration P500,000.00 as attempted to desr.⁹³ This is deores (sever with the advice in the order in that the City P500,000.00 Ciba's legal costs Att and P500,000.00 tion he pas the City attorney's fee for her lawyer.⁹⁶ (Emphasis supplied)

The affidavit of merit discussed that Maramba testified on her shock, sleepless nights, and mental anguish, but she never expressly asked for moral damages or specified the amount of P500,000.00.⁹⁵

On the amount of attorney's fees, the affidavit of merit explained that Maramba did not show a legal retainer but only mentioned in passing, "Of course, (I am asking for) my attorney's fees in the amount of P500,000.00."⁹⁶

Maramba now wants this court to overlook all these blatant discrepancies and maintain the P11 million unsubstantiated award in her favor on the sole ground that petitioner city's assistant legal officer failed to include a notice of hearing in its motion for reconsideration that was filed within the 15-day reglementary period. She did not even attempt to address the lower court's findings that her claimed amounts as damages were all unsubstantiated.

The gross disparity between the award of actual damages and the amount actually proved during the trial, the magnitude of the award, the nature of the "mistake"

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made, and that such negligence did not personally affect the legal officer of the city all contributed to a conclusion that the mistake or negligence committed by counsel bordered on extrinsic fraud.

There were discrepancy and lack of proof even on the amount of moral damages and attorney's fees awarded. This only heightened a sense of arbitrariness in the trial court's July 30, 2004 decision. Petitioner city's petition for relief was correctly granted in the trial court's August 25, 2005 decision.

Petitioner city followed the procedure under Rule 38 of the Rules of Court. Section 4 of Rule 38 provides that "[i]f the petition is sufficient in form and substance to justify relief, the court in which it is filed, shall issue an order requiring the adverse parties to answer the same within fifteen (15) days from the receipt thereof."

The trial court mentioned in its November 18, 2004 order denying petitioner city's petition for relief from judgment that an answer with motion to dismiss was filed before it.⁹⁷ Maramba prayed that the "petition for review be outright denied for lack of merit [and] that the writ of execution dated October 26, 2004 be accordingly implemented."⁹⁸

Thus, the requirement under Section 4 of Rule 38 was complied with when Maramba filed an answer with motion to dismiss, and the court considered this pleading in its resolution of petitioner city's petition for relief from judgment.

Periods for filing a petition for relief under Rule 38

The time for filing a petition for relief is found under Section 3, Rule 38 of the Rules of Court, which reads:

SEC. 3 Time for filing petition; contents and verification. – A petition provided for in either of the preceding sections of this

Rule must be verified, filed within sixty (60) days after the petitioner learns of the judgment, final order, or other proceeding to be set aside, and not more than six (6) months after such judgment or final order was entered, or such proceeding was taken; and must be accompanied with affidavits showing the fraud, accident, mistake or excusable negligence relied upon, and the facts constituting the petitioner's good and substantial cause of action or defense, as the case may be. (Emphasis supplied)

The double period required under this provision is jurisdictional and should be strictly complied with.⁹⁹ Otherwise, a petition for relief from judgment filed beyond the reglementary period will be dismissed outright.¹⁰⁰

The 60-day period to file a petition for relief from judgment is reckoned from actual receipt of the denial of the motion for reconsideration when one is filed.¹⁰¹

Petitioner city received a copy of the July 30, 2004 decision on August 11, 2004. It filed a motion for reconsideration on August 26, 2004. On October 25, 2004, it received a copy of the October 21, 2004 trial court order denying its motion for reconsideration. Four days later or on October 29, 2004, it filed its petition for relief from judgment. Thus, the petition for relief from judgment was considered filed on time.

- **Cathay Metal Corporation Vs. Laguna West Multi-Purpose Cooperative, Inc.** G.R. No. 172204. July 2, 2014

The Rules of Court governs court procedures, including the rules on service of notices and summons. The Cooperative Code provisions on notices cannot replace the rules on summons under the Rules of Court. Rule 14, Section 11 of the Rules of Court provides an exclusive enumeration of the persons authorized to receive summons for juridical entities. These persons are the juridical entity's president, managing partner, general manager, corporate secretary, treasurer, or in-house

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counsel.

The issue in this case is whether respondent was properly served with summons or notices of the hearing on the petition for cancellation of annotations of adverse claim on the properties.

petitioner argued that respondent was sufficiently served with summons and a copy of its petition for cancellation of annotations because it allegedly sent these documents to respondent's official address as registered with the Cooperative Development Authority. Petitioner further argued that the Rules of Procedure cannot trump the Cooperative Code with respect to notices. This is because the Cooperative Code is substantive law, as opposed to the Rules of Procedure, which pertains only to matters of procedure.

Petitioner is mistaken.

The promulgation of the Rules of Procedure is among the powers vested only in this court. This means that on matters relating to procedures in court, it shall be the Rules of Procedure that will govern. Proper court procedures shall be determined by the Rules as promulgated by this court.

Service of notices and summons on interested parties in a civil, criminal, or special proceeding is court procedure. Hence, it shall be governed by the Rules of Procedure.

The Cooperative Code provisions may govern matters relating to cooperatives' activities as administered by the Cooperative Development Authority. However, they are not procedural rules that will govern court processes. A Cooperative Code provision requiring cooperatives to have an official address to which all notices and communications shall be sent cannot take the place of the rules on summons under the Rules of Court concerning a court proceeding.

This is not to say that the notices cannot be sent to cooperatives in accordance with the Cooperative Code. Notices may be

sent to a cooperative's official address. However, service of notices sent to the official address in accordance with the Cooperative Code may not be used as a defense for violations of procedures, specially when such violation affects another party's rights.

Section 11, Rule 14 of the Rules of Court provides the rule on service of summons upon a juridical entity. It provides that summons may be served upon a juridical entity only through its officers.

We have already established that the enumeration in Section 11 of Rule 14 is exclusive.¹⁰² Service of summons upon persons other than those officers enumerated in Section 11 is invalid.¹⁰³ Even substantial compliance is not sufficient service of summons.¹⁰⁴

This provision of the rule does not limit service to the officers' places of residence or offices. If summons may not be served upon these persons personally at their residences or offices, summons may be served upon any of the officers wherever they may be found.

Hence, petitioner cannot use respondent's failure to amend its Articles of Incorporation to reflect its new address as an excuse from sending or attempting to send to respondent copies of the petition and the summons. The Rules of Court provides that notices should be sent to the enumerated officers. Petitioner failed to do this. No notice was ever sent to any of the enumerated officers.

Petitioner insists that it should not be made to inquire further as to the whereabouts of respondent after the attempt to serve the summons by registered mail to respondent's address as allegedly indicated in its Articles of Incorporation. The Rules does not provide that it needs to do so. However, it provides for service by publication. Service by publication is available when the whereabouts of the defendant is unknown. Section 14, Rule 14 of the Rules of Court

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provides:

Sec. 14. *Service upon defendant whose identity or whereabouts are unknown.* – In any action where the defendant is designated as an unknown owner, **or the like, or whenever his whereabouts are unknown and cannot be ascertained by diligent inquiry**, service may, by leave of court, be effected upon him by publication in a newspaper of general circulation and in such places and for such time as the court may order. (*Emphasis supplied*)

This is not a matter of acquiring jurisdiction over the person of respondent since this is an action *in rem*. In an action *in rem*, jurisdiction over the person is not required as long as there is jurisdiction over the res. This case involves the issue of fair play and ensuring that parties are accorded due process.

In this case, petitioner served summons upon respondent by registered mail and, allegedly, by personal service at the office address indicated in respondent's Certificate of Registration. Summons was not served upon respondent's officers. It was also not published in accordance with the Rules of Court. As a result, respondent was not given an opportunity to present evidence, and petitioner was able to obtain from the Regional Trial Court an order cancelling respondent's annotations of adverse claims.

Respondent was, therefore, not validly served with summons.

Respondent's alleged non-operation does not bar it from authorizing a person to act on its behalf in court proceedings

Prior to dissolution, a cooperative is entitled to the exercise of these powers. It may engage in deals involving its properties or rights. It may cause the annotation of claims it deems to have in order to protect such claim. Contrary to petitioner's claim, respondent is not

prevented from authorizing persons to act on its behalf.

In any case, even if petitioner alleged that respondent was already dissolved by virtue of a November 7, 2002 resolution of Cooperative Development Authority, the relevant acts of respondent had occurred before such resolution.

Rights still under negotiations are not adverse claims

The purpose of annotations of adverse claims on title is to apprise the whole world of the controversy involving a property. These annotations protect the adverse claimant's rights before or during the pendency of a case involving a property. It notifies third persons that rights that may be acquired with respect to a property are subject to the results of the case involving it.

Section 70 of Presidential Decree No. 1529 or the Property Registration Decree governs adverse claims. It describes an adverse claim as a statement in writing setting forth a subsequent right or interest claimed involving the property, adverse to the registered owner.

A claim based on a future right does not ripen into an adverse claim as defined in Section 70 of Presidential Decree No. 1529. A right still subject to negotiations cannot be enforced against a title holder or against one that has a legitimate title to the property based on possession, ownership, lien, or any valid deed of transfer.

- **Pro-Guard Security Services Corporation Vs. Tormil Realty Development Corporation** G.R. No. 176341. July 7, 2014

Contending that it is obliged to pay back rentals only from the time the demand to vacate was served upon it and not from the time it began occupying the disputed premises, petitioner Pro-Guard Security Services Corporation (Pro-Guard) seeks recourse to this Court.

While indeed Tormil, as the victor in the unlawful detainer suit, is entitled to the fair rental value for the use and

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occupation of the unit in the building, such compensation should not be reckoned from the time Pro-Guard began to occupy the same, but from the time of the demand to vacate.

"In unlawful detainer cases, the defendant is necessarily in prior lawful possession of the property but his possession eventually becomes unlawful upon termination or expiration of his right to possess."²⁷ In other words, the entry is legal but the possession thereafter became illegal. Additionally, the Rules of Court requires the filing of such action within a year after the withholding of possession,²⁸ meaning that "if the dispossession has not lasted for more than one year, [then] an ejectment proceeding (in this case unlawful detainer) is proper x x x."²⁹

- **Petronio Clidoro, et al. Vs. Augusto Jalmanzar, et al.** G.R. No. 176598. July 9, 2014

- Reduced to its essence, the pivotal issue here is whether the complaint for revival of judgment may be dismissed for lack of cause of action as it was not brought by or against the real parties-in-interest.
-
- First of all, the Court emphasizes that lack of cause of action is not enumerated under Rule 16 of the Rules of Court as one of the grounds for the dismissal of a complaint.

Again, in *Manaloto v. Veloso III*,⁷ the Court reiterated as follows:

When the ground for dismissal is that the complaint states no cause of action, such fact can be determined only from the facts alleged in the complaint and from no other, and the court cannot consider other matters aliunde. The test, therefore, is whether, assuming the allegations of fact in the complaint to be true, a valid judgment could be rendered in accordance with the prayer stated therein.⁸

In this case, it was alleged in the

complaint for revival of judgment that the parties therein were also the parties in the action for partition. Applying the foregoing test of hypothetically admitting this allegation in the complaint, and not looking into the veracity of the same, it would then appear that the complaint sufficiently stated a cause of action as the plaintiffs in the complaint for revival of judgment (hereinafter respondents), as the prevailing parties in the action for partition, had a right to seek enforcement of the decision in the partition case.

It should be borne in mind that the action for revival of judgment is a totally separate and distinct case from the original Civil Case No. T-98 for Partition. As explained in *Saligumba v. Palanog*,⁹ to wit:

An action for revival of judgment is no more than a procedural means of securing the execution of a previous judgment which has become dormant after the passage of five years without it being executed upon motion of the prevailing party. It is not intended to re-open any issue affecting the merits of the judgment debtor's case nor the propriety or correctness of the first judgment. **An action for revival of judgment is a new and independent action, different and distinct from** either the recovery of property case or the reconstitution case [in this case, **the original action for partition**], wherein **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.** x x x¹⁰

With the foregoing in mind, it is understandable that there would be instances where the parties in the original case and in the subsequent action for revival of judgment would not be exactly the same. The mere fact that the names appearing as parties in the the complaint for revival of judgment are different from the names of the parties in the original case would not necessarily mean that they are not the real parties-in-interest. What is important is that, as provided in Section

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1, Rule 3 of the Rules of Court, they are "the party who stands to be benefited or injured by the judgment in the suit, or the party entitled to the avails of the suit." Definitely, as the prevailing parties in the previous case for partition, the plaintiffs in the case for revival of judgment would be benefited by the enforcement of the decision in the partition case.

A comparison of the foregoing would show that almost all of the plaintiffs in the original case for partition, in whose favor the court adjudged certain shares in the estate of deceased Mateo Clidoro, are also the plaintiffs in the action for revival of judgment. Meanwhile, the defendants impleaded in the action for revival are allegedly the representatives of the defendants in the original case, and this appears to hold water, as Gregoria Clidoro-Palanca, named as the representative of defendant Onofre Clidoro in the complaint for revival of judgment, was also mentioned and awarded a portion of the estate in the judgment in the original partition case. In fact, the trial court itself stated in its Order¹¹ of dismissal dated December 8, 2003, that "[s]ome of the parties are actually not parties to the original case, **but representing the original parties** who are indicated as deceased."

In *Basbas v. Sayson*,¹² the Court pointed out that even just one of the co-owners, by himself alone, can bring an action for the recovery of the co-owned property, even through an action for revival of judgment, because the enforcement of the judgment would result in such recovery of property. Thus, as in *Basbas*, it is not necessary in this case that all of the parties, in whose favor the case for partition was adjudged, be made plaintiffs to the action for revival of judgment. Any which one of said prevailing parties, who had an interest in the enforcement of the decision, may file the complaint for revival of judgment, even just by himself.

Verily, the trial court erred in dismissing the complaint for revival of judgment on the ground of lack of, or failure to state a

cause of action. The allegations in the complaint, regarding the parties' interest in having the decision in the partition case executed or implemented, sufficiently state a cause of action. The question of whether respondents were the real parties-in-interest who had the right to seek execution of the final and executory judgment in the partition case should have been threshed out in a full-blown trial.

- **Spouses Rodolfo A. Berot and Lilia P. Berot Vs. Felipe C. Siapno** G.R. No. 188944. July 9, 2014

foreclosure of a mortgaged property despite the objections of petitioners claiming, among others, that its registered owner was impleaded in the suit despite being deceased.

Petitioners were correct when they argued that upon Macaria Berot's death on 23 June 2003, her legal personality ceased, and she could no longer be impleaded as respondent in the foreclosure suit. It is also true that her death opened to her heirs the succession of her estate, which in this case was an intestate succession. The CA, in fact, sustained petitioners' position that a deceased person's estate has no legal personality to be sued. Citing the Court's ruling in *Ventura v. Militante*,¹³ it correctly ruled that a decedent does not have the capacity to be sued and may not be made a defendant in a case:

A deceased person does not have such legal entity as is necessary to bring action so much so that a motion to substitute cannot lie and should be denied by the court. An action begun by a decedent's estate cannot be said to have been begun by a legal person, since an estate is not a legal entity; such an action is a nullity and a motion to amend the party plaintiff will not, likewise, lie, there being nothing before the court to amend. Considering that capacity to be sued is a correlative of the capacity to sue, to the same extent, a decedent does not have the capacity to be sued and may not be named a party defendant in a court action.

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When respondent filed the foreclosure case on 15 June 2004 and impleaded Macaria Berot as respondent, the latter had already passed away the previous year, on 23 June 2003.

It can be gleaned from the records of the case that petitioners did not object when the estate of Macaria was impleaded as respondent in the foreclosure case. Petitioner Rodolfo Berot did not object either when the original Complaint was amended and respondent impleaded him as the administrator of Macaria's estate, in addition to his being impleaded as an individual respondent in the case. Thus, the trial and appellate courts were correct in ruling that, indeed, petitioners impliedly waived any objection to the trial court's exercise of jurisdiction over their persons at the inception of the case.

Indeed, the defense of lack of jurisdiction over the person of the defendant is one that may be waived by a party to a case. In order to avail of that defense, one must timely raise an objection before the court.¹⁶

It should be noted that Rodolfo Berot is the son of the deceased Macaria²² and as such, he is a compulsory heir of his mother. His substitution is mandated by Section 16, Rule 3 of the Revised Rules of Court. Notably, there is no indication in the records of the case that he had other siblings who would have been his co-heirs. The lower and appellate courts veered from the real issue whether the proper parties have been impleaded. They instead focused on the issue whether there was need for a formal substitution when the deceased Macaria, and later its estate, was impleaded. As the compulsory heir of the estate of Macaria, Rodolfo is the real party in interest in accordance with Section 2, Rule 3 of the Revised Rules of Court. At the time of the filing of the complaint for foreclosure, as well as the time it was amended to implead the estate of Macaria, it is Rodolfo – as heir – who is the real party in interest. He stands to be benefitted or injured by the

judgment in the suit.

Rodolfo is also Macaria's co-defendant in the foreclosure proceedings in his own capacity as co-borrower of the loan. He participated in the proceedings of the case, from the initial hearing of the case, and most particularly when respondent filed his amended complaint impleading the estate of Macaria. When respondent amended his complaint, Rodolfo did not file an amended Answer nor raise any objection, even if he was also identified therein as the representative of the estate of the deceased Macaria. The lower court noted this omission by Rodolfo in its Order dated 8 September 2006 ruling on his Motion for Reconsideration to the said court's Decision dated 30 June 2006. Thus, his continued participation in the proceedings clearly shows that the lower court acquired jurisdiction over the heir of Macaria.

As such, formal substitution of the parties in this case is not necessary.

In *Vda. De Salazar v. Court of Appeals*²⁴ we ruled that a formal substitution of the heirs in place of the deceased is no longer necessary if the heirs continued to appear and participated in the proceedings of the case.

In this case, Rodolfo's continued appearance and participation in the proceedings of the case dispensed with the formal substitution of the heirs in place of the deceased Macaria. The failure of petitioners to timely object to the trial court's exercise of jurisdiction over the estate of Macaria Berot amounted to a waiver on their part. Consequently, it would be too late for them at this point to raise that defense to merit the reversal of the assailed decision of the trial court. We are left with no option other than to sustain the CA's affirmation of the trial court's Decision on this matter.

On the second issue of whether the nature of the loan obligation contracted by petitioners is joint or solidary, we rule that it is joint.

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Under Article 1207 of the Civil Code of the Philippines, the general rule is that when there is a concurrence of two or more debtors under a single obligation, the obligation is presumed to be joint:

The law further provides that to consider the obligation as solidary in nature, it must expressly be stated as such, or the law or the nature of the obligation itself must require solidarity.

In the instant case, We have examined the contents of the real estate mortgage but found no indication in the plain wordings of the instrument that the debtors – the late Macaria and herein petitioners – had expressly intended to make their obligation to respondent solidary in nature. Absent from the mortgage are the express and indubitable terms characterizing the obligation as solidary. Respondent was not able to prove by a preponderance of evidence that petitioners' obligation to him was solidary. Hence, applicable to this case is the presumption under the law that the nature of the obligation herein can only be considered as joint. It is incumbent upon the party alleging otherwise to prove with a preponderance of evidence that petitioners' obligation under the loan contract is indeed solidary in character.³¹

The CA properly upheld respondent's course of action as an availment of the second remedy provided under Section 7, Rule 86 of the 1997 Revised Rules of Court.³² Under the said provision for claims against an estate, a mortgagee has the legal option to institute a foreclosure suit and to recover upon the security, which is the mortgaged property.

During her lifetime, Macaria was the registered owner of the mortgaged property, subject of the assailed foreclosure. Considering that she had validly mortgaged the property to secure a loan obligation, and given our ruling in this case that the obligation is joint, her intestate estate is liable to a third of the loan contracted during her lifetime. Thus, the foreclosure of the property may proceed, but would be answerable only to

the extent of the liability of Macaria to respondent.

- **Philippine Long Distance Telephone Company Vs. Millard R. Ocampo, et al.**
G.R. No. 163999. July 9, 2014

- ***The Petition for Certiorari should have***
- ***been filed within 60 days from notice of the***
- ***denial of the Motion for Reconsideration of the assailed Order.***
-

- Section 4,⁵⁴ Rule 65 of the Rules of Court provides that a special civil action for *certiorari* should be instituted within 60 days from notice of the judgment, order, or resolution, or from the notice of the denial of the motion for reconsideration of the judgment, order, or resolution being assailed. The 60-day period, however, is inextendible to avoid any unreasonable delay, which would violate the constitutional rights of parties to a speedy disposition of their cases.⁵⁵ Thus, strict compliance of this rule is mandatory and imperative.⁵⁶ But like all rules, the 60-day limitation may be relaxed "for the most persuasive of reasons," which must be sufficiently shown by the party invoking liberality.⁵⁷

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- In this case, respondents were notified of the denial of their Motion for Reconsideration of the Order dated July 11, 2002, denying their application for subpoena *duces tecum*, on October 18, 2002.⁵⁸ Accordingly, they had until December 17, 2002 within which to file a Petition for *Certiorari* with the CA. Records, however, show that it was only on January 20, 2003 that respondents filed their Petition for *Certiorari* to assail the Orders dated July 11, 2002 and October 10, 2002.⁵⁹ Instead of admitting that more than 60 days had lapsed, respondents kept silent

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about it in their Petition for *Certiorari*.

In the absence of a motion for reconsideration, the Petition for Certiorari should have been dismissed.

Jurisprudence consistently holds that the filing of a motion for reconsideration is a prerequisite to the institution of a petition for *certiorari*.⁶¹ Although this rule is subject to certain exceptions,⁶² none of which is present in this case.

Respondents admit that they failed to file a motion for reconsideration of the Order dated November 29, 2002 prior to filing the Petition for *Certiorari*. As an excuse, they alleged that their counsel verbally moved for a reconsideration of the denial of their Motion to Suppress, which the RTC flatly denied in open court. Such allegation, however, as aptly pointed out by petitioner,⁶³ is not supported by the evidence as the Order dated November 29, 2002 made no mention of such fact.⁶⁴ It is also unlikely for respondents' counsel to have moved for a reconsideration of the said Order considering that, as stated in the Order, he appeared only after the hearings were over.⁶⁵ Besides, the lower court should first be informed of its supposed error and be allowed to correct or rectify the same through a re-examination of the legal and factual aspects of the case, which could only be done by filing a motion for reconsideration of the assailed order.⁶⁶ This respondents failed to do. Thus, in the absence of a motion for reconsideration, the CA erred in giving due course to the Petition and in reversing the Order dated November 29, 2002.

- **Pedro G. Resurreccion, et al. Vs. People of the Philippines** G.R. No. 192866. July 9, 2014

- There are only two issues presented for our resolution:

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- (1) Whether the negligence of the former counsel of the petitioners in allegedly not informing them about

the status of their case, resulting in their failure to present evidence and, consequently, to the waiver of their right to present evidence, is a valid ground to set aside the judgment for conviction.

-
- (2) Whether the 1st Division of the Sandiganbayan correctly denied the petitioners' motion for reconsideration on the ground that the motion did not contain a notice of hearing.
-

Negligence of the Counsel de Parte Binds the Petitioners

Nothing is more settled than the rule that the negligence and mistakes of the counsel are binding on the client.¹⁸ The rationale behind this rule is that a counsel, once retained, is said to have the authority, albeit impliedly, to do all acts necessary or, at least, incidental to the prosecution of the case in behalf of his client, such that any act or omission by counsel within the scope of his authority is treated by law as the act or omission of the client himself.¹⁹ It is only in cases involving gross or palpable negligence of the counsel, or when the application of the general rule amounts to an outright deprivation of one's property or liberty through technicality, or where the interests of justice so require, when relief is accorded to a client who has suffered thereby.²⁰

Here, Atty. Corpuz was present all throughout the presentation of the prosecution's evidence. While he allegedly failed to communicate with the petitioners for nearly three years and to inform them about the status of their case, this omission, however, does not amount to abandonment that qualifies as gross negligence. If at all, the omission is only an act of simple negligence, and not gross negligence that would warrant the annulment of the proceedings below.

Besides, as far as the court is concerned, the petitioners were already duly notified,

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through their counsel, of the entire proceedings in the case.²⁹ If they failed to inquire from their counsel as to the status and developments of their case, they alone should be blamed.

Denial Of The Petitioners' Motion For Reconsideration Was Proper

Anent the issue of whether the Sandiganbayan erred in denying the petitioners' motion for reconsideration on the sole ground that the motion lacked the required notice of hearing, the Rules of Court require that every written motion be set for hearing by the movant, except those motions which the court may act upon without prejudicing the rights of the adverse party. The notice of hearing must be addressed and served to all parties at least three days before the hearing. It must specify the time and date of the hearing of the motion.

A motion which does not meet the requirements of Sections 4 and 5, Rule 15 of the 1997 Rules of Civil Procedure is considered pro forma; it is nothing but a worthless piece of paper which the clerk has no right to receive and the court has no authority to act upon.⁴⁰ "Service of [a] copy of a motion containing notice of the time and place of hearing of said motion is a mandatory requirement and the failure of the movant to comply with [the] said requirements renders his motion fatally defective."⁴¹ la.

Since the motion for reconsideration filed by the petitioners did not contain the time, date and place for the hearing, the motion is nothing but a useless scrap of paper, a pro forma motion, hence, properly dismissible by the Sandiganbayan.

- **Olivarez Realty Corporation and Dr. Pablo R. Olivarez Vs. Benjamin Castillo** G.R. No. 196251. July 9, 2014

Trial may be dispensed with and a summary judgment rendered if the case can be resolved judiciously by plain resort to the pleadings, affidavits, depositions, and other papers filed by the parties.

The trial court correctly rendered

summary judgment, as there were no genuine issues of material fact in this case

Trial "is the judicial examination and determination of the issues between the parties to the action."⁸⁹ During trial, parties "present their respective evidence of their claims and defenses."⁹⁰ Parties to an action have the right "to a plenary trial of the case"⁹¹ to ensure that they were given a right to fully present evidence on their respective claims.

There are instances, however, when trial may be dispensed with. Under Rule 35 of the 1997 Rules of Civil Procedure, a trial court may dispense with trial and proceed to decide a case if from the pleadings, affidavits, depositions, and other papers on file, there is no genuine issue as to any material fact. In such a case, the judgment issued is called a summary judgment.

A motion for summary judgment is filed either by the claimant or the defending party.⁹² The trial court then hears the motion for summary judgment. If indeed there are no genuine issues of material fact, the trial court shall issue summary judgment.

An issue of material fact exists if the answer or responsive pleading filed specifically denies the material allegations of fact set forth in the complaint or pleading. If the issue of fact "requires the presentation of evidence, it is a genuine issue of fact."⁹³ However, if the issue "could be resolved judiciously by plain resort"⁹⁴ to the pleadings, affidavits, depositions, and other papers on file, the issue of fact raised is sham, and the trial court may resolve the action through summary judgment.

A summary judgment is usually distinguished from a judgment on the pleadings. Under Rule 34 of the 1997 Rules of Civil Procedure, trial may likewise be dispensed with and a case decided through judgment on the pleadings if the answer filed fails to tender an issue or

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otherwise admits the material allegations of the claimant's pleading.⁹⁵

Judgment on the pleadings is proper when the answer filed fails to tender any issue, or otherwise admits the material allegations in the complaint.⁹⁶ On the other hand, in a summary judgment, the answer filed tenders issues as specific denials and affirmative defenses are pleaded, but the issues raised are sham, fictitious, or otherwise not genuine.⁹⁷

In this case, Olivarez Realty Corporation admitted that it did not fully pay the purchase price as agreed upon in the deed of conditional sale. As to why it withheld payments from Castillo, it set up the following affirmative defenses: First, Castillo did not file a case to void the Philippine Tourism Authority's title to the property; second, Castillo did not clear the land of the tenants; third, Castillo allegedly sold the property to a third person, and the subsequent sale is currently being litigated before a Quezon City court.

Considering that Olivarez Realty Corporation and Dr. Olivarez's answer tendered an issue, Castillo properly availed himself of a motion for summary judgment.

However, the issues tendered by Olivarez Realty Corporation and Dr. Olivarez's answer are not genuine issues of material fact. These are issues that can be resolved judiciously by plain resort to the pleadings, affidavits, depositions, and other papers on file; otherwise, these issues are sham, fictitious, or patently unsubstantial.

Castillo is entitled to cancel the contract of conditional sale

Since Olivarez Realty Corporation illegally withheld payments of the purchase price, Castillo is entitled to cancel his contract with petitioner corporation. However, we properly characterize the parties' contract as a contract to sell, not a contract of

conditional sale.

In both contracts to sell and contracts of conditional sale, title to the property remains with the seller until the buyer fully pays the purchase price.¹¹⁰ Both contracts are subject to the positive suspensive condition of the buyer's full payment of the purchase price.¹¹¹

In a contract of conditional sale, the buyer automatically acquires title to the property upon full payment of the purchase price.¹¹² This transfer of title is "by operation of law without any further act having to be performed by the seller."¹¹³ In a contract to sell, transfer of title to the prospective buyer is not automatic.¹¹⁴ "The prospective seller [must] convey title to the property [through] a deed of conditional sale."¹¹⁵

The distinction is important to determine the applicable laws and remedies in case a party does not fulfill his or her obligations under the contract. In contracts of conditional sale, our laws on sales under the Civil Code of the Philippines apply. On the other hand, contracts to sell are not governed by our law on sales¹¹⁶ but by the Civil Code provisions on conditional obligations.

Specifically, Article 1191 of the Civil Code on the right to rescind reciprocal obligations does not apply to contracts to sell.¹¹⁷ As this court explained in *Ong v. Court of Appeals*,¹¹⁸ failure to fully pay the purchase price in contracts to sell is not the breach of contract under Article 1191.¹¹⁹ Failure to fully pay the purchase price is "merely an event which prevents the [seller's] obligation to convey title from acquiring binding force."¹²⁰ This is because "there can be no rescission of an obligation that is still non-existent, the suspensive condition not having [happened]."¹²¹

In this case, Castillo reserved his title to the property and undertook to execute a deed of absolute sale upon Olivarez Realty

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Corporation's full payment of the purchase price.¹²² Since Castillo still has to execute a deed of absolute sale to Olivarez Realty Corporation upon full payment of the purchase price, the transfer of title is not automatic. The contract in this case is a contract to sell.

As this case involves a contract to sell, Article 1191 of the Civil Code of the Philippines does not apply. The contract to sell is instead cancelled, and the parties shall stand as if the obligation to sell never existed.¹²³

• **Remedios M. Mauleon Vs. Lolina Moran Porter rep. by Ervin C. Moran** G.R. No. 203288. July 18, 2014

Section 1(e), Rule 41 of the Rules of Court explicitly provides that an order of execution is not appealable, hence, an aggrieved party may resort to the special civil action of *certiorari* under Rule 65 of the Rules of Court. This is because an order of execution is not a final order or resolution within the contemplation of the rules, but is issued to carry out the enforcement of a final judgment or order against the losing party, hence, generally not appealable.³⁵ While there are circumstances wherein appeal from an improper execution is allowed,³⁶ none obtains in this case. Consequently, the Court finds that petitioner properly availed of the remedy of *certiorari* before the RTC, contrary to the finding of the CA³⁷ that she should have appealed therefrom.

Records show that during the scheduled preliminary conference on March 27, 2009, petitioner and her counsel failed to appear despite notice. Hence, the MeTC was justified in granting respondent's motion to render judgment in the ejectment case pursuant to Section 6 in relation to Section 7 of the Rules on Summary Procedure which read as follows:

SEC. 6. *Effect of failure to answer.* - Should the defendant fail to answer the complaint within the period above provided, the court, *motu proprio*, or on

motion of the plaintiff, shall render judgment as may be warranted by the facts alleged in the complaint and limited to what is prayed for therein: *Provided, however,* That the court may in its discretion reduce the amount of damages and attorney's fees claimed for being excessive or otherwise unconscionable. This is without prejudice to the applicability of Section 4, Rule 18 of the Rules of Court, if there are two or more defendants.

SEC. 7. *Preliminary conference; appearance of parties.* - Not later than thirty (30) days after the last answer is filed, a preliminary conference shall be held. x x x.

x x x x

If a sole defendant shall fail to appear, the plaintiff shall be entitled to judgment in accordance with Section 6 hereof. x x x.

The use of the word "shall" in the foregoing provisions makes the attendance of the parties in the preliminary conference mandatory, and non-appearance thereat is excusable only when the party offers a justifiable cause for his failure to attend.³⁸ The petitioner in this case, however, failed in this respect.

• **Gerve Magallanes Vs. Palmer Asia, Inc.** G.R. No. 205179. July 18, 2014

Under our procedural rules, "a case is dismissible for lack of personality to sue upon proof that the plaintiff is not the real party-in-interest, hence grounded on failure to state a cause of action."²⁶ In the instant case, Magallanes filed a motion to dismiss in accordance with the Rules of Court, wherein he claimed that:

x x x the obvious and only real party in interest in the filing and prosecution of the civil aspect impliedly instituted with x x x the filing of the foregoing Criminal Cases for B.P. 22 is Andrews International Products, Inc.

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The alleged bounced checks issued by x x x Magallanes were issued payable in the name of Andrews International Products, Inc. The [n]arration of [facts] in the several Informations for violation of B.P. 22 filed against Magallanes solely mentioned the name of Andrews International Products, Inc.²⁷

The real party in this case is Andrews, not Palmer. Section 2 of Rule 3 of the Rules of Court provides:

Sec. 2. Parties in interest. – A real party in interest is the party who stands to be benefited or injured by the judgment in the suit, or the party entitled to the avails of the suit. Unless otherwise authorized by law or these Rules, every action must be prosecuted or defended in the name of the real party in interest.

In *Goco v. Court of Appeals*,²⁸ we explained that:

This provision has two requirements: 1) to institute an action, the plaintiff must be the real party in interest; and 2) the action must be prosecuted in the name of the real party in interest. Interest within the meaning of the Rules of Court means material interest or an interest in issue to be affected by the decree or judgment of the case, as distinguished from mere curiosity about the question involved. One having no material interest to protect cannot invoke the jurisdiction of the court as the plaintiff in an action.

Parties who are not the real parties in interest may be included in a suit in accordance with the provisions of Section 3 of Rule 3 of the Rules of Court:

Sec. 3. Representatives as parties. Where the action is allowed to be

prosecuted or defended by a representative or someone acting in a fiduciary capacity, the beneficiary shall be included in the title of the case and shall be deemed to be the real party in interest. A representative may be a trustee of an express trust, a guardian, an executor or administrator, or a party authorized by law or these Rules. An agent acting in his own name and for the benefit of an undisclosed principal may sue or be sued without joining the principal except when the contract involves things belonging to the principal.

The CA erred in stating that Palmer and Andrews are the same entity.²⁹ These are two separate and distinct entities claiming civil liability against Magallanes. Andrews was the payee of the bum checks, and the former employer of Magallanes. It filed the complaint for B.P. 22 before MeTC Branch 62. Thus when the MeTC Branch 62 ordered Magallanes to “pay the private complainant the corresponding face value of the checks x x x”,³⁰ it was referring to Andrews, not Palmer.

Given the foregoing facts, it is clear that the real party in interest here is Andrews. Following the Rules of Court, the action should be in the name of Andrews. As previously mentioned, Andrews instituted the action before the MeTC Branch 62 but it was Palmer which filed a petition for review before the CA. In fact, the case at the CA was entitled *Palmer Asia, Inc. v. Gerve Magallanes*.

The corporation that initiated the complaint for B.P. 22 is different from the corporation that filed the memorandum at the RTC and the petition for review before the CA. It appears that Palmer is suing Magallanes in its own right, not as agent of Andrews, the real party in interest.

Even assuming *arguendo* that Palmer is correct in asserting that it is the agent of Andrews, the latter should have been

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included in the title of the case, in accordance with procedural rules.

- **Sps. Alejandro Manzanilla and Remedios Velasco Vs. Waterfields Industries Corporation, represented by its President, Aliza Ma** G.R. No. 177484. July 18, 2014

- As may be recalled, the spouses Manzanilla, on account of Waterfields' alleged violation of the contract of lease by non-payment of rentals, considered the contract terminated and demanded for the latter to pay its obligation and vacate the property. As demand proved futile, the said spouses filed the Complaint for ejectment [unlawful detainer].
- In *Fideldia v. Sps. Mulato*,²⁷ the Court held that:
- For the purpose of bringing an unlawful detainer suit, two requisites must concur: (1) **there must be failure to pay rent or comply with the conditions of the lease**, and (2) there must be demand both to pay or to comply and vacate. **The first requisite refers to the existence of the cause of action for unlawful detainer**, while the second refers to the jurisdictional requirement of demand in order that said cause of action may be pursued. Implied in the first requisite, which is needed to establish the cause of action of the plaintiff in an unlawful detainer suit, is the presentation of the contract of lease entered into by the plaintiff and the defendant, the same being needed to establish the lease conditions alleged to have been violated. Thus, in *Bachrach Corporation v. Court of Appeals*, the Court held that **the evidence needed to establish the cause of action in an unlawful detainer case is (1) a lease contract and (2) the violation of that lease by the defendant.**²⁸

- Here, there is no issue with respect to demand. What is in question is the presence of a cause of action. As mentioned above, courts, in order to ascertain whether there is cause of action for unlawful detainer, must inquire into (a) the existence of the lease contract and, (b) the violation of that lease by the lessee. Since in this case the existence of a lease contract between the parties is undisputed, the focus is on the supposed violation of the lease, that is, Waterfields' alleged non-payment of rent. The basic question that thus presents itself for determination is: *Did Waterfields fail to pay rent?* The answer to this is crucial as from the same will depend the existence of the cause of action. However, since Waterfields denies that it failed to pay rent and puts up the claim that it was utilizing the rental deposit as rental payment, a preliminary question emerges, viz: *May the rental deposit be utilized as rental payment?*
- Accordingly, the MTC in resolving the case first determined if the July 9, 1997 letter operates as an amendment to the original contract. Finding in the affirmative, it declared that the rental deposit cannot be utilized as payment for the rentals in view of the said amendment. As things thus stood, the rental for the months of December 1997 to May 1998, as stated in the Complaint, remained unpaid. Clearly, there was failure on the part of Waterfields to pay rent and, consequently, it committed a violation of the lease. It is this violation which gave rise to a cause of action for unlawful detainer against Waterfields as well as to the right of the spouses Manzanilla to consider the contract terminated. And as the two

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requisites of an unlawful detainer suit are obtaining in this case, *i.e.*, cause of action and demand, the MTC ultimately sustained the spouses Manzanilla's Complaint.

First, the CA should not have immediately assumed as true the spouses Manzanilla's allegation that the contract was already terminated. Aside from the fact that this termination was specifically denied by Waterfields in its Answer,³¹ it is settled that a mere assumption cannot be made the basis of a decision in a case or in granting relief. A judgment must always be based on the court's factual findings.³²

Second, it must be stressed that in this case, the violation of the lease through non-payment of rent is what constitutes the cause of action.³³ Hence, once the failure to pay rent is established, a cause of action for unlawful detainer arises. The CA should have therefore limited itself to the determination of whether Waterfields failed to pay rents for the months of December 1997 to May 1998 as complained of by the spouses Manzanilla. Upon coming up with an answer to this, the CA should have stopped there since at that point, it can already conclude whether there exists a cause of action for unlawful detainer, which as mentioned is the only contentious issue involved in this case.

The problem, however, is that the CA acted on its mistaken notion as to when a cause of action arises. It did not base its determination of the existence of the cause of action from the fact that Waterfields failed to pay rents from December 1997 to May 1998. To it, the cause of action in this case only arose after the contract was terminated and the rental deposit was found sufficient to cover the unpaid rentals. This is erroneous since as already discussed, it is the failure to pay rent which gives rise to the cause of action. Prescinding from this, the CA's acknowledgement that Waterfields failed to pay rent, as shown by its declaration that the latter is the debtor of the spouses Manzanilla with respect to the unpaid

rentals, is clearly inconsistent with the conclusion that no cause of action for ejectment exists against Waterfields.

Failure to pay the rent must precede termination of the contract due to non-payment of rent. It therefore follows that the cause of action for unlawful detainer in this case must necessarily arise before the termination of the contract and not the other way around as what the CA supposed. Indeed, in going beyond the termination of the contract, the CA went a bit too far in its resolution of this case.

Waterfields' claim of unjust enrichment is unworthy of credence.

Waterfields avers that sustaining the trial courts' ruling would amount to unjust enrichment since it would be constrained to hand over to the spouses Manzanilla, even before the expiration of the lease, the subject premises for which it had already spent substantial amounts in terms of improvements.

- "The principle of unjust enrichment requires two conditions: (1) that a person is benefited without a valid basis or justification, and (2) that such benefit is derived at the expense of another."⁴⁰ It does not, however, apply in this case since any benefit that the spouses Manzanilla may obtain from the subject premises cannot be said to be without any valid basis or justification. It is well to remind Waterfields that they violated the contract of lease and that they failed to vacate the premises upon demand. Hence, the spouses Manzanilla are justified in recovering the physical possession thereof and consequently, in making use of the property. Besides, in violating the lease by failing to pay the rent, Waterfields took the risk of losing the improvements it introduced thereon in favor of the spouses Manzanilla. This is because despite the fact that the lease contract

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provides that in case of termination of the lease agreement all permanent improvements and structures found in the subject premises shall belong to the lessors,⁴¹ it still violated the lease.

- **Inocencia Tagalog Vs. Maria Lim Vda. De Gonzalez, et al.** G.R. No. 201286. July 18, 2014

The main issue for our resolution is whether the Regional Trial Court had jurisdiction over the subject matter of the action.

Based on the allegations in respondents' complaint, it is clear that the case involves only the issue of physical possession or unlawful detainer as defined in Section 1,¹³ Rule 70 of the Rules of Court. In *De Leon v. CA*,¹⁴ we held that unlawful detainer is the withholding by a person from another of the possession of a land or building to which the latter is entitled after the expiration or termination of the former's right to hold possession by virtue of a contract, express or implied. An ejectment suit is brought before the MTC to recover not possession *de jure* but physical possession only or possession *de facto*, where dispossession has lasted for not more than one year.

The right to recover possession of the land based on the expiration of the verbal monthly contract of lease is governed by Article 1687¹⁵ of the Civil Code. Since the lease is paid monthly under a verbal contract of lease without a fixed period, the lease period is from month to month. Respondents demanded that Tagalog vacate the land sometime before December 2002, after the termination of the monthly verbal lease contract. They filed the complaint with the RTC in February 2003. Since the complaint was filed within one year from the expiration of the right to hold possession, this case is clearly an unlawful detainer suit within the jurisdiction of the MTC.

The conclusion would be different if the action is for the recovery of the right to possess and dispossession lasted for more than one year which would justify resort

to the remedy of *accion publiciana*. *Accion publiciana* is the plenary action in an ordinary civil proceeding to determine the better right of possession of the land independently of the title and is filed after the expiration of one year from the accrual of the cause of action or from the unlawful withholding of possession of the land. In such case, the RTC has jurisdiction.¹⁶

However, in this case, the unlawful withholding of possession of the land before the filing of the complaint with the RTC lasted only for more or less three months. Also, neither of the parties brought forth the issue of ownership which was the reason given by the RTC for taking cognizance of the action. Jurisdiction is conferred by law and any judgment, order or resolution issued without it is void and cannot be given any effect.¹⁷ This rule applies even if the issue on jurisdiction was raised for the first time on appeal or even after final judgment.¹⁸ In this case, Tagalog raised the issue of jurisdiction in her Answer.

Clearly, the RTC erred in not dismissing the case before it. Under the Rules of Court, it is the duty of the court to dismiss an action whenever it appears that the court has no jurisdiction over the subject matter.¹⁹

In sum, since respondents' complaint should have been filed with the MTC, the RTC seriously erred in proceeding with the case. The proceedings before a court without jurisdiction, including its decision, are null and void. It then follows that the appeal brought before the appellate court, as well as the decisions or resolutions promulgated in accordance with said appeal, is without force and effect.

- **Ricardo C. Silverio, Sr. and Lorna Cilian-Silverio Vs. Ricardo Silverio, Jr.** G.R. No. 186589. July 18, 2014

The pendency of a special civil action for *certiorari* instituted in relation to a pending case does not stay the proceedings therein in the absence of a writ of preliminary injunction or

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temporary restraining order. Rule 65, Section 7 of the 1997 Rules makes this clear:

The court in which the petition is filed may issue orders expediting the proceedings, and it may also grant a temporary restraining order or a writ of preliminary injunction for the preservation of the rights of the parties pending such proceedings. **The petition shall not interrupt the course of the principal case unless a temporary restraining order or a writ of preliminary injunction has been issued against the public respondent from further proceeding in the case.**

The public respondent shall proceed with the principal case within ten (10) days from the filing of a petition for *certiorari* with a higher court or tribunal, absent a temporary restraining order or a preliminary injunction, or upon its expiration. Failure of the public respondent to proceed with the principal case may be a ground for an administrative charge. (*Emphasis supplied*)

Petitioners are thus correct in arguing that the pendency of G.R. No. 178676 did not interrupt the course of CA-G.R. SP No. 97196, in the absence of a temporary restraining order or writ of preliminary injunction issued in the former case. This is because "an original action for *certiorari* is an independent action and is neither a continuation nor a part of the trial resulting in the judgment complained of."¹⁸ The CA therefore committed error in dismissing CA-G.R. SP No. 104060, or petitioners' indirect contempt petition, on the ground of pendency of G.R. No. 178676. It need not wait for this Court to resolve G.R. No. 178676 before the petitioners' contempt charge may be heard.

A hearing is required in order to resolve a charge of indirect contempt; the respondent to the charge may not be

convicted on the basis of written pleadings alone

However, at this point, this Court cannot grant petitioners' plea to resolve the merits of their petition for indirect contempt; it is the CA that should properly try the same. Aside from the fact that the CA is the court against which the alleged contempt was committed, a hearing is required in resolving a charge for indirect contempt. The respondent in an indirect contempt charge may not be convicted on the basis of written pleadings alone.¹⁹

Sections 3 and 4, Rule 71 of the Rules of Court, specifically [outline] the **procedural requisites before the accused may be punished for indirect contempt**. *First*, there must be an order requiring the respondent to show cause why he should not be cited for contempt. *Second*, the respondent must be given the opportunity to comment on the charge against him. **Third, there must be a hearing** and the court must investigate the charge and consider respondent's answer. *Finally*, only if found guilty will respondent be punished accordingly. The law requires that there be a charge in writing, duly filed in court, and an opportunity given to the person charged to be heard by himself or counsel. **What is most essential is that the alleged contemner be granted an opportunity to meet the charges against him and to be heard in his defenses.** This is due process, which must be observed at all times.

x x x x

In contempt proceedings, the prescribed procedure must be followed. To be sure, since an indirect contempt charge partakes the nature of a criminal charge, conviction cannot be had merely on the basis of written pleadings. A respondent in a contempt charge must be served with a copy of the motion/petition. Unlike in civil actions, the Court does not issue summons on the respondent. While the respondent is not required to file a

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formal answer similar to that in ordinary civil actions, **the court must set the contempt charge for hearing on a fixed date and time on which the respondent must make his appearance to answer the charge.**

• **GMA Network, Inc. Vs. Central CATV, Inc.**

G.R. No. 176694. July 18, 2014

The remedy of a demurrer to evidence is applicable in the proceedings before the NTC, pursuant to Section 1, Rule 9, Part 9 of its Rules of Practice and Procedure which provides for the suppletory application of the Rules of Court.

Rule 33²² of the Rules of Court provides for the rule on demurrer to evidence:

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.

In other words, the issue to be resolved in a motion to dismiss based on a demurrer to evidence is whether the plaintiff is entitled to the relief prayed for **based on the facts and the law.**²³ In *Casent Realty Development Corp. v. Philbanking Corp.*,²⁴ the Court explained that these facts and law do not include the defendant's evidence:

What should be resolved in a motion to dismiss based on a demurrer to evidence is whether the plaintiff is entitled to the relief **based on the facts and the law.** The evidence contemplated by the rule on demurrer is that which pertains to the merits of the case, excluding technical aspects

such as capacity to sue. However, the plaintiff's evidence should not be the only basis in resolving a demurrer to evidence. **The "facts" referred to** in Section 8 should include all the means sanctioned by the Rules of Court in ascertaining matters in judicial proceedings. These include 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.**

• **Kalipunan ng Damayang Mahihirap, Inc. etc., et al. Vs. Jessie Robredo, etc., et al.** G.R. No. 200903. July 22, 2014

- **The petitioners wrongly availed themselves of a petition for prohibition and mandamus.**
- We cannot also ignore the petitioners' glaring error in using a petition for prohibition and mandamus in the current case.
- The petitioners seem to have forgotten that a writ of prohibition only lies against the tribunal, corporation, board, officer or person's exercise of **judicial, quasi-judicial or ministerial functions.**¹⁴ We issue a writ of prohibition to afford the aggrieved party a relief against the respondent's usurpation or grave abuse of jurisdiction or power.¹⁵
- On the other hand, a petition for mandamus is merely directed against the tribunal, corporation, board, officer, or person who unlawfully neglects the performance of an act which the law enjoins as a duty resulting from an office, trust or station or who unlawfully excludes another from the use and enjoyment of a right or office to which such other is entitled.¹⁶ Thus, a writ of mandamus will only issue to compel an officer to perform a **ministerial duty.** It will not

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control a public officer's exercise of discretion as where the law imposes upon him the duty to exercise his judgment in reference to any manner in which he is required to act precisely because it is his judgment that is to be exercised, not that of the court.¹⁷

- In the present case, the petitioners seek to prohibit the respondents from implementing Section 28 (a) and (b) of RA 7279 without a prior court order of eviction and/or demolition.

A reading of this provision clearly shows that the acts complained of are beyond the scope of a petition for prohibition and mandamus. The use of the permissive word "may" implies that the public respondents have discretion when their duty to execute evictions and/or demolitions shall be performed. Where the words of a statute are clear, plain, and free from ambiguity, it must be given its literal meaning and applied without attempted interpretation.¹⁸

- Consequently, the time when the public respondents shall carry out evictions and/or demolitions under Section 28 (a), (b), and (c) of RA 7279 is merely discretionary, and not ministerial, judicial or quasi-judicial. The duty is discretionary if the law imposes a duty upon a public officer and gives him the right to decide when the duty shall be performed.

• **Absolute Management Corporation Vs. Metropolitan Bank and Trust Company**
G.R. No. 190277. July 23, 2014

- We agree with petitioner that the court *a quo* merely applied the law in this case when it declared that respondent's counsel did not have the authority to act on behalf of respondent as its **representative** during the pre-trial on November 20, 2006. The applicable provision under Rule 18 of the 1997 Rules of Civil Procedure, as amended,

states,
viz.:

- SEC. 4. *Appearance of parties.* - It shall be the duty of the parties and their counsel to appear at the pre-trial. The non-appearance of a party may be excused only if a valid cause is shown therefor or **if a representative shall appear in his behalf fully authorized in writing to enter into an amicable settlement, to submit to alternative modes of dispute resolution, and to enter into stipulations or admissions of facts and of documents.**¹⁵

- SEC. 5. *Effect of failure to appear.* - The failure of the plaintiff to appear when so required pursuant to the next preceding section shall be cause for dismissal of the action. The dismissal shall be with prejudice, unless otherwise ordered by the court. A similar failure on the part of the defendant shall be cause to allow the plaintiff to present his evidence *ex parte* and the court to render judgment on the basis thereof.

It behooves the Court that respondent did not refute the contention of petitioner that the ground for the trial court in declaring respondent in default was the absence of a Special Power of Attorney (SPA) authorizing its counsel to act on its behalf as "representative" in the pre-trial conference. All that respondent relentlessly invoked was the liberal application of the rules in order not to defeat the right of the respondent to be heard and to present evidence in its defense – citing that default orders are frowned upon and that all parties should be given the opportunity to litigate their claims.

• **Genato Investments, Inc. Vs. Hon. Judge Oscar P Barrientos, et al.** G.R. No. 207443. July 23, 2014

- ased on the records of this case, it is undisputed that the Order of the RTC Caloocan dated 31 August

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2011 became final and executory on 11 October 2011, when the latter issued an Entry of Judgment for the same. The general rule is that a final and executory judgment can no longer be disturbed, altered, or modified in any respect, and that nothing further can be done but to execute it. A final and executory decision may, however, be invalidated via a Petition for Relief or a Petition to Annul the same under Rules 38 or 47, respectively, of the Rules of Court.²⁹

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- Under Rule 38, when a judgment or final order is entered, or any other proceeding is thereafter taken against a party in any court through fraud, accident, mistake, or excusable negligence, he may file a petition in such court and in the same case praying that the judgment, order or proceeding be set aside. The verified petition must be filed within sixty (60) days after the petitioner learns of the judgment, final order, or other proceeding to be set aside, and not more than six (6) months after such judgment or final order was entered. However, it is uncontested that petitioner learned about the proceedings in LRC-Case No. C-5748 more than six (6) months after the Order dated 31 August 2011 had become final and executory on 11 October 2011. Thus, this remedy under Rule 38 of the Rules of Court was clearly unavailing.
-
- Thus, the only remedy left to petitioner in this case is a petition for annulment of judgment under Rule 47, which it, in fact, filed.
- We have repeatedly ruled that a Petition for Annulment of Judgment under Rule 47 of the Rules of Court is a remedy granted only under exceptional circumstances where a party, without fault on his part, has

failed to avail of the ordinary remedies of new trial, appeal, petition for relief or other appropriate remedies. The same petition is not available as a substitute for a remedy which was lost due to the party's own neglect in promptly availing of the same.³¹ There is here no attempted substitution; annulment of judgment is the only remedy available to petitioner.

• **Juanito M. Gopiao Vs. Metropolitan Bank & Trust Co.** G.R. No. 188931. July 28, 2014

- We agree with the CA when it found that the RTC did not gravely abuse its discretion in dismissing petitioner's Affidavit of Third-Party Claim and Very Urgent Motion for Intervention and to Recall and/or Stop the Enforcement/Implementation of the Writ of Possession.
-
- A writ of possession is a writ of execution employed to enforce a judgment to recover the possession of land.¹⁴ It commands the sheriff to enter the land and give its possession to the party entitled under the judgment. Under Sections 6 and 7 of Act 3135,¹⁵ as amended by Act 4118,¹⁶ a writ of possession may be issued in favor of a purchaser in a foreclosure sale of a real estate mortgage either (1) within the one-year redemption period, upon the filing of a bond; or (2) after the lapse of the redemption period, without need of a bond.¹⁷
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- It is a well-established rule that the issuance of a writ of possession to a purchaser in a public auction is a ministerial function of the court, which cannot be enjoined or restrained, even by the filing of a civil case for the declaration of nullity of the foreclosure and consequent auction sale.¹⁸
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- Once title to the property has been consolidated in the buyer's name upon failure of the mortgagor to redeem the property within the one-year redemption period, the writ of possession becomes a matter of right belonging to the buyer. Its right to possession has then ripened into the right of a confirmed absolute owner and the issuance of the writ becomes a ministerial function that does not admit of the exercise of the court's discretion.¹⁹
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- Moreover, a petition for a writ of possession is ex-parte and summary in nature. As one brought for the benefit of one party only and without notice by the court to any person adverse of interest, it is a judicial proceeding wherein relief is granted without giving the person against whom the relief is sought an opportunity to be heard. Since the judge to whom the application for writ of possession is filed need not look into the validity of the mortgage or the manner of its foreclosure, it has been ruled that the ministerial duty of the trial court does not become discretionary upon the filing of a complaint questioning the mortgage.²⁰ Corollarily, any question regarding the validity of the extrajudicial foreclosure sale and the resulting cancellation of the writ may, likewise, be determined in a subsequent proceeding as outlined in Section 8 of Act No. 3135.²¹
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- The foregoing rule, however, admits of a few exceptions, one of which is when a third party in possession of the property claims a right adverse to that of the debtor-mortgagor, as this Court has time and again upheld in numerous cases, consistent with Section 33²² of Rule 39 of the Rules of Court. As such, petitioner claims

that since the following rulings squarely apply to the instant case, the writ of possession should not be enforced against him.

To be sure, considering the *ex-parte* nature of the proceedings involved in the issuance of the writ of possession, and should petitioner still choose to further vindicate his claim of ownership over the subject properties despite the findings of the courts below, an independent civil action is an available remedy.

jurisprudence is replete with rulings that apply the double sales rule to cases where one of the two sales was conducted in a public auction.³⁵

In fact, in *Express credit Financing Corporation v. Spouses Velasco*,³⁶ the facts of which are strikingly similar to the case at hand, we applied the rule on double sales in determining the party who has preferential right over the disputed property in question. In said case, the subject property was sold first, to respondent spouses by virtue of a Deed of Absolute Sale and, second, to petitioner corporation in a foreclosure sale of a real estate mortgage. We ruled, however, in favor of respondent spouses due to the bad faith of petitioner corporation as records reveal that they were well aware of the earlier sale to respondent spouses.

- **Ma. Hazelina A. Tujan-Militante in behalf of the Minor Criselda M. Cada Vs. Raquel M. Cada-Deapera** G.R. No. 210636. July 28, 2014

• The Issues

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- At the core of this controversy is the issue of whether or not the RTC-Caloocan has jurisdiction over the habeas corpus petition filed by respondent and, assuming arguendo it does, whether or not it validly acquired jurisdiction over petitioner and the person of Criselda. Likewise pivotal is the enforceability of the writ issued by RTC-Caloocan in Quezon City where petitioner was served a copy thereof.

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The petition lacks merit. The RTC-Caloocan correctly took cognizance of the habeas corpus petition. Subsequently, it acquired jurisdiction over petitioner when the latter was served with a copy of the writ in Quezon City.

The RTC-Caloocan has jurisdiction over the habeas corpus proceeding

In the case at bar, what respondent filed was a petition for the issuance of a writ of habeas corpus under Section 20 of A.M. No. 03-04-04-SC and Rule 102 of the Rules of Court.²⁰As provided:

Section 20. *Petition for writ of habeas corpus.* - A verified petition for a writ of habeas corpus involving custody of minors shall be filed with the Family Court. The writ shall be enforceable within its judicial region to which the Family Court belongs.XXXXX

Considering that the writ is made enforceable within a judicial region, petitions for the issuance of the writ of habeas corpus, whether they be filed under Rule 102 of the Rules of Court or pursuant to Section 20 of A.M. No. 03-04-04-SC, may therefore be filed with any of the proper RTCs within the judicial region where enforcement thereof is sought.²¹

In view of the afore-quoted provision, it is indubitable that the filing of a petition for the issuance of a writ of habeas corpus before a family court in any of the cities enumerated is proper as long as the writ is sought to be enforced within the National Capital Judicial Region, as here.

In the case at bar, respondent filed the petition before the family court of Caloocan City. Since Caloocan City and Quezon City both belong to the same judicial region, the writ issued by the RTC-Caloocan can still be implemented in Quezon City. Whether petitioner resides in the former or the latter is immaterial in

view of the above rule.

Anent petitioner's insistence on the application of Section 3 of A.M. No. 03-04-04-SC, a plain reading of said provision reveals that the provision invoked only applies to petitions for custody of minors, and not to habeas corpus petitions. Thus:

Section 3. *Where to file petition.* - The **petition for custody of minors** shall be filed with the Family Court of the province or city where the petitioner resides or where the minor may be found.(emphasis added)

Lastly, as regards petitioner's assertion that the summons was improperly served, suffice it to state that service of summons, to begin with, is not required in a habeas corpus petition, be it under Rule 102 of the Rules of Court or A.M. No. 03-04-04-SC. As held in *Saulo v. Cruz*, a writ of habeas corpus plays a role somewhat comparable to a summons, in ordinary civil actions, in that, by service of said writ, the court acquires jurisdiction over the person of the respondent.²²

- **Spouses Mauricio M. Tabino and Leonila Dela Cruz-Tabino Vs. Lazaro M. Tabino**
G.R. No. 196219. July 30, 2014

As a general rule, an ejectment suit cannot be abated or suspended by the mere filing before the regional trial court (RTC) of another action raising ownership of the property as an issue. As an exception, however, unlawful detainer actions may be suspended even on appeal, on considerations of equity, such as when the demolition of petitioners' house would result from the enforcement of the municipal circuit trial court (MCTC) judgment.³⁶

- **Association of Flood Victims, et al. Vs. Commission on Elections, et al.** G.R. No. 203775. August 5, 2014

- Petitioners do not have legal capacity to sue. Sections 1 and 2, Rule 3 of the 1997 Rules of Civil Procedure read:

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- SECTION 1. *Who may be parties; plaintiff and defendant.* – Only natural or juridical persons, or entities authorized by law may be parties in a civil action. The term “plaintiff” may refer to the claiming party, the counter-claimant, the cross-claimant, or the third (fourth, etc.) -party plaintiff. The term “defendant” may refer to the original defending party, the defendant in a counterclaim, the cross-defendant, or the third (fourth, etc.) -party defendant.
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- SECTION 2. *Parties in interest.* – A real party in interest is the party who stands to be benefited or injured by the judgment in the suit, or the party entitled to the avails of the suit. Unless otherwise authorized by law or these Rules, every action must be prosecuted or defended in the name of the real party in interest.
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- Under Sections 1 and 2 of Rule 3, only natural or juridical persons, or entities authorized by law may be parties in a civil action, which must be prosecuted or defended in the name of the real party in interest. Article 44 of the Civil Code lists the juridical persons with capacity to sue, thus:
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- Art. 44. The following are juridical persons:
 - (1) The State and its political subdivisions;
 - **(2) Other corporations, institutions and entities for public interest or purpose, created by law; their personality begins as soon as they have been constituted according to law;**
 - (3) Corporations, partnerships and **associations for private interest or purpose to which the law**

grants a juridical personality, separate and distinct from that of each shareholder, partner or member. (*Emphasis supplied*)

-
- Section 4, Rule 8 of the Rules of Court mandates that “[f]acts showing the capacity of a party to sue or be sued or the authority of a party to sue or be sued in a representative capacity or the legal existence of an organized association of persons that is made a party, must be averred.”
-
- In their petition, it is stated that petitioner Association of Flood Victims “is a non-profit and non-partisan organization **in the process of formal incorporation**, the primary purpose of which is for the benefit of the common or general interest of many flood victims who are so numerous that it is impracticable to join all as parties,” and that petitioner Hernandez “is a Tax Payer and the Lead Convenor of the Association of Flood Victims.”³ Clearly, petitioner Association of Flood Victims, which is still in the process of incorporation, cannot be considered a juridical person or an entity authorized by law, which can be a party to a civil action.⁴
-
- Petitioner Association of Flood Victims is an unincorporated association not endowed with a distinct personality of its own. An unincorporated association, in the absence of an enabling law, has no juridical personality and thus, cannot sue in the name of the association.⁵ Such unincorporated association is not a legal entity distinct from its members. If an association, like petitioner Association of Flood Victims, has no juridical personality, then all members of the association must be made parties in the civil action.⁶

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In this case, other than his bare allegation that he is the lead convenor of the Association of Flood Victims, petitioner Hernandez showed no proof that he was authorized by said association. Aside from petitioner Hernandez, no other member was made signatory to the petition. Only petitioner Hernandez signed the *Verification and Sworn Certification Against Forum Shopping*,⁷ stating that he caused the preparation of the petition. There was no accompanying document showing that the other members of the Association of Flood Victims authorized petitioner Hernandez to represent them and the association in the petition.

- Since petitioner Association of Flood Victims has no legal capacity to sue, petitioner Hernandez, who is filing this petition as a representative of the Association of Flood Victims, is likewise devoid of legal personality to bring an action in court. Neither can petitioner Hernandez sue as a taxpayer because he failed to show that there was illegal expenditure of money raised by taxation¹⁰ or that public funds are wasted through the enforcement of an invalid or unconstitutional law.¹¹

- **Infant Julian Yusay Caram represented by his mother, Ma. Christina Yusay Caram Vs. Atty. Marijoy D. Segui, Atty. Sally D. Escutin, Vilma B. Cabrera and Celia C. Yangco** G.R. No. 193652. August 5, 2014

The RTC had dismissed petitioner's petition for the issuance of a writ of amparo which petitioner filed in order for her to regain parental authority and custody of Julian Yusay Caram (Baby Julian), her biological child, from the respondent officers of the Department of Social Welfare and Development (DSWD).

Section 1 of the Rule on the Writ of Amparo provides as follows:

SECTION 1. *Petition.* – The petition for a writ of amparo is a remedy available to any person whose right to life, liberty and security is violated or threatened with violation by an unlawful act or omission of a public official or employee, or of a private individual or entity.

The writ shall cover extralegal killings and enforced disappearances or threats thereof.

In the landmark case of *Secretary of National Defense, et al. v. Manalo, et al.*,³¹ this Court held: *Chen v. Virtud* w

[T]he *Amparo* Rule was intended to address the intractable problem of "extralegal killings" and "enforced disappearances," its coverage, in its present form, is confined to these two instances or to threats thereof. "Extralegal killings" are "killings committed without due process of law, *i.e.*, without legal safeguards or judicial proceedings." On the other hand, "enforced disappearances" are "attended by the following characteristics: an arrest, detention or abduction of a person by a government official or organized groups or private individuals acting with the direct or indirect acquiescence of the government; the refusal of the State to disclose the fate or whereabouts of the person concerned or a refusal to acknowledge the deprivation of liberty which places such persons outside the protection of law.

This pronouncement on the coverage of the writ was further cemented in the latter case of *Lozada, Jr. v. Macapagal-Arroyo*³² where this Court explicitly declared that as it stands, the writ of amparo is confined only to cases of extrajudicial killings and enforced disappearances, or to threats thereof. As to what constitutes "enforced disappearance," the Court in *Navia v. Pardico*³³ enumerated the elements constituting "enforced disappearances" as the term is statutorily defined in Section 3(g) of R.A. No. 9851³⁴ to wit:

(a) that there be an arrest, detention, abduction

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- (b) that it be carried out by, or with the authorization, support or acquiescence of, the State or a political organization;
- (c) that it be followed by the State or political organization's official or employee or private information on the fate or whereabouts of the person subject of the amparo petition; and
- (d) that the intention for such refusal is to remove subject persons from the protection of life, liberty and security of persons, free from fears and threats that vitiate the quality of life.

In this case, Christina alleged that the respondent DSWD officers caused her "enforced separation" from Baby Julian and that their action amounted to an "enforced disappearance" within the context of the Amparo rule. Contrary to her position, however, the respondent DSWD officers never concealed Baby Julian's whereabouts. In fact, Christina obtained a copy of the DSWD's May 28, 2010 Memorandum³⁵ explicitly stating that Baby Julian was in the custody of the Medina Spouses when she filed her petition before the RTC. Besides, she even admitted in her petition for review on certiorari that the respondent DSWD officers presented Baby Julian before the RTC during the hearing held in the afternoon of August 5, 2010.³⁶ There is therefore, no "enforced disappearance" as used in the context of the Amparo rule as the third and fourth elements are missing.

Christina's directly accusing the respondents of forcibly separating her from her child and placing the latter up for adoption, supposedly without complying with the necessary legal requisites to qualify the child for adoption, clearly indicates that she is not searching for a lost child but asserting her parental authority over the child and contesting custody over him.³⁷

Since it is extant from the pleadings filed that what is involved is the issue of child custody and the exercise of parental rights over a child, who, for all intents and purposes, has been legally considered a ward of the State, the Amparo rule cannot be properly applied.

To reiterate, the privilege of the writ of amparo is a remedy available to victims of extra-judicial killings and enforced disappearances or threats of a similar

• **Lourdes Suites (Crown Hotel Management Corp.) Vs. Noemi Binarao** G.R. No. 204729. August 6, 2014

- The basis of [the] public respondent in dismissing the complaint for lack of cause of action is the failure of petitioner to preponderantly establish its claim against the private respondent by clear and convincing evidence. Hence, public respondent did not commit grave abuse of discretion when it dismissed the Complaint for lack of cause of action, as he referred to the evidence presented and not to the allegations in the Complaint.
-
- The dismissal of the complaint with prejudice is likewise not an exercise of wanton or palpable discretion. It must be noted that this case is an action for small claims where decisions are rendered final and unappealable, hence, a [d]ecision dismissing the same is necessarily with prejudice.²²

• **UPSI Property Holdings, Inc. Vs. Diesel Construction Co., Inc.** G.R. No. 200250. August 6, 2014

The rule is that in case of ambiguity or uncertainty in the dispositive portion of a decision, the body of the decision may be scanned for guidance in construing the judgment.³¹ After scrutiny of the subject decision, nowhere can it be found that the Court intended to delete the award of legal interest especially that, as Diesel argues, it was never raised. In fact, what the Court carefully reviewed was the principal amount awarded as well as the liquidated damages because they were specifically questioned. Recall that the CA modified the awards granted by the CIAC,

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but not the legal interest. In finally resolving the controversy, the Court **affirmed** the amount of unpaid balance of the contract price in favor of Diesel but **expressly deleted** the award of liquidated damages. There being no issue as to the legal interest, the Court did not find it necessary anymore to disturb the imposition of such.

The rule is that in case of ambiguity or uncertainty in the dispositive portion of a decision, the body of the decision may be scanned for guidance in construing the judgment.³¹ After scrutiny of the subject decision, nowhere can it be found that the Court intended to delete the award of legal interest especially that, as Diesel argues, it was never raised. In fact, what the Court carefully reviewed was the principal amount awarded as well as the liquidated damages because they were specifically questioned. Recall that the CA modified the awards granted by the CIAC, but not the legal interest. In finally resolving the controversy, the Court **affirmed** the amount of unpaid balance of the contract price in favor of Diesel but **expressly deleted** the award of liquidated damages. There being no issue as to the legal interest, the Court did not find it necessary anymore to disturb the imposition of such.

- **Aida Padilla Vs. Globe Asiatique Realty Holdings Corporation, et al.** G.R. No. 207376. August 6, 2014

- **The Petition**

- Petitioner came directly to this Court raising the primordial legal issue of whether or not a court can take cognizance of a compulsory counterclaim despite the fact that the corresponding complaint was dismissed for lack of jurisdiction.
- The present petition was de-consolidated from seven other petitions involving respondents and their transactions with Home Development Mutual Fund, as well as the pending criminal complaints arising therefrom.²⁸

A counterclaim is any claim which a defending party may have against an opposing party.³¹ It is in the nature of a cross-complaint; a distinct and independent cause of action which, though alleged in the answer, is not part of the answer.³²

Counterclaims may be either compulsory or permissive.

In this case, petitioner's counterclaim for damages raised in her answer before the Pasig City RTC is compulsory, alleging suffering and injury caused to her as a consequence of the unwarranted filing of the baseless complaint filed by respondents. Said court, however, dismissed her counterclaim upon the same ground of lack of jurisdiction as its resolution supposedly would entail passing upon the validity of orders and processes still pending before the Pasay City RTC.

In *Metals Engineering Resources Corp. v. Court of Appeals*,³³ we reversed the trial court's order allowing private respondent to proceed with the presentation of his evidence in support of his counterclaim after the complaint was dismissed for not paying the correct docket fee and hence the trial court did not acquire jurisdiction over the case. We held that if the court does not have jurisdiction to entertain the main action of the case and dismisses the same, then the compulsory counterclaim, being ancillary to the principal controversy, must likewise be dismissed since no jurisdiction remained for any grant of relief under the counterclaim.³⁴

Under the 1997 Rules of Civil Procedure, it is now explicitly provided that the dismissal of the complaint due to failure of the plaintiff to prosecute his case is "without prejudice to the right of the defendant to prosecute his counterclaim in the same or in a separate action."³⁵ The effect of this amendment on previous rulings on whether the dismissal of a complaint carries with it the dismissal of the counterclaims as well, was discussed

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in the case of *Pinga v. The Heirs of German Santiago*,³⁶
thus:

Similarly, Justice Feria notes that “the present rule reaffirms the right of the defendant to move for the dismissal of the complaint and to prosecute his counterclaim, as stated in the separate opinion [of Justice Regalado in *BA Finance*.] Retired Court of Appeals Justice Herrera pronounces that the amendment to Section 3, Rule 17 settles that “nagging question” whether the dismissal of the complaint carries with it the dismissal of the counterclaim, and opines that by reason of the amendments, the rulings in *Metals Engineering*, *International Container*, and *BA Finance* “may be deemed abandoned.” On the effect of amendment to Section 3, Rule 17, the commentators are in general agreement, although there is less unanimity of views insofar as Section 2, Rule 17 is concerned.

To be certain, when the Court promulgated the 1997 Rules of Civil Procedure, including the amended Rule 17, **those previous jural doctrines that were inconsistent with the new rules incorporated in the 1997 Rules of Civil Procedure were implicitly abandoned insofar as incidents arising after the effectivity of the new procedural rules on 1 July 1997.** *BA Finance*, or even the doctrine that a counterclaim may be necessarily dismissed along with the complaint, clearly conflicts with the 1997 Rules of Civil Procedure. The abandonment of *BA Finance* as doctrine extends as far back as 1997, when the Court adopted the new Rules of Civil Procedure. ... we thus rule that the dismissal of a complaint due to fault of the plaintiff is without prejudice to the right of the defendant to prosecute any pending counterclaims of whatever nature in the same or separate action. **We confirm that *BA Finance* and all previous rulings of the Court that are inconsistent with this present holding are now abandoned.** (*Emphasis supplied.*)

Subsequently, in *Perkin Elmer Singapore Pte Ltd. v. Dakila Trading Corporation*³⁷ this Court held that while the declaration in *Pinga* refers to instances covered by Section 3, Rule 17 on dismissal of complaints due to the fault of plaintiff, it does not preclude the application of the same rule when the dismissal was upon the instance of defendant who correctly argued lack of jurisdiction over its person. Further, in stark departure from *Metals Engineering*, we declared that the court's jurisdiction over respondent's complaint is not to be confused with jurisdiction over petitioner's counterclaim, viz: ...

....Petitioner seeks to recover damages and attorney's fees as a consequence of the **unfounded suit** filed by respondent against it. Thus, petitioner's compulsory counterclaim is only consistent with its position that the respondent wrongfully filed a case against it and the RTC erroneously exercised jurisdiction over its person.

Distinction must be made in Civil Case No. MC99-605 as to the jurisdiction of the RTC over respondent's complaint and over petitioner's counterclaim – while it may have no jurisdiction over the former, it may exercise jurisdiction over the latter. The compulsory counterclaim attached to petitioner's Answer *ad cautelam* can be treated as a separate action, wherein petitioner is the plaintiff while respondent is the defendant. Petitioner could have instituted a separate action for the very same claims but, for the sake of expediency and to avoid multiplicity of suits, it chose to demand the same in Civil Case No. MC99-605. **Jurisdiction of the RTC over the subject matter and the parties in the counterclaim must thus be determined separately and independently from the jurisdiction of the same court in the same case over the subject matter and the parties in respondent's complaint.**³⁸ (*Emphasis supplied.*)

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Still anchored on the pronouncement in *Pinga*, we then categorically ruled that a counterclaim arising from the unfounded suit may proceed despite the dismissal of the complaint for lack of jurisdiction over the person of defendant-counterclaimant, thus:

Also in the case of *Pinga v. Heirs of German Santiago*, the Court discussed the situation wherein the very filing of the complaint by the plaintiff against the defendant caused the violation of the latter's rights. As to whether the dismissal of such a complaint should also include the dismissal of the counterclaim, the Court acknowledged that said matter is still debatable, viz:

Whatever the nature of the counterclaim, it bears the same integral characteristics as a complaint; namely a cause (or causes) of action constituting an act or omission by which a party violates the right of another. The main difference lies in that the cause of action in the counterclaim is maintained by the defendant against the plaintiff, while the converse holds true with the complaint. Yet, as with a complaint, a counterclaim without a cause of action cannot survive.

x x x if the dismissal of the complaint somehow eliminates the cause(s) of the counterclaim, then the counterclaim cannot survive. Yet that hardly is the case, especially as a general rule. More often than not, the allegations that form the counterclaim are rooted in an act or omission of the plaintiff other than the plaintiff's very act of filing the complaint. Moreover, such acts or omissions imputed to the plaintiff are often claimed to have occurred prior to the filing of the complaint itself. **The only apparent exception to this circumstance is if it is alleged in the counterclaim that the very act of the plaintiff in filing the complaint precisely causes the violation of the defendant's rights. Yet even in such an instance, it remains debatable whether the dismissal or withdrawal of the complaint is sufficient to obviate the**

pending cause of action maintained by the defendant against the plaintiff.

Based on the aforementioned ruling of the Court, if the dismissal of the complaint somehow eliminates the cause of the counterclaim, then the counterclaim cannot survive. Conversely, if the counterclaim itself states sufficient cause of action then it should stand independently of and survive the dismissal of the complaint. **Now, having been directly confronted with the problem of whether the compulsory counterclaim by reason of the unfounded suit may prosper even if the main complaint had been dismissed, we rule in the affirmative.**

It bears to emphasize that petitioner's counterclaim against respondent is for damages and attorney's fees arising from the unfounded suit. **While respondent's Complaint against petitioner is already dismissed, petitioner may have very well already incurred damages and litigation expenses such as attorney's fees since it was forced to engage legal representation in the Philippines to protect its rights and to assert lack of jurisdiction of the courts over its person by virtue of the improper service of summons upon it.** Hence, the cause of action of petitioner's counterclaim is not eliminated by the mere dismissal of respondent's complaint.

It may also do well to remember that it is this Court which mandated that claims for damages and attorney's fees based on unfounded suit constitute compulsory counterclaim which must be pleaded in the same action or, otherwise, it shall be barred. **It will then be iniquitous and the height of injustice to require the petitioner to make the counterclaim in the present action, under threat of losing his right to claim the same ever again in any other court, yet make his right totally dependent on the fate of the respondent's complaint.**

If indeed the Court dismisses petitioner's counterclaim solely on the basis of the

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dismissal of respondent's Complaint, then what remedy is left for the petitioner? It can be said that he can still file a separate action to recover the damages and attorney's fees based on the unfounded suit for he cannot be barred from doing so since he did file the compulsory counterclaim in the present action, only that it was dismissed when respondent's Complaint was dismissed. However, this reasoning is highly flawed and irrational considering that **petitioner, already burdened by the damages and attorney's fees it may have incurred in the present case, must again incur more damages and attorney's fees in pursuing a separate action, when, in the first place, it should not have been involved in any case at all.**

Since petitioner's counterclaim is compulsory in nature and its cause of action survives that of the dismissal of respondent's complaint, then it should be resolved based on its own merits and evidentiary support.³⁹
(Additional *emphasis supplied*.)

The above ruling was applied in *Rizal Commercial Banking Corporation v. Royal Cargo Corporation*⁴⁰ where we granted petitioner's prayer for attorney's fees under its Compulsory Counterclaim notwithstanding the dismissal of the complaint.

In the present case, the RTC of Pasig City should have allowed petitioner's counterclaim to proceed notwithstanding the dismissal of respondents' complaint, the same being compulsory in nature and with its cause not eliminated by such dismissal. It bears stressing that petitioner was hailed to a separate court (Pasig City RTC) even while the dispute between PNB and respondents was still being litigated, and she already incurred expenses defending herself, having been sued by respondents in her personal capacity. The accusations hurled against her were serious (perjury and misrepresentation in executing the affidavit in support of the application for

writ of attachment before the Pasay City RTC) – with hints at possible criminal prosecution apart from that criminal complaint already lodged in the Pasig City Prosecutor's Office. The Pasig City RTC clearly erred in refusing to hear the counterclaims upon the same ground for dismissal of the complaint, i.e., lack of jurisdiction in strict observance of the policy against interference with the proceedings of a co-equal court.

- **Malayan Insurance Company, Inc. and Helen Y. Dee Vs. Philip Piccio, et al.**
G.R. No. 193681. August 6, 2014

• **The Issue Before the Court**

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- The sole issue in this case is whether or not petitioners, being mere private complainants, may appeal an order of the trial court dismissing a criminal case even without the OSG's conformity.

• **The Court's Ruling**

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- The petition lacks merit.
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- The CA correctly dismissed the notice of appeal interposed by petitioners against the May 23, 2007 Order of the RTC because they, being mere private complainants, lacked the legal personality to appeal the dismissal of Criminal Case No. 06-875 (resulting from the quashal of the information therein on the ground of lack of jurisdiction).
-
- To expound, it is well-settled that the authority to represent the State in appeals of criminal cases before the Court and the CA is vested solely in the OSG²⁶ which is the law office of the Government whose specific powers and functions include that of representing the Republic and/or the people before any court in any action which affects the welfare of the people as the ends of justice may require.²

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Accordingly, jurisprudence holds that if there is a dismissal of a criminal case by the trial court or if there is an acquittal of the accused, **it is only the OSG that may bring an appeal on the criminal aspect representing the People.**²⁹ The rationale therefor is rooted in the principle that the party affected by the dismissal of the criminal action is the People and not the petitioners who are mere complaining witnesses. For this reason, the People are therefore deemed as the real parties in interest in the criminal case and, therefore, only the OSG can represent them in criminal proceedings pending in the CA or in this Court.³⁰ In view of the corollary principle that every action must be prosecuted or defended in the name of the real party-in-interest who stands to be benefited or injured by the judgment in the suit, or by the party entitled to the avails of the suit,³¹ an appeal of the criminal case not filed by the People as represented by the OSG is perforce dismissible. The private complainant or the offended party may, however, file an appeal without the intervention of the OSG but only insofar as the civil liability of the accused is concerned.³² He may also file a special civil action for *certiorari* even without the intervention of the OSG, but only to the end of preserving his interest in the civil aspect of the case.³³

Here, it is clear that petitioners did not file their appeal merely to preserve their interest in the civil aspect of the case. Rather, by seeking the reversal of the RTC's quashal of the information in Criminal Case No. 06-875 and thereby seeking that the said court be directed to set the case for arraignment and to proceed with trial,³⁴ it is sufficiently clear that they sought the reinstatement of the criminal prosecution of respondents for libel. Being an obvious attempt to meddle into the criminal aspect of the case without the conformity of the OSG, their recourse, in view of the above-discussed principles, must necessarily fail. To repeat, the right to prosecute criminal cases pertains exclusively to the People, which is therefore the proper party to

bring the appeal through the representation of the OSG. Petitioners have no personality or legal standing to interpose an appeal in a criminal proceeding. Since the OSG had expressly withheld its conformity and endorsement in the instant case, the CA, therefore, correctly dismissed the appeal. It must, however, be clarified that the aforesaid dismissal is without prejudice to their filing of the appropriate action to preserve their interests but only with respect to the civil aspect of the libel case following the parameters of Rule 111 of the Rules of Criminal Procedure.

- **Olongapo City Vs. Subic Water and Sewerage Co., Inc.** G.R. No. 171626. August 6, 2014

- **Execution by motion is only available within the five-year period from entry of judgment.**
- Under Rule 39, Section 6,⁵⁰ a judgment creditor has two modes in enforcing the court's judgment. Execution may be either through motion or an independent action.
- These two modes of execution are available depending on the timing when the judgment creditor invoked its right to enforce the court's judgment. **Execution by motion is only available if the enforcement of the judgment was sought within five (5) years from the date of its entry.** On the other hand, execution by independent action is mandatory if the five-year prescriptive period for execution by motion had already elapsed.⁵¹ However, for execution by independent action to prosper – the Rules impose another limitation – the action must be filed before it is barred by the statute of limitations which, under the Civil Code, is ten (10) years from the finality of the judgment.⁵²
- On May 7, 1999, within the five-year period from the trial court's

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judgment, petitioner filed its motion for the issuance of a writ of execution. However, despite the grant of the motion, the court did not issue an actual writ. It was only on May 30, 2003 that petitioner filed a second motion to ask again for the writ's issuance. By this time, the allowed five-year period for execution by motion had already lapsed.

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- As will be discussed below, since the second motion was filed beyond the five-year prescriptive period set by the Rules, then the writ of execution issued by the trial court on July 31, 2003 was null and void for having been issued by a court already ousted of its jurisdiction.

This Court subsequently reiterated its *Arambulo* ruling in *Ramos v. Garciano*,⁵⁵ where we said:

There seems to be no serious dispute that the 4th alias writ of execution was issued eight (8) days after the lapse of the five (5) year period from the date of the entry of judgment in Civil Case No. 367. **As a general rule, after the lapse of such period a judgment may be enforced only by ordinary action, not by mere motion** (Section 6, Rule 39, Rules of Court).

x x x x

The limitation that a judgment be enforced by execution within five years, otherwise it loses efficacy, goes to the very jurisdiction of the Court. A writ issued after such period is void, and the failure to object thereto does not validate it, for the reason that jurisdiction of courts is solely conferred by law and not by express or implied will of the parties.⁵⁶ [*emphasis supplied*]

To clearly restate these rulings, for execution by motion to be valid, the judgment creditor must ensure the

accomplishment of two acts within the five-year prescriptive period. These are: **a) the filing of the motion for the issuance of the writ of execution; and b) the court's actual issuance of the writ.** In the instances when the Court allowed execution by motion even after the lapse of five years, we only recognized one exception, *i.e., when the delay is caused or occasioned by actions of the judgment debtor and/or is incurred for his benefit or advantage.*⁵⁷ However, petitioner failed to show or cite circumstances showing how OCWD or Subic Water caused it to belatedly file its second motion for execution.

- Strictly speaking, the issuance of the writ should have been a ministerial duty on the part of the trial court after it gave its July 23, 1999 order, approving the first motion and directing the issuance of such writ. The petitioner could have easily compelled the court to actually issue the writ by filing a manifestation on the existence of the July 23, 1999 order. However, petitioner idly sat and waited for the five-year period to lapse before it filed its second motion. Having slept on its rights, petitioner had no one to blame but itself.

A writ of execution cannot affect a non-party to a case.

Strangers to a case are not bound by the judgment rendered in it. Thus, a writ of execution can only be issued against a party and not against one who did not have his day in court.⁵⁸

Subic Water never participated in the proceedings in Civil Case No. 580-0-90, where OCWD and petitioner were the contending parties. Subic Water only came into the picture when one Atty. Segundo Mangohig, claiming to be OCWD's former counsel, manifested before the trial court that OCWD had already been judicially dissolved and that Subic Water assumed OCWD's personality.

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In the present case, the compromise agreement, although signed by Mr. Noli Aldip, did not carry the express conformity of Subic Water. Mr. Aldip was never given any authorization to conform to or bind Subic Water in the compromise agreement. Also, the agreement merely labeled Subic Water as a co-maker. It did not contain any provision where Subic Water acknowledged its solidary liability with OCWD.

Lastly, Subic Water did not voluntarily submit to the court's jurisdiction. In fact, the motion it filed was only made as a special appearance, precisely to avoid the court's acquisition of jurisdiction over its person. Without any participation in the proceedings below, it cannot be made liable on the writ of execution issued by the court *a quo*.

B. Substantive Law Aspect

Solidary liability must be expressly stated.

The petitioner also argued that Subic Water could be held solidarily liable under the writ of execution since it was identified as OCWD's co-maker in the compromise agreement.

As the rule stands, solidary liability is not presumed. This stems from Art. 1207 of the Civil Code, which provides:

Art. 1207. x x x **There is a solidary liability only when the obligation expressly so states**, or when the law or the nature of the obligation requires solidarity. [*emphasis supplied*]

In *Palmares v. Court of Appeals*,⁶⁰ the Court did not hesitate to rule that although a party to a promissory note was only labeled as a co-maker, his liability was that of a surety, since the instrument **expressly provided for his joint and several liability** with the principal.

In the present case, the joint and several liability of Subic Water and OCWD was

nowhere clear in the agreement. The agreement simply and plainly stated that petitioner and OCWD were **only requesting** Subic Water to be a co-maker, in view of its assumption of OCWD's water operations. No evidence was presented to show that such request was ever approved by Subic Water's board of directors.

Under these circumstances, petitioner cannot proceed after Subic Water for OCWD's unpaid obligations. The law explicitly states that **solidary liability is not presumed and must be expressly provided for**. Not being a surety, Subic Water is not an insurer of OCWD's obligations under the compromise agreement. At best, Subic Water was merely a guarantor against whom petitioner can claim, provided it was first shown that: a) petitioner had already proceeded after the properties of OCWD, the principal debtor; b) and despite this, the obligation under the compromise agreement, remains to be not fully satisfied.⁶¹ But as will be discussed next, Subic Water could not also be recognized as a guarantor of OCWD's obligations.

An officer's actions can only bind the corporation if he had been authorized to do so.

An examination of the compromise agreement reveals that it was not accompanied by any document showing a grant of authority to Mr. Noli Aldip to sign on behalf of Subic Water.

Subic Water is a corporation. A corporation, as a juridical entity, primarily acts through its board of directors, which exercises its corporate powers. In this capacity, the general rule is that, in the absence of authority from the board of directors, no person, not even its officers, can validly bind a corporation.⁶² Section 23 of the Corporation Code provides:

Section 23. The board of directors or trustees. – Unless otherwise provided in

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this Code, **the corporate powers of all corporations formed under this Code shall be exercised, all business conducted and all property of such corporations controlled and held by the board of directors or trustees** to be elected from among the holders of stocks, or where there is no stock, from among the members of the corporation, who shall hold office for one (1) year until their successors are elected and qualified. (28a) [*emphasis supplied*]

In *People's Aircargo and Warehousing Co., Inc. v. Court of Appeals*,⁶³ we held that under Section 23 of the Corporation Code, **the power and responsibility to decide whether a corporation can enter into a binding contract is lodged with the board of directors**, subject to the articles of incorporation, by-laws, or relevant provisions of law.

Since Mr. Aldip was never authorized and there was no showing that Subic Water's articles of incorporation or by-laws granted him such authority, then the compromise agreement he signed cannot bind Subic Water. Subic Water cannot likewise be made a surety or even a guarantor for OCWD's obligations. OCWD's debts under the compromise agreement are its own corporate obligations to petitioner.

OCWD and Subic Water are two separate and different entities.

Petitioner practically suggests that since Subic Water took over OCWD's water operations in Olongapo City, it also acquired OCWD's juridical personality, making the two entities one and the same.

This is an interpretation that we cannot make or adopt under the facts and the evidence of this case. Subic Water clearly demonstrated that it was a separate corporate entity from OCWD.

OCWD is just a ten percent (10%) shareholder of Subic Water. As a mere

shareholder, OCWD's juridical personality cannot be equated nor confused with that of Subic Water. It is basic in corporation law that a corporation is a juridical entity vested with a legal personality separate and distinct from those acting for and in its behalf and, in general, from the people comprising it.⁶⁵

Under this corporate reality, Subic Water cannot be held liable for OCWD's corporate obligations in the same manner that OCWD cannot be held liable for the obligations incurred by Subic Water as a separate entity. The corporate veil should not and cannot be pierced unless it is clearly established that the separate and distinct personality of the corporation was used to justify a wrong, protect fraud, or perpetrate a deception.⁶⁶

We thus deny the present petition. The writ of execution issued by RTC Olongapo, Br. 75, in favor of Olongapo City, is hereby confirmed to be null and void. Accordingly, respondent Subic Water cannot be made liable under this writ

• **City of Davao Vs. Court of Appeals and Benjamin C. De Guzman** G.R. No. 200538. August 13, 2014

- The issue here is the imposition by the CA of P5,000.00 as treble costs against Davao City in its resolution of the motion for reconsideration filed by De Guzman. While the decision on the merits became final, the Court has residual powers to resolve the issue on such an interlocutory matter. Moreover, if the strict application of the rules will tend to frustrate rather than promote justice, it is always within the Court's power to suspend the rules, or except a particular case from its operation.²¹
- The pertinent rule in this regard is **Section 8 of Rule 65**, as amended by **A.M. No. 07-7-12-SC**, which reads:

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- **SEC. 8.** *Proceedings after comment is filed.* After the comment or other pleadings required by the court are filed, or the time for the filing thereof has expired, the court may hear the case or require the parties to submit memoranda. If, after such hearing or filing of memoranda or upon the expiration of the period for filing, the court finds that the allegations of the petition are true, it shall render judgment for such relief to which the petitioner is entitled.
-
- However, the court may dismiss the petition if it finds the same **patently without merit or prosecuted manifestly for delay, or if the questions raised therein are too unsubstantial to require consideration.** In such event, **the court may award in favor of the respondent treble costs solidarily against the petitioner and counsel,** in addition to subjecting counsel to administrative sanctions under Rule 139 and 139-B of the Rules of Court.
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- The Court may impose *motu proprio*, based on *res ipsa loquitur*, other disciplinary sanctions or measures on erring lawyers for patently dilatory and unmeritorious petitions for *certiorari*.
- - [Emphases and underscoring supplied]
-
- The use of the word "may" in the last sentence of the second paragraph of Section 8, Rule 65, indicates that the assessment of treble costs is not automatic or mandatory. It merely gives the court the discretion and latitude to impose further sanctions where a petition is dismissed for being "patently without merit,"

"prosecuted manifestly for delay," or upon finding that the questions raised in the petition for *certiorari* were "too unsubstantial to require consideration."

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- Although the court is afforded judicial discretion in imposing treble costs, there remains a need to show that it is sound and with basis - that is "taking all the pertinent circumstances into due consideration."²
- In most recent cases where the Court awarded treble costs, the reasons therefor were clearly explained. Treble costs were imposed in cases where the parties and their counsels resort to deplorable dilatory tactics to frustrate the fruition of justice. In *Central Surety And Insurance Company v. Planters Products, Inc.*,²⁶ the Court awarded treble costs when the losing litigant repeatedly frustrated the execution of a final and executory decision. In the said case, the execution was delayed for more than five years because of his dilatory tactics. When the winning party sought the execution by motion beyond the period, he still opposed it despite the fact that the period was suspended because of reasons attributable to him. In *Spouses Manuel A. Aguilar and Yolanda C. Aguilar v. The Manila Banking Corporation*,²⁷ treble costs were again awarded because of the deplorable course resorted to by the losing litigants in the hope of evading manifest obligations. The Court stated that it viewed with disfavor the unjustified delay in the enforcement of the final decision and orders in the said case. Once a judgment becomes final and executory, the prevailing party should not be denied the fruits of his victory by some subterfuge devised by the losing party. Unjustified delay in the

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enforcement of a judgment sets at naught the role of courts in disposing justiciable controversies with finality.

- In the case at bench, the imposition of treble costs was not explained at all. The CA imposed the amount of P5,000.00 but it did not give any reason for such imposition. As the CA never justified it, the imposition should be stricken off.

- **Juanito Magsino Vs. Elena De Ocampo, Ramon Guico** G.R. No. 166944. August 18, 2014

Section 2 (d), Rule 42 of the *Rules of Court* requires the petition for review to be accompanied by clearly legible duplicate originals or true copies of the judgments or final orders of both lower courts, certified correct by the clerk of court of the Regional Trial Court, and the requisite number of plain copies thereof and of the pleadings and other material portions of the record as would support the allegations of the petition. The failure of the petitioner to comply with the requirement shall be a sufficient ground for the dismissal of the petition for review.

The appeal of the petitioner absolutely lacks merit.

We begin by reminding the petitioner that the right to appeal is not a natural right and is not part of due process, but merely a statutory privilege to be exercised only in accordance with the law. Being the party who sought to appeal, he must comply with the requirements of the relevant rules; otherwise, he would lose the statutory right to appeal.¹⁶ It cannot be over-emphasized, indeed, that the procedures regulating appeals as laid down in the Rules of Court must be followed because strict compliance with them was indispensable for the orderly and speedy disposition of justice.¹⁷

Whether or not the dismissal of the petition for review was warranted depended on whether or not there remained sufficient materials in the

records to still enable the CA to act on the appeal despite the omissions.

- **Lourdes C. Fernandez Vs. Norma Villegas and any person acting in her behalf including her family** G.R. No. 200191. August 20, 2014

- The Court laid down the following guidelines with respect to non-compliance with the requirements on or submission of a defective verification and certification against forum shopping, viz.: *forum shopping*, viz.: *forum shopping*

- 1) A distinction must be made between non-compliance with the requirement on or submission of defective verification, and non-compliance with the requirement on or submission of defective certification against forum shopping.

- 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.

- **3) Verification is deemed substantially complied with when one who has ample knowledge to swear to the truth of the allegations in the complaint or petition signs the verification, and when matters alleged in the petition have been made in good faith or are true and correct.**

- 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

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Rule on the ground of “substantial compliance” or presence of “special circumstances or compelling reasons.”

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- **5) The certification against forum shopping must be signed by all the plaintiffs or petitioners in a case; otherwise, those who did not sign will be dropped as parties to the case. Under reasonable or justifiable circumstances, however, as when all the plaintiffs or petitioners share a common interest and invoke a common cause of action or defense, the signature of only one of them in the certification against forum shopping substantially complies with the Rule.**
-
- 6) Finally, the certification against forum shopping must be executed by the party-pleader, not by his counsel. If, however, for reasonable or justifiable reasons, the party-pleader is unable to sign, he must execute a Special Power of Attorney designating his counsel of record to sign on his behalf.³⁷ (*Emphases supplied*)
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- Applying these guidelines to the case at bar, particularly, those stated in paragraphs 3 and 5 highlighted above, the Court finds that the CA committed reversible error in dismissing the CA petition due to a defective verification and certification against forum shopping.
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- **A. Substantial Compliance with the Verification Requirement.**
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- It is undisputed that Lourdes is not only a resident of the subject property but is a co-owner thereof together with her co-plaintiff/sister, Cecilia. As such, she is “one who has ample knowledge to swear to

the truth of the allegations in the x x x [CA] petition” and is therefore qualified to “sign x x x the verification” attached thereto in view of paragraph 3 of the above-said guidelines.

-
- In fact, Article 487 of the Civil Code explicitly provides that any of the co-owners may bring an action for ejectment, without the necessity of joining all the other co-owners as co-plaintiffs because the suit is deemed to be instituted for the benefit of all.³⁸ To reiterate, both Lourdes and Cecilia are co-plaintiffs in the ejectment suit. Thus, they share a commonality of interest and cause of action as against respondents. Notably, even the petition for review filed before the CA indicated that they are the petitioners therein and that the same was filed on their behalf. **Hence, the lone signature of Lourdes on the verification attached to the CA petition constituted substantial compliance with the rules.**³⁹ As held in the case of *Medado v. Heirs of the Late Antonio Consing*:⁴⁰
-
- [W]here the petitioners are immediate relatives, who share a **common interest** in the property subject of the action, **the fact that only one of the petitioners executed the verification or certification of forum shopping will not deter the court from proceeding with the action.**⁴¹ (*Emphases and underscoring supplied*)
-
- Besides, it is settled that the verification of a pleading is only a formal, not a jurisdictional requirement intended to secure the assurance that the matters alleged in a pleading are true and correct. Therefore, the courts may simply order the correction of the

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pleadings or act on them and waive strict compliance with the rules,⁴² as in this case.

-
- **B. Substantial Compliance with the**
- **Certification Against Forum Shopping**
- **Requirement.**
-

- Following paragraph 5 of the guidelines as aforesated, there was also substantial compliance with the certification against forum shopping requirement, notwithstanding the fact that only Lourdes signed the same.
-

- It has been held that under reasonable or justifiable circumstances – as in this case where the plaintiffs or petitioners share a common interest and invoke a common cause of action or defense – the rule requiring all such plaintiffs or petitioners to sign the certification against forum shopping may be relaxed.⁴³ Consequently, the CA erred in dismissing the petition on this score.
-

- 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,⁴⁴ as also in this case.

-
- As there was substantial compliance with the above-discussed procedural requirements at the onset, plaintiffs' subsequent failure to file an amended verification and certification, as directed by the October 11, 2010 CA Resolution, should not have warranted the dismissal of the CA petition.

- **National Power Corporation Vs. Felicisimo Tarcelo, et al.** G.R. No. 198139. September 8, 2014

Execution must always conform to that decreed in the dispositive part of the decision, because the only portion thereof that may be the subject of execution is that which is precisely ordained or decreed in the dispositive portion; whatever is in the body of the decision can only be considered as part of the reasons or conclusions and serves as a guide in determining the *ratio decidendi*.¹

[W]here there is a conflict between the dispositive portion of the decision and the body thereof, the dispositive portion controls irrespective of what appears in the body of the decision. While the body of the decision, order or resolution might create some ambiguity in the manner of the court's reasoning preponderates, it is the dispositive portion thereof that finally invests rights upon the parties, sets conditions for the exercise of those rights, and imposes corresponding duties or obligation."⁴⁵ Thus, with the decretal portion of the trial court's November 7, 2005 Decision particularly stating that NPC shall have the lawful right to enter, take possession and acquire easement of right-of-way over the affected portions of respondents' properties upon the payment of just compensation, any order executing the trial court's Decision should be based on such dispositive portion. "An order of execution is based on the disposition, not on the body, of the decision."⁴⁶

Execution must therefore conform to that ordained or decreed in the dispositive part of the decision.⁴⁷ Since there is a disparity

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between the dispositive portion of the trial court's November 7, 2005 Decision as affirmed with modification by the final and executory June 26, 2007 Decision of the CA in CA-G.R. CV No. 86712 – which decreed that respondents be paid just compensation only for the affected portions of their properties, totaling **1,595.91 square meters** – and the Notice of Garnishment – for the satisfaction of the amount of P5,594,462.50 representing just compensation for the **whole 7,015 square meters** – the latter must be declared null and void.

• **National Power Corporation Vs. Luis Samar and Magdalena Samar** G.R. No. 197329. September 8, 2014

- NPC insists that Section 4, Rule 67 of the 1964 Rules of Court should have been observed in fixing the amount of just compensation for the subject lot; that the value of the lot at the time of NPC's taking thereof or filing of Civil Case No. IR-2243 in 1990 should have been the basis for computing just compensation and not the prevailing market value at the time of the filing or pendency of Civil Case No. IR-2678 in 1995. NPC thus prays that Civil Case No. IR-2678 be remanded to the trial court for determination of just compensation applying Section 4, Rule 67 of the 1964 Rules of Court.
- We agree with NPC's contention.
- In *Republic v. Court of Appeals*,¹⁸ we held that:
- Just compensation is based on the price or value of the property at the time it was taken from the owner and appropriated by the government. However, if the government takes possession before the institution of expropriation proceedings, the value should be fixed as of the

time of the taking of said possession, not of the filing of the complaint. The value at the time of the filing of the complaint should be the basis for the determination of the value when the taking of the property involved coincides with or is subsequent to the commencement of the proceedings.

- The procedure for determining just compensation is set forth in Rule 67 of the 1997 Rules of Civil Procedure. Section 5 of Rule 67 partly states that 'upon the rendition of the order of expropriation, the court shall appoint not more than three (3) competent and disinterested persons as commissioners to ascertain and report to the court the just compensation for the property sought to be taken.' However, we held in *Republic v. Court of Appeals* that Rule 67 presupposes a prior filing of complaint for eminent domain with the appropriate court by the expropriator. If no such complaint is filed, the expropriator is considered to have violated procedural requirements, and hence, waived the usual procedure prescribed in Rule 67, including the appointment of commissioners to ascertain just compensation. In *National Power Corporation v. Court of Appeals*, we clarified 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 x x x.

- **Microsoft Corporation and Adobe Systems Incorporated Vs. Samir Farajallah, et al.** G.R. No. 205800. September 10, 2014
- *Compliance with the three-day*

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notice rule

- In *Anama v. Court of Appeals*,²⁹ we ruled that the three-day notice rule is not absolute. The purpose of the rule is to safeguard the adverse party's right to due process. Thus, if the adverse party was given a reasonable opportunity to study the motion and oppose it, then strict compliance with the three-day notice rule may be dispensed with.

Existence of probable cause

Under Section 1 of Rule 45 of the Rules of Court, petitions for review by *certiorari* "shall raise only questions of law." A question of fact exists when there is a doubt as to the truth of certain facts, and it can only be resolved through a reexamination of the body of evidence.³¹

In *Microsoft Corporation v. Maxicorp, Inc.*,³² we ruled that the existence of probable cause is a question of fact.

In this case, we find reason to overturn the rulings of the RTC and CA, since there was grave abuse of discretion in the appreciation of facts. The CA sustained the quashal of the warrant because the witnesses had "no personal knowledge of the facts upon which the issuance of the warrants may be justified,"³⁷ and the applicants and the witnesses merely relied on the screen shots acquired from the confidential informant.³⁸

Looking at the records, it is clear that Padilla and his companions were able to personally verify the tip of their informant. The evidence on record clearly shows that the applicant and witnesses were able to verify the information obtained from their confidential source. The evidence likewise shows that there was probable cause for the issuance of a search warrant. Thus, the requirement of personal knowledge of the applicant and witnesses was clearly satisfied in this case.

- **Francier P. Onde Vs. The Office of the Local Civil Registrar of Las Piñas**

City G.R. No. 197174. September 10, 2014

On the **first issue**, we agree with the RTC that the first name of petitioner and his mother as appearing in his birth certificate can be corrected by the city civil registrar under R.A. No. 9048. We note that petitioner no longer contested the RTC's ruling on this point.⁴ Indeed, under Section 1⁵ of R.A. No. 9048, clerical or typographical errors on entries in a civil register can be corrected and changes of first name can be done by the concerned city civil registrar without need of a judicial order. Aforesaid Section 1, as amended by R.A. No. 10172, now reads:

SECTION 1. *Authority to Correct Clerical or Typographical Error and Change of First Name or Nickname.* – **No entry in a civil register shall be changed or corrected without a judicial order, except for clerical or typographical errors and change of first name or nickname**, the day and month in the date of birth or sex of a person where it is patently clear that there was a clerical or typographical error or mistake in the entry, **which can be corrected or changed by the concerned city or municipal civil registrar** or consul general in accordance with the provisions of this Act and its implementing rules and regulations. (*Emphasis supplied.*)

In *Silverio v. Republic*,⁶ we held that under R.A. No. 9048, jurisdiction over applications for change of first name is now primarily lodged with administrative officers. The intent and effect of said law is to exclude the change of first name from the coverage of Rules 103 (Change of Name) and 108 (Cancellation or Correction of Entries in the Civil Registry) of the Rules of Court, until and unless an administrative petition for change of name is first filed and subsequently denied. The remedy and

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the proceedings regulating change of first name are primarily administrative in nature, not judicial. In *Republic v. Cagandahan*,⁷ we said that under R.A. No. 9048, the correction of clerical or typographical errors can now be made through administrative proceedings and without the need for a judicial order. The law removed from the ambit of Rule 108 of the Rules of Court the correction of clerical or typographical errors. Thus petitioner can avail of this administrative remedy for the correction of his and his mother's first name.

On the **second issue**, we also agree with the RTC in ruling that correcting the entry on petitioner's birth certificate that his parents were married on December 23, 1983 in Bicol to "not married" is a substantial correction requiring adversarial proceedings. Said correction is substantial as it will affect his legitimacy and convert him from a legitimate child to an illegitimate one. In *Republic v. Uy*,⁸ we held that corrections of entries in the civil register including those on citizenship, legitimacy of paternity or filiation, or **legitimacy** of marriage, involve substantial alterations. 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** proceedings.⁹

On the **third issue**, we likewise affirm the RTC in dismissing the petition for correction of entries. As mentioned, petitioner no longer contested the RTC ruling that the correction he sought on his and his mother's first name can be done by the city civil registrar. Under the circumstances, we are constrained to deny his prayer that the petition for correction of entries before the RTC be reinstated since the same petition includes the correction he sought on his and his mother's first name.

We clarify, however, that the RTC's dismissal is without prejudice. As we said, petitioner can avail of the administrative remedy for the correction of his and his mother's first name. He can also file a new petition before the RTC to correct the alleged erroneous entry on his birth certificate that his parents were married on December 23, 1983 in Bicol. This substantial correction is allowed under Rule 108 of the Rules of Court. As we reiterated in *Eleosida v. Local Civil Registrar of Quezon City*:¹⁰

x x x This is our ruling in *Republic vs. Valencia* where we held that **even substantial errors in a civil registry may be corrected and the true facts established under Rule 108 [of the Rules of Court]** provided the parties aggrieved by the error avail themselves of the appropriate adversary proceeding. x x x

x x x x

It is true in the case at bar that the changes sought to be made by petitioner are not merely clerical or harmless errors but substantial ones as they would affect the status of the marriage between petitioner and Carlos Borbon, as well as the legitimacy of their son, Charles Christian. **Changes of such nature, however, are now allowed under Rule 108** in accordance with our ruling in *Republic vs. Valencia* provided that the appropriate procedural requirements are complied with. x x x (*Emphasis supplied.*)

We also stress that a petition seeking a substantial correction of an entry in a civil register must implead as parties to the proceedings not only the local civil registrar, as petitioner did in the dismissed petition for correction of entries, but also all persons who have or claim any interest which would be affected by the correction. This is

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required by Section 3, Rule 108 of the Rules of Court:

SEC. 3. *Parties.* – When cancellation or correction of an entry in the civil register is sought, **the civil registrar and all persons who have or claim any interest which would be affected thereby shall be made parties to the proceeding.** (*Emphasis supplied.*)

In *Eleosida*,¹¹ we cited Section 3, and Sections 4 and 5 of Rule 108 of the Rules of Court, as the procedural requirements laid down by the Court to **make the proceedings under Rule 108 adversary.** In *Republic v. Uy*,¹² we have similarly ruled that when a petition for cancellation or correction of an entry in the civil register involves substantial and controversial alterations, including those on citizenship, legitimacy of paternity or filiation, or legitimacy of marriage, a **strict compliance** with the requirements of the Rules of Court is mandated. Thus, in his new petition, petitioner should at least implead his father and mother as parties since the substantial correction he is seeking will also affect them.

In view of the foregoing discussion, it is no longer necessary to dwell on the **last issue** as petitioner will have his opportunity to prove his claim that his parents were not married on December 23, 1983 when he files the new petition for the purpose.

- **Frumencio E. Pulgar Vs. The Regional Trial Court of Mauban, Quezon, Br. 64, Quezon Power Limited** (Philippines) G.R. No. 157583. September 10, 2014

• The Issue Before The Court

- The issue advanced before the Court is whether or not the RTC erred in dismissing Pulgar's motion for intervention as a consequence of the dismissal of the main case.

While acknowledging the RTC's lack of jurisdiction, Pulgar nonetheless prays that the Court pass upon the correctness of the Municipal Assessor's assessment of QPL's realty taxes, among others.

• The Court's Ruling

- The petition lacks merit.
- Jurisdiction over an intervention is governed by jurisdiction over the main action.¹⁹ Accordingly, an intervention presupposes the pendency of a suit in a court of competent jurisdiction.²⁰

In this case, Pulgar does not contest the RTC's dismissal of Civil Case No. 0587-M for lack of jurisdiction, but oddly maintains his intervention by asking in this appeal a review of the correctness of the subject realty tax assessment. This recourse, the Court, however, finds to be improper since the RTC's lack of jurisdiction over the main case necessarily resulted in the dismissal of his intervention. In other words, the cessation of the principal litigation – on jurisdictional grounds at that – means that Pulgar had, as a matter of course, lost his right to intervene. Verily, it must be borne in mind that:

[I]ntervention is never an independent action, but is ancillary and supplemental to the existing litigation. Its purpose is not to obstruct nor x xx unnecessarily delay the placid operation of the machinery of trial, but merely to afford one not an original party, yet having a certain right or interest in the pending case, the opportunity to appear and be joined so he could assert or protect such right or interests.

- Otherwise stated, the right of an intervenor should only be in aid of the right of the original party. Where the right of the latter has ceased to exist, there is nothing to aid or fight for; hence, the right of

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intervention ceases.²¹

- **Puerto Azul Land, Inc. Vs. Pacific Wide Realty Development Corporation** G.R. No. 184000. September 17, 2014

- **The Issue Before the Court**

- The core issue for resolution is whether or not the CA erred in reversing the December 13, 2005 RTC Decision, thereby dismissing PALI's Revised Rehabilitation Plan.

The Court's Ruling

The Court finds in favor of PALI.

As adverted to earlier, the validity of PALI's rehabilitation was already raised as an issue by PWRDC and resolved with finality by the Court in its November 25, 2009 Decision in G.R. No. 180893 (consolidated with G.R. No. 178768). The Court sustained therein the CA's affirmation of PALI's Revised Rehabilitation Plan, including those terms which its creditors had found objectionable, namely, the 50% "haircut" reduction of the principal obligations and the condonation of accrued interests and penalty charges.

Since the issue on the validity, as well as regularity of the December 13, 2005 RTC Decision approving PALI's Revised Rehabilitation Plan had already been resolved, the Court, in line with the *res judicata* principle, is constrained to grant the present petition and, consequently, reverse the assailed CA decision.

Res judicata (meaning, a "matter adjudged") is a fundamental principle of law which precludes parties from re-litigating issues actually litigated and determined by a prior and final judgment.³⁴ It means 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 all points and matters determined in the former suit."³⁵

Res judicata has two (2) concepts. The

first is "bar by prior judgment" in which 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. The second is "conclusiveness of judgment" in which 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.³⁶

There is a bar by prior judgment where there is identity of parties, subject matter, and causes of action between the first case where the judgment was rendered and the second case that is sought to be barred.³⁷ There is conclusiveness of judgment, on the other hand, where there is identity of parties in the first and second cases, but no identity of causes of action.³⁸

As may be gleaned from the foregoing antecedents, the present case and G.R. No. 180893 involve the same parties, *i.e.*, PWRDC and PALI, the same subject matter, *i.e.*, PALI's rehabilitation, and the same causes of action, *i.e.*, the alleged violation of PWRDC's rights as creditor by virtue of the RTC's approval of PALI's Revised Rehabilitation Plan. Thus, with the identity of all three (3) elements present in the previously decided case and this one, it is then clear that the principle of *res judicata* should heretofore apply. Accordingly, the Court's November 25, 2009 Decision in G.R. No. 180893 (consolidated with G.R. No. 178768) bars the re-litigation of the issue of the validity and regularity of the approved Revised Rehabilitation Plan between PWRDC and PALI. As the plan's validity had already

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been upheld, PWRDC is now bound by such adverse ruling which had long attained finality. As a result, the CA Decision opposite to the aforestated Court Decision should be set aside, and the petition herein be granted.

- **Carmen T. Gahol, substituted by her heirs, Ricardo T. Gahol, et al. Vs. Esperanza Cobarrubias** G.R. No. 187144. September 17, 2014

- Section 11, Rule 13 of the Rules of Court states:
- SEC. 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.
- Personal service of pleadings is the general rule, and resort to other modes of service is the exception, so that where personal service is practicable, in the light of the circumstances of time, place and person, personal service is mandatory.¹⁹ Only when personal service is not practicable may resort to other modes be had, which must then be accompanied by a written explanation as to why personal service or filing was not practicable to begin with. Based on this explanation will the court then determine whether personal service is indeed not practicable so that resort to other modes is made.²⁰ At this stage, the judge exercises proper discretion but only upon the explanation given. In adjudging the plausibility of an explanation, the court shall consider not only the circumstances, the time and the place but also the importance of

the subject matter of the case or the issues involved therein, and the *prima facie* merit of the pleading involved.²¹

- Here, both counsels for the parties have their law offices in Baguio City, thus, personal service to petitioner's counsel would have been more practicable than mailing the copy of the petition for petitioner's counsel in Manila. It appears, however, that the petition for review was filed in the CA, Manila by personal service, and the copies of the petition for the OP and DENR whose offices are located in Manila and Quezon City, respectively, were also personally served to them. The copy for petitioner's counsel was thus sent by registered mail from Manila on the same day the copies for the other agencies were served personally, thus a written explanation stating that the pleading was sent by registered mail due to time and distance constraints, as well as lack of office personnel. Based on such explanation, the CA can exercise its discretion on its plausibility which is ought to be guided by the principle that substantial justice far outweighs rules of procedure.²² Thus, the CA accepted the petition taking into consideration the *prima facie* merit of the case sought to be expunged for violation of the rule.

- **Eduardo D. Monsanto, et al. Vs. Leoncio Lim and Lorenzo De Guzman** G.R. No. 178911. September 17, 2014

"Filing the appropriate initiatory pleading and the payment of the prescribed docket fees vest a trial court with jurisdiction over the subject matter."¹ Section 5, Rule 1 of the Rules of Court specifically provides that "[a] civil action is commenced by the filing of the original complaint in court." Moreover, "[e]very ordinary civil action must be based on a cause of action."²⁹

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No proper initiatory pleading was filed before the trial court.

In this case, records show that no formal complaint or petition was filed in court. The case was supposedly "commenced" through a letter of Pag-IBIG asking the intervention of Executive Judge Monsanto on the alleged anomalous foreclosure sale conducted by De Guzman. However, said letter could not in any way be considered as a pleading. Section 1, Rule 6 of the Rules of Court defines pleadings as "written statements of the respective claims and defenses of the parties submitted to the court for appropriate judgment." To stress, Pag-IBIG's letter could not be considered as a formal complaint or petition. *First*, the parties to the case were not identified pursuant to Section 1,³⁰ Rule 3 and Section 1,³¹ Rule 7. *Second*, the so-called claim or cause of action was not properly mentioned or specified. *Third*, the letter miserably failed to comply with the requirements of Rule 7, Rules of Court. The letter bore no caption; it was not even assigned a docket number; the parties were not properly identified; the allegations were not properly set forth; no particular relief is sought; in fact, only the intervention of Executive Judge Monsanto is requested; it was not signed by a counsel; and most of all, there is no verification or certification against forum-shopping.

No payment of docket fees.

We have also noted that no docket fees were paid before the trial court. Section 1, Rule 141 of the Rules of Court mandates that "[u]pon the filing of the pleading or other application which initiates an action or proceeding, the fees prescribed therefor shall be paid in full." "It is hornbook law that courts acquire jurisdiction over a case only upon payment of the prescribed docket fee."³²

In fine, since no docket or filing fees were paid, then the RTC Branch 28 did not acquire jurisdiction over the

matter/case. It therefore erred in taking cognizance of the same. Consequently, all the proceedings undertaken by the trial court are null and void, and without force and effect. In, particular, the July 1, 2005 and August 30, 2005 Orders of the RTC are null and void.

It is settled jurisprudence that "[a]ny decision rendered without jurisdiction is a total nullity and may be struck down at any time, even on appeal before this Court."³⁴ Prescinding from the foregoing, we hold that the RTC-Branch 28 did not acquire jurisdiction over the instant matter/case there being no formal initiatory pleading filed as well as non-payment of docket fees. Consequently, all proceedings had before the RTC Branch 28 were null and void for lack of jurisdiction.

- **Manuel J. Jimenez, Jr. Vs. People of the Philippines/People of the Philippines Vs. Manuel J. Jimenez, Jr.** G.R. No. 209195 & G.R. No. 209215. September 17, 2014

The Issues

- - 1) Whether or not the CA erred in ruling that Judge Docena did not commit grave abuse of discretion in granting the motion to discharge Montero as a state witness; and
 - 2) Whether or not the CA erred in ordering the re-affle of Criminal Case No. 39225-MN to another RTC branch for trial on the merits.

THE COURT'S RULING:

G.R. No. 209195

We agree with the CA's ruling that Judge Docena did not gravely abuse his discretion when he granted the motion to discharge Montero as a state witness.

We agree with the CA that the prosecution has complied with the requisites under Section 17, Rule 119 of the Revised Rules of Criminal Procedure which provides that:

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- (1) Two or more accused are jointly charged with the crime.
- (2) The motion for discharge is filed by the prosecution before the trial court.
- (3) The prosecution is required to present evidence and the evidence must be of such a nature as to establish the absolute necessity for the testimony of the state witness at a hearing in support of the discharge.
- (4) The accused gives his consent to be a state witness.
- (5) The trial court is satisfied that:
 - a) There is absolute necessity for the testimony of the accused whose discharge is requested;
 - b) There is no other direct evidence available for the proper prosecution of the offense committed, except the testimony of said accused;
 - c) The testimony of said accused can be substantially corroborated in its material points;
 - d) Said accused does not appear to be the most guilty;
 - e) Said accused has not at any time been convicted of any offense involving dishonesty or turpitude.

No issues have been raised with respect to conditions (1), (2), (4), and 5(e). The parties dispute the compliance with conditions (3) and 5(a) to (d) as the issues before us. We shall discuss these issues separately below.

Absolute necessity of the testimony of Montero

We see no merit in Jimenez's allegation that no absolute necessity exists for Montero's testimony.

Absolute necessity exists for the testimony of an accused sought to be discharged when he or she alone has knowledge of the crime. In more concrete terms, necessity is not there when the testimony would simply corroborate or otherwise strengthen the prosecution's evidence.⁴³

We do not agree with Jimenez that the Court's pronouncement in *Chua v. CA et al.* is inapplicable in the present case simply because more than two accused are involved in the present case. The requirement of absolute necessity for the testimony of a state witness depends on the circumstances of each case regardless of the number of the participating conspirators.

In the present case, not one of the accused-conspirators, except Montero, was willing to testify on the alleged murder of Ruby Rose and their

participation in her killing. Hence, the CA was misled from inferring that Judge Docena made a proper finding in accordance with the evidence presented by each proposed state witness at a hearing in support of the discharge. Absolute necessity for the testimony of Montero. He alone is available to provide direct evidence of the crime.

That the prosecution could use the testimony of the state witness to prove the offense committed, except the testimony of said accused, discharge as a state witness is not an absolute necessity for the prosecution. To the contrary, the evidence is not sufficient to establish the absolute necessity for the testimony of Montero. The prosecution belongs the control of its choice in the discharge of a state witness, save only when the legal requirements have not been complied with.

The prosecution's right to prosecute gives it "a wide range of discretion — the discretion of whether, what and whom to charge, the exercise of which depends on a smorgasbord of factors which are best appreciated by prosecutors." Under Section 17, Rule 119 of the Revised Rules of Criminal Procedure, the court is given the power to discharge a state witness only after it has already acquired jurisdiction over the crime and the accused.⁴⁶

Montero's testimony can be substantially corroborated

We also do not find merit in Jimenez' argument that Montero's testimony cannot be substantially corroborated in its material points and is even contradicted by the physical evidence of the crime.

As the trial court properly found, the evidence consisting of the steel casing where the cadaver was found; the drum containing the cadaver which the prosecution successfully identified (and which even the acting Judge Almeyda believed) to be Ruby Rose; the spot in the sea that Montero pointed to (where the cadaver was retrieved); the apparel worn by the victim when she was killed as well as her burned personal effects, all partly corroborate some of the material points in the sworn statements of Montero.⁴⁷

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With these as bases, Judge Docena's ruling that Montero's testimony found substantial corroboration cannot be characterized as grave abuse of discretion.

Jimenez points to the discrepancies in Montero's statements and the physical evidence, such as the absence of "busal" in the mouth of the retrieved cadaver; his failure to mention that they used packaging tape wrapped around the head down to the neck of the victim; and his declaration that the victim was killed through strangulation using a rope (*lubid*).

However, the corroborated statements of Montero discussed above are far more material than the inconsistencies pointed out by Jimenez, at least for purposes of the motion to discharge.

The alleged discrepancies in the physical evidence, particularly on the height and dental records of Ruby Rose, are matters that should properly be dealt with during the trial proper.

We emphasize at this point that to resolve a motion to discharge under Section 17, Rule 119 of the Revised Rules of Criminal Procedure, the Rules only require that that the testimony of the accused sought to be discharged be substantially corroborated in its **material points**, not on all points.

This rule is based on jurisprudential line that in resolving a motion to discharge under Section 17, Rule 119, a trial judge cannot be expected or required, at the start of the trial, to inform himself with absolute certainty of everything that may develop in the course of the trial with respect to the guilty participation of the accused. If that were practicable or possible, there would be little need for the formality of a trial.⁴⁸

Montero is not the most guilty

We also do not agree with Jimenez that the CA erred in finding that Montero is not the most guilty.

By jurisprudence, "most guilty" refers to the highest degree of culpability in terms of participation in the commission of the offense and does not necessarily mean the severity of the penalty imposed. While all the accused may be given the same penalty by reason of conspiracy, yet one may be considered to have lesser or the least guilt taking into account his degree of participation in the commission of the offense.⁴⁹

What the rule avoids is the possibility that the most guilty would be set free while his co-accused who are less guilty in terms of participation would be penalized.⁵⁰

Before dwelling on the parties' substantive arguments, we find it necessary to first correct the rulings of the CA that are not exactly correct.

Contrary to the CA's findings, a principal by inducement is not automatically the most guilty in a conspiracy. The decision of the Court in *People v. Baharan*⁵¹ did not involve the resolution of a motion to discharge an accused to become a state witness. Instead, the pronouncement of the Court related to the culpability of a principal by inducement whose co-inducement act was the determining cause for the commission of the crime.

Thus viewed, *Baharan* cannot be the basis of a peremptory pronouncement that a principal by inducement is more guilty than the principal by direct participation.

In *Chua v. People*,⁵² which involved a motion to discharge an accused, the Court declared that if one induces another to commit a crime, the influence is the determining cause of the crime. Without the inducement, the crime would not have been committed; it is the inducer who sets into motion the execution of the criminal act.

To place the *Chua* ruling in proper perspective, the Court considered the principal by inducement as the most guilty

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based on **the specific acts done by the two accused and bearing in mind the elements constitutive of the crime** of falsification of private documents **where the element of "damage" arose through the principal by inducement's encashment of the falsified check.** This led the Court to declare that the principal by inducement is the "most guilty" (or properly, the more guilty) between the two accused.

Thus, as a rule, for purposes of resolving a motion to discharge an accused as a state witness, what are controlling are the specific acts of the accused in relation to the crime committed.

We cannot also agree with Jimenez' argument that a principal by direct participation is more guilty than the principal by inducement as the Revised Penal Code penalizes the principal by inducement only when the principal by direct participation has executed the crime.

We note that the severity of the penalty imposed is part of the substantive criminal law which should not be equated with the procedural rule on the discharge of the *particeps criminis*. The procedural remedy of the discharge of an accused is based on other considerations, such as the need for giving immunity to one of several accused in order that not all shall escape, and the judicial experience that the candid admission of an accused regarding his participation is a guaranty that he will testify truthfully.⁵³

We draw attention to the requirement that a state witness does not need to be found to be the least guilty; he or she should not only **"appear to be the most guilty."**⁵⁴

From the evidence submitted by the prosecution in support of its motion to discharge Montero, it appears that while Montero was part of the planning, preparation, and execution stage as most of his co-accused had been, he had no

direct participation in the actual killing of Ruby Rose.

While Lope allegedly assigned to him the execution of the killing, the records do not indicate that he had active participation in hatching the plan to kill Ruby Rose, which allegedly came from accused Lope and Jimenez, and in the actual killing of Ruby Rose which was executed by accused Lennard.⁵⁵ Montero's participation was limited to providing the steel box where the drum containing the victim's body was placed, welding the steel box to seal the cadaver inside, operating the skip or tug boat, and, together with his co-accused, dropping the steel box containing the cadaver into the sea.

The discharge of Montero as a state witness was procedurally sound

We agree with the People that Jimenez is estopped from raising the issue of lack of hearing prior to the discharge of Montero as a state witness. Jimenez did not raise this issue when Acting Judge Almeyda denied the motion to discharge. This denial, of course, was favorable to Jimenez. If he found no reason to complain then, why should we entertain his hearing-related complaint now?

The People even supported its argument that Jimenez actively participated in the proceedings of the motion to discharge such as his filing of a 20-page opposition to the motion; filing a reply to the People's comment; submitting his memorandum of authorities on the qualification of Montero as state witness; and filing a consolidated opposition on the People's and Montero's motion for reconsideration of Judge Almeyda's order.⁵⁷

In these lights, Jimenez cannot impute grave abuse of discretion on Judge Docena for not conducting a hearing prior to his grant of the motion to discharge. In *People v. CA and Pring*,⁵⁸ the Court ruled that with both litigants able to present their sides, the lack of actual hearing is not sufficiently fatal to undermine the

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court's ability to determine whether the conditions prescribed for the discharge of an accused as a state witness have been satisfied.

Interplay between the judge and prosecutor in the motion to discharge an accused to become a state witness

As a last point, we find it necessary to clarify the roles of the prosecution and the trial court judge in the resolution of a motion to discharge an accused as a state witness. This need arises from what appears to us to be a haphazard use of the statement that the trial court judge must rely in large part on the prosecution's suggestion in the resolution of a motion to discharge.

In the present case, the CA cited *Quarto v. Marcelo*⁶⁰ in ruling that the trial court must rely in large part upon the suggestions and the information furnished by the prosecuting officer,

We deem it important to place this ruling in its proper context lest we create the wrong impression that the trial court is a mere "rubber stamp" of the prosecution, in the manner that Jimenez now argues.

In *Quarto*, we emphasized that it is still the trial court that determines whether the prosecution's preliminary assessment of the accused-witness' qualifications to be a state witness satisfies the procedural norms. This relationship is in reality a symbiotic one as the trial court, by the very nature of its role in the administration of justice, largely exercises its prerogative based on the prosecutor's findings and evaluation.⁶¹

Thus, we ruled in *People v. Pring*⁶² that in requiring a hearing in support of the discharge, the essential objective of the law is for the court to receive evidence for or against the discharge, which evidence shall serve as the court's tangible and concrete basis – independently of the fiscal's or prosecution's persuasions – in granting or denying the motion for discharge. We emphasize, in saying this, that actual hearing is not required provided that the parties have both

presented their sides on the merits of the motion.

ISSUE ON INHIBITION OF JUDGE G.R. No. 209215

We find the People's petition meritorious.

We note at the outset that the CA did not provide factual or legal support when it ordered the inhibition of Judge Docena. Additionally, we do not find Jimenez' arguments sufficiently persuasive.

The second paragraph of Section 1 of Rule 137 does not give judges the unlimited discretion to decide whether or not to desist from hearing a case. The inhibition must be for just and valid causes. The mere imputation of bias or partiality is likewise not enough ground for their inhibition, especially when the charge is without basis.⁶³

It is well-established that inhibition is not allowed at every instance that a schoolmate or classmate appears before the judge as counsel for one of the parties. A judge, too, is not expected to automatically inhibit himself from acting in a case involving a member of his fraternity, such as Jimenez in the present case.⁶⁴

In the absence of **clear and convincing evidence** to prove the charge of bias and prejudice, a judge's ruling not to inhibit oneself should be allowed to stand.⁶⁵

In attributing bias and prejudice to Judge Docena, Jimenez must prove that the judge acted or conducted himself in a manner **clearly** indicative of arbitrariness or prejudice so as to defeat the attributes of the cold neutrality that an impartial judge must possess. Unjustified assumptions and mere misgivings that the judge acted with prejudice, passion, pride and pettiness in the performance of his functions cannot overcome the presumption that a judge shall decide on the merits of a case with an unclouded vision of its facts.⁶⁶

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In the present case, Jimenez' allegation of bias and prejudice is negated by the CA finding in its amended decision, as affirmed by this Court, that Judge Docena did not gravely abuse his discretion in granting the motion to discharge. We support this conclusion as the cancellation of the September 29, 2011 hearing is not clearly indicative of bias and prejudice.

On the allegation that Judge Docena's uncontrollable temper and unexplainable attitude should be considered as a factor, we note that the allegations and perceptions of bias from the mere tenor and language of a judge is insufficient to show prejudgment. Allowing inhibition for these reasons would open the floodgates to abuse. Unless there is **concrete proof** that a judge has a personal interest in the proceedings, and that his bias stems from an extra-judicial source, the Court would uphold the presumption that a magistrate shall impartially decide the merits of a case.⁶⁷

- **Ma. Gracia Hao and Danny Hao Vs. People of the Philippines** G.R. No. 183345. September 17, 2014

- **Probable Cause for the Issuance of a Warrant of Arrest**

- Under the Constitution²⁶ and the Revised Rules of Criminal Procedure,²⁷ a judge is mandated to **personally determine** the existence of probable cause after his **personal evaluation** of the prosecutor's resolution and the supporting evidence for the crime charged. These provisions command the judge to refrain from making a mindless acquiescence to the prosecutor's findings and to conduct his own examination of the facts and circumstances presented by both parties.

- Section 5(a) of Rule 112, grants the trial court three options upon the filing of the criminal complaint or information. He may: a) dismiss

the case if the evidence on record clearly failed to establish probable cause; b) issue a warrant of arrest if it finds probable cause; or c) order the prosecutor to present additional evidence within five days from notice in case of doubt on the existence of probable cause.²⁸

- In the present case, the trial court chose to issue warrants of arrest to the petitioners and their co-accused. To be valid, these warrants must have been issued after compliance with the requirement that probable cause be personally determined by the judge. Notably at this stage, the judge is tasked to merely determine **the probability, not the certainty, of guilt of the accused**. In doing so, he need not conduct a *de novo* hearing; he only needs to personally review the prosecutor's initial determination and see if it is supported by substantial evidence.²⁹

- The records showed that Judge Marquez made a personal determination of the existence of probable cause to support the issuance of the warrants. The petitioners, in fact, did not present any evidence to controvert this.

Distinction between Executive and Judicial Determination of Probable Cause

In a criminal prosecution, probable cause is determined at two stages. The first is at the executive level, where determination is made by the prosecutor during the preliminary investigation, before the filing of the criminal information. The second is at the judicial level, undertaken by the judge before the issuance of a warrant of arrest.

In the case at hand, the question before us relates to the judicial determination of

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probable cause. In order to properly resolve if the CA erred in affirming the trial court's issuance of the warrants of arrest against the petitioners, it is necessary to scrutinize the crime of *estafa*, whether committed as a simple offense or through a syndicate.

The crime of swindling or *estafa* is covered by Articles 315-316 of the RPC. In these provisions, the different modes by which *estafa* may be committed, as well as the corresponding penalties for each are outlined. One of these modes is *estafa* by means of deceit. Article 315(2)(a) of the RPC defines how this particular crime is perpetrated:

2. By means of any of the following false pretenses or fraudulent acts executed prior to or simultaneously with the commission of the fraud:

(a) By using fictitious name, or falsely pretending to possess power, influence, qualifications, property, credit, agency, business or imaginary transactions, or by means of other similar deceptions.

Under this provision, *estafa* has the following elements: 1) the existence of a false pretense, fraudulent act or fraudulent means; 2) the execution of the false pretense, fraudulent act or fraudulent means prior to or simultaneously with the commission of the fraud; 3) the reliance by the offended party on the false pretense, fraudulent act or fraudulent means, which induced him to part with his money or property; and 4) as a result, the offended party suffered damage.³¹

As Dy alleged in his complaint-affidavit, Ngo and Gracia induced him to invest with State Resources and promised him a higher rate of return.³² Because of his good business relationship with Ngo and relying on Gracia's attractive financial representations, Dy initially invested the approximate amount of P10,000,000.00.

This first investment earned profits. Thus,

Dy was enticed by Gracia to invest more so that he eventually advanced almost P100,000,000.00³³ with State Resources. Gracia's succeeding checks representing the earnings of his investments, however, were all dishonored upon deposit.³⁴ He subsequently learned that the petitioners used his money for Danny's construction and realty business.³⁵ Despite repeated demands and the petitioners' constant assurances to pay, they never returned Dy's invested money and its supposed earnings.³⁶

These cited factual circumstances show the elements of *estafa* by means of deceit. The petitioners induced Dy to invest in State Resources promising higher returns. But unknown to Dy, what occurred was merely a ruse to secure his money to be used in Danny's construction and realty business. The petitioners' deceit became more blatant when they admitted in their petition that as early as August 1995, State Resources had already been dissolved.³⁷ This admission strengthens the conclusion that the petitioners misrepresented facts regarding themselves and State Resources in order to persuade Dy to part with his money for investment with an inexistent corporation.

These circumstances all serve as indicators of the petitioners' deceit. "Deceit is the false representation of a matter of fact, whether by words or conduct, by false or misleading allegations, or by concealment of that which should have been disclosed, which deceives or is intended to deceive another, so that he shall act upon it to his legal injury."³⁸

Thus, had it not been for the petitioners' false representations and promises, Dy would not have placed his money in State Resources, to his damage. These allegations cannot but lead us to the conclusion that probable cause existed as basis to arrest the petitioners for the crime of *estafa* by means of deceit.

We now address the issue of whether

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estafa in this case was committed through a syndicate.

Under Section 1 of PD No. 1689,³⁹ there is syndicated *estafa* if the following elements are present: 1) *estafa* or other forms of swindling as defined in Articles 315 and 316 of the RPC was committed; 2) the *estafa* or swindling was committed by a syndicate of five or more persons; and 3) the fraud resulted in the misappropriation of moneys contributed by stockholders, or members of rural banks, cooperatives, "samahang nayon[s]," or farmers associations or **of funds solicited by corporations/associations from the general public.**⁴⁰

The factual circumstances of the present case show that the first and second elements of syndicated *estafa* are present; there is probable cause for violation of Article 315(2)(a) of the RPC against the petitioners. Moreover, in Dy's supplemental complaint-affidavit, he alleged that the fraud perpetrated against him was committed, not only by Ngo and the petitioners, but also by the other officers and directors of State Resources. The number of the accused who allegedly participated in defrauding Dy exceeded five, thus satisfying the requirement for the existence of a syndicate.

However, the third element of the crime is patently lacking. The funds fraudulently solicited by the corporation must come from the general public. In the present case, no evidence was presented to show that aside from Dy, the petitioners, through State Resources, also sought investments from other people. Dy had no co-complainants alleging that they were also deceived to entrust their money to State Resources. The general public element was not complied with. Thus, no syndicated *estafa* allegedly took place, only simple *estafa* by means of deceit.

Despite this conclusion, we still hold that the CA did not err in affirming the trial court's denial of the petitioners' motion to lift warrant of arrest.

A warrant of arrest should be issued if the judge after personal evaluation of the facts and circumstances is convinced that probable cause exists that an offense was committed.

Probable cause for the issuance of a warrant of arrest is the existence of such facts and circumstances that would lead a reasonably discreet and prudent person to believe that an offense was committed by the person sought to be arrested.⁴¹ This must be distinguished from the prosecutor's finding of probable cause which is for the filing of the proper criminal information. Probable cause for warrant of arrest is determined to address the necessity of **placing the accused under custody in order not to frustrate the ends of justice.**⁴²

With our conclusion that probable cause existed for the crime of simple *estafa* and that the petitioners have probably committed it, it follows that the issuance of the warrants of arrest against the petitioners remains to be valid and proper. To allow them to go scot-free would defeat rather than promote the purpose of a warrant of arrest, which is to put the accused in the court's custody to avoid his flight from the clutches of justice.

Moreover, we note that simple *estafa* and syndicated *estafa* are not two entirely different crimes. Simple *estafa* is a crime necessarily included in syndicated *estafa*. An offense is necessarily included in another offense when the essential ingredients of the former constitute or form a part of those constituting the latter.⁴⁵

Under this legal situation, only a formal amendment of the filed information under Section 14, Rule 110 of the Rules of Court⁴⁶ is necessary; the warrants of arrest issued against the petitioners should not be nullified since probable cause exists for simple *estafa*.

Suspension of Arraignment

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Under Section 11(c), Rule 116 of the Rules of Court, an arraignment may be suspended if there is a petition for review of the resolution of the prosecutor pending at either the DOJ, or the Office of the President. However, such period of suspension **should not exceed sixty (60) days counted from the filing of the petition with the reviewing office.**

As the petitioners alleged, they filed a petition for review with the DOJ on November 21, 2003. Since this petition had not been resolved yet, they claimed that their arraignment should be suspended indefinitely.

We emphasize that the right of an accused to have his arraignment suspended is not an unqualified right. In *Spouses Trinidad v. Ang*,⁴⁷ we explained that while the pendency of a petition for review is a ground for suspension of the arraignment, the Rules limit the deferment of the arraignment to a period of 60 days reckoned from the filing of the petition with the reviewing office. It follows, therefore, **that after the expiration of the 60-day period, the trial court is bound to arraign the accused or to deny the motion to defer arraignment.**⁴⁸

As the trial court found in its February 26, 2004 order, the DOJ's delay in resolving the petitioners' petition for review had already exceeded 60 days. Since the suspension of the petitioners' arraignment was already beyond the period allowed by the Rules, the petitioners' motion to suspend completely lacks any legal basis.

As a final note, we observe that the resolution of this case had long been delayed because of the petitioners' refusal to submit to the trial court's jurisdiction and their erroneous invocation of the Rules in their favor. As there is probable cause for the petitioners' commission of a crime, their arrest and arraignment should now ensue so that this case may properly proceed to trial, where the merits of both the parties' evidence and allegations may

be weighed.

- **Cesar T. Quiambao and Eric C. Pilapil Vs. People of the Philippines, Aderito Z. Yujuico and Bonifacio C. Sumbilla** G.R. No. 185267. September 17, 2014

The Issue Before the Court

The parties' arguments, properly joined, present to us the following issues:

- Did the RTC-Branch 161 correctly determine whether the MTC committed grave abuse of discretion in ordering the reinstatement of Criminal Case No. 89724?
- Did the MTC's dismissal of Criminal Case No. 89724 operate as an acquittal of the petitioners for the crime charged?

Did the reinstatement or revival of Criminal Case No. 89724 place the petitioners in double jeopardy?

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Did the reinstatement or revival of Criminal Case No. 89724 place the petitioners in double jeopardy?

The MTC acted without jurisdiction when it issued the Order of Dismissal dated June 18, 2007

To recall, the petition for review on *certiorari* (docketed as G.R. No. 180416) filed by the private respondents to question the RTC Branch 154's Order, remains pending before this Court. Being

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the subject of a pending review, the RTC Order – directing the MTC to dismiss Criminal Case No. 89724 for want of probable cause – was therefore **not yet final and executory**.

Nonetheless, despite the pendency of the petition for review before us, the MTC, by virtue of the RTC's "non-final" Order, dismissed Criminal Case No. 89724. Thus, we find that the MTC acted without jurisdiction when it issued its Order of Dismissal dated June 18, 2007.

We held in *PAA v. Court of Appeals*¹⁴ that an appeal to this Court via a Petition for Review on Certiorari stays the judgment, award or order appealed from. Thus, until after the appeal of the defendant shall have been resolved by this Court with finality, and its records transmitted to the court of origin, the judgment, award or order appealed from cannot be executed, enforced, much less, modified by the court of origin. Once the case has been appealed and given due course by this Court, the lower court or the court of origin could no longer take cognizance of the issue under review. It cannot execute the judgment appealed from because to do so would constitute encroachment on the exclusive appellate jurisdiction of this Court.

In *Heirs of the Late Justice Jose B. L. Reyes v. CA*,¹⁵ this Court emphasized that:

A judgment of the Court of Appeals cannot be executed pending appeal. Once final and executory, the judgment must be remanded to the lower court, where a motion for its execution may be filed only after its entry. **In other words, before its finality, the judgment cannot be executed. There can be no discretionary execution of a decision of the Court of Appeals.** In the second place, even in discretionary executions, the same must be firmly founded upon good reasons. The court must state in a special order the "good reasons" justifying the issuance of the writ. The good reasons allowing execution pending appeal must

constitute superior circumstances demanding urgency that will outweigh the injuries or damages to the adverse party if the decision is reversed.

In the third place, on September 14, 1998, petitioners elevated the decision of the Court of Appeals to the Supreme Court by petition for review. **By the mere fact of the filing of the petition, the finality of the Court of Appeals' decision was stayed, and there could be no entry of judgment therein, and, hence, no premature execution could be had.** The Court of Appeals adopted its resolution granting execution pending appeal on September 18, 1998, after the petition for review was already filed in the Supreme Court. **It thereby encroached on the hallowed grounds of the Supreme Court.**

In the present case, the MTC's Order of Dismissal is a jurisdictional error that must be struck down as flawed for having been issued without jurisdiction. It amounts to a premature execution which tended to render moot the issue raised in the order appealed from and would render ineffective any decision which might eventually be made by this Court.

Moreover, the jurisdiction over the issue of probable cause in Criminal Case No. 89724 had already been acquired by this Court. From the moment the case had been elevated to us, the MTC no longer had authority to further act on the issue which was pending review. In fact, at the time the MTC issued the Order of Dismissal, even the RTC had lost jurisdiction. Thus, inasmuch as the case had already come under our exclusive appellate jurisdiction, the MTC acted without jurisdiction when it issued the Order of Dismissal.

As explained in *Vda. de Syquia v. Judge of First Instance et al.*:¹⁶

x x x the perfecting(*sic*) of an appeal taken from said judgment **deprives the trial court of its jurisdiction over said**

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judgment and said jurisdiction is transferred to the appellate court, and the trial court cannot modify or revoke any order of execution of the said judgment after the appeal taken therefrom is perfected.

Similarly, in *Desbarats v. De Vera*¹⁷ we held that:

A modifying order allowing defendant to occupy the portion of the building he is actually holding which was not for the protection and preservation of the rights of the parties is conspicuously null and void; **having been entered after the records on appeal had been approved and, accordingly, after the Court of First Instance had lost jurisdiction over the case.**

The MTC's Order of Revival is also void

Like the Order of Dismissal, the Order of Revival that followed should be declared null and void. While said order merely sought to correct the previous Order of Dismissal, it suffers from the same infirmity of having been issued without jurisdiction.

As discussed above, the MTC no longer had the authority to dismiss Criminal Case No. 89724 because the jurisdiction to act on and entertain the case had already been acquired by this Court. Hence, it naturally follows that all the issuances and/or orders issued by the lower court relative to the issue pending review will become null and void.

There is no double jeopardy because the MTC, which ordered the dismissal of the criminal case, is not a court of competent jurisdiction.

Since the MTC clearly had no jurisdiction to issue the Order of Dismissal and the Order of Revival, there can be no double jeopardy.

Section 7, Rule 117 of the Revised Rules of Criminal Procedure, as amended provides:

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 x x

Thus, double jeopardy exists when the following requisites are present: (1) a first jeopardy attached prior to the second; (2) the first jeopardy has been validly terminated; and (3) a second jeopardy is for the same offense as in the first. A first jeopardy attaches only (a) after a valid indictment; (b) before a competent court; (c) after arraignment; (d) when a valid plea has been entered; and (e) when the accused has been acquitted or convicted, or the case dismissed or otherwise terminated without his express consent.¹⁸

In this case, there is no question that the first four requisites are present in the case at bar. However, in view of the nullity of the Order of Dismissal and the Order of Revival, the fifth requisite – that the accused be acquitted or convicted, or the case dismissed or otherwise terminated without his express consent – is absent. Since the MTC did not have jurisdiction to take cognizance of the case pending this Court's review of the RTC Order, its order of dismissal was a total nullity and did not produce any legal effect. Thus, the dismissal neither terminated the action on

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the merits, nor amounted to an acquittal.

The same can be said of the Order of Revival. Since both orders cannot be the source of any right nor create any obligation, the dismissal and the subsequent reinstatement of Criminal Case No. 89724 did not effectively place the petitioners in double jeopardy.

- **Juanario G. Campit Vs. Isidra B. Gripa, et al.** G.R. No. 195443. September 17, 2014

• The Petition

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- In his petition before this Court, the petitioner argues that his title to the subject property must prevail not only because the August 8, 1978 decision in Civil Case No. 15357, which declared his title null and void, was never executed, but also because, under the Torrens system of registration, a certificate of title is an indefeasible and incontrovertible proof of ownership of the person, in whose favor it was issued, over the land described therein. He now contends that he had acquired the property in good faith and for valuable consideration and, thus, entitled to own and possess the subject property.
-

Our Ruling

We find no merit in the petitioner's arguments.

The issue on the validity of the petitioner's title to the subject property has long been settled in Civil Case No. 15357, where the court, in its decision dated August 8, 1978, which became final and executory on July 19, 1979, had found and declared the petitioner's title null and void by reason of fraud and misrepresentation.

A matter adjudged with finality by a competent court having jurisdiction over the parties and the subject matter already constitutes *res judicata* in another action involving the same cause of action, parties

and subject matter. The doctrine of *res judicata* provides that a final judgment on the merits rendered by a court of competent jurisdiction, is conclusive as to the rights of the parties and their privies and constitutes as an absolute bar to subsequent actions involving the same claim, demand, or cause of action.¹² **Thus, the validity of petitioner's title, having been settled with finality in Civil Case No. 15357, could no longer be reviewed in the present case.**

The August 8, 1978 decision in Civil Case No. 15357, however, was not executed or enforced within the time allowed under the law. Under Section 6, Rule 39 of the Rules of Court, a final and executory judgment may be executed by the prevailing party as a matter of right by mere motion within five (5) years from the entry of judgment, failing which the judgment is reduced to a mere right of action which must be enforced by the institution of a complaint in a regular court within ten (10) years from finality of the judgment.¹³

It appears that no motion or action to revive judgment was ever filed by the respondents - the prevailing party in Civil Case No. 15357, to execute and enforce the August 8, 1978 decision. The title to the subject property, therefore, remained registered under the petitioner's name. As the petitioner argued, his title had already become incontrovertible since the Torrens system of land registration provides for the indefeasibility of the decree of registration and the certificate of title issued upon the expiration of one (1) year from the date of entry of the registration decree.¹⁴

We cannot, however, allow the petitioner to maintain his title and benefit from the fruit of his and his predecessors' fraudulent acts at the expense of the respondents who are the rightful owners of the subject property. **The Torrens system of registration cannot be used to protect a usurper from the true**

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owner, nor can it be used as a shield for the commission of fraud, or to permit one to enrich oneself at the expense of others.¹⁵

Notwithstanding the indefeasibility of the Torrens title, the registered owner can still be compelled under the law to reconvey the property registered to the rightful owner¹⁶ under the principle that the property registered is deemed to be held in trust for the real owner by the person in whose name it is registered.¹⁷ The party seeking to recover title to property wrongfully registered in another person's name must file an action for reconveyance within the allowed period of time.

An action for reconveyance based on an implied or constructive trust prescribes in ten (10) years from the issuance of the Torrens title over the property.¹⁸ There is, however, an exception to this rule where the filing of such action does not prescribe, *i.e.* **when the plaintiff is in possession of the subject property, the action, being in effect that of quieting of title to the property, does not prescribe.**¹⁹

In the present case, the respondents, who are the plaintiffs in Civil Case No. 18421 (the action for annulment and cancellation of title filed in 2013), have always been in possession of the subject property. Considering that the action for annulment and cancellation of title filed by the respondents is substantially in the nature of an action for reconveyance based on an implied or constructive trust, combined with the fact that the respondents have always been in possession of the subject property, we shall treat Civil Case No. 18421 as an action to quiet title, the filing of which does not prescribe. Thus, we find the respondents' filing of Civil Case No. 18421 to be proper and not barred by the time limitations set forth under the Rules of Court in enforcing or executing a final and executory judgment.

- **Spouses Michelle M. Noynay and Noel S. Noynay Vs. Cityhomes Builder and Development, Inc.** G.R. No. 204160. September 22, 2014

• ISSUE

- The lone issue presented for resolution is whether Citihomes has a cause of action for ejectment against Spouses Noynay. In effect, Spouses Noynay would have this Court determine whether Citihomes may rightfully evict them.

Ruling of the Court

Cause of action has been defined as an act or omission by which a party violates a right of another.¹² It requires the existence of a legal right on the part of the plaintiff, a correlative obligation of the defendant to respect such right, and an act or omission of such defendant in violation of the plaintiff's rights.¹³ A complaint should not be dismissed for insufficiency of cause of action if it appears clearly from the complaint and its attachments that the plaintiff is entitled to relief.¹⁴ The complaint, however, may be dismissed for lack of cause of action *later* after questions of fact have been resolved on the basis of stipulations, admissions or evidence presented.¹⁵

Relative thereto, a plaintiff in an unlawful detainer case which seeks recovery of the property must prove one's legal right to evict the defendant, a correlative obligation on the part of such defendant to respect the plaintiff's right to evict, and the defendant's act or omission in the form of refusal to vacate upon demand when his possession ultimately becomes illegal.

At first glance, the main thrust of the discussion in the lower courts is the issue on whether Citihomes had such right to evict Spouses Noynay. At its core is the ruling of the MTCC that the right to demand the eviction of Spouses Noynay was already transferred to UCPB from the moment the Assignment was executed by Citihomes, which was done prior to the institution of the unlawful detainer case. Thus, based on the evidence presented during the trial, the MTCC held

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that Citihomes did not have a cause of action against Spouses Noynay. The Court, however, agrees with the MTCC.

The determination of whether Citihomes has a right to ask for the eviction of Spouses Noynay entirely depends on the review of the Assignment of Claims and Accounts it executed in favor of UCPB. If it turns out that what was assigned merely covered the collectible amounts or receivables due from Spouses Noynay, Citihomes would necessarily have the right to demand the latter's eviction as only an aspect of the contract to sell passed on to UCPB. Simply put, because an assignment covered only credit dues, the relation between Citihomes as the seller and Spouses Noynay as the buyer under their Contract to Sell remained. If on the other hand, it appears that the assignment covered all of Citihomes' rights, obligations and benefits in favor of UCPB, the conclusion would certainly be different.

Clearly, the conclusion of the MTCC had factual and legal bases. Evident from the tenor of the agreement was the intent on the part of Citihomes, as assignor, to assign all of its rights and benefits in favor of UCPB. Specifically, what Citihomes did was an assignment or transfer of all contractual rights arising from various contracts to sell, including the subject contract to sell, with all the rights, obligations and benefits appurtenant thereto in favor of UCPB for a consideration of P100,000,000.00. Indeed, the intent was more than just an assignment of credit. This intent to assign all rights under the contract to sell was even fortified by the delivery of documents such as the pertinent contracts to sell and the TCTs. Had it been the intent of Citihomes to assign merely its interest in the receivables due from Spouses Noynay, the tenor of the deed of assignment would have been couched in very specific terms.

The exercise of such right to cancel

necessarily determines the existence of the right to evict Spouses Noynay. The existence of the right to evict is the first constitutive element of the cause of action in this unlawful detainer case. Considering, however, that the right to cancel was already assigned prior to the commencement of this controversy with the execution of the Assignment, its legal consequences cannot be avoided.

Well-established is the rule that the assignee is deemed subrogated to the rights as well as to the obligations of the seller/assignor. By virtue of the deed of assignment, the assignee is deemed subrogated to the rights and obligations of the assignor and is bound by exactly the same conditions as those which bound the assignor.¹⁸ What can be inferred from here is the effect on the status of the assignor relative to the relations established by a contract which has been subsequently assigned; that is, the assignor becomes a complete stranger to all the matters that have been conferred to the assignee.

In this case, the execution of the Assignment in favor of UCPB relegated Citihomes to the status of a mere stranger to the jural relations established under the contract to sell. With UCPB as the assignee, it is clear that Citihomes has ceased to have any right to cancel the contract to sell with Spouses Noynay. Without this right, which has been vested in UCPB, Citihomes undoubtedly had no cause of action against Spouses Noynay.

This is not to say that Citihomes lost all interest over the property. To be clear, what were assigned covered only the rights in the Contract to Sell and not the property rights over the house and lot, which remained registered under Citihomes' name. Considering, however, that the unlawful detainer case involves mere physical or material possession of the property and is independent of any claim of ownership by any of the parties,¹⁹ the invocation of ownership by Citihomes

is immaterial in the just determination of the case.

Granting that the MTCC erred in ruling that Citihomes had no cause of action by reason of the Assignment it made in favor of UCPB, the Court still upholds the right of the Spouses Noynay to remain undisturbed in the possession of the subject property. The reason is simple – Citihomes failed to comply with the procedures for the proper cancellation of the contract to sell as prescribed by Maceda Law.

In *Pagtalunan v. Manzano*,²⁰ the Court stressed the importance of complying with the provisions of the Maceda Law as to the cancellation of contracts to sell involving realty installment schemes. There it was held that the cancellation of the contract by the seller must be in accordance with Section 3 (b) of the Maceda Law, which requires the notarial act of rescission and the refund to the buyer of the full payment of the cash surrender value of the payments made on the property. The actual cancellation of the contract takes place after thirty (30) days from receipt by the buyer of the notice of cancellation or the demand for rescission of the contract by a notarial act and upon full payment of the cash surrender value to the buyer, to wit:

- (b) **If the contract is cancelled, the seller shall refund to the buyer the cash surrender value of the payments on the property** equivalent to the cash value of the total payments made and, after five years of installments, an additional five percent of the property, but not to exceed ninety percent of the total payments. **Nowadays as provided, that the actual cancellation of the contract shall take place after thirty days from receipt by the buyer of the notice of cancellation or the demand for rescission of the contract by a notarial act and upon full payment of the cash surrender value to the buyer.**

[Emphases supplied]

According to the lower courts, Spouses Noynay failed to complete the two-year minimum period of paid amortizations, thus, the cancellation of the contract to sell no longer required the payment of the cash surrender value. This conclusion rests on the allegation that the

amortization payments commenced only on May 31, 2005. If indeed it were true that the payments started only on that date, Spouses Noynay would not have completed the required two-year period to be entitled to the payment of cash surrender value.

Moreover, based on the Statement of Account,²⁷ dated March 18, 2009, Spouses Noynay started defaulting from January 8, 2008. This shows that prior to that date, amortizations covering the 3-year period, which started with the downpayment, had been paid. This is consistent with the admission of CitiHomes during the preliminary conference. By its admission that Spouses Noynay had been paying the amortizations for three (3) years, there is no reason to doubt Spouses Noynay's compliance with the minimum requirement of two years payment of amortization, entitling them to the payment of the cash surrender value provided for by law and by the contract to sell. To reiterate, Section 3(b) of the Maceda Law requires that for an actual cancellation to take place, the notice of cancellation by notarial act and the full payment of the cash surrender value must be first received by the buyer. Clearly, no payment of the cash surrender value was made to Spouses Noynay. Necessarily, no cancellation of the contract to sell could be considered as validly effected.

- **People of the Philippines Vs. Jose C. Go and Aida C. Dela Rosa** G.R. No. 201644. September 24, 2014

- **The Issue Before the Court**

- The central issue to resolve is whether or not the criminal cases

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against respondents were properly dismissed by the CA on *certiorari*, without the People, as represented by the OSG, having been impleaded.

The Court's Ruling

The petition is meritorious.

In *Vda. de Manguerra v. Risos*, where the petition for *certiorari* filed with the [CA] failed to implead the People of the Philippines as an indispensable party, the Court held:

It is undisputed that in their petition for *certiorari* before the CA, respondents failed to implead the People of the Philippines as a party thereto. Because of this, the petition was obviously defective. As provided in Section 5, Rule 110 of the Revised Rules of Criminal Procedure, all criminal actions are prosecuted under the direction and control of the public prosecutor. Therefore, it behooved the petitioners (respondents herein) to implead the People of the Philippines as respondent in the CA case to enable the Solicitor General to comment on the petition.³⁰

While the failure to implead an indispensable party is not *per se* a ground for the dismissal of an action, considering that said party may still be added by order of the court, on motion of the party or on its own initiative at any stage of the action and/or such times as are just,³¹ it remains essential – as it is jurisdictional – that any indispensable party be impleaded in the proceedings before the court renders judgment. This is because the absence of such indispensable party renders all subsequent actions of the court null and void for want of authority to act, not only as to the absent parties but even as to those present. As explained in *Lotte Phil. Co., Inc. v. Dela Cruz*:³²

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 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. 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 parties but even as to those present.³³

In this case, it is evident that the CA proceeded to render judgment, *i.e.*, the September 28, 2011 Decision and April 17, 2012 Resolution, without an indispensable party, *i.e.*, the People, having been impleaded. Thus, in light of the foregoing discussion, these issuances should be set aside and the case be remanded to the said court. Consequently, the CA is directed to (a) reinstate respondents’ *certiorari* petition, and (b) order said respondents to implead the People as a party to the proceedings and thereby furnish its counsel, the OSG, a copy of the aforementioned pleading. That being said, there would be no need to touch on the other issues herein raised.

- **H.H. Hollero Construction, Inc. Vs. Government Services Insurance Systems, et al.** G.R. No. 152334. September 24, 2014

The Issue Before the Court

- The essential issue for the Court’s resolution is whether or not the CA committed reversible error in dismissing the complaint on the ground of prescription.

The Court's Ruling

The petition lacks merit.

Contracts of insurance, like other contracts, are to be construed according to the sense and meaning of the terms which the parties themselves have used.

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If such terms are clear and unambiguous, they must be taken and understood in their plain, ordinary, and popular sense.³⁹

Section 10⁴⁰ of the General Conditions of the subject CAR Policies commonly read:

10. If a claim is in any respect fraudulent, or if any false declaration is made or used in support thereof, or if any fraudulent means or devices are used by the Insured or anyone acting on his behalf to obtain any benefit under this Policy, or **if a claim is made and rejected and no action or suit is commenced within twelve months after such rejection** or, in case of arbitration taking place as provided herein, within twelve months after the Arbitrator or Arbitrators or Umpire have made their award, **all benefit under this Policy shall be forfeited.** (*Emphases supplied*)

In this relation, case law illumines that the prescriptive period for the insured's action for indemnity should be reckoned from the "final rejection" of the claim.⁴¹

Here, petitioner insists that the GSIS's letters dated April 26, 1990 and June 21, 1990 did not amount to a "final rejection" of its claims, arguing that they were mere tentative resolutions pending further action on petitioner's part or submission of proof in refutation of the reasons for rejection.⁴² Hence, its causes of action for indemnity did not accrue on those dates.

The Court does not agree.

A perusal of the letter⁴³ dated April 26, 1990 shows that the GSIS denied petitioner's indemnity claims wrought by Typhoons Biring and Huaning, it appearing that no amount was recoverable under the policies. While the GSIS gave petitioner the opportunity to dispute its findings, neither of the parties pursued any further action on the matter; this logically shows that they deemed the said letter as a

rejection of the claims. Lest it cause any confusion, the statement in that letter pertaining to any queries petitioner may have on the denial should be construed, at best, as a form of notice to the former that it had the opportunity to seek reconsideration of the GSIS's rejection. Surely, petitioner cannot construe the said letter to be a mere "tentative resolution." In fact, despite its disavowals, petitioner admitted in its pleadings⁴⁴ that the GSIS indeed denied its claim through the aforementioned letter, but tarried in commencing the necessary action in court.

The same conclusion obtains for the letter⁴⁵ dated June 21, 1990 denying petitioner's indemnity claim caused by Typhoon Saling on a "no loss" basis due to the non-renewal of the policies therefor before the onset of the said typhoon. The fact that petitioner filed a letter⁴⁶ of reconsideration therefrom dated April 18, 1991, considering too the inaction of the GSIS on the same similarly shows that the June 21, 1990 letter was also a final rejection of petitioner's indemnity claim.

As correctly observed by the CA, "final rejection" simply means denial by the insurer of the claims of the insured and not the rejection or denial by the insurer of the insured's motion or request for reconsideration.⁴⁷ The rejection referred to should be construed as **the rejection in the first instance**,⁴⁸ as in the two instances above-discussed.

In light of the foregoing, it is thus clear that petitioner's causes of action for indemnity respectively accrued from its receipt of the letters dated April 26, 1990 and June 21, 1990, or the date the GSIS rejected its claims in the first instance. Consequently, given that it allowed more than twelve (12) months to lapse before filing the necessary complaint before the RTC on September 27, 1991, its causes of action had already prescribed.

- **Amanda C. Zacarias Vs. Victoria Anacay, Edna Anacay, et al.** G.R. No. 202354. September 24, 2014

- The invariable rule is that what determines the nature of the

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action, as well as the court which has jurisdiction over the case, are the allegations in the complaint.¹¹ In ejectment cases, the complaint should embody such statement of facts as to bring the party clearly within the class of cases for which Section 1¹² of Rule 70 provides a summary remedy, and must show enough on its face to give the court jurisdiction without resort to parol evidence.¹³ Such remedy is either forcible entry or unlawful detainer. In forcible entry, the plaintiff is deprived of physical possession of his land or building by means of force, intimidation, threat, strategy or stealth. In illegal detainer, the defendant unlawfully withholds possession after the expiration or termination of his right thereto under any contract, express or implied.¹⁴

-
- The MCTC and CA both ruled that the allegations in petitioner's complaint make out a case for forcible entry but not for unlawful detainer.
-
- In *Cabrera v. Getaruela*,¹⁵ the Court held that a complaint sufficiently alleges a cause of action for unlawful detainer if it recites 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.¹⁶

The above complaint failed to allege a cause of action for unlawful detainer as it does not describe possession by the respondents being initially legal or tolerated by the petitioner and which became illegal upon termination by the petitioner of such lawful possession. Petitioner's insistence that she actually tolerated respondents' continued occupation after her discovery of their entry into the subject premises is incorrect. As she had averred, she discovered respondents' occupation in May 2007. Such possession could not have been legal from the start as it was *without her knowledge or consent*, much less was it based on any contract, express or implied. We stress that 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.¹⁸

- In *Valdez v. Court of Appeals*,¹⁹ the Court ruled that where the complaint did not satisfy the jurisdictional requirement of a valid cause for unlawful detainer, the municipal trial court had no jurisdiction over the case.

The complaint in this case is similarly defective as it failed to allege how and when entry was effected. The bare allegation of petitioner that "sometime in May, 2007, she discovered that the defendants have entered the subject property and occupied the same", as correctly found by the MCTC and CA, would show that respondents entered the land and built their houses thereon clandestinely and without petitioner's consent, which facts are constitutive of forcible entry, not unlawful detainer. Consequently, the MCTC has no jurisdiction over the case and the RTC clearly erred in reversing the lower court's ruling and granting reliefs prayed for by

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the petitioner.

Lastly, petitioner's argument that the CA gravely erred in nullifying a final and executory judgment of the RTC deserves scant consideration.

- It is well-settled that a court's jurisdiction may be raised at any stage of the proceedings, even on appeal. The reason is that jurisdiction is conferred by law, and lack of it affects the very authority of the court to take cognizance of and to render judgment on the action.²⁰ Indeed, a void judgment for want of jurisdiction is no judgment at all. It cannot be the source of any right nor the creator of any obligation. All acts performed pursuant to it and all claims emanating from it have no legal effect. Hence, it can never become final and any writ of execution based on it is void.²¹

• **Capital Shoes Factory, Ltd. Vs. Traveler Kids, Inc.** G.R. No. 200065. September 24, 2014

- Stripped of non-essentials, the only issue to be resolved is whether or not the CA correctly modified the RTC order admitting the exhibits offered by CSFL.¹⁵
- CSFL basically argues that the excluded documents are admissible in evidence because it was duly established during the trial that the said documents were duplicate originals, and not mere photocopies, considering that they were prepared at the same time as the originals.
- On the other hand, TKI counters that CSFL's claim that the photocopied documents were duplicate originals was just a unilateral and self-serving statement without any supportive evidence.

after a review of the RTC and the CA

records, which were ordered elevated, the Court is of the considered view that the CA erred in not admitting the invoices and order slips denominated as Exhibits "D" to "GG-1" and "HH" to "KK-1," which were duplicate originals. Section 4(b), Rule 130 of the Rules of Court reads:

Sec. 4 . *Original of document.* —

x x x x

(b) When a document is in two or more copies executed at or about the same time, with identical contents, all such copies are equally regarded as originals.

x x x x

In *Trans-Pacific Industrial Supplies v. The Court of Appeals and Associated Bank*,¹⁶ it was stressed that duplicate originals were admissible as evidence. When carbon sheets are inserted between two or more sheets of writing paper so that the writing of a contract upon the outside sheet, including the signature of the party to be charged thereby, produces a facsimile upon the sheets beneath, such signature being thus reproduced by the same stroke of pen which made the surface or exposed impression, all of the sheets so written on are regarded as duplicate originals and either of them may be introduced in evidence as such without accounting for the nonproduction of the others.

The Court went over the RTC records and the TSNs and found that, contrary to the assertion of TKI, the duplicate originals were produced in court and compared with their photocopies during the hearing before the trial court. The transcripts bare all of these but were missed by the appellate court, which believed the assertion of TKI that what were produced in court and offered in evidence were mere photocopies. The TSNs further reveal that after the comparison, the photocopies were the ones retained in the records.¹⁸

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The Court notes that this case involves a foreign entity and has been pending since October 6, 2005.¹⁹ It is about time that this case be decided on the merits. At this juncture, the Court reminds counsel for TKI of his duty, as an officer of the court, to see to it that the orderly administration of justice be not unduly impeded.

After the admission of CSFL's exhibits as evidence, TKI should have let trial proceed in due course instead of immediately resorting to *certiorari*, by presenting its own testimonial and documentary evidence and in case of an unfavorable decision, appeal the same in accordance with law. After all, the RTC stated that, granting that the questioned exhibits were not admissible, "there still remained enough evidence to substantiate plaintiff's claim on which the Court can validly render judgment upon application of the pertinent law and/or jurisprudence."

- **Leonardo A. Villalon and Erlinda Talde-Villalon Vs. Amelia Chan** G.R. No. 196508. September 24, 2014

- *Second*, the petitioners argue that the CA gravely erred when it ruled that: the RTC committed grave abuse of discretion in issuing its March 3, 2006 resolution disqualifying Atty. Atencia as private prosecutor, and that Atty. Atencia's disqualification violated the respondent's rights to intervene and be heard in the bigamy case. They contend that, even with Atty. Atencia's disqualification, the respondent was never denied her right to participate in the proceedings and was even called to stand as a witness but the respondent never appeared before the court because she was out of the country during the whole proceedings on the bigamy case.
-
- Section 16²¹ of Rule 110 of the Revised Rules of Criminal Procedure²² expressly allows an offended party to intervene by

counsel in the prosecution of the offense for the recovery of civil liability where the civil action for the recovery of civil liability arising from the offense charged is instituted with the criminal action. The civil action shall be deemed instituted with the criminal action, except when the offended party waives the civil action, reserves the right to institute it separately or institutes the civil action prior to the criminal action.²³

-
- In this case, the CA found no such waiver from or reservation made by the respondent. The fact that the respondent, who was already based abroad, had secured the services of an attorney in the Philippines reveals her willingness and interest to participate in the prosecution of the bigamy case and to recover civil liability from the petitioners. Thus, the RTC should have allowed, and should not have disqualified, Atty. Atencia from intervening in the bigamy case as the respondent, being the offended party, is afforded by law the right to participate through counsel in the prosecution of the offense with respect to the civil aspect of the case.
-
- *Lastly*, the petitioners argue that the respondent's *certiorari* petition before the CA should have been dismissed outright because it failed to implead the "People of the Philippines" as a party-respondent.
-
- The respondent's failure to implead the "People of the Philippines" as a party-respondent is not a fatal defect warranting the outright dismissal of her petition for *certiorari* and prohibition before the CA because: (1) a petition for *certiorari* and prohibition under Rule 65 is directed against any tribunal, board or officer exercising

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judicial or quasi-judicial functions alleged to have acted without or in excess of its or his jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction;²⁴ and (2) the petition for *certiorari* and prohibition filed by the respondent is a special civil action separate and independent from the bigamy case filed against the petitioners. For these reasons, the "People of the Philippines" need not be impleaded as a party in a petition for *certiorari* and prohibition.

- **Philippine Amanah Bank (Now Al-manah Islamic Investment Bank of the Philippines, also known as Islamic Bank Vs. Evangelista Contreras** G.R. No. 173168. September 29, 2014

- *The Petition for Relief was filed out of time*
- We sustain the trial court's denial of the respondent's petition for relief from judgment to challenge its final and executory decision.
- Section 3, Rule 38 of the 1997 Rules of Civil Procedure lays down the requirements for a petition for relief from judgment,
- A party filing a petition for relief from judgment must strictly comply with two (2) reglementary periods: *first*, the petition must be filed within sixty (60) days from knowledge of the judgment, order or other proceeding to be set aside; and *second*, within a fixed period of six (6) months from entry of such judgment, order or other proceeding.

In the present case, the respondent's counsel received a copy of the RTC's decision dated September 13, 1993 on September 15, 1993. Thus, the petition for relief from judgment should have been filed on or before November 14, 1993. However, the records showed that the petition was filed only on December 15, 1993, or ninety-one (91) days later.

- Strict compliance with the periods stated under Rule 38 stems from the equitable character and nature of the petition for relief. Indeed, relief is allowed only in exceptional cases such as when there is no other available or adequate remedy. As a petition for relief is actually the "last chance" given by law to litigants to question a final judgment or order, the failure to avail of this final chance within the grace period fixed by the Rules is fatal.¹⁶

The respondent's cited circumstances are not the proper subject of a petition for relief from the judgment

Section 1, Rule 38 of the 1997 Rules of Civil Procedure provides that [w]hen a judgment or final order is entered, or any other proceeding is thereafter taken against a party in any court through fraud, accident, mistake, or excusable negligence, he may file a petition in the same court and in the same case praying that the judgment, order or proceeding be set aside.

Relief from judgment is a remedy provided by law to any person against whom a decision or order is entered through fraud, accident, mistake, or excusable negligence. It is a remedy, equitable in character, that is allowed only in exceptional cases when there is no other available or adequate remedy. When a party has another remedy available to him, which may either be a motion for new trial or appeal from an adverse decision of the trial court, and he was not prevented by fraud, accident, mistake, or excusable negligence from filing such motion or taking such appeal, he cannot avail of the remedy of petition for relief.¹⁷

In the present case, the respondent alleged that he had been prevented from moving for the timely reconsideration of the trial court's decision or to appeal this decision on time due to the death of his wife on September 13, 1993. He explained

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that his counsel, Atty. Valmorida, was the brother of his deceased wife, and could not bear to tell him that he had lost his case in the RTC given the circumstances. Atty. Valmorida only informed him of the court's adverse decision thirty-seven (37) days after his (Atty. Valmorida's) receipt of the adverse decision. This circumstance, according to the respondent, was a clear case of excusable negligence on the part of his counsel, warranting relief from judgment.

We do not find this explanation persuasive.

Negligence to be excusable must be one that ordinary diligence and prudence could not have guarded against. Atty. Valmorida's oversight in the present case can hardly be characterized as excusable, much less unavoidable.

We point out that the one who died was the respondent's wife, and not the respondent; nothing prevented Atty. Valmorida from filing an appeal to challenge the RTC ruling. That Atty. Valmorida took into account the emotions vis-à-vis the medical condition of the respondent, was beside the point. As a lawyer, he knew or ought to have known that failure to appeal the RTC decision would render it final. To be sure, the respondent could have easily prevented the RTC decision from becoming final and executory had he only exerted ordinary diligence by filing a timely motion for reconsideration or filing a notice of appeal.

It is settled that clients are bound by the mistakes, negligence and omission of their counsel. While, exceptionally, the client may be excused from the failure of counsel, the circumstances obtaining in the present case do not convince this Court to recognize the exception.

In his petition for relief, the respondent also claimed that the petitioner bank was not a lender in good faith since it knew that the mortgaged land was not owned by the Ilogon spouses. He added that the petitioner bank and the Ilogon spouses

connived with each other to release the loan to Calinico.

We stress that the mistake contemplated by Rule 38 of the Rules of Court pertains generally to one of fact, not of law. It does not refer to a judicial errors that the court might have committed. Such judicial errors may be corrected by means of an appeal. *To recall, the respondent already raised these grounds in his complaint for annulment of real estate mortgage, cancellation of original certificate of title, reconveyance, recovery of possession and damages* before the RTC. Indeed, relief will not be granted to a party who seeks avoidance from the effects of the judgment when the loss of the remedy at law was due to his own (or that of his counsel's) negligence; otherwise, the petition for relief can be used to revive the right to appeal which had been lost through inexcusable negligence.¹⁸

- **Crisostomo B. Aquino Vs. Municipality of Malay, Aklan, represented by Hon. Mayor John P. Yap, et al.** G.R. No. 211356. September 29, 2014

- **Certiorari, not declaratory relief, is the proper remedy**
- **a. Declaratory relief no longer viable**
- Resolving first the procedural aspect of the case, We find merit in petitioner's contention that the special writ of *certiorari*, and not declaratory relief, is the proper remedy for assailing EO 10.

An action for declaratory relief presupposes that there has been no actual breach of the instruments involved or of the rights arising thereunder. Since the purpose of an action for declaratory relief is to secure an authoritative statement of the rights and obligations of the parties under a statute, deed, or contract for their guidance in the enforcement thereof, or compliance therewith, and not to settle issues arising from an alleged breach thereof, it may be entertained before the

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breach or violation of the statute, deed or contract to which it refers. A petition for declaratory relief gives a practical remedy for ending controversies that have not reached the state where another relief is immediately available; and supplies the need for a form of action that will set controversies at rest before they lead to a repudiation of obligations, an invasion of rights, and a commission of wrongs.⁴

- In the case at bar, the petition for declaratory relief became unavailable by EO 10's enforcement and implementation. The closure and demolition of the hotel rendered futile any possible guidelines that may be issued by the trial court for carrying out the directives in the challenged EO 10. Indubitably, the CA erred when it ruled that declaratory relief is the proper remedy given such a situation.

Respondents did not commit grave abuse of discretion

a. The hotel's classification as a nuisance

Article 694 of the Civil Code defines "nuisance" as any act, omission, establishment, business, condition or property, or anything else that (1) injures or endangers the health or safety of others; (2) annoys or offends the senses; (3) shocks, defies or disregards decency or morality; (4) obstructs or interferes with the free passage of any public highway or street, or any body of water; or (5) hinders or impairs the use of property.¹²

In establishing a no build zone through local legislation, the LGU effectively made a determination that constructions therein, without first securing exemptions from the local council, qualify as nuisances for they pose a threat to public safety. No build zones are intended for the protection of the public because the stability of the ground's foundation is adversely affected

by the nearby body of water. The ever present threat of high rising storm surges also justifies the ban on permanent constructions near the shoreline. Indeed, the area's exposure to potential geo-hazards cannot be ignored and ample protection to the residents of Malay, Aklan should be afforded.

Challenging the validity of the public respondents' actuations, petitioner posits that the hotel cannot summarily be abated because it is not a nuisance *per se*, given the hundred million peso-worth of capital infused in the venture. Citing *Asilo, Jr. v. People*,¹³ petitioner also argues that respondents should have first secured a court order before proceeding with the demolition.

Preliminarily, We agree with petitioner's posture that the property involved cannot be classified as a nuisance *per se*, but not for the reason he so offers. Property valuation, after all, is not the litmus test for such a determination. More controlling is the property's nature and conditions, which should be evaluated to see if it qualifies as a nuisance as defined under the law.

As jurisprudence elucidates, nuisances are of two kinds: nuisance *per se* and nuisance *per accidens*. The first is recognized as a nuisance under any and all circumstances, because it constitutes a direct menace to public health or safety, and, for that reason, may be abated summarily under the undefined law of necessity. The second is that which depends upon certain conditions and circumstances, and its existence being a question of fact, it cannot be abated without due hearing thereon in a tribunal authorized to decide whether such a thing does in law constitute a nuisance.¹⁴

In the case at bar, the hotel, in itself, cannot be considered as a nuisance *per se* since this type of nuisance is generally defined as an act, occupation, or **structure, which is a nuisance at all**

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times and under any circumstances, **regardless of location** or surrounding.¹⁵ Here, it is merely the hotel's particular incident--its location--and not its inherent qualities that rendered it a nuisance. Otherwise stated, had it not been constructed in the no build zone, Boracay West Cove could have secured the necessary permits without issue. As such, petitioner is correct that the hotel is not a nuisance *per se*, but to Our mind, it is still a nuisance *per accidens*.

b. Respondent mayor has the power to order the demolition of illegal constructions

Generally, LGUs have no power to declare a particular thing as a nuisance unless such a thing is a nuisance *per se*.¹⁶ So it was held in *AC Enterprises v. Frabelle Properties Corp*:¹⁷

We agree with petitioner's contention that, under Section 447(a)(3)(i) of R.A. No. 7160, otherwise known as the Local Government Code, the Sangguniang Panglungsod is empowered to enact ordinances declaring, preventing or abating noise and other forms of nuisance. It bears stressing, however, that the Sangguniang Bayan cannot declare a particular thing as a nuisance *per se* and order its condemnation. **It does not have the power to find, as a fact, that a particular thing is a nuisance when such thing is not a nuisance per se; nor can it authorize the extrajudicial condemnation and destruction of that as a nuisance which in its nature, situation or use is not such. Those things must be determined and resolved in the ordinary courts of law.** If a thing, be in fact, a nuisance due to the manner of its operation, that question cannot be determined by a mere resolution of the Sangguniang Bayan. (*emphasis supplied*)

Despite the hotel's classification as a nuisance *per accidens*, however, We still find in this case that the LGU may nevertheless properly order the hotel's demolition. This is because, in the

exercise of police power and the general welfare clause,¹⁸ property rights of individuals may be subjected to restraints and burdens in order to fulfill the objectives of the government. Otherwise stated, the government may enact legislation that may interfere with personal liberty, property, lawful businesses and occupations to promote the general welfare.¹⁹

One such piece of legislation is the LGC, which authorizes city and municipal governments, acting through their local chief executives, to issue demolition orders. Under existing laws, the office of the mayor is given powers not only relative to its function as the executive official of the town; it has also been endowed with authority to hear issues involving property rights of individuals and to come out with an effective order or resolution thereon

The DENR does not have primary jurisdiction over the controversy

In alleging that the case concerns the development and the proper use of the country's environment and natural resources, petitioner is skirting the principal issue, which is Boracay West Cove's non-compliance with the permit, clearance, and zoning requirements for building constructions under national and municipal laws. He downplays Boracay West Cove's omission in a bid to justify ousting the LGU of jurisdiction over the case and transferring the same to the DENR. He attempts to blow the issue out of proportion when it all boils down to whether or not the construction of the three-storey hotel was supported by the necessary documentary requirements.

Based on law and jurisprudence, the office of the mayor has quasi-judicial powers to order the closing and demolition of establishments. This power granted by the LGC, as earlier explained, We believe, is not the same power devolved in favor of the LGU under Sec. 17 (b)(2)(ii), as above-quoted, which is subject to review by the DENR. The fact that the building to be demolished is located within a

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forestland under the administration of the DENR is of no moment, for what is involved herein, strictly speaking, is not an issue on environmental protection, conservation of natural resources, and the maintenance of ecological balance, but the legality or illegality of the structure. Rather than treating this as an environmental issue then, focus should not be diverted from the root cause of this debacle--compliance.

Ultimately, the purported power of review by a regional office of the DENR over respondents' actions exercised through an instrumentality of an ex-parte opinion, in this case, finds no sufficient basis. At best, the legal opinion rendered, though perhaps informative, is not conclusive on the courts and should be taken with a grain of salt.

- **Federico Sabay Vs. People of the Philippines** G.R. No. 192150. October 1, 2014

- **The Issues**
- On the basis of the same arguments raised before the CA, the petitioner questions: (1) the jurisdiction of the MTC over the criminal cases in view of the alleged inadmissibility of the Certification to File Action; and (2) the lower court's finding of guilt, its appreciation of the evidence and its rejection of the claim of self-defense.

The Office of the Barangay Captain Cannot be Precluded From Issuing a Certification to File an Action Where No Actual Settlement Was Reached; the Certification to File an Action Issued by The Office of The Barangay is Valid.

The present case was indisputably referred to the *Barangay Lupon* for conciliation prior to the institution of the criminal cases before the MTC. The

parties in fact admitted that a meeting before the *Lupon* transpired between them, resulting in a *Kasunduan*.

Although they initially agreed to settle their case, the *Kasunduan* that embodied their agreement was never implemented; no actual settlement materialized as the building inspector failed to make his promised recommendation to settle the dispute. The *Barangay* Captain was thus compelled to issue a Certification to File an Action, *indicating that the disputing parties did not reach any settlement*.

The CA correctly observed and considered the situation: the settlement of the case was conditioned on the recommendation of the building inspector; with no recommendation, no resolution of the conflict likewise took place.

Furthermore, the *Barangay* Captain, as a public official, is presumed to act regularly in the performance of official duty.¹³ In the absence of contrary evidence, this presumption prevails; his issuance of the disputed Certification to File an Action was regular and pursuant to law.¹⁴ Thus, the *Barangay* Captain properly issued the Certification to File an Action.

Even granting that an irregularity had intervened in the *Barangay* Captain's issuance of the Certification to File and Action, we note that this irregularity is not a jurisdictional flaw that warrants the dismissal of the criminal cases before the MTC. As we held in *Diu v. Court of Appeals*:¹⁵

Also, the conciliation procedure under Presidential Decree No. 1508 is not a jurisdictional requirement and non-compliance therewith cannot affect the jurisdiction which the lower courts had already acquired over the subject matter and private respondents as defendants therein.

Similarly, in *Garces v. Court of Appeals*,¹⁶ we stated that:

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In fine, we have held in the past that prior recourse to the conciliation procedure required under P.D. 1508 is not a jurisdictional requirement, non-compliance with which would deprive a court of its jurisdiction either over the subject matter or over the person of the defendant.

Thus, the MTC has jurisdiction to try and hear the petitioner's case; the claimed irregularity in conciliation procedure, particularly in the issuance of the Certification to File an Action, did not deprive the court of its jurisdiction. If at all, the irregularity merely affected the parties' cause of action.¹⁷

The Certification to File an Action is Admissible.

Section 34 of Rule 132 of our Rules on Evidence provides that the court cannot consider any evidence that has not been formally offered.¹⁹ Formal offer means that the offering party shall inform the court of the purpose of introducing its exhibits into evidence, to assist the court in ruling on their admissibility in case the adverse party objects.²⁰ Without a formal offer of evidence, courts cannot take notice of this evidence even if this has been previously marked and identified.

This rule, however, admits of an exception. The Court, in the appropriate cases, has relaxed the formal-offer rule and allowed evidence not formally offered to be admitted.

The cases of *People v. Napat-a*,²¹ *People v. Mate*,²² and *The Heirs of Romana Saves, et al. v. The Heirs of Escolastico Saves, et al.*,²³ to cite a few, enumerated the requirements so that evidence, not previously offered, can be admitted, namely: **first**, the evidence must have been duly identified by testimony duly recorded and, **second**, the evidence must have been incorporated in the records of the case.

In the present case, we find that the requisites for the relaxation of the formal-

offer rule are present. As the lower courts correctly observed, Godofredo identified the Certification to File an Action during his cross-examination, Although the Certification was not formally offered in evidence, it was marked as Exhibit "1" and attached to the records of the case.²⁵ Significantly, the petitioner never objected to Godofredo's testimony, particularly with the identification and marking of the Certification. In these lights, the Court sees no reason why the Certification should not be admitted.

The Claim of Self-Defense

Self-defense as a justifying circumstance under Article 11 of the Revised Penal Code, as amended, implies the admission by the accused that he committed the acts that would have been criminal in character had it not been for the presence of circumstances whose legal consequences negate the commission of a crime.²⁸ The plea of self-defense in order to exculpate the accused must be duly proven. The most basic rule is that no self-defense can be recognized until unlawful aggression is established.²⁹

Since the accused alleges self-defense, he carries the burden of evidence to prove that he satisfied the elements required by law;³⁰ he who alleges must prove. By admitting the commission of the act charged and pleading avoidance based on the law, he must rely on the strength of his own evidence to prove that the facts that the legal avoidance requires are present; the weakness of the prosecution's evidence is immaterial after he admitted the commission of the act charged.³¹

In this case, the petitioner admitted the acts attributed to him, and only pleads that he acted in self-defense. His case essentially rests on the existence of unlawful aggression – that Godofredo hit him with an iron bar on his right hand.

As the RTC and the CA pointed out, the petitioner failed to substantiate his claimed self-defense because he did not even present any medical certificate as

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supporting evidence, notwithstanding his claim that he consulted a doctor. Nor did he ever present the doctor he allegedly consulted.

His contention, too, that he was attacked by Godofredo and was shot with a .38 caliber gun by Jessie was refuted by the prosecution eyewitnesses – Rodolfo and Dina – who both testified that it was the petitioner who had attacked Godofredo.

The prosecution eyewitnesses' testimonies were supported by the medico legal certificates showing that Godofredo sustained a contusion on the left parietal area of his head and an abrasion on his left cheek. These medico legal findings are consistent with Godofredo's claim that the petitioner hit him and inflicted physical injuries.

In sum, we are fully satisfied that the petitioner is guilty beyond reasonable doubt of two (2) counts of slight physical injuries, as the lower courts found. His claim of self-defense fails for lack of supporting evidence; he failed to present any evidence of unlawful aggression and cannot thus be said to have hit Godofredo as a measure to defend himself.

• **Fe U. Quijano Vs. Atty. Darill Almante** G.R. No. 164277. October 8, 2014

Where the plaintiff does not prove her alleged tolerance of the defendant's occupation, the possession is deemed illegal from the beginning. Hence, the action for unlawful detainer is an improper remedy. But the action cannot be considered as one for forcible entry without any allegation in the complaint that the entry of the defendant was by means of force, intimidation, threats, strategy or stealth.

An ejectment case can be either for forcible entry or unlawful detainer. It is a summary proceeding designed to provide expeditious means to protect the actual possession or the right to possession of the property involved.¹⁹ The sole question for resolution in the case is the physical or material possession (*possession de facto*)

of the property in question, and neither a claim of juridical possession (*possession de jure*) nor an averment of ownership by the defendant can outrightly deprive the trial court from taking due cognizance of the case. Hence, even if the question of ownership is raised in the pleadings, like here, the court may pass upon the issue but only to determine the question of possession especially if the question of ownership is inseparably linked with the question of possession.²⁰ The adjudication of ownership in that instance is merely provisional, and will not bar or prejudice an action between the same parties involving the title to the property.²¹

Considering that the parties are both claiming ownership of the disputed property, the CA properly ruled on the issue of ownership for the sole purpose of determining who between them had the better right to possess the disputed property.

The disputed property originally formed part of the estate of the late Bibiano Quijano, and passed on to his heirs by operation of law upon his death.²² Prior to the partition, the estate was owned in common by the heirs, subject to the payment of the debts of the deceased.²³ In a co-ownership, the undivided thing or right belong to different persons, with each of them holding the property *pro indiviso* and exercising her rights over the whole property. Each co-owner may use and enjoy the property with no other limitation than that he shall not injure the interests of his co-owners. The underlying rationale is that until a division is actually made, the respective share of each cannot be determined, and every co-owner exercises, together with his co-participants, joint ownership of the *pro indiviso* property, in addition to his use and enjoyment of it.²⁴

Even if an heir's right in the estate of the decedent has not yet been fully settled and partitioned and is thus merely inchoate, Article 493²⁵ of the *Civil Code* gives the heir the right to

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exercise acts of ownership. Accordingly, when Eliseo sold the disputed property to the respondent in 1990 and 1991, he was only a co-owner along with his siblings, and could sell only that portion that *would be* allotted to him upon the termination of the co-ownership. The sale did not vest ownership of the disputed property in the respondent but transferred only the seller's *pro indiviso* share to him, consequently making him, as the buyer, a co-owner of the disputed property until it is partitioned.²⁶

As Eliseo's successor-in-interest or assignee, the respondent was vested with the right under Article 497 of the *Civil Code* to take part in the partition of the estate and to challenge the partition undertaken without his consent.²⁷

The respondent could not deny that at the time of the sale he knew that the property he was buying was not exclusively owned by Eliseo. He knew, too, that the co-heirs had entered into an oral agreement of partition vis-a-vis the estate, such knowledge being explicitly stated in his answer to the complaint,

There is no question that the holder of a Torrens title is the rightful owner of the property thereby covered and is entitled to its possession.³⁰ However, the Court cannot ignore that the statements in the petitioner's complaint about the respondent's possession of the disputed property being by the mere tolerance of Eliseo could be the basis for unlawful detainer. Unlawful detainer involves the defendant's withholding of the possession of the property to which the plaintiff is entitled, after the expiration or termination of the former's right to hold possession under the contract, whether express or implied. A requisite for a valid cause of action of unlawful detainer is that the possession was originally lawful, but turned unlawful only upon the expiration of the right to possess.

To show that the possession was initially lawful, the basis of such lawful possession must then be established. With the

avertment 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 her or her predecessor's tolerance, or her co-heirs' permission for him to occupy the disputed property.³¹ But she did not adduce such evidence. Instead, she appeared to be herself not clear and definite as to his possession of the disputed property being merely tolerated by Eliseo

In contrast, the respondent consistently stood firm on his assertion that his possession of the disputed property was in the concept of an owner, not by the mere tolerance of Eliseo, and actually presented the deeds of sale transferring ownership of the property to him.³³

Considering that the allegation of the petitioner's tolerance of the respondent's possession of the disputed property was not established, the possession could very well be deemed illegal from the beginning. In that case, her action for unlawful detainer has to fail.³⁴ Even so, the Court would not be justified to treat this ejectment suit as one for forcible entry because the complaint contained no allegation that his entry in the property had been by force, intimidation, threats, strategy or stealth.

Regardless, the issue of possession between the parties will still remain. To finally resolve such issue, they should review their options and decide on their proper recourses. In the meantime, it is wise for the Court to leave the door open to them in that respect. For now, therefore, this recourse of the petitioner has to be dismissed.

• **Centennial Guarantee Assurance Corporation Vs. Universal Motors Corporation, Rodrigo T. Janeo, Jr., Gerardo Gelle, et al.** G.R. No. 189358. October 8, 2014

• **The Issues Before the Court**

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- The central issues in this case are: (a) whether or not good reasons exist to justify execution pending appeal against CGAC which is a mere surety; and (b) whether or not CGAC's liability on the bond should be limited to P500,000.00.

The Court's Ruling

The petition is unmeritorious.

The execution of a judgment pending appeal is an exception to the general rule that only a final judgment may be executed; hence, under Section 2, Rule 39 of the Rules of Court (Rules), the existence of "good reasons" for the immediate execution of a judgment is an indispensable requirement as this is what confers discretionary power on a court to issue a writ of execution pending appeal.²⁴ Good reasons consist of compelling circumstances justifying immediate execution, lest judgment becomes illusory,²⁵ that is, the prevailing party's chances for recovery on execution from the judgment debtor are altogether nullified. The "good reason" yardstick imports a superior circumstance demanding urgency that will outweigh injury or damage to the adverse party²⁶ and one such "good reason" that has been held to justify discretionary execution is the imminent danger of insolvency of the defeated party.²⁷

The factual findings that NSSC is under a state of rehabilitation and had ceased business operations, taken together with the information that NSSC President and General Manager Orimaco had permanently left the country with his family, constitute such superior circumstances that demand urgency in the execution of the October 31, 2007 Decision because respondents now run the risk of its non-satisfaction by the time the appeal is decided with finality. Notably, as early as April 22, 2008, the rehabilitation receiver had manifested before the rehabilitation court the futility of

rehabilitating NSSC because of the latter's insincerity in the implementation of the rehabilitation process.²⁸ **Clearly, respondents' diminishing chances of recovery from the favorable Decision is a good reason to justify immediate execution; hence, it would be improper to set aside the order granting execution pending appeal.**

That CGAC's financial standing differs from that of NSSC does not negate the order of execution pending appeal. As the latter's surety, CGAC is considered by law as being the same party as the debtor in relation to whatever is adjudged touching the obligation of the latter, and their liabilities are interwoven as to be inseparable.²⁹ Verily, in a contract of suretyship, one lends his credit by joining in the principal debtor's obligation so as to render himself directly and primarily responsible with him, and without reference to the solvency of the principal.³⁰ Thus, execution pending appeal against NSSC means that the same course of action is warranted against its surety, CGAC. The same reason stands for CGAC's other principal, Orimaco, who was determined to have permanently left the country with his family to evade execution of any judgment against him.

- **George Philip P. Palileo and Jose De La Cruz Vs. Planters Development Bank** G.R. No. 193650. October 8, 2014

- Indeed, its filing or service of a copy thereof to petitioners by courier service cannot be trivialized. Service and filing of pleadings by courier service is a mode not provided in the Rules.³³ This is not to mention that PDB sent a copy of its omnibus motion to an address or area which was not covered by LBC courier service at the time. Realizing its mistake, PDB re-filed and re-sent the omnibus motion by registered mail, which is the proper mode of service under the circumstances. By then, however, the 15-day period had expired.

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- PDB's Notice of Appeal, which was filed only on September 7, 2006, was tardy; it had only up to August 1, 2006 within which to file the same. The trial court therefore acted regularly in denying PDB's notice of appeal.
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- Since PDB's Omnibus Motion for Reconsideration and for New Trial was filed late and the 15-day period within which to appeal expired without PDB filing the requisite notice of appeal, it follows that its right to appeal has been foreclosed; it may no longer question the trial court's Decision in any other manner. "Settled is the rule that a party is barred from assailing the correctness of a judgment not appealed from by him."³⁴ The "presumption that a party who did not interject an appeal is satisfied with the adjudication made by the lower court"³⁵ applies to it. There being no appeal taken by PDB from the adverse judgment of the trial court, its Decision has become final and can no longer be reviewed, much less reversed, by this Court. "Finality of a judgment or order becomes a fact upon the lapse of the reglementary period to appeal if no appeal is perfected, and is conclusive as to the issues actually determined and to every matter which the parties might have litigated and have x x x decided as incident to or essentially connected with the subject matter of the litigation, and every matter coming within the legitimate purview of the original action both in respect to matters of claim and of defense."³⁶ And "[i]n this jurisdiction, the rule is that when a judgment becomes final and executory, it is the ministerial duty of the court to issue a writ of execution to enforce the judgment;"³⁷ "execution will issue as a matter of right x x x (a) when the judgment has become

final and executory; (b) when the judgment debtor has renounced or waived his right of appeal; [or] (c) when the period for appeal has lapsed without an appeal having been filed x x x."³⁸

- **Eliza Zuniga-Santos, represented by her attorney-in-fact, Nympha Z. Sales Vs. Maria Divinagracia Santos-Gran, et al.** G.R. No.197380. October 8, 2014

• The Issue Before the Court

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- The primordial issue for the Court's resolution is whether or not the dismissal of petitioner's Amended Complaint should be sustained.
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The Court's Ruling

Failure to state a cause of action and lack of cause of action are distinct grounds to dismiss a particular action. The former refers to the insufficiency of the allegations in the pleading, while the latter to the insufficiency of the factual basis for the action. Dismissal for failure to state a cause of action may be raised at the earliest stages of the proceedings through a motion to dismiss under Rule 16 of the Rules of Court, while dismissal for lack of cause of action may be raised any time after the questions of fact have been resolved on the basis of stipulations, admissions or evidence presented by the plaintiff.²⁶

In the case at bar, both the RTC and the CA were one in dismissing petitioner's Amended Complaint, but varied on the grounds thereof – that is, the RTC held that there was failure to state a cause of action while the CA ruled that there was insufficiency of factual basis.

At once, it is apparent that the CA based its dismissal on an incorrect ground. From the preceding discussion, it is clear that "insufficiency of factual basis" is not a ground for a motion to dismiss. Rather, it is a ground which becomes available only after the questions of fact have been resolved on the basis of stipulations,

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admissions or evidence presented by the plaintiff. The procedural recourse to raise such ground is a demurrer to evidence taken only after the plaintiff's presentation of evidence. This parameter is clear under Rule 33 of the Rules of Court:

At the preliminary stages of the proceedings, without any presentation of evidence even conducted, it is perceptibly impossible to assess the insufficiency of the factual basis on which the plaintiff asserts his cause of action, as in this case. Therefore, that ground could not be the basis for the dismissal of the action.

However, the Amended Complaint is still dismissible but on the ground of failure to state a cause of action, as correctly held by the RTC. Said ground was properly raised by Gran in a motion to dismiss pursuant to Section 1, Rule 16 of the Rules of Court:

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.²⁹ 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.³⁰

It is well to point out that the plaintiff's cause of action should not merely be "stated" but, importantly, the statement thereof should be "sufficient." This is why the elementary test in a motion to dismiss on such ground is whether or not the complaint alleges facts which if true would

justify the relief demanded.³¹ As a corollary, it has been held that only ultimate facts and not legal conclusions or evidentiary facts are considered for purposes of applying the test.³² This is consistent with Section 1, Rule 8 of the Rules of Court which states that the complaint need only allege the ultimate facts or the essential facts constituting the plaintiff's cause of action. A fact is essential if they cannot be stricken out without leaving the statement of the cause of action inadequate.³³ Since the inquiry is into the sufficiency, not the veracity, of the material allegations, it follows that the analysis should be confined to the four corners of the complaint, and no other.³⁴

A judicious examination of petitioner's Amended Complaint readily shows its failure to sufficiently state a cause of action. Contrary to the findings of the CA, the allegations therein do not proffer ultimate facts which would warrant an action for nullification of the sale and recovery of the properties in controversy, hence, rendering the same dismissible.

While the Amended Complaint does allege that petitioner was the registered owner of the subject properties in dispute, nothing in the said pleading or its annexes would show the basis of that assertion, either through statements/documents tracing the root of petitioner's title or copies of previous certificates of title registered in her name. Instead, the certificates of title covering the said properties that were attached to the Amended Complaint are in the name of Gran. At best, the attached copies of TCT Nos. N-5500 and N-4234 only mention petitioner as the representative of Gran at the time of the covered property's registration when she was a minor. Nothing in the pleading, however, indicates that the former had become any of the properties' owner. This leads to the logical conclusion that her right to the properties in question – at least through the manner in which it was alleged in the Amended Complaint – remains ostensibly unfounded. Indeed,

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while the facts alleged in the complaint are hypothetically admitted for purposes of the motion, it must, nevertheless, be remembered that the hypothetical admission extends only to the relevant and material facts **well pleaded** in the complaint as well as to inferences fairly deductible therefrom.³⁵ Verily, the filing of the motion to dismiss assailing the sufficiency of the complaint does not hypothetically admit allegations of which the court will take judicial notice of to be not true, nor does the rule of hypothetical admission apply to legally impossible facts, or to facts inadmissible in evidence, or to **facts that appear to be unfounded by record or document included in the pleadings.**³⁶

Aside from the insufficiency of petitioner's allegations with respect to her right to the subject properties sought to be recovered, the ultimate facts supposedly justifying the "annulment of sale," by which the reconveyance of the subject properties is sought, were also insufficiently pleaded.

Clearly, the claim that the sale was effected through "voidable and void documents" partakes merely of a conclusion of law that is not supported by any averment of circumstances that will show why or how such conclusion was arrived at. In fact, what these "voidable and void documents" are were not properly stated and/or identified. In *Abad v. Court of First Instance of Pangasinan*,³⁸ the Court pronounced that:

A pleading should state the ultimate facts essential to the rights of action or defense asserted, as distinguished from mere conclusions of fact, or conclusions of law. General allegations that a contract is valid or legal, or is just, fair, and reasonable, are mere conclusions of law. Likewise, **allegations that a contract is void, voidable, invalid, illegal, ultra vires, or against public policy, without stating facts showing its invalidity, are mere conclusions of law.**³⁹

(Emphases supplied)

Hence, by merely stating a legal conclusion, the Amended Complaint presented no sufficient allegation upon which the Court could grant the relief petitioner prayed for. Thus, said pleading should be dismissed on the ground of failure to state cause of action, as correctly held by the RTC.

That a copy of the Deed of Sale adverted to in the Amended Complaint was subsequently submitted by petitioner does not warrant a different course of action. The submission of that document was made, as it was purportedly "recently recovered," only on reconsideration before the CA which, nonetheless, ruled against the remand of the case. An examination of the present petition, however, reveals no counter-argument against the foregoing actions; hence, the Court considers any objection thereto as waived.

In any event, the Court finds the Amended Complaint's dismissal to be in order considering that petitioner's cause of action had already prescribed.

It is evident that petitioner ultimately seeks for the reconveyance to her of the subject properties through the nullification of their supposed sale to Gran. An action for reconveyance is one that seeks to transfer property, wrongfully registered by another, to its rightful and legal owner.⁴⁰ Having alleged the commission of fraud by Gran in the transfer and registration of the subject properties in her name, there was, in effect, an implied trust created by operation of law pursuant to Article 1456 of the Civil Code which provides:

Art. 1456. If property is acquired through mistake or fraud, the person obtaining it is, by force of law, considered a trustee of an implied trust for the benefit of the person from whom the property comes.

To determine when the prescriptive period commenced in an action for

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reconveyance, the plaintiff's possession of the disputed property is material. **If there is an actual need to reconvey the property as when the plaintiff is not in possession, the action for reconveyance based on implied trust prescribes in ten (10) years, the reference point being the date of registration of the deed or the issuance of the title.** On the other hand, if the real owner of the property remains in possession of the property, the prescriptive period to recover title and possession of the property does not run against him and in such case, the action for reconveyance would be in the nature of a suit for quieting of title which is imprescriptible.⁴¹

In the case at bar, a reading of the allegations of the Amended Complaint failed to show that petitioner remained in possession of the subject properties in dispute. On the contrary, it can be reasonably deduced that it was Gran who was in possession of the subject properties, there being an admission by the petitioner that the property covered by TCT No. 224174 was being used by Gran's mother-in-law.⁴² In fact, petitioner's relief in the Amended Complaint for the "surrender" of three (3) properties to her bolsters such stance.⁴³ And since the new titles to the subject properties in the name of Gran were issued by the Registry of Deeds of Marikina on the following dates: TCT No. 224174 on July 27, 1992,⁴⁴ TCT No. N-5500 on January 29, 1976,⁴⁵ and TCT No. N-4234 on November 26, 1975,⁴⁶ the filing of the petitioner's complaint before the RTC on January 9, 2006 was obviously beyond the ten-year prescriptive period, warranting the Amended Complaint's dismissal all the same.

- **Ramon Ching and Po Wing Properties, Inc Vs. Joseph Cheng, Jaime Cheng, Mercedes Igme and Lucina Santos** G.R. No. 175507. October 8, 2014

Rule 17 of the Rules of Civil Procedure governs dismissals of actions at the instance of the plaintiff. Hence, the "two-

dismissal rule" under Rule 17, Section 1 of the Rules of Civil Procedure will not apply if the prior dismissal was done at the instance of the defendant.

The "two-dismissal rule" vis-a-vis the Rules of Civil Procedure

Dismissals of actions are governed by Rule 17 of the 1997 Rules of Civil Procedure. The pertinent provisions state:

RULE 17 DISMISSAL OF ACTIONS

SEC. 1. Dismissal upon notice by plaintiff. — A complaint may be dismissed by the plaintiff by filing a notice of dismissal at any time before service of the answer or of a motion for summary judgment. Upon such notice being filed, the court shall issue an order confirming the dismissal. *Unless otherwise stated in the notice, the dismissal is without prejudice, except that a notice operates as an adjudication upon the merits when filed by a plaintiff who has once dismissed in a competent court an action based on or including the same claim.*

SEC. 2. Dismissal upon motion of plaintiff. — Except as provided in the preceding section, a complaint shall not be dismissed at the plaintiffs instance save upon approval of the court and upon such terms and conditions as the court deems proper. If a counterclaim has been pleaded by a defendant prior to the service upon him of the plaintiffs motion for dismissal, the dismissal shall be limited to the complaint. The dismissal shall be without prejudice to the right of the defendant to prosecute his counterclaim in a separate action unless within fifteen (15) days from notice of the motion he manifests his preference to have his counterclaim resolved in the same action. *Unless otherwise specified in the order, a dismissal under this paragraph shall be without prejudice.* A class suit shall not be dismissed or compromised without the approval of the court.

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SEC. 3. Dismissal due to fault of plaintiff. — If, for no justifiable cause, the plaintiff fails to appear on the date of the presentation of his evidence in chief on the complaint, or to prosecute his action for an unreasonable length of time, or to comply with these Rules or any order of the court, the complaint may be dismissed upon motion of the defendant or upon the court's own motion, without prejudice to the right of the defendant to prosecute his counterclaim in the same or in a separate action. *This dismissal shall have the effect of an adjudication upon the merits, unless otherwise declared by the court.* (Emphasis supplied)

The first section of the rule contemplates a situation where a plaintiff requests the dismissal of the case before any responsive pleadings have been filed by the defendant. It is done through notice by the plaintiff and confirmation by the court. The dismissal is *without* prejudice unless otherwise declared by the court.

The second section of the rule contemplates a situation where a counterclaim has been pleaded by the defendant before the service on him or her of the plaintiff's motion to dismiss. It requires leave of court, and the dismissal is generally *without* prejudice unless otherwise declared by the court.

The third section contemplates dismissals due to the fault of the plaintiff such as the failure to prosecute. The case is dismissed either upon motion of the defendant or by the court *motu proprio*. Generally, the dismissal is *with* prejudice unless otherwise declared by the court.

In all instances, Rule 17 governs dismissals at the instance of the plaintiff, not of the defendant. Dismissals upon the instance of the defendant are generally governed by Rule 16, which covers motions to dismiss.⁶³

In *Insular Veneer, Inc. v. Hon. Plan*,⁶⁴ Consolidated Logging and Lumber Mills

filed a complaint against Insular Veneer to recover some logs the former had delivered to the latter. It also filed *ex parte* a motion for issuance of a restraining order. The complaint and motion were filed in a trial court in Isabela.⁶⁵

The trial court granted the motion and treated the restraining order as a writ of preliminary injunction. When Consolidated Logging recovered the logs, it filed a notice of dismissal under Rule 17, Section 1 of the 1964 Rules of Civil Procedure.⁶⁶

While the action on its notice for dismissal was pending, Consolidated Logging filed the same complaint against Insular Veneer, this time in a trial court in Manila. It did not mention any previous action pending in the Isabela court.⁶⁷

The Manila court eventually dismissed the complaint due to the non-appearance of Consolidated Logging's counsel during pre-trial. Consolidated Logging subsequently returned to the Isabela court to revive the same complaint. The Isabela court apparently treated the filing of the amended complaint as a withdrawal of its notice of dismissal.⁶⁸

Insular Veneer also filed in the Isabela court a motion to dismiss, arguing that the dismissal by the Manila court constituted *res judicata* over the case. The Isabela court, presided over by Judge Plan, denied the motion to dismiss. The dismissal was the subject of the petition for certiorari and mandamus with this court.⁶⁹

As a general rule, dismissals under Section 1 of Rule 17 are without prejudice except when it is the second time that the plaintiff caused its dismissal. Accordingly, for a dismissal to operate as an adjudication upon the merits, i.e., *with prejudice to the re-filing of the same claim*, the following requisites must be present:

(1) There was a previous case that was dismissed by a competent court;

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(2) Both cases were based on or include the same claim;
 (3) Both notices for dismissal were filed by the plaintiff; and
 (4) When the motion to dismiss filed by the plaintiff was consented to by the defendant on the ground that the latter paid and satisfied all the claims of the former.⁷²

The purpose of the "two-dismissal rule" is "to avoid vexatious litigation."⁷³ When a complaint is dismissed a second time, the plaintiff is now barred from seeking relief on the same claim.

The dismissal of the second case was without prejudice in view of the "two-dismissal rule"

Here, the first case was filed as an ordinary civil action. It was later amended to include not only new defendants but new causes of action that should have been adjudicated in a special proceeding. A motion to dismiss was inevitably filed by the defendants on the ground of lack of jurisdiction.

The trial court dismissed the first case by granting the motion to dismiss filed *by the defendants*. When it allowed Atty. Mirardo Arroyo Obias a period of fifteen (15) days to file an appropriate pleading, it was merely acquiescing to a request made by the plaintiffs counsel that had no bearing on the dismissal of the case.

Under Rule 17, Section 3, a defendant may move to dismiss the case if the plaintiff defaults; it does not contemplate a situation where the dismissal was due to lack of jurisdiction. Since there was already a dismissal prior to plaintiffs default, the trial court's instruction to file the appropriate pleading will not reverse the dismissal. If the plaintiff fails to file the appropriate pleading, the trial court does not dismiss the case anew; the order dismissing the case still stands.

The dismissal of the first case was done at the instance of the defendant under Rule

16, Section 1(b) of the Rules of Civil Procedure, which states:

SECTION 1. Grounds. — Within the time for but before filing the answer to the complaint or pleading asserting a claim, a motion to dismiss may be made on any of the following grounds:

....

(b) That the court has no jurisdiction over the subject matter of the claim;⁷⁴

....

Under Section 5 of the same rule,⁷⁵ a party may re-file the same action or claim subject to certain exceptions.

Thus, when respondents filed the second case, they were merely re-filing the same claim that had been previously dismissed on the basis of lack of jurisdiction. When they moved to dismiss the second case, the motion to dismiss can be considered as the first dismissal at the plaintiffs instance.

When respondents filed the third case on substantially the same claim, there was already one prior dismissal at the instance of the plaintiffs and one prior dismissal at the instance of the defendants. While it is true that there were two previous dismissals on the same claim, it does not necessarily follow that the re-filing of the claim was barred by Rule 17, Section 1 of the Rules of Civil Procedure. The circumstances surrounding each dismissal must first be examined to determine before the rule may apply, as in this case.

Even assuming for the sake of argument that the failure of Atty. Mirardo Arroyo Obias to file the appropriate pleading in the first case came under the purview of Rule 17, Section 3 of the Rules of Civil Procedure, the dismissal in the second case is still considered as one *without prejudice*. In *Gomez v. Alcantara*:⁷⁹

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The dismissal of a case for failure to prosecute has the effect of adjudication on the merits, and is necessarily understood to be with prejudice to the filing of another action, *unless otherwise provided in the order of dismissal*. Stated differently, the general rule is that dismissal of a case for failure to prosecute is to be regarded as an adjudication on the merits and with prejudice to the filing of another action, and the only exception is when the order of dismissal expressly contains a qualification that the dismissal is without prejudice.⁸⁰ (Emphasis supplied)

In granting the dismissal of the second case, the trial court specifically orders the dismissal to be without prejudice. It is only when the trial court's order either is silent on the matter, or states otherwise, that the dismissal will be considered an adjudication on the merits.

However, while the dismissal of the second case was without prejudice, respondents' act of filing the third case while petitioners' motion for reconsideration was still pending constituted forum shopping.

The rule against forum shopping and the "twin-dismissal rule"

In *Yap v. Chua*:⁸¹

Forum shopping is the institution of two or more actions or proceedings involving the same parties for the same cause of action, either simultaneously or successively, on the supposition that one or the other court would make a favorable disposition. Forum shopping may be resorted to by any party against whom an adverse judgment or order has been issued in one forum, in an attempt to seek a favorable opinion in another, other than by appeal or a special civil action for certiorari. Forum shopping trifles with the courts, abuses their processes, degrades the administration of justice and congest court dockets. What is critical is the vexation brought upon the courts and the litigants

by a party who asks different courts to rule on the same or related causes and grant the same or substantially the same reliefs and in the process creates the possibility of conflicting decisions being rendered by the different fora upon the same issues. Willful and deliberate violation of the rule against forum shopping is a ground for summary dismissal of the case; it may also constitute direct contempt.

To determine whether a party violated the rule against forum shopping, the most important factor to ask is whether the elements of *litis pendentia* are present, or whether a final judgment in one case will amount to *res judicata* in another; otherwise stated, the test for determining forum shopping is whether in the two (or more) cases pending, there is identity of parties, rights or causes of action, and reliefs sought.⁸² (Emphasis supplied)

When respondents filed the third case, petitioners' motion for reconsideration of the dismissal of the second case was still pending. Clearly, the order of dismissal was not yet final since it could still be overturned upon reconsideration, or even on appeal to a higher court.

Moreover, petitioners were not prohibited from filing the motion for reconsideration. This court has already stated in *Narciso v. Garcia*⁸³ that a defendant has the right to file a motion for reconsideration of a trial court's order denying the motion to dismiss since "[n]o rule prohibits the filing of such a motion for reconsideration."⁸⁴ The second case, therefore, was still pending when the third case was filed.

The prudent thing that respondents could have done was to wait until the final disposition of the second case before filing the third case. As it stands, the dismissal of the second case was without prejudice to the re-filing of the same claim, in accordance with the Rules of Civil Procedure. In their haste to file the third case, however, they unfortunately transgressed certain procedural

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safeguards, among which are the rules on *litis pendentia* and *res judicata*.

There is no question that there was an identity of parties, rights, and reliefs in the second and third cases. While it may be true that the trial court already dismissed the second case when the third case was filed, it failed to take into account that a motion for reconsideration was filed in the second case and, thus, was still pending. Considering that the dismissal of the second case was the subject of the first certiorari case and this present petition for review, it can be reasonably concluded that the second case, to this day, remains pending.

Hence, when respondents filed the third case, they engaged in forum shopping. Any judgment by this court on the propriety of the dismissal of the second case will inevitably affect the disposition of the third case.

This, in fact, is the reason why there were two different petitions for certiorari before the appellate court. The omnibus order dated July 30, 2004 denied two pending motions by petitioners: (1) the motion for reconsideration in the second case and (2) the motion to dismiss in the third case. Since petitioners are barred from filing a second motion for reconsideration of the second case, the first certiorari case was filed before the appellate court and is now the subject of this review.

The denial of petitioners' motion for reconsideration in the third case, however, could still be the subject of a separate petition for certiorari. That petition would be based now on the third case, and not on the second case.

This multiplicity of suits is the very evil sought to be avoided by the rule on forum shopping.

In this case, however, the dismissal of the first case became final and executory upon the failure of respondents' counsel to file the appropriate pleading. They filed the correct pleading the second time

around but eventually sought its dismissal as they "[suspected] that their counsel is not amply protecting their interests as the case is not moving for almost three (3) years."⁹¹ The filing of the third case, therefore, was not precisely for the purpose of obtaining a favorable result but only to get the case moving, in an attempt to protect their rights.

It appears that the resolution on the merits of the original controversy between the parties has long been mired in numerous procedural entanglements. While it might be more judicially expedient to apply the "twin-dismissal rule" and disallow the proceedings in the third case to continue, it would not serve the ends of substantial justice. Courts of justice must always endeavor to resolve cases on their merits, rather than summarily dismiss these on technicalities:

The rule on forum shopping will not strictly apply when it can be shown that (1) the original case has been dismissed upon request of the plaintiff for valid procedural reasons; (2) the only pending matter is a motion for reconsideration; and (3) there are valid procedural reasons that serve the goal of substantial justice for the fresh new case to proceed.

The motion for reconsideration filed in the second case has since been dismissed and is now the subject of a petition for certiorari. The third case filed apparently contains the better cause of action for the plaintiffs and is now being prosecuted by a counsel they are more comfortable with. Substantial justice will be better served if respondents do not fall victim to the labyrinth in the procedures that their travails led them. It is for this reason that we deny the petition.

- **Zarsona Medical Clinic Vs. Philippine Health Insurance Corporation** G.R. No. 191225. October 13, 2014

- Verification of a pleading is a formal, not jurisdictional, requirement intended to secure the assurance that the matters alleged

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in a pleading are true and correct. Thus, the court may simply order the correction of unverified pleadings or act on them and waive strict compliance with the rules. It is deemed substantially complied with when one who has ample knowledge to swear to the truth of the allegations in the complaint or petition signs the verification, and when matters alleged in the petition have been made in good faith or are true and correct.¹¹

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- 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."¹² Rule 7, Section 5 of the Rules of the Court, requires that the certification should be signed by the "petitioner or principal party" himself. The *rationale* behind this is "because only the petitioner himself has actual knowledge of whether or not he has initiated similar actions or proceedings in different courts or agencies."¹³
-
- In *Lim v. The Court of Appeals, Mindanao Station*,¹⁴ we reiterated that the requirements of verification and certification against forum shopping are not jurisdictional. Verification is required to secure an assurance that the allegations in the petition have been made in good faith or are true and correct, and not merely speculative. Non-compliance with the verification requirement does not necessarily render the pleading fatally defective, and is substantially

complied with when signed by one who has ample knowledge of the truth of the allegations in the complaint or petition, and when matters alleged in the petition have been made in good faith or are true and correct. On the other hand, the certification against forum shopping is required based on the principle that a party-litigant should not be allowed to pursue simultaneous remedies in different *fora*. While the certification requirement is obligatory, non-compliance or a defect in the certificate could be cured by its subsequent correction or submission under special circumstances or compelling reasons, or on the ground of "substantial compliance."¹⁵

-
- In both cases, the submission of an SPA authorizing an attorney-in-fact to sign the verification and certification against forum-shopping in behalf of the principal party is considered as substantial compliance with the Rules.

- **Spouses Benedict and Sandra Manuel Vs. Ramon Ong** G.R. No. 205249. October 15, 2014

For resolution is the sole issue of whether the Spouses Manuel may be granted relief from the Regional Trial Court's June 28, 2010 order of default.

Jurisdiction over the persons of the Spouses Manuel acquired

As a preliminary matter, we rule on whether jurisdiction over the persons of the Spouses Manuel, as defendants in Civil Case No. 09-CV-2582, was validly acquired. This preliminary matter is determinative of whether the fifteen-day period within which they must file their answer started to run, thereby facilitating the context in which they could have validly been declared to be in default.

We hold that jurisdiction over the persons

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of both defendants in Civil Case No. 09-CV-2582 — the Spouses Benedict and Sandra Manuel — was validly acquired. This is so because personal service of summons, via tender to petitioner Sandra Manuel, was made by Sheriff Joselito Sales on March 16, 2010.

Tendering summons is itself a means of personal service as it is contained in Rule 14, Section 6. Personal service, as provided by Rule 14, Section 6, is distinguished from its alternative :— substituted service — as provided by Rule 14, Section 7:

SEC. 7. Substituted service. — If, for justifiable causes, the defendant cannot be served within a reasonable time *as provided in the preceding section*, 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 some competent person in charge thereof. (Emphasis supplied)

In this case, the sheriffs return on summons indicated that Sheriff Joselito Sales endeavored to personally hand the summons and a copy of the complaint to the Spouses Manuel on two (2) separate occasions. He relented from doing so on the first occasion in deference to the medical condition of petitioner Sandra Manuel's mother. On the second occasion, he was constrained to tender the summons and copy of the complaint as petitioner Sandra Manuel refused to accept them.

The Spouses Manuel did not deny the occurrence of the events narrated in the sheriffs return but claimed that no valid service of summons was made. They claimed that they did not reside in Lower Bacong, Loacan, Itogon, Benguet, where the service of summons, was made. From this, they surmised that the "Sandra Manuel" who was specifically identified in the sheriffs return was someone other

than petitioner Sandra Manuel.

The Spouses Manuel cannot capitalize on the supposed variance of address. Personal service of summons has nothing to do with the location where summons is served. A defendant's address is inconsequential. Rule 14, Section 6 of the 1997 Rules of Civil Procedure is clear in what it requires: *personally handing the summons to the defendant* (albeit tender is sufficient should the defendant refuse to receive and sign). What is determinative of the validity of personal service is, therefore, the person of the defendant, not the locus of service.

In any case, the Court of Appeals is correct in pointing out that the Spouses Manuel's self-serving assertion must crumble in the face of the clear declarations in the sheriffs return.²¹ Pursuant to Rule 131, Section 3(m) of the Revised Rules on Evidence,²² the acts of Sheriff Joselito Sales and the events relating to the attempt to personally hand the summons and a copy of the complaint to the Spouses Manuel, as detailed in the sheriffs return, enjoy the presumption of regularity.²³ Moreover, Sheriff Joselito Sales must be presumed to have taken ordinary care and diligence in carrying out his duty to make service upon the proper person(s) and not upon an impostor.²⁴

A sheriffs return, if complete on its face, must be accorded the presumption of regularity and, hence, taken to be an accurate and exhaustive recital of the circumstances relating to the steps undertaken by a sheriff. In this case, the Spouses Manuel have harped on their (self-serving) claim of maintaining residence elsewhere but failed to even allege that there was anything irregular about the sheriffs return or that it was otherwise incomplete.

Having alleged irregularities in the service of summons, it was incumbent upon the Spouses Manuel to adduce proof of their claims. All they mustered was their self-serving allegation of an alternative

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address. If at all, this claim of maintaining residence elsewhere should not even be lent an iota of credibility considering that, as respondent Ramon Ong pointed out, the barangay clearances, which the Spouses Manuel themselves attached to one of their pleadings (as proof of their identities), actually indicated that they were residents of Bacong Loacan, Itogon, Benguet.²⁵ Their lie is, thus, revealed by their own pleading.

As the Spouses Manuel not only failed in discharging the burden of proving their allegation but even succeeded in contradicting themselves, Sheriff Joselito Sales' recollection of events must be taken to be true. Thus, valid personal service of summons, via tender to petitioner Sandra Manuel, was made. From this, it follows that jurisdiction over the persons of petitioners Benedict and Sandra Manuel was acquired by the Regional Trial Court, La Trinidad, Benguet, in Civil Case No. 09-CV-2582.

The Spouses Manuel are not entitled to relief from the order of default

As valid service of summons was made on them, it was incumbent upon the Spouses Manuel, pursuant to Rule 11, Section 1 of the 1997 Rules of Civil Procedure,²⁶ to file their answer within fifteen (15) days from March 16, 2011. Having failed to do so, they were rightly declared to be in default.

Rule 9, Section 3 of the 1997 Rules of Civil Procedure provides for when a party to an action may be declared in default. Further, Rule 9, Section 3(b) governs the grant of relief from orders of default:

SEC. 3. *Default; declaration of.* — If the defending party fails to answer within the time allowed therefor, the court shall, upon motion of the claiming party with notice to the defending party, and proof of such failure, declare the defending party in default. Thereupon, the court shall proceed to render judgment granting the claimant such relief as his pleading may

warrant, unless the court in its discretion requires the claimant to submit evidence. Such reception of evidence may be delegated to the clerk of court.

(a) *Effect of order of default.* — A party in default shall be entitled to notice of subsequent proceedings but not to take part in the trial.

(b) *Relief from order of default.* — A party declared in default may at any time after notice thereof and before judgment file a motion under oath to set aside the order of default upon proper showing that his failure to answer was *due to fraud, accident, mistake or excusable negligence and that he has a meritorious defense*. In such case, the order of default may be set aside on such terms and conditions as the judge may impose in the interest of justice. (Emphasis supplied)

Pursuant to Rule 9, Section 3, a court may proceed to render judgment as the pleading may warrant should a defendant fail to timely file his or her answer. However, a court may decline from immediately rendering judgment and instead require the plaintiff to present evidence. Per Rule 9, Section 3(a), a party declared to be in default shall nevertheless be "entitled to notice of subsequent proceedings," although he or she may no longer take part in the trial.

As explained in *Spouses Delos Santos v. Carpio*,²⁷ "there are three requirements which must be complied with by the claiming party before the court may declare the defending party in default:

- (1) the claiming party must file a motion asking for relief from default;
- (2) the defending party must be notified of the motion;
- (3) the claiming party must prove that the requirements are met within the period provided by the Rule."²⁸

All these requisites were complied with by respondent Ramon Ong.

It is not disputed that Ong filed a motion

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to declare the Spouses Manuel in default. It is also not disputed that the latter filed their answer after the fifteen-day period, counted from March 16, 2010, had lapsed. The Spouses Manuel only filed their answer along with their motion to lift order of default on September 13, 2010.

It is similarly settled that the Spouses Manuel were notified that a motion to declare them in default had been filed. They acknowledged in the present petition for *certiorari* that on June 23, 2010, Ong filed a compliance to the Regional Trial Court's April 30, 2010 order that required the submission of the registry return card evidencing the mailing to the Spouses Manuel of a copy of the motion to have them declared in default.

Not only were the requisites for declaring a party in default satisfied, the Spouses Manuel's motion to lift order of default was also shown to be procedurally infirm.

Consistent with Rule 9, Section 3(b) of the 1997 Rules of Civil Procedure, "the remedy against an order of default is a motion to set it aside on the ground of fraud, accident, mistake, or excusable negligence."^[29] However, it is not only the motion to lift order of default which a defendant must file. As this court emphasized in *Agravante v. Patriarca*,³⁰ to the motion to lift order, of default must "be appended an affidavit showing the invoked ground, and another, denominated affidavit of merit, setting forth facts constituting the party's meritorious defense or defenses."³¹

The heed for an affidavit of merit is consistent with Rule 8, Section 5 of the 1997 Rules of Civil Procedure,³² which requires that "[i]n all averments of fraud or mistake, the circumstances constituting fraud or mistake must be stated with particularity."

In *Montinola, Jr. v. Republic Planters Bank*,³³ this court noted that the three (3) requisites that must be satisfied by a motion in order "to warrant the setting

aside of an order of default for failure to file _____ answer, are:

- (1) it must be made by motion under oath by o
- (2) it must be shown that the failure to file a excusable negligence; and
- (3) there must be a proper showing of the ex omitted)

Consistent with *Agravante*, it is through an affidavit of merit that a defendant seeking relief from an order of default shows that "the failure to file answer was due to fraud, accident, mistake or excusable negligence."³⁵

In this case, the Court of Appeals noted that the Spouses Manuel's motion to lift order of default was not made under oath. We add that this motion was not accompanied by an affidavit of merit specifying the facts which would show that their non-filing of an answer within fifteen (15) days from March 16, 2010 was due to fraud, accident, mistake, or excusable negligence.

Failing *both* in making their motion under oath and in attaching an affidavit of merits, the Spouses Manuel's motion to lift order of default must be deemed pro-forma. It is not even worthy of consideration.

Certainly, there is jurisprudence to the effect that an affidavit of merit is not necessary "where a motion to lift an order of default is grounded on the very root of the proceedings [such as] where the court has not acquired jurisdiction over the defendants."³⁶ Similarly, there is jurisprudence stating that "when a motion to lift an order of default contains the reasons for the failure to answer as well as the facts constituting the prospective defense of the defendant and it is sworn to by said defendant, neither a formal verification nor a separate affidavit of merit is necessary."³⁷

However, in this case, the Spouses Manuel failed not only in attaching an affidavit of

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merit *but also* in making their motion under oath. They are, therefore, left without any alternative on which to rest. Their motion is utterly ineffectual.

Apart from their failure to make their motion to lift order of default under oath and to attach to it an affidavit of merit, the Court of Appeals also noted that the Spouses Manuel set their motion to lift order of default for hearing *on the same date that they filed it* (i.e., September 13, 2010). Thus, they also violated Rule 15, Section 4 of the 1997 Rules of Civil Procedure,³⁸ which requires that service of a motion upon an adverse party must be made in such a manner that ensures receipt by the latter "at least three (3) days before the date of hearing. . . ."

We do not lose sight of the admonitions that have been made in jurisprudence that, as a rule, courts should be liberal in setting aside orders of default and that default judgments are frowned upon.³⁹ Indeed, apart from a motion to lift order of default, other remedies are available to a defaulted defendant even after judgment has been rendered. Thus, if judgment had already been rendered but has not yet become final and executory, an appeal asserting that the judgment was contrary to the law or to the evidence,⁴⁰ or a motion for new trial under Rule 37, may be filed.⁴¹ In the case of the latter, the same affidavits as are required in a motion to lift order of default must be attached.⁴² If judgment has become final and executory, a defaulted defendant may file a petition for relief from judgment under Rule 38.⁴³ Still, should the defaulted defendant fail to file a petition for relief, a petition for annulment of judgment on the ground of lack of jurisdiction or extrinsic fraud remains available.⁴⁴

However, jurisprudence, too, has qualified the intent that animates this liberality. As this court stated in *Acance v. Court of Appeals*:⁴⁵

The issuance of the orders of default should be the exception rather than the

rule, to be *allowed only in clear cases of obstinate refusal by the defendant to comply with the orders of the trial court*.⁴⁶ (Emphasis supplied)

Moreover, this liberality must be tempered with a recognition that, in the first place, it is a defendant who is at fault in failing to timely file an answer.

Rule 9, Section 3(b) gives an *exclusive list of only four (4) grounds that allow for relief from orders of default*. Moreover, these grounds — extrinsic fraud, accident, mistake, and excusable negligence — relate to factors that are extraneous to a defendant, that is, grounds that show that a defendant *was prevented, by reasons beyond his or her influence, from timely filing an answer*.

The recognition that it is the defendant who is at fault and must suffer the consequences of his or her own failure is analogous to the dismissal of an action due to the fault of a plaintiff, as provided by Rule 17, Section 3 of the 1997 Rules of Civil Procedure. Rule 17, Section 3 reads:

SEC. 3. Dismissal due to fault of plaintiff. — If for no justifiable cause, the plaintiff fails to appear on the date of the presentation of his evidence in chief on the complaint, or to prosecute his action for an unreasonable length of time, or to comply with these Rules or any order of the court, the complaint may be dismissed upon motion of the defendant or upon the court's own motion, without prejudice to the right of the defendant to prosecute his counterclaim in the same or in a separate action. This dismissal shall have the effect of an adjudication upon the merits, unless otherwise declared by the court.

Rule 17, Section 3 is qualified by the phrase "for no justifiable cause." Thus, in cases covered by Rule 17, Section 3, should the failure to comply with court processes be the result of the plaintiffs own fault, it is but logical that a plaintiff must suffer the consequences of his own

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heedlessness. Rule 9, Section 3 — on default — applies the same logic to a culpable defendant.

In this case, the Spouses Manuel only have themselves to blame in not properly receiving the summons and copy of the complaint served on them. It has been shown that their claim that service of summons was made on persons other than them deserves no credence. Quite the contrary, it is quite apparent that Sheriff Joselito Sales not only explained the contents of the summons and the complaint but actually told them that they must file their answer in fifteen (15) days. It was petitioner Sandra Manuel who refused to sign and receive the summons and the complaint. This is evidently an act of obstinate refusal to submit to and to comply with court processes. Thus, the r Spouses Manuel are not deserving of any leniency.

- **Sps. Dominador Marcos, et al. Vs. Heirs of Isidro Bangi, et al.** G.R. No. 185745. October 15, 2014

• Issue

- The issue set forth by the petitioners for this Court's resolution is whether the CA committed reversible error in affirming the RTC Decision dated March 26, 2007, which upheld the Deed of Absolute Sale dated November 5, 1943 over the one-third portion of the subject property executed by Eusebio in favor of the spouses Isidro and Genoveva.

Ruling of the Court

The petition is denied. Ultimately, the resolution of the instant controversy is hinged upon the question of whether the heirs of Alipio had already effected a partition of his estate prior to the sale of the one-third portion of the subject property to the spouses Isidro and Genoveva on November 5, 1943.

Even granting *arguendo* that the petition falls under any of the exceptions justifying

a factual review of the findings of the appellate court, the petition cannot prosper. The Court is of the opinion, and so holds, that the CA did not commit any reversible error in ruling that an oral partition of the estate of Alipio had already been effected by his heirs prior to the sale by Eusebio of the one-third portion of the subject property to the spouses Isidro and Genoveva on November 5, 1943.

The petitioners claim that the CA erred in ruling that there was already a partition of the estate of Alipio prior to the sale of the one-third portion of the subject property by Eusebio to the spouses Isidro and Genoveva. They insist that "there was no deed of extrajudicial partition by and among Eusebio, Jose and Espedita [Bangi], wherein Eusebio [was assigned the subject property]."¹⁵ Accordingly, the petitioners aver, the sale in favor of the spouses Isidro and Genoveva on November 5, 1943 is a nullity and, consequently, the respondents do not have any right over the subject property.

The Court does not agree.

Partition is the separation, division and assignment of a thing held in common among those to whom it may belong.¹⁶ Every act which is intended to put an end to indivision among co-heirs and legatees or devisees is deemed to be a partition.¹⁷ Partition may be inferred from circumstances sufficiently strong to support the presumption. Thus, after a long possession in severalty, a deed of partition may be presumed.¹⁸ Thus, in *Hernandez v. Andal*,¹⁹ the Court emphasized that:

On general principle, independent and in spite of the statute of frauds, courts of equity have enforced oral partition when it has been completely or partly performed. Regardless of whether a parol partition or agreement to partition is valid and enforceable at law, equity will in proper cases, where the parol partition has

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actually been consummated by the taking of possession in severalty and the exercise of ownership by the parties of the respective portions set off to each, recognize and enforce such parol partition and the rights of the parties thereunder. Thus, it has been held or stated in a number of cases involving an oral partition under which the parties went into possession, exercised acts of ownership, or otherwise partly performed the partition agreement, that equity will confirm such partition and in a proper case decree title in accordance with the possession in severalty.

x x x x

A parol partition may also be sustained on the ground that the parties thereto have acquiesced in and ratified the partition by taking possession in severalty, exercising acts of ownership with respect thereto, or otherwise recognizing the existence of the partition.²⁰

The evidence presented by the parties indubitably show that, after the death of Alipio, his heirs – Eusebio, Espedita and Jose Bangi – had orally partitioned his estate, including the subject property, which was assigned to Eusebio.

Further, the CA did not err in not giving credence to the Deed of Extrajudicial Partition with Quitclaim supposedly executed by Espedita and Jose Bangi on May 8, 1995. The Court notes that Alipio died in 1918 while his wife Ramona died on June 13, 1957. It is quite suspect that Espedita and Jose Bangi executed the said Deed of Extrajudicial Partition, wherein they waived their rights over the subject property in favor of Eusebio's children, only on May 8, 1995. That only several months thereafter, the subject property was supposedly sold to the spouses of Eusebio's children and, later, to herein petitioners spouses Dominador and Gloria.

The foregoing circumstances cast doubt as to the petitioners' insinuation that the estate of Alipio had only been partitioned

in 1995, when Espedita and Jose Bangi executed the said Deed of Extrajudicial Partition with Quitclaim. As pointed out by the CA, the execution of the Deed of Extrajudicial Partition with Quitclaim is but a ruse to defeat the rights of the respondents over the one-third portion of the subject property. If at all, the Deed of Extrajudicial Partition with Quitclaim executed by Espedita and Jose Bangi merely confirms the partition of Alipio's estate that was earlier had, albeit orally, in which the subject property was assigned to Eusebio.

Accordingly, considering that Eusebio already owned the subject property at the time he sold the one-third portion thereof to the spouses Isidro and Genoveva on November 5, 1943, having been assigned the same pursuant to the oral partition of the estate of Alipio effected by his heirs, the lower courts correctly nullified the Deeds of Absolute Sale dated August 10, 1995 and November 21, 1995, as well as TCT No. T-47829 and T-48446.

- **Rosario Mata Castro and Joanne Benedicta Charissima M. Castro, a.k.a. "Maria Scorro M. Castro" and "Jayrose M. Castro" Vs. Jose Maria Jed Lemuel Gregorio and Ana Maria Regina Gregorio** G.R. No. 188801. October 15, 2014

The policy of the law is clear. In order to maintain harmony, there must be a showing of notice and consent. This cannot be defeated by mere procedural devices. In all instances where it appears that a spouse attempts to adopt a child out of wedlock, the other spouse and other legitimate children must be personally notified through personal service of summons. It is not enough that they be deemed notified through constructive service.

Annulment of judgment under Rule 47 of the Rules of Civil Procedure

Under Rule 47, Section 1 of the Rules of Civil Procedure, a party may file an action with the Court of Appeals to annul judgments or final orders and resolutions

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in civil actions of Regional Trial Courts. This remedy will only be available if "the ordinary remedies of new trial, appeal, petition for relief or other appropriate remedies are no longer available through no fault of the petitioner."⁴⁹

*In Dare Adventure Farm Corporation v. Court of Appeals:*⁵⁰

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. Yet, the remedy, being exceptional in character, is not allowed to be so easily and readily abused by parties aggrieved by the final judgments, orders or resolutions. The Court has thus 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. A petition for annulment that ignores or disregards any of the safeguards cannot prosper.

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 corner stone 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.⁵¹ (*Emphasis supplied*)

Because of the exceptional nature of the remedy, there are only two grounds by which annulment of judgment may be availed of: extrinsic fraud, which must be brought four years from discovery, and lack of jurisdiction, which must be brought before it is barred by estoppel or laches.⁵²

Lack of jurisdiction under this rule means lack of jurisdiction over the nature of the action or subject matter, or lack of jurisdiction over the parties.⁵³ Extrinsic fraud, on the other hand, is "[that which] prevents a party from having a trial or from presenting his entire case to the court, or [that which] operates upon matters pertaining not to the judgment itself but to the manner in which it is procured."⁵⁴

The grant of adoption over respondents should be annulled as the trial court did not validly acquire jurisdiction over the proceedings, and the favorable decision was obtained through extrinsic fraud.

Jurisdiction over adoption proceedings vis-a-vis the law on adoption

Petitioners argue that they should have been given notice by the trial court of the adoption, as adoption laws require their consent as a requisite in the proceedings.

Petitioners are correct.

It is settled that "the jurisdiction of the court is determined by the statute in force

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at the time of the commencement of the action."⁵⁵ As Jose filed the petition for adoption on August 1, 2000, it is Republic Act No. 8552⁵⁶ which applies over the proceedings. The law on adoption requires that the adoption by the father of a child born out of wedlock obtain not only the consent of his wife but also the consent of his legitimate children.

Under Article III, Section 7 of Republic Act No. 8552, the husband must first obtain the consent of his wife if he seeks to adopt his own children born out of wedlock:

ARTICLE III ELIGIBILITY

SEC. 7. *Who May Adopt.* — The following may adopt:

Husband and wife shall jointly adopt, except in the following cases:

(i) if one spouse seeks to adopt the legitimate son/daughter of the other; or

(ii) *if one spouse seeks to adopt his/her own illegitimate son/daughter: Provided, however, That the other spouse has signified, his/her consent thereto; or*

(iii) if the spouses are legally separated from each other. . . (*Emphasis supplied*)

The provision is mandatory. As a general rule, the husband and wife must file a joint petition for adoption. The rationale for this is stated in *In Re: Petition for Adoption of Michelle P. Lim*:⁵⁷

The use of the word "shall" in the above-quoted provision means that joint adoption by the husband and the wife is mandatory. This is in consonance with the concept of joint parental authority over the child which is the ideal situation. As the child to be adopted is elevated to the level of a legitimate child, it is but natural to require the spouses to adopt jointly. The rule also insures harmony between

the spouses.⁵⁸

The law provides for several exceptions to the general rule, as in a situation where a spouse seeks to adopt his or her own children born out of wedlock. In this instance, joint adoption is not necessary. However, the spouse seeking to adopt must first obtain the consent of his or her spouse.

In the absence of any decree of legal separation or annulment, Jose and Rosario remained legally married despite their de facto separation. For Jose to be eligible to adopt Jed and Regina, Rosario must first signify her consent to the adoption. Jose, however, did not validly obtain Rosario's consent. His submission of a fraudulent affidavit of consent in her name cannot be considered compliance of the requisites of the law. Had Rosario been given notice by the trial court of the proceedings, she would have had a reasonable opportunity to contest the validity of the affidavit. Since her consent was not obtained, Jose was ineligible to adopt.

The law also requires the written consent of the adopter's children if they are 10 years old or older. In Article III, Section 9 of Republic Act No. 8552:

SEC. 9. *Whose Consent is Necessary to the Adoption.* — After being properly counseled and informed of his/her right to give or withhold his/her approval of the adoption, the written consent of the following to the adoption is hereby required:

(c) *The legitimate and adopted sons/daughters, ten (10) years of age or over, of the adopter(s) and adoptee, if any; (Emphasis supplied)*

The consent of the adopter's other children is necessary as it ensures harmony among the prospective siblings. It also sufficiently puts the other children on notice that they will have to share their parent's love and care, as well as their

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future legitimes, with another person.

It is undisputed that Joanne was Jose and Rosario's legitimate child and that she was over 10 years old at the time of the adoption proceedings. Her written consent, therefore, was necessary for the adoption to be valid.

To circumvent this requirement, however, Jose manifested to the trial court that he and Rosario were childless, thereby preventing Joanne from being notified of the proceedings. As her written consent was never obtained, the adoption was not valid.

For the adoption to be valid, petitioners' consent was required by Republic Act No. 8552. Personal service of summons should have been effected on the spouse and all legitimate children to ensure that their substantive rights are protected. It is not enough to rely on constructive notice as in this case. Surreptitious use of procedural technicalities cannot be privileged over substantive statutory rights.

Since the trial court failed to personally serve notice on Rosario and Joanne of the proceedings, it never validly acquired jurisdiction.

There was extrinsic fraud

The appellate court, in denying the petition, ruled that while fraud may have been committed in this case, it was only intrinsic fraud, rather than extrinsic fraud. This is erroneous.

In *People v. Court of Appeals and Socorro Florece*:⁵⁹

Extrinsic fraud refers to any fraudulent act of the prevailing party in litigation committed outside of the trial of the case, **whereby the defeated party is prevented from fully exhibiting his side of the case by fraud or deception practiced on him by his opponent, such as by keeping him away from court**, by giving him a false promise of a compromise, or where the defendant

never had the knowledge of the suit, being kept in ignorance by the acts of the plaintiff, or where an attorney fraudulently or without authority connives at his defeat.⁶⁰ (*Emphasis supplied*)

An action for annulment based on extrinsic fraud must be brought within four years from discovery.⁶¹ Petitioners alleged that they were made aware of the adoption only in 2005. The filing of this petition on October 18, 2007 is within the period allowed by the rules.

The badges of fraud are present in this case.

First, the petition for adoption was filed in a place that had no relation to any of the parties. Jose was a resident of Laoag City, Ilocos Norte.⁶² Larry and Lilibeth were residents of Barangay 6, Laoag City.⁶³ Jed and Regina were born in San Nicolas, Ilocos Norte.⁶⁴ Rosario and Joanne were residents of Parañaque City, Manila.⁶⁵ The petition for adoption, however, was filed in the Regional Trial Court of Batac, Ilocos Norte.⁶⁶ The trial court gave due course to the petition on Jose's bare allegation in his petition that he was a resident of Batac,⁶⁷ even though it is admitted in the Home Study Report that he was a practicing lawyer in Laoag City.⁶⁸

Second, using the process of delayed registration,⁶⁹ Jose was able to secure birth certificates for Jed and Regina showing him to be the father and Larry as merely the informant.⁷⁰ Worse still is that two different sets of fraudulent certificates were procured: one showing that Jose and Lilibeth were married on December 4, 1986 in Manila,⁷¹ and another wherein the portion for the mother's name was not filled in at all.⁷² The birth certificates of Jed and Regina from the National Statistics Office, however, show that their father was Larry R. Rentegrado.⁷³ These certificates are in clear contradiction to the birth certificates submitted by Jose to the trial court in support of his petition for adoption.

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Third, Jose blatantly lied to the trial court when he declared that his motivation for adoption was because he and his wife, Rosario, were childless,⁷⁴ to the prejudice of their daughter, Joanne. The consent of Rosario to the adoption was also disputed by Rosario and alleged to be fraudulent.⁷⁵

All these tactics were employed by Jose, not only to induce the trial court in approving his petition, but also to prevent Rosario and Joanne from participating in the proceedings or opposing the petition.

The appellate court erroneously classified the fraud employed by Jose as intrinsic on the basis that they were "forged instruments or perjured testimonies"⁷⁶ presented during the trial. It failed to understand, however, that fraud is considered intrinsic when the other party was either present at the trial or was a participant in the proceedings when such instrument or testimony was presented in court, thus:

[I]ntrinsic fraud refers to the acts of a party at a trial that prevented a fair and just determination of the case, but the difference is that the acts or things, like falsification and false testimony, could have been litigated and determined at the trial or adjudication of the case. In other words, *intrinsic fraud does not deprive the petitioner of his day in court because he can guard against that kind of fraud through so many means, including a thorough trial preparation, a skillful, cross-examination, resorting to the modes of discovery, and proper scientific or forensic applications.* Indeed, forgery of documents and evidence for use at the trial and perjury in court testimony have been regarded as not preventing the participation of any party in the proceedings, and are not, therefore, constitutive of extrinsic fraud.⁷⁷ (*Emphasis supplied*)

When fraud is employed by a party precisely to prevent the participation of any other interested party, as in this case,

then the fraud is extrinsic, regardless of whether the fraud was committed through the use of forged documents or perjured testimony during the trial.

Jose's actions prevented Rosario and Joanne from having a reasonable opportunity to contest the adoption. Had Rosario and Joanne been allowed to participate, the trial court would have hesitated to grant Jose's petition since he failed to fulfill the necessary requirements under the law. There can be no other conclusion than that because of Jose's acts, the trial court granted the decree of adoption under fraudulent circumstances.

The law itself provides for penal sanctions for those who violate its provisions. Under Article VII, Section 21 of Republic Act No. 8552:

ARTICLE VII VIOLATIONS AND PENALTIES

SEC. 21. *Violations and Penalties.* —

- (a) *The penalty of imprisonment ranging from one year and/or a fine not less than Fifty thousand pesos (P50,000.00) on any person who shall commit any of the following acts:*
 - (i) *obtaining consent for an adoption through material inducement, or other similar acts;*
 - (ii) *non-compliance with the procedures and requirements;*
 - (iii) *subjecting or exposing the child to be adopted to any danger;*
- (b) *Any person who shall cause the fictitious name(s) of a person(s) who is not his/her biological parent, to be used in the adoption of birth, and shall be punished by imprisonment exceeding Fifty thousand pesos (P50,000.00).*

Unfortunately, Jose's death carried with it the extinguishment of any of his criminal liabilities.⁷⁸ Republic Act No. 8552 also fails to provide any provision on the status of adoption decrees if the adoption is found to have been obtained fraudulently. Petitioners also cannot invoke Article VI, Section 19 of Republic Act No. 8552⁷⁹ since rescission of adoption can only be availed of by the adoptee. Petitioners, therefore, are left with no other remedy in law other than the annulment of the judgment.

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The fraud employed in this case has been to Joanne's prejudice. There is reason to believe that Joanne has grown up having never experienced the love and care of a father, her parents having separated a year after her birth. She has never even benefited from any monetary support from her father. Despite all these adversities, Joanne was able to obtain a medical degree from the University of the Philippines College of Medicine⁸⁰ and is now working as a doctor in Canada.⁸¹ These accomplishments, however, are poor substitutes if the injustice done upon her is allowed to continue.

- **Onofre Andres, substituted by his heirs, namely: Ferdinand et al., all surnamed Adres Vs. Philippine National Bank** G.R. No. 173548. October 15, 2014

- A bank that accepts a mortgage based upon a title which appears valid on its face and after exercising the requisite care, prudence, and diligence appropriate to the public interest character of its business can be deemed a mortgagee in good faith. The subsequent consolidation of title in its name after a valid foreclosure shall be respected notwithstanding later proof showing that the title was based upon a void transaction.

This court reiterated the good faith doctrine that applies to innocent mortgagees for value in the 2012 case of *Philippine Banking Corporation v. Dy*:⁸²

While it is settled that a simulated deed of sale is null and void and therefore, does not convey any right that could ripen into a valid title, it has been equally ruled that, for reasons of public policy, *the subsequent nullification of title to a property is not a ground to annul the contractual right which may have been derived by a purchaser, mortgagee or other transferee who acted in good faith.*⁸³ (Emphasis supplied, citations omitted)

The doctrine protecting mortgagees and innocent purchasers in good faith emanates from the social interest embedded in the legal concept granting indefeasibility of titles. The burden of discovery of invalid transactions relating to the property covered by a title appearing regular on its face is shifted from the third party relying on the title to the co-owners or the predecessors of the title holder. Between the third party and the co-owners, it will be the latter that will be more intimately knowledgeable about the status of the property and its history. The costs of discovery of the basis of invalidity, thus, are better borne by them because it would naturally be lower. A reverse presumption will only increase costs for the economy, delay transactions, and, thus, achieve a less optimal welfare level for the entire society.⁸⁴

The general rule allows every person dealing with registered land to rely on the face of the title when determining its absolute owner.⁸⁵ Thus, cases like *Cabuhat* have held that "a mortgagee has a right to rely in good faith on the certificate of title of the mortgagor of the property given as security and in the absence of any sign that might arouse suspicion, has no obligation to undertake further investigation.

First, it is undisputed that PNB sent its appraiser and credit investigator Gerardo Pestaño to conduct an ocular inspection of the property.⁹⁵ He also went to the relevant government offices to verify the ownership status of the property.⁹⁶ There was an on-going construction of a residential building during his inspection, so he appraised this building as well, in case the land proved insufficient to cover the applied loan.⁹⁷ These acts complied with the standard operating practice expected of banks when dealing with real property.

Second, the two-year period under Rule 74, Section 4 of the Rules of Court had lapsed and petitioner heirs did not allege if any heir or creditor of Roman Andres and

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his wife had invoked their right under this provision. Rule 74, Section 4 of the Rules of Court provides:

SEC 4. Liability of distributees and estate.
– If it shall appear at any time within two (2) years after the settlement and distribution of an estate in accordance with the provisions of either of the first two sections of this rule, **that an heir or other person has been unduly deprived of his lawful participation** in the estate, such heir or such other person may compel the settlement of the estate in the courts in the manner hereinafter provided for the purpose of satisfying such lawful participation. And if within the same time of two (2) years, it shall appear that there are debts outstanding against the estate which have not been paid, or that an heir or other person has been unduly deprived of his lawful participation payable in money, the court having jurisdiction of the estate may, by order for that purpose, after hearing, settle the amount of such debts or lawful participation and order how much and in what manner each distributee shall contribute in the payment thereof, and may issue execution, if circumstances require, against the bond provided in the preceding section or against the real estate belonging to the deceased, or both. Such bond and such real estate shall remain charged with a liability to creditors, heirs, or other persons for the full period of two (2) years after such distribution, notwithstanding any transfers of real estate that may have been made. (Emphasis supplied)

This provision was no longer annotated on the title at the time the title was submitted to PNB as collateral for the loan:

In any event, Rule 74, Section 4 does not apply to Onofre Andres who never alleged being an excluded heir or unpaid creditor of his brother Roman Andres and Roman's wife.

In sum, this court reiterates the rule that banks, as businesses impressed with

public interest, must exercise greater care, prudence, and due diligence in all their property dealings. This court upholds the Court of Appeals' findings that PNB complied with the standard operating practice of banks, which met the requisite level of diligence, when it sent Gerardo Pestaño to conduct an ocular inspection of the property and verify the status of its ownership and title. Consequently, PNB is a mortgagee in good faith. The title resulting from the foreclosure sale, therefore, is to be protected. The bank is an innocent purchaser for value.

- **Marietta N. Barrido Vs. Leonardo V. Nonato** G.R. No. 176492. October 20, 2014

Contrary to Barrido's contention, the MTCC has jurisdiction to take cognizance of real actions or those affecting title to real property, or for the recovery of possession, or for the partition or condemnation of, or foreclosure of a mortgage on real property.⁷

Here, the subject property's assessed value was merely P8,080.00, an amount which certainly does not exceed the required limit of P20,000.00 for civil actions outside Metro Manila to fall within the jurisdiction of the MTCC. Therefore, the lower court correctly took cognizance of the instant case.

The records reveal that Nonato and Barrido's marriage had been **declared void for psychological incapacity under Article 36¹⁰** of the Family Code. During their marriage, however, the conjugal partnership regime governed their property relations. Although Article 129¹¹ provides for the procedure in case of dissolution of the conjugal partnership regime, Article 147 specifically covers the effects of void marriages on the spouses' property relations.

This particular kind of co-ownership applies when a man and a woman, suffering no illegal impediment to marry each other, exclusively live together as husband and wife under a void marriage or without the benefit of marriage.¹² It is clear, therefore, that for Article 147 to

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operate, the man and the woman: (1) must be capacitated to marry each other; (2) live exclusively with each other as husband and wife; and (3) their union is without the benefit of marriage or their marriage is void. Here, all these elements are present.¹³ The term "capacitated" in the first paragraph of the provision pertains to the legal capacity of a party to contract marriage.¹⁴ Any impediment to marry has not been shown to have existed on the part of either Nonato or Barrido. They lived exclusively with each other as husband and wife. However, their marriage was found to be void under Article 36 of the Family Code on the ground of psychological incapacity.¹⁵

Under this property regime, property acquired by both spouses through their work and industry shall be governed by the rules on equal co-ownership. Any property acquired during the union is *prima facie* presumed to have been obtained through their joint efforts. A party who did not participate in the acquisition of the property shall be considered as having contributed to the same jointly if said party's efforts consisted in the care and maintenance of the family household.¹⁶ Efforts in the care and maintenance of the family and household are regarded as contributions to the acquisition of common property by one who has no salary or income or work or industry.¹⁷

In the analogous case of *Valdez*,¹⁸ it was likewise averred that the trial court failed to apply the correct law that should govern the disposition of a family dwelling in a situation where a marriage is declared void *ab initio* because of psychological incapacity on the part of either or both parties in the contract of marriage. The Court held that the court *a quo* did not commit a reversible error in utilizing Article 147 of the Family Code and in ruling that the former spouses own the family home and all their common property in equal shares, as well as in concluding that, in the liquidation and

partition of the property that they owned in common, the provisions on co-ownership under the Civil Code should aptly prevail.¹⁹ The rules which are set up to govern the liquidation of either the absolute community or the conjugal partnership of gains, the property regimes recognized for valid and voidable marriages, are irrelevant to the liquidation of the co-ownership that exists between common-law spouses or spouses of void marriages.²⁰

Here, the former spouses both agree that they acquired the subject property during the subsistence of their marriage. Thus, it shall be presumed to have been obtained by their joint efforts, work or industry, and shall be jointly owned by them in equal shares. Barrido, however, claims that the ownership over the property in question is already vested on their children, by virtue of a Deed of Sale. But aside from the title to the property still being registered in the names of the former spouses, said document of sale does not bear a notarization of a notary public. It must be noted that without the notarial seal, a document remains to be private and cannot be converted into a public document,²¹ making it inadmissible in evidence unless properly authenticated.²² Unfortunately, Barrido failed to prove its due execution and authenticity. In fact, she merely annexed said Deed of Sale to her position paper. Therefore, the subject property remains to be owned in common by Nonato and Barrido, which should be divided in accordance with the rules on co-ownership.

- **YKR Corporation, Ma. Teresa J. Yulo-Gomez, et al. Vs. Philippine Agri-Business Center Corporation/Republic of the Philippines Vs. Philippine Agri-Business Center Corporation** G.R. No. 191838./G.R. No. 191863. October 20, 2014

- The 1997 Rules of Civil Procedure, as amended, states the following provisions on summary judgments under Rule 35:

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- SECTION 1. *Summary judgment for claimant.* – A party seeking to recover upon a claim, counterclaim, or cross-claim or to obtain a declaratory relief may, at any time after the pleading in answer thereto has been served, move with supporting affidavits, depositions or admissions for a summary judgment in his favor upon all or any part thereof.
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- SEC. 2. *Summary judgment for defending party.* – A party against whom a claim, counterclaim, or cross-claim is asserted or a declaratory relief is sought may, at any time, move with supporting affidavits, depositions or admissions for a summary judgment in his favor as to all or any part thereof.
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- SEC. 3. *Motion and proceedings thereon.* — The motion shall be served at least ten (10) days before the time specified for the hearing. The adverse party may serve opposing affidavits, depositions, or admissions at least three (3) days before the hearing. After the hearing, the judgment sought shall be rendered forthwith if the pleadings, supporting affidavits, depositions, and admissions on file, show that, except as to the amount of damages, there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.
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- The disposition of a civil action *via* summary judgment is a method sanctioned under the Rules where there exists no question or controversy as to the material facts. Thus, when a party moves for summary judgment, this is premised on the assumption that a scrutiny of the facts will disclose that the issues presented need not

be tried either because these are patently devoid of substance or that there is no genuine issue as to any pertinent fact. A judgment on the motion must be "rendered forthwith if the pleadings, supporting affidavits, depositions, and admissions on file show that, except as to the amount of damages, there is no genuine issue and that the moving party is entitled to a judgment as a matter of law."²⁸ The case of *Viajar v. Judge Estenzo*²⁹ incisively explains the rationale for this sanctioned, albeit expedited, procedure:

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- 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.³⁰
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- In the same case, the Court expounded that caution must be exercised when courts dispose of a civil case *via* summary judgment because this procedural device does away with trial and deprives parties the opportunity to present their evidence in court

To determine whether summary judgment was properly rendered by the court *a quo*, we shall examine if the following requisites under Rule 35 of the Rules obtain in the case at bar, *viz.:*

- there must be no genuine issue as to any material fact, except for the

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amount of damages;
and

- the party presenting the motion for summary judgment must be entitled to a judgment as a matter of law.

A "genuine issue of fact" is an issue "which requires the presentation of evidence as distinguished from a sham, fictitious, contrived or false claim. When the facts as pleaded appear uncontested or undisputed, then there is no real or genuine issue or question as to the facts, and summary judgment is called for. The party who moves for summary judgment has the burden of demonstrating clearly the absence of any genuine issue of fact, or that the issue posed in the complaint is patently unsubstantial so as not to constitute a genuine issue for trial. x x x When the facts as pleaded by the parties are disputed or contested, proceedings for summary judgment cannot take the place of trial."³²

A prudent examination of the evidence on record yields to no other conclusion that there exists a genuine issue of fact as raised in both petitions.

In G.R. No. 191838, petitioners YKR Corporation and then seven out of the ten Yulo heirs responded to the Request for Admissions by making no categorical admission or denial of the matters set forth in the Request for Admissions allegedly because all the records of YKR Corporation have been taken by the PCGG when they were sequestered. This answer is a permissible way of making a specific denial under the Rules. In Section 10, Rule 8 thereof, there are three ways of making a specific denial: (1) by specifying each material allegation of the fact in the complaint, the truth of which the defendant does not admit, and whenever practicable, setting forth the substance of the matters which he will rely upon to support his denial; (2) by specifying so much of an averment in the complaint as is true and material and denying only the remainder; and, (3) by stating that the

defendant is without knowledge or information sufficient to form a belief as to the truth of a material averment in the complaint, which has the effect of a denial.³³

- With respect to the aforesaid third form of denial, this Court ruled in *Philippine Bank of Communications v. Court of Appeals*³⁴ that the defendant's contention that it had no knowledge or information sufficient to form a belief as to the truth of the deed of exchange was an invalid or ineffectual denial pursuant to the Rules of Court, as it could have easily asserted whether or not it had executed the deed of exchange attached to the petition.

Citing *Capitol Motors Corporations v. Yabut*,³⁵ the Court stated that:

x x x The rule authorizing an answer to the effect that the defendant has no knowledge or information sufficient to form a belief as to the truth of an averment and giving such answer the effect of a denial, does not apply where the fact as to which want of knowledge is asserted, is so **plainly and necessarily within the defendant's knowledge** that his averment of ignorance must be palpably true.³⁶ (*Emphasis supplied.*)

- The court *a quo*, while it recognized that the response given by YKR Corporation and the then seven out of the ten Yulo heirs is allowed by the Rules, did not accept the specific denial and ruled that there existed no genuine issue of fact because despite the sequestration by the PCGG of YKR's records, the matters "ought to be within the personal knowledge of YKR Corporation and [the then] seven out of the ten Yulo heirs."³⁷ On this issue, we agree with petitioners YKR Corporation and the remaining six out of the ten Yulo heirs that the Sandiganbayan

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erred when it issued an unsubstantiated statement that the matters requested for admission in respondent PABC's Request for Admission "ought to be within the personal knowledge" of YKR Corporation and the then seven out of the ten Yulo heirs, without citing any basis both in fact and in law

Considering that petitioners YKR Corporation and the remaining six out of the ten Yulo heirs were deprived of their day in court, the court *a quo* should have made its ruling as to the non-existence of genuine issues of fact by clearly stating its basis both in fact and in law and not on purely conjectural determinations, i.e., that "the matters requested for admission ought to be within the personal knowledge of YKR Corporation and [the then] seven out of the ten Yulo Heirs"⁴⁰ and that "they ought to have made allegations of any knowledge or information as to the nature of such right or interest, or at the very least denied PABC's ownership or right to possession over the subject properties."⁴¹ To be sure, YKR Corporation and the then seven out of the ten Yulo heirs tendered an answer which is a permissible form of making a specific denial under Section 10, Rule 8 of the Rules. The court *a quo* itself stated in the assailed June 30, 2009 Resolution that "this form of response to a Request for Admissions is allowed by the Rules."⁴² Even respondent PABC – the party that moved for summary judgment and which has the burden to prove that there are no genuine issues of fact in the case at bar – did not submit any supporting affidavits, depositions or admissions to prove that the matters requested for admission "ought to be within the personal knowledge of YKR Corporation and [the then] seven out of the ten Yulo Heirs."⁴³

- There also exists a genuine issue of fact as to petitioner Republic.

Finally, petitioners YKR Corporation and six out of the ten Yulo heirs raise the issue that the Sandiganbayan did not have jurisdiction to entertain respondent PABC's

Complaint-in-Intervention⁵⁰ dated August 31, 1988. It is now too late in the day for petitioners to raise the issue of jurisdiction over a complaint-in-intervention that was filed 26 years ago. Petitioners should have raised the alleged jurisdictional defect at the earliest possible opportunity when respondent PABC filed its Motion for Intervention⁵¹ and the subject Complaint-in-Intervention. However, instead of filing an opposition to the court *a quo*'s admission of the Complaint-in-Intervention, petitioners even filed their Answer to Request for Admissions of PABC⁵² on May 11, 2007, their Opposition to Motion for Summary Judgment⁵³ on January 21, 2008, and their Motion for Reconsideration (Re: Resolution dated June 18, 2009)⁵⁴ on July 20, 2009. It is of no moment that petitioners did not file an answer to the Complaint-in-Intervention. As respondent PABC correctly pointed out, viz.: "a

The Sandiganbayan ruled 22 years ago that unless allowed to intervene, PABC "may not have any other logical or practical remedy for the protection of its rights in view of the extraordinary scope and nature of the instant sequestration proceedings." Petitioners never questioned said ruling – until now, 22 long years after. Clearly, petitioners are estopped from assailing the said ruling by the Sandiganbayan, which has long been final.⁵⁵

- **Ricardo N. Azuelo Vs. Zameco II Electric Cooperative, Inc.** G.R. No. 192573. October 22, 2014

• Issue

- Essentially, the issue set forth by Azuelo for the Court's resolution is whether the dismissal of his first complaint for illegal dismissal, on the ground of lack of interest on his part to prosecute the same, bars the filing of another complaint for illegal dismissal against ZAMECO based on the same allegations.

Ultimately, the question that has to be

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resolved is this - whether the dismissal of a complaint for illegal dismissal due to the unreasonable failure of the complainant to submit his position paper amounts to a dismissal with prejudice.

The 2005 Revised Rules of Procedure of the NLRC (2005 Revised Rules), the rules applicable at the time of the controversy, is silent as to the nature of the dismissal of a complaint on the ground of unreasonable failure to submit a position paper by the complainant. Nevertheless, the 2005 Revised Rules, particularly Section 3, Rule I thereof, provides for the suppletory application of the Rules of Court to arbitration proceedings before the LAs and the NLRC in the absence of any applicable provisions therein, viz:

Section 3. Suppletory Application of the Rules of Court. - In the absence of any applicable provisions in these Rules, and **in order to effectuate the objectives of the Labor Code**, the pertinent provisions of the Rules of Court of the Philippines may, **in the interest of expeditious dispensation of labor justice** and whenever practicable and convenient, be applied by analogy or in a suppletory character and effect. (Emphases ours)

The unjustified failure of a complainant in arbitration proceedings before the LA to submit his position paper is akin to the case of a complainant's failure to prosecute his action for an unreasonable length of time in ordinary civil proceedings. In both cases, the complainants are remiss, sans reasonable cause, to prove the material allegations in their respective complaints. Accordingly, the Court sees no reason not to apply the rules relative to unreasonable failure to prosecute an action in ordinary civil proceedings to the unjustified failure of a complainant to submit his position paper in arbitration proceedings before the LA.

In this regard, Section 3, Rule 17 of the Rules of Court provides

that:

Section 3. Dismissal due to fault of plaintiff. — If, for no justifiable cause, the plaintiff fails to appear on the date of the presentation of his evidence in chief on the complaint, **or to prosecute his action for an unreasonable length of time**, or to comply with these Rules or any order of the court, the complaint may be dismissed upon motion of the defendant or upon the court's own motion, without prejudice to the right of the defendant to prosecute his counterclaim in the same or in a separate action. **This dismissal shall have the effect of an adjudication upon the merits, unless otherwise declared by the court.** (Emphases ours)

"The dismissal of a case for failure to prosecute has the effect of adjudication on the merits, and is necessarily understood to be with prejudice to the filing of another action, **unless** otherwise provided in the order of dismissal. Stated differently, the general rule is that dismissal of a case for failure to prosecute is to be regarded as an adjudication on the merits and with prejudice to the filing of another action, and the only exception is when the order of dismissal expressly contains a qualification that the dismissal is without prejudice."²¹

Thus, in arbitration proceedings before the LA, the dismissal of a complaint on account of the unreasonable failure of the complainant to submit his position paper is likewise regarded as an adjudication on the merits and with prejudice to the filing of another complaint, except when the LA's order of dismissal expressly states otherwise.

As already stated, the Order dated November 6, 2006, which dismissed Azuelo's first complaint due to his unreasonable failure to submit his position paper is unqualified. It is thus considered as an adjudication on the merits and with prejudice to filing of another complaint. Accordingly, the NLRC did not abuse its

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discretion when it affirmed LA Abdon's dismissal of the second complaint for illegal dismissal. Azuelo's filing of a second complaint for illegal dismissal against ZAMECO based on the same allegations cannot be permitted lest the rule on *res judicata* be transgressed.

"Under the rule of *res judicata*, a final judgment or decree on the merits by a court of competent jurisdiction is conclusive of the rights of the parties or their privies, in all later suits and on all points and matters determined in the previous suit. The term literally means a 'matter adjudged, judicially acted upon, or settled by judgment.' The principle bars a subsequent suit involving the same parties, subject matter, and cause of action. The *rationale* for the rule is that 'public policy requires that controversies must be settled with finality at a given point in time.'"²²

Azuelo's insistence that the dismissal of his first complaint by LA Bactin was without prejudice since he was not remiss in pursuing his complaint for illegal dismissal is plainly untenable. To stress, the Order dated November 6, 2006 was unqualified; hence, the dismissal is deemed with prejudice pursuant to Section 3, Rule 17 of the Rules of Court. In any case, the Court finds Azuelo's failure to file his position paper, despite ample opportunity therefor, unjustified.

If indeed Azuelo could not prepare his position paper due to the alleged refusal of ZAMECO to furnish him with its investigation report on his dismissal, he should have immediately sought the issuance of an order directing ZAMECO to produce the said investigation report. However, Azuelo only moved for the production of the investigation report on the due date of the third extension of time granted him by LA Bactin to submit his position paper. It is thus apparent that Azuelo's motion seeking the production of the investigation report is merely a ruse to further extend the period given to Azuelo within which to submit his position paper.

Nonetheless, Azuelo contended that technical rules of procedure, such as the rule on dismissals of actions due to the fault of the plaintiff under Section 3, Rule 17 of the Rules of Court, does not apply to proceedings before the LAs and the NLRC. Hence, Azuelo claimed, LA Abdon erred in dismissing his second complaint for illegal dismissal.

The Court does not agree.

Indeed, technical rules of procedure are not binding in labor cases. The LAs and the NLRC are mandated to use every and all reasonable means to ascertain the facts in each case speedily and objectively, without regard to technicalities of the law or procedure.²⁴ Nevertheless, though technical rules of procedure are not ends in themselves, they are necessary for an effective and expeditious administration of justice.²⁵

The non-applicability of technical rules of procedure in labor cases should not be made a license to disregard the rights of employers against unreasonable and/or unjustified claims. Azuelo was given sufficient chances to establish his claim against ZAMECO, which he failed to do when he did not submit his position paper despite several extensions granted him. He cannot now be allowed to raise anew his supposed illegal dismissal as it would be plainly unjust to ZAMECO. It bears stressing that the expeditious disposition of labor cases is mandated not only for the benefit of the employees, but of the employers as well.

It should be made clear that when the law tilts the scale of justice in favor of labor, it is but a recognition of the inherent economic inequality between labor and management. The intent is to balance the scale of justice; to put up the two parties on relatively equal positions. There may be cases where the circumstances warrant favoring labor over the interests of management but never should the scale be so tilted if the result is an injustice to

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the employer, *Justicia remini regarda est* (Justice is to be denied to none).²⁶

Lastly, the Court notes that Azuelo sought the wrong remedy in assailing the Order dated November 6, 2006 issued by LA Bactin. Considering that the dismissal of Azuelo's first complaint was already an adjudication on the merits, he should have filed a verified memorandum of appeal with the RAB of the NLRC in San Fernando City, Pampanga within 10 calendar days from receipt of the said order pursuant to Section 1, Rule VI of the 2005 Revised Rules instead of re-filing his complaint for illegal dismissal. His failure to do so rendered LA Bactin's Order dated November 6, 2006, which dismissed his first complaint for illegal dismissal, final and executory.

- **Godofredo Enrile, et al. Vs. Hon. Danilo A. Manalastas, et al.** G.R. No. 166414. October 22, 2014

The remedy against the denial of a motion to quash is for the movant accused to enter a plea, go to trial, and should the decision be adverse, reiterate on appeal from the final judgment and assign as error the denial of the motion to quash. The denial, being an interlocutory order, is not appealable, and may not be the subject of a petition for *certiorari* because of the availability of other remedies in the ordinary course of law.

Firstly, considering that the *certiorari* case in the RTC was an original action, the dismissal of the petition for *certiorari* on May 25, 2004, and the denial of the motion for reconsideration on July 9, 2004, were in the exercise of its original jurisdiction. As such, the orders were final by reason of their completely disposing of the case, leaving nothing more to be done by the RTC.¹⁷ The proper recourse for the petitioners should be an appeal by notice of appeal,¹⁸ taken within 15 days from notice of the denial of the motion for reconsideration.¹⁹

Yet, the petitioners chose to assail the dismissal by the RTC through petitions for *certiorari* and prohibition in the CA,

instead of appealing by notice of appeal. Such choice was patently erroneous and impermissible, because *certiorari* and prohibition, being extraordinary reliefs to address jurisdictional errors of a lower court, were not available to them. Worthy to stress is that the RTC dismissed the petition for *certiorari* upon its finding that the MTC did not gravely abuse its discretion in denying the petitioners' motion to quash. In its view, the RTC considered the denial of the motion to quash correct, for it would be premature and unfounded for the MTC to dismiss the criminal cases against the petitioners upon the supposed failure by the complainants to prove the period of their incapacity or of the medical attendance for them. Indeed, the time and the occasion to establish the duration of the incapacity or medical attendance would only be at the trial on the merits.

Secondly, the motion to quash is the mode by which an accused, before entering his plea, challenges the complaint or information for insufficiency *on its face* in point of law, or for defects apparent *on its face*.²⁰ Section 3, Rule 117 of the *Rules of Court* enumerates the grounds for the quashal of the complaint or information, as follows: (a) the facts charged do not constitute an offense; (b) the court trying the case has no jurisdiction over the offense charged; (c) the court trying the case has no jurisdiction over the person of the accused; (d) the officer who filed the information had no authority to do so; (e) the complaint or information does not conform substantially to the prescribed form; (f) more than one offense is charged except when a single punishment for various offenses is prescribed by law; (g) the criminal action or liability has been extinguished; (h) the complaint or information contains averments which, if true, would constitute a legal excuse or justification; and (i) the accused has been previously convicted or acquitted of the offense charged, or the case against him was dismissed or otherwise terminated without his express consent.

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According to Section 6,²¹ Rule 110 of the *Rules of Court*, the complaint or information is sufficient if it states the names of the accused; the designation of the offense given by the statute; *the acts or omissions complained of as constituting the offense*; the name of the offended party; the approximate date of the commission of the offense; and the place where the offense was committed. The fundamental test in determining the sufficiency of the averments in a complaint or information is, therefore, whether the facts alleged therein, if hypothetically admitted, constitute the elements of the offense.²²

By alleging in their motion to quash that both complaints should be dismissed for lack of one of the essential elements of less serious physical injuries, the petitioners were averring that the facts charged did not constitute offenses. To meet the test of sufficiency, therefore, it is necessary to refer to the law defining the offense charged, which, in this case, is Article 265 of the *Revised Penal Code*,

Based on the law, the elements of the crime of less serious physical injuries are, namely: (1) that the offender inflicted physical injuries upon another; and (2) that the physical injuries inflicted either incapacitated the victim for labor for 10 days or more, or the injuries required medical assistance for more than 10 days.

Were the elements of the crime sufficiently averred in the complaints? To answer this query, the Court refers to the averments of the complaints themselves, to wit:

Xxxxx

The aforementioned complaints bear out that the elements of less serious physical injuries were specifically averred therein. The complaint in Criminal Case No. 03-276 stated that: (a) the petitioners "wilfully, unlawfully and feloniously attack, assault and strike the face of one JOSEFINA GUINTO MORAÑO;" and (b) the petitioners inflicted physical injuries upon

the complainant "that will require a period of 10 to 12 days barring healing and will incapacitate his customary labor for the same period of time;" while that in Criminal Case No. 03-277 alleged that: (a) the petitioners "wilfully, unlawfully and feloniously attack, assault and right and give hitting her head against pavement of one PERLA BELTRAN MORAÑO;" and (b) the petitioners inflicted upon the complainant "physical injuries [that] will require Medical Attendance for a period of 12 to 15 days barring unforeseen complication."

In the context of Section 6, Rule 110 of the *Rules of Court*,²⁵ the complaints sufficiently charged the petitioners with less serious physical injuries. Indeed, the complaints only needed to aver the ultimate facts constituting the offense, not the details of why and how the illegal acts allegedly amounted to undue injury or damage, for such matters, being evidentiary, were appropriate for the trial. Hence, the complaints were not quashable.

In challenging the sufficiency of the complaints, the petitioners insist that the "complaints do not provide any evidence/s that would tend to establish and to show that the medical attendance rendered on private complainants actually and in fact lasted for a period exceeding ten (10) days;" and the medical certificates attached merely stated that "the probable disability period of healing is 10 to 12 days, for Josefina G. Morano, and, 12-15 days, for Perla B. Morano, hence, the findings of the healing periods were merely speculations, surmises and conjectures." They insist that the "private complainants should have presented medical certificates that would show the number of days rendered for medication considering that they filed their complaint on March 15, 2003 or about two (2) months after the alleged incident."²⁶

The petitioners' insistence is utterly bereft of merit.

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As the MTC and RTC rightly held, the presentation of the medical certificates to prove the duration of the victims' need for medical attendance or of their incapacity should take place only at the trial, not before or during the preliminary investigation. According to *Cinco v. Sandiganbayan*,²⁷ the preliminary investigation, which is the occasion for the submission of the parties' respective affidavits, counter-affidavits and evidence to buttress their separate allegations, is merely inquisitorial, and is often the only means of discovering whether a person may be reasonably charged with a crime, to enable the prosecutor to prepare the information.²⁸ It is not yet a trial on the merits, for its only purpose is to determine whether a crime has been committed and whether there is probable cause to believe that the accused is guilty thereof.²⁹ The scope of the investigation does not approximate that of a trial before the court; hence, what is required is only that the evidence be sufficient to establish probable cause that the accused committed the crime charged, not that all reasonable doubt of the guilt of the accused be removed.³⁰

We further agree with the RTC's observation that "the issues raised in the motion to quash are matters of defense that could only be threshed out in a full blown trial on the merits. Indeed, proof of actual healing period of the alleged injuries of the private complainant could only be established in the trial of the cases filed against herein petitioners by means of competent evidence, and to grant the main prayer of the instant petition for the dismissal of the criminal cases against them for less serious physical injuries is to prevent the trial court to hear and receive evidence in connection with said cases and to render judgments thereon. x x x All things considered, it would be premature to dismiss the subject criminal cases filed against the herein petitioners when the basis thereof could be determined only after trial of the merits."³¹

And, lastly, in opting to still assail the denial of the motion to quash by the MTC by bringing the special civil action for *certiorari* in the RTC, the petitioners deliberately disregarded the fundamental conditions for initiating the special civil action for *certiorari*. These conditions were, firstly, the petitioners must show that the respondent trial court lacked jurisdiction or exceeded it, or gravely abused its discretion amounting to lack or excess of jurisdiction; and, secondly, because the denial was interlocutory, they must show that there was no plain, speedy, and adequate remedy in the ordinary course of law.³²

The petitioners' disregard of the fundamental conditions precluded the success of their recourse. To start with, the petitioners did not show that the MTC had no jurisdiction, or exceeded its jurisdiction in denying the motion to quash, or gravely abused its discretion amounting to lack or excess of jurisdiction in its denial. That showing was the door that would have opened the way to their success with the recourse. Yet, the door remained unopened to them because the denial by the MTC of the motion to quash was procedurally and substantively correct because the duration of the physical incapacity or medical attendance should be dealt with only during the trial on the merits, not at the early stage of dealing with and resolving the motion to quash. As to the second condition, the fact that the denial was interlocutory, not a final order, signified that the MTC did not yet completely terminate its proceedings in the criminal cases. The proper recourse of the petitioners was to enter their pleas as the accused, go to trial in the MTC, and should the decision of the MTC be adverse to them in the end, reiterate the issue on their appeal from the judgment and assign as error the unwarranted denial of their motion to quash.³³ *Certiorari* was not available to them in the RTC because they had an appeal, or another plain, speedy or adequate remedy in the ordinary course of law.

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- **Majestic Finance and Investment Co., Inc. Vs. Jose D. Tito/Cornelio Mendoza and Paulina Cruz Vs. Jose Nazal and Rosita Nazal** G.R. No. 197442. October 22, 2014

• The Issue Before the Court

- The essential issue for the Court's resolution is whether or not the CA erred in allowing Sps. Nazal to prosecute their claim against Majestic.

The Court's Ruling

The petition is meritorious.

Sps. Nazal, who were joined as intervenors in the proceedings, had already lost their right to participate therein, in view of the RTC's dismissal of the main action which was decreed pursuant to Section 3, Rule 17 of the Rules of Court,⁴⁶ stemming from the failure of the putative plaintiff, Tito, to diligently and expeditiously prosecute the same for an unjustified and unreasonable length of time. Case law states that intervention is never an independent action, but is merely ancillary and supplemental to the existing litigation. Its purpose is not to obstruct or unnecessarily delay the placid operation of the machinery of trial, but merely to afford one not an original party, who is claiming a certain right or interest in the pending case, the opportunity to appear and be joined so he could assert or protect such right or interests. In other words, the right of an intervenor should only be in aid of the right of the original party. Thus, as a general rule,⁴⁷ where the right of the latter has ceased to exist, there is nothing to aid or fight for and, consequently, the right of intervention ceases.⁴⁸

It bears pointing out that, despite having been joined in the annulment case as intervenors, Sps. Nazal should have actually been deemed as the case's plaintiffs considering that Tito had already transferred his interest over the disputed property to the former, even prior to the

institution of the proceedings. Verily, where a transfer of interest was effected before the commencement of the suit – as in this case – the transferee must necessarily be the plaintiff (or defendant, as the case may be)⁴⁹ as it is he who stands to be benefited or injured by the judgment in the suit.⁵⁰

Thus, on the supposition that they were the case's plaintiffs, Sps. Nazal should bear the obligation imputed by the RTC upon Tito to diligently and expeditiously prosecute the action within a reasonable length of time. The RTC, however, pointed out that Sps. Nazal failed in this regard. As the records would bear, while Sps. Nazal moved to set the case for pre-trial on **December 9, 1987**, no further action was taken by them after the court a quo failed to calendar the case and set the same for pre-trial. Disconcerting is the fact that it took Sps. Nazal almost **eleven (11) years**, or on **October 20, 1998** to move for the setting of the case for hearing, as they were apparently compelled to act only upon the threat of being dispossessed of the subject property with the filing of the unlawful detainer case by the new registered owners, Sps. Lim. Notably, while under both the present⁵¹ and the old⁵² Rules of Court, the clerk of court has the duty to set the case for pre-trial, the same does not relieve the plaintiffs of their own duty to prosecute the case diligently.⁵³ Truth be told, the expeditious disposition of cases is as much the duty of the plaintiff as the court.⁵⁴

Furthermore, the Court has perused the records and found no sufficient justification for Sps. Nazal's inordinately long inaction over the annulment case. Other than the allegation that their counsel assured them that their claim of ownership was well-founded,⁵⁵ they failed to even offer an explanation as to why they had to wait for more than a decade to proceed with the case. As the Court sees it, this is an unreasonably long time for the defendant to wait for the outcome of a trial that has yet to commence,

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especially as the case had been filed by their predecessor-in-interest, Tito, as early as November 21, 1977.⁵⁶

All told, whether one treats Sps. Nazal as mere intervenors or, properly speaking, as the plaintiffs in the annulment case, the Court finds no cogent reason as to why the same should not be dismissed. In fine, Sps. Nazal are precluded from prosecuting their claim against Majestic.

• **MCMP Construction Corp., Vs. Monark Equipment Corp.** G.R. No. 201001. November 10, 2014

- MCMP challenges the ruling of the CA arguing that the appellate court should have disallowed the presentation of secondary evidence to prove the existence of the Contract, following the Best Evidence Rule. MCMP specifically argues that based on the testimony of Peregrino, Monark did not diligently search for the original copy of the Contract as evidenced by the fact that: 1) the actual custodian of the document was not presented; 2) the alleged loss was not even reported to management or the police; and 3) Monark only searched for the original copy of the document for the purposes of the instant case.

- Petitioner's contention is erroneous.

- The Best Evidence Rule, a basic postulate requiring the production of the original document whenever its contents are the subject of inquiry, is contained in Section 3 of Rule 130 of the Rules of Court which provides:

- "Section 3. *Original document must be produced; exceptions.* — When the subject of inquiry is the contents of a document, no evidence shall be admissible other

than the original document itself, except in the following cases:

-
- (a) **When the original has been lost or destroyed, or cannot be produced in court, without bad faith on the part of the offeror;**
-
- (b) **When the original is in the custody or under the control of the party against whom the evidence is offered, and the latter fails to produce it after reasonable notice;**
-
- (c) When the original consists of numerous accounts or other documents which cannot be examined in court without great loss of time and the fact sought to be established from them is only the general result of the whole; and
-
- (d) When the original is a public record in the custody of a public officer or is recorded in a public office. (Emphasis supplied)"
-
- Relative thereto, Sections 5 and 6 of Rule 130 provide the relevant rules on the presentation of secondary evidence to prove the contents of a lost document:
-
- "Section 5. *When original document is unavailable.* — When the original document has been lost or destroyed, or cannot be produced in court, the offeror, upon proof of its execution or existence and the cause of its unavailability without bad faith on his part, may prove its contents by a copy, or by a recital of its contents in some authentic document, or by the testimony of witnesses in the order stated. (4a)
-
- Section 6. *When original document*

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is in adverse party's custody or control. — If the document is in the custody or under the control of adverse party, he must have reasonable notice to produce it. If after such notice and after satisfactory proof of its existence, he fails to produce the document, secondary evidence may be presented as in the case of its loss."

-
- In *Country Bankers Insurance Corporation v. Lagman*,¹¹ the Court set down the requirements before a party may present secondary evidence to prove the contents of the original document whenever the original copy has been lost:
-
- Before a party is allowed to adduce secondary evidence to prove the contents of the original, the offeror must prove the following: (1) the existence or due execution of the original; (2) the loss and destruction of the original or the reason for its non-production in court; and (3) on the part of the offeror, the absence of bad faith to which the unavailability of the original can be attributed. The correct order of proof is as follows: existence, execution, loss, and contents.
-
- In the instant case, the CA correctly ruled that the above requisites are present. Both the CA and the RTC gave credence to the testimony of Peregrino that the original Contract in the possession of Monark has been lost and that diligent efforts were exerted to find the same but to no avail. Such testimony has remained uncontroverted. As has been repeatedly held by this Court, "findings of facts and assessment of credibility of witnesses are matters best left to the trial court."¹² Hence, the Court will

respect the evaluation of the trial court on the credibility of Peregrino.

-
- MCMP, to note, contends that the Contract presented by Monark is not the contract that they entered into. Yet, it has failed to present a copy of the Contract even despite the request of the trial court for it to produce its copy of the Contract.¹³ Normal business practice dictates that MCMP should have asked for and retained a copy of their agreement. Thus, MCMP's failure to present the same and even explain its failure, not only justifies the presentation by Monark of secondary evidence in accordance with Section 6 of Rule 130 of the Rules of Court, but it also gives rise to the disputable presumption adverse to MCMP under Section 3 (e) of Rule 131 of the Rules of Court that "evidence willfully suppressed would be adverse if produced."

- **Prudential Bank (now Bank of the Philippine Islands) as the duly appointed Administrator of the Estate of Juliana Diez vda. De Gabriel Vs. Amador A. Magdamit, Jr. and Amelia F. Magdamit** G.R. No. 183795. November 12, 2014

ISSUE: INVALID SERVICE OF SUMMONS

Both respondents, Magdamit, Jr. and Magdamit, Sr. argued that the MeTC did not acquire jurisdiction over their persons due to defective or improper service of summons. Magdamit, Sr. argued that the MeTC could not have acquired jurisdiction over his person due to improper/defective service of summons because it was served upon an incompetent person, the housemaid of his daughter.

Fundamental is the rule 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 or when the service of summons upon the person of the defendant is defective, the

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court acquires no jurisdiction over his person, and a judgment rendered against him is null and void.¹⁹

In actions in *personam* such as ejectment, the court acquires jurisdiction over the person of the defendant through personal or substituted service of summons. However, 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.²⁰ Before substituted service of summons is resorted to, the parties must: (a) indicate the impossibility of personal service of summons within a reasonable time; (b) specify the efforts exerted to locate the defendant; and (c) state that the summons was served upon a person of sufficient age and discretion who is residing in the address, or who is in charge of the office or regular place of business of the defendant.²¹

In *Manotoc v. Court of Appeals*,²² we have succinctly discussed a valid resort to substituted service of summons:

We can break down this section into the following requirements to effect a valid substituted service:

(1) Impossibility of Prompt Personal Service

The party relying on substituted service or the sheriff must show that defendant cannot be served promptly or there is impossibility of prompt service. Section 8, Rule 14 provides that the plaintiff or the sheriff is given a "reasonable time" to serve the summons to the defendant in person, but no specific time frame is mentioned. "Reasonable time" is defined as "so much time as is necessary under the circumstances for a reasonably prudent and diligent man to do, conveniently, what the contract or duty requires that should be done, having

a regard for the rights and possibility of loss, if any, to the other party." Under the Rules, the service of summons has no set period.

However, when the court, clerk of court, or the plaintiff asks the sheriff to make the return of the summons and the latter submits the return of summons, then the validity of the summons lapses. The plaintiff may then ask for an alias summons if the service of summons has failed. What then is a reasonable time for the sheriff to effect a personal service in order to demonstrate impossibility of prompt service? To the plaintiff, "reasonable time" means no more than seven (7) days since an expeditious processing of a complaint is what a plaintiff wants. To the sheriff, "reasonable time" means 15 to 30 days because at the end of the month, it is a practice for the branch clerk of court to require the sheriff to submit a return of the summons assigned to the sheriff for service. The Sheriffs Return provides data to the Clerk of Court, which the clerk uses in the Monthly Report of Cases to be submitted to the Office of the Court Administrator within the first ten (10) days of the succeeding month. Thus, one month from the issuance of summons can be considered "reasonable time" with regard to personal service on the defendant.

Sheriffs are asked to discharge their duties on the service of summons with due care, utmost diligence, and reasonable promptness and speed so as not to prejudice the expeditious dispensation of justice. Thus, they are enjoined to try their best efforts to accomplish personal service on defendant. On the other hand, since the defendant is expected to try to avoid and evade service of summons, the sheriff must be resourceful, persevering, canny, and diligent in serving the process on the defendant. 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 month] which

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eventually resulted in failure to prove impossibility of prompt service. "Several attempts" means at least three (3) tries, preferably on at least two different dates. In addition, the sheriff must cite why such efforts were unsuccessful. It is only then that impossibility of service can be confirmed or accepted.

(2) Specific Details in the Return

The sheriff must describe in the Return of Summons the facts and circumstances surrounding the attempted personal service. The efforts made to find the defendant and the reasons behind the failure must be clearly narrated in detail in the Return. The date and time of the attempts on personal service, the inquiries made to locate the defendant, the name/s of the occupants of the alleged residence or house of defendant and all other acts done, though futile, to serve the summons on defendant must be specified in the Return to justify substituted service. The form on Sheriffs Return of Summons on Substituted Service prescribed in the Handbook for Sheriffs published by the Philippine Judicial Academy requires a narration of the efforts made to find the defendant personally and the fact of failure. Supreme Court Administrative Circular No. 5 dated November 9, 1989 requires that "impossibility of prompt service should be shown by stating the efforts made to find the defendant personally and the failure of such efforts," which should be made in the proof of service.

(3) A Person of Suitable Age and Discretion

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." A person of suitable age and discretion is one who has attained the age of full legal capacity (18 years old) and is considered to have enough discernment to understand the

importance of a summons. "Discretion" is defined as "the ability to make decisions which represent a responsible choice and for which an understanding of what is lawful, right or wise may be presupposed". Thus, to be of sufficient discretion, such person must know how to read and understand English to comprehend the import of the summons, and fully realize the need to deliver the summons and complaint to the defendant at the earliest possible time for the person to take appropriate action. Thus, the person must have the "relation of confidence" to the defendant, ensuring that the latter would receive or at least be notified of the receipt of the summons. 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. These matters must be clearly and specifically described in the Return of Summons.

(4) A Competent Person in Charge

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; and 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.** Again, these details must be contained in the Return.²³ (Emphasis and underscoring supplied; citations omitted)

The service of summons on Magdamit, Sr. failed to comply with the rule laid down in

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Manotoc. The resort to substituted service after just two (2) attempts to personally serve the summons on Magdamit, Sr., is premature under our pronouncement that:

What then is a reasonable time for the sheriff to effect a personal service in order to demonstrate impossibility of prompt service? To the plaintiff, "reasonable time" means no more than seven (7) days since an expeditious processing of a complaint is what a plaintiff wants. To the sheriff, "reasonable time" means 15 to 30 days because at the end of the month, it is a practice for the branch clerk of court to require the sheriff to submit a return of the summons assigned to the sheriff for service. The Sheriffs Return provides data to the Clerk of Court, which the clerk uses in the Monthly Report of Cases to be submitted to the Office of the Court Administrator within the first ten (10) days of the succeeding month. Thus, one month from the issuance of summons can be considered "reasonable time" with regard to personal service on the defendant.²⁴

Then too, the proof of service failed to specify the details of the attendant circumstances. The Return merely expressed a general statement that because the Sheriff failed to reach Magdamit, Sr., he elected substituted service of summons. The Return failed to state the impossibility to serve summons within a reasonable time. And the further defect in the service was that the summons was served on a person not of sufficient discretion, an incompetent person, Madel Magalona, a housemaid of Magdamit Sr.'s daughter, Arleen Marie Cabug.

Similar to the case of Magdamit, Sr., the service of summons on Magdamit, Jr. also failed to comply with the rules laid down in *Manotoc*. The summons was served at 1163 Int., J. Nakpil St., Paco, Manila, Magdamit, Jr.'s former residence when at the time, Magdamit, Jr. was residing at 0369 Jupiter St., Progressive Village 20

and 21, Molino I, Bacoar, Cavite. In *Keister v. Navarro*,²⁵ we have defined "dwelling house" or "residence" to refer to a place where the person named in the summons is living at the time when the service is made, even though he may be temporarily out of the country at the time to the time of service. Therefore, it is not sufficient for the Sheriff "to leave the copy at defendant's former dwelling house, residence, or place of abode, as the case may be, after his removal therefrom".²⁶

Worse, the Return did not make mention of any attempt to serve the summons at the actual residence of Magdamit, Jr. The Return merely expressed a general statement that the sheriff exerted efforts to serve the summons and that the same was futile, "[t]hat on several occasions despite diligent (sic) efforts exerted to serve the said processes personally to defendant/s herein the same proved futile," without any statement on the impossibility of service of summons within a reasonable time. Further, the summons was served on a certain Dara Cabug, a person not of suitable age and discretion, who is unauthorized to receive the same.

Notably, the requirement additionally is that

Thus, to be of sufficient discretion, such person must know how to read and understand English to comprehend the import of the summons, and fully realize the need to deliver the summons and complaint to the defendant at the earliest possible time for the person to take appropriate action. Thus, the person must have the "relation of confidence" to the defendant, ensuring that the latter would receive or at least be notified of the receipt of the summons. 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

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deliver it to the defendant or at least notify the defendant of said receipt of summons. These matters must be clearly and specifically described in the Return of Summons.²⁷

The readily acceptable conclusion in this case is that the process server at once resorted to substituted service of summons without exerting enough effort to personally serve summons on respondents. In *Sps. Jose v. Sps. Boyon*,²⁸ we discussed the effect of failure to specify the details of the effort exerted by the process server to personally serve summons upon the defendants:

The Return of Summons shows no effort was actually exerted and no positive step taken by either the process server or petitioners to locate and serve the summons personally on respondents. **At best, the Return merely states the alleged whereabouts of respondents without indicating that such information was verified from a person who had knowledge thereof. Certainly, without specifying the details of the attendant circumstances or of the efforts exerted to serve the summons, a general statement that such efforts were made will not suffice for purposes of complying with the rules of substituted service of summons.**²⁹ (Emphasis and underscoring supplied)

In the case at bar, the Returns contained mere general statements that efforts at personal service were made. Not having specified the details of the attendant circumstances or of the efforts exerted to serve the summons,³⁰ there was a failure to comply strictly with all the requirements of substituted service, and as a result the service of summons is rendered ineffective.³¹

Filing an Answer does not amount to voluntary appearance

The petitioner asserted that assuming *arguendo* that the service of summons

was defective, respondents' filing of their respective Answers and participation in the proceedings in the MeTC, such as attending the pre-trial and presenting evidence, amount to voluntary appearance which vested the MeTC jurisdiction over their persons.

Indeed, despite lack of valid service of summons, the court can still acquire jurisdiction over the person of the defendant by virtue of the latter's voluntary appearance. Section 20, Rule 14 of the Rules of Court clearly states:

Sec. 20. Voluntary appearance. - The defendant's voluntary appearance in the action shall be equivalent to service of summons. The inclusion in a motion to dismiss of other grounds aside from lack of jurisdiction over the person shall not be deemed a voluntary appearance.

However, such is not the case at bar. Contrary to petitioner's contention, respondents are not deemed to have voluntarily submitted to the court's jurisdiction by virtue of filing an Answer or other appropriate responsive pleadings and by participating in the case.

The mandate under the Rules on Summary Proceedings that govern ejectment cases, is expeditious administration of justice such that the filing of an Answer is mandatory. To give effect to the mandatory character and speedy disposition of cases, the defendant is required to file an answer within ten (10) days from service of summons, otherwise, the court, *motu proprio*, or upon motion of the plaintiff, shall render judgment as may be warranted by the facts alleged in the complaint, limited to the relief prayed for by the petitioner.³² Through this rule, the parties are precluded from resorting to dilatory maneuvers.

Compliantly, respondents filed their respective Answers. In the MeTC, at first, Magdamit, Jr. filed a Notice of Special

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Appearance with Motion to Dismiss, where he seasonably raised the issue of lack of jurisdiction, which the MeTC later ordered to be stricken out. In lieu thereof, Magdamit, Jr. filed an Answer with Counterclaim (In a Special Appearance Capacity). Again, Magdamit, Jr. reiterated the lack of jurisdiction over his person and the subject matter. On the other hand, Magdamit, Sr. filed an Answer with an allegation by special defense that the original complaint should be dismissed outright because the MeTC did not acquire jurisdiction over his person and the subject matter. In sum, both respondents filed their Answers via special appearance.

In *Philippine Commercial International Bank v. Spouses Wilson Dy Hong Pi and Lolita Dy*,³³ we held that filing of an answer in a special appearance cannot be construed as voluntary appearance or submission to the court's jurisdiction:

Parallel to our ruling in *Philippine Commercial International Bank*, the respondents' act of filing their respective Answers with express reservation should not be construed as a waiver of the lack of jurisdiction of the MeTC over their person because of non-service/defective/improper service of summons and for lack of jurisdiction over the subject matter. Hence, *sans* voluntary submission to the court's jurisdiction, filing an answer in compliance with the rules on summary procedure in lieu of obtaining an adverse summary judgment does not amount to voluntary submission. As we already held, a party who makes a special appearance in court, challenging the jurisdiction of said court, is not deemed to have submitted himself to the jurisdiction of the court.³⁵ It should not be construed as voluntary submission to the jurisdiction of the court.

- **University of Pangasinan, Inc., et al. Vs. Fernandez, et al.** G.R. No. 211228. November 12, 2014

- **Updating the computation of awards to include as well backwages and separation pay**

corresponding to the period after the rendition of LA Gambito's decision on November 6, 2000 up to its finality on July 11, 2005 is not violative of the principle of immutability of a final and executory judgment.

This Court need not belabor the first two issues raised since they have been amply discussed by the CA in the assailed decision and resolution.

In *Session Delights* aptly quoted by the CA and reiterated in several cases including *Nacar and Gonzales v. Solid Cement Corporation*,²⁷ the Court was emphatic that:

[N]o essential change is made by a re-computation as this step is a necessary consequence that flows from the nature of the illegality of dismissal declared in that decision. A re-computation (or an original computation, if no previous computation has been made) is a part of the law—specifically, Article 279 of the Labor Code and the established jurisprudence on this provision—that is read into the decision. By the nature of an illegal dismissal case, the reliefs continue to add on until full satisfaction, as expressed under Article 279 of the Labor Code. The re-computation of the consequences of illegal dismissal upon execution of the decision does not constitute an alteration or amendment of the final decision being implemented. The illegal dismissal ruling stands; only the computation of monetary consequences of this dismissal is affected and this is not a violation of the principle of immutability of final judgments.

x x x x

That the amount the petitioner shall now pay has greatly increased is a consequence that it cannot avoid as it is the risk that it ran when it continued to seek recourses against the labor arbiter's decision. Article 279 provides for the consequences of illegal dismissal in no

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uncertain terms, qualified only by jurisprudence in its interpretation of when separation pay in lieu of reinstatement is allowed. When that happens, the finality of the illegal dismissal decision becomes the reckoning point instead of the reinstatement that the law decrees. In allowing separation pay, the final decision effectively declares that the employment relationship ended so that separation pay and backwages are to be computed up to that point, x x x.²⁸ (Citation omitted and underscoring ours)

Prescinding from the above, the Court finds no reversible error committed by the CA when it affirmed LA Flores' Order dated August 22, 2006, which allowed the updating beyond November 6, 2000 of the computation of backwages and separation pay awarded to the respondents. The CA correctly ruled that the backwages should be computed from May 9, 2000, the date of illegal dismissal, up to July 11, 2005, the date of the Entry of Judgment, while separation pay should be reckoned from the respective first days of employment of Florentino and Nilda up to July 11, 2005 as well.

While the dispositive portion of the herein assailed CA decision did not explicitly refer to the 13th month pay, its inclusion in the computation approved by LA Flores is proper.

Presidential Decree No. 851²⁹ (P.D. No. 851) is the law directing the 13th month payment. On the other hand, Article 279 of the Labor Code in part provides that an illegally-dismissed employee shall be entitled to full backwages, inclusive of allowances, and other benefits or their monetary equivalent computed from the time compensation was withheld up to the time of actual reinstatement.

In *Gonzales*, a final and executory decision of the LA did not explicitly award the 13th month pay. During the execution proceedings, the NLRC included it in the computation. The CA deleted the same. This Court thereafter ruled that the CA

abused its discretion since "the 13th month pay fell due x x x by legal mandate."³⁰

In the body and dispositive portion of LA Gambito's Decision³¹ dated November 6, 2000, which became final and executory on July 11, 2005, he did not explicitly include the 13th month pay in the award. However, the decision stated that Florentino and Nilda were entitled to full backwages and other benefits.

Subsequently, the Labor Arbitration Associate's updated computation of the award³² included the 13th month pay and was approved by LA Flores through the latter's August 22, 2006 Order. The NLRC set aside LA Flores' order, but the CA reinstated the same. The dispositive portion of the CA decision expressly ordered the award of backwages, separation pay, attorney's fees and legal interest, but conspicuously absent was a reference to the inclusion of the 13th month pay.³³

The Court finds that despite the CA's non-explicit reference to the 13th month pay, following the doctrine in *Gonzales*, its inclusion in the computation is proper. Entitlement to it is a right granted by P.D. No. 851. Besides, the computation of award for backwages and other benefits is a mere legal consequence of the finding that there was illegal dismissal.³⁴

In computing the backwages and benefits awarded to the respondents, the reckoning period is not interrupted by the NLRC's reversal of LA Gambito's finding of illegal dismissal.

The petitioners argue that even if backwages and benefits were really due, the computation should not include the period from February 21, 2002 to September 13, 2004, during which time the NLRC's disquisition that there was no illegal dismissal stood.

The argument fails to persuade.

In *Gonzales*, the Court stated that the

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increase in the amount that the corporation had to pay "is a consequence that it cannot avoid as it is the risk that it ran when it continued to seek recourses against the [LA's] decision."³⁵

Further, in *Reyes v. NLRC, et al.*,³⁶ the Court declared that:

One of the natural consequences of a finding that an employee has been illegally dismissed is the payment of backwages corresponding to the period from his dismissal up to actual reinstatement. The statutory intent of this matter is clearly discernible. The payment of backwages allows the employee to recover from the employer that which he has lost by way of wages as a result of his dismissal. Logically, it must be computed from the date of petitioner's illegal dismissal up to the time of actual reinstatement. There can be no gap or interruption, lest we defeat the very reason of the law in granting the same, x x x.³⁷ (Citation omitted and underscoring ours)

Although in *Reyes*, the issue relates to the delay in filing of the complaint for illegal dismissal from the time of termination, there is no preclusion to apply the doctrine that there should be no gap or interruption in the reckoning period during which the dismissed employee is entitled to backwages and benefits. The statutory intent in the award of backwages and benefits is clear. Further, as declared in *Gonzales*, an employer takes a risk in assailing the LA's finding of illegal dismissal, but there is no insulation from the consequences therefrom.

- **Governor Enrique T. Garcia, Jr. Vs. Office of the Ombudsman, Leonardo B. Roman, et al.** G.R. No. 197567. November 19, 2014

- **II.**

- Probable cause, for the purpose of filing a criminal information, exists when the facts are sufficient to engender a well-founded belief that a crime has been committed and

that the respondent is probably guilty thereof. To engender a well-founded belief that a crime has been committed, and to determine if the suspect is probably guilty of the same, the elements of the crime charged should, in all reasonable likelihood, be present. This is based on the principle that every crime is defined by its elements, without which there should be, at the most, no criminal offense.⁶¹

- The elements of the crime of Violation of Section 3 (e),⁶² RA 3019 are as follows: (a) the offender must be a **public officer discharging administrative, judicial, or official functions**; (b) he must have acted with **manifest partiality, evident bad faith or gross inexcusable negligence**; and (c) his action caused **any undue injury to any party, including the government, or gave any private party unwarranted benefits, advantage or preference in the discharge of his functions.**⁶³
- Considering the findings contained in the CoA Memo, which the Ombudsman, however, disregarded, it is quite clear that all the foregoing elements are, in all reasonable likelihood, present with respect to respondents' participation in this case.
- Respondents, who were all public officers at the time of the alleged commission of the crime – particularly, as provincial officials of Bataan discharging administrative functions (**first element**) – apparently acted with manifest partiality, evident bad faith – or, at the very least, gross inexcusable negligence – when they issued the pertinent documents and certifications that led to the diversion of public funds

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to a project that had no proper allotment, i.e., the mini-theater project (**second element**). The absence of such allotment not only renders invalid the release of funds therefor but also taints the legality of the project's appropriation⁶⁴ as well as the Province's contract with V.F. Construction.

- To be clear, the nineteen (19) projects mentioned in the CoA Memo were listed under "Annex B"⁶⁶ thereof entitled "Schedule of Contracted Projects and Financial Assistance Out of Invalid Appropriations, CY 2004," all of which had **no allotments** issued. **First and foremost on the list is the construction of the mini-theater project.** A similar CoA memorandum, AOM No. 2004-26⁶⁷ dated September 6, 2004, which was also ignored by the Ombudsman, contains the same audit results with regard to the **lack of a valid allotment** for the project. Thus, absent compliance with this basic requirement, the authorizations made by respondents in relation to the project were therefore *prima facie* tainted with illegality, amounting to either manifest partiality, evident bad faith, or, at the very least, to gross inexcusable negligence. Indeed, it is reasonable to expect that respondents – being the Province's accountable officers at that time – had knowledge of the procedure on allotments and appropriations. Knowledge of basic procedure is part and parcel of respondents' shared fiscal responsibility under Section 305 (I) of RA 7160,

Hence, unless the CoA's findings are substantially rebutted, the allotment's absence should have roused respondents' suspicions, as regards the project's legality, and, in consequence, prevented them from approving the disbursements therefor. This is especially true for Roman, who, as the Local Chief Executive of the

Province at that time, was primarily charged with the issuance of allotments.⁶⁸ As such, he was in the position to know if the allotment requirement had, in the first place, been complied with, given that it was a pre-requisite before the project could have been contracted.

In addition, the Court observes the same degree of negligence on the part of respondents in seemingly attesting to the project's 100% completion when such was not the case. The erroneous certification rendered the disbursements made by the Province suspect as V.F. Construction had still to fulfill its contractual obligations to the Province and yet were able to receive full payment.

Considering that the illegal diversion of public funds for the mini-theater project would undermine the execution of other projects legitimately supported by proper allotments, it is quite obvious that undue injury on the part of the Province and its residents would be caused. Likewise, considering that V.F. Construction had already received full payment for a project that had yet to be completed, it also appears that a private party was given unwarranted benefits by respondents in the discharge of their functions (**third element**).

Thus, with the elements of the crime of Violation of Section 3 (e), RA 3019 herein ostensibly present, the Court hereby holds that the Ombudsman committed grave abuse of discretion when it dismissed said charge against respondents.

- **Nedlloyd Lijnen B.V. Rotterdam and The East Asiatic Co., Ltd. Vs. Glow Laks Enterprises, Ltd.** G.R. No. 156330. November 19, 2014

• **The Court's Ruling**

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- We find the petition bereft of merit.
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- It is well settled that foreign laws do not prove themselves in our jurisdiction and our courts are not authorized to take judicial notice of

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them. Like any other fact, they must be alleged and proved.¹³ To prove a foreign law, the party invoking it must present a copy thereof and comply with Sections 24 and 25 of Rule 132 of the Revised Rules of Court¹⁴ which read:

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- SEC. 24. *Proof of official record.* — The record of public documents referred to in paragraph (a) of Section 19, when admissible for any purpose, may be evidenced by an official publication thereof or by a copy attested by the officer having the legal custody of the record, or by his deputy, and accompanied, if the record is not kept in the Philippines, with a certificate that such officer has the custody. **If the office in which the record is kept is in a foreign country, the certificate may be made by a secretary of the embassy or legation, consul general, consul, vice- consul, or consular agent or by any officer in the foreign service of the Philippines stationed in the foreign country in which the record is kept, and authenticated by the seal of his office.**
-
- SEC. 25. *What attestation of copy must state.* — Whenever a copy of a document or record is attested for the purpose of the evidence, the attestation must state, in substance, that the copy is a correct copy of the original, or a specific part thereof, as the case may be. The attestation must be under the official seal of the attesting officer, if there be any, or if he be the clerk of a court having a seal, under the seal of such court.
-
- For a copy of a foreign public document to be admissible, the following requisites are mandatory:

(1) it must be attested by the officer having legal custody of the records or by his deputy; and (2) it must be accompanied by a certificate by a secretary of the embassy or legation, consul general, consul, vice-consular or consular agent or foreign service officer, and with the seal of his office.¹⁵ Such official publication or copy must be accompanied, if the record is not kept in the Philippines, with a certificate that the attesting officer has the legal custody thereof.¹⁶ The certificate may be issued by any of the authorized Philippine embassy or consular officials stationed in the foreign country in which the record is kept, and authenticated by the seal of his office.¹⁷ The attestation must state, in substance, that the copy is a correct copy of the original, or a specific part thereof, as the case may be, and must be under the official seal of the attesting officer.¹⁸

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- Contrary to the contention of the petitioners, the Panamanian laws, particularly Law 42 and its Implementing Order No. 7, were not duly proven in accordance with Rules of Evidence and as such, it cannot govern the rights and obligations of the parties in the case at bar. **While a photocopy of the Gaceta Oficial of the Republica de Panama No. 17.596, the Spanish text of Law 42 which is the foreign statute relied upon by the court *a quo* to relieve the common carrier from liability, was presented as evidence during the trial of the case below, the same however was not accompanied by the required attestation and certification.**
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- It is explicitly required by Section 24, Rule 132 of the Revised Rules of Court that a copy of the statute

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must be accompanied by a certificate of the officer who has legal custody of the records and a certificate made by the secretary of the embassy or legation, consul general, consul, vice-consular or by any officer in the foreign service of the Philippines stationed in the foreign country, and authenticated by the seal of his office. The latter requirement is not merely a technicality but is intended to justify the giving of full faith and credit to the genuineness of the document in a foreign country.¹⁹ Certainly, the deposition of Mr. Enrique Cajigas, a maritime law practitioner in the Republic of Panama, before the Philippine Consulate in Panama, is not the certificate contemplated by law. At best, the deposition can be considered as an opinion of an expert witness who possess the required special knowledge on the Panamanian laws but could not be recognized as proof of a foreign law, the deponent not being the custodian of the statute who can guarantee the genuineness of the document from a foreign country. To admit the deposition as proof of a foreign law is, likewise, a disavowal of the *rationale* of Section 24, Rule 132 of the Revised Rules of Court, which is to ensure authenticity of a foreign law and its existence so as to justify its import and legal consequence on the event or transaction in issue.

- The above rule, however, admits exceptions, and the Court in certain cases recognized that Section 25, Rule 132 of the Revised Rules of Court does not exclude the presentation of other competent evidence to prove the existence of foreign law. In *Willamete Iron and Steel Works v. Muzza*²⁰ for instance, we allowed the foreign law to be established

on the basis of the testimony in open court during the trial in the Philippines of an attorney-at-law in San Francisco, California, who quoted the particular foreign law sought to be established.²¹ The ruling is peculiar to the facts. Petitioners cannot invoke the *Willamete* ruling to secure affirmative relief since their so called expert witness never appeared during the trial below and his deposition, that was supposed to establish the existence of the foreign law, was obtained *ex-parte*.

- It is worth reiterating at this point that under the rules of private international law, a foreign law must be properly pleaded and proved as a fact. In the absence of pleading and proof, the laws of the foreign country or state will be presumed to be the same as our local or domestic law. This is known as processual presumption.²² While the foreign law was properly pleaded in the case at bar, it was, however, proven not in the manner provided by Section 24, Rule 132 of the Revised Rules of Court. The decision of the RTC, which proceeds from a disregard of specific rules cannot be recognized.

Having settled the issue on the applicable Rule, we now resolve the issue of whether or not petitioners are liable for the misdelivery of goods under Philippine laws.

Under the New Civil Code, common carriers, from the nature of their business and for reasons of public policy, are bound to observe **extraordinary diligence** in the vigilance over goods, according to the circumstances of each case.²³ Common carriers are responsible for loss, destruction or deterioration of the goods unless the same is due to flood, storm, earthquake or other natural disaster or calamity.²⁴ **Extraordinary diligence is that extreme care and caution which**

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persons of unusual prudence and circumspection use for securing or preserving their own property or rights.²⁵ This expecting standard imposed on common carriers in contract of carrier of goods is intended to tilt the scales in favor of the shipper who is at the mercy of the common carrier once the goods have been lodged for the shipment.²⁶ Hence, in case of loss of goods in transit, the common carrier is presumed under the law to have been in fault or negligent.²⁷

While petitioners concede that, as a common carrier, they are bound to observe extraordinary diligence in the care and custody of the goods in their possession, they insist that they cannot be held liable for the loss of the shipments, their extraordinary responsibility having ceased at the time the goods were discharged into the custody of the customs arrastre operator, who in turn took complete responsibility over the care, storage and delivery of the cargoes.²⁸

In contrast, respondent, submits that the fact that the shipments were not delivered to the consignee as stated in the bill of lading or to the party designated or named by the consignee, constitutes misdelivery thereof, and under the law it is presumed that the common carrier is at fault or negligent if the goods they transported, as in this case, fell into the hands of persons who have no right to receive them.

We sustain the position of the respondent.

Article 1736 and Article 1738 are the provisions in the New Civil Code which define the period when the common carrier is required to exercise diligence lasts, viz:

Article 1736. The extraordinary responsibility of the common carrier lasts from the time the goods are unconditionally placed in the possession of, and received by the carrier for transportation until the same are

delivered, actually or constructively, by the carrier to the consignee, or to the person who has a right to receive them, without prejudice to the provisions of article 1738.

Article 1738. The extraordinary liability of the common carrier continues to be operative even during the time the goods are stored in a warehouse of the carrier at the place of destination, until the consignee has been advised of the arrival of the goods and has had reasonable opportunity thereafter to remove them or otherwise dispose of them.

Explicit is the rule under Article 1736 of the Civil Code that the extraordinary responsibility of the common carrier begins from the time the goods are delivered to the carrier.²⁹ This responsibility remains in full force and effect even when they are temporarily unloaded or stored in transit, unless the shipper or owner exercises the right of stoppage in transitu, and terminates only after the lapse of a reasonable time for the acceptance, of the goods by the consignee or such other person entitled to receive them.³⁰

It was further provided in the same statute that the carrier may be relieved from the responsibility for loss or damage to the goods upon actual or constructive delivery of the same by the carrier to the consignee or to the person who has the right to receive them.³¹ In sales, actual delivery has been defined as the ceding of the corporeal possession by the seller, and the actual apprehension of the corporeal possession by the buyer or by some person authorized by him to receive the goods as his representative for the purpose of custody or disposal.³² **By the same token, there is actual delivery in contracts for the transport of goods when possession has been turned over to the consignee or to his duly authorized agent and a reasonable time is given him to remove the goods.**³³

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In this case, there is no dispute that the custody of the goods was never turned over to the consignee or his agents but was lost into the hands of unauthorized persons who secured possession thereof on the strength of falsified documents. The loss or the misdelivery of the goods in the instant case gave rise to the presumption that the common carrier is at fault or negligent.

A common carrier is presumed to have been negligent if it fails to prove that it exercised extraordinary vigilance over the goods it transported.³⁴ **When the goods shipped are either lost or arrived in damaged condition, a presumption arises against the carrier of its failure to observe that diligence, and there need not be an express finding of negligence to hold it liable.³⁵ To overcome the presumption of negligence, the common carrier must establish by adequate proof that it exercised extraordinary diligence over the goods.³⁶ It must do more than merely show that some other party could be responsible for the damage.³⁷**

In the present case, petitioners failed to prove that they did exercise the degree of diligence required by law over the goods they transported. Indeed, aside from their persistent disavowal of liability by conveniently posing an excuse that their extraordinary responsibility is terminated upon release of the goods to the Panamanian Ports Authority, petitioners failed to adduce sufficient evidence they exercised extraordinary care to prevent unauthorized withdrawal of the shipments. Nothing in the New Civil Code, however, suggests, even remotely, that the common carriers' responsibility over the goods ceased upon delivery thereof to the custom authorities. To the mind of this Court, the contract of carriage remains in full force and effect even after the delivery of the goods to the port authorities; the only delivery that releases it from their obligation to observe extraordinary care is the delivery to the

consignee or his agents. Even more telling of petitioners' continuing liability for the goods transported to the fact that the original bills of lading up to this time, remains in the possession of the notify party or consignee. Explicit on this point is the provision of Article 353 of the Code of Commerce which provides:

Article 353. The legal evidence of the contract between the shipper and the carrier shall be the bills of lading, by the contents of which the disputes which may arise regarding their execution and performance shall be decided, no exceptions being admissible other than those of falsity and material error in the drafting.

After the contract has been complied with, the bill of lading which the carrier has issued shall be returned to him, and by virtue of the exchange of this title with the thing transported, the respective obligations and actions shall be considered cancelled, unless in the same act the claim which the parties may wish to reserve be reduced to writing, with the exception of that provided for in Article 366.

In case the consignee, upon receiving the goods, cannot return the bill of lading subscribed by the carrier, because of its loss or of any other cause, he must give the latter a receipt for the goods delivered, this receipt producing the same effects as the return of the bill of lading.

While surrender of the original bill of lading is not a condition precedent for the common carrier to be discharged from its contractual obligation, there must be, at the very least, an acknowledgement of the delivery by signing the delivery receipt, if surrender of the original of the bill of lading is not possible.³⁸ There was neither surrender of the original copies of the bills of lading nor was there acknowledgment of the delivery in the present case. This leads to the conclusion that the contract of carriage still subsists and petitioners could be held liable for the breach thereof.

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Petitioners could have offered evidence before the trial court to show that they exercised the highest degree of care and caution even after the goods was turned over to the custom authorities, by promptly notifying the consignee of its arrival at the Port of Cristobal in order to afford them ample opportunity to remove the cargoes from the port of discharge. We have scoured the records and found that neither the consignee nor the notify party was informed by the petitioners of the arrival of the goods, a crucial fact indicative of petitioners' failure to observe extraordinary diligence in handling the goods entrusted to their custody for transport. They could have presented proof to show that they exercised extraordinary care but they chose in vain, full reliance to their cause on applicability of Panamanian law to local jurisdiction.

It is for this reason that we find petitioners liable for the misdelivery of the goods. It is evident from the review of the records and by the evidence adduced by the respondent that petitioners failed to rebut the *prima facie* presumption of negligence. We find no compelling reason to depart from the ruling of the Court of Appeals that under the contract of carriage, petitioners are liable for the value of the misdelivered goods.

- **People of the Philippines Vs. Aquilino Andrade, et al.** G.R. No. 187000. November 24, 2014

It is clearly provided by the Rules of Criminal Procedure that if the motion to quash is based on an alleged defect in the information which can be cured by amendment, the court shall order the amendment to be made.

The ground relied upon by respondents in their "Motion to Dismiss," which is, that the facts alleged in the Information do not constitute an offense, is actually one of the grounds provided under a Motion to Quash in Section 3 (a),¹⁴ Rule 117 of the Revised Rules of Criminal Procedure.

It must be emphasized that respondents

herein filed their Motion after they have been arraigned. Under ordinary circumstances, such motion may no longer be allowed after arraignment because their failure to raise any ground of a motion to quash before they plead is deemed a waiver of any of their objections. Section 9, Rule 117 of the Rules of Court provides:

Sec. 9. Failure to Move to Quash or to Allege Any Ground Therefor. - The failure of the accused to assert any ground of a motion to quash before he pleads to the complaint or information, either because he did not file a motion to quash or failed to allege the same in said motion, shall be deemed a waiver of any objections except those based on the grounds provided for in paragraphs (a), (b), (g), and (i) of Section 3 of this Rule.

However, since the ground asserted by respondents is one of the exceptions provided under the above-provision, the timeliness of the filing is inconsequential. The mistake lies in the RTC's dismissal of the case.

The RTC judge went beyond her authority when she dismissed the cases based on lack of probable cause and not on the ground raised by respondents

Section 2,¹⁶ Rule 117 of the Revised Rules on Criminal Procedure plainly states that in a motion to quash, the court shall not consider any ground other than those stated in the motion, except lack of jurisdiction over the offense charged. In the present case, what the respondents claim in their motion to quash is that the facts alleged in the Informations do not constitute an offense and not lack of probable cause as ruled by the RTC judge.

The RTC judge's determination of probable cause should have been only limited prior to the issuance of a warrant of arrest and not after the arraignment. Once the information has been filed, the judge shall then "personally evaluate the resolution of

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the prosecutor and its supporting evidence"¹⁷ to determine whether there is probable cause to issue a warrant of arrest. At this stage, a judicial determination of probable cause exists.¹⁸

While it is within the trial court's discretion to make an independent assessment of the evidence on hand, it is only for the purpose of determining whether a warrant of arrest should be issued. The judge does not act as an appellate court of the prosecutor and has no capacity to review the prosecutor's determination of probable cause; rather, the judge makes a determination of probable cause independent of the prosecutor's finding.²³

In truth, the court's duty in an appropriate case is confined merely to the determination of whether the assailed executive or judicial determination of probable cause was done without or in excess of jurisdiction or with grave abuse of discretion amounting to want of jurisdiction.²⁴ In this particular case, by proceeding with the arraignment of respondents, there was already an admittance that there is probable cause. Thus, the RTC should not have ruled on whether or not there is probable cause to hold respondents liable for the crime committed since its duty is limited only to the determination of whether the material averments in the complaint or information are sufficient to hold respondents for trial. In fact, in their motion, respondents claimed that the facts alleged in the Informations do not constitute an offense.

Considering that the RTC has already found probable cause, it should have denied the motion to quash and allowed the prosecution to present its evidence and wait for a demurrer to evidence to be filed by respondents, if they opt to, or allowed the prosecution to amend the Information and in the meantime suspend the proceedings until the amendment of the Information without dismissing the case.

Section 4, Rule 117 of the Revised Rules of Criminal Procedure clearly states that if the ground based upon is that "the facts charged do not constitute an offense," the prosecution shall be given by the court an opportunity to correct the defect by amendment, thus:

Section 4. Amendment of the complaint or information. - If the motion to quash is based on an alleged defect of the complaint or information which can be cured by amendment, the court shall order that an amendment be made.

If it is based on the ground that the facts charged do not constitute an offense, the prosecution shall be given by the court an opportunity to correct the defect by amendment. The motion shall be granted if the prosecution fails to make the amendment, or the complaint or information still suffers from the same defect despite the amendment.²⁵

If the defect in the information is curable by amendment, the motion to quash shall be denied and the prosecution shall be ordered to file an amended information.²⁶ Generally, the fact that the allegations in the information do not constitute an offense, or that the information does not conform substantially to the prescribed form, are defects curable by amendment.²⁷ Corollary to this rule, the court should give the prosecution an opportunity to amend the information.²⁸

In the present case, the RTC judge outrightly dismissed the cases without giving the prosecution an opportunity to amend the defect in the Informations. In *People v. Talao Perez*,²⁹ this Court ruled that, "...even granting that the information in question is defective, as pointed out by the accused, it appearing that the defects thereof can be cured by

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amendment, the lower court should not have dismissed the case but should have ordered the Fiscal to amend the information." When there is any doubt about the sufficiency of the complaint or information, the court should direct its amendment or that a new information be filed, and save the necessity of appealing the case on technical grounds when the complaint might easily be amended.³⁰

In *People v. Leviste*,³³ we stressed that the State, like any other litigant, is entitled to its day in court; in criminal proceedings, the public prosecutor acts for and represents the State, and carries the burden of diligently pursuing the criminal prosecution in a manner consistent with public interest.³⁴ The prosecutor's role in the administration of justice is to lay before the court, fairly and fully, every fact and circumstance known to him or her to exist, without regard to whether such fact tends to establish the guilt or innocence of the accused and without regard to any personal conviction or presumption on what the judge may or is disposed to do.³⁵ The prosecutor owes the State, the court and the accused the duty to lay before the court the pertinent facts at his disposal with methodical and meticulous attention, clarifying contradictions and filling up gaps and loopholes in his evidence to the end that the court's mind may not be tortured by doubts; that the innocent may not suffer; and that the guilty may not escape unpunished.³⁶ In the conduct of the criminal proceedings, the prosecutor has ample discretionary power to control the conduct of the presentation of the prosecution evidence, part of which is the option to choose what evidence to present or who to call as witness.³⁷ Thus, the RTC and the CA, by not giving the State the opportunity to present its evidence in court or to amend the Informations, have effectively curtailed the State's right to due process.

• **Penta Pacific Realty Corp. Vs. Ley Construction & Development Corporation** G.R. No. 161589. November

24, 2014

Jurisdiction over the subject matter of an action is determined from the allegations of the initiatory pleading.

1.

Kinds of Possessory Actions

There are three kinds of real actions affecting title to or possession of real property, or interest therein, namely: *accion de reivindicacion*, *accion publiciana* and *accion interdictal*. The first seeks the recovery of ownership as well as possession of realty.¹⁸ The second proposes to recover the right to possess and is a plenary action in an ordinary civil proceeding.¹⁹ The third refers to the recovery of physical or actual possession only (through a special civil action either for forcible entry or unlawful detainer).

If the dispossession is not alleged to take place by any of the means provided by Section 1,²⁰ Rule 70, *Rules of Court*, or, if the dispossession allegedly took place by any of such means but the action is not brought within one year from deprivation of possession, the action is properly a plenary action of *accion publiciana* or *accion de reivindicacion*. The explanation is simply that the disturbance of the peace and quiet of the local community due to the dispossession did not materialize; hence, the possessor thus deprived has no need for the summary proceeding of *accion interdictal* under Rule 70.

The Municipal Trial Court (MTC) has exclusive original jurisdiction over *accion interdictal*. Until April 15, 1994, the MTC had no original jurisdiction over the other possessory actions. By such date, its jurisdiction was expanded to vest it with exclusive original jurisdiction over the other possessory actions of *accion publiciana* and *accion de reivindicacion* where the assessed value of the realty involved did not exceed P20,000.00, or, if the realty involved was in Metro Manila, such value did not exceed P50,000.00. The expansion of jurisdiction was by virtue of the amendment by Section 1 of

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Republic Act No. 7691²¹ to make Section 19 of *Batas Pambansa Blg. 129*

As can be seen, the amendments have made the assessed value of the property whose possession or ownership is in issue, or the assessed value of the adjacent lots if the disputed land is not declared for taxation purposes determinative of jurisdiction. The allegation of the assessed value of the realty must be found in the complaint, if the action (other than forcible entry or unlawful detainer) involves title to or possession of the realty, including quieting of title of the realty. If the assessed value is not found in the complaint, the action should be dismissed for lack of jurisdiction because the trial court is not thereby afforded the means of determining from the allegations of the basic pleading whether jurisdiction over the subject matter of the action pertains to it or to another court. Courts cannot take judicial notice of the assessed or market value of the realty.²²

2.

MeTC had jurisdiction over the complaint of the petitioner

The settled rule is that the nature of the action as appearing from the averments in the complaint or other initiatory pleading determines the jurisdiction of a court; hence, such averments and the character of the relief sought are to be consulted.²³ The court must interpret and apply the law on jurisdiction in relation to the averments of ultimate facts in the complaint or other initiatory pleading regardless of whether or not the plaintiff or petitioner is entitled to recover upon all or some of the claims asserted therein.²⁴ The reliefs to which the plaintiff or petitioner is entitled based on the facts averred, although not the reliefs demanded, determine the nature of the action.²⁵ The defense contained in the answer of the defendant is generally not determinant.²⁶

Is this present action one for unlawful detainer?

A suit for unlawful detainer is premised on Section 1, Rule 70, 1997 *Rules of Civil Procedure*, of which there are two kinds, namely: (1) that filed against a tenant, and (2) that brought against a vendee or vendor, or other person unlawfully withholding possession of any land or building after the expiration or termination of the right to hold possession by virtue of any contract, express or implied.

"In an action for forcible entry or unlawful detainer, the main issue is possession *de facto*, independently of any claim of ownership or possession *de jure* that either party may set forth in his pleading."²⁷ The plaintiff must prove that it was in prior physical possession of the premises until it was deprived thereof by the defendant.²⁸ 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.²⁹ On the other hand, regardless of the actual condition of the title to the property and whatever may be the character of the plaintiff's prior possession, if it has in its favor priority in time, it has the security that entitles it to remain on the property until it is lawfully ejected through an *accion publiciana* or *accion reivindicatoria* by another having a better right.³⁰

In unlawful detainer, the complaint must allege the cause of action according to the manner set forth in Section 1, Rule 70 of the *Rules of Court*,

The complaint must further allege the plaintiff's compliance with the jurisdictional requirement of demand as

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prescribed by Section 2, Rule 70 of the Rules of Court, viz:

Section 2. *Lessor to proceed against lessee only after demand.* — Unless otherwise stipulated, such action by the lessor shall be commenced only after demand to pay or comply with the conditions of the lease and to vacate is made upon the lessee, or by serving written notice of such demand upon the person found on the premises, or by posting such notice on the premises if no person be found thereon, and the lessee fails to comply therewith after fifteen (15) days in the case of land or five (5) days in the case of buildings.

For the action to come under the exclusive original jurisdiction of the MTC, therefore, the complaint must allege that: (a) the defendant originally had lawful possession of the property, either by virtue of a contract or by tolerance of the plaintiff; (b) the defendant's possession of the property eventually became illegal or unlawful upon notice by the plaintiff to the defendant of the expiration or the termination of the defendant's right of possession; (c) the defendant thereafter remained in possession of the property and thereby deprived the plaintiff the enjoyment thereof; and (d) the plaintiff instituted the action within one year from the unlawful deprivation or withholding of possession.³¹

The complaint herein sufficiently alleged all the foregoing requisites for unlawful detainer,

The MeTC correctly exercised its authority in finding for the petitioner as the plaintiff. In unlawful detainer, the possession was originally lawful but became unlawful by the expiration or termination of the right to possess; hence, the issue of rightful possession is decisive for, in the action, the defendant is in actual possession and the plaintiff's cause of action is the termination of the defendant's right to continue in possession.³⁵

A defendant's claim of possession *de jure*

or his averment of ownership does not render the ejectment suit either *accion publiciana* or *accion reivindicatoria*. The suit remains an *accion interdictal*, a summary proceeding that can proceed independently of any claim of ownership.³⁶ Even when the question of possession cannot be resolved without deciding the issue of ownership, the issue of ownership is to be resolved only to determine the issue of possession.³⁷

- **Eagleridge Development Corporation, Marcelo N. Naval and Crispin I. Oben Vs. Cameron Granville 3 Asset Management, Inc.** G.R. No. 204700. November 24, 2014

- **Discovery mode of production/inspection of document may be availed of even beyond pre-trial upon a showing of good cause**

The availing of a motion for production, as one of the modes of discovery, is not limited to the pre-trial stage. Rule 27 does not provide for any time frame within which the discovery mode of production or inspection of documents can be utilized. The rule only requires leave of court "upon due application and a showing of due cause."³⁹ Rule 27, Section 1 of the 1997 Rules of Court, states:

SECTION 1. Motion for production or inspection order — Upon motion of any party showing good cause therefor the court in which an action is pending may (a) order any party to produce and permit the inspection and copying or photographing, by or on behalf of the moving party, of any designated documents, papers, books, accounts, letters, photographs, objects or tangible things, not privileged, which constitute or contain evidence material to any matter involved in the action and which are in his possession, custody or control[.] (Emphasis supplied)

In *Producers Bank of the Philippines v.*

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Court of Appeals,⁴⁰ this court held that since the rules are silent as to the period within which modes of discovery (in that case, written interrogatories) may still be requested, it is necessary to determine: (1) the purpose of discovery; (2) whether, based on the stage of the proceedings and evidence presented thus far, allowing it is proper and would facilitate the disposition of the case; and (3) whether substantial rights of parties would be unduly prejudiced.⁴¹ This court further held that "[t]he use of discovery is encouraged, for it operates with desirable flexibility under the discretionary control of the trial court."⁴²

In *Dasmariñas Garments, Inc. v. Reyes*,⁴³ this court declared that depositions, as a mode of discovery, "may be taken at any time after the institution of any action [as there is] no prohibition against the taking of depositions after pre-trial."⁴⁴ Thus:

Dasmariñas also contends that the "taking of deposition is a mode of pretrial discovery to be availed of before the action comes to trial." Not so. Depositions may be taken at any time after the institution of any action, whenever necessary or convenient. There is no rule that limits deposition-taking only to the period of pre-trial or before it; no prohibition against the taking of depositions after pre-trial. Indeed, the law authorizes the taking of depositions of witnesses before or after an appeal is taken from the judgment of a Regional Trial Court "to perpetuate their testimony for use in the event of further proceedings in the said court" (Rule 134, Rules of Court), and even during the process of execution of a final and executory judgment (*East Asiatic Co. v. C.I.R.*, 40 SCRA 521, 544).⁴⁵

"The modes of discovery are accorded a broad and liberal treatment."⁴⁶ The evident purpose of discovery procedures is "to enable the parties, consistent with recognized privileges, to obtain the fullest possible knowledge of the issues and facts

before civil trials"⁴⁷ and, thus, facilitating an amicable settlement or expediting the trial of the case.⁴⁸

Technicalities in pleading should be avoided in order to obtain substantial justice. In *Mutuc v. Judge Agloro*,⁴⁹ this court directed the bank to give Mutuc a complete statement as to how his debt was computed, and should he be dissatisfied with that statement, pursuant to Rule 27 of the Rules of Court, to allow him to inspect and copy bank records supporting the items in that statement.⁵⁰ This was held to be "in consonance with the rules on discovery and the avowed policy of the Rules of Court . . . to require the parties to lay their cards on the table to facilitate a settlement of the case before the trial."⁵¹ *Id.*

We have determined that the LSPA is relevant and material to the issue on the validity of the deed of assignment raised by petitioners in the court *a quo*, and allowing its production and inspection by petitioners would be more in keeping with the objectives of the discovery rules. We find no great practical difficulty, and respondent continuously fails to allege any, in presenting the document for inspection and copying of petitioners. On the other hand, to deny petitioners the opportunity to inquire into the LSPA would bar their access to relevant evidence and impair their fundamental right to due process.⁵²

Article 1634 of the New Civil Code is applicable

Contrary to respondent's stance, Article 1634 of the Civil Code on assignment of credit in litigation is applicable.

Section 13 of the Special Purpose Vehicle Act clearly provides that in the transfer of the non-performing loans to a special purpose vehicle, "the provisions on subrogation and assignment of credits under the New Civil Code shall apply." Thus:

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Sec. 13. *Nature of Transfer.* – All sales or transfers of NPAs to an SPV shall be in the nature of a true sale after proper notice in accordance with the procedures as provided for in Section 12: Provided, That GFIs and GOCCs shall be subject to existing law on the disposition of assets: Provided, further, That in the transfer of the NPLs, the provisions on subrogation and assignment of credits under the New Civil Code shall apply.

Furthermore, Section 19 of the Special Purpose Vehicle Act expressly states that redemption periods allowed to borrowers under the banking law, the Rules of Court, and/or other laws are applicable. Hence, the right of redemption allowed to a debtor under Article 1634 of the Civil Code is applicable to the case *a quo*.

Accordingly, petitioners may extinguish their debt by paying the assignee-special purpose vehicle the transfer price plus the cost of money up to the time of redemption and the judicial costs.

Petitioners' right to extinguish their debt has not yet lapsed

Petitioners' right to extinguish their debt under Article 1634 on assignment of credits has not yet lapsed. The pertinent provision is reproduced here:

Art. 1634. When a credit or other incorporeal right in litigation is sold, the debtor shall have a right to extinguish it by reimbursing the assignee for the price the latter paid therefor, the judicial costs incurred by him, and the interest on the price from the day on which the same was paid.

A credit or other incorporeal right shall be considered in litigation from the time the complaint concerning the same is answered.

The debtor may exercise his right *within thirty days from the date the assignee demands payment* from him. (Emphasis

supplied)

Under the last paragraph of Article 1634, the debtor may extinguish his or her debt within 30 days from the date the assignee demands payment. In this case, insofar as the actual parties to the deed of assignment are concerned, no demand has yet been made, and the 30-day period did not begin to run. Indeed, petitioners assailed before the trial court the validity of the deed of assignment on the grounds that it did not comply with the mandatory requirements of the Special Purpose Vehicle Act,⁵³ and it referred to Cameron Granville Asset Management (SPV-AMC), Inc., as the assignee, and not respondent Cameron Granville 3 Asset Management, Inc.⁵⁴

The law requires that payment should be made only "to the person in whose favor the obligation has been constituted, or his [or her] successor in interest, or any person authorized to receive it."⁵⁵ It was held that payment made to a person who is not the creditor, his or her successor-in-interest, or a person who is authorized to receive payment, even through error or good faith, is not effective payment which will bind the creditor or release the debtor from the obligation to pay.⁵⁶ Therefore, it was important for petitioners to determine for sure the proper assignee of the EIB credit or who to pay, in order to effectively extinguish their debt.

Moreover, even assuming that respondent is the proper assignee of the EIB credit, petitioners could not exercise their right of extinguishment because they were not informed of the consideration paid for the assignment.⁵⁷

Respondent must, pursuant to Article 1634 of the Civil Code, disclose how much it paid to acquire the EIB credit, so that petitioners could make the corresponding offer to pay, by way of redemption, the same amount in final settlement of their obligation.

Respondent insists that the transfer price

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of the EIB credit is P10,232,998.00 (the actual amount and value of the credit), and that petitioners should have paid the said amount within 30 days from the December 8, 2006 order of the Regional Trial Court approving its substitution of EIB.⁵⁸ Petitioners believe otherwise, and as the deed of assignment was silent on the matter, it becomes necessary to verify the amount of the consideration from the LSPA.

Assuming indeed that respondent acquired the EIB credit for a lesser consideration, it cannot compel petitioners to pay or answer for the entire original EIB credit, or more than what it paid for the assignment.

Under the circumstances of this case, the 30-day period under Article 1634 within which petitioners could exercise their right to extinguish their debt should begin to run only from the time they were informed of the actual price paid by the assignee for the transfer of their debt.

Parol evidence rule is not Applicable

The parol evidence rule does not apply to petitioners who are not parties to the deed of assignment and do not base a claim on it.⁵⁹ Hence, they cannot be prevented from seeking evidence to determine the complete terms of the deed of assignment.

Even assuming that Rule 130, Section 9 is applicable, an exception to the rule under the second paragraph is when the party puts in issue the validity of the written agreement, as in the case *a quo*.

Besides, what is forbidden under the parol evidence rule is the presentation of oral or extrinsic evidence, not those expressly referred to in the written agreement. "[D]ocuments can be read together when one refers to the other."⁶⁰ By the express terms of the deed of assignment, it is clear that the deed of assignment was meant to be read in conjunction with the LSPA.

As we have stated in our decision, Rule 132, Section 17⁶¹ of the Rules of Court allows a party to inquire into the whole of the writing or record when a part of it is given in evidence by the other party. Since the deed of assignment was produced in court by respondent and marked as one of its documentary exhibits, the LSPA which was made a part thereof by explicit reference and which is necessary for its understanding may also be inquired into by petitioners.

The LSPA is not privileged and confidential in nature

Respondent's contention that the LSPA is privileged and confidential is likewise untenable.

Indeed, Rule 27 contains the proviso that the documents sought to be produced and inspected must not be privileged against disclosure. Rule 130, Section 24 describes the types of privileged communication. These are communication between or involving the following: (a) between husband and wife; (b) between attorney and client; (c) between physician and patient; (d) between priest and penitent; and (e) public officers and public interest.

Privileged communications under the rules of evidence is premised on an accepted need to protect a trust relationship. It has not been shown that the parties to the deed of assignment fall under any of the foregoing categories.

This court has previously cited other privileged matters such as the following: "(a) editors may not be compelled to disclose the source of published news; (b) voters may not be compelled to disclose for whom they voted; (c) trade secrets; (d) information contained in tax census returns; . . . (d) bank deposits"⁶² (pursuant to the Secrecy of Bank Deposits Act); (e) national security matters and intelligence information;⁶³ and (f) criminal matters.⁶⁴ Nonetheless, the LSPA does not fall within any of these classes of information. Moreover, the privilege is

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not absolute, and the court may compel disclosure where it is indispensable for doing justice.

At any rate, respondent failed to discharge the burden of showing that the LSPA is a privileged document. Respondent did not present any law or regulation that considers bank documents such as the LSPA as classified information. Its contention that the Special Purpose Vehicle Act⁶⁵ only requires the creditor-bank to give notice to the debtor of the transfer of his or her account to a special purpose vehicle, and that the assignee-special purpose vehicle has no obligation to disclose other financial documents related to the sale, is untenable. The Special Purpose Vehicle Act does not explicitly declare these financial documents as privileged matters. Further, as discussed, petitioners are not precluded from inquiring as to the true consideration of the assignment, precisely because the same law in relation to Article 1634 allows the debtor to extinguish its debt by reimbursing the assignee-special purpose vehicle of the actual price the latter paid for the assignment.

An assignment of a credit "produce[s] no effect as against third persons, unless it appears in a public instrument[.]"⁶⁶ It strains reason why the LSPA, which by law must be a public instrument to be binding against third persons such as petitioners-debtors, is privileged and confidential.

Alternative defenses are allowed under the Rules

Finally, respondent's contention that petitioners cannot claim the validity and invalidity of the deed of assignment at the same time is untenable.

The invocation by petitioners of Article 1634, which presupposes the validity of the deed of assignment or the transfer of the EIB credit to respondent, even if it would run counter to their defense on the invalidity of the deed of assignment, is proper and sanctioned by Rule 8, Section 2 of the Rules of Court, which

reads:

SEC. 2. Alternative causes of action or defenses. — A party may set forth two or more statements of a claim or defense alternatively or hypothetically, either in one cause of action or defense or in separate causes of action or defenses. When two or more statements are made in the alternative and one of them if made independently would be sufficient, the pleading is not made insufficient by the insufficiency of one or more of the alternative statements. (Emphasis supplied)

All told, respondent failed to allege sufficient reasons for us to reconsider our decision. Verily, the production and inspection of the LSPA and its annexes fulfill the discovery-procedures objective of making the trial "less a game of blind man's buff and more a fair contest with the basic issues and facts disclosed to the fullest practicable extent."⁶⁷

- **Philippine Migrants Rights Watch, Inc., et al. Vs. Overseas Workers Welfare Administration, et al.** G.R. No. 166923. November 26, 2014

- As to whether the RTC has jurisdiction over the subject matter involved in this case, it is settled in law and jurisprudence that the RTC has jurisdiction to resolve the constitutionality of a statute, presidential decree, executive order, or administrative regulation, as recognized in Section 2(a), Article VIII of the 1987 Constitution, which provides:
- SECTION 5. The Supreme Court shall have the following powers:
- x x x x
- (2) **Review, revise, reverse, modify, or affirm on appeal or certiorari**, as the law or the Rules of Court may provide **final judgments and orders of lower**

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courts in:

- (a) All cases in which the **constitutionality or validity** of any treaty, international or executive agreement, law, presidential decree, proclamation, order, instruction, **ordinance, or regulation** is in question.¹⁶
- In view of the foregoing provision, the jurisdiction of regular courts involving the validity or constitutionality of a rule or regulation cannot be denied. We have had several occasions wherein We affirmed the power of the RTC to take cognizance of actions assailing a specific rule or set of rules promulgated by administrative bodies for the power of judicial review is vested by the Constitution not only in this Court but in all Regional Trial Courts.¹⁷ It was, therefore, erroneous for the RTC to abruptly dismiss the complaint filed by petitioners on the basis of lack of jurisdiction since said court clearly had the power to take cognizance of the same. In so doing, the lower court failed to ascertain factual issues necessary to determine whether the subject issuance is, indeed, invalid and violative of the Constitution. Considering the settled rule that this Court is not a trier of facts,¹⁸ a remand of this case to the RTC for the proper determination of the merits of the complaint is just and proper.

- **Marcelo Investment and Management Corp. and the Heirs of Edward T. Marcelo, namely Katherine J. Marcelo, et al. Vs. Jose T. Marcelo, Jr.** G.R. No. 209651. November 26, 2014

- The vesting of succession rights on the heirs upon the death of the decedent gives occasion for the barring of sibling disaccords right at the onset of the estate proceedings which is the determination of the administrator of the decedent's estate. In such instances, the liquidation, partition and

distribution of the decedent's estate is prolonged and the issue of administration becomes, contrary to its very objective, itself the hindrance to the ultimate goal of settlement of the decedent's estate. We catch a glimpse of that in this case.

•

The appeal is impressed with merit. While we agree with the lower courts that the appointment of a regular administrator is still necessary, we disagree with the appointment of Jose, Jr. as new regular administrator of Jose, Sr.'s estate.

We first dispose of the issue of whether the appointment of a regular administrator is still necessary at this liquidation, partition and distribution stage of the intestate proceedings involving Jose, Sr.'s estate.

Petitioners contend that the appointment of a regular administrator is unnecessary where there remains no pending matter in the settlement of Jose, Sr.'s estate requiring attention and administration. Specifically, petitioners point out that there is no existing or unliquidated debt against the estate of Jose, Sr, the settlement thereof being already at the liquidation, partition and distribution stage. Further on that, the liquidation and proposed partition had long been approved by the probate court.

We are not convinced. The settlement of Jose, Sr.'s estate is not yet through and complete albeit it is at the liquidation, partition and distribution stage.

Rule 90 of the Rules of Court provides for the Distribution and Partition of the Estate. The rule provides in pertinent part:

SECTION 1. *When order for distribution of residue made.* – x x x

No distribution shall be allowed until payment of the obligations above mentioned has been made or provided for, unless the distributees, or any of them, give a bond, in a sum to be fixed by the court, conditioned for the payment of said

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obligations within such time as the court directs.

x x x x

SEC. 3. *By whom expenses of partition paid.* – If at the time of the distribution the executor or administrator has retained sufficient effects in his hands which may lawfully be applied for the expenses of partition of the properties distributed, such expenses of partition may be paid by such executor or administrator when it appears equitable to the court and not inconsistent with the intention of the testator; otherwise, they shall be paid by the parties in proportion to their respective shares or interest in the premises, and the apportionment shall be settled and allowed by the court, and, if any person interested in the partition does not pay his proportion or share, the court may issue an execution in the name of the executor or administrator against the party not paying for the sum assessed. In this case, we observe that the Liquidation of the Inventory of the Estate, approved by the RTC in its Order dated 16 February 2001, is not yet in effect and complete. We further note that there has been no manifestation forthcoming from any of the heirs, or the parties in this case, regarding the completion of the proposed liquidation and partition of the estate. In fact, as all parties are definitely aware, the RTC archived the intestate proceedings pending the payment of estate taxes.

For clarity, we refer to the Liquidation of the Inventory of the Estate, which was divided into two (2) parts: (1) Settlement of the Claims against the Estate, and (2) After Settlement of the Claims, distribution of the remaining assets of the estate to the four (4) compulsory heirs.

There has been no showing from either of the parties that the receivables of, and claims against, Jose, Sr.'s estate has been actually liquidated, much less, if an offsetting occurred with the companies listed in the inventory on one hand, and

Jose, Sr.'s estate, on the other. Although the Marcelo family, in particular the compulsory heirs of Jose, Sr., hold equity in the corporations mentioned in the inventory, considering that the corporations are family owned by the Marcelos', these corporations are different juridical persons with separate and distinct personalities from the Marcelo patriarch, the decedent, Jose, Sr.¹⁸

More importantly, the liquidation scheme appears yet to be effected, the actual partition of the estate, where each heir separately holds his share in the estate as that which already belongs to him, remains intangible and the ultimate distribution to the heirs still held in abeyance pending payment of estate taxes.¹⁹

From all of the foregoing, it is apparent that the intestate proceedings involving Jose, Sr.'s estate still requires a regular administrator to finally settle the estate and distribute remaining assets to the heirs of the decedent.

We now come to the issue of whether Jose, Jr. may be appointed as regular administrator despite the previous Order of the RTC on 13 December 1991, affirmed by the appellate court and this Court in G.R. No. 123883, that as between Jose, Jr. and Edward, the latter was better suited to act as regular administrator of their father's estate. Stated differently, whether Jose, Jr.'s previous non-appointment as regular administrator of Jose, Sr.'s estate bars his present appointment as such even *in lieu* of Edward who is now dead.

A close scrutiny of the records reveals that in all of Jose, Jr.'s pleadings opposing Edward's appointment as regular administrator, he simultaneously prayed for his appointment as regular administrator of their father's estate. In short, he proffered his competence and qualification to be appointed as regular administrator as a legal issue for resolution of the courts. Essentially, Jose, Jr. was weighed and found wanting by the

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RTC, the appellate court, and this Court.

Section 1, Rule 78 of the Rules of Court provides for the general disqualification of those who wish to serve as administrator:

SECTION 1. *Who are incompetent to serve as executors or administrators.*— No person is competent to serve as executor or administrator who:

- (a) Is a minor;
- (b) Is not a resident of the Philippines; and
- (c) Is in the opinion of the court unfit to execute the duties of the trust by reason of drunkenness, improvidence, or want of understanding or integrity, or by reason of conviction of an offense involving moral turpitude.

Section 6 of the same rule, on the other hand, lists an order of preference in instances when there is a contest of who should be appointed administrator:

SEC. 6. *When and to whom letters of administration granted.*— If no executor is named in the will, or the executor or executors are incompetent, refuse the trust, or fail to give bond, or a person dies intestate, administration shall be granted:

(a) To the surviving spouse, or next of kin, or both, in the discretion of the court, or to such person as such surviving spouse, or next of kin, requests to have appointed, if competent and willing to serve;

(b) If such surviving spouse, or next of kin, or the person selected by them, be incompetent or unwilling, or if the surviving spouse, or next of kin, neglects for thirty (30) days after the death of the person to apply for the administration or to request that administration be granted to some other person, it may be granted to one or more of the principal creditors, if competent and willing to serve;

(c) If there is no such creditor competent and willing to serve, it may be granted to such other person as the court may select. Because Edward and Jose, Jr. are both compulsory heirs of Jose, Sr., they were, at the time the issue of administration first cropped, equally preferred to

administer Jose, Sr.'s estate. Necessarily, the courts also delved into the question of their suitability and fitness to serve as administrator, preferring one over the other, framing it as Edward being more fit and suited to be administrator:

- Edward has kept the Marcelo family corporations and his own in good financial condition;
- The trust reposed by the decedent on Edward who voted on Jose, Sr.'s behalf in a Marcelo corporation; and

Edward being made a co-signatory for money deposited for Jose, Sr.'s own children.

- **Aurora N. De Pedro Vs. Romasan Development Corporation** G.R. No. 194751. November 26, 2014

- Regardless of the type of action — whether it is *in personam*, *in rem* or *quasi in rem* — the preferred mode of service of summons is personal service. To avail themselves of substituted service, courts must rely on a detailed enumeration of the sheriff's actions and a showing that the defendant cannot be served despite diligent and reasonable efforts. The sheriff's return, which contains these details, is entitled to a presumption of regularity, and on this basis, the court may allow substituted service. Should the sheriff's return be wanting of these details, substituted service will be irregular if no other evidence of the efforts to serve summons was presented.

- Failure to serve summons will mean that the court failed to acquire jurisdiction over the person of the defendant. However, the filing of a motion for new trial or reconsideration is tantamount to voluntary appearance.

- **Analceto C. Mangaser represented by his Attorney-in-fact Eustaquio Dugenia** G.R. No. 204926. December 3, 2014

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• The Court's Ruling

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- The Court finds the petition meritorious.
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- For a forcible entry suit to prosper, the plaintiffs must allege and prove: (a) that they have prior physical possession of the property; (b) that they were deprived of possession either by force, intimidation, threat, strategy or stealth; and, (c) that the action was filed within one (1) year from the time the owners or legal possessors learned of their deprivation of the physical possession of the property.²⁸
-
- There is only one issue in ejectment proceedings: who is entitled to physical or material possession of the premises, that is, to possession *de facto*, not possession *de jure*? Issues as to the right of possession or ownership are not involved in the action; evidence thereon is not admissible, except only for the purpose of determining the issue of possession.²⁹
-
- As a rule, the word "possession" in forcible entry suits indeed refers to nothing more than prior physical possession or possession *de facto*, not possession *de jure* or legal possession in the sense contemplated in civil law. Title is not the issue, and the absence of it "is not a ground for the courts to withhold relief from the parties in an ejectment case."³⁰
-
- The Court, however, has consistently ruled in a number of cases³¹ that while prior physical possession is an indispensable requirement in forcible entry cases,

the dearth of merit in respondent's position is evident from the principle that possession can be acquired not only by material occupation, but also by the fact that a thing is subject to the action of one's will or by the proper acts and legal formalities established for acquiring such right. The case of *Quizon v. Juan*,³² which surprisingly was relied on by the CA, also stressed this doctrine.

-
- Possession can be acquired by juridical acts. These are acts to which the law gives the force of acts of possession. Examples of these are donations, succession, execution and registration of public instruments, inscription of possessory information titles and the like.³³ The reason for this exceptional rule is that possession in the eyes of the law does not mean that a man has to have his feet on every square meter of ground before it can be said that he is in possession.³⁴ It is sufficient that petitioner was able to subject the property to the action of his will.³⁵ Here, respondent failed to show that he falls under any of these circumstances. He could not even say that the subject property was leased to him except that he promised that he would vacate it if petitioner would be able to show the boundaries of the titled lot.
-
- In the case of *Nuñez v. SLTEAS Phoenix Solutions, inc.*,³⁶ the subject parcel was acquired by the respondent by virtue of the June 4, 1999 Deed of Assignment executed in its favor by Spouses Ong Tiko and Emerenciana Sylianteng. The petitioner in the said case argued that, aside from the admission in the complaint that the subject parcel was left idle and unguarded, the respondent's claim of prior possession was clearly negated by the fact that he had been in

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occupancy thereof since 1999. The Court disagreed with the petitioner and said:

-
- Although it did not immediately put the same to active use, respondent appears to have additionally caused the **property to be registered in its name as of February 27, 2002 and to have paid the real property taxes due thereon** alongside the sundry expenses incidental thereto. Viewed in the light of the foregoing juridical acts, it consequently did not matter that, by the time respondent conducted its ocular inspection in October 2003, petitioner had already been occupying the land since 1999.
- - [Emphasis and underscoring supplied]
-
- Hence, in that case, the Court ruled that such juridical acts were sufficient to establish the respondent's prior possession of the subject property.

In the case at bench, the Court finds that petitioner acquired possession of the subject property by juridical act, specifically, through the issuance of a free patent under Commonwealth Act No. 141 and its subsequent registration with the Register of Deeds on March 18, 1987.³⁸

Before the Court continues any further, it must be determined first whether the issue of ownership is material and relevant in resolving the issue of possession. The Rules of Court in fact expressly allow this: Section 16, Rule 70 of the Rules of Court provides that the issue of ownership shall be resolved in deciding the issue of possession if the question of possession is intertwined with the issue of ownership. But this provision is only an exception and is allowed only in this limited instance to determine the issue of possession and only if the

question of possession cannot be resolved without deciding the issue of ownership.³⁹

This Court is of the strong view that the issue of ownership should be provisionally determined in this case. *First*, the juridical act from which the right of ownership of petitioner arise would be the registration of the free patent and the issuance of OCT No. RP-174(13789). Apparently, the Torrens title suggests ownership over the land. *Second*, respondent also asserts ownership over the land based on his prior, actual, continuous, public, notorious, exclusive and peaceful possession in the concept of an owner of the property in dispute.⁴⁰ Because there are conflicting claims of ownership, then it is proper to provisionally determine the issue of ownership to settle the issue of possession *de facto*.

Returning to the case, this Court cannot agree with the CA that petitioner's OCT No. RP-174(13789) and his tax declarations should absolutely be disregarded. The issuance of an original certificate of title to the petitioner evidences ownership and from it, a right to the possession of the property flows. Well-entrenched is the rule that a person who has a Torrens title over the property is entitled to the possession thereof.⁴¹

Moreover, his claim of possession is coupled with tax declarations. While tax declarations are not conclusive proof of possession of a parcel of land, they are good indicia of possession in the concept of an owner, for no one in his right mind would be paying taxes for a property that is not in his actual or constructive possession.⁴² Together with the Torrens title, the tax declarations dated 1995 onwards presented by petitioner strengthens his claim of possession over the land before his dispossession on October 31, 2006 by respondent.

The CA was in error in citing the case of *De Grano v. Lacaba*⁴³ to support its ruling.

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In that case, the respondent tried to prove prior possession, by presenting only his tax declarations, tax receipt and a certification from the municipal assessor attesting that he had paid real property tax from previous years. The Court did not give credence to his claim because tax declarations and realty tax payments are not conclusive proof of possession. The situation in the present case differs because aside from presenting his tax declarations, the petitioner submitted OCT No. RP-174(13789) which is the best evidence of ownership from where his right to possession arises.

Against the Torrens title and tax declarations of petitioner, the bare allegations of respondent that he had prior, actual, continuous, public, notorious, exclusive and peaceful possession in the concept of an owner, has no leg to stand on. Thus, by provisionally resolving the issue of ownership, the Court is satisfied that petitioner had prior possession of the subject property.

When petitioner discovered the stealthy intrusion of respondent over his registered property, he immediately filed a complaint with the Lupong Tagapamayapa and subsequently filed an action for forcible entry with the MTC. Instead of taking the law into his own hands and forcefully expelling respondent from his property, petitioner composed himself and followed the established legal procedure to regain possession of his land.

If the Court were to follow the ruling of the CA and disregard juridical acts to obtain prior possession, then it would create an absurd situation. It would be putting premium in favor of land intruders against Torrens title holders, who spent months, or even years, in order to register their land, and who religiously paid real property taxes thereon. They cannot immediately repossess their properties simply because they have to prove their literal and physical possession of their property prior to the controversy. The

Torrens title holders would have to resort to ordinary civil procedure by filing either an *accion publiciana* or *accion reivindicatoria* and undergo arduous and protracted litigation while the intruders continuously enjoy and rip the benefits of another man's land. It will defeat the very purpose of the summary procedure of an action for forcible entry.

The underlying philosophy behind ejectment suits is to prevent breach of the peace and criminal disorder and to compel the party out of possession to respect and resort to the law alone to obtain what he claims is his. Ejectment proceedings are summary in nature so the authorities can speedily settle actions to recover possession because of the overriding need to quell social disturbances.⁴⁴

As to the other requirements of an action for forcible entry, the Court agrees with the RTC that petitioner had sufficiently complied with them. Petitioner proved that he was deprived of possession of the property by stealth. The complaint was also filed on October 30, 2007, within the one year reglementary period counted from the discovery of the stealthy entry by respondent to the property on October 31, 2006.

The second issue raised is the validity of the CA Resolution dated December 5, 2012. Petitioner alleges that the CA denied his reconsideration without indicating its legal basis in violation of the mandate of Section 14, Article VIII of the Constitution, which provides that no petition for review or motion for reconsideration of a decision of the court shall be refused due course or denied without stating the legal basis therefor. This requirement, however, was complied with when the CA, in its resolution denying petitioner's motion for reconsideration, stated that it "finds no cogent reason to reverse, amend, much less reverse the assailed Decision, dated June 13, 2012."⁴⁵

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- **Metropolitan Bankd and Trust Company Vs. Ley Construction and Development Corporation, et al.** G.R. No. 185590. December 3, 2014

- Another significant factor that contradicts the Bank's assertion that its "primary actionable document" is the Trust Receipt is the manner it pleaded the Letter of Credit and the Trust Receipt, respectively.
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- The relevant rule on actionable documents is Section 7, Rule 8 of the Rules of Court which provides:
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- Section 7. *Action or defense based on document.* – Whenever an action or defense is based upon a written instrument or document, the substance of such instrument or document shall be set forth in the pleading, and the original or a copy thereof shall be attached to the pleading as an exhibit, which shall be deemed to be a part of the pleading, or said copy may with like effect be set forth in the pleading.
-
- An "actionable document" is a written instrument or document on which an action or defense is founded. It may be pleaded in either of two ways:
-
- (1) by setting forth the substance of such document in the pleading and attaching the document thereto as an annex, or
-
- (2) by setting forth said document verbatim in the pleading.³⁵
-
- A look at the allegations in the Complaint quoted above will show that the Bank did not set forth the contents of the Trust Receipt verbatim in the pleading. The Bank did not also set forth the substance of the Trust Receipt in the Complaint but simply attached a copy thereof as an

annex. Rather than setting forth the substance of the Trust Receipt, paragraph 2.8 of the Complaint shows that the Bank simply described the Trust Receipt as LCDC's manifestation of "its acceptance/conformity that the negotiation of the [Letter of Credit] is in order."³⁶

- Thus, the Bank's attempt to cling to the Trust Receipt as its so-called "primary actionable document" is negated by the manner of its allegations in the Complaint. Thus, too, the trial and the appellate courts did not misapprehend the facts when they considered the Letter of Credit as the basis of the Bank's cause of action

- **Homer C. Javier, represented by his mother and natural guardian, Susan Canencia Vs. Susan Lumontad** G.R. No. 203760. December 3, 2014

- **A. Nature of the Case: Forcible Entry.**

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- The Court disagrees with the findings of both the MTC and the CA that the allegations in the petitioner's complaint do not make a case for forcible entry but another action cognizable by the RTC.⁴²
-
- As explicated in the case of *Pagadora v. Ilaos*,⁴³ "[t]he invariable rule is that what determines the nature of the action, as well as the court which has jurisdiction over the case, are the allegations in the complaint. In ejectment cases, the complaint should embody such statement of facts as to bring the party clearly within the class of cases for which [Section 1, Rule 70 of the Rules of Court] provides a summary remedy, and must show enough on its face to give the court jurisdiction without resort to *parol* evidence. Hence, **in forcible entry, the complaint must necessarily allege that one in**

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physical possession of a land or building has been deprived of that possession by another through force, intimidation, threat, strategy or stealth. It is not essential, however, that the complaint should expressly employ the language of the law, but it would suffice that facts are set up showing that dispossession took place under said conditions. In other words, the plaintiff must allege that he, prior to the defendant's act of dispossession by force, intimidation, threat, strategy or stealth, had been in prior physical possession of the property. This requirement is **jurisdictional, and as long as the allegations demonstrate a cause of action for forcible entry, the court acquires jurisdiction over the subject matter.**"⁴⁴

- **Sps. Carlos J. Suntay and Rosario R. Suntay Vs. Keyser Marcantile, Inc.** G.R. No. 208462. December 10, 2014

- *Spouses Suntay properly relied on the Certificate of Title of Bayfront*
- Now, the Court proceeds to the substantial issues. This Court finds that the petition is meritorious applying the Torrens System of Land Registration. The main purpose of the Torrens system is to avoid possible conflicts of title to real estate and to facilitate transactions relative thereto by giving the public the right to rely upon the face of a Torrens certificate of title and to dispense with the need of inquiring further, except when the party concerned has actual knowledge of facts and circumstances that should impel a reasonably cautious man to make such further inquiry. Every person dealing with a registered land may safely rely on the correctness of the certificate of title issued

therefor and the law will in no way oblige him to go beyond the certificate to determine the condition of the property."²²

- Again to stress, any buyer or mortgagee of realty covered by a Torrens certificate of title, in the absence of any suspicion, is not obligated to look beyond the certificate to investigate the title of the seller appearing on the face of the certificate. And, he is charged with notice only of such burdens and claims as are annotated on the title."²³
- In the case at bench, the subject property was registered land under the Torrens System covered by CCT No. 15802 with Bayfront as the registered owner. At the time that the Notice of Levy was annotated on January 18, 1995, the title had no previous encumbrances and liens. Evidently, it was a clean title. The Certificate of Sale, pursuant to an auction sale, was also annotated on April 7, 1995, with Bayfront still as the registered owner.
- It was only on March 12, 1996, almost a year later, that Keyser was able to register its Deed of Absolute Sale with Bayfront. Prior to such date, Spouses Suntay appropriately relied on the Torrens title of Bayfront to enforce the latter's judgment debt.
- Because "the act of registration is the operative act to convey or affect the land insofar as third persons are concerned,"²⁴ it follows that where there is nothing in the certificate of title to indicate any cloud or vice in the ownership of the property, or any encumbrance thereon, the purchaser is not required to explore farther than what the Torrens title upon its face indicates in quest for any hidden

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defect or inchoate right that may subsequently defeat his right thereto. If the rule were otherwise, the efficacy and conclusiveness of the certificate of title which the Torrens system seeks to insure would entirely be futile and nugatory. The public shall then be denied of its foremost motivation for respecting and observing the Torrens system of registration.²⁵

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- When the notice of levy and certificate of sale were annotated on the title, the subject property was unoccupied and no circumstance existed that might suggest to Spouses Santay that it was owned by another individual.²⁶ Records reveal that it was only later, on January 6, 1999, that the subject property was discovered by the sheriffs to be padlocked.²⁷ The administrator of the condominium did not even know the whereabouts of the alleged owner.²⁸ To reiterate, absent any peculiar circumstance, Spouses Santay could not be required to disregard the clean title of Bayfront and invest their time, effort and resources to scrutinize every square feet of the subject property. This Court is convinced that Spouses Santay properly relied on the genuineness and legitimacy of Bayfront's Torrens certificate of title when they had their liens annotated thereon.

Levy on execution is superior to the subsequent registration of the deed of absolute sale.

In this case, the contract to sell between Keyser and Bayfront was executed on October 20, 1989, but the deed of absolute sale was only made on November 9, 1995 and registered on March 12, 1996. The Notice of Levy in favor of Spouses Santay was registered on January 18, 1995, while the Certificate of Sale on April 7, 1995, both dates clearly ahead of Keyser's registration of its Deed

of Absolute Sale. Evidently, applying the doctrine of *primus tempore, potior jure* (first in time, stronger in right), Spouses Santay have a better right than Keyser.

In the case of *Uy v. Spouses Medina*³² which dealt with essentially the same issues, the Court wrote:

Considering that the sale was not registered earlier, the right of petitioner over the land became subordinate and subject to the preference created over the earlier annotated levy in favor of Swift. The levy of execution registered and annotated on September 1, 1998 takes precedence over the sale of the land to petitioner on February 16, 1997, despite the subsequent registration on September 14, 1998 of the prior sale. Such preference in favor of the levy on execution retroacts to the date of levy for to hold otherwise will render the preference nugatory and meaningless.

x x x

The settled rule is that levy on attachment, duly registered, takes preference over a prior unregistered sale. This result is a necessary consequence of the fact that the property involved was duly covered by the Torrens system which works under the fundamental principle that registration is the operative act which gives validity to the transfer or creates a lien upon the land.

The preference created by the levy on attachment is not diminished even by the subsequent registration of the prior sale. This is so because an attachment is a proceeding *in rem*. It is against the particular property, enforceable against the whole world. The attaching creditor acquires a specific lien on the attached property which nothing can subsequently destroy except the very dissolution of the attachment or levy itself. Such a proceeding, in effect, means that the property attached is an indebted thing and a virtual condemnation of it to

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pay the owner's debt. The lien continues until the debt is paid, or sale is had under execution issued on the judgment, or until the judgment is satisfied, or the attachment discharged or vacated in some manner provided by law.

- **Annie Geronimo, Susan Geronimo and Silverland Alliance Christian Church Vs. Sps. Estela C. Calderon and Rodolfo T. Calderon** G.R. No. 201781. December 10, 2014

JURISDICTION OF HLURB

In the present case, respondents are buyers of a subdivision lot from subdivision owner and developer Silverland Realty & Development Corporation. Respondents' action against Silverland Realty & Development Corporation was for violation of its own subdivision plan when it allowed the construction and operation of SACC.¹⁶ Respondents sued to stop the church activities inside the subdivision which is in contravention of the residential use of the subdivision lots. Undoubtedly, the present suit for the enforcement of statutory and contractual obligations of the subdivision developer clearly falls within the ambit of the HLURB's jurisdiction. Needless to stress, when an administrative agency or body is conferred quasi-judicial functions, all controversies relating to the subject matter pertaining to its specialization are deemed to be included within the jurisdiction of said administrative agency or body.¹⁷ Split jurisdiction is not favored.¹⁸

Thus, respondents properly filed their complaint before the HLURB. The HLURB has exclusive jurisdiction over complaints arising from contracts between the subdivision developer and the lot buyer, or those aimed at compelling the subdivision developer to comply with its contractual and statutory obligations to make the subdivision a better place to live in.¹⁹

- **Philippine Electric Corporation (PHILEC) Vs. Court of Appeals, et al.** G.R. No. 168612. December 10, 2015

- An appeal to reverse or modify a Voluntary Arbitrator's award or

decision must be filed before the Court of Appeals within 10 calendar days from receipt of the award or decision.

- Despite Rule 43 providing for a 15-day period to appeal, we rule that the Voluntary Arbitrator's decision must be appealed before the Court of Appeals within 10 calendar days from receipt of the decision as provided in the Labor Code.

We ruled that Article 262-A of the Labor Code allows the appeal of decisions rendered by Voluntary Arbitrators.⁸⁸ Statute provides that the Voluntary Arbitrator's decision "shall be final and executory after ten (10) calendar days from receipt of the copy of the award or decision by the parties." Being provided in the statute, this 10-day period must be complied with; otherwise, no appellate court will have jurisdiction over the appeal. This absurd situation occurs when the decision is appealed on the 11th to 15th day from receipt as allowed under the Rules, but which decision, under the law, has already become final and executory.

Furthermore, under Article VIII, Section 5(5) of the Constitution, this court "shall not diminish, increase, or modify substantive rights" in promulgating rules of procedure in courts.⁸⁹ The 10-day period to appeal under the Labor Code being a substantive right, this period cannot be diminished, increased, or modified through the Rules of Court.⁹⁰

In *Shioji v. Harvey*,⁹¹ this court held that the "rules of court, promulgated by authority of law, have the force and effect of law, if not in conflict with positive law."⁹² Rules of Court are "subordinate to the statute."⁹³ In case of conflict between the law and the Rules of Court, "the statute will prevail."⁹⁴

- The rule, therefore, is that a Voluntary Arbitrator's award or decision shall be appealed before

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the Court of Appeals within 10 days from receipt of the award or decision. Should the aggrieved party choose to file a motion for reconsideration with the Voluntary Arbitrator,⁹⁵ the motion must be filed within the same 10-day period since a motion for reconsideration is filed "within the period for taking an appeal."⁹⁶

- **Neil B. Aguilar and Ruben Calimbas Vs. Lightbringers Credit Cooperative** G.R. No. 209605. January 12, 2015

In the lower courts, one of the issues involved was the proper application of the rules when a party does not appear in the scheduled pre-trial conference despite due notice.

The Court, however, clarifies that failure to attend the pre-trial does not result in the "default" of the defendant. Instead, the failure of the defendant to attend shall be cause to allow the plaintiff to present his evidence *ex parte* and the court to render judgment on the basis thereof.

If the absent party is the plaintiff, then his case shall be dismissed. If it is the defendant who fails to appear, then the plaintiff is allowed to present his evidence *ex parte* and the court shall render judgment on the basis thereof. Thus, the plaintiff is given the privilege to present his evidence without objection from the defendant, the likelihood being that the court will decide in favor of the plaintiff, the defendant having forfeited the opportunity to rebut or present his own evidence.³⁵

The pre-trial cannot be taken for granted. It is not a mere technicality in court proceedings for it serves a vital objective: the simplification, abbreviation and expedition of the trial, if not indeed its dispensation.³⁶ More significantly, the pre-trial has been institutionalized as the answer to the clarion call for the speedy disposition of cases. Hailed as the most important procedural innovation in Anglo-Saxon justice in the nineteenth century, it

paved the way for a less cluttered trial and resolution of the case. It is, thus, mandatory for the trial court to conduct pre-trial in civil cases in order to realize the paramount objective of simplifying, abbreviating and expediting trial.³⁷

In the case at bench, the petitioners failed to attend the pre-trial conference set on August 25, 2009. They did not even give any excuse for their non-appearance, manifestly ignoring the importance of the pre-trial stage. Thus, the MCTC properly issued the August 25, 2009 Order,³⁸ allowing respondent to present evidence *ex parte*.

Thus, as it stands, the Court can only consider the evidence on record offered by respondent. The petitioners lost their right to present their evidence during the trial and, *a fortiori*, on appeal due to their disregard of the mandatory attendance in the pre-trial conference.

Substantive Issue

And on the merits of the case, the Court holds that there was indeed a contract of loan between the petitioners and respondent. The Court agrees with the findings of fact of the MCTC and the RTC that a check was a sufficient evidence of a loan transaction. The findings of fact of the trial court, its calibration of the testimonies of the witnesses and its assessment of the probative weight thereof, as well as its conclusions anchored on the findings are accorded high respect, if not conclusive effect.⁴⁰

The case of *Pua v. Spouses Lo Bun Tiong*⁴¹ discussed the weight of a check as an evidence of a loan:

In *Pacheco v. Court of Appeals*, this Court has expressly recognized that a check constitutes an evidence of indebtedness and is a veritable proof of an obligation. Hence, it can be used in lieu of and for the same purpose as a promissory note. In

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fact, in the seminal case of *Lozano v. Martinez*, We pointed out that a check functions more than a promissory note since it not only contains an undertaking to pay an amount of money but is an "order addressed to a bank and partakes of a representation that the drawer has funds on deposit against which the check is drawn, sufficient to ensure payment upon its presentation to the bank." This Court reiterated this rule in the relatively recent *Lim v. Mindanao Wines and Liquor Galleria* stating that a check, the entries of which are in writing, could prove a loan transaction.⁴²

- **Ruben Manalang, et al. Vs. Spouses Bienvenido and Mercedes Bacani** G.R. No. 156995. January 12, 2015

In the exercise of its appellate jurisdiction, the Regional Trial Court (RTC) shall decide the appeal of the judgment of the Municipal Trial Court (MTC) in unlawful detainer or forcible entry cases on the basis of the entire record of the proceedings had in the court of origin and such memoranda and/or briefs as may be required by the RTC. There is no trial *de novo* of the case.

Ruling of the Court

The appeal has no merit.

To start with, the RTC, in an appeal of the judgment in an ejectment case, shall not conduct a rehearing or trial *de novo*.²⁶ In this connection, Section 18, Rule 70 of the Rules of Court clearly provides:

Sec. 18. *Judgment conclusive only on possession; not conclusive in actions involving title or ownership.* — x x x.

x x x x

The judgment or final order shall be appealable to the appropriate Regional Trial Court which shall decide the same on the basis of the entire record of the proceedings had in the court of origin and such memoranda and/or briefs as may be

submitted by the parties or required by the Regional Trial Court. (7a)

Hence, the RTC violated the foregoing rule by ordering the conduct of the relocation and verification survey "in aid of its appellate jurisdiction" and by hearing the testimony of the surveyor, for its doing so was tantamount to its holding of a trial *de novo*. The violation was accentuated by the fact that the RTC ultimately decided the appeal based on the survey and the surveyor's testimony instead of the record of the proceedings had in the court of origin.

Given the foregoing allegations, the case should be dismissed without prejudice to the filing of a non-summary action like *accion reivindicatoria*. In our view, the CA correctly held that a boundary dispute must be resolved in the context of *accion reivindicatoria*, not an ejectment case. The boundary dispute is not about possession, but encroachment, that is, whether the property claimed by the defendant formed part of the plaintiff's property. A boundary dispute cannot be settled summarily under Rule 70 of the *Rules of Court*, the proceedings under which are limited to unlawful detainer and forcible entry. In unlawful detainer, the defendant unlawfully withholds the possession of the premises upon the expiration or termination of his right to hold such possession under any contract, express or implied. The defendant's possession was lawful at the beginning, becoming unlawful only because of the expiration or termination of his right of possession. In forcible entry, the possession of the defendant is illegal from the very beginning, and the issue centers on which between the plaintiff and the defendant had the prior possession *de facto*.

Thirdly, the MTC dismissed the action because it did not have jurisdiction over the case. The dismissal was correct. It is fundamental that the allegations of the complaint and the character of the relief sought by the complaint determine the nature of the action and the court that has jurisdiction over the action.²⁸ To be clear, unlawful detainer is an action filed by a

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lessor, vendor, vendee, or other person against whom the possession of any land or building is unlawfully withheld after the expiration or termination of the right to hold possession by virtue of any contract, express or implied.²⁹ To vest in the MTC the jurisdiction to effect the ejectment from the land of the respondents as the occupants in unlawful detainer, therefore, the complaint should embody such a statement of facts clearly showing the attributes of unlawful detainer.³⁰ However, the allegations of the petitioners' complaint did not show that they had permitted or tolerated the occupation of the portion of their property by the respondents; or how the respondents' entry had been effected, or how and when the dispossession by the respondents had started. All that the petitioners alleged was the respondents' "illegal use and occupation" of the property. As such, the action was not unlawful detainer.

- **The Law Firm of Laguesma Magsalin Consulta and Gastardo Vs. The Commission on Audit and/or Reynaldo A. Villar and Junanito G. Espino, Jr. in his capacities as Chairman and Commissioner, respectively** G.R. No. 185544. January 13, 2015

When a government entity engages the legal services of private counsel, it must do so with the necessary authorization required by law; otherwise, its officials bind themselves to be personally liable for compensating private counsel's services.

Petitioner is a real party-in-interest

Respondents argue that it is Clark Development Corporation, and not petitioner, which is the real party-in-interest since the subject of the assailed decision and resolution was the corporation's request for clearance to pay petitioner its legal fees. Respondents argue that any interest petitioner may have in the case is merely incidental.⁶⁰ This is erroneous.

Petitioner is a real party-in-interest, as defined in Rule 3, Section 2 of the 1997 Rules of Civil

Procedure:

SEC. 2. Parties in interest.— A real party in interest is the party who stands to be benefited or injured by the judgment in the suit, or the party entitled to the avails of the suit. Unless otherwise authorized by law or these Rules, every action must be prosecuted or defended in the name of the real party in interest.

Petitioner does not have a "mere incidental interest,"⁶¹ and its interest is not "merely consequential."⁶² Respondents mistakenly narrow down the issue to whether they erred in denying Clark Development Corporation's request for clearance of the retainership contract.⁶³ In doing so, they argue that the interested parties are limited only to Clark Development Corporation and respondents.⁶⁴

The issue at hand, however, relates to the assailed decision and resolution of respondents, which disallowed the disbursement of public funds for the payment of legal fees to petitioner.

The Commission on Audit did not commit grave abuse of discretion in denying the corporation's request for clearance to engage the services of petitioner as private counsel

The Office of the Government Corporate Counsel is mandated by law to provide legal services to government-owned and controlled corporations such as Clark Development Corporation.

As a general rule, government-owned and controlled corporations are not allowed to engage the legal services of private counsels. However, both respondent and the Office of the President have made issuances that had the effect of providing certain exceptions to the general rule. According to these rules and regulations, the general rule is that government-owned and controlled corporations must refer all their legal matters to the Office of the Government Corporate Counsel. It is only in "extraordinary or exceptional circumstances" or "exceptional cases" that

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it is allowed to engage the services of private counsels.

The labor cases petitioner handled were not of a complicated or peculiar nature that could justify the hiring of a known expert in the field. On the contrary, these appear to be standard labor cases of illegal dismissal and collective bargaining agreement negotiations,⁷⁰ which Clark Development Corporation's lawyers or the Office of the Government Corporate Counsel could have handled.

The cases that the private counsel was asked to manage are not beyond the range of reasonable competence expected from the Office of the Government Corporate Counsel. Certainly, the issues do not appear to be complex or of substantial national interest to merit additional counsel. Even so, there was no showing that the delays in the approval also were due to circumstances not attributable to petitioner nor was there a clear showing that there was unreasonable delay in any action of the approving authorities. Rather, it appears that the procurement of the proper authorizations was mere afterthought.

Respondents, therefore, correctly denied Clark Development Corporation's request for clearance in the disbursement of funds to pay petitioner its standing legal fees.

- **Edmund Sia Vs. Wilfredo Arcenas, Fernando Lopez and Pablo Rafanan** G.R. Nos. 209672-74. January 14, 2015

- A writ of possession is defined as a "writ of execution employed to enforce a judgment to recover the possession of land. It commands the sheriff to enter the land and give its possession to the person entitled under the judgment."⁵⁰ It may be issued under the following instances: (a) land registration proceedings under Section 17⁵¹ of Act No. 496,⁵² otherwise known as "The Land Registration Act;" (b) judicial foreclosure, provided the debtor is in possession of the

mortgaged realty and no third person, not a party to the foreclosure suit, had intervened; (c) extrajudicial foreclosure of a real estate mortgage under Section 7⁵³ of Act No. 3135,⁵⁴ as amended by Act No. 4118;⁵⁵ and (d) in execution sales.⁵⁶ Proceeding therefrom, the issuance of a writ of possession is only proper in order to execute judgments ordering the delivery of specific properties to a litigant, in accordance with Section 10, Rule 39,⁵⁷ of the Rules of Court.

- As already discussed, the judgment in SCA No. V-7075 sought to be enforced in the case at bar only declared valid the auction sale where petitioner bought the subject lots, and accordingly ordered the City Treasurer to issue a Final Bill of Sale to petitioner. Since the said judgment did not order that the possession of the subject lots be vested unto petitioner, the RTC Br. 15 substantially varied the terms of the aforesaid judgment – and thus, exceeded its authority in enforcing the same – when it issued the corresponding writs of possession and demolition to vest unto petitioner the possession of the subject lots. It is well-settled that orders pertaining to execution of judgments must substantially conform to the dispositive portion of the decision sought to be executed. As such, it may not vary, or go beyond, the terms of the judgment it seeks to enforce.⁵⁸ Where the execution is not in harmony with the judgment which gives it life and exceeds it, it has no validity.⁵⁹ Had the petitioner pursued an action for ejectment or reconveyance, the issuance of writs of possession and demolition would have been proper; but not in a special civil action for mandamus, as in this case.

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- Perforce, the CA correctly ruled that the Writ of Possession dated June 19, 2009 and the Writ of Demolition dated August 28, 2009 issued in this case are null and void for having been rendered beyond the authority of RTC Br. 15 in enforcing the judgment in SCA No. V-7075.

- **Virgilio C. Briones Vs. Court of Appeals, Special 8th Division and Cash Asia Credit Corporation** G.R. No. 204444. January 14, 2015

• **The Issue Before the Court**

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- The primordial issue for the Court's resolution is whether or not the CA gravely abused its discretion in ordering the outright dismissal of Briones's complaint on the ground of improper venue.

the Court finds that the CA gravely abused its discretion in ordering the outright dismissal of Briones's complaint against Cash Asia, without prejudice to its re-filing before the proper court in Makati City.

Rule 4 of the Rules of Court governs the rules on venue of civil actions, to wit:

Rule 4
VENUE OF ACTIONS

SECTION 1. *Venue of real actions.* — Actions affecting title to or possession of real property, or interest therein, shall be commenced and tried in the proper court which has jurisdiction over the area wherein the real property involved, or a portion thereof, is situated.

Forcible entry and detainer actions shall be commenced and tried in the municipal trial court of the municipality or city wherein the real property involved, or a portion thereof, is situated.

SEC. 2. *Venue of personal actions.* — All other actions may be commenced and tried where the plaintiff or any of the

principal plaintiffs resides, or where the defendant or any of the principal defendants resides, or in the case of a non-resident defendant where he may be found, at the election of the plaintiff.

SEC. 3. *Venue of actions against nonresidents.* — If any of the defendants does not reside and is not found in the Philippines, and the action affects the personal status of the plaintiff, or any property of said defendant located in the Philippines, the action may be commenced and tried in the court of the place where the plaintiff resides, or where the property or any portion thereof is situated or found.

SEC. 4. *When Rule not applicable.* — This Rule shall not apply –

(a) In those cases where a specific rule or law provides otherwise; or

(b) Where the parties have validly agreed in writing before the filing of the action on the exclusive venue thereof.

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.*³³ 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**

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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.³⁴
(Emphases and underscoring supplied)

In this relation, case law likewise provides that in cases where the complaint assails only the terms, conditions, and/or coverage of a written instrument and not its validity, the exclusive venue stipulation contained therein shall still be binding on the parties, and thus, the complaint may be properly dismissed on the ground of improper venue.³⁵ Conversely, therefore, a complaint directly assailing the validity of the written instrument itself should not be bound by the exclusive venue stipulation contained therein and should be filed in accordance with the general rules on venue. To be sure, it would be inherently consistent for a complaint of this nature to recognize the exclusive venue stipulation when it, in fact, precisely assails the validity of the instrument in which such stipulation is contained.

In this case, the venue stipulation found in the subject contracts is indeed restrictive in nature, considering that it effectively limits the venue of the actions arising therefrom to the courts of Makati City. However, it must be emphasized that Briones's complaint directly assails the validity of the subject contracts, claiming forgery in their execution. Given this

circumstance, Briones cannot be expected to comply with the aforesaid venue stipulation, as his compliance therewith would mean an implicit recognition of their validity. Hence, pursuant to the general rules on venue, Briones properly filed his complaint before a court in the City of Manila where the subject property is located.

In conclusion, the CA patently erred and hence committed grave abuse of discretion in dismissing Briones's complaint on the ground of improper venue.

- **Sara Lee Philippines, Inc. Vs. Emilinda D. Macatlang, et al./Aris Philippines, Inc. Vs. Emilinda D. Macatlang, et al/Sara Lee Corporation Vs. Emilinda D. Macatlang, et al./Cesar C. Cruz Vs. Emilinda D. Macatlang, et al./Fashion Accessories Phils. Inc. Vs. Emilinda D. Macatlang, et al./Emelinda D. Macatlang, et al. Vs. NLRC, et al. G.R. No. 180147/G.R. No. 180148/G.R. No. 180149/G.R. No. 180150/G.R. No. 180319 & G.R. No. 180685. January 14, 2015**

- A confession of judgment is an acknowledgment that a debt is justly due and cuts off all defenses and right of appeal. It is used as a shortcut to a judgment in a case where the defendant concedes liability. It is seen as the written authority of the debtor and a direction for entry of judgment against the debtor.

The Corporations entered into a compromise with some of the former Aris employees which they designate as Confession of Judgment. The Corporations reason that a resort to judgment by confession is the acceptable alternative to a compromise agreement because of the impossibility to obtain the consent to a compromise of all the 5,984 complainants.

Even if we dismiss the Corporations' choice of designation as pure semantics and consider the agreement they entered

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into with the complainants as a form of a compromise agreement, we still could not approve the same.

We elucidate.

A compromise is a contract whereby the parties, by making reciprocal concessions, avoid a litigation or put an end to one already commenced. It is an agreement between two or more persons, who, for preventing or putting an end to a lawsuit, adjust their difficulties by mutual consent in the manner which they agree on, and which everyone of them prefers to the hope of gaining, balanced by the danger of losing.

Article 227 of the Labor Code of the Philippines authorizes compromise agreements voluntarily agreed upon by the parties, in conformity with the basic policy of the State "to promote and emphasize the primacy of free collective bargaining and negotiations, including voluntary arbitration, mediation and conciliation, as modes of settling labor or industrial disputes."

A compromise agreement is valid as long as the consideration is reasonable and the employee signed the waiver voluntarily, with a full understanding of what he was entering into.

- G.R. No. 191540. January 21, 2015

Issues

- According to petitioners, the pending action for annulment of foreclosure of mortgage and the corresponding sale at public auction of the subject properties operates as a bar to the issuance of a writ of possession;
 - Claiming violation of their right to due process, petitioners likewise assert that as they were not parties to the foreclosure and are, thus, strangers or third parties thereto, they may not be evicted by a mere *ex parte* writ of possession; and
- Lastly, petitioners argue that respondent, a mere purchaser of the contested

properties by way of a negotiated sale between him and PNB, may not avail of a writ of possession pursuant to Section 7 of Act No. 3135, as amended, as he is not the purchaser at the public auction sale. Petitioners further contend that respondent has no right to avail of the writ even by way of subrogation.

It is settled that the issuance of a Writ of Possession may not be stayed by a pending action for annulment of mortgage or the foreclosure itself.

It is petitioners' stand that the pending action for annulment of foreclosure of mortgage and of the corresponding sale at public auction of the subject properties operates as a bar to the issuance of a writ of possession.

The Court rules in the negative. *BPI Family Savings Bank, Inc. v. Golden Power Diesel Sales Center, Inc.*²⁷ reiterates the long-standing rule that:

[I]t is settled that a pending action for annulment of mortgage or foreclosure sale does not stay the issuance of the writ of possession. The trial court, where the application for a writ of possession is filed, does not need to look into the validity of the mortgage or the manner of its foreclosure. The purchaser is entitled to a writ of possession without prejudice to the outcome of the pending annulment case.

This is in line with the ministerial character of the possessory writ. Thus, in *Bank of the Philippine Islands v. Tarampi*,²⁸ it was held:

To stress the ministerial character of the writ of possession, the Court has disallowed injunction to prohibit its issuance, just as it has held that **its issuance may not be stayed by a pending action for annulment of mortgage or the foreclosure itself.**

Clearly then, until the foreclosure sale

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of the property in question is annulled by a court of competent jurisdiction, the issuance of a writ of possession remains the ministerial duty of the trial court. The same is true with its implementation; otherwise, the writ will be a useless paper judgment – a result inimical to the mandate of Act No. 3135 to vest possession in the purchaser immediately.²⁹ (Emphases supplied)

Clearly, petitioners' argument is devoid of merit.

Petitioners are not strangers or third parties to the foreclosure sale; they were not deprived of due process.

Section 7 of Act No. 3135, as amended, sets forth the following procedure in the availment of and issuance of a writ of possession in cases of extrajudicial foreclosures,

Although the above provision clearly pertains to a writ of possession availed of and issued within the redemption period of the foreclosure sale, the same procedure also applies to a situation where a purchaser is seeking possession of the foreclosed property bought at the public auction sale *after* the redemption period has expired without redemption having been made.³⁰ The only difference is that in the latter case, no bond is required therefor, as held in *China Banking Corporation v. Lozada*, Upon the expiration of the period to redeem and no redemption was made, the purchaser, as confirmed owner, has the absolute right to possess the land and the issuance of the writ of possession becomes a ministerial duty of the court upon proper application and proof of title.³³

Nevertheless, where the extrajudicially foreclosed real property is in the possession of a third party who is holding the same adversely to the judgment debtor or mortgagor, the RTC's duty to issue a writ of possession in favor of the

purchaser of said real property ceases to be ministerial and, as such, may no longer proceed *ex parte*.³⁴ In such a case, the trial court must order a hearing to determine the nature of the adverse possession.³⁵ For this exception to apply, however, it is not enough that the property is in the possession of a third party, the property must also be held by the third party *adversely to the judgment debtor or mortgagor*,³⁶ such as a co-owner, agricultural tenant or usufructuary.³⁷

In this case, petitioners do not fall under any of the above examples of such a third party holding the subject properties adversely to the mortgagor; nor is their claim to their right of possession analogous to the foregoing situations. Admittedly, they are the mortgagor Limsiaco's heirs. It was precisely because of Limsiaco's death that petitioners obtained the right to possess the subject properties and, as such, are considered transferees or successors-in-interest of the right of possession of the latter. As Limsiaco's successors-in-interest, petitioners merely stepped into his shoes and are, thus, compelled not only to acknowledge but, more importantly, to respect the mortgage he had earlier executed in favor of respondent.³⁸ They cannot effectively assert that their right of possession is adverse to that of Limsiaco as they do not have an independent right of possession other than what they acquired from him.³⁹ Not being third parties who have a right contrary to that of the mortgagor, the trial court was thus justified in issuing the writ and in ordering its implementation.

Respondent is entitled to the issuance of writ of possession.

Respondent, as a transferee or successor-in-interest of PNB by virtue of the contract of sale between them, is considered to have stepped into the shoes of PNB. As such, he is necessarily entitled to avail of the provisions of Section 7 of Act No. 3135, as amended, as if he is PNB.

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Verily, one of the rights that PNB acquired as purchaser of the subject properties at the public auction sale, which it could validly convey by way of its subsequent sale of the same to respondent, is the availment of a writ of possession. This can be deduced from the above-quoted stipulation that "[t]he [v]endee further agrees to undertake, at xxx his expense, the ejectment of any occupant of the [p]roperty." Accordingly, respondent filed the contentious ex parte motion for a writ of possession to eject petitioners therefrom and take possession of the subject properties.

- **Reynaldo H. Jaylo, William Valenzona and Antonio G. Habalo vs. Sandiganbayan (First Division), People of the Philippines, et al.** G.R. Nos. 183152-54. January 21, 2015

What are the repercussions of the failure of the accused to appear, without justifiable cause, at the promulgation of a judgment of conviction? With the resolution of this singular issue, the Court writes *finis* to the 24-year-old controversy before us.

Section 6, Rule 120, of the Rules of Court provides that an accused who failed to appear at the promulgation of the judgment of conviction shall lose the remedies available against the said judgment.

Except when the conviction is for a light offense, in which case the judgment may be pronounced in the presence of the counsel for the accused or the latter's representative, the accused is required to be present at the scheduled date of promulgation of judgment. Notice of the schedule of promulgation shall be made to the accused personally or through the bondsman or warden and counsel.

The promulgation of judgment shall proceed even in the absence of the accused despite notice. The promulgation *in absentia* shall be made by recording the judgment in the criminal docket and serving a copy thereof to the accused at

their last known address or through counsel. The court shall also order the arrest of the accused if the judgment is for conviction and the failure to appear was without justifiable cause.⁴⁵

If the judgment is for conviction and the failure to appear was without justifiable cause, the accused shall lose the remedies available in the Rules of Court against the judgment. Thus, it is incumbent upon the accused to appear on the scheduled date of promulgation, because it determines the availability of their possible remedies against the judgment of conviction. When the accused fail to present themselves at the promulgation of the judgment of conviction, they lose the remedies of filing a motion for a new trial or reconsideration (Rule 121) and an appeal from the judgment of conviction (Rule 122).⁴⁶

The reason is simple. When the accused on bail fail to present themselves at the promulgation of a judgment of conviction, they are considered to have lost their standing in court.⁴⁷ Without any standing in court, the accused cannot invoke its jurisdiction to seek relief.⁴⁸

Section 6, Rule 120, of the Rules of Court, does not take away substantive rights; it merely provides the manner through which an existing right may be implemented.

Petitioners claim that their right to file a motion for reconsideration or an appeal has a statutory origin, as provided under Section 7 of P.D. 1606,

According to petitioners, Section 7 of P.D. 1606 did not provide for any situation as to when the right to file a motion for reconsideration may be deemed lost. Thus, it is available at all times and the Rules promulgated by the Supreme Court cannot operate to diminish or modify the

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right of a convicted accused to file a motion for reconsideration.⁴⁹ Furthermore, they argue, the right to file a motion for reconsideration is a statutory grant, and not merely a remedy "available in [the] Rules," as provided under Section 6 of Rule 120 of the Rules of Court. Thus, according to them, their absence at the promulgation of judgment before the Sandiganbayan cannot be deemed to have resulted in the loss of their right to file a motion for reconsideration.

Petitioners' argument lacks merit.

Like an appeal, the right to file a motion for reconsideration is a statutory grant or privilege. As a statutory right, the filing of a motion for reconsideration is to be exercised in accordance with and in the manner provided by law. Thus, a party filing a motion for reconsideration must strictly comply with the requisites laid down in the Rules of Court.⁵⁰

It bears stressing that the provision on which petitioners base their claim states that "[a] petition for reconsideration of any final order or decision **may** be filed within fifteen (15) days from promulgation or notice of the final order or judgment."⁵¹ In *Social Security Commission v. Court of Appeals*,⁵² we enunciated that the term "may" denotes a mere possibility, an opportunity, or an option. Those granted this opportunity may choose to exercise it or not. If they do, they must comply with the conditions attached thereto.⁵³

Aside from the condition that a motion for reconsideration must be filed within 15 days from the promulgation or notice of the judgment, the movant must also comply with the conditions laid down in the Rules of Court, which applies to all cases and proceedings filed with the Sandiganbayan.⁵⁴

Petitioners insist that the right to file a motion for reconsideration under Section 7

of P.D. 1606 is a guarantee, and no amount of Rules promulgated by the Supreme Court can operate to diminish or modify this substantive right.

Section 6, Rule 120, of the Rules of Court, does not take away *per se* the right of the convicted accused to avail of the remedies under the Rules. It is the failure of the accused to appear without justifiable cause on the scheduled date of promulgation of the judgment of conviction that forfeits their right to avail themselves of the remedies against the judgment.

It is not correct to say that Section 6, Rule 120, of the Rules of Court diminishes or modifies the substantive rights of petitioners. It only works in pursuance of the power of the Supreme Court to "provide a simplified and inexpensive procedure for the speedy disposition of cases."⁵⁷ This provision protects the courts from delay in the speedy disposition of criminal cases – delay arising from the simple expediency of nonappearance of the accused on the scheduled promulgation of the judgment of conviction.

In this case, petitioners have just shown their lack of faith in the jurisdiction of the Sandiganbayan by not appearing before it for the promulgation of the judgment on their cases. Surely they cannot later on expect to be allowed to invoke the Sandiganbayan's jurisdiction to grant them relief from its judgment of conviction.

It is incumbent upon the accused to show justifiable cause for their absence at the promulgation of the judgment of conviction.

It is well to note that Section 6, Rule 120, of the Rules of Court also provides the remedy by which the accused who were absent during the promulgation may reverse the forfeiture of the remedies

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available to them against the judgment of conviction. In order to regain their standing in court, the accused must do as follows: 1) surrender and 2) file a motion for leave of court to avail of the remedies, stating the reasons for their absence, within 15 days from the date of the promulgation of judgment.⁵⁸

In *Villena v. People*,⁵⁹ we stated that the term "surrender" contemplates the act by the convicted accused of physically and voluntarily submitting themselves to the jurisdiction of the court to suffer the consequences of the judgment against them. Upon surrender, the accused must request permission of the court to avail of the remedies by making clear the reasons for their failure to attend the promulgation of the judgment of conviction.

Clearly, the convicted accused are the ones who should show that their reason for being absent at the promulgation of judgment was justifiable. If the court finds that the reasons proffered justify their nonappearance during the promulgation of judgment, it shall allow them to avail of the remedies.⁶⁰ Thus, unless they surrender and prove their justifiable reason to the satisfaction of the court, their absence is presumed to be unjustified.

On the scheduled date of promulgation on 17 April 2007, the Sandiganbayan noted that only Atty. Francisco Chavez, counsel for petitioners, appeared.⁶¹ Jaylo was not served notice of the promulgation, because he was no longer residing at his given address. Valenzona and Habalo were duly notified. Castro had died on 22 December 2006.⁶²

Petitioners did not surrender within 15 days from the promulgation of the judgment of conviction. Neither did they ask for leave of court to avail themselves of the remedies, and state the reasons for their absence. Even if we were to assume that the failure of Jaylo to appear at the

promulgation was due to failure to receive notice thereof, it is not a justifiable reason. He should have filed a notice of change of address before the Sandiganbayan.

The Sandiganbayan was correct in not taking cognizance of the Motion for Partial Reconsideration filed by counsel for petitioners. While the motion was filed on 30 April 2007, it did not operate to regain the standing of petitioners in court. For one, it is not an act of surrender that is contemplated by Section 6, Rule 120, of the Rules of Court. Moreover, nowhere in the Motion for Partial Reconsideration was it indicated that petitioners were asking for leave to avail of the remedies against the judgment of conviction, or that there were valid reasons for their absence at the promulgation.

For the failure of petitioners to regain their standing in court and avail themselves of the remedies against the judgment of conviction, the Decision of the Sandiganbayan attained finality 15 days reckoned from 17 April 2007.

In view thereof, this Court no longer has the power to conduct a review of the findings and conclusions in the Decision of the Sandiganbayan. The Decision is no longer subject to change, revision, amendment, or reversal.⁶³ Thus, there is no need to pass upon the issues raised by petitioners assailing it.

- **Fortune Life Insurance Company, Inc. Vs. (COA) Proper; COA Regional Office No. VI-Western Visayas; Audit Group LGS-B, Province of Antique; and Provincial Government of Antique** G.R. No. 213525. January 27, 2015

• I

- **Petitioner did not comply with the rule on proof of service**
- The petitioner claims that the affidavit of service attached to the petition for *certiorari* complied with the requirement on proof of service.

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- The claim is unwarranted. The petitioner obviously ignores that Section 13, Rule 13 of the *Rules of Court* concerns two types of proof of service, namely: the affidavit and the registry receipt, viz:
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- Section 13. *Proof of Service.* – x x x. 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.
-
- Section 13 thus requires that if the service is done by registered mail, proof of service shall consist of the affidavit of the person effecting the mailing *and* the registry receipt, both of which must be appended to the paper being served. A compliance with the rule is mandatory, such that there is no proof of service if either or both are not submitted.¹³
-
- Here, the petition for *certiorari* only carried the affidavit of service executed by one Marcelino T. Pascua, Jr., who declared that he had served copies of the petition by registered mail “under Registry Receipt Nos. 70449, 70453, 70458, 70498 and 70524 attached to the appropriate spaces found on pages 64-65 of the petition.”¹⁴ The petition only bore, however, the cut *print-outs* of what *appeared to be* the registry receipt numbers of the registered matters, not the registry receipts themselves. The rule requires to be appended the registry receipts, not their

reproductions. Hence, the cut print-outs did not substantially comply with the rule. This was the reason why the Court held in the resolution of August 19, 2014 that the petitioner did not comply with the requirement of proof of service.¹⁵

II

Fresh Period Rule under Neypes did not apply to the petition for certiorari under Rule 64 of the Rules of Court

The petitioner posits that the *fresh period* rule applies because its Rule 64 petition is akin to a petition for review brought under Rule 42 of the Rules of Court; hence, conformably with the *fresh period rule*, the period to file a Rule 64 petition should also be reckoned from the receipt of the order denying the motion for reconsideration or the motion for new trial.¹⁶

The petitioner’s position cannot be sustained.

There is no parity between the petition for review under Rule 42 and the petition for *certiorari* under Rule 64.

As to the nature of the procedures, Rule 42 governs an appeal from the judgment or final order rendered by the Regional Trial Court in the exercise of its appellate jurisdiction. Such appeal is on a question of fact, or of law, or of mixed question of fact and law, and is given due course only upon a *prima facie* showing that the Regional Trial Court committed an error of fact or law warranting the reversal or modification of the challenged judgment or final order.¹⁷ In contrast, the petition for *certiorari* under Rule 64 is similar to the petition for *certiorari* under Rule 65, and assails a judgment or final order of the Commission on Elections (COMELEC), or the Commission on Audit (COA). The petition is not designed to correct only errors of jurisdiction, not errors of judgment.¹⁸ Questions of fact cannot be raised except to determine whether the

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COMELEC or the COA were guilty of grave abuse of discretion amounting to lack or excess of jurisdiction.

The reglementary periods under Rule 42 and Rule 64 are different. In the former, the aggrieved party is allowed 15 days to file the petition for review from receipt of the assailed decision or final order, or from receipt of the denial of a motion for new trial or reconsideration.¹⁹ In the latter, the petition is filed within 30 days from notice of the judgment or final order or resolution sought to be reviewed. The filing of a motion for new trial or reconsideration, if allowed under the procedural rules of the Commission concerned, interrupts the period; hence, should the motion be denied, the aggrieved party may file the petition within the remaining period, which shall not be less than five days in any event, reckoned from the notice of denial.²⁰

The petitioner filed its motion for reconsideration on January 14, 2013, which was 31 days after receiving the assailed decision of the COA on December 14, 2012.²¹ Pursuant to Section 3 of Rule 64, it had only five days from receipt of the denial of its motion for reconsideration to file the petition. Considering that it received the notice of the denial on July 14, 2014, it had only until July 19, 2014 to file the petition. However, it filed the petition on August 13, 2014, which was 25 days too late.

- **Atty. Leo N. Caubang Vs. Jesus G. Crisologo and Nanette B. Crisologo** G.R. No. 174581. February 4, 2015

- Under Section 3 of Act No. 3135:⁶

- Section 3. *Notice of sale; posting; when publication required.* – Notice shall be given by posting notices of the sale for not less than twenty days in at least three public places of the municipality or city where the property is situated, and if such property is worth more than four

hundred pesos, such **notices shall also be published** once a week for at least three consecutive weeks **in a newspaper of general circulation in the municipality or city.**⁷

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- Caubang never made an effort to inquire as to whether the *Oriental Daily Examiner* was indeed a newspaper of general circulation, as required by law. It was shown that the *Oriental Daily Examiner* is not even on the list of newspapers accredited to publish legal notices, as recorded in the Davao RTC's Office of the Clerk of Court. It also has no paying subscribers and it would only publish whenever there are customers. Since there was no proper publication of the notice of sale, the Spouses Crisologo, as well as the rest of the general public, were never informed that the mortgaged property was about to be foreclosed and auctioned. As a result, PDCP Bank became the sole bidder. This allowed the bank to bid for a very low price (P1,331,460.00) and go after the spouses for a bigger amount as deficiency.
-
- The principal object of a notice of sale in a foreclosure of mortgage is not so much to notify the mortgagor as to inform the public generally of the nature and condition of the property to be sold, and of the time, place, and terms of the sale. Notices are given to secure bidders and prevent a sacrifice of the property. Therefore, statutory provisions governing publication of notice of mortgage foreclosure sales must be strictly complied with and slight deviations therefrom will invalidate the notice and render the sale, at the very least, voidable. Certainly, the statutory requirements of posting and publication are mandated and

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imbued with public policy considerations. Failure to advertise a mortgage foreclosure sale in compliance with the statutory requirements constitutes a jurisdictional defect, and any substantial error in a notice of sale will render the notice insufficient and will consequently vitiate the sale.⁸

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- Since it was Caubang who caused the improper publication of the notices which, in turn, compelled the Spouses Crisologo to litigate and incur expenses involving the declaration of nullity of the auction sale for the protection of their interest on the property, the CA aptly held that Caubang shall be the one liable for the spouses' claim for litigation expenses and attorney's fees.

• **Robert and Nenita De Leon Vs. Gilbert and Analyn Dela Llana** G.R. No. 212277. February 11, 2015

- The Issue Before the Court
- The core issue to be resolved is whether or not the principle of res judicata applies – that is, whether or not the second ejectment complaint was barred by prior judgment, i.e., by the MCTC-Nabunturan-Mawab's January 24, 2006 Decision in Civil Case No. 821.

Res judicata (meaning, a "matter adjudged") is a fundamental principle of law which precludes parties from re-litigating issues actually litigated and determined by a prior and final judgment. It means 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 all points and matters determined in the former suit."

Notably, res judicata has two (2) concepts. The first is "bar by prior judgment" in which the judgment or

decree of a 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, while the second concept is "conclusiveness of judgment" in which 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.

There is a bar by prior judgment where there is identity of parties, subject matter, and causes of action between the first case where the judgment was rendered and the second case that is sought to be barred. There is conclusiveness of judgment, on the other hand, where there is identity of parties in the first and second cases, but no identity of causes of action.

Tested against the foregoing, the Court rules that res judicata, in the concept of bar by prior judgment, applies in this case.

As the records would show, the MCTC-Nabunturan-Mawab, through its January 24, 2006 Decision in Civil Case No. 821, dismissed the first ejectment complaint filed by Gilbert against Robert and Gil for the reason that the undated lease contract entered into by Gilbert and Robert was relatively simulated (properly speaking, should be absolutely simulated as will be explained later) and, hence, supposedly non-binding on the parties. To explicate, this pronouncement was made in reference to the cause of action raised in the first ejectment complaint – that is, the alleged breach of the same lease contract due to non-payment of rent. Therefore, to

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find that the said contract was simulated and thereby non-binding negates the cause of action raised in the said complaint, hence, resulting in its dismissal.

By resolving the substantive issue therein – that is, the right of Gilbert to recover the de facto possession of the subject property arising from Robert's breach of the undated lease contract – the MCTC-Nabunturan- Mawab's January 24, 2006 Decision should be properly considered as a judgment on the merits.

The Court must, however, clarify that res judicata only applies in reference to the cause of action raised by Gilbert in both ejectment complaints – that is, his entitlement to the de facto possession of the subject property based on breach of contract (due to non-payment of rent), which was resolved to be simulated and, hence, non-binding. Accordingly, any subsequent ejectment complaint raising a different cause of action – say for instance, recovery of de facto possession grounded on tolerance (which was, by the way, not duly raised by the respondents in this case and, therefore, improperly taken cognizance of the MTCC-Davao City in its ruling) – is not barred by the Court's current disposition. In effect, the dismissal of the second ejectment complaint, by virtue of this Decision, is without prejudice to the filing of another ejectment complaint grounded on a different cause of action, albeit involving the same parties and subject matter.

- **Diana Yap-Co Vs. Spouses William t. Uy and Ester Go-Uy** G.R. No. 209295. February 11, 2015

The Issue Before The Court

- The issue for the Court's resolution is whether or not the CA erred in reinstating Civil Case No. 09-122374 on considerations of equity, notwithstanding the rule on failure to prosecute a case diligently under Section 3, Rule 17

of the Rules of Court.

Section 3, Rule 17 of the Rules of Court provides that "[i]f plaintiff fails to appear at the time of the trial, or to prosecute his action for an unreasonable length of time, or to comply with these rules or any order of the court, the action may be dismissed upon motion of the defendant or upon the court's own motion. This dismissal shall have the effect of an adjudication upon the merits, unless otherwise provided by the court." However, the application of the foregoing rule is not, to the Court's mind, warranted in this case since, as correctly found by the CA, respondents' counsel acted negligently in failing to attend the scheduled hearing dates and even notify respondents of the same so as to enable them to travel all the way from Aurora, Isabela to Manila and attend said hearings. ***Verily, relief is accorded to the client who suffered by reason of the lawyer's palpable mistake or negligence and where the interest of justice so requires.*** Concurring with the CA, the Court finds that respondents would be deprived of the opportunity to prove the legitimacy of their claims if the RTC's dismissal of the case – on a procedural technicality at that, which was clearly caused by the palpable negligence of their counsel – is sustained. Considering that respondents appear to have legal and factual bases for their grievance, it would better serve the higher interest of substantial justice to allow the parties' conflicting claims to be resolved on the merits.

Further, it bears pointing out that while the RTC dismissed the case impliedly by reason of respondents' repeated failure to appear in court and prosecute their case, it also inaccurately expressed the view that such dismissal may properly be taken as its favorable action on petitioner's standing motion to dismiss. The Court takes note, however, that the cited motion to dismiss was not premised on the respondents' failure to prosecute their case ***but on the alleged failure of the***

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complaint to state a cause of action.

Fundamental is the rule that a motion to dismiss grounded on failure to state a cause of action refers only to the insufficiency of the pleading. A complaint states a cause of action if it avers the existence of the three essential elements of a cause of action, namely: (a) the legal right of the plaintiff; (b) the correlative obligation of the defendant; and (c) the act or omission of the defendant in violation of said right. If these elements are present such that the allegations furnish sufficient basis by which the complaint can be maintained, the same should not be dismissed.

In this case, the Court finds that the subject complaint sufficiently averred actual fraud on the part of petitioner in procuring her title to the subject property to the prejudice of respondents who claim to have acquired it first. Thus, outright dismissal for failure to state a cause of action was improper.

- **Atty. Segundo B. Bonsubre, Jr. Vs. Erwin Yerro, Erico Yerro and Richie Yerro** G.R. No. 205952. February 11, 2015

- **The Issue Before the Court**

- The primordial issue for the Court's resolution is whether or not the CA erred in upholding the RTC's ruling denying due course to petitioner's notice of appeal with respect to the criminal aspect of the case.

At the outset, it must be borne in mind that a **dismissal grounded on the denial of the right of the accused to speedy trial has the effect of acquittal that would bar the further prosecution of the accused for the same offense.**

Perforce, the September 18, 2001 Dismissal Order grounded on the denial of respondents' right to speedy trial is a final order that is not appealable and is immediately executory.

Finally, petitioner's asseveration that there was no violation of the respondents' right to speedy trial as both parties mutually agreed to provisionally dismiss the case until full settlement of the obligation under paragraph 5 of the Compromise Agreement likewise does not persuade.

The provisional dismissal of a criminal case, which is a dismissal without prejudice to the reinstatement thereof, is governed by Section 8, Rule 117 of the Rules of Court which reads:

SEC. 8. Provisional dismissal. – A case shall not be provisionally dismissed except with the express consent of the accused and with notice to the offended party.

The provisional dismissal of offenses punishable by imprisonment not exceeding six (6) years or a fine of any amount, or both, shall become permanent one (1) year after issuance of the order without the case having been revived. With respect to offenses punishable by imprisonment of more than six (6) years, their provisional dismissal shall become permanent two (2) years after issuance of the order without the case having been revived.

Under the afore-cited provision, a case is provisionally dismissed if the following requisites concur:

1. (a) The prosecution with the express conformity of the accused, or the accused, moves for a provisional dismissal (sin perjuicio) of his case; or both the prosecution and the accused move for its provisional dismissal;
2. (b) The offended party is notified of the motion for a provisional dismissal of the case;
3. (c) The court issues an Order granting the motion and dismissing the case provisionally; and
4. (d) The public prosecutor is served with a copy of the Order of

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provisional dismissal of the case.

In the case at bar, none of the foregoing requisites were met. While it may appear that the respondents consented to a provisional dismissal of the case under the Compromise Agreement, the prosecution neither presented the same for the court's approval nor filed the required motion to that effect such that no order was in fact issued granting the provisional dismissal of the case. Hence, petitioner's assertion that the respondents are estopped from invoking their right to speedy trial is without basis.

Accordingly, the September 18, 2001 Dismissal Order grounded on the denial of respondents' right to speedy trial being a final order that cannot be subject of reconsideration or an appeal, no error can be imputed against the CA in upholding the RTC Ruling denying due course to petitioner's notice of appeal relative to the criminal aspect of the case.

- **Felipe Jhonny A. Frias, Jr. and Heirs of Rogelio B. Veneracion Vs. The Honorable Edwin D. Sorongon, Assisting Judge, Branch 211, RTC, Mandaluyong City, et al.** G.R. No. 184827. February 11, 2015

- this Court will look into the merit of petitioners' allegation of lack of the required hearing in resolving the issue of indigency.
-

In the instant case, based on the list of documents submitted by petitioners in support of their Motion for Leave and to Admit Complaint of Indigent Litigants, it cannot be disputed that petitioners failed to complete the requirements set forth in Section 19, Rule 141 of the Rules of Court. They did not execute their own affidavit as required by said Section 19. And as this Court ruled in *Spouses Algura*, if the trial court finds that one or both requirements have not been met, then it would set a hearing to enable the applicant to prove that the applicant has "no money or property sufficient and

available for food, shelter and basic necessities for himself and his family."

As correctly argued by Ortigas, the hearing requirement, contrary to petitioners' claim, was complied with during the hearings on the motions to dismiss filed by respondents. In said hearings, petitioners' counsel was present and they were given the opportunity to prove their indigency. Clearly, their non-payment of docket fees is one of the grounds raised by respondents in their motions to dismiss and the hearings on the motions were indeed the perfect opportunity for petitioners to prove that they are entitled to be treated as indigent litigants and thus exempted from the payment of docket fees as initially found by the Executive Judge.

- **Pilipinas Shell Petroleum Corporation and Petron Corporation Vs. Romars International Gases Corporation** G.R. No. 189669. February 16, 2015

ISSUES

A.
THE COURT OF APPEALS GRAVELY ERRED IN RULING THAT VENUE IN AN APPLICATION FOR SEARCH WARRANT IS JURISDICTIONAL. THIS IS BECAUSE A SEARCH WARRANT CASE IS NOT A CRIMINAL CASE.

B. THE COURT OF APPEALS GRAVELY ERRED IN RULING THAT RESPONDENT'S MOTION TO QUASH IS NOT SUBJECT TO THE OMNIBUS MOTION RULE AND THAT THE ISSUE OF LACK OF JURISDICTION MAY NOT BE WAIVED AND MAY EVEN BE RAISED FOR THE FIRST TIME ON APPEAL.

Section 2, Rule 126 of the Revised Rules of Criminal Procedure provides thus: XXXX

The above provision is clear enough. Under paragraph (b) thereof, the application for search warrant in this case should have stated compelling reasons why the same was being filed with the RTC-Naga instead of the RTC-Iriga City, considering that it is the latter court that has territorial jurisdiction over the place

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where the alleged crime was committed and also the place where the search warrant was enforced. The wordings of the provision is of a mandatory nature, requiring a statement of compelling reasons if the application is filed in a court which does not have territorial jurisdiction over the place of commission of the crime. Since Section 2, Article III of the 1987 Constitution guarantees the right of persons to be free from unreasonable searches and seizures, and search warrants constitute a limitation on this right, then Section 2, Rule 126 of the Revised Rules of Criminal Procedure should be construed strictly against state authorities who would be enforcing the search warrants. On this point, then, petitioner's application for a search warrant was indeed insufficient for failing to comply with the requirement to state therein the compelling reasons why they had to file the application in a court that did not have territorial jurisdiction over the place where the alleged crime was committed.

Notwithstanding said failure to state the compelling reasons in the application, the more pressing question that would determine the outcome of the case is, did the RTC-Naga act properly in taking into consideration the issue of said defect in resolving respondent's motion for reconsideration where the issue was raised for the very first time? The record bears out that, indeed, respondent failed to include said issue at the first instance in its motion to quash. Does the omnibus motion rule cover a motion to quash search warrants?

The omnibus motion rule embodied in Section 8, Rule 15, in relation to Section 1, Rule 9, demands that all available objections be included in a party's motion, otherwise, **said objections shall be deemed waived**; and, the only grounds the court could take cognizance of, **even if not pleaded** in said motion are: (a) **lack of jurisdiction over the subject matter**; (b) existence of another action pending between the same parties for the same cause; and (c) bar by prior

judgment or by statute of limitations. It should be stressed here that the Court has ruled in a number of cases that the omnibus motion rule is applicable to motions to quash search warrants.

Furthermore, the Court distinctly stated in *Abuan v. People*, that **"the motion to quash the search warrant which the accused may file shall be governed by the omnibus motion rule, provided, however, that objections not available, existent or known during the proceedings for the quashal of the warrant may be raised in the hearing of the motion to suppress x x x."**

In accordance with the omnibus motion rule, therefore, the trial court could only take cognizance of an issue that was not raised in the motion to quash if, (1) said issue was not available or existent when they filed the motion to quash the search warrant; or (2) the issue was one involving jurisdiction over the subject matter. Obviously, the issue of the defect in the application was available and existent at the time of filing of the motion to quash. What remains to be answered then is, if the newly raised issue of the defect in the application is an issue of jurisdiction.

The foregoing explanation shows why the CA arrived at the wrong conclusion. It gravely erred in equating the proceedings for applications for search warrants with criminal actions themselves. As elucidated by the Court, proceedings for said applications are not criminal in nature and, thus, the rule that venue is jurisdictional does not apply thereto. Evidently, the issue of whether the application should have been filed in RTC-Iriga City or RTC-Naga, is **not** one involving jurisdiction because, as stated in the afore-quoted case, **the power to issue a special criminal process is inherent in all courts.**

Inferring from the foregoing, the Court deems it improper for the RTC-Naga to

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have even taken into consideration an issue which respondent failed to raise in its motion to quash, as it did not involve a question of jurisdiction over the subject matter. It is quite clear that the RTC-Naga had jurisdiction to issue criminal processes such as a search warrant.

• **Department of Environment and Natural Resources (DENR) Vs. United Planners Consultants, Inc. (UPCI)** G.R. No. 212081. February 23, 2015

Republic Act No. (RA) 9285, otherwise known as the Alternative Dispute Resolution Act of 2004," institutionalized the use of an Alternative Dispute Resolution System (ADR System) in the Philippines. The Act, however, was without prejudice to the adoption by the Supreme Court of any ADR system as a means of achieving speedy and efficient means of resolving cases pending before all courts in the Philippines.

Accordingly, A.M. No. 07-11-08-SC was created setting forth the Special Rules of Court on Alternative Dispute Resolution (referred herein as Special ADR Rules) that shall govern the procedure to be followed by the courts whenever judicial intervention is sought in ADR proceedings in the specific cases where it is allowed.

Rule 1.1 of the Special ADR Rules lists down the instances when the said rules shall apply, namely: "(a) Relief on the issue of Existence, Validity, or Enforceability of the Arbitration Agreement; **(b) Referral to Alternative Dispute Resolution ("ADR");** (c) Interim Measures of Protection; (d) Appointment of Arbitrator; (e) Challenge to Appointment of Arbitrator; (f) Termination of Mandate of Arbitrator; (g) Assistance in Taking Evidence; (h) Confirmation, Correction or Vacation of Award in Domestic Arbitration; (i) Recognition and Enforcement or Setting Aside of an Award in International Commercial Arbitration; (j) Recognition and Enforcement of a Foreign Arbitral

Award; (k) Confidentiality/Protective Orders; and (l) Deposit and Enforcement of Mediated Settlement Agreements."

Notably, the Special ADR Rules do not automatically govern the **arbitration proceedings** itself. A pivotal feature of arbitration as an alternative mode of dispute resolution is that it is a product of party autonomy or the freedom of the parties to **make their own arrangements to resolve their own disputes**.

Thus, Rule 2.3 of the Special ADR Rules explicitly provides that "parties are free to agree on the procedure to be followed in the conduct of arbitral proceedings. Failing such agreement, the arbitral tribunal may conduct arbitration in the manner it considers appropriate.

In the case at bar, the Consultancy Agreement contained an arbitration agreement. Hence, respondent, after it filed its complaint, moved for its referral for arbitration, which was not objected to by petitioner. By its referral to arbitration, the case fell within the coverage of the Special ADR Rules. However, with respect to the arbitration proceedings itself, the parties had agreed to adopt the CIAC Rules before the Arbitral Tribunal in accordance with Rule 2.3 of the Special ADR Rules.

On May 7, 2010, the Arbitral Tribunal rendered the Arbitral Award in favor of respondent. Under Section 17.2, Rule 17 of the CIAC Rules, no motion for reconsideration or new trial may be sought, but any of the parties may file a motion for correction of the final award, which shall interrupt the running of the period for appeal, based on any of the following grounds. XXXX

Records do not show that any of the foregoing remedies were availed of by petitioner. Instead, it filed the May 19,

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2010 Motion for Reconsideration of the Arbitral Award, which was a prohibited pleading under the Section 17.2, Rule 17 of the CIAC Rules, thus rendering the same final and executory.

Accordingly, the case was remanded to the RTC for confirmation proceedings pursuant to Rule 11 of the Special ADR Rules which requires confirmation by the court of the final arbitral award. This is consistent with Section 40, Chapter 7 (A) of RA 9285 which similarly requires a judicial confirmation of a domestic award to make the same enforceable:

- **Yuk Ling Ong Vs. Benjamin T. Co** G.R. No. 206653. February 25, 2015

- In court proceedings, there is no right more cherished than the right of every litigant to be given an opportunity to be heard. This right begins at the very moment that summons is served on the defendant. The Rules of Court places utmost importance in ensuring that the defendant personally grasp the weight of responsibility that will befall him. Thus, it is only in exceptional circumstances that constructive notification, or substituted service of summons, is allowed. If the server falls short of the rigorous requirements for substituted service of summons, then the Court has no other option but to strike down a void judgment, regardless of the consequences.

In the present case, petitioner contends that there was lack of jurisdiction over her person because there was an invalid substituted service of summons. Jurisdiction over the defendant is acquired either upon a valid service of summons or the defendant's voluntary appearance in court. If the defendant does not voluntarily appear in court, jurisdiction can be acquired by personal or substituted service of summons as laid out under Sections 6 and 7 of Rule 14 of the Rules of

Court,

In the case at bench, the summons in Civil Case No. 02-0306 was issued on July 29, 2002. In his server's return, the process server resorted to substituted service of summons on August 1, 2002. Surprisingly, the process server immediately opted for substituted service of summons after only two (2) days from the issuance of the summons.

The server's return utterly lacks sufficient detail of the attempts undertaken by the process server to personally serve the summons on petitioner. The server simply made a general statement that summons was effected after several futile attempts to serve the same personally. The server did not state the specific number of attempts made to perform the personal service of summons; the dates and the corresponding time the attempts were made; and the underlying reason for each unsuccessful service. He did not explain either if there were inquiries made to locate the petitioner, who was the defendant in the case. These important acts to serve the summons on petitioner, though futile, must be specified in the return to justify substituted service.

The server's return did not describe in detail the person who received the summons, on behalf of petitioner. It simply stated that the summons was received "by Mr. Roly Espinosa of sufficient age and discretion, the Security Officer thereat." It did not expound on the competence of the security officer to receive the summons.

Also, aside from the server's return, respondent failed to indicate any portion of the records which would describe the specific attempts to personally serve the summons. Respondent did not even claim that petitioner made any voluntary appearance and actively participated in Civil Case No. 02-0306.

Given that the meticulous requirements in

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Manotoc were not met, the Court is not inclined to uphold the CA's denial of the petition for annulment of judgment for lack of jurisdiction over the person of petitioner because there was an invalid substituted service of summons. Accordingly, the decision in Civil Case No. 02-0306 must be declared null and void.

The stricter rule in substituted service of summons was meant to address "[t]he numerous claims of irregularities in substituted service which have spawned the filing of a great number of unnecessary special civil actions of certiorari and appeals to higher courts, resulting in prolonged litigation and wasteful legal expenses."

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A compromise agreement could not be the basis of dismissal/withdrawal of a complaint and counterclaims if it was entered into with a non-party to the suit.

erily, a judicially approved compromise agreement, in order to be binding upon the litigants with the force and effect of a judgment, must have been executed by them. In this case, the compromise agreement was signed by David in his capacity as the complainant in the civil case, and Olympia, through Lobrin as its agent. The agreement made plain that the terms and conditions the "parties" were to follow were agreed upon by David and Olympia. Datoy and Paragas never appeared to have agreed to such terms for it was Olympia, despite not being a party to the civil case, which was a party to the agreement. Despite this, David claims that the concessions were made by Olympia on behalf of the non-signatory parties and such should be binding on them.

David must note that Olympia is a separate being, or at least should be treated as one distinct from the personalities of its owners, partners or even directors. Under the doctrine of

processual presumption, this Court has to presume that Hong Kong laws is the same as that of the Philippines particularly with respect to the legal characterization of Olympia's legal status as an artificial person. Elementary is the rule that under Philippine corporate and partnership laws, a corporation or a partnership possesses a personality separate from that of its incorporators or partners. Olympia should, thus, be accorded the status of an artificial being at least for the purpose of this controversy.

On that basis, Olympia's interest should be detached from those of directors Paragas, Lobrin, Datoy, and even David. Their (individual directors) interest are merely indirect, contingent and inchoate. Because Olympia's involvement in the compromise was not the same as that of the other parties who were, in the first place, never part of it, the compromise agreement could not have the force and effect of a judgment binding upon the litigants, specifically Datoy and Paragas. Conversely, the judicially approved withdrawal of the claims on the basis of that compromise could not be given effect for such agreement did not concern the parties in the civil case.

Olympia is an indispensable Party

In *Lotte Phil. Co., Inc. v. Dela Cruz*, the Court reiterated that 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 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."

Considering that David was asking for judicial determination of his rights in Olympia, it is without a doubt, an indispensable party as it stands to be injured or benefited by the outcome of the main proceeding. It has such an interest

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in the controversy that a final decree would necessarily affect its rights. Not having been impleaded, Olympia cannot be prejudiced by any judgment where its interests and properties are adjudicated in favor of another even if the latter is a beneficial owner. It cannot be said either to have consented to the judicial approval of the compromise, much less waived substantial rights, because it was never a party in the proceedings.

Time and again, the Court has held that 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 parties but even to those present. The failure to implead an indispensable party is not a mere procedural matter. Rather, it brings to fore the right of a disregarded party to its constitutional rights to due process. Having Olympia's interest being subjected to a judicially-approved agreement, absent any participation in the proceeding leading to the same, is procedurally flawed. It is unfair for being violative of its right to due process. In fine, a holding that is based on a compromise agreement that springs from a void proceeding for want of jurisdiction over the person of an indispensable party can never become binding, final nor executory and it may be "ignored wherever and whenever it exhibits its head."