



Remedial Law - Special Proceedings

Case Digest



**UNIVERSITY OF SANTO TOMAS
FACULTY OF CIVIL LAW**

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JESUSA DUJALI BUOT, PETITIONER, -versus- ROQUE RASAY DUJALI, RESPONDENT. G.R. No. 199885, FIRST DIVISION, October 02, 2017, JARDELEZA, J.

When a person dies intestate, his or her estate may generally be subject to judicial administration proceedings. The exception is when there already has been (1) extrajudicial settlement and (2) summary settlement of an estate of small value. Exception to the Exception: When there is a “good and compelling” reason to still institute judicial administration proceedings.

FACTS

Jesusa Dujali Buot filed for administration of estate of deceased Gregorio Dujali, who died intestate. Buot alleged she was a surviving heir along with Roque Dujali, and other heirs. Buot asked that (1) an administrator be appointed to preserve Gregorio's estate; (2) a final inventory of the properties be made; (3) the heirs be established; and (4) the net estate be ordered distributed in accordance with law among the legal heirs.

Dujali opposed and asked for dismissal, arguing Buot had no legal capacity to institute the proceedings because she failed to attach any document, such as a certificate of live birth or a marriage certificate, to prove her filiation. Buot argued only ultimate facts should be included in an initiatory pleading. The marriage certificate and certificate of live birth which Dujali demands are evidentiary matters that ought to be tackled during trial. She attached a copy of the necrological services program where she was listed as one of Gregorio's heirs, a certification from the municipal mayor that she is Gregorio's child, and a copy of the Amended Extrajudicial Settlement which includes both Buot and Dujali as Gregorio's heirs. Notably, this Amended Extrajudicial Settlement pertained to parcels of land not included in the list of properties annexed in Buot's petition.

The RTC sided with Dujali. It held that under the law, there are only two exceptions to the requirement that the settlement of a deceased's estate should be judicially administered: (1) extrajudicial settlement and (2) summary settlement of an estate of small value. In this case, administration has been barred by the fact that Gregorio's estate has already been settled extrajudicially as evidenced by the Amended Extrajudicial Settlement. It also noted that Gregorio had no creditors since Buot failed to allege it in her petition.

ISSUE

Whether the RTC properly dismissed the petition on the ground that there has already been an extrajudicial settlement of certain properties of the estate

RULING

When a person dies intestate, his or her estate may generally be subject to judicial administration proceedings. The exception is provided in Section 1 of Rule 74 of ROC:

Sec. 1. Extrajudicial settlement by agreement between heirs. - If the decedent left no will and no debts and the heirs are all of age, or the minors are represented by their judicial or legal representatives duly authorized for the purpose, the parties may, without securing letters of administration, divide the estate among themselves as they see fit by means of a public instrument filed in the office of the register of deeds, and should they disagree, they may do so

in an ordinary action of partition. If there is only one heir, he may adjudicate to himself the entire estate by means of an affidavit filed in the office of the register of deeds. The parties to an extrajudicial settlement, whether by public instrument or by stipulation in a pending action for partition, or the sole heir who adjudicates the entire estate to himself by means of an affidavit shall file, simultaneously with and as a condition precedent to the filing of the public instrument, or stipulation in the action for partition, or of the affidavit in the office of the register of deeds, a bond with the said register of deeds, in an amount equivalent to the value of the personal property involved as certified to under oath by the parties concerned and conditioned upon the payment of any just claim that may be filed under Section 4 of this rule. It shall be presumed that the decedent left no debts if no creditor files a petition for letters of administration within two (2) years after the death of the decedent.

The fact of the extrajudicial settlement or administration shall be published in a newspaper of general circulation in the manner provided in the next succeeding section; but no extrajudicial settlement shall be binding upon any person who has not participated therein or had no notice thereof

When the deceased left no will and no debts and the heirs are all of age, the heirs may divide the estate among themselves without judicial administration.

Section 1 of Rule 74, however, does not prevent the heirs from instituting administration proceedings if they have good reasons for choosing not to file an action for partition. Since such proceedings are always "long," "costly," "superfluous and unnecessary," resort to judicial administration of cases falling under Section 1, Rule 74 appears to have become the exception rather than the rule.

Where partition is possible, either in or out of court, the estate should not be burdened with an administration proceeding without good and compelling reasons. What constitutes good reason depends on the circumstances of each case. Buot's reasons do not qualify as good and compelling reason to submit Gregorio's estate to administration proceedings. That the extrajudicial settlement in this case did not cover Gregorio's entire estate is not sufficient reason to order the administration of the estate.

GILDA JARDELEZA, (DECEASED), SUBSTITUTED BY HER HEIRS, NAMELY: ERNESTO JARDELEZA, JR., TEODORO MARIA JARDELEZA, ROLANDO L. JARDELEZA, MA. GLENDA JARDELEZA-UY, AND MELECIO GIL JARDELEZA, PETITIONERS, -versus- SPOUSES MELECIO AND ELIZABETH JARDELEZA, JMB TRADERS, INC., AND TEODORO JARDELEZA, RESPONDENTS.

G.R. No. 167975, FIRST DIVISION, June 17, 2015, BERSAMIN, J.

Jurisdiction of RTC as a probate court relates only to matters on settlement of estate and probate of will of a deceased person and does not extend to the determination of a question of ownership that arises during the proceedings. This is true whether or not the property is alleged to belong to the estate unless the claimants to the property are all heirs of the deceased and they agreed to submit the question for determination by the probate or administration court and the interests of third parties are not prejudiced or unless the purpose is to determine whether or not certain properties should be included in the inventory in which case the probate or administration court may decide prima facie the ownership of the property, but such determination is not final and is without prejudice to the right of interested parties to ventilate the question of ownership in a proper action.

FACTS

Sps. Gilda and Ernesto commenced a civil action against Sps Melecio and Elizabeth, JMB Traders and Teodoro Jardeleza raffled to Branch 33 of the RTC. However during the pendency of the case Ernesto died. Hence special proceedings were commenced in RTC Branch 38 and Teodoro was appointed as administrator. Teodoro in his capacity as administrator filed a motion to dismiss on the civil action on the ground that Melecio was also an heir of Ernesto thus the properties subject to the action for reconveyance should be advances to inheritance and the action for reconveyance be heard in the special proceedings. Motion to dismiss was granted. Gilda contended that the in RTC as probate court cannot determine ownership of the property, thus motion to dismiss should have been dismissed.

ISSUE

Whether or not RTC as probate court can resolve issue of ownership? (NO)

RULING:

NO. The determination is provisional, not conclusive, and is subject to the final decision in a separate action to resolve title by a court of competent jurisdiction. Thus, the determination of Branch 38 of RTC in the special proceedings with regard to ownership shall be for the purpose of inventory and the determination is not final is without prejudice to the right of interested parties to ventilate the question of ownership in a proper action.

MARCELO INVESTMENT AND MANAGEMENT CORPORATION, AND THE HEIRS OF EDWARD T. MARCELO, NAMELY, KATHERINE J. MARCELO, ANNA MELINDA J. MARCELO REVILLA, AND JOHN STEVEN J. MARCELO, PETITIONERS, -versus- JOSE T. MARCELO, JR., RESPONDENT.

G.R. No. 209651, FIRST DIVISION, November 26, 2014, PEREZ, J.

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 obligations within such time as the court directs. In this case, the settlement of Jose, Sr.'s estate is not yet through and complete albeit it is at the liquidation, partition and distribution stage. 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.

FACTS

The facts herein occurred in two stages: (1) the first litigation between two of Jose Marcelo, Sr.'s (Jose, Sr.) compulsory heirs, his sons, Edward, (ascendant of herein petitioners, heirs of Edward T. Marcelo, Katherine J. Marcelo, Anna Melinda J. Marcelo Revilla, and John Steven J. Marcelo) and respondent Jose, Jr., for the appointment of regular administrator of Jose, Sr.'s estate; and (2) after Edward was appointed regular administrator of Jose, Sr.'s estate and Edward's death in 2009, respondent Jose, Jr.'s revival of his pursuit to administer his father's, Jose, Sr.'s, estate. Decedent Jose, Sr. died intestate. He was survived by his four compulsory heirs: (1) Edward, (2) George, (3) Helen and (4) respondent Jose, Jr. Initially, petitioner Marcelo Investment and Management Corporation (MIMCO) filed a Petition for the issuance of Letters of Administration of the estate of Jose, Sr. before the RTC, Branch 76, Quezon City. At first, Helen, along with her brother, Jose, Jr. separately opposed MIMCO's petition;

the two prayed for their respective appointment as administrator. Edward opposed Helen's and Jose, Jr.'s respective petitions for issuance of Letters of Administration in their favor and Edward himself prayed for his appointment as regular administrator.

Ultimately, MIMCO, George and Edward banded together: (1) opposed Helen's and Jose, Jr.'s petitions, and (2) prayed for Edward's appointment as regular administrator of Jose, Sr.'s estate. Pending issuance of letters of administration, the RTC appointed Helen and Jose, Jr. as special administrators.

RTC appointed Edward as regular administrator of Jose, Sr.'s estate. Taking issue with the RTC's Order and questioning Edward's appointment, Jose, Jr. filed successive motions: (1) motion for reconsideration of RTC's decision; and (2) omnibus motion alleging the RTC Acting Presiding Judge Efren Ambrosio's (Judge Ambrosio) unusual interest and undue haste in issuing letters of administration in favor of Edward. RTC, through Judge Ambrosio, denied Jose, Jr.'s motion for reconsideration.

Then, RTC ruled on the Omnibus Motion, thus, after a re-examination of the evidence adduced by the parties and a consideration of the arguments raised in the aforesaid pleadings, this court arrived at a conclusion that no substantial error was committed by then Acting Presiding Judge Ambrosio which would warrant a reversal of the questioned orders, namely, the order dated December 13, 1991 and March 12, 1992. Adamant on his competence to better administer his father's estate, Jose, Jr. appealed Edward's appointment as regular administrator to the Court of Appeals. However, the appellate court affirmed in toto the Orders dated 1 October 1993, 13 December 1991 and 12 March 1992 of the intestate court.

The question of who between Edward and Jose, Jr. should administer their father's estate reached us in G.R. No. 123883 (Jose Marcelo, Jr. v. Court of Appeals and Edward Marcelo). The Court does not find reversible error in the appellate court's decision in CA-G.R. CV No. 43674 and affirmed the RTC's and the appellate court's separate rulings of Edward's competence and better suited ability to act as regular administrator of Jose, Sr.'s estate. Thereafter, Jose, Jr. persistently opposed Edward's actions as administrator and his inventory of Jose, Sr.'s estate.

Anent the submission of complete list of stockholders of all the Marcelo group of companies together with the number and current par value of their respective shareholding, suffice it to say that as correctly pointed out by regular administrator Edward, the shares of stock of the decedent will be equally distributed to the heirs that there is no necessity therefor. Regular Administrator Edward respectfully prays that the Liquidation, duly signed by all four (4) compulsory heirs, be approved as the project of partition of the Estate of Jose P. Marcelo Sr. and moved for the approval of the Liquidation of the Inventory of the Estate of Jose, Sr. as the project of partition of the Estate of Jose, Sr.

RTC issued an Order approving the partition of Jose, Sr.'s estate as proposed by Edward. Finding said liquidation of the Inventory of the Estate of Jose P. Marcelo, Sr. to bear the conformity of all the heirs of the decedent and considering further that the period for filing of money claims against the subject estate had already lapsed, the Court resolves to approve said liquidation of Inventory as the project of partition of the estate of Jose P. Marcelo, Sr. Petitioners MIMCO and heirs of Edward, joined by George, opposed Jose, Jr.'s motion and nominated Atty. Henry Reyes as regular administrator in Edward's stead.

RTC issued the assailed Order, now appointing Jose, Jr. as regular administrator of Jose, Sr.'s estate. The estate is left with no one who will administer the estate, i.e., to liquidate the estate and distribute the residue among the heirs.

As well-settled, to liquidate means to determine the assets of the estate and to pay all debts and expenses. Records clearly show that the estate taxes due to the government have not been paid. Petitioners filed an Omnibus Motion for Reconsideration of the 6 January 2010 Order and now moved for the appointment instead of George as administrator of Jose, Sr.'s estate. After Comment on the Omnibus Motion, the RTC issued another Order dated 23 March 2010, denying the Omnibus Motion and affirming the appointment of Jose, Jr. as new regular administrator.

Petitioners appealed the RTC's twin Orders dated 6 January 2010 and 23 March 2010 before the appellate court. This time around, the Court of Appeals affirmed Jose, Jr.'s appointment as new regular administrator. Ruling that the selection of administrator lies in the sound discretion of the trial court, the Court of Appeals held that the prior Order dated 13 December 1991 of the RTC appointing Edward as regular administrator instead of Jose, Jr., which appointment was affirmed by this Court in G.R. No. 123883, did not make a finding on Jose, Jr.'s fitness and suitability to serve as regular administrator. Wholly, Jose, Jr. is competent and "not wanting in understanding and integrity," to act as regular administrator of Jose, Sr.'s estate.

Hence, this appeal by certiorari ascribing grave error in the Court of Appeals' Decision.

ISSUES

1. Whether the appointment of a regular administrator is still necessary at the liquidation, partition and distribution stage of the intestate proceedings involving Jose, Sr.'s estate.
2. 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.

RULING:

1. The appeal is impressed with merit. 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. – 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 obligations within such time as the court directs.

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.

The Court observes 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. The Court further notes 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, the Court refers 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. The same document listed payables and receivables of the estate dependent on a number of factors and contingencies: Considering that the Estate as of June 3, 1999 has no sufficient cash to pay-off the above claims of P6,893,425.33, Edward can work out an offsetting arrangement since the Estate has also receivables or equity from these companies.

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.

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. Significantly, even the Liquidation of the Inventory of Jose, Sr.'s estate states that the valuation amount of the shares of stock as listed therein is based on par value, which may have varied given the passage of time. To date, more than a decade has passed since the intestate proceedings were archived, thus, affecting the value of the estate's assets.

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.

2. Jurisprudence has long held that the selection of an administrator lies in the sound discretion of the trial court. The determination of a person's suitability for the office of judicial administrator rests, to a great extent, in the sound judgment of the court exercising the power of appointment and said judgment is not to be interfered with on appeal unless the said court is clearly in error.

The RTC did not err in appointing Jose, Jr. as the new administrator, even though his previous prayer for appointment was denied. Notably, by virtue of Edward's death, the office of the regular administrator of Jose, Sr.'s estate was vacated, and it was within the jurisdiction of the RTC, as probate court, to appoint a new administrator.

Evidently, the Court of Appeals like the RTC in its second order, closed its eyes on the facts detailed by the RTC in the first order. Considering the two (2) sets of conflicting rulings of the RTC and the

Court of Appeals in the two stages of this litigation, The Court put into proper perspective the 13 December 1991 Order of the RTC appointing Edward over Jose, Jr. as regular administrator of their father's estate, which Order was upheld by us in G.R. No. 123883.

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.

Plainly, the RTC found Edward competent to serve as regular administrator, more competent than Jose, Jr., preferred despite equal status in the Order of Preference, manifesting none of the disqualifications set by law. Still and all, the same Order likewise judged Jose, Jr.'s suitability and fitness, or lack thereof, for the office of administrator, albeit in comparison with Edward and not with the rest of Jose, Sr.'s children. Jose, Jr. was not what Edward was.

The Court notes that this case has been unnecessarily prolonged and resulted in added litigation by the non-payment of estate taxes which is the ultimate responsibility of the heirs having inchoate right in the estate, should there be assets remaining, to be partitioned and distributed. The inheritance tax is an obligation of the estate, indirectly the heirs:

SECTION 1. When order for distribution of residue made. – When the debts, xxx, and inheritance tax, if any, chargeable to the estate in accordance with law, have been paid, xxx 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 obligations within such time as the court directs.

Given the factual considerations that led to the prior findings on the unfitness of Jose, Jr. to act as regular administrator; the Affidavit of Helen preferring George as administrator; and the conformity on record of the rest of Jose, Sr.'s heirs to George's administration

More importantly, consistent with Section 6, Rule 78 of the Rules of Court, not only is George the eldest son of Jose, Sr. and, therefore, his most immediate kin, he has, moreover, been chosen by the rest of the heirs of Jose, Sr. to perform the functions of an administrator. In this regard, in addition to George and the heirs of Edward, Helen executed an Affidavit to manifest her opposition to Jose, Jr. and to support the appointment of George and herself as joint administrators, a copy of which was given to the Court of Appeals.

Supreme Court thus issue Letters of Administration to George to facilitate and close the settlement of Jose, Sr.'s estate.

ERNESTO M. GUEVARA, PETITIONER-APPELLANT,
-versus ROSARIO GUEVARA AND HER HUSBAND PEDRO BUISON, RESPONDENT-APPELLEES.
G.R. No. L-48840, EN BANC, December 29, 1943, OZAETA, J.

The proceeding for the probate of a will is one in rem, with notice by publication to the whole world and with personal notice to each of the known heirs, legatees, and devisees of the testator. Although not contested (section 5, Rule 77), the due execution of the will and the fact that the testator at the time of its execution was of sound and disposing mind and not acting under duress, menace, and undue influence or fraud, must be proved to the satisfaction of the court, and only then may the will be legalized and given effect by means of a certificate of its allowance, signed by the judge and attested by the seal of the court; and when the will devises real property, attested copies thereof and of the certificate of allowance must be recorded in the register of deeds of the province in which the land lies.

It will readily be seen from the above provisions of the law that the presentation of a will to the court for probate is mandatory and its allowance by the court is essential and indispensable to its efficacy. To assure and compel the probate of will, the law punishes a person who neglects his duty to present it to the court with a fine not exceeding P2,000, and if he should persist in not presenting it, he may be committed to prison and kept there until he delivers the will.

FACTS

Ernesto M. Guevarra and Rosario Guevara, legitimate son and natural daughter, respectively, of the deceased Victorino L. Guevara, are litigating here over their inheritance from the latter. The action was commenced on November 12, 1937, by Rosario Guevara to recover from Ernesto Guevara what she claims to be her strict legitime as an acknowledged natural daughter of the deceased. The defendant answered the complaint contending that whatever right or rights the plaintiff might have had, had been barred by the operation of law.

It appears that Victorino L. Guevara executed a will apparently with all the formalities of the law, wherein he made the several bequests and devices.

On September 27, 1933, Victorino L. Guevarra died. His last will and testament, however, was never presented to the court for probate, nor has any administration proceeding ever been instituted for the settlement of his estate. Whether the various legatees mentioned in the will have received their

respective legacies or have even been given due notice of the execution of said will and of the dispositions therein made in their favor, does not affirmatively appear from the record of this case. Ever since the death of Victorino L. Guevara, his only legitimate son Ernesto M. Guevara appears to have possessed the land adjudicated to him in the registration proceeding and to have disposed of various portions thereof for the purpose of paying the debts left by his father.

In the meantime Rosario Guevara, who appears to have had her father's last will and testament in her custody, did nothing judicially to invoke the testamentary dispositions made therein in her favor, whereby the testator acknowledged her as his natural daughter and, aside from certain legacies and bequests, devised to her a portion of 21.6171 hectares of the large parcel of land described in the will. But a little over four years after the testator's demise, she (assisted by her husband) commenced the present action against Ernesto M. Guevara alone for the purpose hereinbefore indicated; and it was only during the trial of this case that she presented the will to the court, not for the purpose of having it probated but only to prove that the deceased Victorino L. Guevara had acknowledged her as his natural daughter. Upon that proof of acknowledgment she claimed her share of the inheritance from him, but on the theory or assumption that he died intestate, because the will had not been probated, for which reason, she asserted, the betterment therein made by the testator in favor of his legitimate son Ernesto M. Guevara should be disregarded. Both the trial court and the Court of appeals sustained that theory.

ISSUE

Whether or not the procedure adopted by the plaintiff (respondent herein) Rosario Guevara was legal? (NO)

RULING

We cannot sanction the procedure adopted by the respondent Rosario Guevara, it being in our opinion in violation of procedural law and an attempt to circumvent and disregard the last will and testament of the decedent. The Code of Civil Procedure, which was in force up to the time this case was decided by the trial court, contains the following pertinent provisions:

Sec. 625. Allowance Necessary, and Conclusive as to Execution. — No will shall pass either the real or personal estate, unless it is proved and allowed in the Court of First Instance, or by appeal to the Supreme Court; and the allowance by the court of a will of real and personal estate shall be conclusive as to its due execution.

Sec. 626. Custodian of Will to Deliver. — The person who has the custody of a will shall, within thirty days after he knows of the death of the testator, deliver the will into the court which has jurisdiction, or to the executor named in the will.

Sec. 627. Executor to Present Will and Accept or Refuse Trust. — A person named as executor in a will, shall within thirty days after he knows of the death of the testor, or within thirty days after he knows that he is named executor, if he obtained such knowledge after knowing of the death of the testor, present such will to the court which has jurisdiction, unless the will has been otherwise returned to said court, and shall, within such period, signify to the court his acceptance of the trust, or make known in writing his refusal to accept it.

Sec. 628. *Penalty.* — A person who neglects any of the duties required in the two proceeding sections, unless he gives a satisfactory excuse to the court, shall be subject to a fine not exceeding one thousand dollars.

Sec. 629. *Person Retaining Will may be Committed.* — If a person having custody of a will after the death of the testator neglects without reasonable cause to deliver the same to the court having jurisdiction, after notice by the court so to do, he may be committed to the prison of the province by a warrant issued by the court, and there kept in close confinement until he delivers the will.

The foregoing provisions are now embodied in Rule 76 of the new Rules of Court, which took effect on July 1, 1940.

The proceeding for the probate of a will is one *in rem*, with notice by publication to the whole world and with personal notice to each of the known heirs, legatees, and devisees of the testator. Although not contested (section 5, Rule 77), the due execution of the will and the fact that the testator at the time of its execution was of sound and disposing mind and not acting under duress, menace, and undue influence or fraud, must be proved to the satisfaction of the court, and only then may the will be legalized and given effect by means of a certificate of its allowance, signed by the judge and attested by the seal of the court; and when the will devises real property, attested copies thereof and of the certificate of allowance must be recorded in the register of deeds of the province in which the land lies.

It will readily be seen from the above provisions of the law that the presentation of a will to the court for probate is mandatory and its allowance by the court is essential and indispensable to its efficacy. To assure and compel the probate of will, the law punishes a person who neglects his duty to present it to the court with a fine not exceeding P2,000, and if he should persist in not presenting it, he may be committed to prison and kept there until he delivers the will.

The implication is that by the omission of the word "intestate" and the use of the word "legatees" in section 1 of Rule 74, a summary extrajudicial settlement of a deceased person's estate, whether he died testate or intestate may be made under the conditions specified. Even if we give retroactive effect to section 1 of Rule 74 and apply it here, as the Court of Appeals did, we do not believe it sanctions the non-presentation of a will for probate and much less the nullification of such will thru the failure of its custodian to present it to the court for probate; for such a result is precisely what Rule 76 sedulously provides against. Section 1 of Rule 74 merely authorizes the extrajudicial or judicial partition of the estate of a decedent "without securing letter of administration." It does not say that in case the decedent left a will the heirs and legatees may divide the estate among themselves without the necessity of presenting the will to the court for probate. The petition to probate a will and the petition to issue letters of administration are two different things, although both may be made in the same case, the allowance of a will precedes the issuance of letters testamentary or of administration (section 4, Rule 78). One can have a will probated without necessarily securing letters testamentary or of administration. We hold that under section 1 of Rule 74, in relation to Rule 76, if the decedent left a will and no debts and the heirs and legatees desire to make an extrajudicial partition of the estate, they must first present that will to the court for probate and divide the estate in accordance with the will. They may not disregard the provisions of the will unless those provisions are contrary to law. Neither may they so away with the presentation of the will to the court for probate, because such suppression of the will is contrary to law and public policy. The law enjoins

the probate of the will and public policy requires it, because unless the will is probated and notice thereof given to the whole world, the right of a person to dispose of his property by will may be rendered nugatory, as is attempted to be done in the instant case. Absent legatees and devisees, or such of them as may have no knowledge of the will, could be cheated of their inheritance thru the collusion of some of the heirs who might agree to the partition of the estate among themselves to the exclusion of others.

In the instant case there is no showing that the various legatees other than the present litigants had received their respective legacies or that they had knowledge of the existence and of the provisions of the will. Their right under the will cannot be disregarded, nor may those rights be obliterated on account of the failure or refusal of the custodian of the will to present it to the court for probate.

Even if the decedent left no debts and nobody raises any question as to the authenticity and due execution of the will, none of the heirs may sue for the partition of the estate in accordance with that will without first securing its allowance or probate by the court, first, because the law expressly provides that "no will shall pass either real or personal estate unless it is proved and allowed in the proper court"; and, second, because the probate of a will, which is a proceeding in rem, cannot be dispensed with the substituted by any other proceeding, judicial or extrajudicial, without offending against public policy designed to effectuate the testator's right to dispose of his property by will in accordance with law and to protect the rights of the heirs and legatees under the will thru the means provided by law, among which are the publication and the personal notices to each and all of said heirs and legatees. Nor may the court approve and allow the will presented in evidence in such an action for partition, which is one in *personam*, any more than it could decree the registration under the Torrens system of the land involved in an ordinary action for *reinvindicacion* or partition.

We therefore believe and so holds that section 1 of Rule 74, relied upon by the Court of Appeals, do not sanction the procedure adopted by the respondent.

UY KIAO ENG, PETITIONER, -versus- NIXON LEE, RESPONDENT.

G.R. No. 176831, THIRD DIVISION, January 15, 2010, NACHURA, J.

In the instant case, the Court, without unnecessarily ascertaining whether the obligation involved here--the production of the original holographic will--is in the nature of a public or a private duty, rules that the remedy of mandamus cannot be availed of by respondent Lee because there lies another plain, speedy and adequate remedy in the ordinary course of law. Let it be noted that respondent has a photocopy of the will and that he seeks the production of the original for purposes of probate. The Rules of Court, however, does not prevent him from instituting probate proceedings for the allowance of the will whether the same is in his possession or not.

FACTS

Alleging that his father passed away on June 22, 1992 in Manila and left a holographic will, which is now in the custody of petitioner Uy Kiao Eng, his mother, respondent Nixon Lee filed, a petition for mandamus with damages, before the Regional Trial Court (RTC) of Manila, to compel petitioner to produce the will so that probate proceedings for the allowance thereof could be instituted. Allegedly, respondent had already requested his mother to settle and liquidate the patriarch's estate and to deliver to the legal heirs their respective inheritance, but petitioner refused to do so without any justifiable reason.

In her answer with counterclaim, petitioner traversed the allegations in the complaint and posited that the same be dismissed for failure to state a cause of action, for lack of cause of action, and for non-compliance with a condition precedent for the filing thereof. Petitioner denied that she was in custody of the original holographic will and that she knew of its whereabouts. She, moreover, asserted that photocopies of the will were given to respondent and to his siblings.

The RTC heard the case. After the presentation and formal offer of respondent's evidence, petitioner demurred, contending that her son failed to prove that she had in her custody the original holographic will. Importantly, she asserted that the pieces of documentary evidence presented, aside from being hearsay, were all immaterial and irrelevant to the issue involved in the petition--they did not prove or disprove that she unlawfully neglected the performance of an act which the law specifically enjoined as a duty resulting from an office, trust or station, for the court to issue the writ of mandamus.

The RTC, at first, denied the demurrer to evidence, however, it granted the same on petitioner's motion for reconsideration.

Aggrieved, respondent sought review from the appellate court. The CA initially denied the appeal for lack of merit. Respondent moved for reconsideration. The appellate court, granted the motion, set aside its earlier ruling, issued the writ, and ordered the production of the will and the payment of attorney's fees. It ruled this time that respondent was able to show by testimonial evidence that his mother had in her possession the holographic will.

Left with no other recourse, petitioner brought the matter before this Court, contending in the main that the petition for mandamus is not the proper remedy and that the testimonial evidence used by the appellate court as basis for its ruling is inadmissible.

ISSUE

Whether or not the issuance of the writ of Mandamus was proper in this case?

RULING

The Court cannot sustain the CA's issuance of the writ. Mandamus is a command issuing from a court of law of competent jurisdiction, in the name of the state or the sovereign, directed to some inferior court, tribunal, or board, or to some corporation or person requiring the performance of a particular duty therein specified, which duty results from the official station of the party to whom the writ is directed or from operation of law. This definition recognizes the public character of the remedy, and clearly excludes the idea that it may be resorted to for the purpose of enforcing the performance of duties in which the public has no interest.

The writ of mandamus, however, will not issue to compel an official to do anything which is not his duty to do or which it is his duty not to do, or to give to the applicant anything to which he is not entitled by law. Nor will mandamus issue to enforce a right which is in substantial dispute or as to which a substantial doubt exists, although objection raising a mere technical question will be disregarded if the right is clear and the case is meritorious.

Recognized further in this jurisdiction is the principle that mandamus cannot be used to enforce contractual obligations. Generally, mandamus will not lie to enforce purely private contract rights, and will not lie against an individual unless some obligation in the nature of a public or quasi-public duty is imposed. The writ is not appropriate to enforce a private right against an individual. The writ of mandamus lies to enforce the execution of an act, when, otherwise, justice would be obstructed; and, regularly, issues only in cases relating to the public and to the government; hence, it is called a prerogative writ.

In the instant case, the Court, without unnecessarily ascertaining whether the obligation involved here--the production of the original holographic will--is in the nature of a public or a private duty, rules that the remedy of mandamus cannot be availed of by respondent Lee because there lies another plain, speedy and adequate remedy in the ordinary course of law. Let it be noted that respondent has a photocopy of the will and that he seeks the production of the original for purposes of probate. The Rules of Court, however, does not prevent him from instituting probate proceedings for the allowance of the will whether the same is in his possession or not.

**EUGENIA RAMONAL CODOY, AND MANUEL RAMONAL, PETITIONERS,
-VERSUS- EVANGELINE R. CALUGAY, JOSEPHINE SALCEDO, AND UEFEMIA
PATIGAS, RESPONDENTS.**

G.R. No. 123486, FIRST DIVISION, August 12, 1999, PARDO, J.

The Supreme Court ruled that based on the language used, that Article 811 of the Civil Code is mandatory. The word "shall" connotes a mandatory order. We have ruled that "shall" in a statute commonly denote an imperative obligation and is inconsistent with the idea of discretion and that the presumption is that the word "shall," when used in a statute is mandatory.

Laws are enacted to achieve a goal intended and to guide against an evil or mischief that aims to prevent. In the case at bar, the goal to achieve is to give effect to the wishes of the deceased and the evil to be prevented is the possibility that unscrupulous individuals who for their benefit will employ means to defeat the wishes of the testator.

So, we believe that the paramount consideration in the present petition is to determine the true intent of the deceased. An exhaustive and objective consideration of the evidence is imperative to establish the true intent of the testator.

FACTS

Evangeline Calugay, Josephine Salcedo and Eufemia Patigas, devisees and legatees of the holographic will of the deceased Matilde Seño Vda. de Ramonal, filed with the Regional Trial Court, Misamis Oriental, a petition for probate of the holographic will of the deceased, who died on January 16, 1990.

In the petition, respondents claimed that the deceased was of sound and disposing mind when she executed the will, that there was no fraud, undue influence, and duress employed in the person of the testator, and will was written voluntarily. The assessed value of the decedent's property, including all real and personal property was about P400,000.00, at the time of her death.

Eugenia Ramonal Codoy and Manuel Ramonal filed an opposition to the petition for probate, alleging that the holographic will was a forgery and that the same is even illegible. This gives an impression

that a "third hand" of an interested party other than the "true hand" of Matilde Seño Vda. De Ramonal executed the holographic will.

Petitioners argued that the repeated dates incorporated or appearing on will after every disposition is out of the ordinary. If the deceased was the one who executed the will, and was not forced, the dates and the signature should appear at the bottom after the dispositions, as regularly done and not after every disposition. And assuming that the holographic will is in the handwriting of the deceased, it was procured by undue and improper pressure and influence on the part of the beneficiaries, or through fraud and trickery.

Respondents presented six (6) witnesses and various documentary evidence. Petitioners instead of presenting their evidence filed a demurrer to evidence, claiming that respondents failed to establish sufficient factual and legal basis for the probate of the holographic will of the deceased. The Demurrer to Evidence was granted by the RTC.

Respondents filed a notice of appeal, and in support of their appeal, the respondents once again reiterated the testimony of the following witnesses, namely: (1) Augusto Neri; (2) Generosa Senon; (3) Matilde Ramonal Binanay; (4) Teresita Vedad; (5) Fiscal Rodolfo Waga; and (6) Evangeline Calugay.

The Court of Appeals, rendered decision ruling that the appeal was meritorious. According to the Court of Appeals, Evangeline Calugay, Matilde Ramonal Binanay and other witnesses definitely and in no uncertain terms testified that the handwriting and signature in the holographic will were those of the testator herself.

Thus, upon the un rebutted testimony of appellant Evangeline Calugay and witness Matilde Ramonal Binanay, the Court of Appeals sustained the authenticity of the holographic will and the handwriting and signature therein, and allowed the will to probate.

Hence, this petition.

ISSUE

Whether or not the Court of Appeals erred in holding that private respondents had been able to present credible evidence to that the date, text, and signature on the holographic will written entirely in the hand of the testatrix.

RULING

We are convinced, based on the language used, that Article 811 of the Civil Code is mandatory. The word "shall" connotes a mandatory order. We have ruled that "shall" in a statute commonly denote an imperative obligation and is inconsistent with the idea of discretion and that the presumption is that the word "shall," when used in a statute is mandatory.¹¹

Laws are enacted to achieve a goal intended and to guide against an evil or mischief that aims to prevent. In the case at bar, the goal to achieve is to give effect to the wishes of the deceased and the evil to be prevented is the possibility that unscrupulous individuals who for their benefit will employ means to defeat the wishes of the testator.

So, we believe that the paramount consideration in the present petition is to determine the true intent of the deceased. An exhaustive and objective consideration of the evidence is imperative to establish the true intent of the testator.

It will be noted that not all the witnesses presented by the respondents testified explicitly that they were familiar with the handwriting of testator. In the case of Augusto Neri, clerk of court, Court of First Instance, Misamis Oriental, he merely identified the record of Special Proceedings No. 427 before said court. He was not presented to declare explicitly that the signature appearing in the holographic was that of the deceased. *Generosa E. Senon*, the election registrar of Cagayan de Oro City, was presented to identify the signature of the deceased in the voter's affidavit, which was not even produced as it was no longer available. What Ms. Binanay saw were pre-prepared receipts and letters of the deceased, which she either mailed or gave to her tenants. She did not declare that she saw the deceased sign a document or write a note. Evangeline Calugay declared that the holographic will was written, dated and signed in the handwriting of the testator. So, the only reason that Evangeline can give as to why she was familiar with the handwriting of the deceased was because she lived with her since birth. She never declared that she saw the deceased write a note or sign a document.

From the testimonies of these witnesses, the Court of Appeals allowed the will to probate and disregard the requirement of three witnesses in case of contested holographic will, citing the decision in *Azaola vs. Singson*, ruling that the requirement is merely directory and not mandatory.

In the case of *Ajero vs. Court of Appeals*, we said that "the object of the solemnities surrounding the execution of wills is to close the door against bad faith and fraud, to avoid substitution of wills and testaments and to guaranty their truth and authenticity. Therefore, the laws on this subject should be interpreted in such a way as to attain these primordial ends. But on the other hand, also one must not lose sight of the fact that it is not the object of the law to restrain and curtail the exercise of the right to make a will.

However, we cannot eliminate the possibility of a false document being adjudged as the will of the testator, which is why if the holographic will is contested, that law requires three witnesses to declare that the will was in the handwriting of the deceased.

The will was found not in the personal belongings of the deceased but with one of the respondents, who kept it even before the death of the deceased. In the testimony of Ms. Binanay, she revealed that the will was in her possession as early as 1985, or five years before the death of the deceased.

There was no opportunity for an expert to compare the signature and the handwriting of the deceased with other documents signed and executed by her during her lifetime. The only chance at comparison was during the cross-examination of Ms. Binanay when the lawyer of petitioners asked Ms. Binanay to compare the documents which contained the signature of the deceased with that of the holographic will and she is not a handwriting expert. Even the former lawyer of the deceased expressed doubts as to the authenticity of the signature in the holographic will.

**SPOUSES ALVARO PASTOR, JR. AND MA. ELENA ACHAVAL DE PASTOR, PETITIONERS, -
VERSUS- THE COURT OF APPEALS, JUAN Y. REYES, JUDGE OF BRANCH I, COURT OF FIRST
INSTANCE OF CEBU AND LEWELLYN BARLITO QUEMADA, RESPONDENTS.**

G.R. No. L-56340, FIRST DIVISION, June 24, 1983 PLANA, J.

In a special proceeding for the probate of a will, the issue by and large is restricted to the extrinsic validity of the will, i.e., whether the testator, being of sound mind, freely executed the will in accordance with the formalities prescribed by law. (Rules of Court, Rule 75, Section 1; Rule 76, Section 9.) As a rule, the question of ownership is an extraneous matter which the Probate Court cannot resolve with finality. Thus, for the purpose of determining whether a certain property should or should not be included in the inventory of estate properties, the Probate Court may pass upon the title thereto, but such determination is provisional, not conclusive, and is subject to the final decision in a separate action to resolve title.

FACTS

Alvaro Pastor, Sr. (PASTOR, SR.), a Spanish subject, died in Cebu City survived by his Spanish wife Sofia Bossio (who also died on October 21, 1966), their two legitimate children Alvaro Pastor, Jr. (PASTOR, JR.) and Sofia Pastor de Midgely (SOFIA), and an illegitimate child, not natural, by the name of Lewellyn Barlito Quemada. PASTOR, JR. is a Philippine citizen, having been naturalized in 1936. SOFIA is a Spanish subject. QUEMADA is a Filipino by his mother's citizenship.

On November 13, 1970, QUEMADA filed a petition for the probate and allowance of an alleged holographic will of PASTOR, SR. with the Court of First Instance of Cebu. The will contained only one testamentary disposition: a legacy in favor of QUEMADA consisting of 30% of PASTOR, SR.'s 42% share in the operation by Atlas Consolidated Mining and Development Corporation (ATLAS) of some mining claims in Pina-Barot, Cebu.

On November 21, 1970, the PROBATE COURT, upon motion of QUEMADA and after an ex parte hearing, appointed him special administrator of the entire estate of PASTOR, SR., whether or not covered or affected by the holographic will. He assumed office as such on December 4, 1970 after filing a bond of P 5,000.00.

QUEMADA as special administrator, instituted against PASTOR, JR. and his wife an action for reconveyance of alleged properties of the estate, which included the properties subject of the legacy and which were in the names of the spouses PASTOR, JR. and his wife, Maria Elena Achaval de Pastor, who claimed to be the owners thereof in their own rights, and not by inheritance.

PASTOR, JR. and his sister SOFIA filed their opposition to the petition for probate and the order appointing QUEMADA as special administrator.

The PROBATE COURT issued an order allowing the will to probate. Appealed to the Court of Appeals, the order was affirmed in a decision dated May 9, 1977. On petition for review, the Supreme Court in G.R. No. L-46645 dismissed the petition in a minute resolution.

For two years after remand of the case to the PROBATE COURT, QUEMADA filed pleading after pleading asking for payment of his legacy and seizure of the properties subject of said legacy. PASTOR, JR. and SOFIA opposed these pleadings on the ground of pendency of the reconveyance suit

with another branch of the Cebu Court of First Instance. All pleadings remained unacted upon by the PROBATE COURT.

The PROBATE COURT set the hearing on the intrinsic validity of the will but upon objection of PASTOR, JR. and SOFIA on the ground of pendency of the reconveyance suit, no hearing was held on March 25. Instead, the PROBATE COURT required the parties to submit their respective position papers as to how much inheritance QUEMADA was entitled to receive under the will. Pursuant thereto, PASTOR, JR. and SOFIA submitted their Memorandum of authorities dated April 10, which in effect showed that determination of how much QUEMADA should receive was still premature. QUEMADA submitted his Position paper dated April 20, 1980. ATLAS, upon order of the Court, submitted a sworn statement of royalties paid to the Pastor Group of tsn from June 1966 (when Pastor, Sr. died) to February 1980.

On August 20, 1980, while the reconveyance suit was still being litigated, the PROBATE COURT issued the now assailed Order of Execution and Garnishment, resolving the question of ownership of the royalties payable by ATLAS and ruling in effect that the legacy to QUEMADA was not inofficious.

The order being "immediately executory", QUEMADA succeeded in obtaining a Writ of Execution and Garnishment on September 4, 1980, and in serving the same on ATLAS on the same day. Notified of the Order on September 6, 1980, the oppositors sought reconsideration thereof on the same date primarily on the ground that the PROBATE COURT gravely abused its discretion when it resolved the question of ownership of the royalties and ordered the payment of QUEMADA's legacy after prematurely passing upon the intrinsic validity of the will. In the meantime, the PROBATE COURT ordered suspension of payment of all royalties due PASTOR, JR. and/or his assignees until after resolution of oppositors' motion for reconsideration.

Before the Motion for Reconsideration could be resolved, however, PASTOR, JR., this time joined by his wife Ma. ELENA ACHAVAL DE PASTOR filed with the Court of Appeals a Petition for certiorari and Prohibition. The petition was denied.

On December 9, 1980, PASTOR, JR. and his wife moved for reconsideration of the Court of Appeal's decision of November 18, 1980, calling the attention of the appellate court to another order of the Probate Court dated November 11, 1980, by which the oppositors' motion for reconsideration of the Probate Court's Order of August 20, 1980 was denied.

Hence, this Petition for Review by certiorari with prayer for a writ of pre y injunction, assailing the decision of the Court of Appeals dated November 18, 1980 as well as the orders of the Probate Court dated August 20, 1980, November 11, 1980 and December 17, 1980, Med by petitioners on March 26, 1981, followed by a Supplemental Petition with Urgent Prayer for Restraining Order.

ISSUES

Whether or not the Probate Court was correct when it ruled on the issues of the intrinsic validity of the will and ownership of the mining claims?

RULING

In a special proceeding for the probate of a will, the issue by and large is restricted to the extrinsic validity of the will, i.e., whether the testator, being of sound mind, freely executed the will in accordance with the formalities prescribed by law. (Rules of Court, Rule 75, Section 1; Rule 76, Section 9.) As a rule, the question of ownership is an extraneous matter which the Probate Court cannot resolve with finality. Thus, for the purpose of determining whether a certain property should or should not be included in the inventory of estate properties, the Probate Court may pass upon the title thereto, but such determination is provisional, not conclusive, and is subject to the final decision in a separate action to resolve title.

The Order sought to be executed by the assailed Order of execution is the Probate Order of December 5, 1972 which allegedly resolved the question of ownership of the disputed mining properties. Nowhere in the dispositive portion of the questioned ORDER is there a declaration of ownership of specific properties. On the contrary, it is manifest therein that ownership was not resolved. For it confined itself to the question of extrinsic validity of the win, and the need for and propriety of appointing a special administrator. Thus it allowed and approved the holographic win "with respect to its extrinsic validity, the same having been duly authenticated pursuant to the requisites or solemnities prescribed by law." It declared that the intestate estate administration aspect must proceed "subject to the outcome of the suit for reconveyance of ownership and possession of real and personal properties in Civil Case 274-T before Branch IX of the CFI of Cebu."

Then again, the Probate Order conditionally stated that the intestate administration aspect must proceed "unless . . . it is proven . . . that the legacy to be given and delivered to the petitioner does not exceed the free portion of the estate of the testator," which clearly implies that the issue of impairment of legitime (an aspect of intrinsic validity) was in fact not resolved.

Finally, the Probate Order did not rule on the propriety of allowing QUEMADA to remain as special administrator of estate properties not covered by the holographic will, "considering that this (Probate) Order should have been properly issued solely as a resolution on the issue of whether or not to allow and approve the aforestated will."

It was, therefore, error for the assailed implementing Orders to conclude that the Probate Order adjudged with finality the question of ownership of the mining properties and royalties, and that, premised on this conclusion, the dispositive portion of the said Probate Order directed the special administrator to pay the legacy in dispute.

Issue of Intrinsic Validity of the Holographic Will -

When the disputed Probate order was issued on December 5, 1972, there had been no liquidation of the community properties of PASTOR, SR. and his wife. So, also, as of the same date, there had been no prior definitive determination of the assets of the estate of PASTOR, SR. There was an inventory of his properties presumably prepared by the special administrator, but it does not appear that it was ever the subject of a hearing or that it was judicially approved. The reconveyance or recovery of properties allegedly owned but not in the name of PASTOR, SR. was still being litigated in another court. There was no appropriate determination, much less payment, of the debts of the decedent and his estate. Nor had the estate tax been determined and paid, or at least provided for, as of December 5, 1972. The net assets of the estate not having been determined, the legitime of the forced heirs in

concrete figures could not be ascertained. All the foregoing deficiencies considered, it was not possible to determine whether the legacy of QUEMADA - a fixed share in a specific property rather than an aliquot part of the entire net estate of the deceased - would produce an impairment of the legitime of the compulsory heirs. Finally, there actually was no determination of the intrinsic validity of the will in other respects. It was obviously for this reason that as late as March 5, 1980 - more than 7 years after the Probate Order was issued the Probate Court scheduled on March 25, 1980 a hearing on the *intrinsic* validity of the will.

**REMEDIOS NUGUID, PETITIONER AND APPELLANT,
-versus- FELIX NUGUID AND PAZ SALONGA NUGUID, OPPOSITORS AND APPELLEES.** G.R. No. L-23445, EN BANC, June 23, 1966, SANCHEZ, J.

A peculiar situation is here thrust upon us. The parties shunted aside the question of whether or not the will should be allowed probate. For them, the meat of the case is the intrinsic validity of the will. Normally, this comes only after the court has declared that the will has been duly authenticated. But petitioner and oppositors, in the court below and here on appeal, travelled on the issue of law, to wit: Is the will intrinsically a nullity?

We pause to reflect. If the case were to be remanded for probate of the will, nothing will be gained. On the contrary, this litigation will be protracted. And for aught that appears in the record, in the event of probate or if the court rejects the will, probability exists that the case will come up once again before us on the same issue of the intrinsic validity or nullity of the will. Result: waste of time, effort, expense, plus added anxiety. These are the practical considerations that induce us to a belief that we might as well meet head-on the issue of the validity of the provisions of the will in question. After all, there exists a justiciable controversy crying for solution.

FACTS

Rosario Nuguid, a resident of Quezon City, died on December 30, 1962, single, without descendants, legitimate or illegitimate. Surviving her were her legitimate parents, Felix Nuguid and Paz Salonga Nuguid, and six (6) brothers and sisters, namely: Alfredo, Federico, Remedios, Conrado, Lourdes and Alberto, all surnamed Nuguid.

On May 18, 1963, petitioner Remedios Nuguid filed in the Court of First Instance of Rizal a holographic will allegedly executed by Rosario Nuguid on November 17, 1951, some 11 years before her demise. Petitioner prayed that said will be admitted to probate and that letters of administration with the will annexed be issued to her.

On June 25, 1963, Felix Nuguid and Paz Salonga Nuguid, concededly the legitimate father and mother of the deceased Rosario Nuguid, entered their opposition to the probate of her will. Ground therefor, inter alia, is that by the institution of petitioner Remedios Nuguid as universal heir of the deceased, oppositors — who are compulsory heirs of the deceased in the direct ascending line — were illegally preterited and that in consequence the institution is void.

On August 29, 1963, before a hearing was had on the petition for probate and objection thereto, oppositors moved to dismiss on the ground of absolute preterition.

On September 6, 1963, petitioner registered her opposition to the motion to dismiss.

The court's order of November 8, 1963, held that "the will in question is a complete nullity and will perform create intestacy of the estate of the deceased Rosario Nuguid" and dismissed the petition.

ISSUE

Whether or not the court can delved into the intrinsic validity of the will? (YES)

RULING

Right at the outset, a procedural aspect has engaged our attention. The case is for the probate of a will. The court's area of inquiry is limited — to an examination of, and resolution on, the extrinsic validity of the will. The due execution thereof, the testatrix's testamentary capacity, and the compliance with the requisites or solemnities by law prescribed, is the questions solely to be presented, and to be acted upon, by the court. Said court at this stage of the proceedings — is not called upon to rule on the intrinsic validity or efficacy of the provisions of the will, the legality of any devise or legacy therein.

A peculiar situation is here thrust upon us. The parties shunted aside the question of whether or not the will should be allowed probate. For them, the meat of the case is the intrinsic validity of the will. Normally, this comes only after the court has declared that the will has been duly authenticated. But petitioner and oppositors, in the court below and here on appeal, travelled on the issue of law, to wit: Is the will intrinsically a nullity?

We pause to reflect. If the case were to be remanded for probate of the will, nothing will be gained. On the contrary, this litigation will be protracted. And for aught that appears in the record, in the event of probate or if the court rejects the will, probability exists that the case will come up once again before us on the same issue of the intrinsic validity or nullity of the will. Result: waste of time, effort, expense, plus added anxiety. These are the practical considerations that induce us to a belief that we might as well meet head-on the issue of the validity of the provisions of the will in question. After all, there exists a justiciable controversy crying for solution.

**SOFIA J. NEPOMUCENO, PETITIONER, -versus-
THE HONORABLE COURT OF APPEALS, RUFINA GOMEZ, OSCAR JUGO ANG, CARMELITA
JUGO, RESPONDENTS. G.R. No. L-62952, FIRST DIVISION, October 9, 1985, GUTIERREZ, JR., J.**

The general rule is that in probate proceedings, the court's area of inquiry is limited to an examination and resolution of the extrinsic validity of the Will. The rule, however, is not inflexible and absolute. Given exceptional circumstances, the probate court is not powerless to do what the situation constrains it to do and pass upon certain provisions of the Will.

Applying the ruling in Nuguid v. Nuguid (17 SCRA 449, a will of this nature, no matter how valid it may appear extrinsically, would be null and void. Separate or latter proceedings to determine the intrinsic validity of the testamentary provisions would be superfluous.

FACTS

Martin Jugo died in Malabon, Rizal. He left a last Will and Testament wherein the testator named and appointed herein petitioner Sofia J. Nepomuceno as his sole and only executor of his estate. It is clearly stated in the Will that the testator was legally married to a certain Rufina Gomez by whom he had two legitimate children, Oscar and Carmelita, but since 1952, he had been estranged from his lawfully wedded wife and had been living with petitioner as husband and wife. In fact, on December 5, 1952, the testator Martin Jugo and the petitioner herein, Sofia J. Nepomuceno were married in Victoria, Tarlac before the Justice of the Peace. The testator devised to his forced heirs, namely, his legal wife Rufina Gomez and his children Oscar and Carmelita his entire estate and the free portion thereof to herein petitioner.

The petitioner filed a petition for the probate of the last Will and Testament of the deceased Martin Jugo in the Court of First Instance of Rizal and asked for the issuance to her of letters testamentary.

The legal wife of the testator, Rufina Gomez and her children filed an opposition alleging inter alia that the execution of the Will was procured by undue and improper influence on the part of the petitioner; that at the time of the execution of the Will, the testator was already very sick and that petitioner having admitted her living in concubinage with the testator, she is wanting in integrity and thus, letters testamentary should not be issued to her.

The lower court denied the probate of the Will on the ground that as the testator admitted in his Will to cohabiting with the petitioner, the Will's admission to probate will be an idle exercise because on the face of the Will, the invalidity of its intrinsic provisions is evident.

The petitioner appealed to the respondent-appellate court. The respondent court set aside the decision of the Court of First Instance of Rizal denying the probate of the will. The respondent court declared the Will to be valid except that the devise in favor of the petitioner is null and void pursuant to Article 739 in relation with Article 1028 of the Civil Code of the Philippines.

The petitioner filed a motion for reconsideration. This was denied by the respondent court in a resolution dated December 28, 1982.

ISSUE

Whether or not the respondent court acted in excess of its jurisdiction when after declaring the last Will and Testament of the deceased Martin Jugo validly drawn, it went on to pass upon the intrinsic validity of the testamentary provision in favor of herein petitioner?

RULING

The respondent court acted within its jurisdiction when after declaring the Will to be validly drawn, it went on to pass upon the intrinsic validity of the Will and declared the devise in favor of the petitioner null and void.

The general rule is that in probate proceedings, the court's area of inquiry is limited to an examination and resolution of the extrinsic validity of the Will. The rule, however, is not inflexible

and absolute. Given exceptional circumstances, the probate court is not powerless to do what the situation constrains it to do and pass upon certain provisions of the Will.

In *Nuguid v. Nuguid* (17 SCRA 449) cited by the trial court, the testator instituted the petitioner as universal heir and completely preterited her surviving forced heirs. A will of this nature, no matter how valid it may appear extrinsically, would be null and void. Separate or latter proceedings to determine the intrinsic validity of the testamentary provisions would be superfluous.

We sustain the respondent court's jurisdiction. As stated in *Nuguid v. Nuguid*, (*supra*):

We pause to reflect. If the case were to be remanded for probate of the will, nothing will be gained. On the contrary, this litigation will be protracted. And for aught that appears in the record, in the event of probate or if the court rejects the will, probability exists that the case will come up once again before us on the same issue of the intrinsic validity or nullity of the will. Result, waste of time, effort, expense, plus added anxiety. These are the practical considerations that induce us to a belief that we might as well meet head-on the issue of the validity of the provisions of the will in question. (Section 2, Rule 1, Rules of Court. *Case, et al. v. Jugo, et al.*, 77 Phil. 517, 522). After all, there exists a justiciable controversy crying for solution.

We see no useful purpose that would be served if we remand the nullified provision to the proper court in a separate action for that purpose simply because, in the probate of a will, the court does not ordinarily look into the intrinsic validity of its provisions.

FILOMENA G. PIZARRO, MISAEL G. PIZARRO, AURELIO PIZARRO, JR., LUZMINDA G. PIZARRO, DELIA-THELMA G. PIZARRO, ROGELIO G. PIZARRO, VIRGILIO G. PIZARRO, ROSALINDA G. PIZARRO, JOSE ELVIN G. PIZARRO AND MARIA EVELYN G. PIZARRO, PETITIONERS, -versus- THE HONORABLE COURT OF APPEALS, HONORABLE MANASES G. REYES, JUDGE OF BRANCH III OF THE COURT OF FIRST INSTANCE OF DAVAO, HONORABLE VICENTE P. BULLECER, JUDGE OF BRANCH IV OF THE COURT OF FIRST INSTANCE OF DAVAO, ALFONSO L. ANGLIONGTO JR., FELICITAS YAP ANGLIONGTO, GAUDENCIO A. CORIAS, REGALADO C. SALAVADOR, ALICIA P. LADISLA AND LYDIA P. GUDANI, RESPONDENTS. G.R. No. L-31979, FIRST DIVISION, August 6, 1980, MELENCIO-HERRERA, J.

In this case, the Supreme ruled that what petitioners sought to achieve in filing the Rescission Case was to rescind the sale mainly for failure of the vendees to pay the full consideration thereof, which is a valid ground for rescission. That cause of action was within the judicial competence and authority of the trial Court (Branch III) as a Court of First Instance with exclusive original jurisdiction over civil cases the subject matter of which is not capable of pecuniary estimation. It was beyond the jurisdictional bounds of the Probate Court (Branch IV) whose main province was the settlement of the estate. As a matter of fact, the Rescission Case was instituted after the Probate Court itself had stated that petitioners' cause of action was not within its authority to resolve but should be filed with the competent Court. The cause of action in one is different from that obtaining in the other.

FACTS

Petitioner Filomena G. Pizarro, is the surviving spouse of the late Aurelio Pizarro, Sr., while the other petitioners, as well as respondents Alicia P. Ladisla and Lydia P. Gudani, are their children. Upon the

death of Aurelio Pizarro, Sr., Special Proceedings No. 1421 entitled "In the Intestate Estate of the Deceased Aurelio Pizarro, Sr.," was instituted by petitioners through. Listed among the properties of the estate were parcels of land situated in Agdao, J. Palma Gil, and Claro M. Recto Streets, Davao City. The Court, upon agreement of the parties, appointed Gaudencio A. Corias, Clerk of Court of said Court, as Administrator of the estate.

The Administrator, filed a Motion for Authority to Sell the properties located at Agdao and Jose Palma Gil Streets, Davao City, to settle the debts of the estate initially estimated at P257,361.23, including inheritance and estate taxes. The heirs, Alicia P. Ladisla and Lydia P. Gudani, opposed the Motion stating that the claims against the estate had not yet been properly determined and that the sale of the Agdao lot with an area of 13,014 sq. ms. would be more than sufficient to cover the supposed obligations of the estate, which they claimed were exaggerated.

The Court, in its Order, authorized the sale "in the interest of the parties" and since majority of the heirs were in favor of the sale "to avoid unnecessary additional burden of about P2,000.00 every month. The Administrator moved for the approval of the conditional sale of the Agdao property to Alfonso L. Angliongto for a total consideration of P146,820.00 payable in six installments including the down payment. The heirs filed a Motion, also to set aside or hold in abeyance the Order authorizing the sale on the ground that they were negotiating for the sale of said lot to Mr. Benjamin Gonzales, whose theatre was being constructed on a 1,187 square meter portion thereof.

The Court, in its Order denied the "Motion to Set Aside" stating that the grounds relied upon by the heirs were "nothing but speculations and had no legal basis." The heirs moved for reconsideration alleging that they were being deprived of the right to a more beneficial sale. A hearing was held on the Motion for approval of the sale of the Agdao lot to Alfonso Angliongto. The heirs maintained their objection. The Court denied reconsideration on February 20, 1967, 7 and approved the sale on the same date stating that "the sale sought to be approved was more beneficial.

The Administrator presented another Motion for Authority to Sell the Claro M. Recto lot stating that the proceeds from the sale of the Agdao lot were not sufficient to settle the obligations of the estate and that the sale of the property on J. Palma Gil Street was unanimously opposed by the heirs. Authority was granted by the Court on March 6, 1967.

Prior to this, the heirs, in a Motion prayed that Administrator Gaudencio A. Corias be asked to resign or be removed for having abused his powers and duties as such and that Letters of Administration be granted instead to Filomena Pizarro.

On March 11, 1967, the Administrator moved that he be allowed to resign. The heirs, except Alicia P. Ladisla and Lydia P. Gudani, filed a "Motion for Cancellation or Rescission of Conditional Contract of Sale" of the Agdao lot in favor of Alfonso L. Angliongto reiterating that it was unnecessary and prejudicial to their interests, that the sale of the lot in Claro M. Recto Street for P370, 000.00 was more than sufficient to settle the obligations of the estate and that the vendee had failed to pay the last four installments due despite repeated demands. The Court denied rescission of the sale in its Order, stating that the relief prayed for is not within its power to grant, and that the heirs "should file the necessary action before a competent Court — not before this Court, and much less by mere motion."

On July 6, 1967, the Administrator presented a "Motion to Approve Final Sale" of the Agdao lot. On the same date, the Court approved the same.

Without waiting for the resolution of their Motion for Reconsideration of the Order denying rescission of the sale, the heirs, except Alicia P. Ladisla and Lydia P. Gudani, filed on, a verified Complaint for "Cancellation of Authority to Sell and Rescission and Annulment of Deed of Sale and Damages with Preliminary Injunction" in the Court of First Instance of Davao (raffled to Branch III), against the Angliongto spouses, Administrator Gaudencio A. Corias, Judge Vicente P. Bullecer, Atty. Regalado C. Salvador, Alicia P. Ladisla and Lydia P. Gudani, 16 the latter two having refused to join as plaintiffs.

On April 10, 1968, the trial Court dismissed the Rescission Case (Civil Case No. 5762) on the ground that it could not review the actuations of a coordinate Branch of the Court besides the fact that a Motion for Reconsideration was still pending resolution before the Probate Court.

On November 25, 1968, petitioners elevated their cause to the Court of Appeals on " *Certiorari* and *Mandamus* with Prohibition and Injunction," charging that respondent Judge Manases G. Reyes gravely abused his discretion in dismissing the Rescission Case and prayed that he be required to take cognizance thereof and that the Angliongtos be enjoined from exercising rights of ownership over the property.

On February 11, 1970, the Court of Appeals dismissed the Petition opining that the Court of First Instance of Davao, Branch IV, did not abuse its discretion in approving the sale in the Intestate Case (Sp. Proc. No. 1421).

The present Petition before us seeks a reversal of the aforesaid findings of the Appellate Court anchored on the principal contentions that the sale of the Agdao property should be rescinded for failure of the vendees to pay the purchase price, and that actually no review of the actuations of a co-equal Branch of the Court is being sought.

ISSUE

Whether or not the lower court erred when it refused to order the rescission of the sale?

RULING

We come now to the question of correctness of the Order of dismissal of the trial Court which the Appellate Tribunal had upheld. As a strict legal proposition, no actuation of the Probate Court had to be reviewed. There is no judicial interference to speak of by one Court in the actuations of another co-equal Court. The Order authorizing the sale was issued on February 20, 1967, and on July 6, 1967, the Court gave its stamp of approval to the final sale. Title was issued in favor of the vendees on July 10, 1967. To all intents and purposes, therefore, that sale had been consummated; the Order approving the sale, final.

But, what petitioners sought to achieve in filing the Rescission Case was to rescind the sale mainly for failure of the vendees to pay the full consideration thereof, which is a valid ground for rescission. That cause of action was within the judicial competence and authority of the trial Court (Branch III) as a Court of First Instance with exclusive original jurisdiction over civil cases the subject matter of

which is not capable of pecuniary estimation. It was beyond the jurisdictional bounds of the Probate Court (Branch IV) whose main province was the settlement of the estate. As a matter of fact, the Rescission Case was instituted after the Probate Court itself had stated that petitioners' cause of action was not within its authority to resolve but should be filed with the competent Court. The cause of action in one is different from that obtaining in the other. It behooved the trial Court, therefore, to have taken cognizance of and to have heard the Rescission Case on the merits and it was reversible error for the Court of Appeals to have upheld its dismissal.

ATTY. RICARDO B. BERMUDO, PETITIONER, -versus- FERMINA TAYAG-ROXAS, RESPONDENT.
G.R. No. 172879, SECOND DIVISION, February 02, 2011, ABAD, J.

Atty. Bermudo did not only serve as administrator of the estate. He also served as Roxas' counsel in the suit that assailed her right as sole heir. Atty. Bermudo brought the contest all the way up to this Court to defend her rights to her uncle's estate. And Atty. Bermudo succeeded. Acting as counsel in that suit for Roxas was not part of his duties as administrator of the estate. Consequently, it was but just that he is paid his attorney's fees

FACTS

Atty. Ricardo Bermudo, as executor, filed a petition for his appointment as administrator of the estate of Artemio Hilario (Hilario) and for the allowance and probate of the latter's will. The testator instituted Fermina Tayag-Roxas (Roxas) as his only heir but several persons, who claimed to be Hilario's relatives, opposed the petition. The RTC rendered a decision, allowing the will and recognizing Roxas as Hilario's sole heir.

When the decision constituting Roxas as the sole heir became final, Atty. Bermudo who also served as counsel for her in the actions concerning her inheritance filed a motion to fix his legal fees and to constitute a charging lien against the estate for the legal services he rendered. RTC granted him fees equivalent to 20% of the estate and constituted the same as lien on the estate's property. Roxas appealed the order to the CA.

The CA rendered a decision that modified the RTC Order, limiting Atty. Bermudo's compensation as administrator to what Section 7, Rule 85 of the Rules of Court provides and making his lawyer's fees 20% of the value of the land belonging to the estate. Atty. Bermudo subsequently filed a motion with the RTC for execution and appraisal of the estate on which his 20% compensation would be based. RTC granted the motion and ordered Roxas to pay Atty. Bermudo P12, 644,300.00 as attorney's fees with interest at the rate of 6% per annum. Roxas challenged the order before the CA through a petition for *certiorari*.

On December 19, 2005, using a different valuation of the land of the estate, the CA ordered Roxas to pay Atty. Bermudo a reduced amount of P4,234,770.00 as attorney's fees with interest at 6% per annum. Atty. Bermudo's motion for reconsideration having been denied, he filed a petition for review before this Court in G.R. 172879. Roxas also filed a motion for partial reconsideration of the CA decision and when this was denied, she filed a petition for *certiorari* with this Court in G.R. 173364.

ISSUE

2. Whether or not the CA erred in holding that Atty. Bermudo, as administrator, is entitled to collect attorney's fees?

RULING

Roxas asserts that Atty. Bermudo is not entitled to attorney's fees but only to compensation as administrator in accordance with Section 7, Rule 85 of the Rules of Court.

But Atty. Bermudo did not only serve as administrator of the estate. He also served as Roxas' counsel in the suit that assailed her right as sole heir. Atty. Bermudo brought the contest all the way up to this Court to defend her rights to her uncle's estate. And Atty. Bermudo succeeded. Acting as counsel in that suit for Roxas was not part of his duties as administrator of the estate. Consequently, it was but just that he is paid his attorney's fees.

Besides, Atty. Bermudo's right to attorney's fees had been settled with finality in CA-G.R. CV 53143. This Court can no longer entertain Roxas' lament that he is not entitled to those fees.

METROPOLITAN BANK & TRUST COMPANY, PETITIONER, VS. ABSOLUTE MANAGEMENT CORPORATION, RESPONDENT. G.R. No. 170498, SECOND DIVISION January 9, 2013, BRION, J.

In its fourth-party complaint, Metrobank claims that Chua's estate should reimburse it if it becomes liable on the checks that it deposited to Ayala Lumber and Hardware's account upon Chua's instructions.

This disjunct created an obligation on the part of Ayala Lumber and Hardware, through its sole proprietor, Chua, to return the amount of these checks to Metrobank. The Court notes, however, that its description of Metrobank's fourth-party complaint as a claim closely analogous to solutio indebiti is only to determine the validity of the lower courts' orders denying it. It is not an adjudication determining the liability of Chua's estate against Metrobank. The appropriate trial court should still determine whether Metrobank has a lawful claim against Chua's estate based on quasi-contract.

Metrobank's fourth-party complaint, as a contingent claim, falls within the claims that should be filed under Section 5, Rule 86 of the Rules of Court.

FACTS

Sherwood Holdings Corporation, Inc. (SHCI) filed a complaint for sum of money against Absolute Management Corporation (AMC). SHCI alleged in its complaint that it made advance payments to AMC for the purchase of plywood and plyboards covered by Metrobank Checks These checks were all crossed, and were all made payable to AMC. They were given to Chua, AMC's General Manager.

Chua died and a special proceeding for the settlement of his estate was commenced. SHCI made demands on AMC, after Chua's death, for allegedly undelivered items. According to AMC, these transactions could not be found in its records. Upon investigation, AMC discovered that Chua received from SHCI 18 Metrobank checks. These were all payable to AMC and were crossed or "for payee's account only."

In its answer AMC averred that it had no knowledge of Chua's transactions with SHCI and it did not receive any money from the latter. AMC also asked the RTC to hold Metrobank liable for the subject checks in case it is adjudged liable to SHCI.

Metrobank filed a motion for bill of particulars,¹² seeking to clarify certain ambiguous statements in AMC's answer. The RTC granted the motion but AMC failed to submit the required bill of particulars. Hence, Metrobank filed a motion to strike out the third-party complaint.

Metrobank admitted that it deposited the checks in question to the account of Ayala Lumber and Hardware, a sole proprietorship Chua owned and managed. The deposit was allegedly done with the knowledge and consent of AMC. According to Metrobank, Chua then gave the assurance that the arrangement for the handling of the checks carried AMC's consent. Chua also submitted documents showing his position and interest in AMC. These documents, as well as AMC's admission in its answer that it allowed Chua to manage AMC with a relative free hand, show that it knew of Chua's arrangement with Metrobank. Further, Chua's records show that the proceeds of the checks were remitted to AMC which cannot therefore now claim that it did not receive these proceeds. Metrobank also raised the defense of estoppel.

RTC denied Metrobank's motion. The RTC categorized Metrobank's allegation in the fourth-party complaint as a "cobro de lo indebido"²⁷ – a kind of quasi-contract that mandates recovery of what has been improperly paid. As such claim, it should have been filed in a Special Proceeding not before the RTC as a fourth-party complaint. The RTC, acting in the exercise of its general jurisdiction, does not have the authority to adjudicate the fourth-party complaint. As a trial court hearing an ordinary action, it cannot resolve matters pertaining to special proceedings because the latter is subject to specific rules.

CA affirmed the RTC's ruling that Metrobank's fourth-party complaint should have been filed in Special Proceedings No. 99-0023.²⁹ According to the CA, the relief that Metrobank prayed for was based on a quasi-contract and was a money claim categorized as an implied contract that should be filed under Section 5, Rule 86 of the Rules of Court.

ISSUES

Whether or not quasi-contracts are included in claims that should be filed pursuant to Rule 86, Section 5 of the Rules of Court? (YES)

RULING

Quasi-contracts are included in claims that should be filed under Rule 86, Section 5 of the Rules of Court.

The Court held under these facts that a claim for necessary expenses spent as previous possessor of the land is a kind of quasi-contract. Metrobank's fourth-party complaint is based on quasi-contract.

Both the RTC and the CA described Metrobank's claim against Chua's estate as one based on quasi-contract. A quasi-contract involves a juridical relation that the law creates on the basis of certain voluntary, unilateral and lawful acts of a person, to avoid unjust enrichment.

According to the CA, Metrobank's fourth-party complaint embodies the concept "solutio indebiti" which arises when something is delivered through mistake to a person who has no right to demand it. It obligates the latter to return what has been received through mistake.

In its fourth-party complaint, Metrobank claims that Chua's estate should reimburse it if it becomes liable on the checks that it deposited to Ayala Lumber and Hardware's account upon Chua's instructions.

This disjunct created an obligation on the part of Ayala Lumber and Hardware, through its sole proprietor, Chua, to return the amount of these checks to Metrobank. The Court notes, however, that its description of Metrobank's fourth-party complaint as a claim closely analogous to solutio indebiti is only to determine the validity of the lower courts' orders denying it. It is not an adjudication determining the liability of Chua's estate against Metrobank. The appropriate trial court should still determine whether Metrobank has a lawful claim against Chua's estate based on quasi-contract.

Metrobank's fourth-party complaint, as a contingent claim, falls within the claims that should be filed under Section 5, Rule 86 of the Rules of Court.

A distinctive character of Metrobank's fourth-party complaint is its contingent nature – the claim depends on the possibility that Metrobank would be adjudged liable to AMC, a future event that may or may not happen. This characteristic unmistakably marks the complaint as a contingent one that must be included in the claims falling under the terms of Section 5, Rule 86 of the Rules of Court.

We read with approval the CA's use of the statutory construction principle of *lex specialis derogat generali*, leading to the conclusion that the specific provisions of Section 5, Rule 86 of the Rules of Court should prevail over the general provisions of Section 11, Rule 6 of the Rules of Court; the settlement of the estate of deceased persons primarily governed by the rules on special proceedings, while the rules provided for ordinary claims, including Section 11, Rule 6 of the Rules of Court, merely apply suppletorily.

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Metrobank argues that Section 11, Rule 6 of the Rules of Court should apply because it impleaded Chua's estate for reimbursement in the same transaction upon which it has been sued by AMC. On this point, the Court supports the conclusion of the CA.

We read with approval the CA's use of the statutory construction principle of *lex specialis derogat generali*, leading to the conclusion that the specific provisions of Section 5, Rule 86 of the Rules of Court should prevail over the general provisions of Section 11, Rule 6 of the Rules of Court; the settlement of the estate of deceased persons (where claims against the deceased should be filed) is primarily governed by the rules on special proceedings, while the rules provided for ordinary claims, including Section 11, Rule 6 of the Rules of Court, merely apply suppletorily.

In sum, on all counts in the considerations material to the issues posed the resolution points to the affirmation of the assailed CA decision and resolution. Metrobank's claim in its fourth-party complaint against Chua's estate is based on quasi-contract. It is also a contingent claim that depends on another event. Both belong to the category of claims against a deceased person that should be filed under Section 5, Rule 86 of the Rules of Court and, as such, should have been so filed in Special Proceedings No. 99-0023.

▲
**ALAN JOSEPH A. SHEKER, PETITIONER, -VERSUS-
ESTATE OF ALICE O. SHEKER, VICTORIA S. MEDINA-ADMINISTRATRIX, RESPONDENT.** G.R. No.
157912, THIRD DIVISION, December 13, 2007, AUSTRIA-MARTINEZ, J.

The certification of non-forum shopping is required only for complaints and other initiatory pleadings. The RTC erred in ruling that a contingent money claim against the estate of a decedent is an initiatory pleading. In the present case, the whole probate proceeding was initiated upon the filing of the petition for allowance of the decedent's will. Under Sections 1 and 5, Rule 86 of the Rules of Court, after granting letters of testamentary or of administration, all persons having money claims against the decedent are mandated to file or notify the court and the estate administrator of their respective money claims; otherwise, they would be barred, subject to certain exceptions.

Such being the case, a money claim against an estate is more akin to a motion for creditors' claims to be recognized and taken into consideration in the proper disposition of the properties of the estate.

FACTS

The RTC admitted to probate the holographic will of Alice O. Sheker and issued an order for all the creditors to file their respective claims against the estate. Petitioner Alan Sheker filed a contingent claim for agent's commission due him in the event of the sale of certain parcels of land belonging to the estate, and the amount of ₱275,000.00, as reimbursement for expenses incurred in the course of negotiating the sale of said realties.

The respondent executrix of the Estate of Alice O. Sheker moved for the dismissal of said money claim against the estate on the grounds that (1) the requisite docket fee, as prescribed in Section 7(a), Rule 141 of the Rules of Court, had not been paid; (2) petitioner failed to attach a certification against non-forum shopping; and (3) petitioner failed to attach a written explanation why the money claim was not filed and served personally.

The RTC dismissed the claim.

ISSUE

Whether or not the RTC erred in strictly applying to a probate proceeding the rules requiring a certification of non-forum shopping, a written explanation for non-personal filing, and the payment of docket fees upon filing of the claim? (YES)

RULING

It must be emphasized that petitioner's contention that rules in ordinary actions are only supplementary to rules in special proceedings is not entirely correct.

“Sec. 2. Applicability of rules of Civil Actions. - In the absence of special provisions, the rules provided for in ordinary actions shall be, as far as practicable, applicable in special proceedings”.

Stated differently, special provisions under Part II of the Rules of Court govern special proceedings; but in the absence of special provisions, the rules provided for in Part I of the Rules governing ordinary civil actions shall be applicable to special proceedings, as far as practicable.

The word practicable is defined as possible to practice or perform; capable of being put into practice, done or accomplished. This means that in the absence of special provisions, rules in ordinary actions may be applied in special proceedings as much as possible and where doing so would not pose an obstacle to said proceedings. Nowhere in the Rules of Court does it categorically say that rules in ordinary actions are inapplicable or merely supplementary to special proceedings.

Provisions of the Rules of Court requiring a certification of non-forum shopping for complaints and initiatory pleadings, a written explanation for non-personal service and filing, and the payment of filing fees for money claims against an estate would not in any way obstruct probate proceedings, thus, they are applicable to special proceedings such as the settlement of the estate of a deceased person.

The word "practicable" is defined as: *possible to practice or perform; capable of being put into practice, done or accomplished.* This means that in the absence of special provisions, rules in ordinary actions may be applied in special proceedings as much as possible and where doing so would not pose an obstacle to said proceedings. Nowhere in the Rules of Court does it categorically say that rules in ordinary actions are inapplicable or merely supplementary to special proceedings. Provisions of the Rules of Court requiring a certification of non-forum shopping for complaints and initiatory pleadings, a written explanation for non-personal service and filing, and the payment of filing fees for money claims against an estate would not in any way obstruct probate proceedings, thus, they are applicable to special proceedings such as the settlement of the estate of a deceased person as in the present case.

Thus, the principal question in the present case is: did the RTC err in dismissing petitioner's contingent money claim against respondent estate for failure of petitioner to attach to his motion a certification against non-forum shopping?

The Court rules in the affirmative.

The certification of non-forum shopping is required only for complaints and other initiatory pleadings. The RTC erred in ruling that a contingent money claim against the estate of a decedent is an initiatory pleading. In the present case, the whole probate proceeding was initiated upon the filing of the petition for allowance of the decedent's will. Under Sections 1 and 5, Rule 86 of the Rules of Court, after granting letters of testamentary or of administration, all persons having money claims against the decedent are mandated to file or notify the court and the estate administrator of their respective money claims; otherwise, they would be barred, subject to certain exceptions.⁵

Such being the case, a money claim against an estate is more akin to a motion for creditors' claims to be recognized and taken into consideration in the proper disposition of the properties of the estate.

A money claim is only an incidental matter in the main action for the settlement of the decedent's estate; more so if the claim is contingent since the claimant cannot even institute a separate action for a mere contingent claim. Hence, herein petitioner's contingent money claim, not being an initiatory pleading, does not require a certification against non-forum shopping.

The RTC should have relaxed and liberally construed the procedural rule on the requirement of a written explanation for non-personal service, again in the interest of substantial justice.

**HEIRS OF TEOFILO GABATAN, NAMELY: LOLITA GABATAN, POMPEYO GABATAN, PEREGRINO GABATAN, REYNALDO GABATAN, NILA GABATAN AND JESUS JABINIS, RIORITA GABATAN TUMALA AND FREIRA GABATAN, PETITIONERS,
-VERSUS- HON. COURT OF APPEALS AND LOURDES EVERO PACANA, RESPONDENTS. G.R. No. 150206, FIRST DIVISION, March 13, 2009, LEONARDO-DE CASTRO, J.**

It is undisputed that the subject property was owned by the deceased during his lifetime. Jurisprudence dictates that the determination of who are the legal heirs of the deceased must be made in the proper special proceedings in court, and not in an ordinary suit for recovery of ownership and possession of property. This must take precedence over the action for recovery of possession and ownership. The Court has consistently ruled that the trial court cannot make a declaration of heirship in the civil action for the reason that such a declaration can only be made in a special proceeding. Under Section 3, Rule 1 of the 1997 Revised Rules of Court, a civil action is defined as one by which a party sues another for the enforcement or protection of a right, or the prevention or redress of a wrong, while a special proceeding is a remedy by which a party seeks to establish a status, a right, or a particular fact.

FACTS

Lot 3095 C-5 was declared for taxation in the name of Juan Gabatan. In the complaint before the RTC, Lourdes alleged that she is the sole owner of Lot 3095 C-5, having inherited the same from her deceased mother, Hermogena, who she claimed as the only child of Juan and his wife, Laureana. Lourdes alleged that upon the death of Juan, Lot 3095 C-5 was entrusted to his brother, Teofilo, and Teofilo's wife, Rita, for administration. It was also claimed that prior to her death Hermogena demanded for the return of the land but to no avail. After Hermogena's death, Lourdes also did the same but petitioners refused to heed the numerous demands to surrender the subject property.

In their answer, petitioners denied that Lourdes's claim. Petitioners maintained that Juan Gabatan died single in 1934 and without any issue and that Juan was survived by one brother and two sisters, namely: Teofilo, Macaria and Justa. These siblings and/or their heirs inherited the subject land from Juan Gabatan and have been in possession thereof in the concept of owners for more than fifty (50) years. Petitioners added that a similar case was previously filed by Lourdes against Teofilo's wife, Rita, but the case was dismissed for lack of interest. Finally, petitioners contended that the complaint lacks or states no cause of action or, if there was any, the same has long prescribed and/or has been barred by laches.

ISSUE

1. WON the issue on Lourdes's heirship can be resolved in the same civil action for recovery of ownership and possession of property.

RULING

The Lourdes's main cause of action in the court a quo is the recovery of ownership and possession of property. It is undisputed that the subject property was owned by the deceased during his lifetime. Jurisprudence dictates that the determination of who are the legal heirs of the deceased must be made in the proper special proceedings in court, and not in an ordinary suit for recovery of ownership and possession of property. This must take precedence over the action for recovery of possession and ownership. The Court has consistently ruled that the trial court cannot make a declaration of heirship in the civil action for the reason that such a declaration can only be made in a special proceeding. Under Section 3, Rule 1 of the 1997 Revised Rules of Court, a civil action is defined as one by which a party sues another for the enforcement or protection of a right, or the prevention or redress of a wrong, while a special proceeding is a remedy by which a party seeks to establish a status, a right, or a particular fact.

In the case of *Milagros Joaquin v. Lourdes Reyes*, the Court reiterated its ruling that matters relating to the rights of filiation and heirship must be ventilated in the proper probate court in a special proceeding instituted precisely for the purpose of determining such rights. The status of an illegitimate child who claimed to be an heir to a decedent's estate could not be adjudicated in an ordinary civil action which, as in this case, was for the recovery of property.

However, in *Portugal v. Portugal-Beltran*, the Court relaxed its rule and allowed the trial court in a proceeding for annulment of title to determine the status of the party therein as heirs, since the only property of the intestate estate of Portugal is the Caloocan parcel of land, to still subject it, under the circumstances of the case, to a special proceeding which could be long, hence, not expeditious, just to establish the status of petitioners as heirs is not only impractical; it is burdensome to the estate with the costs and expenses of an administration proceeding. And it is superfluous in light of the fact that the parties to the civil case could and had already in fact presented evidence before the trial court which assumed jurisdiction over the case upon the issues it defined during pre-trial. Thus, the trial court should proceed to evaluate the evidence presented by the parties during the trial and render a decision thereon upon the issues it defined during pre-trial.

Similarly, in the present case, there appears to be only one parcel of land being claimed by the contending parties as their inheritance from Juan Gabatan. It would be more practical to dispense with a separate special proceeding for the determination of the status of Lourdes as the sole heir of Juan Gabatan, especially since the parties to civil case, had voluntarily submitted the issue to the RTC and already presented their evidence regarding the issue of heirship in the proceeding. Also, the RTC assumed jurisdiction over the same and consequently rendered judgment thereon.

As to proof of heirship, two conflicting birth certificates of Lourdes were presented at the RTC. Even assuming that the birth certificate presented by Lourdes is a reliable document, the same on its face is insufficient to prove Lourdes's filiation to her alleged grandfather, Juan Gabatan. Lourdes's mother's birth certificate, which would have been the best evidence of Hermogena's relationship to Juan Gabatan, was never offered as evidence at the RTC. Neither did Lourdes present any authentic document or final judgment categorically evidencing Hermogena's relationship to Juan Gabatan.

Lourdes's cause of action accrued in 1933, but she and her mother did not assert their rights as such since it is only in 1978 that Lourdes filed her first complaint to recover the subject property against Rita Gabatan, the widow of Teofilo Gabatan. However, that case was dismissed without prejudice for

failure to prosecute. Again, Lourdes waited until 1989 to refile the present case, claiming that she waited until the death of Rita Gabatan to refile her case out of respect because Rita was then already old. The reason is unacceptable, because it is precisely the advancing age of Rita (who might have personal knowledge of the matters litigated in this case) that should have urged the Lourdes to exert every effort to preserve valuable evidence and speedily litigate her claim.

Thus, Lourdes dismally failed to substantiate, with convincing, credible and independently verifiable proof, her assertion that she is the sole heir of Juan Gabatan and thus, entitled to the property under litigation. Aggravating the weakness of her evidence were the circumstances that (a) she did not come to court with clean hands for she presented a tampered/altered, if not outright spurious, copy of her certificate of live birth and (b) she unreasonably delayed the prosecution of her own cause of action.

TERESITA N. DE LEON, ZENAIDA C. NICOLAS AND THE HEIRS OF ANTONIO NICOLAS, PETITIONERS, -versus- HON. COURT OF APPEALS, HON. PABLO P. INVENTOR AND RAMON NICOLAS, RESPONDENTS. G.R. No. 128781, August 6, 2002, SECOND DIVISION, Austria-Martinez J.

Guided by the above jurisprudence, it is clear that the Court of Appeals committed an error in considering the assailed Order dated November 11, 1994 as final or binding upon the heirs or third persons who dispute the inclusion of certain properties in the intestate estate of the deceased Rafael Nicolas. Under the foregoing rulings of the Court, any aggrieved party, or a third person for that matter, may bring an ordinary action for a final determination of the conflicting claims.

FACTS

Herein petitioner Teresita N. de Leon was appointed administratrix of the estate of Rafael C. Nicolas. Deceased spouses Rafael and Salud Nicolas were the parents of petitioner Teresita N. de Leon, Estrellita N. Vizconde, Antonio Nicolas (deceased husband of petitioner Zenaida Nicolas and predecessor of the petitioners Heirs of Antonio Nicolas), Ramon Nicolas and Roberto Nicolas.

On September 19, 1994, private respondent Ramon G. Nicolas, an oppositor-applicant in the intestate proceedings, filed a "Motion for Collation," claiming that deceased Rafael Nicolas, during his lifetime, had given real properties to his children by gratuitous title and that administratrix-petitioner Teresita failed to include the same in the inventory of the estate of the decedent.

On September 27, 1994, the RTC issued an Order directing Ramon "to submit pertinent documents relative to the transfer of the properties from the registered owners during their lifetime for proper determination of the court if such properties should be collated, and set it for hearing with notice to the present registered owners to show cause why their properties may not be included in the collation of properties."

On November 11, 1994, the RTC issued an Order, to wit:

"Acting on the Amended Motion for Collation filed by oppositor-applicant Ramon G. Nicolas and the comment thereto filed by petitioner-administratrix, the Court finds the following properties to be collated to the estate properties under present administration, to wit:

"Accordingly, the Administratrix is hereby ordered to include the foregoing properties which were received from the decedent for collation in the instant probate proceedings.

On November 18, 1994, petitioner Teresita N. de Leon filed a Motion for Reconsideration alleging that the properties subject of the Order "were already titled in their names years ago"⁸ and that titles may not be collaterally attacked in a motion for collation. On February 23, 1995, the RTC issued an Order denying said motion, ruling that it is within the jurisdiction of the court to determine whether titled properties should be collated. Petitioner Teresita N. de Leon filed a Motion for Reconsideration of the Order dated February 23, 1995¹⁰ which respondent opposed.¹¹

On November 4, 1996, the RTC removed petitioner from her position as administratrix on ground of conflict of interest considering her claim that she paid valuable consideration for the subject properties acquired by her from their deceased father and therefore the same should not be included in the collation;¹³ and, ordered the hearing on the collation of properties covered by TCT No. T-V-1211 and T-V-1210 only.¹⁴

On November 28, 1996, acting on the impression that the collation of the real properties enumerated in the Order dated November 11, 1994 is maintained by the RTC, petitioner Teresita N. de Leon filed a Motion for Reconsideration praying that her appointment as administratrix be maintained; and that the properties be declared and decreed as the exclusive properties of the registered owners mentioned therein and not subject to collation.

The RTC denied said motion in its Order dated December 23, 1996. Petitioners Teresita N. de Leon, Zenaida Nicolas (the surviving spouse of Antonio Nicolas) and the Heirs of Antonio Nicolas filed with the Court of Appeals a petition for certiorari, prohibition and mandamus with prayer for a temporary restraining order and writ of preliminary injunction claiming that:

After private respondent Ramon had filed his comment, and petitioners, their reply, and after hearing the oral arguments of the parties, the Special Fourth Division of the Court of Appeals found the petition devoid of merit, ruling that the Order dated November 11, 1994 directing the inclusion of the properties therein enumerated in the estate of the deceased Rafael Nicolas had already become final for failure of petitioners to appeal from the order of collation; that the appeal of the petitioner from the Orders dated November 4, 1996 and December 3, 1996 removing petitioner as administratrix is timely appealed; and, observing that the notice of appeal and record on appeal appear to be unacted upon by the RTC.

ISSUE

Whether or not the probate court can pass upon the question of title?

RULING

The court finds the petition partly meritorious. Contrary to the finding of the Court of Appeals that the Order of November 11, 1994 had become final for failure of petitioners to appeal therefrom in due time, we hold that said Order is interlocutory in nature. Our pronouncement in *Garcia v. Garcia* supports this ruling:

"The court which acquires jurisdiction over the properties of a deceased person through the filing of the corresponding proceedings, has supervision and control over the said properties, and under the said power, it is its inherent duty to see that the inventory submitted by the administrator appointed by it contains all the properties, rights and credits which the law requires the administrator to set

out in his inventory. In compliance with this duty the court has also inherent power to determine what properties, rights and credits of the deceased should be included in or excluded from the inventory. Should an heir or person interested in the properties of a deceased person duly call the court's attention to the fact that certain properties, rights or credits have been left out in the inventory, it is likewise the court's duty to hear the observations, with power to determine if such observations should be attended to or not and if the properties referred to therein belong prima facie to the intestate, but no such determination is final and ultimate in nature as to the ownership of the said properties."

A probate court, whether in a testate or intestate proceeding, can only pass upon questions of title provisionally. The rationale therefor and the proper recourse of the aggrieved party are expounded in *Jimenez v. Court of Appeals*:

"The patent reason is the probate court's limited jurisdiction and the principle that questions of title or ownership, which result in inclusion or exclusion from the inventory of the property, can only be settled in a separate action.

"All that the said court could do as regards said properties are determined whether they should or should not be included in the inventory or list of properties to be administered by the administrator. If there is a dispute as to the ownership, then the opposing parties and the administrator have to resort to an ordinary action for a final determination of the conflicting claims of title because the probate court cannot do so."

Guided by the above jurisprudence, it is clear that the Court of Appeals committed an error in considering the assailed Order dated November 11, 1994 as final or binding upon the heirs or third persons who dispute the inclusion of certain properties in the intestate estate of the deceased Rafael Nicolas. Under the foregoing rulings of the Court, any aggrieved party, or a third person for that matter, may bring an ordinary action for a final determination of the conflicting claims.

What seems to be a conflict between the above-quoted Rule and the afore-discussed jurisprudence that the Order in question is an interlocutory and not a final order is more apparent than real. This is because the questioned Order was erroneously referred to as an order of collation both by the RTC and the appellate court. For all intents and purposes, said Order is a mere order including the subject properties in the inventory of the estate of the decedent.

The Court held in *Valero Vda. de Rodriguez v. Court of Appeals*²⁶ that the order of exclusion (or inclusion) is not a final order; that it is interlocutory in the sense that it did not settle once and for all the title to the subject lots; that the prevailing rule is that for the purpose of determining whether a certain property should or should not be included in the inventory, the probate court may pass upon the title thereto but such determination is not conclusive and is subject to the final decision in a separate action regarding ownership which may be instituted by the parties.

In the Rodriguez case, the Court distinguished between an order of collation and an order of exclusion from or inclusion in the estate's inventory, thus:

"In this appeal, it is not proper to pass upon the question of collation and to decide whether Mrs. Rustia's titles to the disputed lots are questionable. The proceedings below have not reached the

stage of partition and distribution when the legitimes of the compulsory heirs have to be determined."

Based thereon, we find that what the parties and the lower courts have perceived to be as an Order of Collation is nothing more than an order of inclusion in the inventory of the estate which, as we have already discussed, is an interlocutory order. The motion for collation was filed with the probate court at the early stage of the intestate estate proceedings. We have examined the records of the case and we found no indication that the debts of the decedent's spouses have been paid and the net remainder of the conjugal estate has already been determined, and the estates of the deceased spouses at the time filing of the motion for collation were ready for partition and distribution. In other words, the issue on collation is still premature.

And even if we consider, en arguendo, that said assailed Order is a collation order and a final order, still, the same would have no force and effect upon the parties. It is a hornbook doctrine that a final order is appealable. As such, the Order should have expressed therein clearly and distinctly the facts and the laws on which it is based as mandated by Section 14, Article VIII of the 1987 Constitution of the Republic of the Philippines.

GLORIOSA V. VALARAO, PETITIONER, V. CONRADO C. PASCUAL AND MANUEL C.

DIAZ, RESPONDENTS. G.R. No. 150164, SECOND DIVISION, November 26, 2002 BELLOSILLO, J.

Contrary to respondents' assertion, there is nothing in Sec. 2 requiring a special administrator to take possession of the estate only upon a prior finding that the heirs have been wasting properties of the estate which are in their possession. The law explicitly authorizes him to take possession of the properties in whatever state they are, provided he does so to preserve them for the regular administrator appointed afterwards. Clearly, the special administrator enjoys not merely subsidiary possession to be carried out when the heirs dissipate the properties but the primary and independent discretion of keeping them so they may be preserved for regular administration.

FACTS

FELICIDAD C. PASCUAL died at seventy-one (71) years, *femme sole*, leaving a substantial inheritance for her querulous collateral relatives who all appear disagreeable to any sensible partition of their windfall. To divide the disputed estate are five (5) groups of legal heirs which include respondents Conrado C. Pascual, a brother of the deceased, and Manuel C. Diaz, a nephew, son of her sister Carmen P. Diaz, and petitioner Gloriosa V. Valarao who is the decedent's niece.

The bloodlines marking the groups of heirs are: (a) the legitimate children of her late sister Leoncia P. Villanueva, including petitioner Gloriosa V. Valarao; (b) the legitimate children of her late sister Carmen P. Diaz including respondent Manuel C. Diaz; (c) the legitimate children of her late brother Macario Pascual; (d) the legitimate children of her late sister Milagros P. de Leon; and, (e) the decedent's surviving sister Augustia C. Pascual and brothers Leonardo C. Pascual and Conrado C. Pascual, the latter being one of respondents herein.

Petitioner Gloriosa V. Valarao initiated a special proceeding for the issuance of letters of administration in her favor over the estate of Felicidad C. Pascual. Respondent Conrado C. Pascual and some of his co-heirs, including respondent Diaz, filed with the same probate court a petition for

probate, of an alleged holographic will of Felicidad C. Pascual. The two (2) special proceedings were consolidated.

By agreement of the parties in the proceedings *a quo*, petitioner Valarao and respondent Diaz were appointed joint administrators of the estate of Felicidad C. Pascual. RTC rendered a *Decision* which denied the probate of the alleged holographic will of the decedent and giving due course to the intestate settlement of the estate.

In view of the appeal taken from the disallowance of the holographic will, petitioner Valarao moved in the probate court for her appointment as special administratrix of the estate. Respondent Diaz also asked for his designation as special co-administrator of the estate alongside petitioner.

Respondent Diaz moved for reconsideration of his rejection as special co-administrator of the estate. He contested the allegation of petitioner Valarao that he had been remiss in his duties as co-administrator. He cited as examples of his services the collection of rentals for properties included in the estate, the payment of estate taxes and the deposit of about ₱4,000,000.00 in a joint bank account held in trust for the estate by him and petitioner as co-administrators. Respondent Diaz further alleged that justice and equity demanded that his group of heirs be also represented in the management of the estate.

On the other hand, petitioner reiterated the alleged uncooperative conduct of respondent Diaz in discharging his tasks as co-administrator, and at the same time moved that he and his group of sympathetic heirs be compelled to surrender to her as special administratrix the books and records of a corporation where the estate owned substantial interests.

The probate court denied the motion for reconsideration and ordered respondent Diaz and all the heirs to respect the authority of petitioner Valarao as special administratrix, especially by furnishing her with copies of documents pertinent to the properties comprising the estate.

Respondents Pascual and Diaz along with other heirs moved for reconsideration of the 11 September 2000 *Order* on the ground that petitioner Valarao as special administratrix was not authorized to dispossess the heirs of their rightful custody of properties in the absence of proof that the same properties were being dissipated by them, and that the possessory right of petitioner as special administratrix had already been exercised by her "*constructively*" when the heirs on her side took possession of the estate supposedly in her behalf. Respondents further alleged that the motion was pending resolution by the probate court.

On 13 June 2001 respondents filed their supplemental petition for certiorari in CA-G.R. SP No. 61193 seeking permanent injunction against the enforcement of the *Orders* of 7 June 2000 and 11 September 2000 also as they mandated the turnover of documents to petitioner Valarao.

The Court of Appeals promulgated its *Decision* reversing and setting aside the *Order* of 7 June 2000 appointing petitioner Valarao as lone special administratrix. The appellate court explained that since the heirs were divided into two (2) scrappy factions, justice and equity demanded that both factions be represented in the management of the estate of the deceased. Hence, this petition for review on certiorari.

ISSUE

Whether or not the appointment of Valarao was proper? (YES)

RULING

To begin with, the probate court had ample jurisdiction to appoint petitioner Valarao as special administratrix and to assist her in the discharge of her functions, even after respondents had filed a notice of appeal from the *Decision* disallowing probate of the holographic will of Felicidad C. Pascual. This is because the appeal is one where multiple appeals are allowed and a record on appeal is required. In this mode of appeal, the probate court loses jurisdiction only over the subject matter of the appeal but retains jurisdiction over the special proceeding from which the appeal was taken for purposes of further remedies which the parties may avail of, including the appointment of a special administrator.

Moreover, there is nothing neither whimsical nor capricious in the action of the probate court not to appoint respondent Diaz as special co-administrator since the *Orders* of 7 June 2000 and 11 September 2000 clearly stipulate the grounds for the rejection. The records also manifest that the probate court weighed the evidence of the applicants for special administrator before concluding not to designate respondent Diaz because the latter was found to have been remiss in his previous duty as co-administrator of the estate in the early part of his administration. Verily, the process of decision-making observed by the probate court evinces reason, equity, justice and legal principle unmistakably opposite the core of abusive discretion correctible by the special civil action of certiorari under which the appellate court was bound to act. Finally, the extraordinary writ does not operate to reverse factual findings where evidence was assessed in the ordinary course of the proceedings since perceived errors in the appreciation of evidence do not embroil jurisdictional issues.

Respondents cannot take comfort in the cases of *Matias v. Gonzales*,¹² *Corona v. Court of Appeals* and *Vda. De Dayrit v. Ramolete*, cited in the assailed *Decision*. Contrary to their claim, these cases do not establish an absolute right demandable from the probate court to appoint special co-administrators who would represent the respective interests of squabbling heirs. Rather, the cases constitute precedents for the authority of the probate court to designate not just one but also two or more special co-administrators for a single estate. Now whether the probate court exercises such prerogative when the heirs are fighting among themselves is a matter left entirely to its sound discretion.

We also rule that the probate court in issuing the *Order* of 11 September 2000 did not err in commanding respondents to turn over all documents pertinent to the estate under special administration and in enforcing such order by means of contempt of court. The powers of a special administrator are plainly delineated in Sec. 2, Rule 80 of the *Rules of Court*, vesting upon him the authority to "take possession and charge of the goods, chattels, rights, credits and estate of the deceased and preserve the same for the executor or administrator afterwards appointed".

Contrary to respondents' assertion, there is nothing in Sec. 2 requiring a special administrator to take possession of the estate only upon a prior finding that the heirs have been wasting properties of the estate which are in their possession. The law explicitly authorizes him to take possession of the properties in whatever state they are, provided he does so to preserve them for the regular

administrator appointed afterwards. Clearly, the special administrator enjoys not merely subsidiary possession to be carried out when the heirs dissipate the properties but the primary and independent discretion of keeping them so they may be preserved for regular administration.

In any event, as we have held in *De Guzman v. Guadiz*, the partisan possession exercised by litigants over properties of the estate differs greatly from the neutral possession of a special administrator under the *Rules of Court*. Quite obviously, with this distinction, the possession of portions of the estate by respondents as heirs necessarily excludes the possessory right over the same properties inherent in the mandate of a special administrator.

UNION BANK OF THE PHILIPPINES, petitioner, vs. EDMUND SANTIBAÑEZ and FLORENCE SANTIBAÑEZ ARIOLA, respondents.

G.R. No. 149926, SECOND DIVISION, February 23, 2005, CALLEJO, SR., J.

In testate succession, there can be no valid partition among the heirs until after the will has been probated. *The law enjoins the probate of a will and the public requires it, because unless a will is probated and notice thereof given to the whole world, the right of a person to dispose of his property by will may be rendered nugatory. The authentication of a will decides no other question than such as touch upon the capacity of the testator and the compliance with those requirements or solemnities which the law prescribes for the validity of a will.*

Included in the will of the decedent are the three (3) subject tractors. This being so, any partition involving the said tractors among the heirs is not valid. The joint agreement executed by Edmund and Florence, partitioning the tractors among themselves, is invalid, specially so since at the time of its execution, there was already a pending proceeding for the probate of their late father's holographic will covering the said tractors.

The filing of a money claim against the decedent's estate in the probate court is mandatory. *As we held in the vintage case of Py Eng Chong v. Herrera:*

... This requirement is for the purpose of protecting the estate of the deceased by informing the executor or administrator of the claims against it, thus enabling him to examine each claim and to determine whether it is a proper one which should be allowed. The plain and obvious design of the rule is the speedy settlement of the affairs of the deceased and the early delivery of the property to the distributees, legatees, or heirs. The law strictly requires the prompt presentation and disposition of the claims against the decedent's estate in order to settle the affairs of the estate as soon as possible, pay off its debts and distribute the residue.

As the petitioner failed to file its money claim with the probate court, at most, it may only go after Edmund as co-maker of the decedent under the said promissory notes and continuing guaranty, of course, subject to any defenses Edmund may have as against the petitioner.

FACTS

On May 31, 1980, the First Countryside Credit Corporation (FCCC) and Efraim M. Santibañez entered into a loan agreement in the amount of ₱128,000.00. The amount was intended for the payment of the purchase price of one (1) unit Ford 6600 Agricultural All-Purpose Diesel Tractor. In view thereof, Efraim and his son, Edmund, executed a promissory note in favor of the FCCC, the principal sum

payable in five equal annual amortizations of ₱43,745.96 due on May 31, 1981 and every May 31st thereafter up to May 31, 1985.

On December 13, 1980, the FCCC and Efraim entered into another loan agreement, this time in the amount of ₱123,156.00. It was intended to pay the balance of the purchase price of another unit of Ford 6600 Agricultural All-Purpose Diesel Tractor, with accessories, and one (1) unit Howard Rotamotor Model AR 60K. Again, Efraim and his son, Edmund, executed a promissory note for the said amount in favor of the FCCC. Aside from such promissory note, they also signed a Continuing Guaranty Agreement for the loan dated December 13, 1980.

Sometime in February 1981, Efraim died, leaving a holographic will. Subsequently in March 1981, testate proceedings commenced before the RTC of Iloilo City. On April 9, 1981, Edmund, as one of the heirs, was appointed as the special administrator of the estate of the decedent. During the pendency of the testate proceedings, the surviving heirs, Edmund and his sister Florence Santibañez Ariola, executed a Joint Agreement dated July 22, 1981, wherein they agreed to divide between themselves and take possession of the three (3) tractors; that is, two (2) tractors for Edmund and one (1) tractor for Florence. Each of them was to assume the indebtedness of their late father to FCCC, corresponding to the tractor respectively taken by them.

On August 20, 1981, a Deed of Assignment with Assumption of Liabilities was executed by and between FCCC and Union Savings and Mortgage Bank, wherein the FCCC as the assignor, among others, assigned all its assets and liabilities to Union Savings and Mortgage Bank.

Demand letters for the settlement of his account were sent by petitioner Union Bank of the Philippines (UBP) to Edmund, but the latter failed to heed the same and refused to pay. Thus, on February 5, 1988, the petitioner filed a Complaint for sum of money against the heirs of Efraim Santibañez, Edmund and Florence, before the RTC of Makati City. Summons were issued against both, but the one intended for Edmund was not served since he was in the United States and there was no information on his address or the date of his return to the Philippines. Accordingly, the complaint was narrowed down to respondent Florence S. Ariola.

On December 7, 1988, respondent Florence S. Ariola filed her Answer and alleged that the loan documents did not bind her since she was not a party thereto. Considering that the joint agreement signed by her and her brother Edmund was not approved by the probate court, it was null and void; hence, she was not liable to the petitioner under the joint agreement.

ISSUES

1. Whether the partition in the Agreement executed by the heirs is valid. (NO)
2. Whether the heirs' assumption of the indebtedness of the deceased is valid. (NO)

RULING

1.

At the outset, well-settled is the rule that a probate court has the jurisdiction to determine all the properties of the deceased, to determine whether they should or should not be included in the

inventory or list of properties to be administered. The said court is primarily concerned with the administration, liquidation and distribution of the estate.

In our jurisdiction, the rule is that there can be no valid partition among the heirs until after the will has been probated:

In testate succession, there can be no valid partition among the heirs until after the will has been probated. The law enjoins the probate of a will and the public requires it, because unless a will is probated and notice thereof given to the whole world, the right of a person to dispose of his property by will may be rendered nugatory. The authentication of a will decides no other question than such as touch upon the capacity of the testator and the compliance with those requirements or solemnities which the law prescribes for the validity of a will.

This, of course, presupposes that the properties to be partitioned are the same properties embraced in the will. In the present case, the deceased, Efraim Santibañez, left a holographic will which contained, inter alia, the provision which reads as follows:

(e) All other properties, real or personal, which I own and may be discovered later after my demise, shall be distributed in the proportion indicated in the immediately preceding paragraph in favor of Edmund and Florence, my children.

We agree with the appellate court that the above-quoted is an all-encompassing provision embracing all the properties left by the decedent which might have escaped his mind at that time he was making his will, and other properties he may acquire thereafter. Included therein are the three (3) subject tractors. This being so, any partition involving the said tractors among the heirs is not valid. The joint agreement executed by Edmund and Florence, partitioning the tractors among themselves, is invalid, specially so since at the time of its execution, there was already a pending proceeding for the probate of their late father's holographic will covering the said tractors.

It must be stressed that the probate proceeding had already acquired jurisdiction over all the properties of the deceased, including the three (3) tractors. To dispose of them in any way without the probate court's approval is tantamount to divesting it with jurisdiction which the Court cannot allow. Every act intended to put an end to indivision among co-heirs and legatees or devisees is deemed to be a partition, although it should purport to be a sale, an exchange, a compromise, or any other transaction. Thus, in executing any joint agreement which appears to be in the nature of an extra-judicial partition, as in the case at bar, court approval is imperative, and the heirs cannot just divest the court of its jurisdiction over that part of the estate. Moreover, it is within the jurisdiction of the probate court to determine the identity of the heirs of the decedent. In the instant case, there is no showing that the signatories in the joint agreement were the only heirs of the decedent. When it was executed, the probate of the will was still pending before the court and the latter had yet to determine who the heirs of the decedent were. Thus, for Edmund and respondent Florence S. Ariola to adjudicate unto themselves the three (3) tractors was a premature act, and prejudicial to the other possible heirs and creditors who may have a valid claim against the estate of the deceased.

2.

The question that now comes to fore is whether the heirs' assumption of the indebtedness of the decedent is binding. We rule in the negative. Perusing the joint agreement, it provides that the heirs

as parties thereto "have agreed to divide between themselves and take possession and use the above-described chattel and each of them to assume the indebtedness corresponding to the chattel taken as herein after stated which is in favor of First Countryside Credit Corp." The assumption of liability was conditioned upon the happening of an event, that is, that each heir shall take possession and use of their respective share under the agreement. It was made dependent on the validity of the partition, and that they were to assume the indebtedness corresponding to the chattel that they were each to receive. The partition being invalid as earlier discussed, the heirs in effect did not receive any such tractor. It follows then that the assumption of liability cannot be given any force and effect.

The Court notes that the loan was contracted by the decedent. The petitioner, purportedly a creditor of the late Efraim Santibañez, should have thus filed its money claim with the probate court in accordance with Section 5, Rule 86 of the Revised Rules of Court, which provides:

Section 5. Claims which must be filed under the notice. If not filed barred; exceptions. — All claims for money against the decedent, arising from contract, express or implied, whether the same be due, not due, or contingent, all claims for funeral expenses for the last sickness of the decedent, and judgment for money against the decedent, must be filed within the time limited in the notice; otherwise they are barred forever, except that they may be set forth as counterclaims in any action that the executor or administrator may bring against the claimants. Where an executor or administrator commences an action, or prosecutes an action already commenced by the deceased in his lifetime, the debtor may set forth by answer the claims he has against the decedent, instead of presenting them independently to the court as herein provided, and mutual claims may be set off against each other in such action; and if final judgment is rendered in favor of the defendant, the amount so determined shall be considered the true balance against the estate, as though the claim had been presented directly before the court in the administration proceedings. Claims not yet due, or contingent, may be approved at their present value.

The filing of a money claim against the decedent's estate in the probate court is mandatory. As we held in the vintage case of *Py Eng Chong v. Herrera*:

... This requirement is for the purpose of protecting the estate of the deceased by informing the executor or administrator of the claims against it, thus enabling him to examine each claim and to determine whether it is a proper one which should be allowed. The plain and obvious design of the rule is the speedy settlement of the affairs of the deceased and the early delivery of the property to the distributees, legatees, or heirs. The law strictly requires the prompt presentation and disposition of the claims against the decedent's estate in order to settle the affairs of the estate as soon as possible, pay off its debts and distribute the residue.

Perusing the records of the case, nothing therein could hold private respondent Florence S. Ariola accountable for any liability incurred by her late father. The documentary evidence presented, particularly the promissory notes and the continuing guaranty agreement, were executed and signed only by the late Efraim Santibañez and his son Edmund. As the petitioner failed to file its money claim with the probate court, at most, it may only go after Edmund as co-maker of the decedent under the said promissory notes and continuing guaranty, of course, subject to any defenses Edmund may have as against the petitioner. As the court had not acquired jurisdiction over the person of Edmund, we find it unnecessary to delve into the matter further.

MARGARITO R. JAMERO, Petitioner, v. THE HONORABLE ACHILLES L. MELICOR, in his capacity as Presiding Judge of the Regional Trial Court of Tagbilaran City, Branch 4, ATTY. ALBERTO BAUTISTA, in his capacity as the appointed SPECIAL ADMINISTRATOR, and ERNESTO R. JAMERO, Respondent.

G.R. NO. 140929, SECOND DIVISION, May 26, 2005, AUSTRIA-MARTINEZ, J.

*Suffice it to be stated that indeed, **the appointment of a special administrator is interlocutory, discretionary on the part of the RTC and non-appealable. However, it may be subject of certiorari if it can be shown that the RTC committed grave abuse of discretion or lack of or in excess of jurisdiction.** As the Court held in *Pefianco v. Moral*, even as the trial court's order may merely be interlocutory and non-appealable, certiorari is the proper remedy to annul the same when it is rendered with grave abuse of discretion.*

FACTS

Petitioner filed Special Proceedings for the Administration and Settlement of the Estate of his deceased mother Consuelo Jamero with the Regional Trial Court (RTC), Tagbilaran City. Private respondent Ernesto R. Jamero, a brother of petitioner, opposed the latter's petition for appointment as regular administrator of the estate.

Upon motion of private respondent Ernesto and over the objections of petitioner, the respondent court, in its Order dated December 4, 1998, appointed Atty. Alberto Bautista as special administrator pending the appointment of a regular administrator. The RTC denied petitioner's motion for reconsideration in its Order dated February 26, 1999 which petitioner received on March 4, 1999.

On April 21, 1999, petitioner filed a Petition for Certiorari with the CA. The CA denied the petition.

Petitioner filed a Motion for Reconsideration which the appellate court denied in its Resolution, promulgated on November 24, 1999, to wit:

The petitioner filed a Motion for Reconsideration of our Resolution of dismissal dated June 14, 1999, imploring us to use merciful discretion by relaxing the rules on technicality to effect substantial justice, and citing the importance of the legal issues involved herein.

We find the motion devoid of merit. This Court has no authority to extend the definitive period fixed in Sec. 4, Rule 65 of the 1997 Rules of Civil Procedure, as amended.

In any case, the appointment of a special administrator is discretionary to the appointing court. Being an interlocutory order, the same is not appealable nor subject to certiorari.

WHEREFORE, the Motion for Reconsideration is DENIED for lack of merit.

SO ORDERED.

Hence, the petitioner filed a petition for review on certiorari with the Supreme Court. The petitioner alleged, among others, that the CA has decided in a way not in accord with law and established jurisprudence when it ruled that the appointment of special administrator is discretionary to the

appointing court, and that being an interlocutory order the same is not appealable nor subject to certiorari.

ISSUE

Whether the CA erred in ruling that the appointment of special administrator is discretionary to the appointing court and that being an interlocutory order, the same is not appealable nor subject to certiorari. (NO)

RULING

As to the second issue, suffice it to be stated that indeed, the appointment of a special administrator is interlocutory, discretionary on the part of the RTC and non-appealable. However, it may be subject to certiorari if it can be shown that the RTC committed grave abuse of discretion or lack of or in excess of jurisdiction. As the Court held in *Pefianco v. Moral*, even as the trial court's order may merely be interlocutory and non-appealable, certiorari is the proper remedy to annul the same when it is rendered with grave abuse of discretion.

JOSE C. LEE AND ALMA AGGABAO, in their capacities as President and Corporate Secretary, respectively, of Philippines International Life Insurance Company, and FILIPINO LOAN ASSISTANCE GROUP, petitioners vs. REGIONAL TRIAL COURT OF QUEZON CITY BRANCH 85 presided by JUDGE PEDRO M. AREOLA, BRANCH CLERK OF COURT JANICE Y. ANTERO, DEPUTY SHERIFFS ADENAUER G. RIVERA and PEDRO L. BORJA, all of the Regional Trial Court of Quezon City Branch 85, MA. DIVINA ENDERES claiming to be Special Administratrix, and other persons/ public officers acting for and in their behalf, respondents.
G.R. No. 146006, THIRD DIVISION, February 23, 2004, CORONA, J.

It being settled that property under administration needs the approval of the probate court before it can be disposed of, any unauthorized disposition does not bind the estate and is null and void. As early as 1921 in the case of Godoy vs. Orellano, We laid down the rule that a sale by an administrator of property of the deceased, which is not authorized by the probate court is null and void and title does not pass to the purchaser.

Our jurisprudence is therefore clear that (1) any disposition of estate property by an administrator or prospective heir pending final adjudication requires court approval and (2) any unauthorized disposition of estate property can be annulled by the probate court, there being no need for a separate action to annul the unauthorized disposition.

In the present case, Juliana Ortañez and Jose Ortañez sold specific properties of the estate (1,014 and 1,011 shares of stock in Philinterlife) in favor of petitioner FLAG. This they could not lawfully do pending the final adjudication of the estate by the intestate court because of the undue prejudice it would cause the other claimants to the estate

FACTS

Dr. Juvencio P. Ortañez incorporated the Philippine International Life Insurance Company, Inc. At the time of the company's incorporation, Dr. Ortañez owned ninety percent (90%) of the subscribed capital stock.

On July 21, 1980, Dr. Ortañez died. He left behind a wife (Juliana Salgado Ortañez), three legitimate children (Rafael, Jose and Antonio Ortañez) and five illegitimate children by Ligaya Novicio (herein private respondent Ma. Divina Ortañez-Enderes and her siblings Jose, Romeo, Enrico Manuel and Cesar, all surnamed Ortañez).

On September 24, 1980, Rafael Ortañez filed before the Court of First Instance of Rizal, Quezon City a petition for letters of administration of the intestate estate of Dr. Ortañez,.

Private respondent Ma. Divina Ortañez-Enderes and her siblings filed an opposition to the petition for letters of administration and, in a subsequent urgent motion, prayed that the intestate court appoint a special administrator.

Judge Ernani Cruz Paño, then presiding judge of Branch 85, appointed Rafael and Jose Ortañez joint special administrators of their father's estate.

As ordered by the intestate court, special administrators Rafael and Jose Ortañez submitted an inventory of the estate of their father which included, among other properties, 2,029 shares of stock in Philippine International Life Insurance Company (hereafter Philinterlife), representing 50.725% of the company's outstanding capital stock.

On April 15, 1989, the decedent's wife, Juliana S. Ortañez, claiming that she owned 1,014 Philinterlife shares of stock as her conjugal share in the estate, sold said shares with right to repurchase in favor of herein petitioner Filipino Loan Assistance Group (FLAG), represented by its president, herein petitioner Jose C. Lee. Juliana Ortañez failed to repurchase the shares of stock within the stipulated period, thus ownership thereof was consolidated by petitioner FLAG in its name.

On October 30, 1991, Special Administrator Jose Ortañez, acting in his personal capacity and claiming that he owned the remaining 1,011 Philinterlife shares of stocks as his inheritance share in the estate, sold said shares with right to repurchase also in favor of herein petitioner FLAG, represented by its president, herein petitioner Jose C. Lee. After one year, petitioner FLAG consolidated in its name the ownership of the Philinterlife shares of stock when Jose Ortañez failed to repurchase the same.

It appears that several years before (but already during the pendency of the intestate proceedings at the Regional Trial Court of Quezon City), Juliana Ortañez and her two children, Special Administrators Rafael and Jose Ortañez, entered into a memorandum of agreement dated March 4, 1982 for the extrajudicial settlement of the estate of Dr. Juvencio Ortañez, partitioning the estate (including the Philinterlife shares of stock) among themselves. This was the basis of the number of shares separately sold by Juliana Ortañez on April 15, 1989 (1,014 shares) and by Jose Ortañez on October 30, 1991 (1,011 shares) in favor of herein petitioner FLAG.

Herein private respondent Ma. Divina Ortañez-Enderes and her siblings (hereafter referred to as private respondents Enderes et al.) filed a motion for appointment of special administrator of Philinterlife shares of stock. This move was opposed by Special Administrator Jose Ortañez.

The intestate court granted the motion of private respondents Enderes et al. and appointed private respondent Enderes special administratrix of the Philinterlife shares of stock.

Special Administratrix Enderes filed an urgent motion to declare void ab initio the memorandum of agreement dated March 4, 1982. On January 9, 1996, she filed a motion to declare the partial nullity of the extrajudicial settlement of the decedent's estate. These motions were opposed by Special Administrator Jose Ortañez.

Special Administratrix Enderes filed an urgent motion to declare void ab initio the deeds of sale of Philinterlife shares of stock, which move was again opposed by Special Administrator Jose Ortañez.

Jose Ortañez filed an omnibus motion for (1) the approval of the deeds of sale of the Philinterlife shares of stock and (2) the release of Ma. Divina Ortañez-Enderes as special administratrix of the Philinterlife shares of stock on the ground that there were no longer any shares of stock for her to administer.

The intestate court denied the omnibus motion of Special Administrator Jose Ortañez for the approval of the deeds of sale.

ISSUE

Whether the heirs can sell a part of the estate during the pendency of the probate proceedings without approval from the court. (NO)

RULING

An heir can sell his right, interest, or participation in the property under administration under Art. 533 of the Civil Code which provides that possession of hereditary property is deemed transmitted to the heir without interruption from the moment of death of the decedent. However, an heir can only alienate such portion of the estate that may be allotted to him in the division of the estate by the probate or intestate court after final adjudication, that is, after all debtors shall have been paid or the devisees or legatees shall have been given their shares. This means that an heir may only sell his ideal or undivided share in the estate, not any specific property therein. In the present case, Juliana Ortañez and Jose Ortañez sold specific properties of the estate (1,014 and 1,011 shares of stock in Philinterlife) in favor of petitioner FLAG. This they could not lawfully do pending the final adjudication of the estate by the intestate court because of the undue prejudice it would cause the other claimants to the estate, as what happened in the present case.

Juliana Ortañez and Jose Ortañez sold specific properties of the estate, without court approval. It is well-settled that court approval is necessary for the validity of any disposition of the decedent's estate. In the early case of *Godoy vs. Orellano*, we laid down the rule that the sale of the property of the estate by an administrator without the order of the probate court is void and passes no title to the purchaser. And in the case of *Dillena vs. Court of Appeals*, we ruled that:

It must be emphasized that the questioned properties fishpond were included in the inventory of properties of the estate submitted by then Administratrix Fausta Carreon Herrera on November 14, 1974. Private respondent was appointed as administratrix of the estate on March 3, 1976 in lieu of Fausta Carreon Herrera. On November 1, 1978, the questioned deed of sale of the fishponds was executed between petitioner and private respondent without notice and approval of the probate court. Even after the sale, administratrix Aurora Carreon still included the three fishponds as among the real properties of the estate in her inventory submitted on August 13, 1981. In fact, as stated by

the Court of Appeals, petitioner, at the time of the sale of the fishponds in question, knew that the same were part of the estate under administration.

The subject properties therefore are under the jurisdiction of the probate court which according to our settled jurisprudence has the authority to approve any disposition regarding properties under administration. More emphatic is the declaration We made in *Estate of Olave vs. Reyes* where We stated that when the estate of the deceased person is already the subject of a testate or intestate proceeding, the administrator cannot enter into any transaction involving it without prior approval of the probate court.

Only recently, in *Manotok Realty, Inc. vs. Court of Appeals*, We held that the sale of an immovable property belonging to the estate of a decedent, in a special proceedings, needs court approval. . . This pronouncement finds support in the previous case of *Dolores Vda. De Gil vs. Agustin Cancio* wherein We emphasized that it is within the jurisdiction of a probate court to approve the sale of properties of a deceased person by his prospective heirs before final adjudication.

It being settled that property under administration needs the approval of the probate court before it can be disposed of, any unauthorized disposition does not bind the estate and is null and void. As early as 1921 in the case of *Godoy vs. Orellano*, We laid down the rule that a sale by an administrator of property of the deceased, which is not authorized by the probate court is null and void and title does not pass to the purchaser.

There is hardly any doubt that the probate court can declare null and void the disposition of the property under administration, made by private respondent, the same having been effected without authority from said court. It is the probate court that has the power to authorize and/or approve the sale (Section 4 and 7, Rule 89), hence, a fortiori, it is said court that can declare it null and void for as long as the proceedings had not been closed or terminated. To uphold petitioner's contention that the probate court cannot annul the unauthorized sale, would render meaningless the power pertaining to the said court. *Bonga vs. Soler*, 2 SCRA 755.

Our jurisprudence is therefore clear that (1) any disposition of estate property by an administrator or prospective heir pending final adjudication requires court approval and (2) any unauthorized disposition of estate property can be annulled by the probate court, there being no need for a separate action to annul the unauthorized disposition.

The question now is: can the intestate or probate court execute its order nullifying the invalid sale? We see no reason why it cannot. The intestate court has the power to execute its order with regard to the nullity of an unauthorized sale of estate property, otherwise its power to annul the unauthorized or fraudulent disposition of estate property would be meaningless. In other words, enforcement is a necessary adjunct of the intestate or probate court's power to annul unauthorized or fraudulent transactions to prevent the dissipation of estate property before final adjudication. Moreover, in this case, the order of the intestate court nullifying the sale was affirmed by the appellate courts (the Court of Appeals in CA-G.R. SP No. 46342 dated June 23, 1998 and subsequently by the Supreme Court in G.R. No. 135177 dated October 9, 1998). The finality of the decision of the Supreme Court was entered in the book of entry of judgments on February 23, 1999. Considering the finality of the order of the intestate court nullifying the sale, as affirmed by the appellate courts, it was correct for private respondent-Special Administratrix Enderes to thereafter move for a writ of execution and for the intestate court to grant it.

Petitioners Jose Lee, Alma Aggabao and FLAG, however, contend that the probate court could not issue a writ of execution with regard to its order nullifying the sale because said order was merely provisional:

The only authority given by law is for respondent judge to determine provisionally whether said shares are included or excluded in the inventory... In ordering the execution of the orders, respondent judge acted in excess of his jurisdiction and grossly violated settled law and jurisprudence, i.e., that the determination by a probate or intestate court of whether a property is included or excluded in the inventory of the estate being provisional in nature, cannot be the subject of execution.

Petitioners' argument is misplaced. There is no question, based on the facts of this case, that the Philinterlife shares of stock were part of the estate of Dr. Juvencio Ortañez from the very start as in fact these shares were included in the inventory of the properties of the estate submitted by Rafael Ortañez after he and his brother, Jose Ortañez, were appointed special administrators by the intestate court.

The controversy here actually started when, during the pendency of the settlement of the estate of Dr. Ortañez, his wife Juliana Ortañez sold the 1,014 Philinterlife shares of stock in favor petitioner FLAG without the approval of the intestate court. Her son Jose Ortañez later sold the remaining 1,011 Philinterlife shares also in favor of FLAG without the approval of the intestate court.

We are not dealing here with the issue of inclusion or exclusion of properties in the inventory of the estate because there is no question that, from the very start, the Philinterlife shares of stock were owned by the decedent, Dr. Juvencio Ortañez. Rather, we are concerned here with the effect of the sale made by the decedent's heirs, Juliana Ortañez and Jose Ortañez, without the required approval of the intestate court. This being so, the contention of petitioners that the determination of the intestate court was merely provisional and should have been threshed out in a separate proceeding is incorrect.

THE ESTATE OF HILARIO M. RUIZ, EDMOND RUIZ, Executor, petitioner, vs. THE COURT OF APPEALS (Former Special Sixth Division), MARIA PILAR RUIZ-MONTES, MARIA CATHRYN RUIZ, CANDICE ALBERTINE RUIZ, MARIA ANGELINE RUIZ and THE PRESIDING JUDGE OF THE REGIONAL TRIAL COURT OF PASIG, respondents.

G.R. No. 118671, SECOND DIVISION, January 29, 1996, PUNO, J.

Be that as it may, grandchildren are not entitled to provisional support from the funds of the decedent's estate. The law clearly limits the allowance to "widow and children" and does not extend it to the deceased's grandchildren, regardless of their minority or incapacity. It was error, therefore, for the appellate court to sustain the probate court's order granting an allowance to the grandchildren of the testator pending settlement of his estate.

In settlement of estate proceedings, the distribution of the estate properties can only be made: (1) after all the debts, funeral charges, expenses of administration, allowance to the widow, and estate tax have been paid; or (2) before payment of said obligations only if the distributees or any of them gives a bond in a sum fixed by the court conditioned upon the payment of said obligations within such time as the court directs, or when provision is made to meet those obligations.

In the case at bar, the probate court ordered the release of the titles to the Valle Verde property and the Blue Ridge apartments to the private respondents after the lapse of six months from the date of first publication of the notice to creditors. The questioned order speaks of "notice" to creditors, not payment of debts and obligations. Hilario Ruiz allegedly left no debts when he died but the taxes on his estate had not hitherto been paid, much less ascertained. The estate tax is one of those obligations that must be paid before distribution of the estate. If not yet paid, the rule requires that the distributees post a bond or make such provisions as to meet the said tax obligation in proportion to their respective shares in the inheritance. Notably, at the time the order was issued the properties of the estate had not yet been inventoried and appraised.

*Still and all, petitioner cannot correctly claim that the assailed order deprived him of his right to take possession of all the real and personal properties of the estate. **The right of an executor or administrator to the possession and management of the real and personal properties of the deceased is not absolute and can only be exercised "so long as it is necessary for the payment of the debts and expenses of administration.***

FACTS

Hilario M. Ruiz executed a holographic will naming as his heirs his only son, Edmond Ruiz, his adopted daughter, private respondent Maria Pilar Ruiz Montes, and his three granddaughters, private respondents Maria Cathryn, Candice Albertine and Maria Angeline, all children of Edmond Ruiz. The testator bequeathed to his heirs substantial cash, personal and real properties and named Edmond Ruiz executor of his estate.

On April 12, 1988, Hilario Ruiz died. Immediately thereafter, the cash component of his estate was distributed among Edmond Ruiz and private respondents in accordance with the decedent's will. For unbeknown reasons, Edmond, the named executor, did not take any action for the probate of his father's holographic will.

On June 29, 1992, four years after the testator's death, it was private respondent Maria Pilar Ruiz Montes who filed before the Regional Trial Court, Branch 156, Pasig, a petition for the probate and approval of Hilario Ruiz's will and for the issuance of letters testamentary to Edmond Ruiz, Surprisingly, Edmond opposed the petition on the ground that the will was executed under undue influence.

On November 2, 1992, one of the properties of the estate — the house and lot at No. 2 Oliva Street, Valle Verde IV, Pasig which the testator bequeathed to Maria Cathryn, Candice Albertine and Maria Angeline — was leased out by Edmond Ruiz to third persons.

On July 28, 1993, petitioner Testate Estate of Hilario Ruiz, with Edmond Ruiz as executor, filed an "Ex-Parte Motion for Release of Funds." It prayed for the release of the rent payments deposited with the Branch Clerk of Court. Respondent Montes opposed the motion and concurrently filed a "Motion for Release of Funds to Certain Heirs" and "Motion for Issuance of Certificate of Allowance of Probate Will." Montes prayed for the release of the said rent payments to Maria Cathryn, Candice Albertine and Maria Angeline and for the distribution of the testator's properties, specifically the Valle Verde property and the Blue Ridge apartments, in accordance with the provisions of the holographic will.

On August 26, 1993, the probate court denied petitioner's motion for release of funds but granted respondent Montes' motion in view of petitioner's lack of opposition. It thus ordered the release of the rent payments to the decedent's three granddaughters. It further ordered the delivery of the titles to and possession of the properties bequeathed to the three granddaughters and respondent Montes upon the filing of a bond of P50,000.00.

Petitioner moved for reconsideration alleging that he actually filed his opposition to respondent Montes's motion for release of rent payments which opposition the court failed to consider.

Despite petitioner's manifestation, the probate court, on December 22, 1993, ordered the release of the funds to Edmond but only "such amount as may be necessary to cover the expenses of administration and allowances for support" of the testator's three granddaughters subject to collation and deductible from their share in the inheritance. The court, however, held in abeyance the release of the titles to respondent Montes and the three granddaughters until the lapse of six months from the date of first publication of the notice to creditors.

ISSUES

1. Whether the probate court has the authority to grant an allowance from the funds of the estate for the support of the testator's grandchildren. (NO)
2. Whether the probate court should order the release of the titles to certain heirs. (NO)
3. Whether the probate court should grant possession of all properties of the estate to the executor of the will. (NO)

RULING

1.

On the matter of allowance, Section 3 of Rule 83 of the Revised Rules of Court provides:

Sec. 3. Allowance to widow and family. — The widow and minor or incapacitated children of a deceased person, during the settlement of the estate, shall receive therefrom under the direction of the court, such allowance as are provided by law.

Petitioner alleges that this provision only gives the widow and the minor or incapacitated children of the deceased the right to receive allowances for support during the settlement of estate proceedings. He contends that the testator's three granddaughters do not qualify for an allowance because they are not incapacitated and are no longer minors but of legal age, married and gainfully employed. In addition, the provision expressly states "children" of the deceased which excludes the latter's grandchildren.

It is settled that allowances for support under Section 3 of Rule 83 should not be limited to the "minor or incapacitated" children of the deceased. Article 18813 of the Civil Code of the Philippines, the substantive law in force at the time of the testator's death, provides that during the liquidation of the conjugal partnership, the deceased's legitimate spouse and children, regardless of their age, civil status or gainful employment, are entitled to provisional support from the funds of the estate. The law is rooted on the fact that the right and duty to support, especially the right to education, subsist even beyond the age of majority.

Be that as it may, **grandchildren are not entitled to provisional support from the funds of the decedent's estate.** The law clearly limits the allowance to "widow and children" and does not extend it to the deceased's grandchildren, regardless of their minority or incapacity. It was error, therefore, for the appellate court to sustain the probate court's order granting an allowance to the grandchildren of the testator pending settlement of his estate.

2.

Respondent courts also erred when they ordered the release of the titles of the bequeathed properties to private respondents six months after the date of first publication of notice to creditors. An order releasing titles to properties of the estate amounts to an advance distribution of the estate which is allowed only under the following conditions:

Sec. 2. Advance distribution in special proceedings. — Notwithstanding a pending controversy or appeal in proceedings to settle the estate of a decedent, the court may, in its discretion and upon such terms as it may deem proper and just, permit that such part of the estate as may not be affected by the controversy or appeal be distributed among the heirs or legatees, upon compliance with the conditions set forth in Rule 90 of these Rules.

And Rule 90 provides that:

Sec. 1. When order for distribution of residue made. — When the debts, funeral charges, and expenses of administration the allowance to the widow, and inheritance tax if any, chargeable to the estate in accordance with law, have been paid, the court, on the application of the executor or administrator, or of a person interested in the estate, and after hearing upon notice shall assign the residue of the estate to the persons entitled to the same, naming them and the proportions or parts, to which each is entitled, and such persons may demand and recover their respective shares from the executor or administrator, or any other person having the same in his possession. If there is a controversy before the court as to who are the lawful heirs of the deceased person or as to the distributive shares to which each person is entitled under the law, the controversy shall be heard and decided as in ordinary cases.

No distribution shall be allowed until the 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 obligations within such time as the court directs.

In settlement of estate proceedings, the distribution of the estate properties can only be made: (1) after all the debts, funeral charges, expenses of administration, allowance to the widow, and estate tax have been paid; or (2) before payment of said obligations only if the distributees or any of them gives a bond in a sum fixed by the court conditioned upon the payment of said obligations within such time as the court directs, or when provision is made to meet those obligations.

In the case at bar, the probate court ordered the release of the titles to the Valle Verde property and the Blue Ridge apartments to the private respondents after the lapse of six months from the date of first publication of the notice to creditors. The questioned order speaks of "notice" to creditors, not payment of debts and obligations. Hilario Ruiz allegedly left no debts when he died but the taxes on his estate had not hitherto been paid, much less ascertained. The estate tax is one of those obligations that must be paid before distribution of the estate. If not yet paid, the rule requires that the

distributees post a bond or make such provisions as to meet the said tax obligation in proportion to their respective shares in the inheritance. Notably, at the time the order was issued the properties of the estate had not yet been inventoried and appraised.

It was also too early in the day for the probate court to order the release of the titles six months after admitting the will to probate. The probate of a will is conclusive as to its due execution and extrinsic validity and settles only the question of whether the testator, being of sound mind, freely executed it in accordance with the formalities prescribed by law. Questions as to the intrinsic validity and efficacy of the provisions of the will, the legality of any devise or legacy may be raised even after the will has been authenticated.

The intrinsic validity of Hilario's holographic will was controverted by petitioner before the probate court in his Reply to Montes' Opposition to his motion for release of funds and his motion for reconsideration of the August 26, 1993 order of the said court. Therein, petitioner assailed the distributive shares of the devisees and legatees inasmuch as his father's will included the estate of his mother and allegedly impaired his legitime as an intestate heir of his mother. The Rules provide that if there is a controversy as to who are the lawful heirs of the decedent and their distributive shares in his estate, the probate court shall proceed to hear and decide the same as in ordinary cases.

3.

Still and all, petitioner cannot correctly claim that the assailed order deprived him of his right to take possession of all the real and personal properties of the estate. The right of an executor or administrator to the possession and management of the real and personal properties of the deceased is not absolute and can only be exercised "so long as it is necessary for the payment of the debts and expenses of administration," Section 3 of Rule 84 of the Revised Rules of Court explicitly provides:

Sec. 3. Executor or administrator to retain whole estate to pay debts, and to administer estate not willed. — An executor or administrator shall have the right to the possession and management of the real as well as the personal estate of the deceased so long as it is necessary for the payment of the debts and expenses for administration.

When petitioner moved for further release of the funds deposited with the clerk of court, he had been previously granted by the probate court certain amounts for repair and maintenance expenses on the properties of the estate, and payment of the real estate taxes thereon. But petitioner moved again for the release of additional funds for the same reasons he previously cited. It was correct for the probate court to require him to submit an accounting of the necessary expenses for administration before releasing any further money in his favor.

It was relevantly noted by the probate court that petitioner had deposited with it only a portion of the one-year rental income from the Valle Verde property. Petitioner did not deposit its succeeding rents after renewal of the lease. Neither did he render an accounting of such funds.

Petitioner must be reminded that his right of ownership over the properties of his father is merely inchoate as long as the estate has not been fully settled and partitioned. As executor, he is a mere trustee of his father's estate. The funds of the estate in his hands are trust funds and he is held to the duties and responsibilities of a trustee of the highest order. He cannot unilaterally assign to himself and possess all his parents' properties and the fruits thereof without first submitting an inventory

and appraisal of all real and personal properties of the deceased, rendering a true account of his administration, the expenses of administration, the amount of the obligations and estate tax, all of which are subject to a determination by the court as to their veracity, propriety and justness.

EDGAR SAN LUIS, Petitioner, vs. FELICIDAD SAN LUIS, Respondent.

G.R. No. 133743, THIRD DIVISION, February 6, 2007, YNARES-SANTIAGO, J.

*It is incorrect for petitioners to argue that "residence," for purposes of fixing the venue of the settlement of the estate of Felicisimo, is synonymous with "domicile." The rulings in Nuval and Romualdez are inapplicable to the instant case because they involve election cases. **Needless to say, there is a distinction between "residence" for purposes of election laws and "residence" for purposes of fixing the venue of actions.** In election cases, "residence" and "domicile" are treated as synonymous terms, that is, the fixed permanent residence to which when absent, one has the intention of returning. **However, for purposes of fixing venue under the Rules of Court, the "residence" of a person is his personal, actual or physical habitation, or actual residence or place of abode, which may not necessarily be his legal residence or domicile provided he resides therein with continuity and consistency.** Hence, it is possible that a person may have his residence in one place and domicile in another.*

In the instant case, while petitioners established that Felicisimo was domiciled in Sta. Cruz, Laguna, respondent proved that he also maintained a residence in Alabang, Muntinlupa from 1982 up to the time of his death.

FACTS

The instant case involves the settlement of the estate of Felicisimo T. San Luis (Felicisimo). During his lifetime, Felicisimo contracted three marriages. His first marriage was with Virginia Sulit on March 17, 1942 out of which were born six children, namely: Rodolfo, Mila, Edgar, Linda, Emilita and Manuel. On August 11, 1963, Virginia predeceased Felicisimo.

Five years later, on May 1, 1968, Felicisimo married Merry Lee Corwin, with whom he had a son, Tobias. However, on October 15, 1971, Merry Lee, an American citizen, filed a Complaint for Divorce before the Family Court of the First Circuit, State of Hawaii, United States of America (U.S.A.), which issued a Decree Granting Absolute Divorce and Awarding Child Custody on December 14, 1973.

On June 20, 1974, Felicisimo married respondent Felicidad San Luis. He had no children with respondent but lived with her for 18 years from the time of their marriage up to his death on December 18, 1992.

Thereafter, respondent sought the dissolution of their conjugal partnership assets and the settlement of Felicisimo's estate. On December 17, 1993, she filed a petition for letters of administration before the Regional Trial Court of Makati City.

Respondent alleged that she is the widow of Felicisimo; that, at the time of his death, the decedent was residing at 100 San Juanico Street, New Alabang Village, Alabang, Metro Manila; that the decedent's surviving heirs are respondent as legal spouse, his six children by his first marriage, and son by his second marriage; that the decedent left real properties, both conjugal and exclusive, valued at ₱30,304,178.00 more or less; that the decedent does not have any unpaid debts. Respondent

prayed that the conjugal partnership assets be liquidated and that letters of administration be issued to her.

Petitioner Rodolfo San Luis, one of the children of Felicisimo by his first marriage, filed a motion to dismiss on the grounds of improper venue and failure to state a cause of action. Rodolfo claimed that the petition for letters of administration should have been filed in the Province of Laguna because this was Felicisimo's place of residence prior to his death.

ISSUE

Whether the venue was properly laid. (YES)

RULING

Under Section 1, Rule 73 of the Rules of Court, the petition for letters of administration of the estate of Felicisimo should be filed in the Regional Trial Court of the province "in which he resides at the time of his death." In the case of *Garcia Fule v. Court of Appeals*, we laid down the doctrinal rule for determining the residence – as contradistinguished from domicile – of the decedent for purposes of fixing the venue of the settlement of his estate:

The term "resides" connotes *ex vi termini* "actual residence" as distinguished from "legal residence or domicile." This term "resides," like the terms "residing" and "residence," is elastic and should be interpreted in the light of the object or purpose of the statute or rule in which it is employed. In the application of venue statutes and rules – Section 1, Rule 73 of the Revised Rules of Court is of such nature – residence rather than domicile is the significant factor. Even where the statute uses the word "domicile" still it is construed as meaning residence and not domicile in the technical sense. Some cases make a distinction between the terms "residence" and "domicile" but as generally used in statutes fixing venue, the terms are synonymous, and convey the same meaning as the term "inhabitant." In other words, "resides" should be viewed or understood in its popular sense, meaning, the personal, actual or physical habitation of a person, actual residence or place of abode. It signifies physical presence in a place and actual stay thereat. In this popular sense, the term means merely residence, that is, personal residence, not legal residence or domicile. Residence simply requires bodily presence as an inhabitant in a given place, while domicile requires bodily presence in that place and also an intention to make it one's domicile. No particular length of time of residence is required though; however, the residence must be more than temporary.

It is incorrect for petitioners to argue that "residence," for purposes of fixing the venue of the settlement of the estate of Felicisimo, is synonymous with "domicile." The rulings in *Nuval* and *Romualdez* are inapplicable to the instant case because they involve election cases. Needless to say, there is a distinction between "residence" for purposes of election laws and "residence" for purposes of fixing the venue of actions. In election cases, "residence" and "domicile" are treated as synonymous terms, that is, the fixed permanent residence to which when absent, one has the intention of returning. However, for purposes of fixing venue under the Rules of Court, the "residence" of a person is his personal, actual or physical habitation, or actual residence or place of abode, which may not necessarily be his legal residence or domicile provided he resides therein with continuity and consistency. Hence, it is possible that a person may have his residence in one place and domicile in another.

In the instant case, while petitioners established that Felicisimo was domiciled in Sta. Cruz, Laguna, respondent proved that he also maintained a residence in Alabang, Muntinlupa from 1982 up to the time of his death. Respondent submitted in evidence the Deed of Absolute Sale dated January 5, 1983 showing that the deceased purchased the aforesaid property. She also presented billing statements from the Philippine Heart Center and Chinese General Hospital for the period August to December 1992 indicating the address of Felicisimo at "100 San Juanico, Ayala Alabang, Muntinlupa." Respondent also presented proof of membership of the deceased in the Ayala Alabang Village Association and Ayala Country Club, Inc., letter-envelopes from 1988 to 1990 sent by the deceased's children to him at his Alabang address, and the deceased's calling cards stating that his home/city address is at "100 San Juanico, Ayala Alabang Village, Muntinlupa" while his office/provincial address is in "Provincial Capitol, Sta. Cruz, Laguna."

From the foregoing, we find that Felicisimo was a resident of Alabang, Muntinlupa for purposes of fixing the venue of the settlement of his estate. Consequently, the subject petition for letters of administration was validly filed in the Regional Trial Court which has territorial jurisdiction over Alabang, Muntinlupa. The subject petition was filed on December 17, 1993. At that time, Muntinlupa was still a municipality and the branches of the Regional Trial Court of the National Capital Judicial Region which had territorial jurisdiction over Muntinlupa were then seated in Makati City as per Supreme Court Administrative Order No. 3. Thus, the subject petition was validly filed before the Regional Trial Court of Makati City.

ERLINDA PILAPIL, HEIRS OF DONATA ORTIZ BRIONES, namely: ESTELA, ERIBERTO AND VIRGILIO SANTOS, ANA SANTOS CULTURA, ELVIRA SANTOS INOCENTES, ERNESTO MENDOZA, RIZALINA SANTOS, ADOLFO MENDOZA and PACITA MENDOZA, Petitioners, v. HEIRS OF MAXIMINO R. BRIONES, namely: SILVERIO S. BRIONES, PETRA BRIONES, BONIFACIO CABAUG, JR., ANITA TRASMONTE, CIRILITA FORTUNA, CRESENCIA BRIONES, FUGURACION MEDALLE and MERCEDES LAGBAS, Respondents.

G.R. NO. 150175, FIRST DIVISION, March 10, 2006, CHICO-NAZARIO, J.

The proceeding for probate is one in rem and the court acquires jurisdiction over all persons interested, through the publication of the notice prescribed by sec. 630 C. P. C.; and any order that may be entered therein is binding against all of them. A final order of distribution of the estate of a deceased person vests the title to the land of the estate in the distributees.

The only instance that we can think of in which a party interested in a probate proceeding may have a final liquidation set aside is when he is left out by reason of circumstances beyond his control or through mistake or inadvertence not imputable to negligence. Even then, the better practice to secure relief is reopening of the same case by proper motion within the reglementary period, instead of an independent action the effect of which, if successful, would be, as in the instant case, for another court or judge to throw out a decision or order already final and executed and reshuffle properties long ago distributed and disposed of.

In summary, the heirs of Maximino failed to prove by clear and convincing evidence that Donata managed, through fraud, to have the real properties, belonging to the intestate estate of Maximino, registered in her name. In the absence of fraud, no implied trust was established between Donata and the heirs of Maximino under Article 1456 of the New Civil Code. Donata was able to register the real properties in her name, not through fraud or mistake, but pursuant to an Order, dated 2 October 1952, issued by the CFI in Special Proceedings No. 928-R.

FACTS

Petitioners are the heirs of the late Donata Ortiz-Briones (Donata). Respondents, on the other hand, are the heirs of the late Maximino Briones (Maximino).

Maximino was married to Donata but their union did not produce any children. When Maximino died on 1 May 1952, Donata instituted intestate proceedings to settle her husband's estate with the Cebu City Court of First Instance (CFI). On 8 July 1952, the CFI issued Letters of Administration appointing Donata as the administratrix of Maximino's estate. She submitted an Inventory of Maximino's properties.

The CFI awarded ownership of the questioned real properties to Donata. On 27 June 1960, Donata had the said CFI Order recorded in the Primary Entry Book of the Register of Deeds, and by virtue thereof, received new TCTs, covering the said properties, now in her name.

Donata died on 1 November 1977. Erlinda, one of Donata's nieces, instituted with the RTC a petition for the administration of the intestate estate of Donata. Erlinda and her husband, Gregorio, were appointed by the RTC as administrators of Donata's intestate estate.

On 21 January 1985, Silverio Briones (Silverio), a nephew of Maximino, filed a Petition with the RTC for Letters of Administration for the intestate estate of Maximino, which was initially granted by the RTC. The RTC also issued an Order, dated 5 December 1985, allowing Silverio to collect rentals from Maximino's properties. But then, Gregorio filed with the RTC a Motion to Set Aside the Order, dated 5 December 1985, claiming that the said properties were already under his and his wife's administration as part of the intestate estate of Donata. Silverio's Letters of Administration for the intestate estate of Maximino was subsequently set aside by the RTC.

On 3 March 1987, the heirs of Maximino filed a Complaint with the RTC against the heirs of Donata for the partition, annulment, and recovery of possession of real property. They alleged that Donata, as administratrix of the estate of Maximino, through fraud and misrepresentation, in breach of trust, and without the knowledge of the other heirs, succeeded in registering in her name the real properties belonging to the intestate estate of Maximino.

In their Answer to the Complaint, the heirs of Donata raised, as affirmative and special defenses, among others, that even granting *arguendo* that plaintiffs have the right to question the transfer to the name of the late Donata Ortiz Briones the titles of the said lots any action of that effect has definitely prescribed for more than 30 years have already occurred when the titles to said lots were transferred to the name of the late Donata Ortiz Briones

ISSUE

Whether the heirs of Maximino may still assail the intestate proceedings. (NO)

RULING

If we are to assume that Richard Hill and Marvin Hill did not formally intervene, still they would be concluded by the result of the proceedings, not only as to their civil status but as the distribution of the estate as well. As this Court has held in *Manolo v. Paredes*, 47 Phil. 938, "The proceeding for

probate is one in rem (40 Cyc., 1265) and the court acquires jurisdiction over all persons interested, through the publication of the notice prescribed by sec. 630 C. P. C.; and any order that may be entered therein is binding against all of them." (See also in re Estate of Johnson, 39 Phil. 156) "A final order of distribution of the estate of a deceased person vests the title to the land of the estate in the distributees." (Santos vs. Roman Catholic Bishop of Nueva Caceres, 45 Phil. 895) There is no reason why, by analogy, these salutary doctrines should not apply to intestate proceedings.

The only instance that we can think of in which a party interested in a probate proceeding may have a final liquidation set aside is when he is left out by reason of circumstances beyond his control or through mistake or inadvertence not imputable to negligence. Even then, the better practice to secure relief is reopening of the same case by proper motion within the reglementary period, instead of an independent action the effect of which, if successful, would be, as in the instant case, for another court or judge to throw out a decision or order already final and executed and reshuffle properties long ago distributed and disposed of.

In summary, the heirs of Maximino failed to prove by clear and convincing evidence that Donata managed, through fraud, to have the real properties, belonging to the intestate estate of Maximino, registered in her name. In the absence of fraud, no implied trust was established between Donata and the heirs of Maximino under Article 1456 of the New Civil Code. Donata was able to register the real properties in her name, not through fraud or mistake, but pursuant to an Order, dated 2 October 1952, issued by the CFI in Special Proceedings No. 928-R. The CFI Order, presumed to be fairly and regularly issued, declared Donata as the sole, absolute, and exclusive heir of Maximino; hence, making Donata the singular owner of the entire estate of Maximino, including the real properties, and not merely a co-owner with the other heirs of her deceased husband. There being no basis for the Complaint of the heirs of Maximino in Civil Case No. CEB-5794, the same should have been dismissed.

**AMELIA GARCIA-QUIAZON, JENNETH QUIAZON and MARIA JENNIFER QUIAZON, Petitioners,
vs. MA. LOURDES BELEN, for and in behalf of MARIA LOURDES ELISE QUIAZON, Respondent.**

G.R. No. 189121, SECOND DIVISION, July 31, 2013, PEREZ, J.

*The term "resides" connotes ex vi termini "actual residence" as distinguished from "legal residence or domicile." This term "resides," like the terms "residing" and "residence," is elastic and should be interpreted in the light of the object or purpose of the statute or rule in which it is employed. In the application of venue statutes and rules – Section 1, Rule 73 of the Revised Rules of Court is of such nature – residence rather than domicile is the significant factor. Even where the statute uses word "domicile" still it is construed as meaning residence and not domicile in the technical sense. Some cases make a distinction between the terms "residence" and "domicile" but as generally used in statutes fixing venue, the terms are synonymous, and convey the same meaning as the term "inhabitant." **In other words, "resides" should be viewed or understood in its popular sense, meaning, the personal, actual or physical habitation of a person, actual residence or place of abode. It signifies physical presence in a place and actual stay thereat. Venue for ordinary civil actions and that for special proceedings have one and the same meaning. As thus defined, "residence," in the context of venue provisions, means nothing more than a person's actual residence or place of abode, provided he resides therein with continuity and consistency.***

Viewed in light of the foregoing principles, the Court of Appeals cannot be faulted for affirming the ruling of the RTC that the venue for the settlement of the estate of Eliseo was properly laid in Las Piñas City. It is evident from the records that during his lifetime, Eliseo resided at No. 26 Everlasting Road, Phase 5,

Pilar Village, Las Piñas City. For this reason, the venue for the settlement of his estate may be laid in the said city.

FACTS

Eliseo died intestate on 12 December 1992.

On 12 September 1994, Maria Lourdes Elise Quiazon (Elise), represented by her mother, Ma. Lourdes Belen (Lourdes), filed a Petition for Letters of Administration before the Regional Trial Court (RTC) of Las Piñas City. In her Petition, Elise claims that she is the natural child of Eliseo having been conceived and born at the time when her parents were both capacitated to marry each other. Insisting on the legal capacity of Eliseo and Lourdes to marry, Elise impugned the validity of Eliseo's marriage to Amelia by claiming that it was bigamous for having been contracted during the subsistence of the latter's marriage with one Filipito Sandico (Filipito). To prove her filiation to the decedent, Elise, among others, attached to the Petition for Letters of Administration her Certificate of Live Birth signed by Eliseo as her father. In the same petition, it was alleged that Eliseo left real properties worth ₱2,040,000.00 and personal properties worth ₱2,100,000.00. In order to preserve the estate of Eliseo and to prevent the dissipation of its value, Elise sought her appointment as administratrix of her late father's estate.

Claiming that the venue of the petition was improperly laid, Amelia, together with her children, Jenneth and Jennifer, opposed the issuance of the letters of administration by filing an Opposition/Motion to Dismiss. The petitioners asserted that as shown by his Death Certificate, Eliseo was a resident of Capas, Tarlac and not of Las Piñas City, at the time of his death. Pursuant to Section 1, Rule 73 of the Revised Rules of Court, the petition for settlement of decedent's estate should have been filed in Capas, Tarlac and not in Las Piñas City. In addition to their claim of improper venue, the petitioners averred that there are no factual and legal bases for Elise to be appointed administratrix of Eliseo's estate.

In a Decision dated 11 March 2005, the RTC directed the issuance of Letters of Administration to Elise upon posting the necessary bond. The lower court ruled that the venue of the petition was properly laid in Las Piñas City, thereby discrediting the position taken by the petitioners that Eliseo's last residence was in Capas, Tarlac, as hearsay.

ISSUE

Whether the venue was properly laid. (YES)

RULING

Under Section 1, Rule 73 of the Rules of Court, the petition for letters of administration of the estate of a decedent should be filed in the RTC of the province where the decedent resides at the time of his death:

Sec. 1. Where estate of deceased persons settled. – If the decedent is an inhabitant of the Philippines at the time of his death, whether a citizen or an alien, his will shall be proved, or letters of administration granted, and his estate settled, in the Court of First Instance now Regional Trial Court in the province in which he resides at the time of his death, and if he is an inhabitant of a foreign

country, the Court of First Instance now Regional Trial Court of any province in which he had estate. The court first taking cognizance of the settlement of the estate of a decedent, shall exercise jurisdiction to the exclusion of all other courts. The jurisdiction assumed by a court, so far as it depends on the place of residence of the decedent, or of the location of his estate, shall not be contested in a suit or proceeding, except in an appeal from that court, in the original case, or when the want of jurisdiction appears on the record.

The term "resides" connotes *ex vi termini* "actual residence" as distinguished from "legal residence or domicile." This term "resides," like the terms "residing" and "residence," is elastic and should be interpreted in the light of the object or purpose of the statute or rule in which it is employed. In the application of venue statutes and rules – Section 1, Rule 73 of the Revised Rules of Court is of such nature – residence rather than domicile is the significant factor. Even where the statute uses word "domicile" still it is construed as meaning residence and not domicile in the technical sense. Some cases make a distinction between the terms "residence" and "domicile" but as generally used in statutes fixing venue, the terms are synonymous, and convey the same meaning as the term "inhabitant." In other words, "resides" should be viewed or understood in its popular sense, meaning, the personal, actual or physical habitation of a person, actual residence or place of abode. It signifies physical presence in a place and actual stay thereat. Venue for ordinary civil actions and that for special proceedings have one and the same meaning. As thus defined, "residence," in the context of venue provisions, means nothing more than a person's actual residence or place of abode, provided he resides therein with continuity and consistency.

Viewed in light of the foregoing principles, the Court of Appeals cannot be faulted for affirming the ruling of the RTC that the venue for the settlement of the estate of Eliseo was properly laid in Las Piñas City. It is evident from the records that during his lifetime, Eliseo resided at No. 26 Everlasting Road, Phase 5, Pilar Village, Las Piñas City. For this reason, the venue for the settlement of his estate may be laid in the said city.

In opposing the issuance of letters of administration, the petitioners harp on the entry in Eliseo's Death Certificate that he is a resident of Capas, Tarlac where they insist his estate should be settled. While the recitals in death certificates can be considered proofs of a decedent's residence at the time of his death, the contents thereof, however, is not binding on the courts. Both the RTC and the Court of Appeals found that Eliseo had been living with Lourdes, deporting themselves as husband and wife, from 1972 up to the time of his death in 1995. This finding is consistent with the fact that in 1985, Eliseo filed an action for judicial partition of properties against Amelia before the RTC of Quezon City, Branch 106, on the ground that their marriage is void for being bigamous. That Eliseo went to the extent of taking his marital feud with Amelia before the courts of law renders untenable petitioners' position that Eliseo spent the final days of his life in Tarlac with Amelia and her children. It disproves rather than supports petitioners' submission that the lower courts' findings arose from an erroneous appreciation of the evidence on record. Factual findings of the trial court, when affirmed by the appellate court, must be held to be conclusive and binding upon this Court.

CASTORIO ALVARICO, Petitioner, vs. AMELITA L. SOLA, Respondent.

G.R. No. 138953, SECOND DIVISION, June 6, 2002, QUISUMBING, J.

In other words, a private individual may not bring an action for reversion or any action which would have the effect of canceling a free patent and the corresponding certificate of title issued

on the basis thereof, such that the land covered thereby will again form part of the public domain. Only the Solicitor General or the officer acting in his stead may do so.

Since Amelita Solas title originated from a grant by the government, its cancellation is a matter between the grantor and the grantee. Clearly then, petitioner has no standing at all to question the validity of Amelitas title. It follows that he cannot recover the property because, to begin with, he has not shown that he is the rightful owner thereof.

FACTS

Petitioner Castorio Alvarico is the natural father of respondent Amelita Sola while Fermina Lopez is petitioner's aunt, and also Amelitas adoptive mother.

On June 17, 1982, the Bureau of Lands approved and granted the Miscellaneous Sales Application (MSA) of Fermina over Lot 5, SGS-3451, with an area of 152 sq. m. at the Waterfront, Cebu City.

On May 28, 1983, Fermina executed a Deed of Self-Adjudication and Transfer of Rights over Lot 5 in favor of Amelita, who agreed to assume all the obligations, duties, and conditions imposed upon Fermina under MSA Application No. V-81066. The document of transfer was filed with the Bureau of Lands.

Amelita assumed payment of the lot to the Bureau of Lands. She paid a total amount of P282,900.

On April 7, 1989, the Bureau of Lands issued an order approving the transfer of rights and granting the amendment of the application from Fermina to Amelita. On May 2, 1989, Original Certificate of Title (OCT) No. 3439 was issued in favor of Amelita.

On June 24, 1993, herein petitioner filed Civil Case No. CEB-14191 for reconveyance against Amelita. He claimed that on January 4, 1984, Fermina donated the land to him and immediately thereafter, he took possession of the same. He averred that the donation to him had the effect of withdrawing the earlier transfer to Amelita.

For her part, Amelita maintained that the donation to petitioner is void because Fermina was no longer the owner of the property when it was allegedly donated to petitioner, the property having been transferred earlier to her. She added that the donation was void because of lack of approval from the Bureau of Lands, and that she had validly acquired the land as Ferminas rightful heir. She also denied that she is a trustee of the land for petitioner.

ISSUE

Whether the Petitioner has a legal standing to assail the validity of Amelita's title. (NO)

RULING

Even assuming that respondent Amelita Sola acquired title to the disputed property in bad faith, only the State can institute reversion proceedings under Sec. 101 of the Public Land Act. Thus:

Sec. 101. All actions for reversion to the Government of lands of the public domain or improvements thereon shall be instituted by the Solicitor General or the officer acting in his stead, in the proper courts, in the name of the Republic of the Philippines.

In other words, a private individual may not bring an action for reversion or any action which would have the effect of canceling a free patent and the corresponding certificate of title issued on the basis thereof, such that the land covered thereby will again form part of the public domain. Only the Solicitor General or the officer acting in his stead may do so. Since Amelita Solas title originated from a grant by the government, its cancellation is a matter between the grantor and the grantee. Clearly then, petitioner has no standing at all to question the validity of Amelita's title. It follows that he cannot recover the property because, to begin with, he has not shown that he is the rightful owner thereof.

Anent petitioner's contention that it was the intention of Fermina for Amelita to hold the property in trust for him, we held that if this was really the intention of Fermina, then this should have been clearly stated in the Deed of Self-Adjudication executed in 1983, in the Deed of Donation executed in 1984, or in a subsequent instrument. Absent any persuasive proof of that intention in any written instrument, we are not prepared to accept petitioner's bare allegation concerning the donor's state of mind.

MELCHOR CARO, petitioner, vs. SUSANA SUCALDITO, respondent.

G.R. No. 157536, SECOND DIVISION, May 16, 2005, CALLEJO, SR., J.

*The Court notes that the petitioner's complaint before the RTC prays for the annulment of the free patent issued in the respondent's favor. **Considering that the ultimate relief sought is for the respondent to "return" the subject property to him, it is in reality an action for reconveyance.** In *De Guzman v. Court of Appeals*, the Court held that "[t]he essence of an action for reconveyance is that the decree of registration is respected as incontrovertible but what is sought instead is the transfer of the property which has been wrongfully or erroneously registered in another person's name, to its rightful owner or to one with a better right." **Indeed, in an action for reconveyance filed by a private individual, the property does not go back to the State.***

Clearly then, a suit filed by one who is not a party-in-interest must be dismissed. In this case, the petitioner, not being the owner of the disputed property but a mere applicant for a free patent, cannot thus be considered as a party-in-interest with personality to file an action for reconveyance.

FACTS

Gregorio Caro bought a parcel of land known as Assessor's Lot No. 160 from Ruperto Gepilano as evidenced by a Deed of Sale dated October 21, 1953. Thereafter, Gregorio Caro sold a portion of the said lot to his son Melchor Caro, consisting of 70,124 square meters, and now identified as Lot No. 4512 of the Cadastral survey of Nueva Valencia. Father and son executed a Deed of Definite Sale dated January 31, 1973 covering Lot No. 4512.

On August 1, 1974, Melchor Caro applied for a free patent before the Bureau of Lands covering the said area of the property which he bought from his father. The application was, however, opposed by Deogracias de la Cruz. On November 6, 1980, the Regional Director rendered a Decision canceling the said application.

On August 29, 1982, Susana R. Sucaldito, as the buyer of Lot No. 4512, filed an Application for a Free Patent covering the said lot, and was issued Free Patent. Consequently, the Register of Deeds of Iloilo

City issued Original Certificate of Title (OCT) No. F-27162 in her favor. Sucaldito then filed a Petition for Writ of Possession before the RTC of Iloilo City, which was granted in an Order dated May 7, 1984.

Thereafter, on February 20, 1984, Caro filed a Complaint against Sucaldito for "Annulment of Title, Decision, Free Patent and/or Recovery of Ownership and/or Possession with Damages" before the RTC of Iloilo City. He later filed an amended complaint, alleging that he was the owner of the subject lot, and had been in possession of the same "since 1953 and/or even prior thereto in the concept of owner, adversely, openly, continuously and notoriously." He further alleged that the said lot had been declared for tax purposes in his name and that of his predecessors-in-interest, and that the corresponding land taxes had been paid therefor. He claimed that Assessor's Lot No. 160 had actually been divided into two lots, namely, Lot No. 4511 and Lot No. 4512; Sucaldito had actually been claiming Lot No. 989 (Lot No. 4512), which was located two kilometers away. He lamented that despite the overwhelming evidence proving his ownership and possession of the said property, the Bureau of Lands did not award it to him.

Caro further alleged that since the issuance of the free patent over the subject lot in favor of Sucaldito was wrongful and fraudulent, she had no right whatsoever over the subject lot. Hence, as a "trustee of a constructive trust," she was obliged to return the same to him as the lawful owner.

Citing the case of *Maximo v. Court of First Instance of Capiz, Br. III*, the trial court ruled that Caro had no personality to file the action for the annulment of the free patent issued in favor of Sucaldito, which could only be brought by the Solicitor General. It held that "an applicant for a free patent who is not the owner of a parcel of land cannot bring an action in court to recover the land, for the court may not usurp the authority of the Director of Lands and the Secretary of Agriculture to dispose lands of the public domain through administrative proceedings under the Public Land Act," or Commonwealth Act No. 141, as amended. The trial court further stressed that the remedy of a rival-applicant for a free patent over the same land was through administrative channels, not judicial, because even if the oppositor succeeds in annulling the title of the applicant, the former does not thereby become the owner of the land in dispute.

ISSUE

Whether the petitioner has personality to file a suit for reconveyance. (NO)

RULING

The Court agrees with the ruling of the RTC and the CA, and holds that the petitioner has no personality to file a suit for reconveyance of the subject property.

The Court notes that the petitioner's complaint before the RTC prays for the annulment of the free patent issued in the respondent's favor. Considering that the ultimate relief sought is for the respondent to "return" the subject property to him, it is in reality an action for reconveyance. In *De Guzman v. Court of Appeals*, the Court held that "[t]he essence of an action for reconveyance is that the decree of registration is respected as incontrovertible but what is sought instead is the transfer of the property which has been wrongfully or erroneously registered in another person's name, to its rightful owner or to one with a better right." Indeed, in an action for reconveyance filed by a private individual, the property does not go back to the State.

Reversion, on the other hand, is an action where the ultimate relief sought is to revert the land back to the government under the Regalian doctrine. Considering that the land subject of the action originated from a grant by the government, its cancellation is a matter between the grantor and the grantee.

Under Section 2, Rule 3 of the Rules of Court, every action must be prosecuted or defended in the name of the real party-in-interest, or one "who stands to be benefited or injured by the judgment in the suit." Corollarily, legal standing has been defined as a personal and substantial interest in the case, such that the party has sustained or will sustain direct injury as a result of the challenged act. Interest means a material interest in issue that is affected by the questioned act or instrument, as distinguished from a mere incidental interest in the question involved.

Clearly then, a suit filed by one who is not a party-in-interest must be dismissed. In this case, the petitioner, not being the owner of the disputed property but a mere applicant for a free patent, cannot thus be considered as a party-in-interest with personality to file an action for reconveyance. The Court, citing several of its holdings, expounded on this doctrine in *Tankiko v. Cezar* as follows:

... Thus, in *Lucas v. Durian* [102 Phil. 1157 (1957)], the Court affirmed the dismissal of a Complaint filed by a party who alleged that the patent was obtained by fraudulent means and, consequently, prayed for the annulment of said patent and the cancellation of a certificate of title. The Court declared that the proper party to bring the action was the government, to which the property would revert. Likewise affirming the dismissal of a Complaint for failure to state a cause of action, the Court in *Nebrada v. Heirs of Alivio* [104 Phil. 126 (1958)] noted that the plaintiff, being a mere homestead applicant, was not the real party-in-interest to institute an action for reconveyance.

Verily, the Court stressed that " ... [i]f the suit is not brought in the name of or against the real party-in-interest, a motion to dismiss may be filed on the ground that the complaint states no cause of action [*Travel Wide v. CA*, 199 SCRA 205, 209 (1991), per Cruz, J. See also *Suguister v. Tamayo*, 176 SCRA 579, August 21, 1989]. In fact, a final judgment may be invalidated if the real parties-in-interest are not included. This was underscored by the Court in *Arcelona v. CA* [280 SCRA 20, October 2, 1997], in which a final judgment was nullified because indispensable parties were not impleaded.

In the present dispute, only the State can file a suit for reconveyance of a public land. Therefore, not being the owners of the land but mere applicants for sales patents thereon, respondents have no personality to file the suit. Neither will they be directly affected by the judgment in such suit.

In *De la Peña v. Court of Appeals*, the Court, in dismissing the petitioner's imputation of fraud in securing a free patent and title over a parcel of land, declared that reconveyance is a remedy granted only to the owner of the property alleged to be erroneously titled in another's name. The Court further expounded:

Persons who have not obtained title to public lands could not question the titles legally issued by the State [*Reyes v. Rodriguez*, 62 Phil. 771, 776 (1936)]. In such cases, the real party-in-interest is the Republic of the Philippines to whom the property would revert if it is ever established, after appropriate proceedings, that the free patent issued to the grantee is indeed vulnerable to annulment on the ground that the grantee failed to comply with the conditions imposed by the law. Not being an applicant, much less a grantee, petitioner cannot ask for reconveyance.

In VSC Commercial Enterprises, Inc. v. Court of Appeals, where the private respondents therein were mere lessees of the property in question, the Court ruled that as mere lessees, they had "no present substantial and personal interest with respect to issues involving ownership of the disputed property." The Court went on to declare:

... The only interest they have, in the event the petitioner's title over the subject property is cancelled and ownership reverts to the State, is the hope that they become qualified buyers of the subject parcel of land. Undoubtedly, such interest is a mere expectancy. Even the private respondents themselves claim that in case of reversion of ownership to the State, they only have "pre-emptive rights" to buy the subject property; that their real interest over the said property is contingent upon the government's consideration of their application as buyers of the same. It is settled that a suit filed by a person who is not a party-in-interest must be dismissed.

In fact, Section 101 of Commonwealth Act No. 141 states –

Section 101. All actions for the reversion to the government of lands of the public domain or improvements thereon shall be instituted by the Solicitor General or the officer acting in his stead, in the proper courts, in the name of the Commonwealth [now Republic] of the Philippines.

This provision was applied and discussed in *Sumail v. Judge of the Court of First Instance of Cotabato, et al.*, a case on all fours with the present one, as follows:

Under Section 101 of the above reproduced, only the Solicitor General or the officer acting in his stead may bring the action for reversion. Consequently, Sumail may not bring such action or any action which would have the effect of cancelling a free patent and the corresponding certificate of title issued on the basis thereof, with the result that the land covered thereby will again form part of the public domain. Furthermore, there is another reason for withholding legal personality from Sumail. He does not claim the land to be his private property. In fact, by his application for a free patent, he had formally acknowledged and recognized the land to be a part of the public domain; this, aside from the declaration made by the cadastral court that lot 3633 was public land. Consequently, even if the parcel were declared reverted to the public domain, Sumail does not automatically become the owner thereof. He is a mere public land applicant like others who may apply for the same.

To reiterate, the petitioner is not the proper party to file an action for reconveyance that would result in the reversion of the land to the government. The petitioner has no personality to "recover" the property as he has not shown that he is the rightful owner thereof.

PILAR Y. GOYENA, Petitioner, v. AMPARO LEDESMA-GUSTILO, respondent.
G.R. No. 147148, THIRD DIVISION, January 13, 2003, CARPIO MORALES, J.

*As a rule, when it appears that the judge has exercised care and diligence in selecting the guardian, and has given due consideration to the reasons for and against his action which are urged by the interested parties, **his action should not be disturbed unless it is made very clear that he has fallen into grievous error.***

In the case at bar, petitioner has not shown that the lower courts committed any error.

Petitioner cannot rely on Garchitorena v. Sotelo with respect to the existence of antagonistic interests between respondent and Julieta. In that case, the interest of Perfecto Gabriel as creditor and mortgagee of the minor-wards' properties (a house and lot) is antagonistic to the interest of the wards as mortgagors, hence, Gabriel's appointment as guardian was erroneous. For while he sought to foreclose the wards' properties as creditor and mortgagee on one hand, he had to, on the other hand, endeavor to retain them for the wards as their guardian. Added to that was Gabriel's appointment as guardian without him informing the guardianship court that he held a mortgage on the properties. Furthermore, he deliberately misinformed the said court that the first mortgagee was the Santa Clara Monastery when it was him. None of the said circumstances obtain in the present case.

FACTS

On July 8, 1996, respondent filed at the RTC of Makati a "PETITION FOR LETTERS OF GUARDIANSHIP" over the person and properties of her sister Julieta, the pertinent allegations of which read:

2. That for the most part during the year 1995 and 1996, Julieta Ledesma has been a patient in the Makati Medical Center where she is under medical attention for old age, general debility, and a "mini"-stroke which she suffered in the United States in early 1995;
3. That Julieta Ledesma is confined to her bed and can not get up from bed without outside assistance, and she has to be moved by wheel chair;
4. That Julieta Ledesma owns real estate and personal properties in Metro Manila and in Western Visayas, with an aggregate estimated assessed and par value of P1 Million Pesos[;]
5. That Julieta Ledesma is not in a position to care for herself, and that she needs the assistance of a guardian to manage her interests in on-going corporate and agricultural enterprises;
6. That the nearest of kin of Julieta Ledesma are her sisters of the full blood, namely, petitioner Amparo Ledesma Gustilo, Teresa Ledesma (aka. Sister Cristina of the Religious of the Assumption, and Loreto Ledesma Mapa, all of whom have given their consent to the filing of this petition as shown by their signatures at the bottom of this petition[;]
7. That petitioner has extensive experience in business management of commercial, agricultural and corporate enterprises, many of which are in the same entities where Julieta Ledesma holds an interest, and that she is in a position to monitor and supervise the delivery of vitally needed medical services to Julieta Ledesma whether in the Metro Manila area, or elsewhere.

Petitioner filed an Opposition to the petition for letters of guardianship. She later filed an Amended Opposition on August 15, 1996 reading in part:

2.03 The petition lacked factual and legal basis in that Julieta Ledesma is competent and sane and there is absolutely no need to appoint a guardian to take charge of her person/property. She is very able to take charge of her affairs, and this is clearly evident from her letters to the petitioner. Copies of her recent letters are herewith attached as Annexes "A" to "E."

xxx - xxx - xxx

2.05 Petitioner is not fit to be appointed as the guardian of Julieta Ledesma since their interests are antagonistic (Sudler v. Sudler, 121 Md. 46. 49 L.R.A. 800, as cited in vol. V-B Francisco Revised Rules of Court, Rule 93, Section 4, p. 414).

xxx - xxx - xxx

3.01 The above captioned petition should be dismissed for utter lack of legal and/or factual basis.

By Decision of October 4, 1996, the trial court found Julieta "incompetent and incapable of taking care of herself and her property" and appointed respondent as guardian of her person and properties, ratiocinating as follows:

A perusal of the records shows that petitioner (Amparo) is 72 years of age, the youngest sister of Julieta. Admittedly, the Oppositor Pilar Goyena, 90 years of age has been the close friend and companion of Julieta for 61 years. Julieta was with Oppositor when she suffered her first stroke in Makati in 1991 which was the reason why Julieta had to give up the management of their hacienda in Bacolod. It is also not disputed that Julieta was with Pilar when she had her second stroke in the U.S. In short, the special bond of friendship existing between Julieta and the Oppositor cannot be denied. Now that Julieta is unable to manage her personal life and business concerns due to senility and "vascular dementia," the oppositor wants to be appointed her guardian or else Bart Lacson, Fely Montelibano and Jose T. Revilla.

It is interesting to note that the oppositor has interposed her objection to the appointment of Amparo as guardian because she thinks that the latter dislikes her. She further added that there were a number of letters allegedly written by Julieta to Amparo which showed Julieta's sentiments regarding certain matters. Nevertheless, not one of the nearest of kin of Julieta opposed the petition. As a matter of fact, her sisters signified their conformity thereto. Thus, Ms. Goyena's mere conjecture that Amparo dislikes her is no sufficient reason why the petition should be denied. Neither does it make Amparo unsuitable and unfit to perform the duties of a guardian. On the contrary, it is Ms. Goyena who could be considered as to have an adverse interest to that of Julieta if it is true that 50% of Julieta's holdings at the Makati Medical Center has been transferred to her as alleged in Exhibit 1 and Exhibit A.

By and large, the qualification of Amparo to act as guardian over the person and properties of Julieta has been duly established. As a sister, she can best take care of Julieta's concerns and well being. Now that Julieta is in the twilight of her life, her family should be given the opportunity to show their love and affection for her without however denying Pilar Goyena access to her considering the special bond of friendship between the two. Needless to say, the oppositor at 90 years of age could not be said to be physically fit to attend to all the needs of Julieta.

ISSUE

Whether the RTC erred in appointing the Respondent as guardian. (NO)

RULING

In the selection of a guardian, a large discretion must be allowed the judge who deals directly with the parties. As this Court said:

As a rule, when it appears that the judge has exercised care and diligence in selecting the guardian, and has given due consideration to the reasons for and against his action which are urged by the interested parties, his action should not be disturbed unless it is made very clear that he has fallen into grievous error.

In the case at bar, petitioner has not shown that the lower courts committed any error.

Petitioner cannot rely on *Garchitorena v. Sotelo* with respect to the existence of antagonistic interests between respondent and Julieta. In that case, the interest of Perfecto Gabriel as creditor and mortgagee of the minor-wards' properties (a house and lot) is antagonistic to the interest of the wards as mortgagors, hence, Gabriel's appointment as guardian was erroneous. For while he sought to foreclose the wards' properties as creditor and mortgagee on one hand, he had to, on the other hand, endeavor to retain them for the wards as their guardian. Added to that was Gabriel's appointment as guardian without him informing the guardianship court that he held a mortgage on the properties. Furthermore, he deliberately misinformed the said court that the first mortgagee was the Santa Clara Monastery when it was him. None of the said circumstances obtain in the present case.

Petitioner can neither rely on certain letters of Julieta to establish her claim that there existed a rift between the two which amounts to antagonistic interests. The first letter sent by Julieta to respondent which reads:

x x x So if you (appellee) do not agree with me (Julieta) my decision is right to let us divide as soon as possible, so we will have capital each of us to work, and keep the Hda, for [sic] generation to generation.

xxx - xxx - xxx

For the last time I will repeat even if I have to kneel before you and Carlos I have no interest anymore in any future investment due to my age and being single and alone in life. I would like to be able to enjoy whatever monies that correspond to me. I would like to have enough money as a reserve for any future need that I might have like hospitalization, travel, buying whatever I like, etc. etc. (Letter to appellee; Exhibit "2")

merely shows Julieta's lack of interest in future investments, not necessarily a business disagreement, and certainly not per se amounting to antagonistic interests between her and respondent to render the latter unsuitable for appointment as guardian.

The second letter which reads:

My mind is still clear to tell you about Fortuna when I had my stroke I was confined in MMC for one month. If I am not mistaken you did not visit me. One day Carlos came to visit me and asked me this question. Do you think you will be able to continue managing the Hda? I answered him I don't know it all depends on my sickness. Carlos said who do you want to take your place? I said I want Cheling Zabaljauregui. Then Carlos said O.K. He asked Pilar can you contact Cheling? Tell him to call me or see me. The nephew of Cheling was a resident in MMC through him Pilar was able to contact Cheling and gave him Carlo's message. So I thought all the time it was agreeable. I left for USA for treatment. To my surprise when I came back from USA it was not Cheling, but you (appellee) took over the

management as you requested. Carlos did not tell me but decided in your favor. . . . (Letter to appellee; Exhibit "3"; emphasis supplied)

shows that: 1) respondent did not visit Julieta when she was confined at the Makati Medical Center on account of her stroke, 2) there was disagreement as to who should run the hacienda, with Julieta favoring a certain Cheling Zabaljaurigue, and 3) respondent took over management of the hacienda with their brother Carlos (Ledesma) supporting her. No inference as to the existence of antagonistic interests between respondent and Julieta can thus be made.

The third letter which reads:

. . . Carlos went to the house before I left and asked from me twenty thousand (20,000) shares of San Carlos Milling which you gave because I wanted to sell all. . . . If he does not sell or cannot sell, just arrange to send them back to me. Amparing since I came here to America and Vancouver my requests have been ignored. Everyone is suspecting that Pilar is the one ordering or commanding me that is not true. What I asked from Julio is just to report to me or send me reports so I can follow up from here. But up to now he has ignored my requests x x x . (Letter to appellee Exhibit "4") has no relevance to the issue of whether or not the lower courts erred in finding that respondent is not unsuitable for appointment as guardian. The letter in fact discloses, that it was Julieta's nephew Julio Ledesma, and not respondent, who ignored the "request."

As for the fourth letter which reads:

I want all of you to know that whatever decision now and in the future I want to do nobody can stop me especially regarding my properties, money, etc. I will be the only one to dispose of it because it is mine. You said to Raul you are going to court, you are most welcome x x x . (Letter to Connie, Exhibit "5")

It has also no relevance to the issue in the case at bar. The letter is not even addressed to respondent but to a certain Connie (a sister-in-law of Julieta).

Petitioner's assertion that respondent's intent in instituting the guardianship proceedings is to take control of Julieta's properties and use them for her own benefit is purely speculative and finds no support from the records.

The claim that respondent is hostile to the best interests of Julieta also lacks merit. That respondent removed Julieta from the Makati Medical Center where she was confined after she suffered a stroke does not necessarily show her hostility towards Julieta, given the observation by the trial court, cited in the present petition, that Julieta was still placed under the care of doctors after she checked out and was returned to the hospital when she suffered another stroke.

Finally, this Court notes two undisputed facts in the case at bar, to wit: 1) Petitioner opposed the petition for the appointment of respondent as guardian before the trial court because, among other reasons, she felt she was disliked by respondent, a ground which does not render respondent unsuitable for appointment as guardian, and 2) Petitioner concealed the deteriorating state of mind of Julieta before the trial court, which is reflective of a lack of good faith.

The Incompetent, CARMEN CAÑIZA, represented by her legal guardian, AMPARO EVANGELISTA, Petitioner, v. COURT OF APPEALS (SPECIAL FIRST DIVISION), PEDRO ESTRADA and his wife, LEONORA ESTRADA, Respondents.

G.R. No. 110427, THIRD DIVISION, February 24, 1997, NARVASA, C.J.

*Amparo Evangelista was appointed by a competent court the general guardian of both the person and the estate of her aunt, Carmen Cañiza. Her Letters of Guardianship dated December 19, 1989 clearly installed her as the "guardian over the person and properties of the incompetent CARMEN CAÑIZA with full authority to take possession of the property of said incompetent in any province or provinces in which it may be situated and to perform all other acts necessary for the management of her properties . . ." By that appointment, it became Evangelista's duty to care for her aunt's person, to attend to her physical and spiritual needs, to assure her well-being, with right to custody of her person in preference to relatives and friends. **It also became her right and duty to get possession of, and exercise control over, Cañiza's property, both real and personal, it being recognized principle that the ward has no right to possession or control of his property during her incompetency. That right to manage the ward's estate carries with it the right to take possession thereof and recover it from anyone who retains it, and bring and defend such actions as may be needful for this purpose.***

Actually, in bringing the action of desahucio, Evangelista was merely discharging the duty to attend to "the comfortable and suitable maintenance of the ward" explicitly imposed on her by Section 4, Rule 96 of the Rules of Court.

FACTS

On November 20, 1989, being then ninety-four (94) years of age, Carmen Cañiza was declared incompetent by judgment of the Regional Trial Court of Quezon City in a guardianship proceeding instituted by her niece, Amparo A. Evangelista. She was so adjudged because of her advanced age and physical infirmities which included cataracts in both eyes and senile dementia. Amparo A. Evangelista was appointed legal guardian of her person and estate.

Cañiza was the owner of a house and lot at No. 61 Tobias St., Quezon City. On September 17, 1990, her guardian Amparo Evangelista commenced a suit in the Metropolitan Trial Court (MetroTC) of Quezon City (Branch 35) to eject the spouses Pedro and Leonora Estrada from said premises.

The amended Complaint pertinently alleged that plaintiff Cañiza was the absolute owner of the property in question, covered by TCT No. 27147; that out of kindness, she had allowed the Estrada Spouses, their children, grandchildren and sons-in-law to temporarily reside in her house, rent-free; that Cañiza already had urgent need of the house on account of her advanced age and failing health, "so funds could be raised to meet her expenses for support, maintenance and medical treatment.;" that through her guardian, Cañiza had asked the Estradas verbally and in writing to vacate the house but they had refused to do so; and that "by the defendants' act of unlawfully depriving plaintiff of the possession of the house in question, they . . . (were) enriching themselves at the expense of the incompetent, because, while they . . . (were) saving money by not paying any rent for the house, the incompetent . . . (was) losing much money as her house could not be rented by others." Also alleged was that the complaint was "filed within one (1) year from the date of first letter of demand dated February 3, 1990."

In their Answer with Counterclaim, the defendants declared that they had been living in Cañiza's house since the 1960's; that in consideration of their faithful service they had been considered by Cañiza as her own family, and the latter had in fact executed a holographic will on September 4, 1988 by which she "bequeathed" to the Estradas the house and lot in question.

Judgment was rendered by the MetroTC on April 13, 1992 in Cañiza's favor, the Estradas being ordered to vacate the premises and pay Cañiza P5,000.00 by way of attorney's fees.

But on appeal, the decision was reversed by the Quezon City Regional Trial Court, Branch 96. By judgment rendered on October 21, 1992, the RTC held that the "action by which the issue of defendants' possession should be resolved is accion publiciana, the obtaining factual and legal situation . . . demanding adjudication by such plenary action for recovery of possession cognizable in the first instance by the Regional Trial Court."

Cañiza sought to have the Court of Appeals reverse the decision of October 21, 1992, but failed in that attempt. In a decision promulgated on June 2, 1993, the Appellate Court affirmed the RTC's judgment in toto.

Through her guardian, Cañiza came to this Court praying for reversal of the Appellate Court's judgment. She contends in the main that the latter erred in (a) holding that she should have pursued an accion publiciana, and not an accion interdictal; and in (b) giving much weight to "a xerox copy of an alleged holographic will, which is irrelevant to this case."

In the responsive pleading filed by them on this Court's requirement, the Estradas insist that the case against them was really not one of unlawful detainer; they argue that since possession of the house had not been obtained by them by any "contract, express or implied," as contemplated by Section 1, Rule 70 of the Rules of Court, their occupancy of the premises could not be deemed one "terminable upon mere demand (and hence never became unlawful) within the context of the law." Neither could the suit against them be deemed one of forcible entry, they add, because they had been occupying the property with the prior consent of the "real owner," Carmen Cañiza, which "occupancy can even ripen into full ownership once the holographic will of petitioner Carmen Cañiza is admitted to probate." They conclude, on those postulates, that it is beyond the power of Cañiza's legal guardian to oust them from the disputed premises.

ISSUE

Whether Evangelista, as a guardian, has the right to obtain possession and manage the properties of her ward. (YES)

RULING

The Estradas insist that the devise of the house to them by Cañiza clearly denotes her intention that they remain in possession thereof, and legally incapacitated her judicial guardian, Amparo Evangelista, from evicting them therefrom, since their ouster would be inconsistent with the ward's will.

A will is essentially ambulatory; at any time prior to the testator's death, it may be changed or revoked; and until admitted to probate, it has no effect whatever and no right can be claimed

thereunder, the law being quite explicit: "No will shall pass either real or personal property unless it is proved and allowed in accordance with the Rules of Court" (ART. 838, id.). An owner's intention to confer title in the future to persons possessing property by his tolerance, is not inconsistent with the former's taking back possession in the meantime for any reason deemed sufficient. And that in this case there was sufficient cause for the owner's resumption of possession is apparent: she needed to generate income from the house on account of the physical infirmities afflicting her, arising from her extreme age.

Amparo Evangelista was appointed by a competent court the general guardian of both the person and the estate of her aunt, Carmen Cañiza. Her Letters of Guardianship dated December 19, 1989 clearly installed her as the "guardian over the person and properties of the incompetent CARMEN CAÑIZA with full authority to take possession of the property of said incompetent in any province or provinces in which it may be situated and to perform all other acts necessary for the management of her properties . . ." By that appointment, it became Evangelista's duty to care for her aunt's person, to attend to her physical and spiritual needs, to assure her well-being, with right to custody of her person in preference to relatives and friends. It also became her right and duty to get possession of, and exercise control over, Cañiza's property, both real and personal, it being recognized principle that the ward has no right to possession or control of his property during her incompetency. That right to manage the ward's estate carries with it the right to take possession thereof and recover it from anyone who retains it, and bring and defend such actions as may be needful for this purpose.

Actually, in bringing the action of desahucio, Evangelista was merely discharging the duty to attend to "the comfortable and suitable maintenance of the ward" explicitly imposed on her by Section 4, Rule 96 of the Rules of Court, viz.:

"SEC. 4. Estate to be managed frugally, and proceeds applied to maintenance of ward. — A guardian must manage the estate of his ward frugally and without waste, and apply the income and profits thereof, so far as maybe necessary, to the comfortable and suitable maintenance of the ward and his family, if there be any; and if such income and profits be insufficient for that purpose, the guardian may sell or encumber the real estate, upon being authorized by order to do so, and apply to such of the proceeds as may be necessary to such maintenance."

BONIFACIA P. VANCIL, Petitioner, v. HELEN G. BELMES, respondent.
G.R. No. 132223, THIRD DIVISION, June 19, 2001, SANDOVAL-GUTIERREZ, J.

*Significantly, this Court has held that **courts should not appoint persons as guardians who are not within the jurisdiction of our courts** for they will find it difficult to protect the wards. In Guerrero vs. Teran, this Court held:*

*Doa Maria Muoz y Gomez was, as above indicated, removed upon the theory that her appointment was void because she did not reside in the Philippine Islands. There is nothing in the law which requires the courts to appoint residents only as administrators or guardians. However, notwithstanding the fact that there are no statutory requirements upon this question, the courts, charged with the responsibilities of protecting the estates of deceased persons, wards of the estate, etc., will find much difficulty in complying with this duty by appointing administrators and guardians who are not personally subject to their jurisdiction. **Notwithstanding that there is no statutory requirement, the courts should not consent to the appointment of persons as administrators and guardians who are not personally subject to the jurisdiction of our courts here.***

Even assuming that respondent is unfit as guardian of minor Vincent, still petitioner cannot qualify as a substitute guardian. It bears stressing that she is an American citizen and a resident of Colorado. Obviously, she will not be able to perform the responsibilities and obligations required of a guardian. In fact, in her petition, she admitted the difficulty of discharging the duties of a guardian by an expatriate, like her. To be sure, she will merely delegate those duties to someone else who may not also qualify as a guardian.

FACTS

Petitioner, Bonifacia Vancil, is the mother of Reeder C. Vancil, a Navy serviceman of the United States of America who died in the said country on December 22, 1986. During his lifetime, Reeder had two (2) children named Valerie and Vincent by his common-law wife, Helen G. Belmes.

Sometime in May of 1987, Bonifacia Vancil commenced before the Regional Trial Court of Cebu City a guardianship proceedings over the persons and properties of minors Valerie and Vincent. At the time, Valerie was only 6 years old while Vincent was a 2-year old child. It is claimed in the petition that the minors are residents of Cebu City, Philippines and have an estate consisting of proceeds from their father's death pension benefits with a probable value of P100,000.00.

On July 15, 1987, Petitioner was appointed legal and judicial guardian over the persons and estate of Valerie Vancil and Vincent Vancil Jr.

On August 13, 1987, the natural mother of the minors, Helen Belmes, submitted an opposition to the subject guardianship proceedings asseverating that she had already filed a similar petition for guardianship under Special Proceedings No. 2819 before the Regional Trial Court of Pagadian City. Thereafter, on June 27, 1988, Helen Belmes followed her opposition with a motion for the Removal of Guardian and Appointment of a New One, asserting that she is the natural mother in actual custody of and exercising parental authority over the subject minors at Maralag, Dumingag, Zamboanga del Sur where they are permanently residing; that the petition was filed under an improper venue; and that at the time the petition was filed **Bonifacia Vancil was a resident of 140 Hurliman Court, Canon City, Colorado, U.S.A. being a naturalized American citizen.**

On October 12, 1988, after due proceedings, the trial court rejected and denied Belmes motion to remove and/or to disqualify Bonifacia as guardian of Valerie and Vincent Jr. and instead ordered petitioner Bonifacia Vancil to enter the office and perform her duties as such guardian upon the posting of a bond of P50,000.00. The subsequent attempt for a reconsideration was likewise dismissed in an Order dated November 24, 1988.

ISSUE

Whether a non-resident can be appointed as an administrator or guardian. (NO)

RULING

We agree with the ruling of the Court of Appeals that respondent, being the natural mother of the minor, has the preferential right over that of petitioner to be his guardian. This ruling finds support in Article 211 of the Family Code which provides:

Art. 211. The father and the mother shall jointly exercise parental authority over the persons of their common children. In case of disagreement, the fathers decision shall prevail, unless there is a judicial order to the contrary. xxx.

Indeed, being the natural mother of minor Vincent, respondent has the corresponding natural and legal right to his custody. In *Sagala-Eslao vs. Court of Appeals*, this Court held:

Of considerable importance is the rule long accepted by the courts that the right of parents to the custody of their minor children is one of the natural rights incident to parenthood, a right supported by law and sound public policy. The right is an inherent one, which is not created by the state or decisions of the courts, but derives from the nature of the parental relationship.

Petitioner contends that she is more qualified as guardian of Vincent.

Petitioners claim to be the guardian of said minor can only be realized by way of substitute parental authority pursuant to Article 214 of the Family Code, thus:

Art. 214. In case of death, absence or unsuitability of the parents, substitute parental authority shall be exercised by the surviving grandparent. xxx.

In *Santos, Sr. vs. Court of Appeals*, this Court ruled:

The law vests on the father and mother joint parental authority over the persons of their common children. In case of absence or death of either parent, the parent present shall continue exercising parental authority. Only in case of the parents death, absence or unsuitability may substitute parental authority be exercised by the surviving grandparent.

Petitioner, as the surviving grandparent, can exercise substitute parental authority only in case of death, absence or unsuitability of respondent. Considering that respondent is very much alive and has exercised continuously parental authority over Vincent, petitioner has to prove, in asserting her right to be the minors guardian, respondents unsuitability. Petitioner, however, has not proffered convincing evidence showing that respondent is not suited to be the guardian of Vincent. Petitioner merely insists that respondent is morally unfit as guardian of Valerie considering that her (respondents) live-in partner raped Valerie several times. But Valerie, being now of major age, is no longer a subject of this guardianship proceeding.

Even assuming that respondent is unfit as guardian of minor Vincent, still petitioner cannot qualify as a substitute guardian. It bears stressing that she is an American citizen and a resident of Colorado. Obviously, she will not be able to perform the responsibilities and obligations required of a guardian. In fact, in her petition, she admitted the difficulty of discharging the duties of a guardian by an expatriate, like her. To be sure, she will merely delegate those duties to someone else who may not also qualify as a guardian.

Moreover, we observe that respondents allegation that petitioner has not set foot in the Philippines since 1987 has not been controverted by her. Besides, petitioners old age and her conviction of libel by the Regional Trial Court, Branch 6, Cebu City in Criminal Case No. CBU-16884 filed by one Danilo

R. Deen, will give her a second thought of staying here. Indeed, her coming back to this country just to fulfill the duties of a guardian to Vincent for only two years is not certain.

Significantly, this Court has held that courts should not appoint persons as guardians who are not within the jurisdiction of our courts for they will find it difficult to protect the wards. In Guerrero vs. Teran, this Court held:

Doa Maria Muoz y Gomez was, as above indicated, removed upon the theory that her appointment was void because she did not reside in the Philippine Islands. There is nothing in the law which requires the courts to appoint residents only as administrators or guardians. However, notwithstanding the fact that there are no statutory requirements upon this question, the courts, charged with the responsibilities of protecting the estates of deceased persons, wards of the estate, etc., will find much difficulty in complying with this duty by appointing administrators and guardians who are not personally subject to their jurisdiction. Notwithstanding that there is no statutory requirement, the courts should not consent to the appointment of persons as administrators and guardians who are not personally subject to the jurisdiction of our courts here.

PATRIA PACIENTE, petitioner, vs. HON. AUXENCIO C. DACUYCUY, Presiding Judge of the Juvenile and Domestic Relations Court of Leyte and Southern Leyte; FELICIANA CALLE, court-appointed guardian of the minors Shirley and Leandro, both surnamed HOMERES; the SOLICITOR GENERAL; THE CITY FISCAL OF TACLOBAN; and, THE REGISTER OF DEEDS, Tacloban City, respondents.

G.R. No. L-58319, FIRST DIVISION, June 29, 1982, GUTIERREZ, J.

*In Cui vs. Piccio, et al., supra, this Court held that the jurisdiction of the court in guardianship proceedings, ordinarily, is to cite persons suspected of having embezzled, concealed or conveyed the property belonging to the ward for the purpose of obtaining information which may be used in an action later to be instituted by the guardian to protect the right of the ward. **Generally, the guardianship court exercising special and limited jurisdiction cannot actually order the delivery of the property of the ward found to be embezzled, concealed, or conveyed. In a categorical language of this Court, only in extreme cases, where property clearly belongs to the ward or where his title thereto has been already judicially decided, may the court direct its delivery to the guardian. In effect, there can only be delivery or return of the embezzled, concealed or conveyed property of the ward, where the right or title of said ward is clear and undisputable. However, where title to any property said to be embezzled, concealed or conveyed is in dispute, under the Cui case, the determination of said title or right whether in favor of the persons said to have embezzled, concealed or conveyed the property must be determined in a separate ordinary action and not in a guardianship proceedings.***

In the present case the right or title of the two minors to the property is clear and undisputable. They inherited a part of the land in question from their father. The sale of this land, where they are co-owners, by their mother without the authority of the guardianship court is illegal.

FACTS

In 1972, Leonardo Homeres died leaving his wife, Lilia Samson Homeres, and two minor children, Shirley and Leandro, a parcel of land known as Lot No. 3085-G situated in Tacloban City.

On September 9, 19-76, Lilia S. Homeres, sold Lot No. 3085-G to Conchita Dumdum for P10,000.00.

On November 11, 1976, Lilia S. Homeres filed a petition for guardianship over the persons and estate of the minors. The petition was granted on August 9, 1977.

On September 21, 1977, Conchita Dumdum sold Lot No. 3085-G, which had been titled in her name under, to petitioner Patria Paciente for the amount of P15,000.00. Consequently, Patria Paciente was issued TCT No. T-13238 by the Register of Deeds of Tacloban City.

On December 27, 1978, the petitioner mortgaged the lot to the Consolidated Bank and Trust Corporation for P30,000.00.

On September 12, 1980, the Acting City Register of Deeds of Tacloban City, filed a manifestation informing respondent court that Lot No. 3085-G which is the subject of the guardianship proceedings had been registered in the name of the petitioner and that it was mortgaged to the Consolidated Bank and Trust Corporation to guarantee petitioner's loan of P30,000.00.

Upon being thus informed by the Register of Deeds, the respondent court issued an order on November 14, 1980, directing the petitioner and the manager of the Consolidated Bank and Trust Corporation to appear before the court on January 21, 1981 and show cause why TCT No. T-13238, covering a parcel of land co-owned by the minors, Shirley and Leandro Homeres, should not be cancelled for having been alienated without authority from the court.

When January 21, 1981 came, the petitioner and the manager of Consolidated Bank and Trust Corporation did not appear before the court. Instead, Conchita Dumdum appeared and explained to the respondent court that she sold the lot which she acquired from Lilia S. Homeres to the petitioner without obtaining the approval of the court because she was not aware of such requirement regarding the properties of the minors. On the same date, the respondent court again issued an order requiring the petitioner and the manager of the Consolidated Bank and Trust Corporation to explain why TCT No. T- 13238 should not be cancelled for their failure to first secure judicial authority before disposing of the said property.

ISSUE

Whether the respondent court acting as a guardianship court has jurisdiction to order the Register of Deeds to cancel the transfer certificate of title of petitioner and to order the issuance of a new title to include the minors as co-owners. (YES)

RULING

Relying on the cases of Cui, et al. vs. Piccio, et al. 91 Phil. 712, and Parco and Bautista vs. Court of Appeals, G.R. No. L-33152, January 30, 1982, petitioner contends that respondent court in hearing a petition for guardianship is not the proper situs for the cancellation of a Torrens Title. In the Cui case, this Court ruled:

... Out of the cases cited, the only one we find to have some relevancy is that of Castillo vs. Bustamante, 64 Phil. 839. In this case, the court made a distinction between the provisions of sections 709 and 593 of the Code of Civil Procedure which now correspond to section 6, Rule 88 and section 6 of Rule 97 of the Rules of Court. This Court in that case said in effect that while in administration proceedings

the court under section 709 may only question the person suspected of having embezzled, concealed or conveyed away property belonging to the estate, section 593 of the same Code of Civil Procedure authorizes the Judge or the court to issue such orders as maybe necessary to secure the estate against concealment, embezzlement and conveyance, and this distinction is now given emphasis by respondents' counsel. the way we interpret section 573 of the Code of Civil Procedure as now embodied in Rule 97, section 6 of the Rules of Court in the light of the ruling laid down in the case of Castillo vs. Bustamante, supra, is that the court may issue an order directing the delivery or return of any property embezzled, concealed or conveyed which belongs to a ward, where the right or title of said ward is clear and indisputable.

xxx xxx xxx

In conclusion, we hold that the respondent Judge had no jurisdiction to issue his order of September 5, 1951, in the guardianship proceedings requiring the petitioners to deliver the rentals collected by them to the guardian and authorizing the latter to collect rentals in the future, for the reason that the jurisdiction of the court in guardianship proceedings, ordinarily, is to cite persons suspected of having embezzled, concealed or conveyed property belonging to the ward for the purpose of obtaining information which may be used in action later to be instituted by the guardian to protect the right of the ward; and that only in extreme cases, where property clearly belongs to the ward or where his title thereto has already been judicially decided, may the court direct its delivery to the guardian.

and in the case of Parco and Bautista the ruling reads as follows:

In Cui vs. Piccio, et al., supra, this Court held that the jurisdiction of the court in guardianship proceedings, ordinarily, is to cite persons suspected of having embezzled, concealed or conveyed the property belonging to the ward for the purpose of obtaining information which may be used in an action later to be instituted by the guardian to protect the right of the ward. Generally, the guardianship court exercising special and limited jurisdiction cannot actually order the delivery of the property of the ward found to be embezzled, concealed, or conveyed. In a categorical language of this Court, only in extreme cases, where property clearly belongs to the ward or where his title thereto has been already judicially decided, may the court direct its delivery to the guardian. In effect, there can only be delivery or return of the embezzled, concealed or conveyed property of the ward, where the right or title of said ward is clear and undisputable. However, where title to any property said to be embezzled, concealed or conveyed is in dispute, under the Cui case, the determination of said title or right whether in favor of the persons said to have embezzled, concealed or conveyed the property must be determined in a separate ordinary action and not in a guardianship proceedings.

Insofar as the acts of the guardianship court intended to effect the delivery or return of the property conveyed are concerned, **We find the orders of the respondent court valid.** The petitioner's contentions in this regard are untenable. Even the aforesaid cases relied upon do not support her argument. While it is true that in these two cases We ruled that where title to any property said to be embezzled, concealed or conveyed is in question, the determination of said title or right whether in favor of the ward or in favor of the person said to have embezzled, concealed or conveyed the property must be determined in a separate ordinary action and not in guardianship proceedings, **We also emphasized that if the right or title of the ward to the property is clear and indisputable the court may issue an order directing its delivery or return.**

In the present case the right or title of the two minors to the property is clear and indisputable. They inherited a part of the land in question from their father. The sale of this land, where they are co-owners, by their mother without the authority of the guardianship court is illegal (Yuson de Pua vs. San Agustin, 106 SCRA 7, 16).

In issuing the above questioned order and resolution, the respondent court did not exceed its jurisdiction but merely exercised its duty to protect persons under disability.

EDUARDO T. ABAD, Petitioner, vs. LEONARDO BIASON and GABRIEL A. MAGNO, Respondents.
G.R. No. 191993, FIRST DIVISION, December 5, 2012, REYES, J.

*In his petition, Abad prayed for the nullification of the CA Decision dated August 28, 2009 and Resolution dated April 19, 2010, which dismissed his appeal from the Decision dated September 26, 2007 of the RTC and denied his motion for reconsideration, respectively. Basically, he was challenging Biason's qualifications and the procedure by which the RTC appointed him as guardian for Maura. However, with Biason's demise, it has become impractical and futile to proceed with resolving the merits of the petition. **It is a well-established rule that the relationship of guardian and ward is necessarily terminated by the death of either the guardian or the ward. The supervening event of death rendered it pointless to delve into the propriety of Biason's appointment since the juridical tie between him and Maura has already been dissolved.** The petition, regardless of its disposition, will not afford Abad, or anyone else for that matter, any substantial relief.*

FACTS

On March 19, 2007, petitioner Eduardo Abad (Abad) filed a petition for guardianship over the person and properties of Maura B. Abad (Maura) with the Regional Trial Court (RTC), Dagupan City. In support thereof, Abad alleged that he maintains residence at No. 14 B St. Paul Street, Horseshoe Village, Quezon City and that he is Maura's nephew. He averred that Maura, who is single, more than ninety (90) years old, is in dire need of a guardian who will look after her and her business affairs. Due to her advanced age, Maura is already sickly and can no longer manage to take care of herself and her properties unassisted thus becoming an easy prey of deceit and exploitation.

Finding the petition sufficient in form and substance, the RTC gave due course to the same and scheduled it for hearing. When the petition was called for hearing on April 27, 2007, nobody entered an opposition and Abad was allowed to present evidence ex parte. After Abad formally offered his evidence and the case was submitted for decision, Atty. Gabriel Magno filed a Motion for Leave to Intervene, together with an Oppositionin- Intervention. Subsequently, on June 14, 2007, Leonardo Biason (Biason) filed a Motion for Leave to File Opposition to the Petition and attached therewith his Opposition to the Appointment of Eduardo Abad as Guardian of the Person and Properties of Maura B. Abad. Specifically, Biason alleged that he is also a nephew of Maura and that he was not notified of the pendency of the petition for the appointment of the latter's guardian. He vehemently opposed the appointment of Abad as Maura's guardian as he cannot possibly perform his duties as such since he resides in Quezon City while Maura maintains her abode in Mangaldan, Pangasinan. Biason prayed that he be appointed as Maura's guardian since he was previously granted by the latter with a power of attorney to manage her properties.

On September 26, 2007, the RTC rendered a Decision, denying Abad's petition and appointing Biason as Maura's guardian.

Unyielding, Abad filed a motion for reconsideration of the foregoing decision but the RTC denied the same in an Order dated December 11, 2007.

Abad filed an appeal to the CA. On August 28, 2009, the CA issued a Decision, affirming the decision of the RTC.

On June 7, 2010, Abad filed a Petition for Review on Certiorari with this Court. Unfortunately, **pending the resolution of the instant petition, Biason died.** On May 11, 2012, Maura filed a Manifestation and Motion, informing this Court that Biason passed away on April 3, 2012 at SDS Medical Center, Marikina City due to multiple organ failure, septic shock, community acquired pneumonia high risk, prostate CA with metastasis, and attached a copy of his Death Certificate. Maura averred that Biason's death rendered moot and academic the issues raised in the petition. She thus prayed that the petition be dismissed and the guardianship be terminated.

ISSUE

Whether the case should be dismissed due to the death of Biason. (YES)

RULING

An issue or a case becomes moot and academic when it ceases to present a justiciable controversy, so that a determination of the issue would be without practical use and value. In such cases, there is no actual substantial relief to which the petitioner would be entitled and which would be negated by the dismissal of the petition.

In his petition, Abad prayed for the nullification of the CA Decision dated August 28, 2009 and Resolution dated April 19, 2010, which dismissed his appeal from the Decision dated September 26, 2007 of the RTC and denied his motion for reconsideration, respectively. Basically, he was challenging Biason's qualifications and the procedure by which the RTC appointed him as guardian for Maura. However, with Biason's demise, it has become impractical and futile to proceed with resolving the merits of the petition. It is a well-established rule that the relationship of guardian and ward is necessarily terminated by the death of either the guardian or the ward. The supervening event of death rendered it pointless to delve into the propriety of Biason's appointment since the juridical tie between him and Maura has already been dissolved. The petition, regardless of its disposition, will not afford Abad, or anyone else for that matter, any substantial relief.

NILO OROPESA, Petitioner, vs. CIRILO OROPESA, Respondent.

G.R. No. 184528, FIRST DIVISION, April 25, 2012, LEONARDO-DE CASTRO, J.

*Sec. 2. Meaning of the word "incompetent." – Under this rule, the word "incompetent" includes persons suffering the penalty of civil interdiction or who are hospitalized lepers, prodigals, deaf and dumb who are unable to read and write, those who are of unsound mind, even though they have lucid intervals, and **persons not being of unsound mind, but by reason of age, disease, weak mind, and other similar causes, cannot, without outside aid, take care of themselves and manage their property, becoming thereby an easy prey for deceit and exploitation.***

The Court noted the absence of any testimony of a medical expert which states that Gen. Cirilo O. Oropesa does not have the mental, emotional, and physical capacity to manage his own affairs. On the contrary, Oppositor's evidence includes a Neuropsychological Screening Report which states that Gen. Oropesa, (1) performs on the average range in most of the domains that were tested; (2) is capable of mental calculations; and (3) can provide solutions to problem situations. The Report concludes that Gen. Oropesa possesses intact cognitive functioning, except for mildly impaired abilities in memory, reasoning and orientation. It is the observation of the Court that oppositor is still sharp, alert and able.

FACTS

On January 23, 2004, the (petitioner) filed with the Regional Trial Court of Parañaque City, a petition for him and a certain Ms. Louie Ginez to be appointed as guardians over the property of his father, the (respondent) Cirilo Oropesa.

In the said petition, it is alleged among others that the (respondent) has been afflicted with several maladies and has been sickly for over ten (10) years already having suffered a stroke on April 1, 2003 and June 1, 2003, that his judgment and memory [were] impaired and such has been evident after his hospitalization; that even before his stroke, the (respondent) was observed to have had lapses in memory and judgment, showing signs of failure to manage his property properly; that due to his age and medical condition, he cannot, without outside aid, manage his property wisely, and has become an easy prey for deceit and exploitation by people around him, particularly Ms. Ma. Luisa Agamata, his girlfriend.

In an Order dated January 29, 2004, the presiding judge of the court a quo set the case for hearing, and directed the court social worker to conduct a social case study and submit a report thereon.

Pursuant to the abovementioned order, the Court Social Worker conducted her social case study, interviewing the (petitioner) and his witnesses. The Court Social Worker subsequently submitted her report but without any finding on the (respondent) who refused to see and talk to the social worker.

On July 6, 2004, the (respondent) filed his Opposition to the petition for guardianship. On August 3, 2004, the (respondent) filed his Supplemental Opposition.

Thereafter, the (petitioner) presented his evidence which consists of his testimony, and that of his sister Gianina Oropesa Bennett, and the (respondent's) former nurse, Ms. Alma Altaya.

After presenting evidence, the (petitioner) filed a manifestation dated May 29, 2006 resting his case. The (petitioner) failed to file his written formal offer of evidence.

ISSUE

Whether respondent is considered as an incompetent person under the Rules of Court. (NO)

RULING

After considering the evidence and pleadings on record, we find the petition to be without merit.

Petitioner comes before the Court arguing that the assailed rulings of the Court of Appeals should be set aside as it allegedly committed grave and reversible error when it affirmed the erroneous decision of the trial court which purportedly disregarded the overwhelming evidence presented by him showing respondent's incompetence.

In *Francisco v. Court of Appeals*, we laid out the nature and purpose of guardianship in the following wise:

A guardianship is a trust relation of the most sacred character, in which one person, called a "guardian" acts for another called the "ward" whom the law regards as incapable of managing his own affairs. A guardianship is designed to further the ward's well-being, not that of the guardian. It is intended to preserve the ward's property, as well as to render any assistance that the ward may personally require. It has been stated that while custody involves immediate care and control, guardianship indicates not only those responsibilities, but those of one in loco parentis as well.

In a guardianship proceeding, a court may appoint a qualified guardian if the prospective ward is proven to be a minor or an incompetent.

A reading of Section 2, Rule 92 of the Rules of Court tells us that persons who, though of sound mind but by reason of age, disease, weak mind or other similar causes, are incapable of taking care of themselves and their property without outside aid are considered as incompetents who may properly be placed under guardianship. The full text of the said provision reads:

Sec. 2. Meaning of the word "incompetent." - Under this rule, the word "incompetent" includes persons suffering the penalty of civil interdiction or who are hospitalized lepers, prodigals, deaf and dumb who are unable to read and write, those who are of unsound mind, even though they have lucid intervals, and persons not being of unsound mind, but by reason of age, disease, weak mind, and other similar causes, cannot, without outside aid, take care of themselves and manage their property, becoming thereby an easy prey for deceit and exploitation.

We have held in the past that a "finding that a person is incompetent should be anchored on clear, positive and definite evidence." We consider that evidentiary standard unchanged and, thus, must be applied in the case at bar.

In support of his contention that respondent is incompetent and, therefore, should be placed in guardianship, petitioner raises in his Memorandum the following factual matters:

- a. Respondent has been afflicted with several maladies and has been sickly for over ten (10) years already;
- b. During the time that respondent was hospitalized at the St. Luke's Medical Center after his stroke, he purportedly requested one of his former colleagues who was visiting him to file a loan application with the Armed Forces of the Philippines Savings and Loan Association, Inc. (AFPSLAI) for payment of his hospital bills, when, as far as his children knew, he had substantial amounts of money in various banks sufficient to cover his medical expenses;
- c. Respondent's residence allegedly has been left dilapidated due to lack of care and management;

d. The realty taxes for respondent's various properties remain unpaid and therefore petitioner and his sister were supposedly compelled to pay the necessary taxes;

e. Respondent allegedly instructed petitioner to sell his Nissan Exalta car for the reason that the former would be purchasing another vehicle, but when the car had been sold, respondent did not procure another vehicle and refused to account for the money earned from the sale of the old car;

f. Respondent withdrew at least \$75,000.00 from a joint account under his name and his daughter's without the latter's knowledge or consent;

g. There was purportedly one occasion where respondent took a kitchen knife to stab himself upon the "orders" of his girlfriend during one of their fights;

h. Respondent continuously allows his girlfriend to ransack his house of groceries and furniture, despite protests from his children.

Respondent denied the allegations made by petitioner and cited petitioner's lack of material evidence to support his claims. According to respondent, petitioner did not present any relevant documentary or testimonial evidence that would attest to the veracity of his assertion that respondent is incompetent largely due to his alleged deteriorating medical and mental condition. In fact, respondent points out that the only medical document presented by petitioner proves that he is indeed competent to run his personal affairs and administer his properties. Portions of the said document, entitled "Report of Neuropsychological Screening," were quoted by respondent in his Memorandum to illustrate that said report in fact favored respondent's claim of competence, to wit:

General Oropesa spoke fluently in English and Filipino, he enjoyed and participated meaningfully in conversations and could be quite elaborate in his responses on many of the test items. He spoke in a clear voice and his articulation was generally comprehensible. x x x.

x x x x

General Oropesa performed in the average range on most of the domains that were tested. He was able to correctly perform mental calculations and keep track of number sequences on a task of attention. He did BEST in visuo-constructional tasks where he had to copy geometrical designs using tiles. Likewise, he was able to render and read the correct time on the Clock Drawing Test. x x x.

x x x x

x x x Reasoning abilities were generally intact as he was able to suggest effective solutions to problem situations. x x x.

With the failure of petitioner to formally offer his documentary evidence, his proof of his father's incompetence consisted purely of testimonies given by himself and his sister (who were claiming interest in their father's real and personal properties) and their father's former caregiver (who admitted to be acting under their direction). These testimonies, which did not include any expert medical testimony, were insufficient to convince the trial court of petitioner's cause of action and instead lead it to grant the demurrer to evidence that was filed by respondent.

Even if we were to overlook petitioner's procedural lapse in failing to make a formal offer of evidence, his documentary proof were comprised mainly of certificates of title over real properties registered

in his, his father's and his sister's names as co-owners, tax declarations, and receipts showing payment of real estate taxes on their co-owned properties, which do not in any way relate to his father's alleged incapacity to make decisions for himself. The only medical document on record is the aforementioned "Report of Neuropsychological Screening" which was attached to the petition for guardianship but was never identified by any witness nor offered as evidence. In any event, the said report, as mentioned earlier, was ambivalent at best, for although the report had negative findings regarding memory lapses on the part of respondent, it also contained findings that supported the view that respondent on the average was indeed competent.

In an analogous guardianship case wherein the soundness of mind of the proposed ward was at issue, we had the occasion to rule that "where the sanity of a person is at issue, expert opinion is not necessary [and that] the observations of the trial judge coupled with evidence establishing the person's state of mental sanity will suffice."

Thus, it is significant that in its Order dated November 14, 2006 which denied petitioner's motion for reconsideration on the trial court's unfavorable September 27, 2006 ruling, the trial court highlighted the fatal role that petitioner's own documentary evidence played in disproving its case and, likewise, the trial court made known its own observation of respondent's physical and mental state, to wit: The Court noted the absence of any testimony of a medical expert which states that Gen. Cirilo O. Oropesa does not have the mental, emotional, and physical capacity to manage his own affairs. On the contrary, Oppositor's evidence includes a Neuropsychological Screening Report which states that Gen. Oropesa, (1) performs on the average range in most of the domains that were tested; (2) is capable of mental calculations; and (3) can provide solutions to problem situations. The Report concludes that Gen. Oropesa possesses intact cognitive functioning, except for mildly impaired abilities in memory, reasoning and orientation. It is the observation of the Court that oppositor is still sharp, alert and able.

HERBERT CANG, petitioner, vs. COURT OF APPEALS and Spouses RONALD V. CLAVANO and MARIA CLARA CLAVANO, respondents.

G.R. No. 105308, THIRD DIVISION, September 25, 1998, ROMERO, J.

In its ordinary sense, the word "abandon" means to forsake entirely, to forsake or renounce utterly. The dictionaries trace this word to the root idea of "putting under a ban." The emphasis is on the finality and publicity with which a thing or body is thus put in the control of another, hence, the meaning of giving up absolutely, with intent never to resume or claim one's rights or interests. In reference to abandonment of a child by his parent, the act of abandonment imports "any conduct of the parent which evinces a settled purpose to forego all parental duties and relinquish all parental claims to the child." It means "neglect or refusal to perform the natural and legal obligations of care and support which parents owe their children."

*In the instant case, records disclose that petitioner's conduct did not manifest a settled purpose to forego all parental duties and relinquish all parental claims over his children as to, constitute abandonment. **Physical estrangement alone, without financial and moral desertion, is not tantamount to abandonment.** While admittedly, petitioner was physically absent as he was then in the United States, he was not remiss in his natural and legal obligations of love, care and support for his children. He maintained regular communication with his wife and children through letters and telephone. He used to send packages by mail and catered to their whims.*

FACTS

Petitioner Herbert Cang and Anna Marie Clavano who were married on January 27, 1973, begot three children, namely: Keith, born on July 3, 1973; Charmaine, born on January 23, 1977, and Joseph Anthony, born on January 3, 1981.

During the early years of their marriage, the Cang couple's relationship was undisturbed. Not long thereafter, however, Anna Marie learned of her husband's alleged extramarital affair with Wilma Soco, a family friend of the Clavanos.

Upon learning of her husband's alleged illicit liaison, Anna Marie filed a petition for legal separation with alimony pendente lite with the then Juvenile and Domestic Relations Court of Cebu which rendered a decision approving the joint manifestation of the Cang spouses providing that they agreed to "live separately and apart or from bed and board."

Petitioner then left for the United States where he sought a divorce from Anna Marie before the Second Judicial District Court of the State of Nevada. Said court issued the divorce decree that also granted sole custody of the three minor children to Anna Marie, reserving "rights of visitation at all reasonable times and places" to petitioner.

Thereafter, petitioner took an American wife and thus became a naturalized American citizen. In 1986, he divorced his American wife and never remarried.

While in the United States, petitioner worked in Tablante Medical Clinic earning P18,000.00 to P20,000.00 a month a portion of which was remitted to the Philippines for his children's expenses and another, deposited in the bank in the name of his children.

Meanwhile, on September 25, 1987, private respondents Ronald V. Clavano and Maria Clara Diago Clavano, respectively the brother and sister-in-law of Anna Marie, filed Special Proceedings for the adoption of the three minor Cang children before the Regional Trial Court of Cebu. The petition bears the signature of then 14-year-old Keith signifying consent to his adoption. Anna Marie likewise filed an affidavit of consent alleging that her husband had "evaded his legal obligation to support" his children; that her brothers and sisters including Ronald V. Clavano, had been helping her in taking care of the children; that because she would be going to the United States to attend to a family business, "leaving the children would be a problem and would naturally hamper (her) job-seeking venture abroad;" and that her husband had "long forfeited his parental rights" over the children.

Upon learning of the petitioner for adoption, petitioner immediately returned to the Philippines and filed an opposition thereto, alleging that, although private respondents Ronald and Maria Clara Clavano were financially capable of supporting the children while his finances were "too meager" compared to theirs, he could not "in conscience, allow anybody to strip him of his parental authority over his beloved children."

Pending resolution of the petition for adoption, petitioner moved to reacquire custody over his children alleging that Anna Marie had transferred to the United States thereby leaving custody of their children to private respondents. On January 11, 1988, the Regional Trial Court of Cebu City, Branch 19, issued an order finding that Anna Marie had, in effect, relinquished custody over the

children and, therefore, such custody should be transferred to the father. The court then directed the Clavanos to deliver custody over the minors to petitioner.

On March 27, 1990, the Regional Trial Court of Cebu City, Branch 14, issued a decree of adoption in favor of the respondents.

Before the Court of Appeals, petitioner contended that the lower court erred in holding that it would be in the best interest of the three children if they were adopted by private respondents Ronald and Maria Clara Clavano. He asserted, among others, that the petition for adoption was fatally defective and tailored to divest him of parental authority because he did not have a written consent to the adoption and he never abandoned his children.

ISSUE

Whether the father has abandoned his minor children and thus, his consent for the adoption of minors is no longer needed. (NO)

RULING

This Court finds that both the lower court and the Court of Appeals failed to appreciate facts and circumstances that should have elicited a different conclusion on the issue of whether petitioner has so abandoned his children, thereby making his consent to the adoption unnecessary.

In its ordinary sense, the word "abandon" means to forsake entirely, to forsake or renounce utterly. The dictionaries trace this word to the root idea of "putting under a ban." The emphasis is on the finality and publicity with which a thing or body is thus put in the control of another, hence, the meaning of giving up absolutely, with intent never to resume or claim one's rights or interests. In reference to abandonment of a child by his parent, the act of abandonment imports "any conduct of the parent which evinces a settled purpose to forego all parental duties and relinquish all parental claims to the child." It means "neglect or refusal to perform the natural and legal obligations of care and support which parents owe their children."

In the instant case, records disclose that petitioner's conduct did not manifest a settled purpose to forego all parental duties and relinquish all parental claims over his children as to, constitute abandonment. Physical estrangement alone, without financial and moral desertion, is not tantamount to abandonment. While admittedly, petitioner was physically absent as he was then in the United States, he was not remiss in his natural and legal obligations of love, care and support for his children. He maintained regular communication with his wife and children through letters and telephone. He used to send packages by mail and catered to their whims.

TOMASA VDA. DE JACOB, as Special Administratrix of the Intestate Estate of Deceased Alfredo E. Jacob, petitioner, vs. COURT OF APPEALS, PEDRO PILAPIL, THE REGISTER OF DEEDS for the Province of Camarines Sur, and JUAN F. TRIVINO as publisher of "Balalong," respondents.

G.R. No. 135216, THIRD DIVISION, August 19, 1999, PANGANIBAN, J.

The burden of proof in establishing adoption is upon the person claiming such relationship. This Respondent Pilapil failed to do. Moreover, the evidence presented by petitioner shows that the alleged adoption is a sham.

Other considerations also cast doubt on the claim of respondent. The alleged Order was purportedly made in open court. In his Deposition, however, Judge Moya declared that he did not dictate decisions in adoption cases. The only decisions he made in open court were criminal cases, in which the accused pleaded guilty. Moreover, Judge Moya insisted that the branch where he was assigned was always indicated in his decisions and orders; yet the questioned Order did not contain this information. Furthermore, Pilapil's conduct gave no indication that he recognized his own alleged adoption, as shown by the documents that he signed and other acts that he performed thereafter. In the same vein, no proof was presented that Dr. Jacob had treated him as an adopted child. Likewise, both the Bureau of Records Management in Manila and the Office of the Local Civil Registrar of Tigaon, Camarines Sur, issued Certifications that there was no record that Pedro Pilapil had been adopted by Dr. Jacob. Taken together, these circumstances inexorably negate the alleged adoption of respondent.

FACTS

Alfredo E. Jacob and was appointed Special Administratrix for the various estates of the deceased by virtue of a reconstructed Marriage Contract between herself and the deceased.

Defendant-appellee on the other hand, claimed to be the legally-adopted son of Alfredo. In support of his claim, he presented an Order dated 18 July 1961 issued by then Presiding Judge Jose L. Moya, CFI, Camarines Sur, granting the petition for adoption filed by deceased Alfredo in favor of Pedro Pilapil.

During the proceeding for the settlement of the estate of the deceased Alfredo, herein defendant-appellee Pedro sought to intervene therein claiming his share of the deceased's estate as Alfredo's adopted son and as his sole surviving heir. Pedro questioned the validity of the marriage between appellant Tomasa and his adoptive father Alfredo.

Appellant Tomasa opposed the Motion for Intervention and filed a complaint for injunction with damages (Civil Case No. T-83) questioning appellee's claim as the legal heir of Alfredo. Appellant questioned, among others, whether the defendant-appellee is the legally adopted son of deceased Jacob.

Anent the second issue, appellee presented the Order dated 18 July 1961 in Special Proceedings No. 192 issued by then Presiding Judge Moya granting the petition for adoption filed by deceased Alfredo which declared therein Pedro Pilapil as the legally adopted son of Alfredo.

Appellant Tomasa however questioned the authenticity of the signature of Judge Moya.

In an effort to disprove the genuineness and authenticity of Judge Moya's signature in the Order granting the petition for adoption, the deposition of Judge Moya was taken at his residence on 01 October 1990.

In his deposition, Judge Moya attested that he could no longer remember the facts in judicial proceedings taken about twenty-nine (29) years ago when he was then presiding judge since he was already 79 years old and was suffering from "glaucoma".

The trial court then consulted two (2) handwriting experts to test the authenticity and genuineness of Judge Moya's signature.

A handwriting examination was conducted by Binevenido C. Albacea, NBI Document Examiner. Examiner Albacea used thirteen (13) specimen signatures of Judge Moya and compared it with the questioned signature. He pointed out irregularities and "significant fundamental differences in handwriting characteristics/habits existing between the questioned and the "standard" signature" and concluded that the questioned and the standard signatures "JOSE L. MOYA" were NOT written by one and the same person.

On the other hand, to prove the genuineness of Judge Moya's signature, appellee presented the comparative findings of the handwriting examination made by a former NBI Chief Document Examiner Atty. Desiderio A. Pagui who examined thirty-two (32) specimen signatures of Judge Moya inclusive of the thirteen (13) signatures examined by Examiner Albacea. In his report, Atty. Pagui noted the existence of significant similarities of unconscious habitual pattern within allowable variation of writing characteristics between the standard and the questioned signatures and concluded that the signature of Judge Moya appearing in the Order dated 18 July 1961 granting the petition for adoption was indeed genuine.

Confronted with two (2) conflicting reports, the trial court sustained the findings of Atty. Pagui declaring the signature of Judge Moya in the challenged Order as genuine and authentic.

Based on the evidence presented, the trial court ruled for defendant-appellee sustaining his claim as the legally adopted child and sole heir of deceased Alfredo and declaring the reconstructed Marriage Contract as spurious and non-existent."

ISSUE

Whether Pedro Pilapil is the legally adopted son of Alfredo E. Jacob. (NO)

RULING

In ruling that Respondent Pedro Pilapil was adopted by Dr. Jacob and that the signature of Judge Moya appearing on the Adoption Order was valid, the Court of Appeals relied on the presumption that the judge had acted in the regular performance of his duties. The appellate court also gave credence to the testimony of respondent's handwriting expert, for "the assessment of the credibility of such expert witness rests largely on the discretion of the trial court . . . "

We disagree. As a rule, the factual findings of the trial court are accorded great weight and respect by appellate courts, because it had the opportunity to observe the demeanor of witnesses and to note telltale signs indicating the truth or the falsity of a testimony. The rule, however, is not applicable to the present case, because it was Judge Augusto O. Cledera, not the ponente, who heard the testimonies of the two expert witnesses. Thus, the Court examined the records and found that the Court of Appeals and the trial court "failed to notice certain relevant facts which, if properly

considered, will justify a different conclusion." Hence, the present case is an exception to the general rule that only questions of law may be reviewed in petitions under Rule 45.

Central to the present question is the authenticity of Judge Moya's signature on the questioned Order of Adoption. To enlighten the trial court on this matter, two expert witnesses were presented, one for petitioner and one for Respondent Pilapil. The trial court relied mainly on respondent's expert and brushed aside the Deposition of Judge Moya himself.

Clearly, Judge Moya could not recall having ever issued the Order of Adoption. More importantly, when shown the signature over his name, he positively declared that it was not his.

The fact that he had glaucoma when his Deposition was taken does not discredit his statements. At the time, he could with medication still read the newspapers; upon the request of the defense counsel, he even read a document shown to him. Indeed, we find no reason – and the respondent has not presented any – to disregard the Deposition of Judge Moya.

Judge Moya's declaration was supported by the expert testimony of NBI Document Examiner Bienvenido Albacea.

It is noteworthy that Mr. Albacea is a disinterested party, his services having been sought without any compensation. Moreover, his competence was recognized even by Respondent Pilapil's expert witness, Atty. Desiderio Pagui.

Other considerations also cast doubt on the claim of respondent. The alleged Order was purportedly made in open court. In his Deposition, however, Judge Moya declared that he did not dictate decisions in adoption cases. The only decisions he made in open court were criminal cases, in which the accused pleaded guilty. Moreover, Judge Moya insisted that the branch where he was assigned was always indicated in his decisions and orders; yet the questioned Order did not contain this information. Furthermore, Pilapil's conduct gave no indication that he recognized his own alleged adoption, as shown by the documents that he signed and other acts that he performed thereafter. In the same vein, no proof was presented that Dr. Jacob had treated him as an adopted child. Likewise, both the Bureau of Records Management in Manila and the Office of the Local Civil Registrar of Tigaon, Camarines Sur, issued Certifications that there was no record that Pedro Pilapil had been adopted by Dr. Jacob. Taken together, these circumstances inexorably negate the alleged adoption of respondent.

The burden of proof in establishing adoption is upon the person claiming such relationship. This Respondent Pilapil failed to do. Moreover, the evidence presented by petitioner shows that the alleged adoption is a sham.

REPUBLIC OF THE PHILIPPINES, *Petitioner*, -versus - HON. JOSE R. HERNANDEZ, in his capacity as Presiding Judge, Regional Trial Court, Branch 158, Pasig City and SPOUSES VAN MUNSON y NAVARRO and REGINA MUNSON y ANDRADE, *Respondent*
G.R. No. 117209, SECOND DIVISION, February 9, 1996, REGALADO, J.

While the right of a natural parent to name the child is recognized, guaranteed and protected under the law, the so-called right of an adoptive parent to re-name an adopted child by virtue or as a consequence of adoption, even for the most noble intentions and moving supplications, is unheard of in law and consequently cannot be favorably considered. To repeat, the change of the surname of the adoptee as a

result of the adoption and to follow that of the adopter does not lawfully extend to or include the proper or given name. Furthermore, factual realities and legal consequences, rather than sentimentality and symbolisms, are what are of concern to the Court.

Finally, it is understood that this decision does not entirely foreclose and is without prejudice to, private respondents' privilege to legally change the proper or given name of their adopted child, provided that the same is exercised, this time, via a proper petition for change of name. Of course, the grant thereof is conditioned on strict compliance with all jurisdictional requirements and satisfactory proof of the compelling reasons advanced therefor.

FACTS

On March 10, 1994, herein private respondent spouses, Van Munson y Navarro and Regina Munson y Andrade, filed a Petition to adopt the minor Kevin Earl Bartolome Moran, duly alleging therein the jurisdictional facts required by Rule 99 of the Rules of Court for adoption, their qualifications as and fitness to be adoptive parents, as well as the circumstances under and by reason of which the adoption of the aforementioned minor was sought. In the very same petition, private respondents prayed for the change of the first name or said minor adoptee to Aaron Joseph, the same being the name with which he was baptized in keeping with religious tradition and by which he has been called by his adoptive family, relatives and friends since May 6, 1993 when he arrived at private respondents' residence.

At the hearing on April 18, 1994, petitioner opposed the inclusion of the relief for change of name in the same petition for adoption. In its formal opposition dated May 3, 1995, petitioner reiterated its objection to the joinder of the petition for adoption and the petitions for change of name in a single proceeding, arguing that these petition should be conducted and pursued as two separate proceedings.

Trial court ruled in favor of herein private respondents.

Petitioner argues that a petition for adoption and a petition for change of name are two special proceedings which, in substance and purpose, are different from and are not related to each other, being respectively governed by distinct sets of law and rules. In order to be entitled to both reliefs, namely, a decree of adoption and an authority to change the giver or proper name of the adoptee, the respective proceedings for each must be instituted separately, and the substantive and procedural requirements therefor under Articles 183 to 193 of the Family Code in relation to Rule 99 of the Rules of Court for adoption, and Articles 364 to 380 of the Civil Code in relation to Rule 103 of the Rules of Court for change of name, must correspondingly be complied with

ISSUE

Whether the petition for adoption can include a petition for change of name (NO)

RULING

Clearly, the law allows the adoptee, as a matter of right and obligation, to bear the surname of the adopter, upon issuance of the decree of adoption. It is the change of the adoptee's *surname* to follow

that of the adopter which is the natural and necessary consequence of a grant of adoption and must specifically be contained in the order of the court, in fact, even if not prayed for by petitioner.

However, the *given or proper* name, also known as the *first or Christian* name, of the adoptee must remain as it was originally registered in the civil register. The creation of an adoptive relationship does not confer upon the adopter a license to change the adoptee's registered Christian or first name. The automatic change thereof, premised solely upon the adoption thus granted, is beyond the purview of a decree of adoption. Neither is it a mere incident in nor an adjunct of an adoption proceeding, such that a prayer therefor furtively inserted in a petition for adoption, as in this case, cannot properly be granted.

The name of the adoptee as recorded in the civil register should be used in the adoption proceedings in order to vest the court with jurisdiction to hear and determine the same, and shall continue to be so used until the court orders otherwise. Changing the given or proper name of a person as recorded in the civil register is a substantial change in one's official or legal name and cannot be authorized without a judicial order. The purpose of the statutory procedure authorizing a change of name is simply to have, wherever possible, a record of the change, and in keeping with the object of the statute, a court to which the application is made should normally make its decree recording such change.

The official name of a person whose birth is registered in the civil register is the name appearing therein. If a change in one's name is desired, this can only be done by filing and strictly complying with the substantive and procedural requirements for a special proceeding for change of name under Rule 103 of the Rules of Court, wherein the sufficiency of the reasons or grounds therefor can be threshed out and accordingly determined.

Under Rule 103, a petition for change of name shall be filed in the regional trial court of the province where the person desiring to change his name resides. It shall be signed and verified by the person desiring his name to be changed or by some other person in his behalf and shall state that the petitioner has been a *bona fide* resident of the province where the petition is filed for at least three years prior to such filing, the cause for which the change of name is sought, and the name asked for. An order for the date and place of hearing shall be made and published, with the Solicitor General or the proper provincial or city prosecutor appearing for the Government at such hearing. It is only upon satisfactory proof of the veracity of the allegations in the petition and the reasonableness of the causes for the change of name that the court may adjudge that the name be changed as prayed for in the petition, and shall furnish a copy of said judgment to the civil registrar of the municipality concerned who shall forthwith enter the same in the civil register.

A petition for change of name being a proceeding *in rem*, strict compliance with all the requirements therefor is indispensable in order to vest the court with jurisdiction for its adjudication. It is an independent and discrete special proceeding, in and by itself, governed by its own set of rules. *A fortiori*, it cannot be granted by means of any other proceeding. To consider it as a mere incident or an offshoot of another special proceeding would be to denigrate its role and significance as the appropriate remedy available under our remedial law system.

The Solicitor General correctly points out the glaring defects of the subject petition insofar as it seeks the change of name of the adoptee, all of which taken together cannot but lead to the conclusion that there was no petition sufficient in form and substance for change of name as would rightfully deserve

an order therefor. It would be procedurally erroneous to employ a petition for adoption to effect a change of name in the absence of the corresponding petition for the latter relief at law.

It is necessary to reiterate in this discussion that a person's name is a word or combination of words by which he is known and identified, and distinguished from others, for the convenience of the world at large in addressing him, or in speaking of or dealing with him. It is both of personal as well as public interest that every person must have a name. The name of an individual has two parts: the given or proper name and the surname or family name. The given or proper name is that which is given to the individual at birth or at baptism, to distinguish him from other individuals. The surname or family name is that which identifies the family to which he belongs and is continued from parent to child. The given name may be freely selected by the parents for the child, but the surname to which the child is entitled is fixed by law.

By Article 408 of the Civil Code, a person's birth must be entered in the civil register. The official name of a person is that given him in the civil register. That is his name in the eyes of the law.⁴⁹ And once the name of a person is officially entered in the civil register, Article 376 of the same Code seals that identity with its precise mandate: no person can change his name or surname without judicial authority. This statutory restriction is premised on the interest of the State in names borne by individuals and entities for purposes of identification.

By reason thereof, the only way that the name of person can be changed legally is through a petition for change of name under Rule 103 of the Rules of Court. For purposes of an application for change of name under Article 376 of the Civil Code and correlatively implemented by Rule 103, the only name that may be changed is the true or official name recorded in the civil register. As earlier mentioned, a petition for change of name being a proceeding *in rem*, impressed as it is with public interest, strict compliance with all the requisites therefor in order to vest the court with jurisdiction is essential, and failure therein renders the proceedings a nullity.

It must likewise be stressed once again that a change of name is a privilege, not a matter of right, addressed to the sound discretion of the court which has the duty to consider carefully the consequences of a change of name and to deny the same unless weighty reasons are shown. Before a person can be authorized to change his name, that is, his true or official name or that which appears in his birth certificate or is entered in the civil register, he must show proper and reasonable cause or any convincing reason which may justify such change.

Jurisprudence has recognized, *inter alia*, the following grounds as being sufficient to warrant a change of name: (a) when the name is ridiculous, dishonorable or extremely difficult to write or pronounce; (b) when the change results as a legal consequence of legitimation or adoption; (c) when the change will avoid confusion; (d) when one has continuously used and been known since childhood by a Filipino name and was unaware of alien parentage; (e) when the change is based on a sincere desire to adopt a Filipino name to erase signs of former alienage, all in good faith and without prejudice to anybody; and (f) when the surname causes embarrassment and there is no showing that the desired change of name was for a fraudulent purpose or that the change of name would prejudice public interest.

Contrarily, a petition for change of name grounded on the fact that one was baptized by another name, under which he has been known and which he used, has been denied inasmuch as the use of baptismal names is not sanctioned. For, in truth, baptism is not a condition *sine qua non* to a change

of name. Neither does the fact that the petitioner has been using a different name and has become known by it constitute proper and reasonable cause to legally authorize a change of name. A name given to a person in the church records or elsewhere or by which he is known in the community - when at variance with that entered in the civil register - is unofficial and cannot be recognized as his real name.

The instant petition does not sufficiently persuade us to depart from such rulings of long accepted wisdom and applicability. The only grounds offered to justify the change of name prayed for was that the adopted child had been baptized as Aaron Joseph in keeping with the religious faith of private respondents and that it was the name by which he had been called and known by his family, relatives and friends from, the time he came to live with private respondents. Apart from suffusing their pleadings with sanctimonious entreaties for compassion, none of the justified grounds for a change of name has been alleged or established by private respondents. The legal bases chosen by them to bolster their cause have long been struck down as unavailing for their present purposes. For, to allow the adoptee herein to use his baptismal name, instead of his name registered in the civil register, would be to countenance or permit that which has always been frowned upon.

The practically unrestricted freedom of the natural parent to select the proper or given name of the child presupposes that no other name for it has theretofore been entered in the civil register. Once such name is registered, regardless of the reasons for such choice and even if it be solely for the purpose of identification, the same constitutes the official name. This effectively authenticates the identity of the person and must remain unaltered save when, for the most compelling reasons shown in an appropriate proceeding, its change may merit judicial approval.

While the right of a natural parent to name the child is recognized, guaranteed and protected under the law, the so-called right of an adoptive parent to re-name an adopted child by virtue or as a consequence of adoption, even for the most noble intentions and moving supplications, is unheard of in law and consequently cannot be favorably considered. To repeat, the change of the surname of the adoptee as a result of the adoption and to follow that of the adopter does not lawfully extend to or include the proper or given name. Furthermore, factual realities and legal consequences, rather than sentimentality and symbolisms, are what are of concern to the Court.

Finally, it is understood that this decision does not entirely foreclose and is without prejudice to, private respondents' privilege to legally change the proper or given name of their adopted child, provided that the same is exercised, this time, via a proper petition for change of name. Of course, the grant thereof is conditioned on strict compliance with all jurisdictional requirements and satisfactory proof of the compelling reasons advanced therefor.

REPUBLIC OF THE PHILIPPINES, *Petitioner*, -versus - THE COURT OF APPEALS, JAIME B. CARANTO, and ZENAIDA P. CARANTO, *Respondents*

G.R. No. 103695, SECOND DIVISION, March 15, 1996, MENDOZA, J.

While the right of a natural parent to name the child is recognized, guaranteed and protected under the law, the so-called right of an adoptive parent to re-name an adopted child by virtue or as a consequence of adoption, even for the most noble intentions and moving supplications, is unheard of in law and consequently cannot be favorably considered. To repeat, the change of the surname of the adoptee as a result of the adoption and to follow that of the adopter does not lawfully extend to or include the proper

or given name. Furthermore, factual realities and legal consequences, rather than sentimentality and symbolisms, are what are of concern to the Court.

Finally, it is understood that this decision does not entirely foreclose and is without prejudice to, private respondents' privilege to legally change the proper or given name of their adopted child, provided that the same is exercised, this time, via a proper petition for change of name. Of course, the grant thereof is conditioned on strict compliance with all jurisdictional requirements and satisfactory proof of the compelling reasons advanced therefor.

FACTS

The petition below was filed on September 21 1988 by private respondents spouses Jaime B. Caranto and Zenaida P. Caranto for the adoption of Midael C. Mazon, then fifteen years old, who had been living with private respondent Jaime B. Caranto since he was seven years old. When private respondents were married on January 19, 1986, the minor Midael C. Mazon stayed with them under their care and custody. Private respondents prayed that judgment be rendered:

- a) Declaring the child Michael C. Mazon the child of petitioners for all intents and purposes;
- b.) Dissolving the authority vested in the natural parents of the child; and
- c) That the surname of the child be legally changed to that of the petitioners and that the first name which was mistakenly registered as "MIDAEL" be corrected to "MICHAEL."

The Solicitor General opposed the petition insofar as it sought the correction of the name of the child from "Midael" to "Michael." He argued that although the correction sought concerned only a clerical and innocuous error, it could not be granted because the petition was basically for adoption, not the correction of an entry in the civil registry under Rule 108 of the Rules of Court.

The RTC dismissed the opposition of the Solicitor General on the ground that Rule 108 of the Rules of Court (Cancellation or Correction of Entries in the Civil Registry). According to the trial court, the error could be corrected in the same proceeding for adoption to prevent multiplicity of actions and inconvenience to the petitioners

Court of Appeals affirmed in toto the decision of the RTC.

Petitioner's contention is that the trial court did not acquire jurisdiction over the petition for adoption because the notice by publication did not state the true name of the minor child. Petitioner invokes the ruling in *Cruz v. Republic*. There the petition for adoption and the notice published in the newspaper gave the baptismal name of the child ("Rosanna E. Cruz") instead of her name in the record of birth ("Rosanna E. Bucoy"). It was held that this was a "substantial defect in the petition and the published order of hearing." Indeed there was a question of identity involved in that case. Rosanna E. Cruz could very well be a different person from Rosanna E. Bucoy, as common experience would indicate.

ISSUE

- I. Whether the trial court acquired jurisdiction (YES)

II. Whether Court of Appeals and the trial court erred in granting private respondents' prayer for the correction of the name of the child in the civil registry (YES)

RULING

I.

The present case is different. It involves an obvious clerical error in the name of the child sought to be adopted. In this case the correction involves merely the substitution of the letters "ch" for the letter "d," so that what appears as "Midael" as given name would read "Michael." Even the Solicitor General admits that the error is a plainly clerical one. Changing the name of the child from "Midael C. Mazon" to "Michael C. Mazon" cannot possibly cause any confusion, because both names "can be read and pronounced with the same rhyme (tugma) and tone (tono, tunog, himig)." The purpose of the publication requirement is to give notice so that those who have any objection to the adoption can make their objection known. That purpose has been served by publication of notice in this case.

For this reason we hold that the RTC correctly granted the petition for adoption of the minor Midael C. Mazon and the Court of Appeals, in affirming the decision of the trial court, correctly did so.

II.

The trial court was clearly in error in holding Rule 108 to be applicable only to the correction of errors concerning the civil status of persons. Rule 108, §2 plainly states:

§2. Entries subject to cancellation or correction. — Upon good and valid grounds, the following entries in the civil register may be cancelled or corrected: (a) births; (b) marriages; (c) deaths; (d) legal separation; (e) judgments of annulments of marriage; (f) judgments declaring marriages void from the beginning; (g) legitimations; (h) adoptions; (i) acknowledgments of natural children; (j) naturalization; (k) election, loss or recovery of citizenship; (l) civil interdiction; (m) judicial determination of filiation (n) voluntary emancipation of a minor; and (o) changes of name.

This case falls under letter "(o)," referring to "changes of name." Indeed, it has been the uniform ruling of this Court that Art. 412 of the Civil Code — to implement which Rule 108 was inserted in the Rules of Court in 1964 covers "those harmless and innocuous changes, such as correction of a name that is clearly misspelled." Thus, in *Yu v. Republic* it was held that "to change "Sincio" to "Sencio" which merely involves the substitution of the first vowel "i" in the first name into the vowel "e" amounts merely to the righting of a clerical error." In *Labayo-Rowe v. Republic* it was held that "the change of petitioner's name from Beatriz Labayo/Beatriz Labayu to Emperatriz Labayo is a mere innocuous alteration wherein a summary proceeding is appropriate."

Rule 108 thus applies to the present proceeding. Now §3 of this Rule provides:

§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.

The local civil registrar is thus required to be made a party to the proceeding. He is an indispensable party, without whom no final determination of the case can be had. As he was not impleaded in this case much less given notice of the proceeding, the decision of the trial court, insofar as it granted the prayer for the correction of entry, is void. The absence of an indispensable party in a case renders ineffectual all the proceedings subsequent to the filing of the complaint including the judgment.

Nor was notice of the petition for correction of entry published as required by Rule 108, §4 which reads:

§4. *Notice and publication.* — Upon filing of the petition, the court shall, by an order, fix the time and place for the hearing of the same, and cause reasonable notice thereof to be given to the persons named in the petition. The court shall also cause the order to be published once a week for three (3) consecutive weeks in a newspaper of general circulation in the province.

While there was notice given by publication in this case, it was notice of the petition for adoption made in compliance with Rule 99, §4. In that notice only the prayer for adoption of the minor was stated. Nothing was mentioned that in addition the correction of his name in the civil registry was also being sought. The local civil registrar was thus deprived of notice and, consequently, of the opportunity to be heard.

The necessary consequence of the failure to implead the civil registrar as an indispensable party and to give notice by publication of the petition for correction of entry was to render the proceeding of the trial court, so far as the correction of entry was concerned, null and void for lack of jurisdiction both as to party and as to the subject matter

IN THE MATTER OF THE ADOPTION OF STEPHANIE NATHY ASTORGA GARCIA

HONORATO B. CATINDIG, *Petitioner*

G.R. No. 148311, THIRD DIVISION, March 31, 2005, SANDOVAL-GUTIERREZ, J.

Being a legitimate child by virtue of her adoption, it follows that Stephanie is entitled to all the rights provided by law to a legitimate child without discrimination of any kind, including the right to bear the surname of her father and her mother, as discussed above. This is consistent with the intention of the members of the Civil Code and Family Law Committees as earlier discussed. In fact, it is a Filipino custom that the initial or surname of the mother should immediately precede the surname of the father.

Hence, since there is no law prohibiting an illegitimate child adopted by her natural father, like Stephanie, to use, as middle name her mother's surname, we find no reason why she should not be allowed to do so.

FACTS

On August 31, 2000, Honorato B. Catindig, herein petitioner, filed a petition¹ to adopt his minor illegitimate child Stephanie Nathy Astorga Garcia. He alleged therein, among others, that Stephanie was born on June 26, 1994;² that her mother is Gemma Astorga Garcia; that Stephanie has been using her mother's middle name and surname; and that he is now a widower and qualified to be her adopting parent. He prayed that Stephanie's middle name Astorga be changed to "Garcia," her mother's surname, and that her surname "Garcia" be changed to "Catindig," his surname.

Trial court granted the adoption.

Petitioner filed a motion for clarification and/or reconsideration praying that Stephanie should be allowed to use the surname of her natural mother (GARCIA) as her middle name.

On May 28, 2001, the trial court denied petitioner's motion for reconsideration holding that there is no law or jurisprudence allowing an adopted child to use the surname of his biological mother as his middle name.

ISSUE

Whether an illegitimate child, upon adoption by her natural father, use the surname of her natural mother as her middle name (YES)

RULING

As correctly submitted by both parties, there is no law regulating the use of a middle name. Even Article 176 of the Family Code, as amended by Republic Act No. 9255, otherwise known as "*An Act Allowing Illegitimate Children To Use The Surname Of Their Father*," is silent as to what middle name a child may use.

The middle name or the mother's surname is only considered in Article 375(1), quoted above, in case there is identity of names and surnames between ascendants and descendants, in which case, the middle name or the mother's surname shall be added.

Notably, the law is likewise silent as to what middle name an adoptee may use. Article 365 of the Civil Code merely provides that "*an adopted child shall bear the surname of the adopter*." Also, Article 189 of the Family Code, enumerating the legal effects of adoption, is likewise silent on the matter.

However, as correctly pointed out by the OSG, the members of the Civil Code and Family Law Committees that drafted the Family Code recognized the Filipino custom of adding the surname of the child's mother as his middle name. In the Minutes of the Joint Meeting of the Civil Code and Family Law Committees, the members approved the suggestion that the initial or surname of the mother should immediately precede the surname of the father.

In the case of an adopted child, the law provides that "*the adopted shall bear the surname of the adopters*." Again, it is silent whether he can use a middle name. What it only expressly allows, as a matter of right and obligation, is for the adoptee to bear the surname of the adopter, upon issuance of the decree of adoption.

Adoption is defined as the process of making a child, whether related or not to the adopter, possess in general, the rights accorded to a legitimate child. It is a juridical act, a proceeding in rem which creates between two persons a relationship similar to that which results from legitimate paternity and filiation. The modern trend is to consider adoption not merely as an act to establish a relationship of paternity and filiation, but also as an act which endows the child with a legitimate status. This was, indeed, confirmed in 1989, when the Philippines, as a State Party to the Convention of the Rights of the Child initiated by the United Nations, accepted the principle that adoption is impressed with social and moral responsibility, and that its underlying intent is geared to favor the adopted child. Republic Act No. 8552, otherwise known as the "Domestic Adoption Act of 1998," secures these rights and privileges for the adopted.

One of the effects of adoption is that the adopted is deemed to be a legitimate child of the adopter for all intents and purposes pursuant to Article 189 of the Family Code and Section 17 Article V of RA 8552.

Being a legitimate child by virtue of her adoption, it follows that Stephanie is entitled to all the rights provided by law to a legitimate child without discrimination of any kind, including the right to bear the surname of her father and her mother, as discussed above. This is consistent with the intention of the members of the Civil Code and Family Law Committees as earlier discussed. In fact, it is a Filipino custom that the initial or surname of the mother should immediately precede the surname of the father.

Additionally, as aptly stated by both parties, Stephanie's continued use of her mother's surname (Garcia) as her middle name will maintain her maternal lineage. It is to be noted that Article 189(3) of the Family Code and Section 18 Article V of RA 8552 (law on adoption) provide that the adoptee remains an intestate heir of his/her biological parent. Hence, Stephanie can well assert or claim her hereditary rights from her natural mother in the future.

Moreover, records show that Stephanie and her mother are living together in the house built by petitioner for them at 390 Tumana, San Jose, Baliuag, Bulacan. Petitioner provides for all their needs. Stephanie is closely attached to both her mother and father. She calls them "Mama" and "Papa". Indeed, they are one normal happy family. Hence, to allow Stephanie to use her mother's surname as her middle name will not only sustain her continued loving relationship with her mother but will also eliminate the stigma of her illegitimacy.

It is a settled rule that adoption statutes, being humane and salutary, should be liberally construed to carry out the beneficent purposes of adoption. The interests and welfare of the adopted child are of primary and paramount consideration, hence, every reasonable intendment should be sustained to promote and fulfill these noble and compassionate objectives of the law.

Hence, since there is no law prohibiting an illegitimate child adopted by her natural father, like Stephanie, to use, as middle name her mother's surname, we find no reason why she should not be allowed to do so.

**SOCIAL SECURITY SYSTEM, *Petitioner*, -versus - ROSANNA H. AGUAS, JANET H. AGUAS, and
minor JEYLN H. AGUAS, represented by her Legal Guardian, ROSANNA H. AGUAS,
*Respondents***

G.R. No. 165546, FIRST DIVISION, February 27, 2006, CALLEJO, SR., J.

Under Section 8(e) of Republic Act No. 1161, as amended, only "legally adopted" children are considered dependent children. Absent any proof that the family has legally adopted Janet, the Court cannot consider her a dependent child of Pablo, hence, not a primary beneficiary.

FACTS

Pablo Aguas, a member of the Social Security System (SSS) and a pensioner, died on December 8, 1996. Pablo's surviving spouse, Rosanna H. Aguas, filed a claim with the SSS for death benefits on December 13, 1996. Rosanna indicated in her claim that Pablo was likewise survived by his minor child, Jeylnn, who was born on October 29, 1991.

Janet H. Aguas, who also claimed to be the child of the deceased and Rosanna, now joined them as claimant.

According to one of the witnesses, Janet was not the real child of Pablo and Rosanna; she was just taken in by the spouses because for a long time they could not have children; however, there were no legal papers on Janet's adoption

ISSUE

Whether Janet is entitled to the SSS death benefits accruing from the death of Pablo (NO)

RULING

Here, the witnesses were unanimous in saying that Janet was not the real child but merely adopted by Rosanna and Pablo. Leticia also testified that Janet's adoption did not undergo any legal proceedings; hence, there were no papers to prove it. Under Section 8(e) of Republic Act No. 1161, as amended, only "legally adopted" children are considered dependent children. Absent any proof that the family has legally adopted Janet, the Court cannot consider her a dependent child of Pablo, hence, not a primary beneficiary.

**DIWATA RAMOS LANDINGIN, *Petitioner*, -versus - REPUBLIC OF THE PHILIPPINES,
*Respondent***

G.R. No. 165546, FIRST DIVISION, February 27, 2006, CALLEJO, SR., J.

The written consent of the biological parents is indispensable for the validity of a decree of adoption. Indeed, the natural right of a parent to his child requires that his consent must be obtained before his parental rights and duties may be terminated and re-established in adoptive parents. In this case, petitioner failed to submit the written consent of Amelia Ramos to the adoption.

FACTS

On February 4, 2002, Diwata Ramos Landingin, a citizen of the United States of America (USA), of Filipino parentage and a resident of Guam, USA, filed a petition for the adoption of minors Elaine Dizon Ramos who was born on August 31, 1986; Elma Dizon Ramos, who was born on September 7, 1987; and Eugene Dizon Ramos who was born on August 5, 1989. The minors are the natural children of Manuel Ramos, petitioner's brother, and Amelia Ramos.

Landingin, as petitioner, alleged in her petition that when Manuel died on May 19, 1990,² the children were left to their paternal grandmother, Maria Taruc Ramos; their biological mother, Amelia, went to Italy, re-married there and now has two children by her second marriage and no longer communicated with her children by Manuel Ramos nor with her in-laws from the time she left up to the institution of the adoption; the minors are being financially supported by the petitioner and her children, and relatives abroad; as Maria passed away on November 23, 2000, petitioner desires to adopt the children; the minors have given their written consent to the adoption; she is qualified to adopt as shown by the fact that she is a 57-year-old widow, has children of her own who are already married, gainfully employed and have their respective families; she lives alone in her own home in Guam, USA, where she acquired citizenship, and works as a restaurant server. She came back to the

Philippines to spend time with the minors; her children gave their written consent to the adoption of the minors. Petitioner's brother, Mariano Ramos, who earns substantial income, signified his willingness and commitment to support the minors while in petitioner's custody.

However, petitioner failed to present Pagbilao as witness and offer in evidence the voluntary consent of Amelia Ramos to the adoption; petitioner, likewise, failed to present any documentary evidence to prove that Amelia assents to the adoption.

Trial court granted the petition. CA reversed.

ISSUES

I. Whether the petitioner is entitled to adopt the minors without the written consent of their biological mother, Amelia Ramos Pablo (NO)

II. Whether the affidavit of consent purportedly executed by the petitioner-adopter's children sufficiently complies with the law (NO)

III. Whether petitioner is financially capable of supporting the adoptees. (NO)

RULING

I.

The general requirement of consent and notice to the natural parents is intended to protect the natural parental relationship from unwarranted interference by interlopers, and to insure the opportunity to safeguard the best interests of the child in the manner of the proposed adoption.

Clearly, the written consent of the biological parents is indispensable for the validity of a decree of adoption. Indeed, the natural right of a parent to his child requires that his consent must be obtained before his parental rights and duties may be terminated and re-established in adoptive parents. In this case, petitioner failed to submit the written consent of Amelia Ramos to the adoption.

We note that in her Report, Pagbilao declared that she was able to interview Amelia Ramos who arrived in the Philippines with her son, John Mario in May 2002. If said Amelia Ramos was in the Philippines and Pagbilao was able to interview her, it is incredible that the latter would not require Amelia Ramos to execute a Written Consent to the adoption of her minor children. Neither did the petitioner bother to present Amelia Ramos as witness in support of the petition.

Petitioner, nonetheless, argues that the written consent of the biological mother is no longer necessary because when Amelia's husband died in 1990, she left for Italy and never came back. The children were then left to the guidance and care of their paternal grandmother. It is the paternal relatives, including petitioner, who provided for the children's financial needs. Hence, Amelia, the biological mother, had effectively abandoned the children. Petitioner further contends that it was by twist of fate that after 12 years, when the petition for adoption was pending with the RTC that Amelia and her child by her second marriage were on vacation in the Philippines. Pagbilao, the DSWD social worker, was able to meet her, and during the meeting, Amelia intimated to the social worker that she conformed to the adoption of her three children by the petitioner.

Petitioner's contention must be rejected. When she filed her petition with the trial court, Rep. Act No. 8552 was already in effect. Section 9 thereof provides that if the written consent of the biological parents cannot be obtained, the written consent of the legal guardian of the minors will suffice. If, as claimed by petitioner, that the biological mother of the minors had indeed abandoned them, she should, thus have adduced the written consent of their legal guardian.

Also, merely permitting the child to remain for a time undisturbed in the care of others is not such an abandonment. To dispense with the requirement of consent, the abandonment must be shown to have existed at the time of adoption.

Amelia sends financial support ranging from P10,000-P15,000 a month through her parents who share minimal amount of P3,000-P5,000 a month to his (sic) children. The petitioner and other paternal relatives are continuously providing support for most of the needs & education of minors up to present.

Thus, when Amelia left for Italy, she had not intended to abandon her children, or to permanently sever their mother-child relationship. She was merely impelled to leave the country by financial constraints. Yet, even while abroad, she did not surrender or relinquish entirely her motherly obligations of rearing the children to her now deceased mother-in-law, for, as claimed by Elaine herself, she consulted her mother, Amelia, for serious personal problems. Likewise, Amelia continues to send financial support to the children, though in minimal amounts as compared to what her affluent in-laws provide.

Let it be emphasized, nevertheless, that the adoption of the minors herein will have the effect of severing all legal ties between the biological mother, Amelia, and the adoptees, and that the same shall then be vested on the adopter. It would thus be against the spirit of the law if financial consideration were to be the paramount consideration in deciding whether to deprive a person of parental authority over his/her children. More proof has to be adduced that Amelia has emotionally abandoned the children, and that the latter will not miss her guidance and counsel if they are given to an adopting parent. Again, it is the best interest of the child that takes precedence in adoption.

II.

Petitioner failed to offer in evidence Pagbilao's Report and of the Joint Affidavit of Consent purportedly executed by her children; the authenticity of which she, likewise, failed to prove. The joint written consent of petitioner's children was notarized on January 16, 2002 in Guam, USA; for it to be treated by the Rules of Court in the same way as a document notarized in this country it needs to comply with Section 2 of Act No. 2103,

As the alleged written consent of petitioner's legitimate children did not comply with the afore-cited law, the same can at best be treated by the Rules as a private document whose authenticity must be proved either by anyone who saw the document executed or written; or by evidence of the genuineness of the signature or handwriting of the makers.

Since, in the instant case, no further proof was introduced by petitioner to authenticate the written consent of her legitimate children, the same is inadmissible in evidence.

III.

Since the primary consideration in adoption is the best interest of the child, it follows that the financial capacity of prospective parents should also be carefully evaluated and considered. Certainly, the adopter should be in a position to support the would-be adopted child or children, in keeping with the means of the family.

According to the Adoption Home Study Report forwarded by the Department of Public Health & Social Services of the Government of Guam to the DSWD, petitioner is no longer supporting her legitimate children, as the latter are already adults, have individual lives and families. At the time of the filing of the petition, petitioner was 57 years old, employed on a part-time basis as a waitress, earning \$5.15 an hour and tips of around \$1,000 a month. Petitioner's main intention in adopting the children is to bring the latter to Guam, USA. She has a house at Quitugua Subdivision in Yigo, Guam, but the same is still being amortized. Petitioner likewise knows that the limited income might be a hindrance to the adoption proceedings.

Given these limited facts, it is indeed doubtful whether petitioner will be able to sufficiently handle the financial aspect of rearing the three children in the US. She only has a part-time job, and she is rather of age. While petitioner claims that she has the financial support and backing of her children and siblings, the OSG is correct in stating that the ability to support the adoptees is personal to the adopter, as adoption only creates a legal relation between the former and the latter. Moreover, the records do not prove nor support petitioner's allegation that her siblings and her children are financially able and that they are willing to support the minors herein. The Court, therefore, again sustains the ruling of the CA on this issue.

**IN THE MATTER OF APPLICATION FOR THE ISSUANCE OF A WRIT OF HABEAS CORPUS
RICHARD BRIAN THORNTON for and in behalf of the minor child SEQUEIRA JENNIFER DELLE
FRANCISCO THORNTON, *Petitioner*, -versus - ADELFA FRANCISCO THORNTON, *Respondent*
G.R. No. 154598, THIRD DIVISION, August 16, 2004 CORONA, J.**

The Court of Appeals and Supreme Court have concurrent jurisdiction with family courts in habeas corpus cases where the custody of minors is involved.

FACTS

Petitioner, an American, and respondent, a Filipino, were married on August 28, 1998 in the Catholic Evangelical Church at United Nations Avenue, Manila. A year later, respondent gave birth to a baby girl whom they named Sequeira Jennifer Delle Francisco Thornton.

However, after three years, respondent grew restless and bored as a plain housewife. She wanted to return to her old job as a "guest relations officer" in a nightclub, with the freedom to go out with her friends. In fact, whenever petitioner was out of the country, respondent was also often out with her friends, leaving her daughter in the care of the househelp.

Petitioner admonished respondent about her irresponsibility but she continued her carefree ways. On December 7, 2001, respondent left the family home with her daughter Sequiera without notifying her husband. She told the servants that she was bringing Sequiera to Purok Marikit, Sta. Clara, Lamitan, Basilan Province.

Petitioner filed a petition for habeas corpus in the designated Family Court in Makati City but this was dismissed, presumably because of the allegation that the child was in Basilan. Petitioner then went to Basilan to ascertain the whereabouts of respondent and their daughter. However, he did not find them there and the barangay office of Sta. Clara, Lamitan, Basilan, issued a certification that respondent was no longer residing there.

Petitioner gave up his search when he got hold of respondent's cellular phone bills showing calls from different places such as Cavite, Nueva Ecija, Metro Manila and other provinces. Petitioner then filed another petition for habeas corpus, this time in the Court of Appeals which could issue a writ of habeas corpus enforceable in the entire country.

However, the petition was denied by the Court of Appeals on the ground that it did not have jurisdiction over the case. It ruled that since RA 8369 (The Family Courts Act of 1997) gave family courts exclusive original jurisdiction over petitions for habeas corpus, it impliedly repealed RA 7902 (An Act Expanding the Jurisdiction of the Court of Appeals) and Batas Pambansa 129 (The Judiciary Reorganization Act of 1980).

ISSUE

Whether has CA jurisdiction to issue writs of habeas corpus involving custody of minors (YES)

RULING

The Court of Appeals should take cognizance of the case since there is nothing in RA 8369 that revoked its jurisdiction to issue writs of habeas corpus involving the custody of minors.

The Court of Appeals opines that RA 8369 impliedly repealed RA 7902 and BP 129 since, by giving family courts exclusive jurisdiction over habeas corpus cases, the lawmakers intended it to be the sole court which can issue writs of habeas corpus. To the court *a quo*, the word "exclusive" apparently cannot be construed any other way.

We disagree with the CA's reasoning because it will result in an iniquitous situation, leaving individuals like petitioner without legal recourse in obtaining custody of their children. Individuals who do not know the whereabouts of minors they are looking for would be helpless since they cannot seek redress from family courts whose writs are enforceable only in their respective territorial jurisdictions. Thus, if a minor is being transferred from one place to another, which seems to be the case here, the petitioner in a habeas corpus case will be left without legal remedy. This lack of recourse could not have been the intention of the lawmakers when they passed the Family Courts Act of 1997.

The primordial consideration is the welfare and best interests of the child. We rule therefore that RA 8369 did not divest the Court of Appeals and the Supreme Court of their jurisdiction over habeas corpus cases involving the custody of minors. Again, to quote the Solicitor General:

To allow the Court of Appeals to exercise jurisdiction over the petition for habeas corpus involving a minor child whose whereabouts are uncertain and transient will not result in one of the situations that the legislature seeks to avoid. First, the welfare of the child is paramount. Second, the *ex parte* nature of habeas corpus proceedings will not result in disruption of the child's privacy and emotional

well-being; whereas to deprive the appellate court of jurisdiction will result in the evil sought to be avoided by the legislature: the child's welfare and well being will be prejudiced.

We agree with the observations of the Solicitor General that:

While *Floresca* involved a cause of action different from the case at bar. it supports petitioner's submission that the word "exclusive" in the Family Courts Act of 1997 may not connote automatic foreclosure of the jurisdiction of other courts over habeas corpus cases involving minors. In the same manner that the remedies in the *Floresca* case were selective, the jurisdiction of the Court of Appeals and Family Court in the case at bar is concurrent. The Family Court can issue writs of habeas corpus enforceable only within its territorial jurisdiction. On the other hand, in cases where the territorial jurisdiction for the enforcement of the writ cannot be determined with certainty, the Court of Appeals can issue the same writ enforceable throughout the Philippines, as provided in Sec. 2, Rule 102 of the Revised Rules of Court, thus:

The Writ of Habeas Corpus may be granted by the Supreme Court, or any member thereof, on any day and at any time, or by *the Court of Appeals or any member thereof in the instances authorized by law, and if so granted it shall be enforceable anywhere in the Philippines, and may be made returnable before the court or any member thereof, or before a Court of First Instance, or any judge thereof for hearing and decision on the merits. It may also be granted by a Court of First Instance, or a judge thereof, on any day and at any time, and returnable before himself, enforceable only within his judicial district.*

In ruling that the Commissioner's "exclusive" jurisdiction did not foreclose resort to the regular courts for damages, this Court, in the same *Floresca* case, said that it was merely applying and giving effect to the constitutional guarantees of social justice in the 1935 and 1973 Constitutions and implemented by the Civil Code. It also applied the well-established rule that what is controlling is the spirit and intent, not the letter, of the law

The rule is expressed in the maxim, *interpretare et concordare legibus est optimus interpretandi*, i.e., every statute must be so interpreted and brought into accord with other laws as to form a uniform system of jurisprudence. It is that the legislature should be presumed to have known the existing laws on the subject and not have enacted conflicting statutes. Hence, all doubts must be resolved against any implied repeal, and all efforts should be exerted in order to harmonize and give effect to all laws on the subject."

The provisions of RA 8369 reveal no manifest intent to revoke the jurisdiction of the Court of Appeals and Supreme Court to issue writs of habeas corpus relating to the custody of minors. Further, it cannot be said that the provisions of RA 8369, RA 7092 and BP 129 are absolutely incompatible since RA 8369 does not prohibit the Court of Appeals and the Supreme Court from issuing writs of habeas corpus in cases involving the custody of minors. Thus, the provisions of RA 8369 must be read in harmony with RA 7029 and BP 129 – that family courts have concurrent jurisdiction with the Court of Appeals and the Supreme Court in petitions for habeas corpus where the custody of minors is at issue.

In any case, whatever uncertainty there was has been settled with the adoption of A.M. No. 03-03-04-SC Re: Rule on Custody of Minors and Writ of Habeas Corpus in Relation to Custody of Minors. Section 20 of the rule provides that:

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.

xxx xxx xxx

The petition *may likewise be filed with the Supreme Court, Court of Appeals, or with any of its members and, if so granted, the writ shall be enforceable anywhere in the Philippines.* The writ may be made returnable to a Family Court or to any regular court within the region where the petitioner resides or where the minor may be found for hearing and decision on the merits.

From the foregoing, there is no doubt that the Court of Appeals and Supreme Court have concurrent jurisdiction with family courts in habeas corpus cases where the custody of minors is involved.

**MARTIN GIBBS FLETCHER, *Petitioner*, -versus - THE DIRECTOR OF BUREAU OF CORRECTIONS
or his representative, *Respondent***

UDK-14071, FIRST DIVISION, July 17, 2009, CORONA, J.

The writ obtains immediate relief for those who have been illegally confined or imprisoned without sufficient cause. The writ, however, should not be issued when the custody over the person is by virtue of a judicial process or a valid judgment.

It is undisputed that petitioner was convicted of estafa in Criminal Case No. 95-995. On June 24, 1996, he was sentenced to imprisonment of 12 years of prison mayor as minimum to 17 years and four months of reclusion temporal as maximum, with payment of actual damages of ₱102,235.56.

FACTS

Petitioner Martin Gibbs Fletcher seeks his release from prison in this petition for the issuance of the writ of *habeas corpus*. He claims that his prison sentence of 12 to 17 years was commuted by then President Fidel V. Ramos to nine to 12 years. Since he had already served 14 years, three months and 12 days, including his good conduct allowance, his continued imprisonment is illegal.

In its return to the writ, the Office of the Solicitor General (OSG) posited that the petition should be denied for failure to comply with Section 3, Rule 102 of the Rules of Court. In particular, the petition was neither signed nor verified by petitioner or a person on his behalf or by his purported counsel. Moreover, it was not accompanied by a copy of the cause of petitioner's detention or commitment order.

ISSUES

- I. Whether petition should be denied for failure to comply with Section 3, Rule 102 of the Rules of Court (NO)
- II. Whether the writ of habeas corpus should be granted (NO)

RULING

I.

We disagree with the OSG insofar as it argues that the petition should be dismissed for failure to comply with Section 3, Rule 102 of the Rules of Court. Strict compliance with the technical requirements for a *habeas corpus* petition as provided in the Rules of Court may be dispensed with where the allegations in the application are sufficient to make out a case for *habeas corpus*. In *Angeles v. Director of New Bilibid Prison*, we held that the formalities required for petitions for *habeas corpus* shall be construed liberally. The petition for the writ is required to be verified but the defect in form is not fatal. Indeed, in the landmark case of *Villavicencio v. Lukban*, this Court declared that it is the duty of a court to issue the writ if there is evidence that a person is unjustly restrained of his liberty within its jurisdiction *even if there is no application therefor*. So long as this Court sits, technicality cannot trump liberty. Therefore, a petition which is deficient in form, such as petitioner's petition-letter in this case, may be entertained so long as its allegations sufficiently make out a case for *habeas corpus*.

The ultimate purpose of the writ of *habeas corpus* is to relieve a person from unlawful restraint. The writ exists as a speedy and effectual remedy to relieve persons from unlawful restraint and as an effective defense of personal freedom.

Where the restraint of liberty is allegedly authored by the State, the very entity tasked to ensure the liberty of all persons (citizens and aliens alike) within its jurisdiction, courts must be vigilant in extending the *habeas corpus* remedy to one who invokes it. To strictly restrict the great writ of liberty to technicalities not only defeats the spirit that animates the writ but also waters down the precious right that the writ seeks to protect, the right to liberty. To dilute the remedy that guarantees protection to the right is to negate the right itself. Thus, the Court will not unduly confine the writ of *habeas corpus* in the prison walls of technicality. Otherwise, it will betray its constitutional mandate to promulgate rules concerning the protection and enforcement of constitutional rights

II.

The writ obtains immediate relief for those who have been illegally confined or imprisoned without sufficient cause. The writ, however, should not be issued when the custody over the person is by virtue of a judicial process or a valid judgment.

It is undisputed that petitioner was convicted of *estafa* in Criminal Case No. 95-995. On June 24, 1996, he was sentenced to imprisonment of 12 years of *prision mayor* as minimum to 17 years and four months of *reclusion temporal* as maximum, with payment of actual damages of ₱102,235.56.

Based on petitioner's prison records, he began serving his sentence on July 24, 1997. He claims that after having served good conduct time allowance for 14 years, three months and 12 days, he should now be released from prison.

We disagree.

A convict may be released on parole after serving the minimum period of his sentence. However, the pendency of another criminal case is a ground for the disqualification of such convict from being released on parole. Unfortunately, petitioner is again on trial in Criminal Case No. 94-6988 for *estafa*. The case was filed as early as 1996 but he was arraigned only on October 6, 2008. He

pleaded not guilty to the charge against him. Pre-trial was set on January 26, 2009. Clearly, he is disqualified from being released on parole and consequently must serve out the entirety of his sentence.

We note the issuance of a warrant for petitioner's arrest on March 8, 1996, the date he was first set for arraignment in Criminal Case No. 94-6988. Pursuant to Section 4, Rule 102 of the Rules of Court, the writ cannot be issued and petitioner cannot be discharged since he has been charged with another criminal offense. His continued detention is without doubt warranted under the circumstances.

Petitioner asserts that his sentence in Criminal Case No. 95-995 was commuted by then President Ramos. However, he presented no proof of such commutation. Other than indorsements by the Chief Justice, Public Attorney's Office and Undersecretary of the Department of Justice no document purporting to be the commutation of his sentence by then President Ramos was attached in his petition and in his subsequent missives to this Court. His barren claim of commutation therefore deserves scant consideration, lest we be accused of usurping the President's sole prerogative to commute petitioner's sentence in Criminal Case No. 95-995.

Having established that petitioner's continued imprisonment is by virtue of a valid judgment and court process, we see no need to discuss petitioner's other arguments.

In the Matter of the Petition for a Writ of Habeas Corpus of the person of ARMY MAJOR JASON LAUREANO AQUINO, PA

MARIA FE S. AQUINO, *Petitioner*, -versus - LT. GEN. HERMOGENES C. ESPERON, AFP,* in his capacity as Commanding General, Philippine Army, and the Custodial Officer or Commander, Army Detention Center, G2-21D, Camp Capinpin, Tanay, Rizal, *Respondents*
UDK-14071, FIRST DIVISION, July 17, 2009, CORONA, J.

While it is true that the extraordinary writ of habeas corpus is the appropriate remedy to inquire into questions of violations of constitutional right this Court, however, does not find the conditions of Major Aquino's confinement to be a proper subject of inquiry in the instant Petition.

This Court has declared that habeas corpus is not the proper mode to question conditions of confinement.

FACTS

The facts leading to the arrest of Major Aquino, as set forth in the Solicitor General's brief, show that on 3 February 2006, Major Aquino, along with several military men, namely, Major Leomar Jose M. Doctolero, Captain Joey T. Fontiveros, Captain Montano B. Aldomovar, Captain Isagani Criste, and Captain James Sababa, allegedly met at the resthouse of Captain Aldomovar near Camp Tecson, San Miguel, Bulacan to plot a breach of the Camp Defense Plan of Camp General Emilio Aguinaldo and to take over Camp Aguinaldo, as well as the Headquarters of the Philippine Army. On 26 February 2006, in the wake of the group's alleged withdrawal of support from the Armed Forces of the Philippines chain of command and the current administration of President Gloria Macapagal-Arroyo, Major Aquino was ordered arrested and confined at the Intelligence Service Group of the Philippine Army in Fort Bonifacio, Taguig, upon the order of Lt. Gen. Hermogenes C. Esperon, (Lt. Gen. Esperon) who was then the Commanding General of the Philippine Army. On the same day, Lt. Gen. Esperon ordered

the Army Inspector General to conduct an investigation to determine: 1) the circumstances attending Major Aquino's alleged withdrawal of support; 2) the veracity of reports anent the alleged troop movement⁵ of some Philippine Military personnel from their respective stations to Manila to join the protest march at Epifanio Delos Santos Avenue on 24 February 2006 with Brigadier General Danilo Lim (Brig. Gen. Lim); and 3) the participation, responsibility and culpability of all Philippine Military personnel involved, if any. For this purpose, a panel of investigators was formed. During the investigation, Major Aquino denied the accusations hurled against him. He intimated, inter alia, that he had no plan nor did he make any pronouncement of withdrawing support from the chain of command, and that he pledged to continue to support the same and the duly constituted authorities..

Petitioner filed a Petition for Habeas Corpus with the Court of Appeals, praying that the AFP Chief of Staff and the Commanding General of the Philippine Army, or whoever are acting in their place and stead, be directed to immediately produce the body of Major Aquino and explain forthwith why he should not be set at liberty without delay.

Petitioner contends that in his confinement, Major Aquino was not restricted to his barracks, quarters or tent as mandated by Article 70 of the Articles of War; rather, he was placed in solitary confinement in a maximum security detention cell. When petitioner proceeded to the detention cell, she alleged that she was restricted from visiting her husband. Petitioner asserts that these are extreme punishments akin to treating Major Aquino as a convicted criminal.

ISSUE

Whether the petition for the writ of habeas corpus shall prosper (NO)

RULING

While it is true that the extraordinary writ of habeas corpus is the appropriate remedy to inquire into questions of violations of constitutional right this Court, however, does not find the conditions of Major Aquino's confinement to be a proper subject of inquiry in the instant Petition.

This Court has declared that habeas corpus is not the proper mode to question conditions of confinement.

Major Aquino is charged with violations of Article 67, for attempting to begin or create mutiny, and Article 97, for Conduct Unbecoming an Officer and Gentleman. According to Article 67, any person subject to military law who attempts to create or who begins, excites, causes or joins in any mutiny shall suffer death or such other punishment as a court-martial may direct. It cannot be gainsaid that in determining the "circumstances" of arrest and confinement in Article 70 of persons charged with crime or with serious offense, such circumstances as the gravity of the offense charged may be considered.

As a rule, therefore, the writ of habeas corpus does not extend into questions of conditions of confinement; but only to the fact and duration of confinement. The high prerogative writ of habeas corpus was devised and exists as a speedy and effectual remedy to relieve persons from unlawful restraint. Its object is to inquire into the legality of one's detention, and if found illegal, to order the release of the detainee. It is not a means for the redress of grievances or to seek injunctive relief or damages. We reiterate the pronouncement of this Court in *Alejano*:

The ruling in this case, however, does not foreclose the right of detainees and convicted prisoners from petitioning the courts for the redress of grievances. Regulations and conditions in detention and prison facilities that violate the Constitutional rights of the detainees and prisoners will be reviewed by the courts on a case-by-case basis. The courts could afford injunctive relief or damages to the detainees and prisoners subjected to arbitrary and inhumane conditions. However, *habeas corpus* is not the proper mode to question conditions of confinement. The writ of *habeas corpus* will only lie if what is challenged is the fact or duration of confinement.

NURHIDA JUHURI AMPATUAN, *Petitioner*, -versus - JUDGE VIRGILIO V. MACARAIG, REGIONAL TRIAL COURT, MANILA, BRANCH 37, DIRECTOR GENERAL AVELINO RAZON, JR., DIRECTOR GEARY BARIAS, PSSUPT. CO YEE M. CO, JR. and POLICE CHIEF INSPECTOR AGAPITO QUIMSON, *Respondents*

G.R No. 182497, FIRST DIVISION, June 29, 2010, PEREZ, J.

The function of habeas corpus is to determine the legality of one's detention, meaning, if there is sufficient cause for deprivation or confinement and if there is none to discharge him at once. For habeas corpus to issue, the restraint of liberty must be in the nature of illegal and involuntary deprivation of freedom which must be actual and effective, not nominal or moral.

Granting arguendo that the administrative case was ante-dated, the Court cannot simply ignore the filing of an administrative case filed against PO1 Ampatuan. It cannot be denied that the PNP has its own administrative disciplinary mechanism and as clearly pointed out by the respondents, the Chief PNP is authorized to place PO1 Ampatuan under restrictive custody pursuant to Section 52, Par. 4 of R.A. 8551.

FACTS

Petitioner alleged in her petition that her husband PO1 Ampatuan was assigned at Sultan Kudarat Municipal Police Station. On 14 April 2008, he was asked by his Chief of Police to report to the Provincial Director of Shariff Kabunsuan, Superintendent Esmael Pua Ali (Supt. Ali). The latter brought PO1 Ampatuan to Superintendent Piang Adam, Provincial Director of the Philippine National Police (PNP) Maguindanao. PO1 Ampatuan was directed to stay at the Police Provincial Office of Maguindanao without being informed of the cause of his restraint. The next day, 15 April 2008, PO1 Ampatuan was brought to the General Santos City Airport and was made to board a Philippine Airlines plane bound for Manila. Upon landing at the Manila Domestic Airport, PO1 Ampatuan was turned over to policemen of Manila and brought to Manila Mayor Alfredo Lim by Police Director Geary Barias and General Roberto Rosales. A press briefing was then conducted where it was announced that PO1 Ampatuan was arrested for the killing of two Commission on Elections (COMELEC) Officials. He was then detained at the Police Jail in United Nations Avenue, Manila. Thereafter, PO1 Ampatuan was brought to inquest Prosecutor Renato Gonzaga of the Office of the City Prosecutor of Manila due to the alleged murder of Atty. Alioden D. Dalaig, head of the Law Department of the COMELEC. On 20 April 2008, PO1 Ampatuan was turned-over to the Regional Headquarters Support Group in Camp Bagong Diwa, Taguig City.

Petitioner continues that on 21 April 2008, Chief Inquest Prosecutor Nelson Salva ordered the release for further investigation of PO1 Ampatuan. The Order was approved by the City Prosecutor of Manila. But Police Senior Superintendent Co Yee Co, Jr., and Police Chief Inspector Agapito Quimson refused to release PO1 Ampatuan.

This prompted Petitioner to file the petition for writ of *habeas corpus* in the RTC of Manila, Branch 37.

Petitioner countered that the administrative case filed against PO1 Ampatuan was ante-dated to make it appear that there was such a case filed before April 23, 2008.

ISSUE

Whether the petition for the writ of habeas corpus shall prosper (NO)

RULING

The function of habeas corpus is to determine the legality of one's detention, meaning, if there is sufficient cause for deprivation or confinement and if there is none to discharge him at once. For habeas corpus to issue, the restraint of liberty must be in the nature of illegal and involuntary deprivation of freedom which must be actual and effective, not nominal or moral.

Granting arguendo that the administrative case was ante-dated, the Court cannot simply ignore the filing of an administrative case filed against PO1 Ampatuan. It cannot be denied that the PNP has its own administrative disciplinary mechanism and as clearly pointed out by the respondents, the Chief PNP is authorized to place PO1 Ampatuan under restrictive custody pursuant to Section 52, Par. 4 of R.A. 8551.

The filing of the administrative case against PO1 Ampatuan is a process done by the PNP and this Court has no authority to order the release of the subject police officer.

SUSAN GO and the PEOPLE OF THE PHILIPPINES, *Petitioners*, -versus - FERNANDO L. DIMAGIBA, *Respondent*

G.R No. 151876, THIRD DIVISION, June 21, 2005, PANGANIBAN, J.

The writ may not be availed of when the person in custody is under a judicial process or by virtue of a valid judgment. However, as a post-conviction remedy, it may be allowed when, as a consequence of a judicial proceeding, any of the following exceptional circumstances is attendant: (1) there has been a deprivation of a constitutional right resulting in the restraint of a person; (2) the court had no jurisdiction to impose the sentence; or (3) the imposed penalty has been excessive, thus voiding the sentence as to such excess.

His Petition for a writ of habeas corpus was clearly an attempt to reopen a case that had already become final and executory. Such an action deplorably amounted to forum shopping. Respondent should have resorted to the proper, available remedy instead of instituting a different action in another forum.

FACTS

Respondent Fernando L. Dimagiba issued to Petitioner Susan Go thirteen (13) checks which, when presented to the drawee bank for encashment or payment on the due dates, were dishonored for the reason "account closed."6 Dimagiba was subsequently prosecuted for 13 counts of violation of BP

227 under separate Complaints filed with the MTCC. After a joint trial, the MTCC rendered a Decision on July 16, 1999, convicting the accused in the 13 cases.

RTC denied the appeal and sustained his conviction. There being no further appeal to the Court of Appeals, the RTC issued a Certificate of Finality of the Decision.

Thus, on February 14, 2001, the MTCC issued an Order directing the arrest of Dimagiba for the service of his sentence as a result of his conviction. The trial court also issued a Writ of Execution to enforce his civil liability.

On February 27, 2001, Dimagiba filed a Motion for Reconsideration of the MTCC Order. He prayed for the recall of the Order of Arrest and the modification of the final Decision, arguing that the penalty of fine only, instead of imprisonment also, should have been imposed on him. The arguments raised in that Motion were reiterated in a Motion for the Partial Quashal of the Writ of Execution filed on February 28, 2001.

In an Order dated August 22, 2001, the MTCC denied the Motion for Reconsideration and directed the issuance of a Warrant of Arrest against Dimagiba. On September 28, 2001, he was arrested and imprisoned for the service of his sentence.

On October 9, 2001, he filed with the RTC of Baguio City a Petition for a writ of habeas corpus.

ISSUE

Whether the petition for the writ of habeas corpus shall prosper (NO)

RULING

The writ of habeas corpus applies to all cases of illegal confinement or detention in which individuals are deprived of liberty. It was devised as a speedy and effectual remedy to relieve persons from unlawful restraint; or, more specifically, to obtain immediate relief for those who may have been illegally confined or imprisoned without sufficient cause and thus deliver them from unlawful custody. It is therefore a writ of inquiry intended to test the circumstances under which a person is detained.

The writ may not be availed of when the person in custody is under a judicial process or by virtue of a valid judgment. However, as a post-conviction remedy, it may be allowed when, as a consequence of a judicial proceeding, any of the following exceptional circumstances is attendant: (1) there has been a deprivation of a constitutional right resulting in the restraint of a person; (2) the court had no jurisdiction to impose the sentence; or (3) the *imposed penalty has been excessive*, thus voiding the sentence as to such excess.

In the present case, the Petition for a writ of habeas corpus was anchored on the ruling in *Vaca* and on SC-AC No. 12-2000, which allegedly prescribed the imposition of a fine, not imprisonment, for convictions under BP 22. Respondent sought the retroactive effect of those rulings, thereby effectively challenging the penalty imposed on him for being excessive. From his allegations, the Petition appeared sufficient in form to support the issuance of the writ.

However, it appears that respondent has previously sought the modification of his sentence in a Motion for Reconsideration of the MTCC's Execution Order and in a Motion for the Partial Quashal of the Writ of Execution. Both were denied by the MTCC on the ground that it had no power or authority to amend a judgment issued by the RTC.

In his Petition for habeas corpus, respondent raised the same arguments that he had invoked in the said Motions. We believe that his resort to this extraordinary remedy was a procedural infirmity. The remedy should have been an appeal of the MTCC Order denying his Motions, in which he should have prayed that the execution of the judgment be stayed. But he effectively misused the action he had chosen, obviously with the intent of finding a favorable court. His Petition for a writ of habeas corpus was clearly an attempt to reopen a case that had already become final and executory. Such an action deplorably amounted to forum shopping. Respondent should have resorted to the proper, available remedy instead of instituting a different action in another forum.

The Court also finds his arguments for his release insubstantial to support the issuance of the writ of habeas corpus.

ROGER CHAVEZ, *Petitioner*, -versus- THE HONORABLE COURT OF APPEALS, THE PEOPLE OF THE PHILIPPINES and THE WARDEN OF THE CITY JAIL OF MANILA, *Respondents*
G.R No. L-29169, EN BANC, August 19, 1968, SANCHEZ, J.

The writ may not be availed of when the person in custody is under a judicial process or by virtue of a valid judgment. However, as a post-conviction remedy, it may be allowed when, as a consequence of a judicial proceeding, any of the following exceptional circumstances is attendant: (1) there has been a deprivation of a constitutional right resulting in the restraint of a person; (2) the court had no jurisdiction to impose the sentence; or (3) the imposed penalty has been excessive, thus voiding the sentence as to such excess.

His Petition for a writ of habeas corpus was clearly an attempt to reopen a case that had already become final and executory. Such an action deplorably amounted to forum shopping. Respondent should have resorted to the proper, available remedy instead of instituting a different action in another forum.

FACTS

The thrust of petitioner's case presented in his original and supplementary petitions invoking jurisdiction of this Court is that he is entitled, on habeas corpus, to be freed from imprisonment upon the ground that in the trial which resulted in his conviction¹ he was denied his constitutional right not to be compelled to testify against himself. There is his prayer, too, that, should he fail in this, he be granted the alternative remedies of certiorari to strike down the two resolutions of the Court of Appeals dismissing his appeal for failure to file brief, and of mandamus to direct the said court to forward his appeal to this Court for the reason that he was raising purely questions of law.

Petitioner's plea on this score rests upon his averment, with proof, of violation of his right — constitutionally entrenched — against self-incrimination. He asks that the hand of this Court be made to bear down upon his conviction; that he be relieved of the effects thereof. He asks us to consider the constitutional injunction that "No person shall be compelled to be a witness against himself,"⁹ fully echoed in Section 1, Rule 115, Rules of Court where, in all criminal prosecutions, the defendant shall be entitled: "(e) To be exempt from being a witness against himself."

It has been said that forcing a man to be a witness against himself is at war with "the fundamentals of a republican government"; that it may suit the purposes of despotic power but it can not abide the pure atmosphere of political liberty and personal freedom

ISSUE

Whether the petition for the writ of habeas corpus shall prosper (YES)

RULING

Habeas corpus is a high prerogative writ. It is traditionally considered as an exceptional remedy to release a person whose liberty is illegally restrained such as when the accused's constitutional rights are disregarded. Such defect results in the absence or loss of jurisdiction and therefore invalidates the trial and the consequent conviction of the accused whose fundamental right was violated. That void judgment of conviction may be challenged by collateral attack, which precisely is the function of habeas corpus. This writ may issue even if another remedy which is less effective may be availed of by the defendant. Thus, failure by the accused to perfect his appeal before the Court of Appeals does not preclude a recourse to the writ. The writ may be granted upon a judgment already final. For, as explained in *Johnson vs. Zerbst*, the writ of habeas corpus as an extraordinary remedy must be *liberally given effect* so as to protect well a person whose liberty is at stake. The propriety of the writ was given the nod in that case, involving a violation of another constitutional right, in this wise: Since the Sixth Amendment constitutionally entitles one charged with crime to the assistance of Counsel, compliance with this constitutional mandate is an essential jurisdictional prerequisite to a Federal Court's authority. When this right is properly waived, the assistance of Counsel is no longer a necessary element of the Court's jurisdiction to proceed to conviction and sentence. If the accused, however, is not represented by Counsel and has not competently and intelligently waived his constitutional right, the Sixth Amendment stands as a jurisdictional bar to a valid conviction and sentence depriving him of his liberty. *A court's jurisdiction at the beginning of trial may be lost "in the course of the proceedings" due to failure to complete the court — as the Sixth Amendment requires — by providing Counsel for an accused who is unable to obtain Counsel, who has not intelligently waived this constitutional guaranty, and whose life or liberty is at stake. If this requirement of the Sixth Amendment is not complied with, the court no longer has jurisdiction to proceed.* The judgment of conviction pronounced by a court without jurisdiction is void, and one *imprisoned thereunder* may obtain release of habeas corpus.

Under our own Rules of Court, to grant the remedy to the accused Roger Chavez whose case presents a clear picture of disregard of a constitutional right is absolutely proper. Section 1 of Rule 102 extends the writ, unless otherwise expressly provided by law, "to all cases of illegal confinement or detention by which any person is deprived of his liberty, or by which the rightful custody of any person is withheld from the person entitled thereto.

Just as we are about to write *finis* to our task, we are prompted to restate that: "A void judgment is in legal effect no judgment. By it no rights are divested. From it no rights can be obtained. Being worthless in itself, all proceedings founded upon it are equally worthless. It neither binds nor bars any one. All acts performed under it and all claims flowing out of it are void. The parties attempting to enforce it may be responsible as trespassers. ... "

NOEL B. BAGTAS, *Petitioner*, -versus- HON. RUTH C. SANTOS, Presiding Judge of Regional Trial Court, Branch 72, Antipolo City, and ANTONIO and ROSITA GALLARDO, *Respondents*
G.R No. 166682, EN BANC, November 27, 2009, CARPIO, J.

The writ of habeas corpus extends to all cases of illegal confinement or detention by which any person is deprived of his liberty, or by which the rightful custody of any person is withheld from the person entitled thereto. Thus, it is the proper legal remedy to enable parents to regain the custody of a minor child even if the latter be in the custody of a third person of his own free will. It may even be said that in custody cases involving minors, the question of illegal and involuntary restraint of liberty is not the underlying rationale for the availability of the writ as a remedy. Rather, it is prosecuted for the purpose of determining the right of custody over a child.

The RTC erred when it hastily dismissed the action for having become moot after Maryl Joy was produced before the trial court. It should have conducted a trial to determine who had the rightful custody over Maryl Joy.

FACTS

Antonio and Rosita S. Gallardo (Spouses Gallardo) are the parents of Maricel S. Gallardo (Maricel). Two weeks after graduating from high school in April 2000, Maricel ran away to live with her boyfriend. Maricel became pregnant and gave birth to Maryl Joy S. Gallardo (Maryl Joy). Maricel's boyfriend left her.

In February 2002, Maricel returned to her parents. On the same day, Maricel ran away again and lived with Noel B. Bagtas (Bagtas) and Lydia B. Sioson (Sioson) at Ma. Corazon, Unirock, Barangay Sta. Cruz, Antipolo City. Maricel went to Negros Occidental and left Maryl Joy in the custody of Bagtas and Sioson. In a letter dated 5 February 2001, Maricel relinquished her rights over Maryl Joy to Bagtas and his wife.

In April 2002, the Spouses Gallardo tried to obtain the custody of Maryl Joy from Bagtas and Sioson. Bagtas and Sioson refused. Unable to settle the matter, the Spouses Gallardo filed with the RTC a petition for habeas corpus.

In its Orders, the RTC ruled that, since the sole purpose of the petition for habeas corpus was the production of Maryl Joy before the trial court, the action became moot when Maryl Joy was produced. CA affirmed.

ISSUE

Whether the petition for the writ of habeas corpus shall prosper (YES)

RULING

The writ of habeas corpus extends to all cases of illegal confinement or detention by which any person is deprived of his liberty, or by which the rightful custody of any person is withheld from the person entitled thereto. Thus, it is the proper legal remedy to enable parents to regain the custody of a minor child even if the latter be in the custody of a third person of his own free will. It may even be said that

in custody cases involving minors, the question of illegal and involuntary restraint of liberty is not the underlying rationale for the availability of the writ as a remedy. Rather, it is prosecuted for the purpose of determining the right of custody over a child.

The RTC erred when it hastily dismissed the action for having become moot after Maryl Joy was produced before the trial court. It should have conducted a trial to determine who had the rightful custody over Maryl Joy. In dismissing the action, the RTC, in effect, granted the petition for habeas corpus and awarded the custody of Maryl Joy to the Spouses Gallardo without sufficient basis. In *Laxamana v. Laxamana*, the Court held that:

Mindful of the nature of the case at bar, the court a quo should have conducted a trial notwithstanding the agreement of the parties to submit the case for resolution on the basis, inter alia, of the psychiatric report of Dr. Teresito. Thus, petitioner is not estopped from questioning the absence of a trial considering that said psychiatric report, which was the court's primary basis in awarding custody to respondent, is insufficient to justify the decision. The fundamental policy of the State to promote and protect the welfare of children shall not be disregarded by mere technicality in resolving disputes which involve the family and the youth.

In *Sombong*, the Court laid down three requisites in petitions for habeas corpus involving minors: (1) the petitioner has a right of custody over the minor, (2) the respondent is withholding the rightful custody over the minor, and (3) the best interest of the minor demands that he or she be in the custody of the petitioner. In the present case, these requisites are not clearly established because the RTC hastily dismissed the action and awarded the custody of Maryl Joy to the Spouses Gallardo without conducting any trial.

The proceedings before the RTC leave so much to be desired. While a remand of the case would mean further delay, Maryl Joy's best interest demands that proper proceedings be conducted to determine the fitness of the Spouses Gallardo to take care of her.

MA. HAZELINA A. TUJANMILITANTE IN BEHALF OF THE MINOR CRISELDA M. CADA,
Petitioner, -versus- RAQUEL M. CADA-DEAPERA, Respondent
G.R No. 210636, THIRD DIVISION, July 28, 2014, VELASCO, JR., J.

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.

FACTS

On March 24, 2011, respondent Raquel M. Cada-Deapera filed before the RTC-Caloocan a verified petition for writ of habeas corpus, docketed as Special Civil Action Case No. C-4344. In the said petition, respondent demanded the immediate issuance of the special writ, directing petitioner Ma. Hazelina Tujan-Militante to produce before the court respondent's biological daughter, minor

Criselda M. Cada (Criselda), and to return to her the custody over the child. Additionally, respondent indicated that petitioner has three (3) known addresses where she can be served with summons and other court processes, to wit: (1) 24 Bangkal St., Amparo Village, Novaliches, Caloocan City; (2) 118B K9Street, Kamias, Quezon City; and (3) her office at the Ombudsman-Office of the Special Prosecutor, 5th Floor, Sandiganbayan, Centennial Building, Commonwealth Avenue cor. Batasan Road, Quezon City.

The next day, on March 25, 2011, the RTC-Caloocan issued a writ of habeas corpus, ordering petitioner to bring the child to court on March 28, 2011. Despite diligent efforts and several attempts, however, the Sheriff was unsuccessful in personally serving petitioner copies of the habeas corpus petition and of the writ. Instead, on March 29, 2011, the Sheriff left copies of the court processes at petitioner's Caloocan residence, as witnessed by respondent's counsel and barangay officials. Nevertheless, petitioner failed to appear at the scheduled hearings before the RTC-Caloocan.

Meanwhile, on March 31, 2011, petitioner filed a Petition for Guardianship over the person of Criselda before the RTC, Branch 89 in Quezon City (RTC-Quezon City). Respondent filed a Motion to Dismiss the petition for guardianship on the ground of *litis pendentia*, among others. Thereafter, or on June 3, 2011, respondent filed a criminal case for kidnapping before the Office of the City Prosecutor – Quezon City against petitioner and her counsel.

On July 12, 2011, the RTC-Quezon City granted respondent's motion and dismissed the guardianship case due to the pendency of the habeas corpus petition before RTC-Caloocan.

Arguing that the RTC-Caloocan lacked jurisdiction over the case, petitioner relies on Section 3 of A.M. No. 03-04-04-SC and maintains that the habeas corpus petition should have been filed before the family court that has jurisdiction over her place of residence or that of the minor or wherever the minor may be found. As to respondent, she asserts, among others, that the applicable rule is not Section 3 but Section 20 of A.M. No. 03-04-04-SC.

ISSUE

Whether RTC-Caloocan correctly took cognizance of the habeas corpus petition (YES)

RULING

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.

The petition may be filed with the regular court in the absence of the presiding judge of the Family Court, provided, however, that the regular court shall refer the case to the Family Court as soon as its presiding judge returns to duty.

The petition may also be filed with the appropriate regular courts in places where there are no Family Courts.

The writ issued by the Family Court or the regular court shall be enforceable in the judicial region where they belong.

The petition may likewise be filed with the Supreme Court, Court of Appeals, or with any of its members and, if so granted, the writ shall be enforceable anywhere in the Philippines. The writ may be made returnable to a Family Court or to any regular court within the region where the petitioner resides or where the minor may be found for hearing and decision on the merits.

Upon return of the writ, the court shall decide the issue on custody of minors. The appellate court, or the member thereof, issuing the writ shall be furnished a copy of the decision.

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.

On this point, Section 13 of Batas Pambansa Blg. 129 (BP 129), otherwise known as the Judiciary Reorganization Act of 1980, finds relevance. Said provision, which contains the enumeration of judicial regions in the country, states:

Section 13. Creation of Regional Trial Courts. – There are hereby created thirteen Regional Trial Courts, one for each of the following judicial regions:

x x x x

The National Capital Judicial Region, consisting of the cities of Manila, Quezon, Pasay, Caloocan and Mandaluyong, and the municipalities of Navotas, Malabon, San Juan, Makati, Pasig, Pateros, Taguig, Marikina, Parañaque, Las Piñas, Muntinlupa, and Valenzuela.

In view of the aforementioned 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.

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

**IN THE MATTER OF THE PETITION FOR HABEAS CORPUS OF POTENCIANO ILUSORIO,
ERLINDA K. ILUSORIO, *Petitioner*, -versus- ERLINDA K. ILUSORIO-BILDNER, SYLVIA K.
ILUSORIO-YAP, JOHN DOES and JANE DOES, *Respondents*
G.R No. 139789, THIRD DIVISION, July 19, 2001, PARDO, J.**

The law provides that the husband and the wife are obliged to live together, observe mutual love, respect and fidelity. The sanction therefor is the "spontaneous, mutual affection between husband and wife and not any legal mandate or court order" to enforce consortium.

FACTS

Erlinda K. Ilusorio, the matriarch who was so lovingly inseparable from her husband some years ago, filed a petition with the Court of Appeals for *habeas corpus* to have custody of her husband in consortium.

On April 5, 1999, the Court of Appeals promulgated its decision dismissing the petition for lack of unlawful restraint or detention of the subject, Potenciano Ilusorio.

Thus, on October 11, 1999, Erlinda K. Ilusorio filed with the Supreme Court an appeal *via* certiorari pursuing her desire to have custody of her husband Potenciano Ilusorio.

One reason why Erlinda K. Ilusorio sought custody of her husband was that respondents Lin and Sylvia were illegally restraining Potenciano Ilusorio to fraudulently deprive her of property rights out of pure greed. She claimed that her two children were using their sick and frail father to sign away Potenciano and Erlinda's property to companies controlled by Lin and Sylvia. She also argued that since Potenciano retired as director and officer of Baguio Country Club and Philippine Overseas Telecommunications, she would logically assume his position and control. Yet, Lin and Sylvia were the ones controlling the corporations.

ISSUE

Whether the habeas corpus petition shall prosper (NO)

RULING

The fact of illegal restraint has not been proved during the hearing at the Court of Appeals on March 23, 1999. Potenciano himself declared that he was not prevented by his children from seeing anybody and that he had no objection to seeing his wife and other children whom he loved.

We were not convinced that Potenciano Ilusorio was mentally incapacitated to choose whether to see his wife or not. Again, this is a question of fact that has been decided in the Court of Appeals.

As to whether the children were in fact taking control of the corporation, these are matters that may be threshed out in a separate proceeding, irrelevant in *habeas corpus*.

The law provides that the husband and the wife are obliged to live together, observe mutual love, respect and fidelity. The sanction therefor is the "spontaneous, mutual affection between husband and wife and not any legal mandate or court order" to enforce consortium.

Obviously, there was absence of empathy between spouses Erlinda and Potenciano, having separated from bed and board since 1972. We defined *empathy* as a shared feeling between husband and wife experienced not only by having spontaneous sexual intimacy but a deep sense of spiritual communion. Marital union is a two-way process.

Marriage is definitely for two loving adults who view the relationship with "*amor gignit amorem*" respect, sacrifice and a continuing commitment to togetherness, conscious of its value as a sublime social institution.

On June 28, 2001, Potenciano Ilusorio gave his soul to the Almighty, his Creator and Supreme Judge. Let his soul rest in peace and his survivors continue the much prolonged fracas *ex aequo et bono*.

ATTY. EDWARD SERAPIO, *Petitioner*, -versus- SANDIGANBAYAN (THIRD DIVISION), PEOPLE OF THE PHILIPPINES, and PHILIPPINE NATIONAL POLICE DIRECTOR-GENERAL LEANDRO MENDOZA, *Respondents*

G.R No. 148468, EN BANC, January 28, 2003, CALLEJO, SR., J.

A petition for habeas corpus is not the appropriate remedy for asserting one's right to bail. It cannot be availed of where accused is entitled to bail not as a matter of right but on the discretion of the court and the latter has not abused such discretion in refusing to grant bail, or has not even exercised said discretion. The proper recourse is to file an application for bail with the court where the criminal case is pending and to allow hearings thereon to proceed.

The issuance of a writ of habeas corpus would not only be unjustified but would also preempt the Sandiganbayan's resolution of the pending application for bail of petitioner. The recourse of petitioner is to forthwith proceed with the hearing on his application for bail.

FACTS

Ombudsman filed with the Sandiganbayan several Informations against former President Estrada, who earlier had resigned from his post as President of the Republic of the Philippines. One of these Informations, docketed as Criminal Case No. 26558, charged Joseph Estrada with plunder. On April 18, 2001, the Ombudsman filed an amended Information in said case charging Estrada and several co-accused, including petitioner, with said crime. No bail was recommended for the provisional release of all the accused, including petitioner. The case was raffled to a special division which was subsequently created by the Supreme Court.

The Sandiganbayan reset the arraignment of accused and the hearing on the petition for bail of petitioner in Criminal Case No. 26558 for July 10, 2001 to enable it to resolve the pending incidents and the motion to quash of petitioner. However, even before the Sandiganbayan could resolve the pending motions of petitioner and the prosecution, petitioner filed with this Court on June 29, 2001 a Petition for *Habeas Corpus* and *Certiorari*, docketed as *G.R. No. 148468*, praying that the Court declare void the questioned orders, resolutions and actions of the Sandiganbayan on his claim that he was thereby effectively denied of his right to due process. Petitioner likewise prayed for the issuance of a writ of *habeas corpus*; that the People be declared to have waived their right to present evidence in opposition to his petition for bail; and, premised on the failure of the People to adduce

strong evidence of petitioner's guilt of plunder, that he be granted provisional liberty on bail after due proceedings.

Anent the issue of the propriety of the issuance of a writ of *habeas corpus* for petitioner, he contends that he is entitled to the issuance of said writ because the State, through the prosecution's refusal to present evidence and by the Sandiganbayan's refusal to grant a bail hearing, has failed to discharge its burden of proving that as against him, evidence of guilt for the capital offense of plunder is strong. Petitioner contends that the prosecution launched "a seemingly endless barrage of obstructive and dilatory moves" to prevent the conduct of bail hearings. Specifically, the prosecution moved for petitioner's arraignment before the commencement of bail hearings and insisted on joint bail hearings for petitioner, Joseph Estrada and Jinggoy Estrada despite the fact that it was only petitioner who asked for a bail hearing; manifested that it would present its evidence as if it is the presentation of the evidence in chief, meaning that the bail hearings would be concluded only after the prosecution presented its entire case upon the accused; and argued that petitioner's motion to quash and his petition for bail are inconsistent, and therefore, petitioner should choose to pursue only one of these two remedies. He further claims that the Sandiganbayan, through its questioned orders and resolutions postponing the bail hearings effectively denied him of his right to bail and to due process of law.

Petitioner also maintains that the issuance by the Sandiganbayan of new orders canceling the bail hearings which it had earlier set did not render moot and academic the petition for issuance of a writ of *habeas corpus*, since said orders have resulted in a continuing deprivation of petitioner's right to bail. He argues further that the fact that he was arrested and is detained pursuant to valid process does not by itself negate the efficacy of the remedy of *habeas corpus*. In support of his contention, petitioner cites *Moncupa vs. Enrile*, where the Court held that *habeas corpus* extends to instances where the detention, while valid from its inception, has later become arbitrary.

However, the People insist that *habeas corpus* is not proper because petitioner was arrested pursuant to the amended information which was earlier filed in court, the warrant of arrest issuant pursuant thereto was valid, and petitioner voluntarily surrendered to the authorities.

ISSUE

Whether the habeas corpus petition shall prosper (NO)

RULING

As a general rule, the writ of *habeas corpus* will not issue where the person alleged to be restrained of his liberty in custody of an officer under a process issued by the court which jurisdiction to do so. In exceptional circumstances, *habeas corpus* may be granted by the courts even when the person concerned is detained pursuant to a valid arrest or his voluntary surrender, for this writ of liberty is recognized as "the fundamental instrument for safeguarding individual freedom against arbitrary and lawless state action" due to "its ability to cut through barriers of form and procedural mazes." Thus, in previous cases, we issued the writ where the deprivation of liberty, while initially valid under the law, had later become invalid, and even though the persons praying for its issuance were not completely deprived of their liberty.

The Court finds no basis for the issuance of a writ of *habeas corpus* in favor of petitioner. The general rule that *habeas corpus* does not lie where the person alleged to be restrained of his liberty is in the custody of an officer under process issued by a court which had jurisdiction to issue the same applies, because petitioner is under detention pursuant to the order of arrest issued by the Sandiganbayan on April 25, 2001 after the filing by the Ombudsman of the amended information for plunder against petitioner and his co-accused. Petitioner had in fact voluntarily surrendered himself to the authorities on April 25, 2001 upon learning that a warrant for his arrest had been issued.

The ruling in *Moncupa vs. Enrile* that *habeas corpus* will lie where the deprivation of liberty which was initially valid has become arbitrary in view of subsequent developments finds no application in the present case because the hearing on petitioner's application for bail has yet to commence. As stated earlier, they delay in the hearing of petitioner's petition for bail cannot be pinned solely on the Sandiganbayan or on the prosecution for that matter. Petitioner himself is partly to be blamed. Moreover, a petition for *habeas corpus* is not the appropriate remedy for asserting one's right to bail. It cannot be availed of where accused is entitled to bail not as a matter of right but on the discretion of the court and the latter has not abused such discretion in refusing to grant bail, or has not even exercised said discretion. The proper recourse is to file an application for bail with the court where the criminal case is pending and to allow hearings thereon to proceed.

The issuance of a writ of *habeas corpus* would not only be unjustified but would also preempt the Sandiganbayan's resolution of the pending application for bail of petitioner. The recourse of petitioner is to forthwith proceed with the hearing on his application for bail.

**PANFILO LACSON, MICHAEL RAY B. AQUINO and CESAR O. MANCAO, Petitioners, -versus-
SECRETARY HERNANDO PEREZ, P/DIRECTOR LEANDRO MENDOZA, and P/SR. SUPT.
REYNALDO BERROYA, Respondents**
G.R No. 147780, EN BANC, May 10, 2001, MELO, J.

Petitioner Lumbao, leader of the People's Movement against Poverty (PMAP), for his part, argues that the declaration of a "state of rebellion" is violative of the doctrine of separation of powers, being an encroachment on the domain of the judiciary which has the constitutional prerogative to "determine or interpret" what took place on May 1, 2001, and that the declaration of a state of rebellion cannot be an exception to the general rule on the allocation of the governmental powers.

We disagree. To be sure, Section 18, Article VII of the Constitution expressly provides that "[t]he President shall be the Commander-in-Chief of all armed forces of the Philippines and whenever it becomes necessary, he may call out such armed forces to prevent or suppress lawless violence, invasion or rebellion..."

The Court, in a proper case, may look into the sufficiency of the factual basis of the exercise of this power. However, this is no longer feasible at this time, Proclamation No. 38 having been lifted

FACTS

On May 1, 2001, President Macapagal-Arroyo, faced by an "angry and violent mob armed with explosives, firearms, bladed weapons, clubs, stones and other deadly weapons" assaulting and attempting to break into Malacañang, issued Proclamation No. 38 declaring that there was a state of rebellion in the National Capital Region. She likewise issued General Order No. 1 directing the Armed

Forces of the Philippines and the Philippine National Police to suppress the rebellion in the National Capital Region. Warrantless arrests of several alleged leaders and promoters of the "rebellion" were thereafter effected.

Aggrieved by the warrantless arrests, and the declaration of a "state of rebellion," which allegedly gave a semblance of legality to the arrests, the following four related petitions were filed before the Court –

(1) G. R. No. 147780 for prohibition, injunction, *mandamus*, and *habeas corpus* (with an urgent application for the issuance of temporary restraining order and/or writ of preliminary injunction) filed by Panfilio M. Lacson, Michael Ray B. Aquino, and Cezar O. Mancao; (2) G. R. No. 147781 for *mandamus* and/or review of the factual basis for the suspension of the privilege of the writ of *habeas corpus*, with prayer for the suspension of the privilege of the writ of *habeas corpus*, with prayer for a temporary restraining order filed by Miriam Defensor-Santiago; (3) G. R. No. 147799 for prohibition and injunction with prayer for a writ of preliminary injunction and/or restraining order filed by Ronaldo A. Lumbao; and (4) G. R. No. 147810 for certiorari and prohibition filed by the political party *Laban ng Demokratikong Pilipino*.

All the foregoing petitions assail the declaration of a state of rebellion by President Gloria Macapagal-Arroyo and the warrantless arrests allegedly effected by virtue thereof, as having no basis both in fact and in law.

Significantly, on May 6, 2001, President Macapagal-Arroyo ordered the lifting of the declaration of a "state of rebellion" in Metro Manila. Accordingly, the instant petitions have been rendered moot and academic

ISSUE

Whether the aforestated petitions are proper (NO)

RULING

In quelling or suppressing the rebellion, the authorities may only resort to warrantless arrests of persons suspected of rebellion, as provided under Section 5, Rule 113 of the Rules of Court, if the circumstances so warrant. The warrantless arrest feared by petitioners is, thus, not based on the declaration of a "state of rebellion"

Anent petitioners' allegations *ex abundante ad cautelam* in support of their application for the issuance of a writ of *habeas corpus*, it is manifest that the writ is not called for since its purpose is to relieve petitioners from unlawful restraint (*Ngaya-an v. Balweg*, 200 SCRA 149 [1991]), a matter which remains speculative up to this very day.

Petitioner Lumbao, leader of the People's Movement against Poverty (PMAP), for his part, argues that the declaration of a "state of rebellion" is violative of the doctrine of separation of powers, being an encroachment on the domain of the judiciary which has the constitutional prerogative to "determine or interpret" what took place on May 1, 2001, and that the declaration of a state of rebellion cannot be an exception to the general rule on the allocation of the governmental powers.

We disagree. To be sure, Section 18, Article VII of the Constitution expressly provides that "[t]he President shall be the Commander-in-Chief of all armed forces of the Philippines and whenever it becomes necessary, he may call out such armed forces to prevent or suppress lawless violence, invasion or rebellion..."

The Court, in a proper case, may look into the sufficiency of the factual basis of the exercise of this power. However, this is no longer feasible at this time, Proclamation No. 38 having been lifted

In the matter of the Petition for Habeas Corpus of CEZARI GONZALES and JULIUS MESA ROBERTO RAFAEL PULIDO *Petitioner*, -versus – Gen. EFREN ABU, as Chief of Staff of the Armed Forces of the Philippines and all persons acting in his stead and under his authority, and GEN. ERNESTO DE LEON, in his capacity as the Flag Officer in Command of the Philippine Navy, and all persons acting in his stead and under his authority, *Respondents*.

G.R. No. 170924, EN BANC, July 4, 2007, CHICO-NAZARIO, J.

When the release of the persons in whose behalf the application for a Writ of Habeas Corpus was filed is effected, the Petition for the issuance of the writ becomes moot and academic.

With the release of both Mesa and Gonzales, the Petition for Habeas Corpus has, indeed, been rendered moot. Courts of justice constituted to pass upon substantial rights will not consider questions where no actual interests are involved. Thus, the well-settled rule that courts will not determine a moot question. Where the issues have become moot and academic, there ceases to be any justiciable controversy, thus rendering the resolution of the same of no practical value.

FACTS

On July 27, 2003, three hundred twenty-one (321) junior officers and enlisted personnel of the Armed Forces of the Philippines took over the premises of the Oakwood Premiere Luxury Apartments in Makati City and declared their withdrawal of support from President Arroyo and demanded her resignation and that of the members of her cabinet and top officers of both the AFP and the Philippine National Police.

On the same day, President Arroyo issued Proclamation No. 427 declaring the country to be under a "state of rebellion." Consequently, she issued General Order No. 4 directing the AFP and the PNP to carry out all reasonable measures, giving due regard to constitutional rights, to suppress and quell the "rebellion." After a series of negotiations, the soldiers agreed to return to barracks, thus ending the occupation of Oakwood.

Among those involved in the occupation of Oakwood were Cezari Gonzales and Julius Mesa, both enlisted personnel of the Philippine Navy.

On the basis of the directives by then AFP Chief of Staff Narciso L. Abaya Gonzales and Mesa were taken into custody by their Service Commander. Gonzales and Mesa were not charged before a court martial with violation of the Articles of War. They were, however, among the soldiers charged before Branch 61 of the Regional Trial Court (RTC) of Makati City, with the crime of Coup D'état as defined under Article 134-A of the Revised Penal Code. With this, a Commitment Order was issued by the RTC committing custody of the persons of Gonzales and Mesa to the Commanding Officer of Fort San Felipe Naval Base, Cavite City. Subsequently, they were discharged from military service.

They were consequently detained in Fort Bonifacio under the custody of the Philippine Marines. A petition for bail was filed by the accused soldiers which the RTC subsequently granted. Despite of the order and the service thereof, petitioners were not released.

As a response, the People of the Philippines moved for partial reconsideration of the order granting bail. With the denial of the Motion for Partial Reconsideration, the People filed with the Court of Appeals a special civil action for certiorari under Rule 65 of the Rules of Court with urgent prayer for Temporary Restraining Order (TRO) and/or Writ of Preliminary Injunction against the RTC of Makati which granted the bail. Moreover, since Gonzales and Mesa continued to be in detention, a Petition for Habeas Corpus was filed by petitioner Pulido on their behalf.

In response, the People of the Philippines moved for partial reconsideration of the order granting bail. With the denial of the Motion for Partial Reconsideration, the People filed with the Court of Appeals a special civil action for certiorari under Rule 65 of the Rules of Court with urgent prayer for Temporary Restraining Order (TRO) and/or Writ of Preliminary Injunction, questioning the order of the RTC granting bail to Gonzales and Mesa before the 7th Division of the Court of Appeals. The Court of Appeals (Seventh Division) did not issue a TRO and/or preliminary injunction.

Since Gonzales and Mesa continued to be in detention, a Petition for Habeas Corpus was filed by petitioner Pulido on their behalf.

The Court of Appeals (3rd Division) issued a Writ of Habeas Corpus directing respondents Gen. Efrén Abu, Chief of Staff of the Armed Forces of the Philippines, and all persons acting in his stead and under his authority, and Gen. Ernesto de Leon, Flag Officer in Command of the Philippine Navy, and all persons acting in his stead and under his authority, to produce the bodies of Gonzales and Mesa before the Court and to appear and show the cause and validity of their detention.

A return of the Writ of Habeas Corpus was made. Respondents prayed that the Petition for Habeas Corpus be dismissed primarily on two grounds: (1) the continued detention of Gonzales and Mesa is justified because of the pendency of the Petition for Certiorari questioning the order dated 8 July 2004 of the RTC granting bail to Gonzales and Mesa before the 7th Division of the Court of Appeals, docketed as CA-G.R. SP No. 88440; and (2) petitioner is guilty of forum shopping because of his failure to state in the petition that the order granting bail has been elevated to the Court of Appeals and pending before its 7th Division.

Thereafter, the Court of Appeals (7th Division) rendered its decision dismissing the petition that questioned the propriety of the granting of bail to Gonzales, Mesa, and twenty-five of their co-accused.

Then, the Court of Appeals (3rd Division) dismissed the Petition for Habeas Corpus for violation of Section 5, Rule 7 of the Rules of Court on forum shopping. According to the CA (3rd Division) petitioner never mentioned the pendency before the Seventh Division of this Court of the certiorari case.

ISSUE

Whether or not the petition for habeas corpus was proper despite the pendency of certiorari case.
(NO)

RULING

As lucidly explained by the Court of Appeals, the ultimate relief sought by petitioner in both the certiorari and habeas corpus cases is the release of Gonzales and Mesa. Petitioner should not have filed the Petition for Habeas Corpus because the relief he is seeking therein is the same relief he is asking for in the certiorari case. Moreover, the main issue in both cases boils down to whether Gonzales and Mesa should be released on bail. Because of the presence of the elements of *litis pendentia* -- parties, reliefs and issue are substantially the same/similar in the two cases; and any decision in the certiorari case will be binding on the habeas corpus case – petitioner is thus guilty of forum shopping.

According to the Supreme Court, the CA was correct when it held that remedies sought being two sides of the same coin (i.e., the release of Gonzales and Mesa), they cannot be secured through separately-filed cases where issues of jurisdiction may arise and whose rulings may conflict with one another.

Furthermore, the CA accurately rationated that the inter-relationships among the criminal case, the certiorari case and the present petition, as well as among the courts where these cases are pending, show beyond doubt that the petitioner committed forum shopping in the strict sense of that term i.e., the attempt by a party, after an adverse opinion in one forum, to seek a favorable opinion in another forum other than through an appeal or certiorari. The "adverse" aspect for the petitioner, while not an opinion, is no less adverse as he has failed to secure the release of Gonzales and Mesa before the lower court and before this Court in the certiorari case (as of the time of the filing of the present petition); thus, he came to us in the present petition. That the Seventh Division of this Court has ordered the release on bail of the soldiers-accused, thus rendering the present petition moot and academic after the finality of the 7th Division Decision, plainly demonstrates this legal reality.

With this, for the failure to inform the Court of Appeals of the pendency of the certiorari case, petitioner clearly violated his obligation to disclose within five days the pendency of the same or a similar action or claim as mandated in Section 5(c), Rule 728 of the Rules of Court.

Nonetheless, the Supreme Court held that when the release of the persons in whose behalf the application for a Writ of Habeas Corpus was filed is effected, the Petition for the issuance of the writ becomes moot and academic. With the release of both Mesa and Gonzales, the Petition for Habeas Corpus has, indeed, been rendered moot. Courts of justice constituted to pass upon substantial rights will not consider questions where no actual interests are involved. Thus, the well-settled rule that courts will not determine a moot question. Where the issues have become moot and academic, there ceases to be any justiciable controversy, thus rendering the resolution of the same of no practical value. This Court will therefore abstain from expressing its opinion in a case where no legal relief is needed or called for.

ANISAH IMPAL SANGCA, *Petitioner*, -versus -THE CITY PROSECUTOR OF CEBU CITY and THE PRESIDING JUDGE, Regional Trial Court, Branch 58, Cebu City, *Respondents*.

G.R. No. 175864, THIRD DIVISION, June 8, 2007, YNARES-SANTIAGO, J.

A writ of habeas corpus extends to all cases of illegal confinement or detention in which any person is deprived of his liberty, or in which the rightful custody of any person is withheld from the person entitled

to it. Its essential object and purpose is to inquire into all manner of involuntary restraint and to relieve a person from it if such restraint is illegal. The singular function of a petition for habeas corpus is to protect and secure the basic freedom of physical liberty.

In the instant case, records show that Adam has been released upon order of the trial judge on January 26, 2007. Therefore, the petition has become moot.

FACTS

In the first week of July 2006, the Philippine Drug Enforcement Agency (PDEA), Regional Office VII, received information that Adam was engaged in illegal drug trafficking activities in Cebu City and neighboring cities and municipalities. PDEA then planned an entrapment operation which led to the arrest of Adam.

Adam denied the charge against her. She claimed that she is a trader of ready to wear clothing. As such, she frequently travels to different Asian countries to buy goods for sale in Cebu and in Mindanao. She supplies various boutiques in Cebu City, including Salad Dressing at SM, D. Blaz., Beauty Land and Lovely's Closet. She also operates a beauty parlor in Talamban.

The inquest prosecutor recommended the dismissal of the case but was disapproved by the City Prosecutor. Consequently, an information charging Adam with violation of Section 5, Article 2 of R.A. No. 9165 was filed before the Regional Trial Court of Cebu City, Branch 58.

On Petition for Review before the Department of Justice, Secretary Raul M. Gonzalez found no probable cause to hold Adam liable for the offense charged stating that based on records, it was revealed that no payment was ever made by the police officers for the supposed object of the buy-bust operations and no buy-bust money was ever presented. According to the DOJ, of the essential elements to be established in the prosecution of the drug "buy-bust" cases, that is, "the delivery of the thing sold and the payment therefore" was wanting.

With this, the Justice Secretary directed the City Prosecutor of Cebu City to withdraw the information. PDEA filed a motion for reconsideration but was denied by the Justice Secretary.

Finding that Adam could not be held liable for the crime charged, the RTC issued an Order on January 26, 2007 granting the Motion to Withdraw Information and ordering the release of the accused, unless otherwise held for another valid ground.

However, before the the order of the RTC, on January 4, 2007, petitioner Anisah Impal Sangca filed the instant petition praying for the issuance of a writ of habeas corpus and the release of Lovely Impal Adam who was detained in the Cebu City Jail for alleged violation of Section 5, Article 2 of Republic Act (R.A.) No. 9165, otherwise known as the Dangerous Drugs Act of 2002.

ISSUE

Whether the petition for writ of habeas corpus is proper. (NO)

RULING

A writ of habeas corpus extends to all cases of illegal confinement or detention in which any person is deprived of his liberty, or in which the rightful custody of any person is withheld from the person entitled to it. Its essential object and purpose is to inquire into all manner of involuntary restraint and to relieve a person from it if such restraint is illegal. The singular function of a petition for habeas corpus is to protect and secure the basic freedom of physical liberty.

In the instant case, records show that Adam has been released upon order of the trial judge on January 26, 2007. Therefore, the petition has become moot.

IN THE MATTER OF THE PETITION OF HABEAS CORPUS OF EUFEMIA E. RODRIGUEZ, filed by EDGARDO E. VELUZ, *Petitioner*, -versus – LUISA R. VILLANUEVA and TERESITA R. PABELLO, *Respondents*.

G.R. No. 169482, FIRST DIVISION, January 29, 2007, CORONA, J.

While habeas corpus is a writ of right, it will not issue as a matter of course or as a mere perfunctory operation on the filing of the petition. Judicial discretion is called for in its issuance and it must be clear to the judge to whom the petition is presented that, prima facie, the petitioner is entitled to the writ.¹⁸ It is only if the court is satisfied that a person is being unlawfully restrained of his liberty will the petition for habeas corpus be granted. If the respondents are not detaining or restraining the applicant or the person in whose behalf the petition is filed, the petition should be dismissed.

In this case, the Court of Appeals made an inquiry into whether Eufemia was being restrained of her liberty. It found that she was not for there is no proof that Eufemia is being detained and restrained of her liberty by respondents. Nothing on record reveals that she was forcibly taken by respondents. On the contrary, respondents, being Eufemia's adopted children, are taking care of her. (emphasis supplied)

FACTS

Eufemia E. Rodriguez was a 94-year old widow, allegedly suffering from a poor state of mental health and deteriorating cognitive abilities. She was living with petitioner, her nephew, since 2000. He acted as her guardian.

In the morning of January 11, 2005, respondents Luisa R. Villanueva and Teresita R. Pabello took Eufemia from petitioner Veluz' house. He made repeated demands for the return of Eufemia but these proved futile. Claiming that respondents were restraining Eufemia of her liberty, he filed a petition for habeas corpus in the Court of Appeals.

In their comment, respondents stated that they are the legally adopted daughters of Eufemia and her deceased spouse, Maximo Rodriguez. Prior to their adoption, respondent Luisa was Eufemia's half-sister while respondent Teresita was Eufemia's niece and petitioner's sister.

Respondents point out that it was petitioner and his family who were staying with Eufemia, not the other way around as petitioner claimed. Eufemia paid for the rent of the house, the utilities and other household needs.

Furthermore, respondents alleged that sometime in the 1980s, petitioner was appointed as the "encargado" or administrator of the properties of Eufemia as well as those left by the deceased Maximo. As such, he took charge of collecting payments from tenants and transacted business with third persons for and in behalf of Eufemia and the respondents who were the only compulsory heirs of the late Maximo.

In the latter part of 2002, Eufemia and the respondents demanded an inventory and return of the properties entrusted to petitioner. These demands were unheeded. Hence, Eufemia and the respondents were compelled to file a complaint for estafa against petitioner in the Regional Trial Court of Quezon City. Consequently, and by reason of their mother's deteriorating health, respondents decided to take custody of Eufemia on January 11, 2005. The latter willingly went with them.

The Court of Appeals ruled that petitioner failed to present any convincing proof that respondents (the legally adopted children of Eufemia) were unlawfully restraining their mother of her liberty. He also failed to establish his legal right to the custody of Eufemia as he was not her legal guardian. Thus, the Court of Appeals denied his petition. Petitioner moved for reconsideration but it was also denied.

ISSUE

Whether the petition for habeas corpus is proper. (NO)

RULING

In general, the purpose of the writ of habeas corpus is to determine whether or not a particular person is legally held. A prime specification of an application for a writ of habeas corpus, in fact, is an actual and effective, and not merely nominal or moral, illegal restraint of liberty. "The writ of habeas corpus was devised and exists as a speedy and effectual remedy to relieve persons from unlawful restraint, and as the best and only sufficient defense of personal freedom. A prime specification of an application for a writ of habeas corpus is restraint of liberty. The essential object and purpose of the writ of habeas corpus is to inquire into all manner of involuntary restraint as distinguished from voluntary, and to relieve a person therefrom if such restraint is illegal. Any restraint which will preclude freedom of action is sufficient."

In passing upon a petition for habeas corpus, a court or judge must first inquire into whether the petitioner is being restrained of his liberty. If he is not, the writ will be refused. Inquiry into the cause of detention will proceed only where such restraint exists. If the alleged cause is thereafter found to be unlawful, then the writ should be granted and the petitioner discharged. Needless to state, if otherwise, again the writ will be refused.

While habeas corpus is a writ of right, it will not issue as a matter of course or as a mere perfunctory operation on the filing of the petition. Judicial discretion is called for in its issuance and it must be clear to the judge to whom the petition is presented that, prima facie, the petitioner is entitled to the writ.¹⁸ It is only if the court is satisfied that a person is being unlawfully restrained of his liberty will the petition for habeas corpus be granted. If the respondents are not detaining or restraining the applicant or the person in whose behalf the petition is filed, the petition should be dismissed.

In this case, the Court of Appeals made an inquiry into whether Eufemia was being restrained of her liberty. It found that she was not for there is no proof that Eufemia is being detained and restrained of her liberty by respondents. Nothing on record reveals that she was forcibly taken by respondents. On the contrary, respondents, being Eufemia's adopted children, are taking care of her. (emphasis supplied)

THE SECRETARY OF NATIONAL DEFENSE, THE CHIEF OF STAFF, ARMED FORCES OF THE PHILIPPINES, *Petitioners*, -versus – RAYMOND MANALO and REYNALDO MANALO, *Respondents*.

G.R. No. 180906, EN BANC, October 7, 2008, PUNO, J.:

In sum, we conclude that respondents' right to security as "freedom from threat" is violated by the apparent threat to their life, liberty and security of person. Their right to security as a guarantee of protection by the government is likewise violated by the ineffective investigation and protection on the part of the military.

FACTS

Brothers Raymond and Reynaldo Manalo were abducted by military men belonging to the CAFGU on the suspicion that they were members and supporters of the NPA. During the 18 months of detention, they were subjected to torture. On August 13, 2007, the brothers were able to escape.

Dr. Benito Molino, M.D., corroborated the accounts of respondents Raymond and Reynaldo Manalo. His findings showed that the scars borne by respondents were consistent with their account of physical injuries inflicted upon them. However, petitioners dispute respondents' account of their alleged abduction and torture. Petitioners averred that the Manalo brothers were not at any time arrested, forcibly abducted, detained, held incommunicado, disappeared or under the custody by the military.

Thus, ten days after their escape, the Manalo brothers filed a Petition for Prohibition, Injunction, and Temporary Restraining Order to stop the military officers and agents from depriving them of their right to liberty and other basic rights. While the said case was pending, the Rule on the Writ of Amparo took effect on October 24, 2007. The Manalos subsequently filed a manifestation and omnibus motion to treat their existing petition as amparo petition.

On December 26, 2007, the Court of Appeals granted the privilege of the writ of amparo. The CA ordered the Secretary of National Defense and the Chief of Staff of the AFP to furnish the Manalos and the court with all official and unofficial investigation reports as to the Manalos' custody, confirm the present places of official assignment of two military officials involved, and produce all medical reports and records of the Manalo brothers while under military custody. The Secretary of National Defense and the Chief of Staff of the AFP appealed to the Supreme Court under Rule 45, questioning the appellate court's assessment and assailing the December 26, 2007 Decision.

ISSUE

Whether the issuance of the writ of amparo proper. (YES)

RULING

There is no quarrel that the enforced disappearance of both respondents Raymond and Reynaldo Manalo has now passed as they have escaped from captivity and surfaced. But while respondents admit that they are no longer in detention and are physically free, they assert that they are not "free in every sense of the word" as their "movements continue to be restricted for fear that people they have named in their Judicial Affidavits and testified against (in the case of Raymond) are still at large and have not been held accountable in any way. These people are directly connected to the Armed Forces of the Philippines and are, thus, in a position to threaten respondents' rights to life, liberty and security." (emphasis supplied) Respondents claim that they are under threat of being once again abducted, kept captive or even killed, which constitute a direct violation of their right to security of person.

Elaborating on the "right to security, in general," respondents point out that this right is "often associated with liberty;" it is also seen as an "expansion of rights based on the prohibition against torture and cruel and unusual punishment." Conceding that there is no right to security expressly mentioned in Article III of the 1987 Constitution, they submit that their rights "to be kept free from torture and from incommunicado detention and solitary detention places fall under the general coverage of the right to security of person under the writ of Amparo."

They submit that the Court ought to give an expansive recognition of the right to security of person in view of the State Policy under Article II of the 1987 Constitution which enunciates that, "The State values the dignity of every human person and guarantees full respect for human rights." Finally, to justify a liberal interpretation of the right to security of person, respondents cite the teaching in *Moncupa v. Enrile* that "the right to liberty may be made more meaningful only if there is no undue restraint by the State on the exercise of that liberty" such as a requirement to "report under unreasonable restrictions that amounted to a deprivation of liberty" or being put under "monitoring and surveillance."

Applying the foregoing concept of the right to security of person to the case at bar, we now determine whether there is a continuing violation of respondents' right to security.

First, the violation of the right to security as freedom from threat to respondents' life, liberty and security.

While respondents were detained, they were threatened that if they escaped, their families, including them, would be killed. In Raymond's narration, he was tortured and poured with gasoline after he was caught the first time he attempted to escape from Fort Magsaysay. A call from a certain "Mam," who wanted to see him before he was killed, spared him.

This time, respondents have finally escaped. The condition of the threat to be killed has come to pass. It should be stressed that they are now free from captivity not because they were released by virtue of a lawful order or voluntarily freed by their abductors. It ought to be recalled that towards the end of their ordeal, sometime in June 2007 when respondents were detained in a camp in Limay, Bataan, respondents' captors even told them that they were still deciding whether they should be executed.

The possibility of respondents being executed stared them in the eye while they were in detention. With their escape, this continuing threat to their life is apparent, moreso now that they have surfaced

and implicated specific officers in the military not only in their own abduction and torture, but also in those of other persons known to have disappeared such as Sherlyn Cadapan, Karen Empeño, and Manuel Merino, among others.

Understandably, since their escape, respondents have been under concealment and protection by private citizens because of the threat to their life, liberty and security. The threat vitiates their free will as they are forced to limit their movements or activities. Precisely because respondents are being shielded from the perpetrators of their abduction, they cannot be expected to show evidence of overt acts of threat such as face-to-face intimidation or written threats to their life, liberty and security. Nonetheless, the circumstances of respondents' abduction, detention, torture and escape reasonably support a conclusion that there is an apparent threat that they will again be abducted, tortured, and this time, even executed. These constitute threats to their liberty, security, and life, actionable through a petition for a writ of Amparo.

Under these circumstances, there is substantial evidence to warrant the conclusion that there is a violation of respondents' right to security as a guarantee of protection by the government.

In sum, we conclude that respondents' right to security as "freedom from threat" is violated by the apparent threat to their life, liberty and security of person. Their right to security as a guarantee of protection by the government is likewise violated by the ineffective investigation and protection on the part of the military.

OFFICE OF THE COURT ADMINISTRATOR, COMPLAINANT, *Complainant*, -versus - JUDGE NORMA C. PERELLO, FORMER CLERK OF COURT LUIS C. BUCAYON II, COURT STENOGRAPHERS THELMA A. MANGILIT, CECILIO B. ARGAME, MARICAR N. EUGENIO, AND RADIGUNDA R. LAMAN AND INTERPRETER PAUL M. RESURRECCION, ALL OF THE REGIONAL TRIAL COURT, BRANCH 276, MUNTINLUPA CITY, *Respondents*.
A.M. No. RTJ-05-1952, EN BANC, December 24, 2008, LEONARDO-DE CASTRO, J.

FACTS

The Office of the Court Administrator (OCA) conducted judicial audit in all seven (7) branches of the Regional Trial Court in Muntinlupa City, including Branch 276 then presided by herein respondent Judge Norma C. Perello (Judge Perello). The audit was prompted by reports of perceived irregular disposition of petitions for habeas corpus by the said court.

The audit team reported that for the period 1998-2004, a total of 219 petitions for habeas corpus were assigned to Branch 276 but the records for 22 of these cases were not presented to the audit team, while the case folders of about a hundred cases did not contain copies of the decisions of conviction. The audit team also noted a huge disparity in the number of petitions for habeas corpus raffled in Branch 276 as against those raffled in the other branches, which led the team to doubt if the raffle had been conducted with strict regularity considering the fact that Judge Perello was the Executive Judge that time.

The audit team likewise reported several substantive and procedural lapses relative to the disposition of habeas corpus cases in Branch 276. Finally, the audit team observed that in some of the petitions for habeas corpus, respondent Judge Perello erred in ordering the release of the prisoners before they have served the full term of their sentence.

Thus, the audit team recommended to the OCA to consider the judicial audit report as an administrative complaint against Judge Perello and her staffs for gross inefficiency.

In her Comment, Judge Perello opined that that the prisoners she released were all convicted under the old law, R.A. No. 6425, and not under the new law, R.A. No. 9165, otherwise known as the Comprehensive Dangerous Drugs Act of 2002 which imposes the penalty of life imprisonment to death regardless of the quantity of the drug involved. She maintains that the provisions of R.A. No. 9165 cannot be given retroactive effect insofar as these prisoners are concerned for the main reason that it would not be favorable to them. Thus, according to Judge Perello, the provisions of R.A. No. 6425, as interpreted in the case of *People v. Simon*, must be applied to the released prisoners. Citing the *Simon* case, she insisted that the maximum imposable penalty for violation of R.A. No. 6425 where the quantity involved is 750 grams or less is six (6) months only, which was the reason why she ordered the immediate release of the prisoners because they had already served two (2) years of imprisonment.

The then Court Administrator Presbitero J. Velasco, Jr. submitted the recommendations of respondent Judge Norma C. Perello be FOUND GUILTY of GROSS IGNORANCE OF THE LAW AND JURISPRUDENCE and be meted the penalty of SUSPENSION for three (3) months without salary and benefit.

ISSUE

Whether the orders granting the writs of habeas corpus proper. (NO)

RULING

While the Supreme Court agreed with respondent judge that R.A. No. 9165 cannot be retroactively applied to the prisoners involved in the cases audited, however, the Court was not impressed with Judge Perello's justification in granting the writs. Such ratiocination on her part betrays a lack of understanding of the rule on graduation of penalties. Nowhere in the cited case of *Simon* does it state that the maximum penalty shall be six (6) months where the quantity is less than 750 grams. The *Simon* case clarified the penalty to be imposed vis-à-vis the quantity of the drug involved, such that prison correccional shall be imposed if the drug is below 250 grams; prision mayor if the quantity is from 250 to 499 grams; and reclusion temporal if the drug is from 500 to 750 grams. The same case likewise declared that while modifying circumstances may be appreciated to determine the periods of the corresponding penalties, or even reduce the penalty by degrees, in no case should such graduation of penalties reduce the imposable penalty beyond or lower than prison correccional.

As found by the audit team, Judge Perello considered only the minimum period of prison correccional in granting the writs for habeas corpus such that when the prisoners had served imprisonment for a period of two (2) years, she immediately ordered their release. This is clearly erroneous because the petition for habeas corpus cannot be granted if the accused has only served the minimum of his sentence as he must serve his sentence up to its maximum term. The maximum range of prison correccional is from 4 years, 2 months and 1 day to 6 years. This is the period which the prisoners must have served before their applications for writs of habeas corpus may be granted.

In obstinately granting the writs of habeas corpus even if the convicted prisoners had only served the minimum period of their sentence, Judge Perello displayed a blatant disregard of the rule on graduation of penalties as well as settled jurisprudence tantamount to gross ignorance of the law. As a trial judge, respondent is the visible representation of law and justice. Under Canon 1.01 of the Code of Judicial Conduct, she is expected to be "the embodiment of competence, integrity and independence." Judges are expected to keep abreast of developments in law and jurisprudence. He should strive for excellence exceeded only by his passion for truth, to the end that he be the personification of justice and the Rule of Law. When the law is sufficiently basic, a judge owes it to his office to simply apply it; anything less than that would be gross ignorance of the law. Judge Perello must thereby have more than a cursory knowledge of the law on graduation of penalties and the impossible penalty for violation of the Dangerous Drugs Act. Indeed, the facts obtaining in this case speak of other dubious circumstances affecting Judge Perello's integrity and competence too glaring to ignore.

Notably, the record shows that Judge Perello granted the writs of habeas corpus even without the pertinent copies of detention and judgment of conviction. This is contrary to the provisions of Section 3(d) of Rule 102 of the Rules of Court, to wit:

Sec. 3. Requisites of application therefor. - Application for the writ shall be by petition signed and verified either by the party for whose relief it is intended, or by some person in his behalf, and shall set forth:

xxx xxx xxx

(d) A copy of the commitment or cause of detention of such person, if it can be procured without impairing the efficiency of the remedy; xxx.

The Rules clearly require that a copy of the commitment or cause of detention must accompany the application for the writ of habeas corpus. Obviously, Judge Perello deviated from the guidelines laid down in Section 3(d) of Rule 102 of the Rules of Court. It must be emphasized that rules of procedure have been formulated and promulgated by this Court to ensure the speedy and efficient administration of justice. Failure to abide by these rules undermines the wisdom behind them and diminishes respect for the rule of law. Judges should therefore administer their office with due regard to the integrity of the system of law itself, remembering that they are not depositories of arbitrary power, but judges under the sanction of law. Indeed, Judge Perello's stubborn unwillingness to act in accordance with the rules and settled jurisprudence shows her refusal to reform herself and to correct a wrong, tantamount to grave abuse of discretion.

MA. ESTRELITA D. MARTINEZ, *Petitioners*, -versus – Director General LEANDRO MENDOZA, Chief Superintendent NESTORIO GUALBERTO, SR., Superintendent LEONARDO ESPINA, SR., Superintendent JESUS VERSOZA, and JOHN DOES, *Respondents*.
G.R. No. 153795, FIRST DIVISION, August 17, 2006, PANGANIBAN, J.:

Habeas corpus may not be used as a means of obtaining evidence on the whereabouts of a person, or as a means of finding out who has specifically abducted or caused the disappearance of a certain person.

Petitioner must establish by competent and convincing evidence that the missing person, on whose behalf the Petition was filed, is under the custody of respondents. Unfortunately, her evidence is

insufficient to convince the Court that they have Michael in their custody. Moreover, "a writ of habeas corpus should not issue where it is not necessary to afford the petitioner relief or where it would be ineffective."

FACTS

Petitioners are the mother and wife, respectively, of Michael Martinez, a resident of 4570 Cattleya Road, Sun Valley Subdivision, Parañaque City, who was allegedly abducted and taken away by seven (7) persons around 7:30 in the morning of November 19, 2001 while he was walking along Magnolia Street, on his way to his mother's house at 3891 Marigold Street of the same subdivision. The abduction was reported by petitioners to the Barangay, the Parañaque Police and the Anti-Kidnapping Task Force at Camp Crame.

It appears that in the evening of November 19, 2001, the Criminal Investigation and Detection Group (CIDG) of the Philippine National Police (PNP) presented before the media a certain Phillip Medel, Jr., who allegedly executed a statement confessing to his participation in the killing of Dorothy Jones, a.k.a. Nida Blanca, naming Michael Martinez as the person who introduced him to Rod Lauren Strunk, the husband of Nida Blanca and alleged mastermind in her killing.

In view thereof, petitioners filed a petition for habeas corpus with the Regional Trial Court, Branch 78, Quezon City against respondents PNP Director General Leandro Mendoza; Chief Superintendent Nestorio Gualberto, Sr., Chief of the CIDG; Senior Superintendent Leonardo Espina, Sr. and Senior Superintendent Jesus Versoza of the CIDG and members of Task Force Marsha, which is investigating the Nida Blanca murder case, for them to produce before said court the person of Michael Martinez or to justify the continued detention of his liberty.

Thee RTC set the petition for hearing and directed respondents to show cause why the writ of habeas corpus should not issue.

Respondents submitted a RETURN wherein they vehemently and categorically denied any participation or involvement in the alleged abduction or disappearance of Michael Martinez as the latter was never confined and detained by them or in their custody at any given time. Respondents thus prayed for the dismissal of the petition for habeas corpus.

The RTC found the respondents denial pale beside Medel's positive assertion that Michael Martinez is in their custody. The RTC then directed respondents to produce the body of Michael Martinez before it on December 11, 2001 at 2:00 o'clock in the afternoon.

Upon appeal on the RTC order, the Court of Appeals granted the petition.

ISSUE

Whether the CA erred in reversing the trial court and dismissing the Petition for habeas corpus. (NO)

RULING

At the outset, it must be stressed that petitioner's anchor for the present case is the disappearance of Michael. The matter of his alleged detention is, at best, merely consequential to his disappearance.

Ostensibly, his disappearance has been established. However, the grant of relief in a habeas corpus proceeding is not predicated on the disappearance of a person, but on his illegal detention. Habeas corpus generally applies to "all cases of illegal confinement or detention by which any person is deprived of his liberty or by which the rightful custody of any person is withheld from the person entitled thereto."

Said this Court in another case:

"The ultimate purpose of the writ of habeas corpus is to relieve a person from unlawful restraint. It is devised as a speedy relief from unlawful restraint. It is a remedy intended to determine whether the person under detention is held under lawful authority."

If the respondents are neither detaining nor restraining the applicant or the person on whose behalf the petition for habeas corpus has been filed, then it should be dismissed. This Court has ruled that this remedy has one objective -- to inquire into the cause of detention of a person:

"The purpose of the writ is to determine whether a person is being illegally deprived of his liberty. If the inquiry reveals that the detention is illegal, the court orders the release of the person. If, however, the detention is proven lawful, then the habeas corpus proceedings terminate. The use of habeas corpus is thus very limited."

Habeas corpus may not be used as a means of obtaining evidence on the whereabouts of a person, or as a means of finding out who has specifically abducted or caused the disappearance of a certain person.

When respondents making the return of the writ state that they have never had custody over the person who is the subject of the writ, the petition must be dismissed, in the absence of definite evidence to the contrary. "The return of the writ must be taken on its face value considering that, unless it is in some way [convincingly] traversed or denied, the facts stated therein must be taken as true" for purposes of the habeas corpus proceedings.

Petitioner must establish by competent and convincing evidence that the missing person, on whose behalf the Petition was filed, is under the custody of respondents. Unfortunately, her evidence is insufficient to convince the Court that they have Michael in their custody. Moreover, "a writ of habeas corpus should not issue where it is not necessary to afford the petitioner relief or where it would be ineffective."

Considering that respondents have persistently denied having Michael in their custody, and absent any decisive proof to rebut their denial, the Court is constrained to affirm the CA's dismissal of the Petition for habeas corpus.

In view of the established fact of Michael's suspiciously felonious disappearance, we exhort the NBI and the National Anti-Kidnapping Task Force (NAKTAF) to continue their investigation into the matter, so that all persons responsible can be prosecuted for whatever crime they have committed.

ARIE ANTONETTE ABIGAIL C. SALIENTES, ORLANDO B. SALIENTES, and ROSARIO C. SALIENTES, *Petitioners*, -versus – LORAN S.D. ABANILLA, HONORABLE JUDGE PEDRO SABUNDAYO, JR., REGIONAL TRIAL COURT, BRANCH 203, MUNTINLUPA CITY, *Respondents*.
G.R. No. 162734, THIRD DIVISION, August 29, 2006, QUISUMBING, J.:

Habeas corpus may be resorted to in cases where rightful custody is withheld from a person entitled thereto.

Under Article 211 of the Family Code, respondent Loran and petitioner Marie Antonette have joint parental authority over their son and consequently joint custody. Further, although the couple is separated de facto, the issue of custody has yet to be adjudicated by the court. In the absence of a judicial grant of custody to one parent, both parents are still entitled to the custody of their child. In the present case, private respondent's cause of action is the deprivation of his right to see his child as alleged in his petition. Hence, the remedy of habeas corpus is available to him.

FACTS

Private respondent Loran S.D. Abanilla and petitioner Marie Antonette Abigail C. Salientes are the parents of the minor Lorenzo Emmanuel S. Abanilla. They lived with Marie Antonette's parents, petitioners Orlando B. Salientes and Rosario C. Salientes. Due to in-laws problems, private respondent suggested to his wife that they transfer to their own house, but Marie Antonette refused. So, he alone left the house of the Salientes. Thereafter, he was prevented from seeing his son.

Later, Loran S.D. Abanilla in his personal capacity and as the representative of his son, filed a Petition for Habeas Corpus and Custody before the Regional Trial Court of Muntinlupa City to which the RTC directed respondents to produce and bring before the court the body of minor Lorenzo Emmanuel Salientes Abanilla.

Petitioners moved for reconsideration which the court denied.

Consequently, petitioners filed a petition for certiorari with the Court of Appeals, but the same was dismissed. Petitioners moved for reconsideration, which was also denied.

ISSUE

Whether the issuance of the writ of habeas corpus is proper. (YES)

RULING

Habeas corpus may be resorted to in cases where rightful custody is withheld from a person entitled thereto. Under Article 211 of the Family Code, respondent Loran and petitioner Marie Antonette have joint parental authority over their son and consequently joint custody. Further, although the couple is separated de facto, the issue of custody has yet to be adjudicated by the court. In the absence of a judicial grant of custody to one parent, both parents are still entitled to the custody of their child. In the present case, private respondent's cause of action is the deprivation of his right to see his child as alleged in his petition. Hence, the remedy of habeas corpus is available to him.

In a petition for habeas corpus, the child's welfare is the supreme consideration. The Child and Youth Welfare Code unequivocally provides that in all questions regarding the care and custody, among others, of the child, his welfare shall be the paramount consideration.

Again, it bears stressing that the order did not grant custody of the minor to any of the parties but merely directed petitioners to produce the minor in court and explain why private respondent is prevented from seeing his child. This is in line with the directive in Section 9 14 of A.M. 03-04-04-SC 15 that within fifteen days after the filing of the answer or the expiration of the period to file answer, the court shall issue an order requiring the respondent (herein petitioners) to present the minor before the court. This was exactly what the court did.

Moreover, Article 213 of the Family Code deals with the judicial adjudication of custody and serves as a guideline for the proper award of custody by the court. Petitioners can raise it as a counter argument for private respondent's petition for custody. But it is not a basis for preventing the father to see his own child. Nothing in the said provision disallows a father from seeing or visiting his child under seven years of age.

In sum, the trial court did not err in issuing the orders dated January 23, 2003 and February 24, 2003. Hence, the Court of Appeals properly dismissed the petition for certiorari against the said orders of the trial court.

**IN THE MATTER OF THE PETITION FOR HABEAS CORPUS ENGR. ASHRAF KUNTING,
Petitioner.**

G.R. No. 167193, SECOND DIVISION, April 19, 2006, AZCUNA, J.:

Section 4, Rule 102 of the Rules of Court provides when the writ is not allowed:

SEC. 4. When writ not allowed or discharge authorized. If it appears that the person alleged to be restrained of his liberty is in the custody of an officer under process issued by a court or judge or by virtue of a judgment or order of a court of record, and that the court or judge had jurisdiction to issue the process, render the judgment, or make the order, the writ shall not be allowed; or if the jurisdiction appears after the writ is allowed, the person shall not be discharged by reason of any informality or defect in the process, judgment, or order. Nor shall anything in this rule be held to authorize the discharge of a person charged with or convicted of an offense in the Philippines, or of a person suffering imprisonment under lawful judgment.

In this case, Kunting's detention by the PNP-IG was under process issued by the RTC. He was arrested by the PNP by virtue of the alias order of arrest issued by Judge Danilo M. Bucoy, RTC, Branch 2, Isabela City, Basilan. His temporary detention at PNP-IG, Camp Crame, Quezon City, was thus authorized by the trial court.

FACTS

Kunting was arrested in Malaysia for violation of the Malaysian Internal Security Act, then the Royal Malaysian Police in Kuala Lumpur, Malaysia, turned over Kunting to the PNP-IG and Task Force Salinglahi pursuant to warrants for his arrest issued by the Regional Trial Court (RTC) of Isabela City. Kunting was charged with four counts of Kidnapping for Ransom and Serious Illegal Detention with the RTC.

Petitioner was immediately flown to the Philippines and brought to the PNP-IG at Camp Crame for booking and custodial investigation. The PNP-IG informed the RTC that Kunting was already in their custody but PNP-IG requested for Kunting's temporary detention at the PNP-IG, Camp Crame, Quezon City due to the high security risks involved and prayed for the issuance of a corresponding commitment order, to which the RTC granted.

Subsequently, the RTC issued an Order the turn over Kunting to the trial court since Kunting filed an Urgent Motion for Reinvestigation.

The PNP-IG Director wrote DOJ requesting for representation and a motion to be filed for the transfer of the venue of the trial from Isabela City, Basilan to Pasig City, for the following reasons: (1) Several intelligence reports have been received by the PNP-IG stating that utmost effort will be exerted by the Abu Sayyaf Group (ASG) to recover the custody of Kunting from the PNP considering his importance to the ASG; and (2) there is a big possibility that Kunting may be recovered by the ASG if he will be detained in Basilan due to inadequate security facility in the municipal jail and its proximity to the area of operation of the ASG.

In February 2005, the RTC issued an Order denying Kunting's Motion to Set Case for Preliminary Investigation since the PNP-IG has not turned over Kunting. The trial court reiterated its Order directing the Police Superintendent and Chief, Legal Affairs Division, PNP-IG, to turn over Kunting to the court. The Legal Affairs Division of PNP-IG, filed with the RTC a Motion to Defer Implementation of the Order citing, among other grounds, the existence of a pending motion for the transfer of the venue of the trial against Kunting, which was allegedly filed by the DOJ before the Supreme Court.

Thereafter, Kunting filed the petition for the issuance of a writ of habeas corpus. Kunting stated that he has been restrained of his liberty since June 12, 2003 by the PNP-IG and alleged that he was never informed of the charges filed against him until he requested his family to research in Zamboanga City.

ISSUE

Whether the petition for habeas corpus can prosper.

RULING

Under Section 1, Rule 102 of the Rules of Court, the writ of habeas corpus extends to "all case of illegal confinement or detention by which any person is deprived of his liberty, or by which the rightful custody of any person is withheld from the person entitled thereto." The remedy of habeas corpus has one objective: to inquire into the cause of detention of a person, and if found illegal, the court orders the release of the detainee. If, however, the detention is proven lawful, then the habeas corpus proceedings terminate.

Section 4, Rule 102 of the Rules of Court provides when the writ is not allowed:

SEC. 4. When writ not allowed or discharge authorized. If it appears that the person alleged to be restrained of his liberty is in the custody of an officer under process issued by a court or judge or by virtue of a judgment or order of a court of record, and that the court or judge had jurisdiction to issue the process, render the judgment, or make the order, the writ shall not be allowed; or if the

jurisdiction appears after the writ is allowed, the person shall not be discharged by reason of any informality or defect in the process, judgment, or order. Nor shall anything in this rule be held to authorize the discharge of a person charged with or convicted of an offense in the Philippines, or of a person suffering imprisonment under lawful judgment.

In this case, Kunting's detention by the PNP-IG was under process issued by the RTC. He was arrested by the PNP by virtue of the alias order of arrest issued by Judge Danilo M. Bucoy, RTC, Branch 2, Isabela City, Basilan. His temporary detention at PNP-IG, Camp Crame, Quezon City, was thus authorized by the trial court.

Moreover, Kunting was charged with four counts of Kidnapping for Ransom and Serious Illegal Detention in Criminal Case Nos. 3608-1164, 3537-1129, 3674-1187, and 3611-1165. In accordance with the last sentence of Section 4 above, the writ cannot be issued and Kunting cannot be discharged since he has been charged with a criminal offense. *Bernarte v. Court of Appeals* holds that "once the person detained is duly charged in court, he may no longer question his detention by a petition for the issuance of a writ of habeas corpus."

Nevertheless, this Court notes that the RTC in its Orders directed the Police Superintendent and Chief, Legal Affairs Division, PNP-IG, Camp Crame, Quezon City, to turn over Kunting to the court. The trial court has been waiting for two years for the PNP-IG to turn over the person of Kunting for the trial of his case. The PNP-IG has delayed the turn over because it is waiting for the DOJ to request for the transfer of venue of the trial of the case from Isabela City, Basilan to Pasig City. In the absence of evidence that the DOJ has indeed filed a motion for the transfer of venue, In its Comment, the Office of the Solicitor General stated that the PNP-IG is presently awaiting the resolution of the Motion for Transfer of Venue it requested from the DOJ. In this regard, the Police Chief Superintendent is, therefore, directed to take positive steps towards action on said motion and comply with the Order of the trial court.

**IN THE MATTER OF THE PETITION FOR HABEAS CORPUS OF MINOR SHANG KO VINGSON YU
SHIRLY VINGSON@ SHIRLY VINGSON DEMAISIP, *Petitioner* -versus- JOVY CABCABAN,
*Respondent.***

UDK No. 14817, THIRD DIVISION, January 13, 2014, ABAD, J.:

Under Section 1, Rule 102 of the Rules of Court, the writ of habeas corpus is available, not only in cases of illegal confinement or detention by which any person is deprived of his liberty, but also in cases involving the rightful custody over a minor. The general rule is that parents should have custody over their minor children. But the State has the right to intervene where the parents, rather than care for such children, treat them cruelly and abusively, impairing their growth and well-being and leaving them emotional scars that they carry throughout their lives unless they are liberated from such parents and properly counseled.

Since this case presents factual issues and since the parties are all residents of Bacolod City, it would be best that such issues be resolved by a Family Court in that city.

FACTS

Petitioner Shirly Vingson (Shirly) alleged that Shang Ko Vingson Yu (Shang Ko), her 14-year-old daughter, ran away from home. Shirly then went to the police station in Bacolod City upon receipt of

information that Shang Ko was in the custody of respondent Jovy Cabcaban, a police officer in that station. Since Cabcaban refused to release Shang Ko to her, Shirly sought the help of the National Bureau of Investigation to rescue her child. An NBI agent, Arnel Pura informed Shirly that Shang Ko was no longer with Cabcaban but was staying with a private organization called Calvary Kids. Pura told her, however, that the child was fine and had been attending school.

This prompted petitioner Shirly to file a petition for habeas corpus against respondent Cabcaban and the unnamed officers of Calvary Kids before the Court of Appeals (CA) rather than the Regional Trial Court of Bacolod City citing as reason several threats against her life in that city.

The CA denied the petition for its failure to clearly allege who has custody of Shang Ko. The CA also denied petitioner Shirly's motion for reconsideration.

In her Comment, respondent Cabcaban claimed that police officers found Shang Ko crying outside a church. When queried, the latter refused to give any information about herself. Thus, they indorsed her case to the Bacolod City Police Women and Children Protection Desk that Cabcaban headed. After the initial interview, Cabcaban referred Shang Ko to Balay Pasilungan , a temporary shelter for abused women and children.

Respondent Cabcaban further claimed that on the next day, a social worker sat with the minor who said that her mother Shirly had been abusive in treating her and that Shang Ko pleaded with the police and the social worker not to return her to her mother. As a result, the Bacolod City Police filed a complaint against petitioner Shirly for violation of Republic Act 7610 or the Special Protection of Children Against Abuse, Exploitation, and Discrimination Act.

Respondent Cabcaban then decided to turn over Shang Ko to the Calvary Kids, a private organization that gave sanctuary and schooling to abandoned and abused children. She(Cabcaban) further claimed that one year later, she accompanied the NBI agents to Calvary Kids to talk to the institution's social worker, school principal, and director. Shang Ko herself told the NBI that she would rather stay at Calvary Kids because she was afraid of what would happen to her if she returned home. As proof, Shang Ko wrote a letter stating that, contrary to her mother's malicious insinuations, Cabcaban actually helped her when she had nowhere to go after her family refused to take her back.

ISSUE

Whether the petition for writ of habeas corpus proper. (NO)

RULING

Under Section 1, Rule 102 of the Rules of Court, the writ of habeas corpus is available, not only in cases of illegal confinement or detention by which any person is deprived of his liberty, but also in cases involving the rightful custody over a minor. The general rule is that parents should have custody over their minor children. But the State has the right to intervene where the parents, rather than care for such children, treat them cruelly and abusively, impairing their growth and well-being and leaving them emotional scars that they carry throughout their lives unless they are liberated from such parents and properly counseled.

Since this case presents factual issues and since the parties are all residents of Bacolod City, it would be best that such issues be resolved by a Family Court in that city. Meantime, considering the

presumption that the police authorities acted regularly in placing Shang Ko in the custody of Calvary Kids the Court believes that she should remain there pending hearing and adjudication of this custody case. Besides she herself has expressed preference to stay in that place.

With this, the Supreme Court set aside the Court of Appeals Resolutions and ordered the custody case forwarded to the Family Court of Bacolod City for hearing and adjudication as the evidence warrants. Meantime until such court orders otherwise the Court held that the minor Shang Ko Vingson remain in the custody of Calvary Kids of Bacolod City.

MR. ALEXANDER "LEX" ADONIS, represented by the CENTER FOR MEDIA FREEDOM AND RESPONSIBILITY (CMFR), through its Executive Director, MRS. MELINDA QUINTOS-DE JESUS; and the NATIONAL UNION OF JOURNALISTS OF THE PHILIPPINES (NUJP), through its Chairperson, MR. JOSE TORRES, JR., Petitioners –versus SUPERINTENDENT VENANCIO TESORO, DIRECTOR, DAVAO PRISONS AND PENAL FARM, PANABO CITY, Digos DAVAO DEL NORTE, Respondent.

G.R. No. 182855, FIRST DIVISION, June 5, 2013, REYES, J.:

The ultimate purpose of the writ of habeas corpus is to relieve a person from unlawful restraint. The writ exists as a speedy and effectual remedy to relieve persons from unlawful restraint and as an effective defense of personal freedom. It is issued only for the lone purpose of obtaining relief for those illegally confined or imprisoned without sufficient legal basis. It is not issued when the person is in custody because of a judicial process or a valid judgment.

In the instant case, Adonis was convicted for libel by the RTC Branch 17. Since his detention was by virtue of a final judgment, he is not entitled to the Writ of Habeas Corpus.

FACTS

Adonis was convicted by the Regional Trial Court of Davao City (RTC), Branch 17 for Libel, filed against him by then Representative Prospero Nograles. A second libel case was likewise filed against Adonis by Jeanette L. Leuterio, pending before the RTC of Davao City, Branch 14.

The Board of Pardons and Parole (BPP) issued an order for the Discharge on Parole of seven (7) inmates in various jails in the country, which included Adonis.

Meanwhile, the Supreme Court issued Administrative Circular No. 08-2008, with the subject "Guidelines in the Observance of a Rule of Preference in the Imposition of Penalties in Libel Cases."

In view of this, Adonis filed with the RTC Branch 17 a Motion to Reopen Case (With Leave of Court), praying for his immediate release from detention and for the modification of his sentence to payment of fine pursuant to the said Circular.

Thereafter Adonis moved for his provisional release from detention. The motion was granted by Presiding Judge George Omelio in open court and he was allowed to post bail in the amount of ₱5,000. Subsequently on even date and after Adonis filed a cash bond and an undertaking, the trial court issued an Order directing the Chief of Davao Penal Colony "to release the accused Alexis Adonis unless he is being held for some other crimes or offenses." On the same date, the said order was served to the respondent, but the release of Adonis was not effected.

Then Adonis filed the instant petition for the issuance of a writ of habeas corpus alleging that his liberty was restrained by the respondent for no valid reason.

ISSUE

Whether the petition for writ of habeas corpus proper. (NO)

RULING

The ultimate purpose of the writ of habeas corpus is to relieve a person from unlawful restraint. The writ exists as a speedy and effectual remedy to relieve persons from unlawful restraint and as an effective defense of personal freedom. It is issued only for the lone purpose of obtaining relief for those illegally confined or imprisoned without sufficient legal basis. It is not issued when the person is in custody because of a judicial process or a valid judgment.

Section 4, Rule 102 of the Revised Rules of Court provides when a writ must not be allowed or discharge authorized, to wit:

SEC. 4. When writ not allowed or discharge authorized.— If it appears that the person alleged to be restrained of his liberty is in the custody of an officer under process issued by a court or judge or by virtue of a judgment or order of a court of record, and that the court or judge had jurisdiction to issue the process, render the judgment, or make the order, the writ shall not be allowed; or if the jurisdiction appears after the writ is allowed, the person shall not be discharged by reason of any informality or defect in the process, judgment, or order. Nor shall anything in this rule be held to authorize the discharge of a person charged with or convicted of an offense in the Philippines, or of a person suffering imprisonment under lawful judgment.

In the instant case, Adonis was convicted for libel by the RTC Branch 17. Since his detention was by virtue of a final judgment, he is not entitled to the Writ of Habeas Corpus. He was serving his sentence when the BPP granted him parole, along with six (6) others, on December 11, 2007. While it is true that a convict may be released from prison on parole when he had served the minimum period of his sentence; the pendency of another criminal case, however, is a ground for the disqualification of such convict from being released on parole. Notably, at the time he was granted the parole, the second libel case was pending before the RTC Branch 14. In fact, even when the instant petition was filed, Criminal Case No. 48719-01 was still pending. The issuance of the writ under such circumstance was, therefore, proscribed. There was basis for the respondent to deny his immediate release at that time.

**DAVID E. SO, ON BEHALF OF HIS DAUGHTER MARIA ELENA SO GUISANDE, *Petitioner* –versus
HON. ESTEBAN A. TACLA, JR., REGIONAL TRIAL COURT OF MANDALUYONG CITY, BRANCH
208; AND DR. BERNARDO A. VICENTE, NATIONAL CENTER FOR MENTAL HEALTH,
*Respondent.***

**HON. ESTEBAN A. TACLA, JR., PRESIDING JUDGE OF THE REGIONAL TRIAL COURT,
MANDALUYONG CITY, BRANCH 208; AND PEOPLE OF THE PHILIPPINES,, *Petitioners* – DAVID
E. SO, ON BEHALF OF HIS DAUGHTER MARIA ELENA SO GUISANDE, *Respondent.*
G.R. No. 190108/ G.R. No. 190473, EN BANC, October 19, 2010, NACHURA, J.:**

While habeas corpus is a writ of right, it will not issue as a matter of course or as a mere perfunctory operation on the filing of the petition. Judicial discretion is called for in its issuance and it must be clear to the judge to whom the petition is presented that, prima facie, the petitioner is entitled to the writ. It is only if the court is satisfied that a person is being unlawfully restrained of his liberty will the petition for habeas corpus be granted. If the respondents are not detaining or restraining the applicant of the person in whose behalf the petition is filed, the petition should be dismissed.

Certainly, with the dismissal of the non-bailable case against accused Guisande, she is no longer under peril to be confined in a jail facility, much less at the NCMH. Effectively, accused Guisande's person, and treatment of any medical and mental malady she may or may not have, can no longer be subjected to the lawful processes of the RTC Mandaluyong City. In short, the cases have now been rendered moot and academic.

FACTS

Petitioner David E. So (So) in G.R. No. 190108 filed the petition for the writs of habeas corpus and amparo on behalf of his daughter, Ma. Elena So Guisande (Guisande), accused of Qualified Theft in the criminal case pending before Judge Tacla. Petitioner So alleged, among others, that Guisande was under a life-threatening situation while confined at the NCMH, the government hospital ordered by the RTC Mandaluyong City to ascertain the actual psychological state of Guisande, who was being charged with a non-bailable offense.

Prior to the institution of the criminal proceedings before the RTC, Guisande was committed by So for psychiatric treatment and care at the Makati Medical Center (MMC). Thus, the return of the warrant for the arrest of Guisande, issued by Judge Tacla, stated that the former was confined at MMC for Bipolar Mood Disorder and that she was "not ready for discharge," as certified by her personal psychiatrist, Dr. Ma. Cecilia Tan.

Acting on the prosecution's Urgent Motion to Refer Accused's Illness to a Government Hospital, Judge Tacla ordered Guisande's referral to the NCMH for an independent forensic assessment of Guisande's mental health to determine if she would be able to stand arraignment and undergo trial for Qualified Theft.

Subsequently, Judge Tacla, upon motion of the NCMH, ordered that accused Guisande be physically brought to the NCMH, with NCMH Chief Dr. Vicente to have temporary legal custody of the accused, and thereafter, Judge Tacla would issue the corresponding order of confinement of Guisande in a regular jail facility upon the NCMH's determination that she was ready for trial.

Accused Guisande was confined at the NCMH Payward, Pavilion 6-I-E, instead of Pavilion 35, Forensic Psychiatric Section, where female court case patients are usually confined at the NCMH. In connection therewith, Dr. Vicente issued a special Memorandum on November 9, 2009, reiterating existing hospital policies on the handling of court case patients undergoing evaluation procedures to foreclose any possibility of malingering on the patient's part, specifically patients accused of a non-bailable crime.

Eventually, claiming "life-threatening" circumstances surrounding her confinement at the NCMH which supposedly worsened her mental condition and violated her constitutional rights against solitary detention and assistance of counsel, accused Guisande and her father simultaneously, albeit

separately, filed a Motion for Relief from Solitary Confinement before the RTC Mandaluyong City, and the present petition in G.R. No. 190108 for the issuance of the writs of habeas corpus and amparo.

ISSUE

Whether the petition for the issuance of writ of habeas corpus and amparo proper. (NO)

RULING

In general, the purpose of the writ of habeas corpus is to determine whether or not a particular person is legally held. A prime specification of an application for a writ of habeas corpus, in fact, is an actual and effective, and not merely nominal or moral, illegal restraint of liberty. The writ of habeas corpus was devised and exists as a speedy and effectual remedy to relieve persons from unlawful restraint, and as the best and only sufficient defense of personal freedom. xxx The essential object and purpose of the writ of habeas corpus is to inquire into all manner of involuntary restraint as distinguished from voluntary, and to relieve a person therefrom if such restraint is illegal. Any restraint which will preclude freedom of action is sufficient.

In passing upon a petition for habeas corpus, a court or judge must first inquire into whether the petitioner is being restrained of his liberty. If he is not, the writ will be refused. Inquiry into the cause of detention will proceed only where such restraint exists. If the alleged cause is thereafter found to be unlawful, then the writ should be granted and the petitioner discharged. Needless to state, if otherwise, again the writ will be refused.

While habeas corpus is a writ of right, it will not issue as a matter of course or as a mere perfunctory operation on the filing of the petition. Judicial discretion is called for in its issuance and it must be clear to the judge to whom the petition is presented that, prima facie, the petitioner is entitled to the writ. It is only if the court is satisfied that a person is being unlawfully restrained of his liberty will the petition for habeas corpus be granted. If the respondents are not detaining or restraining the applicant of the person in whose behalf the petition is filed, the petition should be dismissed.

In the cases at bar, the question before the CA was correctly limited to which hospital, the NCMH or a medical facility of accused's own choosing, accused Guisande should be referred for treatment of a supposed mental condition. In addition, we note that it was procedurally proper for the RTC to ask the NCMH for a separate opinion on accused's mental fitness to be arraigned and stand trial. Be that as it may, the CA allowed the transfer of accused to St. Clare's Medical Center under the custody of Dr. Rene Yat, who was required periodically to report on his evaluation, every fifteen (15) days, to the RTC Mandaluyong City, although in the same breath, the CA also ordered the continuation of the arraignment and trial of the accused for Qualified Theft before the same trial court. In other words, Guisande remained in custody of the law to answer for the non-bailable criminal charge against her, and was simply allowed to pursue medical treatment in the hospital and from a doctor of her choice.

Certainly, with the dismissal of the non-bailable case against accused Guisande, she is no longer under peril to be confined in a jail facility, much less at the NCMH. Effectively, accused Guisande's person, and treatment of any medical and mental malady she may or may not have, can no longer be subjected to the lawful processes of the RTC Mandaluyong City. In short, the cases have now been rendered moot and academic which, in the often cited *David v. Macapagal-Arroyo*, is defined as "one that ceases

to present a justiciable controversy by virtue of supervening events, so that a declaration thereon would be of no practical use or value."

Finally, the Resolutions of the CA and Assistant City Prosecutor Escobar-Pilares, unmistakably foreclose the justiciability of the petitions before this Court.

In CA-G.R. SP No. 00039, the CA said:

We are also not swayed by [David So's] argument that [petitioners] advanced lies to this Court when they stated in their petition that Elena was facing two (2) non-bailable offenses. During the hearing on the petition for habeas corpus/writ of amparo, the counsel for [David So] stated that Elena was facing only one (1) non-bailable offense to which [petitioners] did not anymore object. Besides, the number of non-bailable offenses is not even material in the instant case for habeas corpus/writ of amparo as the only issue to be determined here was whether or not Elena's confinement at NCMH was lawful.

**MA. HAZELINA A. TUJAN-MILITANTE IN BEHALF OF THE MINOR CRISELDA M. CADA,
Petitioner –versus RAQUEL M. CADA-DEAPERA, Respondent.**

G.R. No. 210636, THIRD DIVISION, July 28, 2014, VELASCO, JR., J.:

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.

However, the petition may be filed with the regular court in the absence of the presiding judge of the Family Court, provided, however, that the regular court shall refer the case to the Family Court as soon as its presiding judge returns to duty.

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.

FACTS

Respondent Raquel M. Cada-Deapera filed before the RTC-Caloocan a verified petition for writ of habeas corpus. In the said petition, respondent demanded the immediate issuance of the special writ, directing petitioner Ma. Hazelina Tujan-Militante to produce before the court respondent's biological daughter, minor Criselda M. Cada (Criselda), and to return to her the custody over the child.

The RTC-Caloocan issued a writ of habeas corpus, ordering petitioner to bring the child to court. Despite diligent efforts and several attempts, however, the Sheriff was unsuccessful in personally serving petitioner copies of the habeas corpus petition and of the writ. Instead, on March 29, 2011, the Sheriff left copies of the court processes at petitioner's Caloocan residence, as witnessed by respondent's counsel and barangay officials. Nevertheless, petitioner failed to appear at the scheduled hearings before the RTC-Caloocan.

Meanwhile, petitioner filed a Petition for Guardianship over the person of Criselda before the RTC, Branch 89 in Quezon City (RTC-Quezon City). Respondent filed a Motion to Dismiss the petition for guardianship on the ground of *litis pendencia*, among others. Thereafter, respondent filed a criminal case for kidnapping before the Office of the City Prosecutor – Quezon City against petitioner and her counsel.

The RTC-Quezon City granted respondent's motion and dismissed the guardianship case due to the pendency of the habeas corpus petition before RTC-Caloocan.

Then, Raquel moved for the *ex parte* issuance of an alias writ of habeas corpus before the RTC-Caloocan, which was granted by the trial court. On even date, the court directed the Sheriff to serve the alias writ upon petitioner at the Office of the Assistant City Prosecutor of Quezon City. In compliance, the Sheriff served petitioner the August 8, 2011 Order as well as the Alias Writ during the preliminary investigation of the kidnapping case.

Petitioner moved for the quashal of the writ and prayed before the RTC Caloocan for the dismissal of the habeas corpus petition, claiming, among others, that she was not personally served with summons. Thus, as argued by petitioner, jurisdiction over her and Criselda's person was not acquired by the RTC-Caloocan to which the RTC denied. The RTC also directed petitioner to appear and bring Criselda Martinez Cada before the court.

Aggrieved, petitioner, via certiorari to the CA, assailed the issued Order. The CA dismissed the petition for certiorari. Petitioner sought reconsideration but the same was denied by the CA.

ISSUE

Whether 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. (YES)

RULING

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.

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. As 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.

However, the petition may be filed with the regular court in the absence of the presiding judge of the Family Court, provided, however, that the regular court shall refer the case to the Family Court as soon as its presiding judge returns to duty.

The petition may also be filed with the appropriate regular courts in places where there are no Family Courts. The writ issued by the Family Court or the regular court shall be enforceable in the judicial region where they belong.

The petition may likewise be filed with the Supreme Court, Court of Appeals, or with any of its members and, if so granted, the writ shall be enforceable anywhere in the Philippines. The writ may be made returnable to a Family Court or to any regular court within the region where the petitioner resides or where the minor may be found for hearing and decision on the merits.

Upon return of the writ, the court shall decide the issue on custody of minors. The appellate court, or the member thereof, issuing the writ shall be furnished a copy of the decision. (emphasis added)

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.

On this point, Section 13 of Batas Pambansa Blg. 129 (BP 129), otherwise known as the Judiciary Reorganization Act of 1980, finds relevance. Said provision, which contains the enumeration of judicial regions in the country.

In view of the 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.

LOURDES D. RUBRICO, JEAN RUBRICO APRUEBO, and MARY JOY RUBRICO CARBONEL, Petitioners -versus- GLORIA MACAPAGAL-ARROYO, GEN. HERMOGENES ESPERON, P/DIR. GEN. AVELINO RAZON, MAJ. DARWIN SY a.k.a. DARWIN REYES, JIMMY SANTANA, RUBEN ALFARO, CAPT. ANGELO CUARESMA, a certain JONATHAN, P/SUPT. EDGAR B. ROQUERO, ARSENIO C. GOMEZ, and OFFICE OF THE OMBUDSMAN, Respondents.
G.R. No. 183871, EN BANC, February 18, 2010, VELASCO, JR., J.:

Settled is the doctrine that the President, during his tenure of office or actual incumbency, may not be sued in any civil or criminal case, and there is no need to provide for it in the Constitution or law.

And lest it be overlooked, the petition is simply bereft of any allegation as to what specific presidential act or omission violated or threatened to violate petitioners' protected rights.

FACTS

Petitioner Lourdes D. Rubrico (Lourdes) alleged that she was abducted on April 3, 2007 by armed men belonging to the 301st Air Intelligence and Security Squadron (AISS, for short) based in

Fernando Air Base in Lipa City. She was eventually released at Dasmariñas, Cavite, her hometown, but only after being made to sign a statement that she would be a military asset.

After Lourdes' release, the harassment, coming in the form of being tailed on at least two occasions at different places, i.e., Dasmariñas, Cavite and Baclaran in Pasay City, by motorcycle-riding men in bonnets, continued. According to petitioner during her detention, the sub-station commander of Bagong Bayan, Dasmariñas, Cavite, kept sending text messages to her daughter Mary Joy R. Carbonel (Mary Joy), bringing her to beaches and asking her questions about Karapatan, an alliance of human rights organizations. Her other daughter, Jean R. Apruebo (Jean), was also constrained to leave their house because of the presence of men watching them;

Therafter, Lourdes has filed with the Office of the Ombudsman a criminal complaint for kidnapping and arbitrary detention and administrative complaint for gross abuse of authority and grave misconduct against Capt. Angelo Cuaresma (Cuaresma), Ruben Alfaro (Alfaro), Jimmy Santana (Santana) and a certain Jonathan, c/o Headquarters 301st AISS, Fernando Air Base and Maj. Sy/Reyes with address at No. 09 Amsterdam Ext., Merville Subd., Parañaque City, but nothing has happened; and the threats and harassment incidents have been reported to the Dasmariñas municipal and Cavite provincial police stations, but nothing eventful resulted from their respective investigations.

Thus, Lourdes filed a petition praying that a writ of amparo be issued ordering the individual respondents to desist from performing any threatening act against them.

After due proceedings, the CA rendered its partial judgment, dismissing the petition with respect to respondent Gen. Hermogenes Esperon, P/Dir. Gen. Avelino Razon, Supt. Edgar B. Roquero, P/Sr. Insp. Arsenio C. Gomez (ret.) and the Office of the Ombudsman.

ISSUE

Whether the CA committed reversible error in dismissing the Petition and dropping President Gloria Macapagal Arroyo as party respondent. (NO)

Petitioners first take issue on the President's purported lack of immunity from suit during her term of office. The 1987 Constitution, so they claim, has removed such immunity heretofore enjoyed by the chief executive under the 1935 and 1973 Constitutions.

RULING

Settled is the doctrine that the President, during his tenure of office or actual incumbency, may not be sued in any civil or criminal case, and there is no need to provide for it in the Constitution or law. It will degrade the dignity of the high office of the President, the Head of State, if he can be dragged into court litigations while serving as such. Furthermore, it is important that he be freed from any form of harassment, hindrance or distraction to enable him to fully attend to the performance of his official duties and functions. Unlike the legislative and judicial branch, only one constitutes the executive branch and anything which impairs his usefulness in the discharge of the many great and important duties imposed upon him by the Constitution necessarily impairs the operation of the Government.

And lest it be overlooked, the petition is simply bereft of any allegation as to what specific presidential act or omission violated or threatened to violate petitioners' protected rights.

This brings us to the correctness of the assailed dismissal of the petition with respect to Gen. Esperon, P/Dir. Gen. Razon, P/Supt. Roquero, P/Insp. Gomez, and the OMB.

None of the four individual respondents immediately referred to above has been implicated as being connected to, let alone as being behind, the alleged abduction and harassment of petitioner Lourdes. Their names were not even mentioned in Lourdes' Sinumpaang Salaysay of April 2007. The same goes for the respective Sinumpaang Salaysay and/or Karagdagang Sinumpaang Salaysay of Jean and Mary Joy.

As explained by the CA, Gen. Esperon and P/Dir. Gen. Razon were included in the case on the theory that they, as commanders, were responsible for the unlawful acts allegedly committed by their subordinates against petitioners. To the appellate court, "the privilege of the writ of amparo must be denied as against Gen. Esperon and P/Dir. Gen. Razon for the simple reason that petitioners have not presented evidence showing that those who allegedly abducted and illegally detained Lourdes and later threatened her and her family were, in fact, members of the military or the police force." The two generals, the CA's holding broadly hinted, would have been accountable for the abduction and threats if the actual malefactors were members of the AFP or PNP.

As regards the three other answering respondents, they were impleaded because they allegedly had not exerted the required extraordinary diligence in investigating and satisfactorily resolving Lourdes' disappearance or bringing to justice the actual perpetrators of what amounted to a criminal act, albeit there were allegations against P/Insp. Gomez of acts constituting threats against Mary Joy.

While in a qualified sense tenable, the dismissal by the CA of the case as against Gen. Esperon and P/Dir. Gen. Razon is incorrect if viewed against the backdrop of the stated rationale underpinning the assailed decision vis-à-vis the two generals, i.e., command responsibility. The Court assumes the latter stance owing to the fact that command responsibility, as a concept defined, developed, and applied under international law, has little, if at all, bearing in amparo proceedings.

While there are several pending bills on command responsibility, there is still no Philippine law that provides for criminal liability under that doctrine.

It may plausibly be contended that command responsibility, as legal basis to hold military/police commanders liable for extra-legal killings, enforced disappearances, or threats, may be made applicable to this jurisdiction on the theory that the command responsibility doctrine now constitutes a principle of international law or customary international law in accordance with the incorporation clause of the Constitution. Still, it would be inappropriate to apply to these proceedings the doctrine of command responsibility, as the CA seemed to have done, as a form of criminal complicity through omission, for individual respondents' criminal liability, if there be any, is beyond the reach of amparo. In other words, the Court does not rule in such proceedings on any issue of criminal culpability, even if incidentally a crime or an infraction of an administrative rule may have been committed. As the Court stressed in *Secretary of National Defense v. Manalo* (Manalo), the writ of amparo was conceived to provide expeditious and effective procedural relief against violations or threats of violation of the basic rights to life, liberty, and security of persons; the corresponding amparo suit, however, "is not an action to determine criminal guilt requiring proof beyond

reasonable doubt x x x or administrative liability requiring substantial evidence that will require full and exhaustive proceedings."

Petitioners, as the CA has declared, have not adduced substantial evidence pointing to government involvement in the disappearance of Lourdes. To a concrete point, petitioners have not shown that the actual perpetrators of the abduction and the harassments that followed formally or informally formed part of either the military or the police chain of command. A preliminary police investigation report, however, would tend to show a link, however hazy, between the license plate (XRR 428) of the vehicle allegedly used in the abduction of Lourdes and the address of Darwin Reyes/Sy, who was alleged to be working in Camp Aguinaldo.²⁵ Then, too, there were affidavits and testimonies on events that transpired which, if taken together, logically point to military involvement in the alleged disappearance of Lourdes, such as, but not limited to, her abduction in broad daylight, her being forcibly dragged to a vehicle blindfolded and then being brought to a place where the sounds of planes taking off and landing could be heard. Mention may also be made of the fact that Lourdes was asked about her membership in the Communist Party and of being released when she agreed to become an "asset."

ARTHUR BALAO, WINSTON BALAO, NONETTE BALAO, JONILYN BALAO-STRUGAR, AND BEVERLY LONGID, *Petitioners* –versus- EDUARDO ERMITA, GILBERTO TEODORO, RONALDO PUNO, NORBERTO GONZALES, GEN. ALEXANDER YANO, GEN. JESUS VERZOSA, BRIG. GEN. REYNALDO MAPAGU, LT. P/DIR. EDGARDO DOROMAL, MAJ. GEN. ISAGANI CACHUELA, COMMANDING OFFICER OF THE AFP-ISU BASED IN BAGUIO CITY, PSS EUGENE MARTIN, AND SEVERAL JOHN DOES, *Respondents*.

G.R. No. 186050, EN BANC, August 01, 2017, PERLAS-BERNABE, J.:

Section 20. Archiving and Revival of Cases. - The court shall not dismiss the petition, but shall archive it, if upon its determination it cannot proceed for a valid cause such as the failure of petitioner or witnesses to appear due to threats on their lives.

Based on the report submitted by the RTC, it appears that the PNP had indeed conducted the required investigation on the angle presented by Gonzales and further attempted to ascertain the identities of "Uncle John" and Rene" who are persons of interest in these cases. This notwithstanding, none of the material witnesses, namely, Gonzales himself, Luken, and Fontanilla, could provide any information on the identities of these persons, despite having been presented with various photographs of James and his companions. As such, the investigation of the PNP on James's case has once more reached an impasse without, this time, any other active leads left to further pursue.

FACTS

The present matter arose from a petition for the issuance of a writ of amparo filed by the relatives of James M. Balao (James) before the RTC, alleging that he was abducted by five (5) unidentified men on September 17, 2008 in La Trinidad, Benguet because of his activist/political leanings as founding member of the Cordillera Peoples Alliance (CPA).

The RTC granted the privilege of the writ of amparo, thereby commencing the conduct of several investigations by the Armed Forces of the Philippines (AFP) and the Philippine National Police (PNP) to determine the whereabouts and the circumstances behind the disappearance of James.

In its Formal Report, the PNP stated that they encountered problems in gathering evidence that would lead to the resolution of the case, and thus, proposed that their investigation be terminated. Meanwhile, the AFP overturned the suspicions behind the involvement of an active service officer of the army, i.e., Major Ferdinand Bruce Tokong, in James's abduction, which likewise led to a standstill in its own investigation. As a result, the RTC recommended, among others, the archiving of the case, considering that the ongoing investigation had reached an impasse.

In a Resolution, the Supreme Court partially adopted the RTC's recommendations, and accordingly: (a) rejected the recommendation of the RTC to archive the cases; (b) relieved the AFP and the Commission on Human Rights from their respective obligations to investigate James's abduction; and (c) directed the PNP to further investigate the angle presented by Bryan Gonzales (Gonzales) and to ascertain the identities of "Uncle John" and "Rene" who are persons of interest in these cases.

The Court held that while it may appear that the investigation conducted by the AFP had reached an impasse, records disclosed that the testimony of Gonzales, an asset of the Military Intelligence Group 1 and a cousin of James, alluded to the possibility that James could have been abducted by members of the CPA. In the same testimony, "Uncle John" and "Rene" were mentioned as CPA members who were James's housemates. Thus, there was still an active lead worth pursuing by the PNP, which means that the recommendation to archive the case was premature.

On June 20, 2017, the RTC submitted its Report to the Court. The RTC concluded that the investigation has reached another impasse for failure to uncover relevant leads, and once more recommended to archive the cases, to be revived upon motion by any of the parties should a significant lead arise. Further, the RTC asked the Court to relieve the PNP of its mandate to investigate the matter and to submit reportorial requirements until new witnesses or relevant evidence appear or are discovered.

ISSUE

Whether the Supreme Court should adopt the recommendations of the RTC in its Report relative to these cases. (YES)

RULING

As mentioned in the Court's Resolution, "archiving of cases is a procedural measure designed to temporarily defer the hearing of cases in which no immediate action is expected, but where no grounds exist for their outright dismissal. Under this scheme, an inactive case is kept alive but held in abeyance until the situation obtains in which action thereon can be taken. To be sure, the Amparo rule sanctions the archiving of cases, provided that it is impelled by a valid cause, such as when the witnesses fail to appear due to threats on their lives or to similar analogous causes that would prevent the court from effectively hearing and conducting the amparo proceedings x x x." Section 20 of A.M. No. 07-9-12-SC, entitled "The Rule on the Writ of Amparo," reads:

Section 20. Archiving and Revival of Cases. - The court shall not dismiss the petition, but shall archive it, if upon its determination it cannot proceed for a valid cause such as the failure of petitioner or witnesses to appear due to threats on their lives.

A periodic review of the archived cases shall be made by the amparo court that shall, motu proprio or upon motion by any party, order their revival when ready for further proceedings. The petition

shall be dismissed with prejudice upon failure to prosecute the case after the lapse of two (2) years from notice to the petitioner of the order archiving the case.

The clerks of court shall submit to the Office of the Court Administrator a consolidated list of archived cases under this Rule not later than the first week of January of every year.

Based on the report submitted by the RTC, it appears that the PNP had indeed conducted the required investigation on the angle presented by Gonzales and further attempted to ascertain the identities of "Uncle John" and Rene" who are persons of interest in these cases. This notwithstanding, none of the material witnesses, namely, Gonzales himself, Luken, and Fontanilla, could provide any information on the identities of these persons, despite having been presented with various photographs of James and his companions. As such, the investigation of the PNP on James's case has once more reached an impasse without, this time, any other active leads left to further pursue. Given this situation, the Court therefore concludes that the archiving of the case is now appropriate and perforce, adopts and approves the recommendations of the RTC in its June 13, 2017 Report.

LT. SG. MARY NANCY P. GADIAN, *Petitioner* –versus- ARMED FORCES OF THE PHILIPPINES CHIEF OF STAFF LT. GEN. VICTOR IBRADO; PHILIPPINE NAVY FLAG OFFICER IN COMMAND VICE-ADMIRAL FERDINAND GOLEZ; COL. JOEL IBÁÑEZ-CHIEF OF STAFF OF THE WESTERN MINDANAO COMMAND; LT. COL. ANTONIO DACANAY, MANAGEMENT AND FINANCIAL OFFICER OF THE WESTERN MINDANAO COMMAND; RETIRED LT. GEN. EUGENIO CEDO, FORMER COMMANDER OF THE WESTERN MINDANAO COMMAND, *Respondents*.

G.R. No. 188163, EN BANC, October 03, 2017, BERSAMIN, J.:

The writ of amparo is both preventive and curative. It is preventive when it seeks to stop the impunity in committing offenses that violates a person's right to live and be free. It is curative when it facilitates subsequent punishment of perpetrators through an investigation and action. Thus, the writ of amparo either prevents a threat from becoming an actual violation against a person, or cures the violation of a person's right through investigation and punishment.

The CA has correctly determined the existence of the justification to warrant the issuance of the writ of amparo in favor of Lt. SG Gadian, stating:

In brief, prior to the filing of the present Petition, petitioner and aggrieved party's evidence of threat to the latter's life, liberty and security are their receipt of short messaging service or text messages warning them of the giving of "shoot to kill order." Taken alone, such messages may not lead a reasonable mind to consider seriously the existence of threat to life, liberty and security but when receipt of such messages come at a time when claims of anomalies in the holding of military exercises participated in by a foreign country affecting several individuals and involving significant amount of money are being announced publicly, the situation differs, The aggrieved party is a junior officer in the military, with the rank of the lieutenant senior grade. The anomalies reported refer to the conduct of military exercises involving the Philippines and United States of America. The officers claimed to be involved are officers far more senior than the aggrieved party. There is a claim of the aggrieved party that she has resigned from her commission, an act which could be viewed, rightfully or wrongfully, as intended to evade the restrictions of military discipline.

FACTS

Lt. SG Gadian was a commissioned officer of the Philippine Navy. At the time material to this case, she served as the Officer-In-Charge of the Civil Military Operations (CMO) Fusion Cell for the RP-US Balikatan Exercises 2007. As such, she was responsible for the allocation of Balikatan funds and the planning and preparation of the Civil Military Operations component of the RP-US Balikatan Exercises 2007.

On February 14, 2007, the CMO held the opening ceremony where the funds for food allowance were distributed to the participants.

In May 2007, Lt. SG Gadian was asked about the status of the funds during the staff conference presided by Col. Ibañez. When she reported that the funds had been distributed to the recipients who were grateful for the support, Col. Ibañez shouted: You are not authorized to distribute the funds! You should tell the people at GHQ that they should follow the proper channel! She was then required to submit a fund utilization report, but Lt. Col. Crespillo told her not to submit the report to Col. Ibañez because only the Exercise Directorate could require them to submit such report.

Thereafter, at the behest of Retired Lt. General Eugenio Cedo (Gen. Cedo) to the Office of the Inspector General, Lt. SG Gadian was investigated for: (a) lavish spending; (b) misuse of funds; and (c) willful disobedience. She was absolved from liability by prosecution witnesses. The case was submitted for decision in April 2009. Lt. SG Gadian filed her resignation from the AFP effective May 1, 2009.

Fearing for her life after her resignation, Lt. SG Gadian went into hiding. Since then, Lt. SG Gadian received text messages from concerned individuals warning her that people were conducting surveillance at their house. Two attempts were even made to 'snatch' her en route to the hearing in Manila. All these were testified to by her family members and people who were with her throughout her struggle.

An apprehension order was released for Lt. SG Gadian's arrest, along with a "48 hour ultimatum" for her surrender. Again, concerned individuals told her that there was a verbal shoot to kill order to silence her. She was also not unaware of other unsolved cases similar to the case of Ensign Philip Andrew Pestaño's death after giving information of his superior's engagement in drugs, illegal logging and gun running.

Thus, on May 19, 2009, Nedina Gadian-Diamante, alleging herself as the older sister of Lt. SG Mary Nancy P. Gadian (Lt. SG Gadian), brought to the Supreme Court a petition for the issuance of a writ of amparo in behalf of the latter, impleading as respondents various officers of the Armed Forces of the Philippines (AFP), including then AFP Chief of Staff Lt. Gen. Victor Ibrado (Gen. Ibrado). On May 21, 2009, the Court issued the writ of amparo, and directed the CA to hear and decide the petition.

The respondents denied knowledge of any existing threats against Lt. SG Gadian's life, but did not present controverting evidence. On his part, respondent Gen. Cedo averred that he had had no participation in the issuance of the apprehension order and the shoot-to-kill order against her; and that he had retired from the service in September 2007 and had not been interested in her whereabouts.

In its decision, the CA concluded that Lt. SG Gadian had presented substantial evidence to prove the existence of a threat on her life, liberty and security but had not established the source of the threats thus granted the writ of amparo.

The parties then respectively appealed.

ISSUE

Whether the issuance of the writ of amparo warranted by the circumstance. (YES)

RULING

A writ of amparo is an independent and summary remedy to provide immediate judicial relief for the protection of a person's constitutional right to life and liberty. When a person is consumed by fear for her life and liberty that it completely limits her movement, the writ may be issued to secure her. Note, however, that the source of this fear must be valid and substantiated by circumstances, and not mere paranoia. Thus, in resolving the necessity of issuing a writ of amparo and the corresponding protection order, the courts must look at the overall circumstance surrounding the applicant and respondents.

Moreover, the writ of amparo is both preventive and curative. It is preventive when it seeks to stop the impunity in committing offenses that violates a person's right to live and be free. It is curative when it facilitates subsequent punishment of perpetrators through an investigation and action. Thus, the writ of amparo either prevents a threat from becoming an actual violation against a person, or cures the violation of a person's right through investigation and punishment.

The CA has correctly determined the existence of the justification to warrant the issuance of the writ of amparo in favor of Lt. SG Gadian, stating:

In brief, prior to the filing of the present Petition, petitioner and aggrieved party's evidence of threat to the latter's life, liberty and security are their receipt of short messaging service or text messages warning them of the giving of "shoot to kill order." Taken alone, such messages may not lead a reasonable mind to consider seriously the existence of threat to life, liberty and security but when receipt of such messages come at a time when claims of anomalies in the holding of military exercises participated in by a foreign country affecting several individuals and involving significant amount of money are being announced publicly, the situation differs, The aggrieved party is a junior officer in the military, with the rank of the lieutenant senior grade. The anomalies reported refer to the conduct of military exercises involving the Philippines and United States of America. The officers claimed to be involved are officers far more senior than the aggrieved party. There is a claim of the aggrieved party that she has resigned from her commission, an act which could be viewed, rightfully or wrongfully, as intended to evade the restrictions of military discipline.

Evidence was likewise presented that after public announcements were made by aggrieved party about the said anomalies, unidentified persons came to their house in Polomolok, South Cotabato asking for information about the aggrieved party and her family. No mention was made that the purpose of their visit was to serve a legal process, such as arrest warrant.

After the present petition was filed, an attempt to abduct the aggrieved party, to be attested to [sic] by Armando Matutina and Roy Lirazan, was committed.

The Court finds these sufficient to establish for purposes of the present proceedings, threat to life, liberty and security of the aggrieved party. Threat or intimidation must be viewed in the light of the perception of the victim at the time of the commission of the crime, not by any hard and fast rule.³³

While it is conceded that Lt. SG Gadian's life was in actual danger, the possibility of danger must be acknowledged to exist. The reason, as she claims, was her expose of the Balikatan Funds anomaly. Consequently, she has hereby sought a preventive writ of amparo.

Nonetheless, the Supreme Court recognized that as of today the danger to the life and security of Lt. SG Gadian had already ceased, if not entirely disappeared thus the appeals were dismissed for being now moot and academic.

EDITA T. BURGOS, *Petitioner* -versus- PRESIDENT GLORIA MACAPAGAL-ARROYO, GEN. HERMOGENES ESPERON, JR., LT. GEN. ROMEO P. TOLENTINO, MAJ. GEN. JUANITO GOMEZ, MAJ. GEN. DELFIN BANGIT, LT. COL. NOEL CLEMENT, LT. COL. MELQUIADES FELICIANO, and DIRECTOR GENERAL OSCAR CALDERON, *Respondents*.

G.R. No. 183711, EN BANC, June 22, 2010, BRION, *J.*:

The Supreme Court concluded that the PNP and the AFP have so far failed to conduct an exhaustive and meaningful investigation into the disappearance of Jonas Burgos, and to exercise the extraordinary diligence (in the performance of their duties) that the Rule on the Writ of Amparo requires. Because of these investigative shortcomings, the Court cannot rule on the case until a more meaningful investigation, using extraordinary diligence, is undertaken.

FACTS

The established facts show that at around one o'clock in the afternoon of April 28, 2007, Jonas Joseph T. Burgos – a farmer advocate and a member of Kilusang Magbubukid sa Bulacan (a chapter of the militant peasant organization Kilusang Magbubukid ng Pilipinas) – was forcibly taken and abducted by a group of four (4) men and a woman from the extension portion of Hapag Kainan Restaurant, located at the ground floor of Ever Gotesco Mall, Commonwealth Avenue, Quezon City.

Petitioner held a press conference and announced that her son Jonas was missing. Thereafter, Editha filed for the three petitions – one for the issuance of the Writ of Habeas Corpus (G.R.183711), another for the motion to declare the respondents in contempt (G.R. 183712), and another for the Writ of Amparo in her favor (G.R. 183713).

On July 17, 2008, the Court of Appeals (CA) issued a decision which dismissed the petitioner's petition for the Issuance of the Writ of Habeas Corpus; denied the petitioner's motion to declare the respondents in contempt; and partially granted the privilege of the Writ of Amparo in favor of the petitioner.

The CA found that the evidence the petitioner presented failed to establish her claimed direct connection between the abductors of Jonas and the military. The CA also found that the investigations

by the Armed Forces of the Philippines (AFP) and the PNP "leave much to be desired as they did not fully exert their effort to unearth the truth and to bring the real culprits before the bar of justice."

As for the PNP-CIDG, the CA branded its investigation as "rather shallow" and "conducted haphazardly." The CA also held that the petitions for habeas corpus and contempt as against President Gloria Macapagal-Arroyo must be dropped since she enjoys the privilege of immunity from suit. The CA ruled that the President's immunity from suit is a settled doctrine citing *David v. Arroyo*.

ISSUE

Whether the petition for the issuance of the writ of amparo prosper. (NO)

RULING

The Supreme Court concluded that the PNP and the AFP have so far failed to conduct an exhaustive and meaningful investigation into the disappearance of Jonas Burgos, and to exercise the extraordinary diligence (in the performance of their duties) that the Rule on the Writ of Amparo requires. Because of these investigative shortcomings, the Court cannot rule on the case until a more meaningful investigation, using extraordinary diligence, is undertaken.

From the records, we note that there are very significant lapses in the handling of the investigation. Furthermore no independent investigation appeared to have been made. Based on these considerations, the Court held that further investigation and monitoring should be undertaken. While significant leads have been provided to investigators, the investigations by the PNP-CIDG, the AFP Provost Marshal, and even the Commission on Human Rights (CHR) have been less than complete. The PNP-CIDG's investigation particularly leaves much to be desired in terms of the extraordinary diligence that the Rule on the Writ of Amparo requires. For this reason, we resolve to refer the present case to the CHR as the Court's directly commissioned agency tasked with the continuation of the investigation of the Burgos abduction and the gathering of evidence, with the obligation to report its factual findings and recommendations to this Court. We take into consideration in this regard that the CHR is a specialized and independent agency created and empowered by the Constitution to investigate all forms of human rights violations involving civil and political rights and to provide appropriate legal measures for the protection of human rights of all persons within the Philippines.

GEN. ALEXANDER B. YANO, Chief of Staff, Armed Forces of the Philippines, LT. GEN. VICTOR S. IBRADO, Commanding General, Philippine Army, and MAJ. GEN. RALPH A. VILLANUEVA, Commander, 7th Infantry Division, Philippine Army, *Petitioners* –versus- CLEOFAS SANCHEZ and MARCIANA MEDINA, *Respondents*.

G.R. No. 186640, EN BANC, February 11, 2010, CARPIO MORALES, J.

The requisite standard of proof necessary to prove either party's claim in an Amparo proceeding is substantial evidence. The grant of RELIEFS by the CA was not valid and proper in view of its findings of want of substantial evidence.

FACTS

On December 28, 2007, Cleofas Sanchez (Cleofas) filed before the SC a petition docketed as G.R. No. 180839 for issuance of a Writ of Amparo with Motion for Production and Inspection directed against

Gen. Hermogenes Esperon (Gen. Esperon), the then Chief of Staff of the Armed Forces of the Philippines (AFP).

On January 2, 2008, SC resolved to issue a Writ of Amparo and ordered Gen. Esperon to make a verified return of the writ before Court of Appeals Justice Edgardo Sundiam, who was ordered to hear and decide the case which was eventually redocketed as CA-G.R. SP No. 00010 WR/A.

Cleofas amended her petition on January 14, 2008 to include Marciana Medina (Marciana) as additional petitioner, and to implead other military officers including Lt. Ali Sumangil (Lt. Sumangil) and Sgt. Gil Villalobo (Sgt. Villalobos) as additional respondents.

In the Amended Petition, Cleofas and Marciana alleged that on September 17, 2006 at around 8:00 p.m., their respective sons Nicolas Sanchez and Heherson Medina were catching frogs outside their home in Sitio Dalin, Barangay Bueno, Capas, Tarlac, that at around 1:00 a.m. of the next day, September 18, 2006, Nicolas' "wives" Lourdez and Rosalie Sanchez, who were then at home, heard gunshots and saw armed men in soldiers' uniforms passing by and that at around 4:00 a.m. of the same day, Lourdez and Rosalie went out to check on Nicolas and Heherson but only saw their caps, slippers, pana and airgun for catching frogs, as well as bloodstains; and that they immediately reported the matter to the barangay officials.

A certain Antonina Galang later informed them that she had seen the Nicolas and Heherson inside Camp Servillano Aquino of the Northern Luzon Command (Nolcom) in San Miguel, Tarlac City on September 21, 2006, and that she saw the victims again on September 24, 2006 and November 1, 2006, this time at the Camp of the Bravo Company of the Army's 71st Infantry Battalion inside Hacienda Luisita, where she had occasion to talk to Lt. Sumangil and Sgt. Villalobos.

Contending that the victims' life, liberty and security had been and continued to be violated on account of their forced disappearance, respondents prayed for the issuance of a writ of Amparo, the production of the victims' bodies during the hearing on the Writ, the inspection of certain military camps, the issuance of temporary and permanent protection orders, and the rendition of judgment under Section 18 of the Rule on the Writ of Amparo.

In their consolidated Return of the Writ, the military officers denied having custody of the victims. They posited that the proper remedy of respondents was to file a petition for the issuance of a Writ of Habeas Corpus, since the petition's ultimate objective was the production of the bodies of the victims, as they were allegedly abducted and illegally detained by military personnel;

That the petition failed to indicate the matters required by paragraphs (c), (d) and (e), Section 5 of the Rule on the Writ of Amparo, such that the allegations were incomplete to constitute a cause of action, aside from being based on mere hearsay evidence, and are, at best, speculative and that the petition did not allege any specific action or inaction attributable to the military officers with respect to their duties;

Gen. Esperon specifically asserted that, in compliance with the Defense Secretary's directive in relation to cases of Writ of Amparo against the AFP, he issued directives to the Nolcom Commander and the Army's Commanding General to investigate and establish the circumstances surrounding reported disappearances of victims insofar as the claim on the possible involvement of the military units was concerned.

Lt. Gen. Yano stated he immediately inquired on the actions taken on the case. He averred that he had never participated directly or indirectly; or consented, permitted or sanctioned any illegal or illegitimate military operations.

Lt. Sumangil and Sgt. Villalobos denied having spoken to Josephine inside the camp on September 24, 2006, on which date civilians were not allowed to enter except on official missions or when duly authorized to conduct transactions inside the camp.

In opposing the request for issuance of inspection and production orders, the military officers posited that apart from compromising national security should entry into these military camps/bases be allowed, these orders partook of the nature of a search warrant, such that the requisites for the issuance thereof must be complied with prior to their issuance. They went on to argue that such request relied solely on bare, self-serving and vague allegations contained in Josephine's (Antonina) affidavit.

The CA absolved Gen. Esperon, Lt. Gen. Yano, Maj. Gen. Gomez, and Lt. Col. Bayani for lack of evidence linking them to the disappearances. While it ruled that the petitioners have not adequately and convincingly established any direct or indirect link between respondents individual military officers and the disappearances of Nicolas and Heherson, the concerned Philippine Army units such as the Northern Command and the 7th Infantry Division, which had jurisdiction over the place of disappearance of Nicolas and Heherson, should exert extraordinary diligence to follow all possible leads to solve the disappearances of Nicolas and Heherson.

Hence gave the following RELIEFS:

1. Inspections of the following camps: Camp Servillano Aquino, San Miguel, Tarlac City, any military camp of the 7th Infantry Division located in Aqua Farm, Hacienda Luisita, Tarlac City, within reasonable working hours of any day except when the military camp is on red alert status.
2. Thorough and Impartial Investigation - for the appropriate Investigating Unit of the Philippine Army at Camp Servillano Aquino and the Philippine Army, 7th Infantry Division in Fort Magsaysay to conduct their respective investigation of all angles pertaining to the disappearances of Nicolas and Heherson and to immediately file charges against those found guilty and submit their written report to this Court within three (3) months from notice.

The military officers filed a Motion for Partial Reconsideration but the CA denied it by the assailed Resolution of March 3, 2009. Gen. Alexander Yano, Lt. Gen. Victor Ibrado, and Maj. Gen. Ralph Villanueva then filed the present a petition for review of the appellate court's assailed decisions with the SC contending that WHILE NOT CATEGORICALLY DENYING THE PRIVILEGE OF THE WRIT OF AMPARO PURSUANT TO SECTION 18 OF THE RULE ON THE WRIT OF AMPARO DESPITE ITS FINDING THAT PETITIONERS FAILED TO PROVE THEIR ALLEGATIONS IN THEIR PETITION FOR AMPARO BY SUBSTANTIAL EVIDENCE, the CA still gave them the assailed RELIEFS.

ISSUE

WON the CA erred in granting the reliefs. (YES)

RULING:

In ruling in favor of Lt. Sumangil and Sgt. Villalobos, the SC resolved the case on the basis of the credibility of Josephine as a witness. Three witnesses two of which relatives of Josephine testified as to the negative reputation of Josephine a.k.a Antonina and that she is known to fool others and invents stories for money reasons and that that she cannot be trusted. These negative testimonies against Antonia were never successfully rebutted by her and the Court gave credence to them there being no ill motive were established against the said witnesses to testify against Antonina Galang.

Furthermore, Antonina Galang stated that she was in Camp Servillano Aquino when she first saw Nicolas and Heherson riding in an army truck because she was visiting her uncle, Major Henry Galang, allegedly living in the camp. TSG Edgard Reyes however testified that as a meter reader in the camp, Major Galang was no longer residing there in September 2006. This testimony and revelation of TSG Reyes only bolstered the testimonies of the other witnesses on Antonina Galang's penchant to invent stories or tell a lie.

The grant of RELIEFS by the CA was not valid and proper in view of its findings of want of substantial evidence.

Sections 17 and 18 of the Amparo Rule lay down the requisite standard of proof necessary to prove either party's claim, viz:

SEC. 17. Burden of Proof and Standard of Diligence Required. - The parties shall establish their claim by substantial evidence.

The respondent who is a private individual or entity must prove that ordinary diligence as required by applicable laws, rules and regulations was observed in the performance of duty.

The respondent who is a public official or employee must prove that extraordinary diligence as required by applicable laws, rules and regulations was observed in the performance of duty.

The respondent public official or employee cannot invoke the presumption that official duty has been regularly performed to evade responsibility or liability.

SEC. 18. Judgment. - The Court shall render judgment within ten (10) days from the time the petition is submitted for decision. If the allegations in the petition are proven by substantial evidence, the court shall grant the privilege of the writ and such reliefs as may be proper and appropriate; otherwise, the privilege shall be denied.

The requisite standard of proof – substantial evidence - speaks of the clear intent of the Rule to have the equivalent of an administrative proceeding, albeit judicially conducted, in resolving amparo petitions.

To the appellate court, the evidence adduced in the present case failed to measure up to that standard– substantial evidence which a reasonable mind might accept as adequate to support a conclusion. Since respondents did not avail of any remedy against the adverse judgment, the appellate court's decision is, insofar as it concerns them, now beyond the ambit of review.

Meanwhile, the requirement for a government official or employee to observe extraordinary diligence in the performance of duty stresses the extraordinary measures expected to be taken in safeguarding every citizen's constitutional rights as well as in the investigation of cases of extra-judicial killings and enforced disappearances.

The failure to establish that the public official observed extraordinary diligence in the performance of duty does not result in the automatic grant of the privilege of the *amparo* writ. It does not relieve the petitioner from establishing his or her claim by substantial evidence. The omission or inaction on the part of the public official provides, however, some basis for the petitioner to move and for the court to grant certain interim reliefs.

These provisional reliefs are intended to assist the court before it arrives at a judicious determination of the *amparo* petition. For the appellate court to, still order the inspection of the military camps and order the army units to conduct an investigation into the disappearance of Nicolas and Heherson after it absolved petitioners was not in order. The reliefs granted by the appellate court to respondents are not in sync with a finding that petitioners could not be held accountable for the disappearance of the victims. To the appellate court, the evidence adduced in the present case failed to measure up to that standard- substantial evidence which a reasonable mind might accept as adequate to support a conclusion hence, it does not have any basis in granting the RELIEFS.

Infant JULIAN YUSA Y CARAM, represented by his mother, MA. CHRISTINA YUSAY CARAM, Petitioner -versus- Atty. MARIJOY D. SEGUI, Atty. SALLY D. ESCUTIN, VILMA B. CABRERA, and CELIA C. YANGCO, Respondents.

G.R. No. 193652, EN BANC, August 5, 2014, VILLARAMA, JR., J.

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. 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.

FACTS

Petitioner Ma. Christina Yusay Caram(Christina) had an amorous relationship with Marcelino Gicano Constantino III (Marcelino) and eventually became pregnant with the latter's child without the benefit of marriage. After getting pregnant, Christina mislead Marcelino into believing that she had an abortion when in fact she proceeded to complete the term of her pregnancy. During this time, she intended to have the child adopted through Sun and Moon Home for Children (Sun and Moon) in Parañaque City to avoid placing her family in a potentially embarrassing situation for having a second illegitimate son.

On July 26, 2009, Christina gave birth to Baby Julian at Amang Rodriguez Memorial Medical Center, Marikina City. Sun and Moon shouldered all the hospital and medical expenses. On August 13, 2009, Christina voluntarily surrendered Baby Julian by way of a Deed of Voluntary Commitment to the DSWD.

On November 26, 2009, Marcelino suffered a heart attack and died without knowing about the birth of his son. Thereafter, during the wake, Christina disclosed to Marcelino's family that she and the deceased had a son that she gave up for adoption due to financial distress and initial embarrassment. Marcelino's family was taken aback by the revelation and sympathized with Christina. After the emotional revelation, they vowed to help her recover and raise the baby. On November 27, 2009, the DSWD, through Secretary Esperanza I. Cabral issued a certificate declaring Baby Julian as "Legally Available for Adoption." A local matching conference was held on January 27, 2010 and on February 5, 2010, Baby Julian was "matched" with the spouses Vergel and Filomina Medina (Medina Spouses) of the Kaisahang Bahay Foundation. Supervised trial custody then commenced.

On May 5, 2010, Christina who had changed her mind about the adoption, wrote a letter to the DSWD asking for the suspension of Baby Julian's adoption proceedings. She also said she wanted her family back together.

On May 28, 2010, the DSWD, through respondent Atty. Marijoy D. Segui, sent a Memorandum to DSWD Assistant Secretary Vilma B. Cabrera informing her that the certificate declaring Baby Julian legally available for adoption had attained finality on November 13, 2009, or three months after Christina signed the Deed of Voluntary Commitment which terminated her parental authority and effectively made Baby Julian a ward of the State. The said Memorandum was noted by respondent Atty. Sally D. Escutin, Director IV of the Legal Service, DSWD.

On July 12, 2010, Noel Gicano Constantino, Marcelino's brother, sent a letter to Atty. Escutin informing her that a DNA testing was scheduled on July 16, 2010 at the DNA Analysis Laboratory at the University of the Philippines.

On July 16, 2010, Assistant Secretary Cabrera sent a letter to Noel Constantino stating that it would not allow Baby Julian to undergo DNA testing. Assistant Secretary Cabrera informed Noel Constantino that the procedures followed relative to the certification on the availability of the child for adoption and the child's subsequent placement to prospective adoptive parents were proper, and that the DSWD was no longer in the position to stop the adoption process. Assistant Secretary Cabrera further stated that should Christina wish to reacquire her parental authority over Baby Julian or halt the adoption process, she may bring the matter to the regular courts as the reglementary period for her to regain her parental rights had already lapsed under Section 7 of Republic Act (R.A.) No. 9523.

On July 27, 2010, Christina filed a petition for the issuance of a writ of amparo before the RTC of Quezon City seeking to obtain custody of Baby Julian from Atty. Segui, Atty. Escutin, Assistant Secretary Cabrera and Acting Secretary Celia C. Yangco, all of the DSWD.

In her petition, Christina argues that the life, liberty and security of Baby Julian is being violated or threatened by the respondent DSWD officers' enforcement of an illegal Deed of Voluntary Commitment between her and Sun and Moon. She claims that she had been "blackmailed" through the said Deed by the DSWD officers and Sun and Moon's representatives into surrendering her child thereby causing the "forced separation" of the said infant from his mother. Furthermore, she also reiterates that the respondent DSWD officers acted beyond the scope of their authority when they deprived her of Baby Julian's custody.

ISSUE

Whether a petition for a writ of amparo is the proper recourse for obtaining parental authority and custody of a minor child. (NO)

RULING

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 actor 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., this Court held:

The 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 group 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 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 enumerated the elements constituting "enforced disappearances" as the term is statutorily defined in Section 3(g) of R.A. No. 9851 to wit:

- (a) that there be an arrest, detention, abduction or any form of deprivation of liberty;
- (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 refusal to acknowledge or give 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 person from the protection of the law for a prolonged period of time.

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 Memorandum 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. 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. 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 nature, regardless of whether the perpetrator of the unlawful act or omission is a public official or employee or a private individual. It is envisioned basically to protect and guarantee the right to life, liberty and security of persons, free from fears and threats that vitiate the quality of life.

Reverend Father ROBERT P. REYES, *Petitioner* -versus- RAUL M. GONZALEZ, in his capacity as the secretary of the COURT OF APPEALS, secretary DEPARTMENT OF JUSTICE, AND COMMISSIONER MARCELINO C. LIBANAN, IN HIS CAPACITY AS THE COMMISSIONER OF THE BUREAU OF IMMIGRATION, *Respondents*.

G.R. No. 182161, EN BANC, December 3, 2009, LEONARDO-DE CASTRO, J.

Petitioner is seeking the extraordinary writ of amparo due to his apprehension that the DOJ may deny his motion to lift the HDO. Petitioner's apprehension is at best merely speculative. Thus, he has failed to show any clear threat to his right to liberty actionable through a petition for a writ of amparo.

FACTS

Petitioner was among those arrested in the Manila Peninsula Hotel siege. Petitioner together with 50 others, were brought to Camp Crame. In the evening of the same day, the DOJ Panel of Prosecutors conducted inquest proceedings to ascertain whether or not there was probable cause to hold petitioner and the others for trial on charges of Rebellion and/or Inciting to Rebellion.

On December 1, 2007, upon the request of the DILG, respondent DOJ Secretary Raul Gonzales issued Hold Departure Order No. 45 ordering respondent Commissioner of Immigration to include in the Hold Departure List of the Bureau of Immigration and Deportation (BID) the name of petitioner and 49 others.

After finding probable cause against petitioner and 36 others for the crime of Rebellion, the DOJ Panel of Prosecutors filed an Information. The RTC dismissed the charge for rebellion against petitioner for lack of probable cause. Thus, his counsel wrote a letter to the DOJ Secretary, requesting the lifting of HDO 45. However, the HDO was still not lifted because there was an MR for the order of dismissal.

Petitioner then filed a petition for the issuance of a writ of amparo, claiming that the continued restraint on petitioner's right to travel is illegal.

CA: Denied the privilege of the writ of amparo; MR also denied

PETITIONER

The writ of amparo does not only exclusively apply to situations of extrajudicial killings and enforced disappearances but encompasses the whole gamut of liberties protected by the Constitution

ISSUE

WON the writ of amparo is also applicable to the person's liberty to travel. (NO)

RULING

As the 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."

Here, the restriction on petitioner's right to travel as a consequence of the pendency of the criminal case filed against him was not unlawful. Petitioner has also failed to establish that his right to travel was impaired in the manner and to the extent that it amounted to a serious violation of his right to life, liberty and security, for which there exists no readily available legal recourse or remedy.

Additionally, petitioner is seeking the extraordinary writ of amparo due to his apprehension that the DOJ may deny his motion to lift the HDO. Petitioner's apprehension is at best merely speculative. Thus, he has failed to show any clear threat to his right to liberty actionable through a petition for a writ of amparo.

**LT. COL. ROGELIO BOAC, LT. COL. FELIPE ANOTADO AND LT. FRANCIS MIRABELLE
SAMSON, *Petitioners* –versus- ERLINDA T. CADAPAN AND CONCEPCION E.
EMPEÑO, *Respondents*.**

G.R. Nos. 184461-62, EN BANC, May 31, 2011, CARPIO-MORALES, J.

There is no need to file a motion for execution for an amparo or habeas corpus decision. Since the right to life, liberty and security of a person is at stake, the proceedings should not be delayed and execution of any decision thereon must be expedited as soon as possible since any form of delay, even for a day, may jeopardize the very rights that these writs seek to immediately protect.

FACTS

Sherlyn Cadapan (Cadapan), Karen Empeño (Karen), and Manuel Merino (Manuel) were abducted by armed men in Sam Miguel, Bulacan. They were herded into a jeep and sped towards an undisclosed location. The families of these victims scoured to nearby police precincts and military campus in the hope of finding them but the same yielded nothing. Spouses Asher and Erlinda Cadapan (Spouses Cadapan) and Concepcion Empeño (Empeño) filed a petition for habeas corpus before the Supreme Court, impleading Generals Romero Tolentino and Jovito Palparan (Gen. Palparan), Lt. Col. Rogelio Boac (Lt. Boac), *et. al.*

The Court then issued the writ of habeas corpus, returnable to the presiding justice of the Court of Appeals. In their answer, the impleaded respondents denied that the three victims are in the custody of the military. They testified that they are not familiar with the victims and they have inquired among their subordinates about the reported abduction and their inquiry yielded to nothing. The Court of Appeals (CA) then dismissed the habeas corpus petition since the evidence is not strong. Spouses Cadapan and Empeño, filed a motion for reconsideration and presented newly discovered evidence that they have gathered.

Spouses Cadapan and Empeño then filed before the Court a petition for writ of amparo which impleaded the previous respondents of the case and added then president, Gloria Macapagal-Arroyo. The Supreme Court issued the writ of amparo, asked the appellate court to consolidate the petition of habeas corpus and writ of amparo. The motion for reconsideration for the writ of habeas corpus was then granted. However, the writ of amparo was not issued since the appellate court believes that it will be superfluous to issue the latter. Lt. Boac then challenged the decision rendered by the appellate court via petition for review. Meanwhile, Spouses Cadapan and Empeño, filed their own petition for review assailing the appellate court's decision in the writ of amparo case.

ISSUE

Whether or not the appellate court erred in rendering a decision that the writ of amparo or habeas corpus needs a motion for execution. (YES)

RULING

Contrary to the ruling of the appellate court, there is no need to file a motion for execution for an amparo or habeas corpus decision. Since the right to life, liberty and security of a person is at stake, the proceedings should not be delayed and execution of any decision thereon must be expedited as soon as possible since any form of delay, even for a day, may jeopardize the very rights that these writs seek to immediately protect.

The Solicitor General's argument that the Rules of Court supplement the Rule on the Writ of Amparo is misplaced. The Rules of Court only find suppletory application in an amparo proceeding if the Rules strengthen, rather than weaken, the procedural efficacy of the writ. As it is, the Rule dispenses with dilatory motions in view of the urgency in securing the life, liberty or security of the aggrieved party. Suffice it to state that a motion for execution is inconsistent with the extraordinary and expeditious remedy being offered by an amparo proceeding.

In fine, the appellate court erred in ruling that its directive to immediately release Sherlyn, Karen and Merino was not automatically executory. For that would defeat the very purpose of having summary proceedings in amparo petitions. Summary proceedings, it bears emphasis, are immediately executory without prejudice to further appeals that may be taken therefrom.

MA. ESTRELITA D. MARTINEZ, *Petitioner* -versus- Director General LEANDRO MENDOZA, Chief Superintendent NESTORIO GUALBERTO, SR., Superintendent LEONARDO ESPINA, SR., Superintendent JESUS VERSOZA, and JOHN DOES, *Respondents*.
G.R. No. 153795, FIRST DIVISION, August 17, 2006, PANGANIBAN, CJ.

When respondents deny custody of an allegedly detained person, petitioners have the duty of establishing the fact of detention by competent and convincing evidence; otherwise, the writ of habeas corpus cannot be issued. Nonetheless, when the disappearance of a person is indubitable, the law enforcement authorities are duty-bound to investigate it with due diligence and to locate the missing person. When the wrongdoing is attributable to the police agencies and/or their agents, the aggrieved may secure the assistance of the People's Law Enforcement Board or the Commission on Human Rights.

FACTS

Petitioners are the mother and wife, respectively, of Michael Martinez, a resident of 4570 Cattleya Road, Sun Valley Subdivision, Parañaque City, who was allegedly abducted and taken away by seven (7) persons around 7:30 in the morning of November 19, 2001 while he was walking along Magnolia Street, on his way to his mother's house at 3891 Marigold Street of the same subdivision. The abduction was reported by petitioners to the Barangay, the Parañaque Police and the Anti-Kidnapping Task Force at Camp Crame.

It appears that in the evening of November 19, 2001, the Criminal Investigation and Detection Group (CIDG) of the Philippine National Police (PNP) presented before the media a certain Phillip Medel, Jr., who allegedly executed a statement confessing to his participation in the killing of Dorothy Jones, *a.k.a.* Nida Blanca, naming Michael Martinez as the person who introduced him to Rod Lauren Strunk, the husband of Nida Blanca and alleged mastermind in her killing. In a televised interview with a media reporter on November 26, 2001, Medel narrated that he saw Michael Martinez at the CIDG at Camp Crame where he was being detained, and which the former allegedly reiterated when he talked to Robert Paul Martinez, a brother of Michael, on November 27, 2001 and he even described the clothes Michael was then wearing, which were the same clothes worn by him when he was abducted. Petitioners then made representations with CIDG for the release of Michael Martinez or that they be allowed to see him, but the same were not granted.

In view thereof, petitioners filed a petition for habeas corpus with the Regional Trial Court, Branch 78, Quezon City against respondents PNP Director General Leandro Mendoza; Chief Superintendent Nestorio Gualberto, Sr., Chief of the CIDG; Senior Superintendent Leonardo Espina, Sr. and Senior Superintendent Jesus Versoza of the CIDG and members of Task Force Marsha, which is investigating the Nida Blanca murder case, for them to produce before said court the person of Michael Martinez or to justify the continued detention of his liberty.

The court *a quo*, in a Decision dated December 10, 2001 directed respondents to produce the body of Michael Martinez before it on December 11, 2001 at 2:00 o'clock in the afternoon.

On December 11, 2001, respondents filed a notice of appeal on the ground that the Decision is contrary to law and the evidence.

ISSUE

Whether or not the petition for habeas corpus is proper. (NO)

RULING

At the outset, it must be stressed that petitioner's anchor for the present case is the *disappearance* of Michael. The matter of his alleged *detention* is, at best, merely consequential to his disappearance. Ostensibly, his disappearance has been established. However, the grant of relief in a habeas corpus proceeding is not predicated on the disappearance of a person, but on his illegal detention. Habeas corpus generally applies to "all cases of illegal confinement or detention by which any person is deprived of his liberty or by which the rightful custody of any person is withheld from the person entitled thereto.

The ultimate purpose of the writ of *habeas corpus* is to relieve a person from unlawful restraint. It is devised as a speedy relief from unlawful restraint. It is a remedy intended to determine whether the person under detention is held under lawful authority.

If the respondents are neither detaining nor restraining the applicant or the person on whose behalf the petition for habeas corpus has been filed, then it should be dismissed. This Court has ruled that this remedy has one objective -- to inquire into the cause of detention of a person:

The purpose of the writ is to determine whether a person is being illegally deprived of his liberty. If the inquiry reveals that the detention is illegal, the court orders the release of the person. If, however, the detention is proven lawful, then the *habeas corpus* proceedings terminate. The use of *habeas corpus* is thus very limited.

Habeas corpus may not be used as a means of obtaining evidence on the whereabouts of a person, or as a means of finding out who has specifically abducted or caused the disappearance of a certain person.

When respondents making the return of the writ state that they have never had custody over the person who is the subject of the writ, the petition must be dismissed, in the absence of definite evidence to the contrary. "The return of the writ must be taken on its face value considering that, *unless it is in some way convincingly traversed or denied*, the facts stated therein must be taken as true" *for purposes of the habeas corpus proceedings*.

When forcible taking and disappearance -- not arrest and detention -- have been alleged, the proper remedy is not habeas corpus proceedings, but *criminal* investigation and proceedings.

Abduction or kidnapping is a crime punishable by law. Investigations with regard to crimes are first and foremost the duty of the Philippine National Police (PNP) and the National Bureau of Investigation (NBI), not the courts. There are instances when members of the PNP -- the agency tasked with investigating crimes -- are suspected of being responsible for the disappearance of a person, who is the subject of habeas corpus proceedings. This fact will not convert the courts into --

or authorize them through habeas corpus proceedings to be -- forefront investigators, prosecutors, judges and executioners all at the same time. Much as this Court would want to resolve these disappearances speedily -- as in the present case, when it is interested in determining who are responsible for the disappearance and detention of Michael (if, indeed, he is being detained) -- it would not want to step beyond its reach and encroach on the duties of other duly established agencies. Instead of rendering justice *to all*, it may render injustice if it resorts to shortcuts through habeas corpus proceedings. In fine, this proceeding for habeas corpus cannot be used as a substitute for a thorough criminal investigation.

The Department of Interior and Local Government (DILG), specifically the People's Law Enforcement Board (PLEB), is tasked to investigate abuses or wrongdoings by members of the PNP. Thus, if they or the NBI abuse or fail to perform their duties, as indicated in this case, people may refer their complaints to the PLEB, which should be part of their arsenal in the battle to resolve cases in which members of the PNP are suspected of having caused the disappearance of anyone. Removing criminals from the ranks of those tasked to promote peace and order and to ensure public safety would be a big axe blow to the mighty oak of lawlessness. Let each citizen contribute a blow, puny though it may be when done alone; but collectively we can, slowly but surely, rid our society of disorder and senseless disappearances.

Going back to the present case, petitioner must establish by competent and convincing evidence that the missing person, on whose behalf the Petition was filed, is under the custody of respondents. Unfortunately, her evidence is insufficient to convince the Court that they have Michael in their custody. Moreover, "a writ of habeas corpus should not issue where it is not necessary to afford the petitioner relief or where it would be ineffective.

Considering that respondents have persistently denied having Michael in their custody, and absent any decisive proof to rebut their denial, the Court is constrained to affirm the CA's dismissal of the Petition for habeas corpus.

GEN. AVELINO I. RAZON, JR., Chief, Philippine National Police (PNP); Police Chief Superintendent RAUL CASTAÑEDA, Chief, Criminal Investigation and Detection Group (CIDG); Police Senior Superintendent LEONARDO A. ESPINA, Chief, Police Anti-Crime and Emergency Response (PACER); and GEN. JOEL R. GOLTIAO, Regional Director of ARMM, PNP, Petitioners -versus- MARY JEAN B. TAGITIS, herein represented by ATTY. FELIPE P. ARCILLA, JR., Attorney-in-Fact, Respondent.

G.R. No. 182498, EN BANC, December 3, 2009, BRION, J.

The test in reading the petition should be to determine whether it contains the details available to the one filing the petition under the circumstances, WHILE presenting a cause of action showing a violation of the victim's rights to life, liberty and security through State or private party action. The petition should likewise be read in its totality, to determine if the required elements---namely, of the disappearance, the State or private action, and the actual or threatened violations of the rights to life, liberty or security--- are present.

Applying these rules in the present case, the petition amply recites in its paragraphs 4 to 11 the circumstances under which Tagitis suddenly dropped out of sight after engaging in normal activities, and thereafter was nowhere to be found despite efforts to locate him. The petition alleged, too, under its paragraph 7, in relation to paragraphs 15 and 16, that according to reliable information, police

operatives were the perpetrators of the abduction. It also clearly alleged how Tagitis' rights to life, liberty and security were violated when he was "forcibly taken and boarded on a motor vehicle by a couple of burly men believed to be police intelligence operatives," and then taken "into custody by the respondents' police intelligence operatives since October 30, 2007, specifically by the CIDG, PNP Zamboanga City, x x x held against his will in an earnest attempt of the police to involve and connect [him] with different terrorist groups."

FACTS:

Engr. Morced N. Tagitis is a consultant for the World Bank and the Senior Honorary Counselor for the Islamic Development Bank (IDB) Scholarship Programme. He was last seen in Jolo, Sulu. Kunnong and Muhammad Abdunazeir N. Matli, a UP professor of Muslim studies and Tagitis' fellow student counselor at the IDB reported Tagitis' disappearance to the Jolo Police Station.

More than a month later, the Mary B. Tagitis (Tagitis), Engr. Tagitis's wife, filed a Petition for the Writ of Amparo (petition) with the Court of Appeals (CA). The petition was directed against certain members of the Armed Forces of the Philippines (AFP) and the Philippine National Police (PNP): Lt. Gen. Alexander Yano, Commanding General, Philippine Army; Gen. Avelino I. Razon, Chief, PNP; Gen. Edgardo M. Doromal, Chief, Criminal Investigation and Detention Group (CIDG); Sr. Supt. Leonardo A. Espina, Chief, Police Anti-Crime and Emergency Response; Gen. Joel Goltiao, Regional Director, ARMM-PNP; and Gen. Ruben Rafael, Chief, Anti-Terror Task Force Comet [collectively referred to as petitioners].

The petition went on to state:

Soon after the Tagitis left the room, Engr. Tagitis went out of the pension house to take his early lunch but while out on the street, a couple of burly men believed to be police intelligence operatives, forcibly took him. When Kunnong could not locate Engr. Tagitis, the former sought the help of another IDB scholar and reported the matter to the local police agency. Kunnong including his friends and companions in Jolo, exerted efforts in trying to locate the whereabouts of Engr. Tagitis and when he reported the matter to the police authorities in Jolo, he was immediately given a ready answer that Engr. Tagitis could have been abducted by the Abu Sayyaf group.

Information from persons in the military who do not want to be identified stated that Engr. Tagitis is in the hands of the uniformed men, and according to reliable information received by Tagitis, subject Engr. Tagitis is in the custody of police intelligence operatives, specifically with the CIDG, PNP Zamboanga City, being held against his will in an earnest attempt of the police to involve and connect Engr. Tagitis with the different terrorist groups.

Tagitis filed her complaint with the PNP Police Station in the ARMM in Cotabato and in Jolo, seeking their help to find her husband, but Tagitis's request and pleadings failed to produce any positive results.

The unexplained uncooperative behavior of the [petitioners] to Tagitis's request for help and failure and refusal of the [petitioners] to extend the needed help, support and assistance in locating the whereabouts of Engr. Tagitis who had been declared missing since October 30, 2007 which is almost two (2) months now, clearly indicates that the [petitioners] are actually in physical possession and custody of Engr. Tagitis.

Tagitis has exhausted all administrative avenues and remedies but to no avail, and under the circumstances, Tagitis has no other plain, speedy and adequate remedy to protect and get the release of subject Engr. Morced Tagitis from the illegal clutches of the [petitioners], their intelligence operatives and the like which are in total violation of the subject's human and constitutional rights, except the issuance of a WRIT OF AMPARO.

On the same day the petition was filed, the CA immediately issued the Writ of Amparo. The basis for the issuance by the Court of the Writ is as follows:

At the same time, the CA dismissed the petition against the Tagitis from the military, Lt. Gen Alexander Yano and Gen. Ruben Rafael, based on the finding that it was PNP-CIDG, not the military, that was involved.

Thereafter, the CA issued an ALARM WARNING that Task Force Tagitis of the PNP did not appear to be exerting extraordinary efforts in resolving Tagitis' disappearance.

ISSUES

1. WON the petition for writ of amparo filed is sufficient in form and substance. (YES)
2. WON an enforced disappearance is a proper ground for issuance of a writ of amparo. (YES)
3. WON there was an enforced disappearance in this case. (YES)
4. WON the PNP may be held accountable. (YES)

RULING

1. In questioning the sufficiency in form and substance of the respondent's Amparo petition, the petitioners contend that the petition violated Section 5(c), (d), and (e) of the Amparo Rule.

SPECIFICALLY, the petitioners allege that Tagitis failed to A) allege: 1) any ACT or OMISSION the petitioners committed in violation of Tagitis' rights to LIFE, LIBERTY, and SECURITY; 2) in a complete manner HOW Tagitis was ABDUCTED, the persons RESPONSIBLE for his DISAPPEARANCE, and the respondent's SOURCE of INFORMATION; 3) the abduction was committed at the petitioners' instructions or with their consent; and 4) any action or inaction attributable to the petitioners in the performance of their duties in the investigation of Tagitis' disappearance; B) implead the members of PNP-CIDG regional office in Zamboanga alleged to have custody over her husband; C) attach the affidavits of witnesses to support her accusations; and D) specify what legally available efforts she took to determine the fate or whereabouts of her husband.

The petitioners state that a petition for the Writ of Amparo shall be signed and verified and shall allege, among others, as stated in Section 5 of the Rule on the Writ of Amparo:

- i. "(c) The right to life, liberty and security of the aggrieved party violated or threatened with violation by an unlawful act or omission of the respondent, and how such threat or violation is committed with the attendant circumstances detailed in supporting affidavits;"
- ii. "(d) The investigation conducted, if any, specifying the names, personal circumstances, and addresses of the investigating authority or individuals, as well as the manner and conduct of the investigation, together with any report;"

- iii. "(e) The actions and recourses taken by the petitioner to determine the fate or whereabouts of the aggrieved party and the identity of the person responsible for the threat, act or omission; and"

The framers of the Amparo Rule never intended Section 5(c) of the Rule to be complete in every detail in stating the threatened or actual violation of a victim's rights. As in any other initiatory pleading, the pleader must of course state the ultimate facts constituting the cause of action, omitting the evidentiary details. In an Amparo petition, however, this requirement must be read in light of the nature and purpose of the proceeding, which addresses a situation of uncertainty; hence the one filing the petition may not be able to describe with certainty how the victim exactly disappeared, or who actually acted to kidnap, abduct or arrest him or her, or where the victim is detained, because these information may purposely be hidden or covered up by those who caused the disappearance.

To read the Rules of Court requirement on pleadings while addressing the unique Amparo situation, **the test in reading the petition should be to determine whether it contains the details available to the one filing the petition under the circumstances, WHILE presenting a cause of action showing a violation of the victim's rights to life, liberty and security through State or private party action.** The petition should likewise be read in its totality, to determine if the required elements---namely, of the disappearance, the State or private action, and the actual or threatened violations of the rights to life, liberty or security--- are present.

Applying these rules in the present case, the petition amply recites in its paragraphs 4 to 11 the circumstances under which Tagitis suddenly dropped out of sight after engaging in normal activities, and thereafter was nowhere to be found despite efforts to locate him. The petition alleged, too, under its paragraph 7, in relation to paragraphs 15 and 16, that according to reliable information, police operatives were the perpetrators of the abduction. It also clearly alleged how Tagitis' rights to life, liberty and security were violated when he was "forcibly taken and boarded on a motor vehicle by a couple of burly men believed to be police intelligence operatives," and then taken "into custody by the respondents' police intelligence operatives since October 30, 2007, specifically by the CIDG, PNP Zamboanga City, x x x held against his will in an earnest attempt of the police to involve and connect [him] with different terrorist groups."

If a defect can at all be attributed to the petition, this defect is its lack of supporting affidavit, as required by Section 5(c) of the Amparo Rule. This requirement, however, should not be read as an absolute one that necessarily leads to the dismissal of the petition if not strictly followed.

Where, as in this case, the petitioner has substantially complied with the requirement by submitting a verified petition sufficiently detailing the facts relied upon, the strict need for the sworn statement that an affidavit represents is essentially fulfilled.

Section 5(d) of the Amparo Rule requires that prior investigation of an alleged disappearance must have been made, specifying the manner and results of the investigation. The Court rejected the petitioners' argument that the Tagitis's petition did not comply with the Section 5(d) requirements of the Amparo Rule, as the petition specifies in its paragraph 11 that Kunnong and his companions immediately reported Tagitis' disappearance to the police authorities in Jolo, Sulu as soon as they were relatively certain that he indeed had disappeared.

2. The present case is one of first impression in the use and application of the Rule on the Writ of Amparo in an ENFORCED DISAPPEARANCE situation.

The Amparo Rule expressly provides that the "writ shall cover extralegal killings and enforced disappearances or threats thereof." **However, while the Rule covers "enforced disappearances" this concept is neither defined nor penalized in this jurisdiction.**

The Court clarifies that it does not rule on any issue of criminal culpability for the extrajudicial killing or enforced disappearance. This is an issue that requires criminal action before our criminal courts based on existing penal laws. Its intervention is in determining whether an enforced disappearance has taken place and who is responsible or accountable for this disappearance, and to define and impose the appropriate remedies to address it.

The burden for the public authorities to discharge in these situations, under the Rule on the Writ of Amparo, is twofold. The first is to ensure that all efforts at disclosure and investigation are undertaken under pain of indirect contempt from this Court when governmental efforts are less than what the individual situations require. The second is to address the disappearance, so that the life of the victim is preserved and his or her liberty and security restored.

The absence of a specific penal law in the Philippines, however, is not a stumbling block for action from this Court through the issuance of a writ of amparo. Because UNDERLYING every enforced disappearance is a violation of the constitutional rights to life, liberty and security that the Supreme Court is mandated by the Constitution to protect through its rule-making powers.

Furthermore, the Court has surveyed international law and states that enforced disappearance as a State practice has been repudiated by the international community, so that the ban on it is now a generally accepted principle of international law, which should be considered a part of the law of the land, and which we should act upon to the extent already allowed under our laws and the international conventions that bind us. This should serve as the backdrop for the Rule on the Writ of Amparo.

Although the Amparo Rule still has gaps waiting to be filled through substantive law, as evidenced primarily by the lack of a concrete definition of "enforced disappearance," the some material, among others, provide ample guidance and standards on how, through the medium of the Amparo Rule, the Court can provide remedies.

The Court also states that certain evidentiary difficulties are present in the Amparo proceeding: First, there may be a deliberate concealment of the identities of the direct perpetrators. Experts note that abductors are well organized, armed and usually members of the military or police forces. Second, deliberate concealment of pertinent evidence of the disappearance; The central piece of evidence in an enforced disappearance---i.e., the corpus delicti or the victim's body---is usually concealed to effectively thwart any investigation. The problem for the victim's family is the State's virtual monopoly of access to pertinent evidence. Third is the element of denial; In many cases, the State authorities deliberately deny that the enforced disappearance ever occurred. "Deniability" is central to the policy of enforced disappearances, as the absence of any proven disappearance makes it easier to escape the application of legal standards ensuring the victim's human rights.

The characteristics an amparo proceeding of being summary and of the use of substantial evidence as the required level of proof (in contrast to the usual preponderance of evidence or proof beyond reasonable doubt in court proceedings) reveals the clear intent of the framers of the Amparo Rule to have it become similar to an administrative proceeding.

Thus, in these proceedings, the Amparo petitioner needs only to properly comply with the substance and form requirements of a Writ of Amparo petition, as discussed above, and prove the allegations by substantial evidence.

3. There is no DIRECT evidence indicating how the victim actually disappeared. The direct evidence at hand only shows that Tagitis went out of the ASY Pension House after depositing his room key with the hotel desk and was never seen nor heard of again.

The undisputed conclusion, however, from all concerned---the petitioner, Engr. Tagitis' colleagues and even the police authorities---is that Engr Tagitis disappeared under mysterious circumstances and was never seen again. Likewise, there is no direct evidence showing that operatives of PNP CIDG Zamboanga abducted or arrested Tagitis.

Col. Kasim never denied that he met with the Tatigits and her friends, and that he provided them information that Tagitis was being held by police officials. However, this is based on the input of an unnamed asset. He simply claimed in his testimony that the "informal letter" he received from his informant in Sulu did not indicate that Tagitis was in the custody of the CIDG. He also stressed that the information he provided the respondent was merely a "raw report" from "barangay intelligence" that still needed confirmation and "follow up" as to its veracity.

To be sure, Tagitis's and Mrs. Talbin's testimonies were far from perfect, as the petitioners pointed out. The inconsistencies the petitioners point out relate, more than anything else, to details that should not affect the credibility of the respondent and Mrs. Talbin; the inconsistencies are not on material points.

To consider also that some pieces of evidence are incompetent and inadmissible evidence of is to state that in the absence of any direct evidence, a court should dismiss the petition. An immediate dismissal for this reason would make the Amparo Rule ineffective, since it cannot allow for the special evidentiary difficulties that are unavoidably present in Amparo situations, particularly in extrajudicial killings and enforced disappearances.

To give full meaning to our Constitution and the rights it protects, the Court declares that courts in amparo proceedings should at least take a close look at the available evidence to determine the correct import of every piece of evidence; and this should include those usually considered inadmissible under the general rules of evidence. But the Court must take into account the surrounding circumstances and the test of reason which shall be used as a basic minimum admissibility requirement.

The Court gleans from all these admitted pieces of evidence and developments a consistency in the government's denial of any complicity in the disappearance of Tagitis, which is disrupted only by the report made by Col. Kasim to Tagitis about her husband. Even Col. Kasim, however, eventually denied that he ever made the disclosure that Tagitis was under custodial investigation for complicity in terrorism.

Based on these considerations, we conclude that Col. Kasim's disclosure, made in an unguarded moment, unequivocally point to some government complicity in the disappearance.

4. The PNP and CIDG are accountable because Section 24 of Republic Act No. 6975, otherwise known as the "PNP Law," specifies the PNP as the governmental office with the mandate "to investigate and prevent crimes, effect the arrest of criminal offenders, bring offenders to justice and assist in their prosecution."

The PNP-CIDG is the "investigative arm" of the PNP and is mandated to "investigate and prosecute all cases involving violations of the Revised Penal Code, particularly those considered as heinous crimes."

Under the PNP organizational structure, the PNP-CIDG is tasked to investigate all major crimes involving violations of the Revised Penal Code and operates against organized crime groups, unless the President assigns the case exclusively to the National Bureau of Investigation (NBI).

Given their mandates, the PNP and PNP-CIDG officials and members were the ones who were remiss in their duties when the government completely failed to exercise its duties in entertaining the complaints of Tagitis.

To fully enforce the Amparo remedy, the Court refers this case back to the CA for appropriate proceedings directed at the monitoring of the PNP and the PNP-CIDG investigations and actions, and the validation of their results through hearings the CA may deem appropriate to conduct.

REPUBLIC OF THE PHILIPPINES, REPRESENTED BY THE DIRECTOR/HEAD OF THE CRIMINAL INVESTIGATION AND DETECTION GROUP (CIDG), PHILIPPINE NATIONAL POLICE (PNP), *Petitioner* –versus- REGINA N. CA YANAN AND SPOI ROLANDO V. PASCUA, *Respondents*.
G.R. No. 181796, EN BANC, November 7, 2017, BERSAMIN, J.

Substantial evidence is sufficient in proceedings involving petitions for the writ of amparo. The respondent must show in the return the observance of extraordinary diligence. Once an enforced disappearance is established by substantial evidence, the relevant State agencies should be tasked to assiduously investigate and determine the disappearance, and, if warranted, to bring to the bar of justice whoever may be responsible for the disappearance.

FACTS

Regina filed a petition for habeas corpus in the RTC alleging that elements of the CIDG, led by Pascua, were illegally detaining her husband Pablo, that Pablo was forcibly arrested by elements of the CIDG, that Pablo is being detained at the CIDG, and that despite repeated demands, the CIDG has not produced Pablo. The CIDG denied having custody of Pablo and prayed for the dismissal of the petition.

In her memoranda, Regina reiterated her allegations but she amended her petition to now seek the issuance of a writ of amparo. Pascua did not appear in the proceedings before the RTC. The RTC ruled in favor of Regina and maintains the issuance of the writ of amparo. The CIDG challenges this order and alleges that Regina was not able to prove her claims with substantial evidence.

ISSUE

Whether or not the issuance of the writ of amparo is proper. (YES)

RULING

The Rule on the Writ of Amparo requires substantial evidence to establish the allegations of the petition and to warrant ranting the privilege of the writ. Substantial evidence is such relevant evidence as a reasonable mind might accept as adequate to accept a conclusion.

The Court held that Regina was able to establish her claims with substantial evidence and cited the affidavit of an eyewitness, who was with Pablo when he was taken, and in which Pascua was positively identified as the one who arrested her husband. Moreover, Pascua admitted the existence of the abduction, albeit denying his participation and instead alleging that he was also a victim. Other witness were also presented by Regina to corroborate the affidavit.

Moreover, CIDG failed to exercise the required diligence as they only issued passive certificates. Under the Rule, the return should spell out the details of the investigations conducted in a manner that would enable the court to judiciously determine whether or not the efforts to ascertain the whereabouts of the person missing had been sincere and adequate.

MAYOR WILLIAM N. MAMBA, ATTY. FRANCISCO N. MAMBA, JR., ARIEL MALANA, NARDING AGGANGAN, JOMARI SAGALON, JUN CINABRE, FREDERICK BALIGOD, ROMMEL ENCOLLADO, JOSEPH TUMALIUAN, and RANDY DAYAG, *Petitioners* -versus- LEOMAR BUENO, *Respondent*
G.R. No. 191416, EN BANC, February 7, 2017, REYES, J.

Accordingly, a writ of amparo may still issue in the respondent's favor notwithstanding that he has already been released from detention. In such case, the writ of amparo is issued to facilitate the punishment of those behind the illegal detention through subsequent investigation and action.

FACTS

On June 13, 2009, the canteen owned by Emelita N. Mamba (Emelita) in Tuao, Cagayan was robbed. On June 14, 2009, several members of the Task Force, Malana, Aggangan and Sagalon, together with barangay officials Cinabre and Encollado, went to the. house of the Respondent, then still a minor, to invite him for questioning on his supposed involvement in the robbery. The respondent and his mother, Maritess Bueno (Maritess), acceded to the invitation. Thereupon, the respondent was brought to the Tuao police station.

The Respondents alleged that at around 3:00 p.m. of June 14, 2009, Tumaliuan and Dayag, both members of the Task Force, upon the order of Baligod, then Municipal Administrator of Tuao, fetched the respondent from the police station and brought .him to Mayor Mamba's house.¹⁵ Sometime in the evening of even date, the respondent was made to board a white van driven by Aggangan. Inside the van, he was beaten with a gun by Malana, who later threatened him that he would be killed. Thereafter, he was brought back to Mayor Mamba's house.

Meanwhile, Maritess went to the Tuao police station to look for her son; she was told that the respondent was brought to Mayor Mamba's house. However, when Maritess went to Mayor Mamba's

house, she was not permitted to see her son. The PNP Cagayan Regional Office was then preparing a case for *habeas corpus* when the respondent was released on June 18, 2009 to the local SWD office. Maritess then sought the assistance of the Regional Office of the Commission on Human Rights (CHR) in Cagayan as regards the case of the respondent.²¹ On August 25, 2009, the respondent, assisted by the CHR, filed a Petition for the Issuance of a Writ of *Amparo* with the CA. On September 14, 2009, the CA, gave due course to the petition and directed the issuance of the writ of *amparo*.

ISSUE

Whether the CA erred in granting the petition for the issuance of a writ of *amparo*. (NO)

RULING

In the seminal case of *Secretary of National Defense, et al. v. Manalo, et al.*, the Court emphasized that the writ of *amparo* serves both preventive and curative roles in addressing the problem of extralegal killings and enforced disappearances. It is preventive in that it breaks the expectation of impunity in the commission of these offenses; it is curative in that it facilitates the subsequent punishment of perpetrators as it will inevitably yield leads to subsequent investigation and action.

Accordingly, a writ of *amparo* may still issue in the respondent's favor notwithstanding that he has already been released from detention. In such case, the writ of *amparo* is issued to facilitate the punishment of those behind the illegal detention through subsequent investigation and action.

More importantly, the writ of *amparo* likewise covers violations of the right to security. At the core of the guarantee of the right to security, as embodied in Section 2, Article III of the Constitution, is the immunity of one's person, including the extensions of his/her person, *i.e.*, houses, papers and effects, against unwarranted government intrusion. Section 2, Article III of the Constitution not only limits the State's power over a person's home and possession, but more importantly, protects the privacy and sanctity of the person himself.

Infant JULIAN YUSA Y CARAM, represented by his mother, MA. CHRISTINA YUSAY CARAM, Petitioner -versus- Atty. MARIJOY D. SEGUI, Atty. SALLY D. ESCUTIN, VILMA B. CABRERA, and CELIA C. YANGCO, Respondents.

G.R. No. 193652, EN BANC, August 5, 2014, VILLARAMA, JR., J.

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. 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.

FACTS

Petitioner Ma. Christina Yusay Caram(Christina) had an amorous relationship with Marcelino Gicano Constantino III (Marcelino) and eventually became pregnant with the latter's child without the benefit of marriage. After getting pregnant, Christina misled Marcelino into believing that she had

an abortion when in fact she proceeded to complete the term of her pregnancy. During this time, she intended to have the child adopted through Sun and Moon Home for Children (Sun and Moon) in Parañaque City to avoid placing her family in a potentially embarrassing situation for having a second illegitimate son.

On July 26, 2009, Christina gave birth to Baby Julian at Amang Rodriguez Memorial Medical Center, Marikina City. Sun and Moon shouldered all the hospital and medical expenses. On August 13, 2009, Christina voluntarily surrendered Baby Julian by way of a Deed of Voluntary Commitment to the DSWD.

On November 26, 2009, Marcelino suffered a heart attack and died without knowing about the birth of his son. Thereafter, during the wake, Christina disclosed to Marcelino's family that she and the deceased had a son that she gave up for adoption due to financial distress and initial embarrassment. Marcelino's family was taken aback by the revelation and sympathized with Christina. After the emotional revelation, they vowed to help her recover and raise the baby. On November 27, 2009, the DSWD, through Secretary Esperanza I. Cabral issued a certificate declaring Baby Julian as "Legally Available for Adoption." A local matching conference was held on January 27, 2010 and on February 5, 2010, Baby Julian was "matched" with the spouses Vergel and Filomina Medina (Medina Spouses) of the Kaisahang Bahay Foundation. Supervised trial custody then commenced.

On May 5, 2010, Christina who had changed her mind about the adoption, wrote a letter to the DSWD asking for the suspension of Baby Julian's adoption proceedings. She also said she wanted her family back together.

On May 28, 2010, the DSWD, through respondent Atty. Marijoy D. Segui, sent a Memorandum to DSWD Assistant Secretary Vilma B. Cabrera informing her that the certificate declaring Baby Julian legally available for adoption had attained finality on November 13, 2009, or three months after Christina signed the Deed of Voluntary Commitment which terminated her parental authority and effectively made Baby Julian a ward of the State. The said Memorandum was noted by respondent Atty. Sally D. Escutin, Director IV of the Legal Service, DSWD.

On July 12, 2010, Noel Gicano Constantino, Marcelino's brother, sent a letter to Atty. Escutin informing her that a DNA testing was scheduled on July 16, 2010 at the DNA Analysis Laboratory at the University of the Philippines.

On July 16, 2010, Assistant Secretary Cabrera sent a letter to Noel Constantino stating that it would not allow Baby Julian to undergo DNA testing. Assistant Secretary Cabrera informed Noel Constantino that the procedures followed relative to the certification on the availability of the child for adoption and the child's subsequent placement to prospective adoptive parents were proper, and that the DSWD was no longer in the position to stop the adoption process. Assistant Secretary Cabrera further stated that should Christina wish to reacquire her parental authority over Baby Julian or halt the adoption process, she may bring the matter to the regular courts as the reglementary period for her to regain her parental rights had already lapsed under Section 7 of Republic Act (R.A.) No. 9523. On July 27, 2010, Christina filed a petition for the issuance of a writ of amparo before the RTC of Quezon City seeking to obtain custody of Baby Julian from Atty. Segui, Atty. Escutin, Assistant Secretary Cabrera and Acting Secretary Celia C. Yangco, all of the DSWD.

in her petition, Christina argues that the life, liberty and security of Baby Julian is being violated or threatened by the respondent DSWD officers' enforcement of an illegal Deed of Voluntary Commitment between her and Sun and Moon. She claims that she had been "blackmailed" through the said Deed by the DSWD officers and Sun and Moon's representatives into surrendering her child thereby causing the "forced separation" of the said infant from his mother. Furthermore, she also reiterates that the respondent DSWD officers acted beyond the scope of their authority when they deprived her of Baby Julian's custody

ISSUE:

Whether a petition for a writ of amparo is the proper recourse for obtaining parental authority and custody of a minor child. (NO)

RULING:

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 actor, 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., this Court held:

The 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 group 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 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 enumerated the elements constituting "enforced disappearances" as the term is statutorily defined in Section 3(g) of R.A. No. 9851 to wit:

- (a) that there be an arrest, detention, abduction or any form of deprivation of liberty;
- (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 refusal to acknowledge or give information on the fate or whereabouts of the person subject of the amparo petition; and,

(d) that the intention for such refusal isto remove subject person from the protection of the law for a prolonged period of time.

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 Memorandum 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. 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. 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 nature, regardless of whether the perpetrator of the unlawful act or omission is a public official or employee or a private individual. It is envisioned basically to protect and guarantee the right to life, liberty and security of persons, free from fears and threats that vitiate the quality of life.

**MANILA ELECTRIC COMPANY, ALEXANDER S. DEYTO and RUBEN A. SAPITULA, *Petitioners* -
versus- ROSARIO GOPEZ LIM, *Respondent*.**

G.R. No. 184769, EN BANC, October 5, 2010, CARPIO MORALES, J.

In another vein, there is no showing from the facts presented that petitioners committed any unjustifiable or unlawful violation of respondent's right to privacy vis-a-vis the right to life, liberty or security. To argue that petitioners' refusal to disclose the contents of reports allegedly received on the threats to respondent's safety amounts to a violation of her right to privacy is at best speculative. Respondent in fact trivializes these threats and accusations from unknown individuals in her earlier-quoted portion of her July 10, 2008 letter as "highly suspicious, doubtful or are just mere jokes if they existed at all." And she even suspects that her transfer to another place of work "betray[s] the real intent of management]" and could be a "punitive move." Her posture unwittingly concedes that the issue is labor-related.

FACTS:

Rosario G. Lim (respondent), also known as Cherry Lim, is an administrative clerk at the Manila Electric Company (MERALCO).

On June 4, 2008, an anonymous letter was posted at the door of the Metering Office of the Administration building of MERALCO Plaridel, Bulacan Sector, at which respondent is assigned, denouncing respondent. The letter reads:

Cherry Lim:

MATAPOS MONG LAMUNIN LAHAT NG BIYAYA NG MERALCO, NGAYON NAMAN AY GUSTO MONG PALAMON ANG BUONG KUMPANYA SA MGA BUWAYA NG GOBYERNO. KAPAL NG MUKHA MO, LUMAYAS KA RITO, WALANG UTANG NA LOOB....

Copies of the letter were also inserted in the lockers of MERALCO linesmen. Informed about it, respondent reported the matter on June 5, 2008 to the Plaridel Station of the Philippine National Police.

By Memorandum, petitioner Alexander Deyto, Head of MERALCO's Human Resource Staffing, directed the transfer of respondent to MERALCO's Alabang Sector in Muntinlupa as "A/F OTMS Clerk," effective July 18, 2008 in light of the receipt of reports that there were accusations and threats directed against [her] from unknown individuals and which could possibly compromise [her] safety and security.

Respondent, by letter of July 10, 2008 addressed to petitioner Ruben A. Sapitula, Vice-President and Head of MERALCO's Human Resource Administration, appealed her transfer and requested for a dialogue so she could voice her concerns and misgivings on the matter, claiming that the "punitive" nature of the transfer amounted to a denial of due process. Citing the grueling travel from her residence in Pampanga to Alabang and back entails, and violation of the provisions on job security of their Collective Bargaining Agreement (CBA), respondent expressed her thoughts on the alleged threats to her security

Respondent thus requested for the deferment of the implementation of her transfer.

No response to her request having been received, respondent filed a petition for the issuance of a writ of habeas data against petitioners before the Regional Trial Court (RTC)

By respondent's allegation, petitioners' unlawful act and omission consisting of their continued failure and refusal to provide her with details or information about the alleged report which MERALCO purportedly received concerning threats to her safety and security amount to a violation of her right to privacy in life, liberty and security, correctible by habeas data. Respondent thus prayed for the issuance of a writ

ISSUE:

1. May an employee invoke the remedies available under writ of habeas data where an employer decides to transfer her workplace on the basis of copies of an anonymous letter posted therein – imputing to her disloyalty to the company and calling for her to leave, which imputation it investigated but fails to inform her of the details thereof? (NO)

RULING:

Section 1 of the Rule on the Writ of Habeas Data provides:

Section 1. Habeas Data. – The writ of habeas data is a remedy available to any person whose **right to privacy in life, liberty or security is violated or threatened by an unlawful act or omission** of a public official or employee or of a private individual or entity **engaged in the gathering, collecting or storing of data or information** regarding the person, family, home and correspondence of the aggrieved party. (emphasis and underscoring supplied)

The habeas data rule, in general, is designed to protect by means of judicial complaint the image, privacy, honor, information, and freedom of information of an individual. It is meant to provide a forum to enforce one's right to the truth and to informational privacy, thus safeguarding the constitutional guarantees of a person's right to life, liberty and security against abuse in this age of information technology.

It bears reiteration that like the writ of amparo, habeas data was conceived as a response, given the lack of effective and available remedies, to address the extraordinary rise in the number of killings and enforced disappearances. Its intent is to address violations of or threats to the rights to life, liberty or security as a remedy independently from those provided under prevailing Rules.

Castillo v. Cruz underscores the emphasis laid down in Tapuz v. del Rosario that the writs of amparo and habeas data will NOT issue to protect purely property or commercial concerns nor when the grounds invoked in support of the petitions therefor are vague or doubtful. Employment constitutes a property right under the context of the due process clause of the Constitution. It is evident that respondent's reservations on the real reasons for her transfer - a legitimate concern respecting the terms and conditions of one's employment - are what prompted her to adopt the extraordinary remedy of habeas data. Jurisdiction over such concerns is inarguably lodged by law with the NLRC and the Labor Arbiters.

In another vein, there is no showing from the facts presented that petitioners committed any unjustifiable or unlawful violation of respondent's right to privacy vis-a-vis the right to life, liberty or security. To argue that petitioners' refusal to disclose the contents of reports allegedly received on the threats to respondent's safety amounts to a violation of her right to privacy is at best speculative. Respondent in fact trivializes these threats and accusations from unknown individuals in her earlier-quoted portion of her July 10, 2008 letter as "highly suspicious, doubtful or are just mere jokes if they existed at all." And she even suspects that her transfer to another place of work "betray[s] the real intent of management]" and could be a "punitive move." Her posture unwittingly concedes that the issue is labor-related.

RHONDA AVE S. VIVARES and SPS. MARGARITA and DAVID SUZARA, *Petitioners* -versus- ST. THERESA'S COLLEGE, MYLENE RHEZA T. ESCUDERO, and JOHN DOES, *Respondents*.

G.R. No. 202666, THIRD DIVISION, September 29, 2014, VELASCO, JR., J

In developing the writ of habeas data, the Court aimed to protect an individual's right to informational privacy, among others. The writ, however, will not issue on the basis merely of an alleged unauthorized access to information about a person. Availment of the writ requires the existence of a nexus between the right to privacy on the one hand, and the right to life, liberty or security on the other. Thus, the

existence of a person's right to informational privacy and a showing, at least by substantial evidence, of an actual or threatened violation of the right to privacy in life, liberty or security of the victim are indispensable before the privilege of the writ may be extended. Without an actionable entitlement in the first place to the right to informational privacy, a habeas data petition will not prosper.

FACTS:

Julia Daluz and Julienne Suzara, both minors, were, during the period material, graduating high school students at STC Cebu. Sometime in January 2012, while changing into their swimsuits for a beach party they were about to attend, Julia and Julienne, along with several others, took digital pictures of themselves clad only in their undergarments. These pictures were uploaded by Angela Tan on her Facebook profile.

Back at the school, Mylene Escudero, a computer teacher, learned from her students about the pictures that some seniors posted. Julia, Julienne and Chloe Taboada were identified, among others. Escudero also saw other pictures wherein Julia and Julienne were drinking liquor and smoking cigarettes. These pictures were allegedly viewable by any Facebook user. Escudero then reported the matter to Kristine Tigol, STC's Discipline-in-Charge. STC found that the students deported themselves in a manner proscribed by the Student's handbook. As penalty, they were barred from joining the commencement exercises.

A week before graduation, Angela's mother, Dr. Tan, filed a petition for injunction, praying that STC be enjoined from implementing the sanction that precluded Angela from joining the rites Rhonda Vivares, Julia's mother, joined as an intervenor. The RTC issued a TRO, allowing the students to attend the ceremony. However, STC still did not allow the students to participate in the rites since its MR still remained unresolved. Thereafter, the petitioners filed a petition for the issuance of a writ of habeas data.

RTC: Dismissed the petition for habeas data

RESPONDENTS: Writ of habeas data only applies to cases of extrajudicial killings and enforced disappearances; and it may not be issued against it because it is not engaged in the business of collecting, storing or gathering data

ISSUE:

WON there is an actual or threatened violation of the right to privacy in the life, liberty, or security of the minors involved in this case.

HELD:

NONE. In developing the writ of habeas data, the Court aimed to protect an individual's right to informational privacy, among others. The writ, however, will not issue on the basis merely of an alleged unauthorized access to information about a person. Availment of the writ requires the existence of a nexus between the right to privacy on the one hand, and the right to life, liberty or security on the other. Thus, the existence of a person's right to informational privacy and a showing, at least by substantial evidence, of an actual or threatened violation of the right to privacy in life, liberty or security of the victim are indispensable before the privilege of the writ may be

extended. Without an actionable entitlement in the first place to the right to informational privacy, a habeas data petition will not prosper.

Furthermore, contrary to respondents' submission, the Writ of Habeas Data was not enacted solely for the purpose of complementing the Writ of Amparo in cases of extralegal killings and enforced disappearances. Habeas data, to stress, was designed "to safeguard individual freedom from abuse in the information age." As such, it is erroneous to limit its applicability to extralegal killings and enforced disappearances only.

As to respondents' contention that it is not engaged in the business of gathering, storing and collecting data, nothing in the Rule would suggest that the habeas data protection shall be available only against abuses of a person or entity engaged in the business of gathering, storing, and collecting of data. Habeas data is a protection against unlawful acts or omissions of public officials and of private individuals or entities engaged in gathering, collecting, or storing data about the aggrieved party and his or her correspondences, or about his or her family. Such individual or entity need not be in the business of collecting or storing data.

MOST REV. PEDRO D. ARIGO, Vicar Apostolic of Puerto Princesa D.D.; MOST REV. DEOGRACIAS S. INIGUEZ, JR., Bishop-Emeritus of Caloocan, FRANCES Q. QUIMPO, CLEMENTE G. BAUTISTA, JR., Kalikasan-PNE, MARIA CAROLINA P. ARAULLO, RENATO M. REYES, JR., Bagong Alyansang Makabayan, HON. NERI JAVIER COLMENARES, Bayan Muna Partylist, ROLAND G. SIMBULAN, PH.D., Junk VF A Movement, TERESITA R. PEREZ, PH.D., HON. RAYMOND V. PALATINO, Kabataan Party-list, PETER SJ. GONZALES, Pamalakaya, GIOVANNI A. TAPANG, PH. D., Agham, ELMER C. LABOG, Kilusang Mayo Uno, JOAN MAY E. SALVADOR, Gabriela, JOSE ENRIQUE A. AFRICA, THERESA A. CONCEPCION, MARY JOAN A. GUAN, NESTOR T. BAGUINON, PH.D., A. EDSEL F. TUPAZ, *Petitioners* -versus- SCOTT H. SWIFT in his capacity as Commander of the US. 7th Fleet, MARK A. RICE in his capacity as Commanding Officer of the USS Guardian, PRESIDENT BENIGNO S. AQUINO III in his capacity as Commander-in-Chief of the Armed Forces of the Philippines, HON. ALBERT F. DEL ROSARIO, Secretary, Department of Foreign Affairs, HON. PAQUITO OCHOA, JR., Executive Secretary, Office of the President, HON. VOLTAIRE T. GAZMIN, Secretary, Department of National Defense, HON. RAMON JESUS P. PAJE, Secretary, Department of Environment and Natural Resources, VICE ADMIRAL JOSE LUIS M. ALANO, Philippine Navy Flag Officer in Command, Armed Forces of the Philippines, ADMIRAL RODOLFO D. ISO RENA, Commandant, Philippine Coast Guard, COMMODORE ENRICO EFREN EVANGELISTA, Philippine Coast Guard Palawan, MAJOR GEN. VIRGILIO O. DOMINGO, Commandant of Armed Forces of the Philippines Command and LT. GEN. TERRY G. ROBLING, US Marine Corps Forces. Pacific and Balikatan 2013 Exercise Co-Director, *Respondents*.

G.R. No. 206510, EN BANC, September 16, 2014, VILLARAMA, JR, J.

Tubbataha reef was damaged due to the fault of US Guardian. The respondents argued that they are immune from suit and did not participate to UNCLOS. The court ruled that non-membership in the UNCLOS does not mean that the US will disregard the rights of the Philippines as a Coastal State over its internal waters and territorial sea. The court thus expects the US to bear "international responsibility" under Art. 31 in connection with the USS Guardian grounding which adversely affected the Tubbataha reefs.

FACTS:

Congress passed Republic Act (R.A.) No. 10067, otherwise known as the “Tubbataha Reefs Natural Park (TRNP) Act of 2009” “to ensure the protection and conservation of the globally significant economic, biological, sociocultural, educational and scientific values of the Tubbataha Reefs into perpetuity for the enjoyment of present and future generations.” Under the “no-take” policy, entry into the waters of TRNP is strictly regulated and many human activities are prohibited and penalized or fined, including fishing, gathering, destroying and disturbing the resources within the TRNP. The law likewise created the Tubbataha Protected Area Management Board (TPAMB) which shall be the sole policy-making and permit-granting body of the TRNP. The *USS Guardian* is an Avenger-class mine countermeasures ship of the US Navy. In December 2012, the US Embassy in the Philippines requested diplomatic clearance for the said vessel “to enter and exit the territorial waters of the Philippines and to arrive at the port of Subic Bay for the purpose of routine ship replenishment, maintenance, and crew liberty.

On January 6, 2013, the ship left Sasebo, Japan for Subic Bay, arriving on January 13, 2013 after a brief stop for fuel in Okinawa, Japan.

On January 15, 2013, the *USS Guardian* departed Subic Bay for its next port of call in Makassar, Indonesia. On January 17, 2013 at 2:20 a.m. while transiting the Sulu Sea, the ship ran aground on the northwest side of South Shoal of the Tubbataha Reefs, about 80 miles east-southeast of Palawan. No one was injured in the incident, and there have been no reports of leaking fuel or oil.

Petitioners claim that the grounding, salvaging and post-salvaging operations of the *USS Guardian* cause and continue to cause environmental damage of such magnitude as to affect the provinces of Palawan, Antique, Aklan, Guimaras, Iloilo, Negros Occidental, Negros Oriental, Zamboanga del Norte, Basilan, Sulu, and Tawi-Tawi, which events violate their constitutional rights to a balanced and healthful ecology. They also seek a directive from this Court for the institution of civil, administrative and criminal suits for acts committed in violation of environmental laws and regulations in connection with the grounding incident. Specifically, petitioners cite the following violations committed by US respondents under R.A. No. 10067: unauthorized entry (Section 19); non-payment of conservation fees (Section 21); obstruction of law enforcement officer (Section 30); damages to the reef (Section 20); and destroying and disturbing resources (Section 26[g]). Furthermore, petitioners assail certain provisions of the Visiting Forces Agreement (VFA) which they want this Court to nullify for being unconstitutional.

Respondents assert that: (1) the grounds relied upon for the issuance of a TEPO or writ of *Kalikasan* have become *fait accompli* as the salvage operations on the *USS Guardian* were already completed; (2) the petition is defective in form and substance; (3) the petition improperly raises issues involving the VFA between the Republic of the Philippines and the United States of America; and (4) the determination of the extent of responsibility of the US Government as regards the damage to the Tubbataha Reefs rests exclusively with the executive branch.

Issues:

1. Whether or not the petitioners has locus standi in the case. (YES)
2. Whether or not US shall be bound by UNCLOS albeit it did not ratified to such. (YES)
3. Whether or not the waiver of immunity of the US is found in the VFA. (NO)

RULING:

1. Yes, the petitioners have *locus standi* in this case.

Locus standi is “a right of appearance in a court of justice on a given question. ”Specifically, it is “a party’s personal and substantial interest in a case where he has sustained or will sustain direct injury as a result” of the act being challenged, and “calls for more than just a generalized grievance.” However, the rule on standing is a procedural matter which this Court has relaxed for non-traditional plaintiffs like ordinary citizens, taxpayers and legislators when the public interest so requires, such as when the subject matter of the controversy is of transcendental importance, of overreaching significance to society, or of paramount public interest.

In the landmark case of *Oposa v. Factoran, Jr.*, the Court recognized the “public right” of citizens to “a balanced and healthful ecology which, for the first time in our constitutional history, is solemnly incorporated in the fundamental law.” The court declared that the right to a balanced and healthful ecology need not be written in the Constitution for it is assumed, like other civil and political rights guaranteed in the Bill of Rights, to exist from the inception of mankind and it is an issue of transcendental importance with intergenerational implications. Such right carries with it the correlative duty to refrain from impairing the environment. On the novel element in the class suit filed by the petitioners minors in *Oposa*, this Court ruled that not only do ordinary citizens have legal standing to sue for the enforcement of environmental rights, they can do so in representation of their own and future generations.

Petitioners minors assert that they represent their generation as well as generations yet unborn. The Court finds no difficulty in ruling that they can, for themselves, for others of their generation and for the succeeding generations, file a class suit. **Their personality to sue in behalf of the succeeding generations can only be based on the concept of intergenerational responsibility insofar as the right to a balanced and healthful ecology is concerned.** Such a right, as hereinafter expounded, considers the “rhythm and harmony of nature. ”Nature means the created world in its entirety. Such rhythm and harmony indispensably include, *inter alia*, the judicious disposition, utilization, management, renewal and conservation of the country’s forest, mineral, land, waters, fisheries, wildlife, off-shore areas and other natural resources to the end that their exploration, development and utilization be equitably accessible to the present as well as future generations. Needless to say, every generation has a responsibility to the next to preserve that rhythm and harmony for the full enjoyment of a balanced and healthful ecology. Put a little differently, the minors’ assertion of their right to a sound environment constitutes, at the same time, the performance of their obligation to ensure the protection of that right for the generations to come.

2. Yes. The United States should be bound by UNCLOS.

According to Senior Associate Justice Antonio T. Carpio took the position that the conduct of the US in this case, when its warship entered a restricted area in violation of R.A. No. 10067 and caused damage to the TRNP reef system, brings the matter within the ambit of Article 31 of the United Nations Convention on the Law of the Sea (UNCLOS). He explained that while historically, warships enjoy sovereign immunity from suit as extensions of their flag State, Art. 31 of the UNCLOS creates an exception to this rule in cases where they fail to comply with the rules and regulations of the coastal State regarding passage through the latter’s internal waters and the territorial sea.

According to Justice Carpio, although the US to date has not ratified the UNCLOS, as a matter of long-standing policy the US considers itself bound by customary international rules on the “traditional uses of the oceans” as codified in UNCLOS, as can be gleaned from previous declarations by former Presidents Reagan and Clinton, and the US judiciary in the case of *United States v. Royal Caribbean Cruise Lines, Ltd.*

The UNCLOS is a product of international negotiation that seeks to balance State sovereignty (*mare clausum*) and the principle of freedom of the high seas (*mare liberum*). The freedom to use the world's marine waters is one of the oldest customary principles of international law. The UNCLOS gives to the coastal State sovereign rights in varying degrees over the different zones of the sea which are: 1) internal waters, 2) territorial sea, 3) contiguous zone, 4) exclusive economic zone, and 5) the high seas. It also gives coastal States more or less jurisdiction over foreign vessels depending on where the vessel is located. Insofar as the internal waters and territorial sea is concerned, the Coastal State exercises sovereignty, subject to the UNCLOS and other rules of international law. Such sovereignty extends to the air space over the territorial sea as well as to its bed and subsoil.

In the case of warships, as pointed out by Justice Carpio, they continue to enjoy sovereign immunity subject to the following exceptions: *Article 31 Responsibility of the flag State for damage caused by a warship or other government ship operated for non-commercial purposes.*

The flag State shall bear international responsibility for any **loss or damage to the coastal State resulting from the non-compliance by a warship or other government ship operated for non-commercial purposes with the laws and regulations of the coastal State concerning passage through the territorial sea** or with the provisions of this Convention or other rules of international law.

An overwhelming majority – over 80% -- of nation states are now members of UNCLOS, but despite this the US, the world's leading maritime power, has not ratified it. While the Reagan administration was instrumental in UNCLOS' negotiation and drafting, the U.S. delegation ultimately voted against and refrained from signing it due to concerns over deep seabed mining technology transfer provisions contained in Part XI. In a remarkable, multilateral effort to induce U.S. membership, the bulk of UNCLOS member states cooperated over the succeeding decade to revise the objectionable provisions. The revisions satisfied the Clinton administration, which signed the revised Part XI implementing agreement in 1994. In the fall of 1994, President Clinton transmitted UNCLOS and the Part XI implementing agreement to the Senate requesting its advice and consent. Despite consistent support from President Clinton, each of his successors, and an ideologically diverse array of stakeholders, the Senate has since withheld the consent required for the President to internationally bind the United States to UNCLOS.

Justice Carpio invited our attention to the policy statement given by President Reagan on March 10, 1983 that the US will “recognize the rights of the other states in the waters off their coasts, as reflected in the convention [UNCLOS], so long as the rights and freedom of the United States and others under international law are recognized by such coastal states”, and President Clinton's reiteration of the US policy “to act in a manner consistent with its [UNCLOS] provisions relating to traditional uses of the oceans and to encourage other countries to do likewise.” Since Article 31 relates to the “traditional uses of the oceans,” and “if under its policy, the US ‘recognize[s] the rights of the other states in the waters *off their coasts,*” Justice Carpio postulates that “there is more reason

to expect it to recognize the rights of other states in their *internal waters*, such as the Sulu Sea in this case.”

As to the non-ratification by the US, Justice Carpio emphasizes that “the US’ refusal to join the UNCLOS was centered on its disagreement with UNCLOS’ regime of deep seabed mining (Part XI) which considers the oceans and deep seabed commonly owned by mankind,” pointing out that such “has nothing to do with its [the US’] acceptance of customary international rules on navigation.” It may be mentioned that even the US Navy Judge Advocate General’s Corps publicly endorses the ratification of the UNCLOS, as shown by the following statement posted on its official website.

The court fully concur with Justice Carpio’s view that non-membership in the UNCLOS does not mean that the US will disregard the rights of the Philippines as a Coastal State over its internal waters and territorial sea. The court thus expect the US to bear “international responsibility” under Art. 31 in connection with the *USS Guardian* grounding which adversely affected the Tubbataha reefs. Indeed, it is difficult to imagine that our long-time ally and trading partner, which has been actively supporting the country’s efforts to preserve our vital marine resources, would shirk from its obligation to compensate the damage caused by its warship while transiting our internal waters. Much less can we comprehend a Government exercising leadership in international affairs, unwilling to comply with the UNCLOS directive for all nations to cooperate in the global task to protect and preserve the marine environment as provided in Article 197 which states that states shall cooperate on a global basis and, as appropriate, on a regional basis, directly or through competent international organizations, in formulating and elaborating international rules, standards and recommended practices and procedures consistent with this Convention, for the protection and preservation of the marine environment, taking into account characteristic regional features.

In fine, the relevance of UNCLOS provisions to the present controversy is beyond dispute. Although the said treaty upholds the immunity of warships from the jurisdiction of Coastal States while navigating the latter’s territorial sea, the flag States shall be required to leave the territorial sea immediately if they flout the laws and regulations of the Coastal State, and they will be liable for damages caused by their warships or any other government vessel operated for non-commercial purposes under Article 31.

3. No. Waiver of immunity is not found in the VFA .

The VFA is an agreement which defines the treatment of United States troops and personnel visiting the Philippines to promote “common security interests” between the US and the Philippines in the region. It provides for the guidelines to govern such visits of military personnel, and further defines the rights of the United States and the Philippine government in the matter of criminal jurisdiction, movement of vessel and aircraft, importation and exportation of equipment, materials and supplies. The invocation of US federal tort laws and even common law is thus improper considering that it is the VFA which governs disputes involving US military ships and crew navigating Philippine waters in pursuance of the objectives of the agreement.

As it is, the waiver of State immunity fonder the VFA pertains only to criminal jurisdiction and not to special civil actions such as the present petition for issuance of a writ of *Kalikasan*.

In any case, the court considered that ruling on the application or non-application of criminal jurisdiction provisions of the VFA to US personnel who may be found responsible for the grounding

of the *USS Guardian*, would be premature and beyond the province of a petition for a writ of *Kalikasan*. The court also find it unnecessary at this point to determine whether such waiver of State immunity is indeed absolute. In the same vein, the court cannot grant damages which have resulted from the violation of environmental laws. The Rules allows the recovery of damages, including the collection of administrative fines under R.A. No. 10067, in a separate civil suit or that deemed instituted with the criminal action charging the same violation of an environmental law.

**RESIDENT MARINE MAMMALS OF THE PROTECTED SEASCAPE TANON STRAIT, *Petitioner* –
versus- SECRETARY ANGELO REYES, IN HIS CAPACITY AS SECRETARY OF THE
DEPARTMENT OF ENERGY, *Respondents*.**

G.R. NO. 180771 and 181527, EN BANC, APRIL 21, 2015, J. LEONARDO-DE CASTRO

In our jurisdiction, locus standi in environmental cases has been given a more liberalized approach. The Rules of Procedure for Environmental Cases allow for a “citizen suit,” and permit any Filipino citizen to file an action before our courts for violation of our environmental laws on the principle that humans are stewards of nature.

FACTS:

On 13 June 2002, the Government of the Philippines, acting through the Department of Energy (DOE) entered into a Geophysical Survey and Exploration Contract-102 (GSEC-102) with Japan Petroleum Exploration Co., Ltd. (JAPEX). On 12 December 2004, DOE and JAPEX converted GSEC-102 to Service Contract No. 46 (SC-46) for the exploration, development, and production of petroleum resources in a block covering approximately 2,850 sqm. offshore the Tañon Strait. From 9-18 May 2005, JAPEX conducted seismic surveys in and around Tañon Strait, including a multi-channel sub-bottom profiling covering approximately 751 kms. to determine the area’s underwater composition.

During the 2nd sub-phase of the project, JAPEX committed to drill one exploration well. Since the same was to be drilled in the marine waters of Aloguisan and Pinamungajan where the Tañon Strait was declared a protected seascape in 1988, JAPEX agreed to comply with the Environmental Impact Assessment requirements under Presidential Decree No. 1586 (PD 1586), entitled “Establishing an Environmental Impact Statement System, Including Other Environmental Management Related Measures and For Other Purposes.”

On 31 January 2007, the Protected Area Management Board (PAMB) of the Tañon Strait issued Resolution No. 2007-01 where it adopted the Initial Environmental Examination commissioned by JAPEX, and favorably recommended the approval of the latter’s application for an Environmental Compliance Certificate (ECC). On 6 March 2007, DENR-EMB Region VII granted an ECC to DOE and JAPEX for the offshore oil and gas exploration project in Tañon Strait. From 16 November 2007 to 8 February 2008, JAPEX drilled an exploratory well with a depth of 3,150 meters near Pinamungajan town.

On 17 December 2007, two separate original petitions were filed commonly seeking that the implementation of SC-46 be enjoined for violation of the 1987 Constitution. The petitioners in G.R. No. 180771 are the “Resident Marine Mammals” which inhabit the waters in and around the Tañon Strait, joined by “Stewards” Gloria Estenzo Ramos and Rose-Liza Eisma-Osorio as their legal guardians and friends seeking their protection. Also impleaded as unwilling co-petitioner is former

President Gloria Macapagal-Arroyo. In G.R. No. 181527, the petitioners are the Central Visayas Fisherfolk Development Center (FIDEC), a non-stock, non-profit, non-governmental organization established for the welfare of the marginal fisherfolk in Region VII and representatives of the subsistence fisherfolk of the municipalities of Aloguinsan and Pinamungajan, Cebu. Their contentions are:

1. A study made after the seismic survey showed that there is a drastic reduce in fish catch by 50-70% attributable to the destruction of the “payao” or the artificial reef.
2. The ECC obtained by the respondents is invalid because there is no public consultations and discussions prior to its issuance.
3. SC-46 is null and void for having violated Section 2, Article XII of the 1987 Constitution, considering that there is no general law prescribing the standard or uniform terms, conditions, and requirements for service contracts involving oil exploration and extraction
4. FIDEC alleges that it was barred from entering and fishing within a 7-kilometer radius from the point where the oil-rig was located, an area grater than the 1.5-kilometer radius exclusion zone stated in the Initial Environmental Examination

The respondents in both petitions are: the late Angelo T. Reyes, DOE Secretary; Jose L. Atienza, DENR Secretary; Leonardo Sibbaluca, DENR-Region VII Director and Chairman of Tañon Strait PAMB; JAPEX, a Japanese company; and Supply Oilfield Services, Inc. (SOS) as the alleged Philippine agent of JAPEX. Their counter-allegations are: 1. The “Resident Marine Mammals” and “Stewards” have no legal standing to file the petition; 2. SC-46 is constitutional; 3. The Environmental Compliance Certificate was legally issued; and 4. The case is moot and academic since SC-46 is mutually terminated on 21 June 2008.

ISSUES:

1. Whether or not the case is moot and academic. (NO)
2. Whether or not the petitioners have a legal standing. (YES)
3. Whether or not SC-46 is unconstitutional. (YES)

RULING:

1. The Court makes clear that the “moot and academic” principle is not a magic formula that can automatically dissuade the courts in resolving a case. Despite the termination of SC-46, the Court deems it necessary to resolve the consolidated petitions as it falls within the exceptions. Both petitioners allege that SC-46 is violative of the Constitution, the environmental and livelihood issues raised undoubtedly affect the public’s interest, and the respondents’ contested actions are capable of repetition.

2. Yes. In our jurisdiction, locus standi in environmental cases has been given a more liberalized approach. The Rules of Procedure for Environmental Cases allow for a “citizen suit,” and permit any Filipino citizen to file an action before our courts for violation of our environmental laws on the principle that humans are stewards of nature:

“Section 5. Citizen suit. – **Any Filipino citizen in representation of others, including minors or generations yet unborn, may file an action to enforce rights or obligations under environmental laws.** Upon the filing of a citizen suit, the court shall issue an order which shall contain a brief description of the cause of action and the reliefs prayed for, requiring all interested parties to manifest their interest to intervene in the case within fifteen (15) days from notice thereof. The plaintiff may publish the order once in a newspaper of general circulation in the Philippines or furnish all affected barangays copies of said order.

Citizen suits filed under R.A. No. 8749 and R.A. No. 9003 shall be governed by their respective provisions. (Emphasis supplied)” Although the petition was filed in 2007, years before the effectivity of the Rules of Procedure for Environmental Cases, it has been consistently held that rules of procedure may be retroactively applied to actions pending and undetermined at the time of their passage and will not violate any right of a person who may feel that he is adversely affected, inasmuch as there is no vested rights in rules of procedure.

Moreover, even before the Rules of Procedure for Environmental Cases became effective, the SC had already taken a permissive position on the issue of locus standi in environmental cases. In Oposa, the SC allowed the suit to be brought in the name of generations yet unborn “based on the concept of intergenerational responsibility insofar as the right to a balanced and healthful ecology is concerned.”

It is also worth noting that the Stewards in the present case are joined as real parties in the Petition and not just in representation of the named cetacean species.

3. Yes. Section 2, Article XII of the 1987 Constitution provides in part:

“The President may enter into agreement with foreign-owned corporations involving either technical or financial assistance for large-scale exploration, development, and utilization of minerals, petroleum, and other mineral oils according to the general terms and conditions provided by law, based on real contributions to the economic growth and general welfare of the country. In such agreements, the State shall promote the development and use of local scientific and technical resources.

The President shall notify the Congress of every contract entered into in accordance with this provision, within thirty days from its execution.”

The disposition, exploration, development, exploitation, and utilization of indigenous petroleum in the Philippines are governed by Presidential Decree No. 87 (PD 87) or the Oil Exploration and Development Act of 1972. Although the Court finds that PD 87 is sufficient to satisfy the requirement of a general law, the absence of the two other conditions, that the President be a signatory to SC-46, and that the Congress be notified of such contract, renders it null and void.

SC-46 appears to have been entered into and signed by the DOE through its then Secretary Vicente S. Perez, Jr. Moreover, public respondents have neither shown nor alleged that Congress was subsequently notified of the execution of such contract.

Service contracts involving the exploitation, development, and utilization of our natural resources are of paramount interest to the present and future generations. Hence, safeguards were out in place to insure that the guidelines set by law are meticulously observed and likewise eradicate the

corruption that may easily penetrate departments and agencies by ensuring that the President has authorized or approved of the service contracts herself.

Even under the provisions of PD 87, it is required that the Petroleum Board, now the DOE, obtain the President's approval for the execution of any contract under said statute. The SC likewise ruled on the legality of SC-46 vis-à-vis other pertinent laws to serve as a guide for the Government when executing service contracts.

Under Proclamation No. 2146, the Tañon Strait is an environmentally critical area, having been declared as a protected area in 1998; therefore, any activity outside the scope of its management plan may only be implemented pursuant to an ECC secured after undergoing an Environment Impact Assessment (EIA) to determine the effects of such activity on its ecological system.

Public respondents admitted that JAPEX only started to secure an ECC prior to the 2nd sub-phase of SC-46, which required the drilling of the exploration well. This means that no environmental impact evaluation was done when the seismic surveys were conducted. Unless the seismic surveys are part of the management plan of the Tañon Strait, such surveys were done in violation of Section 12 of NIPAS Act and Section 4 of Presidential Decree No. 1586.

While PD 87 may serve as the general law upon which a service contract for petroleum exploration and extraction may be authorized, the exploitation and utilization of this energy resource in the present case may be allowed only through a law passed by Congress, since the Tañon Strait is a NIPAS area. Since there is no such law specifically allowing oil exploration and/or extraction in the Tañon Strait, no energy resource exploitation and utilization may be done in said protected seascape.

Victoria Segovia, et al., *Petitioner* –versus- The Climate Change Commission, *Respondent*.

G.R. No. 211010, EN BANC, March 7, 2017, CAGUIOA, J.

There is a difference between a petition for the issuance of a writ of kalikasan, wherein it is sufficient that the person filing represents the inhabitants prejudiced by the environmental damage subject of the writ; and a petition for the issuance of a writ of continuing mandamus, which is only available to one who is personally aggrieved by the unlawful act or omission.

FACTS:

Petitioners Victoria Segovia, et al. (Segovia) are Carless People of the Philippines, parents, representing their children, who in turn represent "Children of the Future, and Car-owners who would rather not have cars if good public transportation were safe, convenient, accessible, available, and reliable". They claim that they are entitled to the issuance of the extraordinary writs of Kalikasan and Continuing Mandamus due to the alleged failure and refusal of respondents Climate Change Commission, et al. (CCC), et al. to perform an act mandated by environmental laws, and violation of environmental laws resulting in environmental damage of such magnitude as to prejudice the life, health and property of all Filipinos. Segovia contends that the failure of CCC to implement the foregoing laws and executive issuances resulted in the continued degradation of air quality, particularly in Metro Manila, in violation of the Segovia's constitutional right to a balanced and healthful ecology, and may even be tantamount to deprivation of life, and of life sources or "land, water, and air" by the government without due process of law.

ISSUE:

Whether or not a writ of *Kalikasan* and/or Continuing *Mandamus* should issue. (NO)

RULING:

The petitioners failed to establish the requisites for the issuance of the writs prayed for.

For a writ of *kalikasan* to issue, the following requisites must concur: (1.) there is an actual or threatened violation of the constitutional right to a balanced and healthful ecology; (2.) the actual or threatened violation arises from an unlawful act or omission of a public official or employee, or private individual or entity; and (3.) the actual or threatened violation involves or will lead to an environmental damage of such magnitude as to prejudice the life, health or property of inhabitants in two or more cities or provinces.

A party claiming the privilege for the issuance of a writ of *kalikasan* has to show that a law, rule or regulation was violated or would be violated. Segovia failed to show that CCC is guilty of any unlawful act or omission that constitutes a violation of the petitioners' right to a balanced and healthful ecology.

CCC sufficiently showed that they did not unlawfully refuse to implement or neglect the laws, executive and administrative orders as claimed by the petitioners. Projects and programs that seek to improve air quality were undertaken by CCC, jointly and in coordination with stakeholders, such as: priority tagging of expenditures for climate change adaptation and mitigation, the Integrated Transport System which is aimed to decongest major thoroughfares, Truck Ban, Anti-Smoke Belching Campaign, Anti-Colorum, Mobile Bike Service Programs, and Urban Re-Greening Programs.

Similarly, the writ of continuing *mandamus* cannot issue.

There is a difference between a petition for the issuance of a writ of *kalikasan*, wherein it is sufficient that the person filing represents the inhabitants prejudiced by the environmental damage subject of the writ; and a petition for the issuance of a writ of continuing *mandamus*, which is only available to one who is personally aggrieved by the unlawful act or omission.

Segovia failed to prove direct or personal injury arising from acts attributable to the CCC to be entitled to the writ.¹¹ While the requirements of standing had been liberalized in environmental cases, the general rule of real party-in-interest applies to a petition for continuing *mandamus*.

The Road Sharing Principle is precisely as it is denominated - a principle. It cannot be considered an absolute imposition to encroach upon the province of CCC to determine the manner by which this principle is applied or considered in their policy decisions. *Mandamus* lies to compel the performance of duties that are purely ministerial in nature, not those that are discretionary, and the official can only be directed by *mandamus* to act but not to act one way or the other. The duty being enjoined in *mandamus* must be one according to the terms provided in the law itself. Thus, the recognized rule is that, in the performance of an official duty or act involving discretion, the corresponding official can only be directed by *mandamus* to act, but not to act one way or the other.

In this case, there is no showing of unlawful neglect on the part of the CCC to perform any act that the law specifically enjoins as a duty - there being nothing in the executive issuances relied upon by Segovia that specifically enjoins the bifurcation of roads to implement the Road Sharing Principle. To the opposite, the CCC were able to show that they were and are actively implementing projects and programs that seek to improve air quality.

Clearly, the determination of the means to be taken by the executive in implementing or actualizing any stated legislative or executive policy relating to the environment requires the use of discretion.

Republic of the Philippines, *Petitioner* –versus- Lorena Sali, *Respondent*.

G.R. No. 206023, SECOND DIVISION, April 3, 2017, Peralta, J.

RA 9048 now governs the change of first name. It vests the power and authority to entertain petitions for change of first name to the city or municipal civil registrar or consul general concerned.

FACTS:

Sali filed a Petition for Correction of Entry under Rule 108 of the Rules of Court, before the RTC alleging that the Local Civil Registrar of Baybay, Leyte erroneously entered her name as “Dorothy” instead of Lorena, and her birthday as June 24, 1968 instead of April 24, 1968. The RTC granted her petition. The OSG appealed to the SC arguing that the petition was actually a petition for change of name. The first name being sought to be changed does not involve the correction of a simple clerical, typographical or innocuous error such as a patently misspelled name, but a substantial change in Sali’s first name. Even if Rule 108 was applicable, she failed to exhaust the administrative remedies pursuant to RA 9048.

ISSUE:

Whether or not the grant of the Petition for Correction of Entry under Rule 108 was correct.

RULING:

1. First Name: NO. *Sali’s petition is not for a change of name as contemplated under Rule 103 of the Rules but for correction of entries under Rule 108.* What she seeks is the correction of clerical errors which were committed in the recording of her name and birth date. The evidence presented by Sali show that, since birth, she has been using the name "Lorena." Thus, it is apparent that she never had any intention to change her name. What she seeks is simply the removal of the clerical fault or error in her first name, and to set aright the same to conform to the name she grew up with.

Under RA 9048, jurisdiction over applications for change of first name is now primarily lodged with the aforementioned administrative officers. The intent and effect of the 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. In sum, the remedy and the proceedings regulating change of first name are primarily administrative in nature, not judicial.

In this case, the petition, insofar as it prayed for the change of Sali's first name, was not within the RTC's primary jurisdiction. For failure to exhaust administrative remedies, the RTC should have dismissed the petition to correct Sali's first name.

2. Date of Birth: YES. On the other hand, anent Sali's petition to correct her birth date from "June 24, 1968" to "April 24, 1968," R.A. No. 9048 is inapplicable. It was only on August 15, 2012 that R.A. No. 10172 was signed into law amending R.A. No. 9048. As modified, Section 1 now includes the day and month in the date of birth and sex of a person.

REPUBLIC OF THE PHILIPPINES, *Petitioner* -versus- MERLYN MERCADERA through her Attorney-in-Fact, EVELYN M. OGA, *Respondent*.

G.R. No. 186027, SECOND DIVISION, December 8, 2010, MENDOZA, J.

In petitions for correction, only clerical, spelling, typographical and other innocuous errors in the civil registry may be raised. Considering that the enumeration in Section 2, Rule 108 also includes changes of name, the correction of a patently misspelled name is covered by Rule 108. Suffice it to say, not all alterations allowed in one's name are confined under Rule 103. Corrections for clerical errors may be set right under Rule 108.

FACTS:

On June 6, 2005, Merlyn Mercadera, represented by her sister and duly constituted Attorney-in-Fact, Evelyn M. Oga (Oga), sought the correction of her given name as it appeared in her Certificate of Live Birth - from Marilyn L. Mercadera to Merlyn L. Mercadera before the Office of the Local Civil Registrar of Dipolog City pursuant to RA 9048. The Office of the Local Civil Registrar of Dipolog City, however, refused to effect the correction unless a court order was obtained because the Civil Registrar therein is not yet equipped with a permanent appointment before he can validly act on petitions for corrections filed before their office as mandated by Republic Act 9048.

Mercadera was then constrained to file a Petition For Correction of Some Entries as Appearing in the Certificate of Live Birth under Rule 108. The RTC found the petition sufficient in form and substance and directed the publication of the order and sending of copies to the OSG. However, the OSG entered its appearance and deputized the OCP to assist in the case only on the very day of the hearing. Thus, the hearing was reset on September 5, 2005. On September 15, 2005, the testimony of Oga and several photocopies of documents were formally offered and marked as evidence to prove that Mercadera never used the name Marilyn in any of her public or private transactions. The RTC granted the petition.

The OSG timely interposed an appeal praying for the reversal and setting aside of the RTC decision. It mainly anchored its appeal on the availment of Mercadera of the remedy and procedure under Rule 108. For the OSG, the correction in the spelling of Mercadera's given name might seem innocuous enough to grant but it is in truth a material correction as it would modify or increase substantive rights. The lower court, may not substitute one for the other for purposes of expediency. The CA upheld the RTC.

ISSUE:

Whether or not the CA erred in granting the change of name under Rule 103. (NO)

HELD:

NO. The change of name contemplated under Article 376 and Rule 103 must not be confused with Article 412 and Rule 108. A change of one's name under Rule 103 can be granted, only on grounds provided by law. In order to justify a request for change of name, there must be a proper and compelling reason for the change and proof that the person requesting will be prejudiced by the use of his official name. To assess the sufficiency of the grounds invoked therefor, there must be adversarial proceedings.

In petitions for correction, only clerical, spelling, typographical and other innocuous errors in the civil registry may be raised. Considering that the enumeration in Section 2, Rule 108 also includes changes of name, the correction of a patently misspelled name is covered by Rule 108. Suffice it to say, not all alterations allowed in one's name are confined under Rule 103. Corrections for clerical errors may be set right under Rule 108.

Thus, the petition filed by Mercadera before the RTC correctly falls under Rule 108 as it simply sought a correction of a misspelled given name. To correct simply means to make or set aright; to remove the faults or error from. To change means to replace something with something else of the same kind or with something that serves as a substitute. From the allegations in her petition, Mercadera clearly prayed for the lower court to remove the faults or error from her registered given name MARILYN, and to make or set aright the same to conform to the one she grew up to, MERLYN. It does not take a complex assessment of said petition to learn of its intention to simply correct the clerical error in spelling. Mercadera even attempted to avail of the remedy allowed by R.A. No. 9048 but she unfortunately failed to enjoy the expediency which the law provides and was constrained to take court action to obtain relief.

REPUBLIC OF THE PHILIPPINES, *Petitioner*, -versus - HON. SANTIAGO O. TAÑADA, JUDGE OF THE COURT OF FIRST INSTANCE OF CEBU, and LUA ONG REPRESENTING THE MINOR BABY ONG ALIAS LUA AN JOK, *Respondents*.

G.R. No. L-31563, EN BANC, November 29, 1971, CASTRO, J.

Notices published in the newspapers often appear in the back pages thereof or in pages least read or paid attention to. The reader usually merely scans these pages and glances fleetingly at the captions or the titles. Only if the caption or the title strikes him does the reader proceed to read on. As such, the probability is great that the reader does not at all notice the other names and/or aliases of the applicant if these are mentioned only in the body of the order or petition. This non-inclusion defeats the very purpose of the required publication.

In the case at bar, while it is true that Lua An Jok does not constitute an alias for it is the name by which he has been known since his childhood, such name must be included in the caption of the order and in the title of the petition because it constitutes the new name sought by Lua Ong for his son. An otherwise ruling would defeat the very purpose of requiring publication. Persons who know Lua An Jok and who have an interest against the petition, upon reading the title of the petition or the caption of the published order, would not readily know that Lua An Jok and Baby Ong refer to one and the same person and would not thereby be afforded the opportunity to come forward with anything affecting the petition.

FACTS:

Lua Ong, father of the then minor Baby Ong, filed with the Court of First Instance of Cebu with Judge Santiago O. Tañada presiding, a petition for change of the name of Baby Ong to Lua An Jok. The court subsequently issued an order setting the petition for hearing and directing the publication of the said order in Cebu Advocate, a newspaper of general circulation in Cebu City and in the province of Cebu, once a week for 3 consecutive weeks. On the day of the hearing, because no one, not even the provincial fiscal in representation of the Solicitor General, appeared to interpose any objection to the petition, Judge Tañada referred the case to his deputy clerk of court, requiring him to submit a report on the evidence adduced.

After some time, Judge Tañada issued an order granting the petition, thereby, authorizing Baby Ong to use the name An Joc Lua and directing the local civil registrar of Cebu City to cause the proper entry to be made. The assistant provincial fiscal, on behalf of the Government of the Republic, interposed an appeal.

It is the Republic's submission that both the caption of the published order and the title of the petition failed to include the name An Joc Lua, the name allowed by the court to be used by the applicant. Such non-inclusion constitutes a jurisdictional omission, hence, Judge Tañada erred in assuming jurisdiction to hear and determine the petition. In any case, the petition should be denied because no proper and reasonable cause or compelling reason to warrant the change of name was offered.

On the other hand, Lua Ong avers that the name Lua An Jok is not an alias of Baby Ong, therefore, it should not be included in the title of the petition and in the caption of the published order. Lua An Jok is the true and correct name of the applicant. Moreover, he claims that the reason for the change of name is to avoid confusion. He alleges that the attending midwife of the hospital where his wife gave birth erred in reporting his son's name as Baby Ong. As such, he filed the petition in order to set the record straight.

ISSUES:

- A. Whether the court acquired jurisdiction over the petition. (NO)
- B. Whether a compelling reason was offered by Lua Ong for the change of name. (YES)

RULING:

(A) An action for change of name constitutes a judicial proceeding in rem. As such, a court acquires jurisdiction to hear and determine the corresponding petition only after the publication of the order reciting the purpose of the petition and setting the date and place for the hearing thereof at least once a week for 3 successive weeks in a newspaper of general circulation. Such publication, to be valid and effective, should contain the correct information as to (1) the name or names of the applicant, (2) the cause for the change of name, and (3) the new name sought. Moreover, the title of the petition should include (1) the applicant's real name and (2) his aliases or other names, if any, and (3) the name sought to be adopted.

Notices published in the newspapers often appear in the back pages thereof or in pages least read or paid attention to. The reader usually merely scans these pages and glances fleetingly at the captions or the titles. Only if the caption or the title strikes him does the reader proceed to read on. As such,

the probability is great that the reader does not at all notice the other names and/ or aliases of the applicant if these are mentioned only in the body of the order or petition. This non-inclusion defeats the very purpose of the required publication.

In the case at bar, while it is true that Lua An Jok does not constitute an alias for it is the name by which he has been known since his childhood, such name must be included in the caption of the order and in the title of the petition because it constitutes the new name sought by Lua Ong for his son. An otherwise ruling would defeat the very purpose of requiring publication. Persons who know Lua An Jok and who have an interest against the petition, upon reading the title of the petition or the caption of the published order, would not readily know that Lua An Jok and Baby Ong refer to one and the same person and would not thereby be afforded the opportunity to come forward with anything affecting the petition.

(B) To justify a change of name, there must exist a proper and reasonable cause or compelling reason. The following have been held to constitute proper and reasonable causes or compelling reasons: (1) a ridiculous name, a name tainted with dishonor, or a name extremely difficult to write or pronounce; (2) a change of civil status; and (3) need to avoid confusion.

In the case at bar, the insistence of Lua Ong that the entry "Baby Ong" in the civil registry be changed to "Lua AnJok" could very well be motivated, there being no evidence to the contrary, solely by an honest desire to make the civil registry speak the truth. The Court observed that the attending midwife was apparently never advised by the child's parents of the name the latter gave to it. So, perfunctorily accomplishing the required report to the civil registrar, the midwife found it expedient to place therein the name "Baby Ong."

REPUBLIC OF THE PHILIPPINES, *Petitioner*, -versus - JULIAN EDWARD EMERSON COSETENG-MAGPAYO (A.K.A. JULIAN EDWARD EMERSON MARQUEZ-LIM COSETENG), *Respondent*.

G.R. No. 189476, THIRD DIVISION, February 2, 2011, CARPIO MORALES, J.

Julian's reason for changing his name cannot be considered as one of, or analogous to, the recognized grounds that make Rule 103 applicable in a case. The change he seeks goes so far as to affect his legal status in relation to his parents. As such, Rule 103 would not suffice to grant Julian's supplication. Instead, Rule 108 should be made applicable since Julian's desired change affects his civil status from legitimate to illegitimate. Such is a substantial correction or change of entry in the civil registry. Consequently, the RTC order granting the petition should be set aside. This is because Rule 108 clearly directs that a petition which concerns one's civil status should be filed in the civil registry in which the entry is sought to be cancelled or corrected. Also, all persons who have or claim any interest which would be affected thereby should be made parties to the proceeding. In the case at bar, the petition of Julian was filed not in Makati where his birth certificate was registered but in Quezon City. Moreover, neither the Civil Registrar of Makati nor his father and mother were made parties thereto.

FACTS:

Julian Edward Emerson Coseteng-Magpayo filed before the RTC of Quezon City a petition to change his name to Julian Edward Emerson Marquez Lim Coseteng. He claimed that his parents were never legally married as shown by certifications from the National Statistics Office and Julian's academic records.

After due notice and publication and no opposition to the petition having been filed, an order of general default was entered by the trial court which then allowed Julian to present evidence ex parte. The RTC subsequently granted the petition and ordered the correction of Julian's birth certificate by deleting the entry for the date and place of marriage of his parents thereby changing Julian's last name to Coseteng. The name of Julian's father was likewise deleted in his birth certificate.

In opposition thereto, the Republic of the Philippines filed the present petition contending that the deletion of the entry on the date and place of marriage of Julian's parents from his birth certificate has the effect of changing his civil status from legitimate to illegitimate. Any change in civil status of a person must be effected through an appropriate adversary proceeding.

ISSUE:

Whether the change in Julian's legitimacy is a substantial change thereby making Rule 103 of the Rules of Court inapplicable. (YES)

RULING:

A person can effect a change of name under Rule 103 using valid and meritorious grounds such as: (a) when the name is ridiculous, dishonorable or extremely difficult to write or pronounce; (b) when the change results as a legal consequence such as legitimation; (c) when the change will avoid confusion; (d) when one has continuously used and been known since childhood by a Filipino name, and was unaware of alien parentage; (e) a sincere desire to adopt a Filipino name to erase signs of former alienage, all in good faith and without prejudicing anybody; and (f) when the surname causes embarrassment and there is no showing that the desired change of name was for a fraudulent purpose or that the change of name would prejudice public interest. In the case at bar, Julian's reason for changing his name cannot be considered as one of, or analogous to, the above recognized grounds. The change he seeks goes so far as to affect his legal status in relation to his parents. As such, Rule 103 would not suffice to grant Julian's supplication. Instead, Rule 108 should be made applicable since Julian's desired change affects his civil status from legitimate to illegitimate. Such is a substantial correction or change of entry in the civil registry.

Rule 108 clearly directs that a petition which concerns one's civil status should be filed in the civil registry in which the entry is sought to be cancelled or corrected. All persons who have or claim any interest which would be affected thereby should be made parties to the proceeding. In the case at bar, the petition of Julian was filed not in Makati where his birth certificate was registered but in Quezon City. Moreover, neither the Civil Registrar of Makati nor his father and mother were made parties thereto. As such, the RTC order granting the petition should be set aside.

**MA. CRISTINA TORRES BRAZA, PAOLO JOSEF T. BRAZA and JANELLE ANN T. BRAZA,
Petitioners, -versus- THE CITY CIVIL REGISTRAR OF HIMAMAYLAN CITY, NEGROS
OCCIDENTAL, minor PATRICK ALVIN TITULAR BRAZA, represented by LEON TITULAR,
CECILIA TITULAR and LUCILLE C. TITULAR, Respondents.**

G.R. No. 181174, FIRST DIVISION, December 4, 2009, CARPIO MORALES, J.

The allegations of the petition clearly show that petitioners seek to nullify the marriage between Pablo and Lucille on the ground that it is bigamous and impugn Patrick's filiation in connection with which they ask the court to order Patrick to be subjected to a DNA test. As such, the petition must fail because

in a special proceeding for correction of entry under Rule 108, the trial court has no jurisdiction to nullify marriages and rule on legitimacy and filiation. These are governed not by Rule 108 but by A.M. No. 02-11-10-SC and Art. 17118 of the Family Code which provides that the corresponding petition should be filed in a Family Court. Moreover, it is well-accepted principle that the validity of marriages as well as legitimacy and filiation can be questioned only in a direct action seasonably filed by the proper party, and not through collateral attack such as the petition filed in the present case.

FACTS:

Ma. Cristina Torres Braza and Pablo Sicad Braza, Jr. were married on January 4, 1978. The union bore 3 children. After some time, Pablo died in a vehicular accident in Indonesia.

During Pablo's wake in the Philippines, Lucille Titular began introducing minor Patrick Alvin Titular Braza as her and Pablo's son. Consequently, Ma. Cristina made inquiries in the course of which she obtained Patrick's birth certificate from the Local Civil Registrar of Himamaylan City, Negros Occidental. Such birth certificate stated, among others, that Patrick was acknowledged by Pablo and was legitimated by virtue of the subsequent marriage of his parents on April 22, 1998. Ma. Cristina likewise obtained a copy of the marriage contract between Pablo and Lucille. Considering the foregoing, Ma. Cristina filed a petition to correct the entries in the birth record of Patrick in the Local Civil Register.

Contending that Patrick could not have been legitimated by the supposed marriage between Lucille and Pablo, said marriage being bigamous on account of the valid and subsisting marriage between Ma. Cristina and Pablo, petitioners prayed for (1) the correction of the entries in Patrick's birth record with respect to his legitimation, the name of the father and his acknowledgment, and the use of the last name "Braza"; 2) a directive to submit Patrick to DNA testing to determine his paternity and filiation; and 3) the declaration of nullity of the legitimation of Patrick and, for this purpose, the declaration of the marriage of Lucille and Pablo as bigamous.

The trial court dismissed the petition, holding that in a special proceeding for correction of entry, the court, which is not acting as a Family Court, has no jurisdiction over an action to annul the marriage of Lucille and Pablo, impugn the legitimacy of Patrick, and order Patrick to be subjected to a DNA test. The controversy should be ventilated in an ordinary adversarial action.

ISSUE:

Whether the trial court, in this case, may rule upon the validity of marriage between Pablo and Lucille and answer questions regarding Patrick's legitimacy. (NO)

RULING:

Rule 108 of the Rules of Court vis a vis Article 412 of the Civil Code charts the procedure by which an entry in the civil registry may be cancelled or corrected. The proceeding contemplated therein may generally be used only to correct clerical, spelling, typographical and other innocuous errors. A clerical error is one which is visible to the eyes or obvious to the understanding that is made by a clerk or a transcriber in copying or writing resulting in a harmless change such as a correction of name that is clearly misspelled or of a misstatement of the occupation of the parent. In contrast

thereto, substantial or contentious alterations may be allowed only in adversarial proceedings where all interested parties are impleaded and due process is properly observed.

In the case at bar, the allegations of the petition clearly show that petitioners seek to nullify the marriage between Pablo and Lucille on the ground that it is bigamous and impugn Patrick's filiation in connection with which they ask the court to order Patrick to be subjected to a DNA test. As such, the petition must fail because in a special proceeding for correction of entry under Rule 108, the trial court has no jurisdiction to nullify marriages and rule on legitimacy and filiation. These are governed not by Rule 108 but by A.M. No. 02-11-10-SC and Art. 17118 of the Family Code which provides that the corresponding petition should be filed in a Family Court. Moreover, it is well-accepted principle that the validity of marriages as well as legitimacy and filiation can be questioned only in a direct action seasonably filed by the proper party, and not through collateral attack such as the petition filed in the present case.

GERBERT R. CORPUZ, *Petitioner*, -versus- DAISYLYN TIROL STO. TOMAS and The SOLICITOR GENERAL, *Respondents*.

G.R. No. 186571, THIRD DIVISION, August 11, 2010, BRION, J.

The recognition that the RTC may extend to the Canadian divorce decree does not, by itself, authorize the cancellation of the entry in the civil registry. A petition for recognition of a foreign judgment is not the proper proceeding contemplated under the Rules of Court for the cancellation of entries in the civil registry. It must be pointed out, however, that this ruling should not be construed as requiring 2 separate proceedings for the registration of a foreign divorce decree in the civil registry: one for recognition of the foreign decree and another specifically for cancellation of the entry under Rule 108 of the Rules of Court. Instead, it means that the recognition of the foreign divorce decree may be made in a Rule 108 proceeding itself since the object of a special proceeding is precisely to establish the status or right of a party or a particular fact.

FACTS:

Gerbert Corpuz is a former Filipino citizen who acquired Canadian citizenship through naturalization. On January 18, 2005, he married Daisylyn Sto. Tomas, a Filipina. He then left for Canada after the wedding. When he returned to the Philippines to surprise Daisylyn, he was shocked to discover that his wife was having an affair with another man. Hurt and disappointed, he returned to Canada and filed a petition for divorce which was granted.

2 years after the divorce, Gerbert has moved on and has found another Filipina to love. As such, he went to the Pasig City Civil Registry Office and registered the Canadian divorce decree on his and Daisylyn's marriage certificate. Despite the registration of the divorce decree, an official of the NSO informed him that the marriage between him and Daisylyn still subsists under Philippine laws and that to be enforceable, the foreign divorce decree must first be judicially recognized by a competent Philippine court. Accordingly, he filed a petition for judicial recognition of foreign divorce and/or declaration of marriage as dissolved with the RTC.

The RTC denied Gerbert's petition, holding that only the Filipino spouse can avail of the remedy under the 2nd paragraph of Article 26 of the Family Code in order for him or her to be able to remarry under Philippine law.

ISSUES:

- A. Whether aliens may petition a court in the Philippines for the recognition of a foreign divorce decree. (YES)
- B. Whether the recognition of the divorce decree will authorize the cancellation of entry. (NO)

RULING:

(A) The unavailability of the 2nd paragraph of Article 26 of the Family Code to aliens does not necessarily strip Gerbert of legal interest to petition for the recognition of his foreign divorce decree. The foreign divorce decree itself, after its authenticity and conformity with the alien's national law have been duly proven according to the rules on evidence, serves as a presumptive evidence of right in favor of Gerbert. Direct involvement or being the subject of the foreign judgment is sufficient to clothe a party with the requisite interest to institute an action before the Philippine courts for the recognition of the foreign judgment. In a divorce situation, it has been previously declared that a divorce obtained by an alien abroad may be recognized in the Philippines provided the divorce is valid according to his or her national law.

(B) The recognition that the RTC may extend to the Canadian divorce decree does not, by itself, authorize the cancellation of the entry in the civil registry. A petition for recognition of a foreign judgment is not the proper proceeding contemplated under the Rules of Court for the cancellation of entries in the civil registry.

It must be pointed out, however, that this ruling should not be construed as requiring 2 separate proceedings for the registration of a foreign divorce decree in the civil registry: one for recognition of the foreign decree and another specifically for cancellation of the entry under Rule 108 of the Rules of Court. Instead, it means that the recognition of the foreign divorce decree may be made in a Rule 108 proceeding itself since the object of a special proceeding is precisely to establish the status or right of a party or a particular fact. It must be noted that Rule 108 can serve as the appropriate adversarial proceeding by which the applicability of the foreign judgment can be measured and tested in terms of jurisdictional infirmities, want of notice to the party, collusion, fraud, or clear mistake of law or fact.

REPUBLIC OF THE PHILIPPINES, *Petitioner*, -versus- MERLINDA L. OLAYBAR, *Respondent*.

G.R. No. 189538, THIRD DIVISION, February 10, 2014, PERALTA, J.

A petition for correction or cancellation of an entry in the civil registry cannot substitute for an action to invalidate a marriage. A direct action is necessary to prevent the circumvention of the substantive and procedural safeguards of marriage under the Family Code and other related laws. It is also necessary to prevent circumvention of the jurisdiction of the Family Courts as a petition for cancellation or correction of entries in the civil registry may be filed in the RTC where the corresponding civil registry is located. A Filipino citizen cannot dissolve his marriage by the mere expedient of changing his entry of marriage in the civil registry.

While Rule 108 cannot be availed of to determine the validity of marriage, the proceedings before the RTC cannot be fully nullified where all the parties had been given the opportunity to contest the allegations of Olaybar, where all the procedures were followed and where all the evidence of the parties had already been admitted and examined. Respondent indeed sought not the nullification of marriage

as there was no marriage to speak of, but the correction of the record of such marriage to reflect the truth as set forth by the evidence. Otherwise stated, in allowing the correction of the subject certificate of marriage by cancelling the wife portion thereof, the trial court did not, in any way, declare the marriage void as there was no marriage to speak of.

FACTS:

Merlinda L. Olaybar requested from the NSO a Certificate of No Marriage in order to comply with one of the requirements for her marriage with her boyfriend of 5 years. Upon receipt thereof, she discovered that she was already married to a certain Ye Son Sune, a Korean National, on June 24, 2002 at the Office of the MTCC, Palace of Justice.

Olaybar denied having contracted said marriage and claimed that she did not know the alleged husband, that she did not appear before a solemnizing officer and that the signature appearing in the marriage certificate is not hers. She, thus, filed a Petition for Cancellation of Entries in the Marriage Contract especially the entries in the wife portion thereof. She impleaded the Local Civil Registrar of Cebu City as well as her alleged husband as parties to the case.

Finding that the signature appearing in the subject marriage contract was not that of Olaybar, the RTC granted the petition for cancellation of entries in her marriage contract.

ISSUE:

Whether the cancellation of entries in the marriage contract which, in effect, nullifies the marriage may be undertaken in a Rule 108 proceeding. (YES)

RULING:

Rule 108 of the Rules of Court provides the procedure for cancellation or correction of entries in the civil registry. The proceedings may either be summary or adversary. If the correction is clerical, the procedure to be adopted is summary. If the rectification affects the civil status, citizenship or nationality of a party, it is deemed substantial therefore the procedure to be adopted is adversary. Since the promulgation of *Republic vs. Valencia* in 1986, the Court has repeatedly ruled that even substantial errors in a civil registry may be corrected through a petition filed under Rule 108 with the true facts established and the parties aggrieved by the error availing themselves of the appropriate adversarial proceeding. An appropriate adversary suit or proceeding is one where the trial court has conducted proceedings where all relevant facts have been fully and properly developed, where opposing counsel have been given opportunity to demolish the opposite party's case, and where the evidence has been thoroughly weighed and considered.

The proceeding in Rule 108 requires publication of the petition and mandates the inclusion as parties of all persons who may claim interest which would be affected by the cancellation or correction. It also requires the civil registrar and any person in interest to file their opposition, if any. Moreover, it states that although the court may make orders expediting the proceedings, it is after hearing that the court shall either dismiss the petition or issue an order granting the same. As long as these procedural requirements are followed, it is considered as an appropriate adversary proceeding to effect substantial corrections and changes in entries of the civil register.

In this case, the entries made in the wife portion of the certificate of marriage are admittedly the personal circumstances of Olaybar. The latter, however, claims that her signature was forged and she was not the one who contracted marriage with the purported husband. With the testimonies and other evidence presented, the trial court made a categorical conclusion that Olaybar's signature in the marriage certificate was not hers and, therefore, was forged. Clearly, it was established that, as she claimed in her petition, no such marriage was celebrated.

A petition for correction or cancellation of an entry in the civil registry cannot substitute for an action to invalidate a marriage. A direct action is necessary to prevent the circumvention of the substantive and procedural safeguards of marriage under the Family Code and other related laws. It is also necessary to prevent circumvention of the jurisdiction of the Family Courts as a petition for cancellation or correction of entries in the civil registry may be filed in the RTC where the corresponding civil registry is located. A Filipino citizen cannot dissolve his marriage by the mere expedient of changing his entry of marriage in the civil registry.

While Rule 108 cannot be availed of to determine the validity of marriage, the proceedings before the RTC cannot be fully nullified where all the parties had been given the opportunity to contest the allegations of Olaybar, where all the procedures were followed and where all the evidence of the parties had already been admitted and examined. Respondent indeed sought not the nullification of marriage as there was no marriage to speak of, but the correction of the record of such marriage to reflect the truth as set forth by the evidence. Otherwise stated, in allowing the correction of the subject certificate of marriage by cancelling the wife portion thereof, the trial court did not, in any way, declare the marriage void as there was no marriage to speak of.

REPUBLIC OF THE PHILIPPINES, *Petitioner*, -versus- HON. FELICIANO BELMONTE, JUDGE OF THE COURT OF FIRST INSTANCE OF BAGUIO AND BENGUET and ANITA PO ALIAS VERONICA PAO, ASSISTED BY HER MOTHER HELEN POA, *Respondents*.

G.R. No. L-32600, FIRST DIVISION, February 26, 1988, GANCAAYCO, J.

The procedure recited in Rule 103 regarding change of name and in Rule 108 concerning the cancellation or correction of entries in the civil registry are separate and distinct. They may not be substituted one for the other for the sole purpose of expediency. If both reliefs are to be sought in the same proceedings all the requirements of Rules 103 and 108 must be complied with.

Under Section 3 of Rule 108, 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 should be made parties to the proceeding. In the case at bar, an inspection of all the pleadings filed by the petitioner with the trial court shows that the local civil registrar concerned was never made a party to the proceeding. Moreover, the summary procedure for correction of the civil register under Rule 108 is confined to innocuous or clerical errors and not to a material change in the spelling of a surname as prayed for by Anita. To be a clerical error, it must be apparent on the face of the record and should be capable of being corrected by reference to the record alone. The petitioner seeks more than just the correction of a clerical error.

FACTS:

Anita Po alias Veronica Pao, a resident of Baguio City, filed a petition for the change of name from Anita Po to Veronica Pao. She explained that the real name of her father is Pao Yu, thus, her real

surname is Pao. Moreover, she asserted that she had been baptized by a Catholic priest and that she was christened as Veronica, her Christian given name. Accordingly, she also sought to change her father's name from Po Yu to Pao Yu and her mother's name from Pakiat Chan to Helen Chan in her birth records. The maiden name of her mother is Helen Chan while the given name Pakiat written on her birth certificate is actually the given name of her maternal grandmother.

The OSG presented its opposition to the petition and sought the dismissal of the same. It believes that the names Po Yu and Pakiat Chan appearing in the birth certificate of Anita Po cannot be changed in the same proceeding for the change of name of Anita Po.

ISSUE:

Whether a petition for change of name and correction of certain entries in the civil registry can be joined in the same proceeding. (NO)

RULING:

The procedure recited in Rule 103 regarding change of name and in Rule 108 concerning the cancellation or correction of entries in the civil registry are separate and distinct. They may not be substituted one for the other for the sole purpose of expediency. If both reliefs are to be sought in the same proceedings all the requirements of Rules 103 and 108 must be complied with.

Under Section 3 of Rule 108, 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 should be made parties to the proceeding. In the case at bar, an inspection of all the pleadings filed by the petitioner with the trial court shows that the local civil registrar concerned was never made a party to the proceeding. Said civil registrar being an indispensable party, a final determination of the case cannot be made.

Moreover, the summary procedure for correction of the civil register under Rule 108 is confined to innocuous or clerical errors and not to a material change in the spelling of a surname as prayed for by Anita. To be a clerical error, it must be apparent on the face of the record and should be capable of being corrected by reference to the record alone. The petitioner seeks more than just the correction of a clerical error.

In any case, an examination of Anita's allegations reveals that her claim to the supposed correct name of Veronica Pao is predicated on the assumption that the correct name of her father is Pao Yu and not Po Yu as recited in her own birth certificate. This assumption is baseless, absent any proof that the name of her father in her birth certificate was entered erroneously. Until the name of her father is shown to have been entered erroneously, there is no justification for allowing Anita to use the surname Pao. As such, the propriety of corrections should first be determined in a different proceeding more adversary in character than the summary case instituted herein.

**REPUBLIC OF THE PHILIPPINES, *Petitioner*, -versus- DR. NORMA S. LUGSANAY UY,
Respondent.**

G.R. No. 198010, THIRD DIVISION, August 12, 2013, PERALTA, J.

The fact that the notice of hearing was published in a newspaper of general circulation and notice thereof was served upon the State will not change the nature of the proceedings taken. Sections 4 and 5 of Rule 108 of the Rules of Court mandates 2 sets of notices to different potential oppositors: one given to the persons named in the petition and another given to other persons who are not named in the petition but nonetheless may be considered interested or affected parties. Summons must be served not for the purpose of vesting the courts with jurisdiction but to comply with the requirements of fair play and due process in order to afford the person concerned the opportunity to protect his interest if he so chooses. In the case at bar, respondent seeks the correction of her first name and surname, her status from "legitimate" to "illegitimate" and her citizenship from "Chinese" to "Filipino." Considering the foregoing, she should have impleaded and notified not only the Local Civil Registrar but also her parents and siblings as they have interest in and are affected by the changes or corrections respondent wanted to make.

FACTS:

Dr. Norma S. Lugsanay Uy filed a Petition for Correction of Entry in her Certificate of Live Birth with only the Local Civil Registrar of Gingoog City impleaded as respondent. Her Certificate of Live Birth shows that her full name is "Anita Sy" when in fact she is allegedly known to her family and friends as "Norma S. Lugsanay." Her school records, PRC Board of Medicine Certificate and passport show so. She also claimed that she had to follow the surname of her mother since she is an illegitimate child considering that her parents were never married. Furthermore, she contended that she is a Filipino citizen and not Chinese. In connection therewith, she allegedly filed earlier a petition for correction of entries with the Office of the Local Civil Registrar of Gingoog City to effect the mentioned corrections. This was supposedly granted. However, the National Statistics Office (NSO) records did not bear such changes.

The RTC issued an order finding the petition to be sufficient in form and substance and set the case for hearing with the directive that the said order be published in a newspaper of general circulation in the City of Gingoog and the Province of Misamis Oriental at least once a week for 3 consecutive weeks at the expense of respondent, and that the order and petition be furnished to the OSG and the City Prosecutor's Office. Respondent complied with the publication requirement.

The RTC then issued an order in favor of respondent and directed the City Civil Registrar of Gingoog City to effect the correction or change of the entries. The CA affirmed the same, finding that the respondent's failure to implead other indispensable parties was cured upon the publication of the order.

ISSUE:

Whether the petition is dismissible for failure to implead indispensable parties. (YES)

RULING:

The fact that the notice of hearing was published in a newspaper of general circulation and notice thereof was served upon the State will not change the nature of the proceedings taken. Sections 4 and 5 of Rule 108 of the Rules of Court mandates 2 sets of notices to different potential oppositors: one given to the persons named in the petition and another given to other persons who are not named in the petition but nonetheless may be considered interested or affected parties. Summons must be served not for the purpose of vesting the courts with jurisdiction but to comply with the requirements of fair play and due process in order to afford the person concerned the opportunity to protect his interest if he so chooses. In the case at bar, respondent seeks the correction of her first name and surname, her status from "legitimate" to "illegitimate" and her citizenship from "Chinese" to "Filipino." Considering the foregoing, she should have impleaded and notified not only the Local Civil Registrar but also her parents and siblings as they have interest in and are affected by the changes or corrections respondent wanted to make.

It must be noted 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 and legitimacy of marriage, a strict compliance with the requirements of Rule 108 of the Rules of Court is mandated. If the entries in the civil register could be corrected or changed through mere summary proceedings and not through appropriate action wherein all parties who may be affected by the entries are notified or represented, the door to fraud or other mischief would be set open, the consequence of which might be detrimental and far reaching.

FRANCLER P. ONDE, *Petitioner*, -versus- THE OFFICE OF THE LOCAL CIVIL REGISTRATION OF LAS PIÑAS CITY, *Respondent*.

G.R. No. 197174, THIRD DIVISION, September 10, 2014, VILLARAMA, JR., J.

Under Section 1 of RA 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.

On the other hand, the correction on the entry in Onde's birth certificate that his parents were not married is substantial as it will affect his legitimacy and convert him from a legitimate child to an illegitimate one. As such, the parties aggrieved by the error must avail themselves of the appropriate adversary proceedings.

FACTS:

Onde filed a petition for correction of entries in his certificate of live birth before the RTC and named the Office of the Local Civil Registrar of Las Pinas City as the sole respondent. Onde alleged that he is the illegitimate child of his parents but his birth certificate stated that his parents were married. His birth certificate also stated that his mother's first name is Tely instead of Matilde and that his first name is Franc Ler.

The RTC dismissed the petition for correction of entries on the ground that it is insufficient in form and substance. It ruled that the proceedings must be adversarial since the first correction is substantial in nature and would affect Onde's status as a legitimate child. On the other hand, the correction in the first name of Onde and his mother can be done by the city civil registrar under RA

No. 9048. To this, Onde argues that Rule 108 of the Rules of Court allows a substantial correction of entries in the Civil Registry. Meanwhile, the OSG contends that the RTC correctly dismissed the petition.

ISSUES:

A. Whether the RTC erred in ruling that the correction on the first name of Onde and his mother can be done by the city civil Registrar under RA No. 9048. (NO)

B. Whether the RTC erred in ruling that correcting the entry on Onde's birth certificate that his parents were not married is substantial in nature requiring adversarial proceedings. (NO)

RULING:

(A) Under Section 1 of RA 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 RA No. 10172, now reads:

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.

(B) The correction on the entry in Onde's birth certificate that his parents were not married is substantial as it will affect his legitimacy and convert him from a legitimate child to an illegitimate one. In Republic v. Uy, it was 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.

MA. LOURDES BARRIENTOS ELEOSIDA, FOR AND IN BEHALF OF HER MINOR CHILD, CHARLES CHRISTIAN ELEOSIDA, *Petitioner*, -versus- LOCAL CIVIL REGISTRAR OF QUEZON CITY, and CARLOS VILLENA BORBON, *Respondents*.

G.R. No. 130277, FIRST DIVISION, May 9, 2002, PUNO, J.

The proceedings under Rule 108 may either be summary or adversary in nature. If the correction sought to be made in the civil register is clerical, the procedure to be adopted is summary. On the other hand, if the rectification is deemed substantial as if it affects the civil status, citizenship or nationality of a party, the procedure to be adopted is adversary.

An appropriate adversary suit or proceeding under Rule 108 requires that the following be made parties to the proceeding: (a) the civil registrar and (b) all persons who have or claim any interest which would be affected thereby. Moreover, upon the filing of the petition, the Court should: (a) issue an order fixing the time and place for the hearing of the petition, and (b) cause the order for hearing to be published once a week for 3 consecutive weeks in a newspaper of general circulation in the province.

In the case at bar, 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. As the procedural requirements stated above were shown to be satisfactorily complied with, the Court is not correct in dismissing the petition motu proprio without allowing the petitioner to present evidence to support her petition.

FACTS:

Ma. Lourdes Eleosida filed a petition before the RTC seeking to correct the following entries in the birth certificate of her son, Charles Christian: (a) the surname "Borbon" to "Eleosida"; (b) the date of the parents' wedding to be left blank; and (c) the informant's name as "Ma. Lourdes B. Eleosida," instead of "Ma. Lourdes E. Borbon." In support of her petition, petitioner alleged that she gave birth to her son out of wedlock and that she and the boy's father, Carlos Borbon, were never married. The petition impleaded the Local Registrar of Quezon City and Carlos Villena Borbon as respondents.

The trial court issued a notice of hearing directing the Offices of the Local Civil Registrar of Quezon City and the Solicitor General to file their opposition thereto, if any, within 15 days from notice of the petition or from the last date of publication of such notice. After the expiration of the said period, it issued another order setting the date for the presentation of evidence on the part of the petitioner to show compliance with the jurisdictional requirements considering that there is no opposition filed despite notice. However, the Court eventually dismissed the petition for lack of merit, stating that only the correction of clerical errors of a harmless and innocuous nature may be allowed and not those that may affect the civil status, nationality or citizenship of the persons involved.

ISSUE:

Whether corrections of entry in the certificate of live birth may be allowed under Rule 108 even if the errors to be corrected are substantial. (YES)

RULING:

Rule 108 of the Revised Rules of Court provides the procedure for cancellation or correction of entries in the civil registry. The proceedings under the said rule may either be summary or adversary in nature. If the correction sought to be made in the civil register is clerical, the procedure to be adopted is summary. On the other hand, if the rectification is deemed substantial as if it affects the civil status, citizenship or nationality of a party, the procedure to be adopted is adversary.

An appropriate adversary suit or proceeding is one where the trial court has conducted proceedings where all relevant facts have been fully and properly developed, where opposing counsel has been given opportunity to demolish the opposite party's case, and where the evidence has been thoroughly weighed and considered. Under Rule 108, in order to make the proceedings adversary, it is required that the following be made parties to the proceeding: (a) the civil registrar and (b) all persons who have or claim any interest which would be affected thereby. Moreover, upon the filing of the petition, the Court should: (a) issue an order fixing the time and place for the hearing of the petition, and (b) cause the order for hearing to be published once a week for 3 consecutive weeks in a newspaper of general circulation in the province. If all these procedural requirements have been followed, a

petition for correction and/or cancellation of entries in the record of birth even if filed and conducted under Rule 108 of the Revised Rules of Court can no longer be described as summary.

In the case at bar, 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. As the procedural requirements stated above were complied with, the Court is not correct in dismissing the petition *motu proprio* without allowing the petitioner to present evidence to support her petition. It must be noted that upon receipt of the petition, the trial court issued a notice of hearing setting the hearing and ordered the publication of said notice once a week for three consecutive weeks in a newspaper of general circulation as well as its posting in selected places in Metro Manila. The notice stated that the petitioner shall prove her petition during the said hearing and all other persons having or claiming any interest thereon shall also appear and show if there is any reason why the petition should not be granted. Respondents Carlos Villena Borbon, the Local Civil Registrar of Quezon City and the Solicitor General were all furnished with a copy of the notice of hearing together with a copy of the petition.

REPUBLIC OF THE PHILIPPINES, *Petitioner*, -versus- CARLITO I. KHO, MICHAEL KHO, MERCY NONA KHO-FORTUN, HEDDY MOIRA KHO-SERRANO, KEVIN DOGMOC KHO (MINOR), and KELLY DOGMOC KHO (MINOR), *Respondents*.

G.R. No. 170340, SECOND DIVISION, June 29, 2007, CARPIO MORALES, J.

The requirement in Section 3 may be cured by compliance with Section 4, Rule 108 which requires notice by publication. The purpose precisely of Section 4 is to bind the whole world to the subsequent judgment on the petition. The sweep of the decision would cover even parties who should have been impleaded under Section 3 but were inadvertently left out. It must be noted that a petition for correction is an action in rem, an action against a thing and not against a person. The decision on the petition binds not only the parties thereto but the whole world. As such, it is validated essentially through publication. Publication is notice to the whole world that the proceeding has for its object to bar indefinitely all who might be minded to make an objection of any sort against the right sought to be established. It is the publication of such notice that brings in the whole world as a party in the case and vests the court with jurisdiction to hear and decide it. Considering so, it becomes unnecessary to rule on whether Marivel or the respondents' parents should have been impleaded as parties to the proceeding. It may not be amiss to mention that during the hearing, the city prosecutor who was acting as representative of the OSG did not raise any objection to the non-inclusion of Marivel and Carlito's parents as parties to the proceeding.

FACTS:

Carlito Kho and his siblings filed before the RTC of Butuan City a verified petition for correction of entries in the civil registry of Butuan City to effect changes in their respective birth certificates. In the case of Carlito, he petitioned the (1) change of the citizenship of their parents from "Chinese" to "Filipino"; (2) deletion of "John" from his name; and (3) deletion of the word "married" opposite the date of marriage of his parents. The last correction was prayed to be effected likewise in the birth certificates of his siblings.

In addition thereto, Carlito asked the court in behalf of his minor children, Kevin and Kelly, to order the correction of the date of his and his wife's marriage from April 27, 1989 to January 21, 2000, the

date appearing in their marriage certificate, in the birth records of the said children. Also, it was prayed that the name of the children's mother be changed from "Maribel" to "Marivel."

The Local Civil Registrar of Butuan City was impleaded as respondent. Moreover, as required, the petition was published for 3 consecutive weeks in Mindanao Daily Patrol-CARAGA, a newspaper of general circulation, after which it was set for hearing. Eventually, documentary evidence were presented showing compliance with the jurisdictional requirements of the petition.

The trial court granted the petition. The Republic appealed, faulting the trial court in granting the petition despite the failure to implead the minors' mother, Marivel, as an indispensable party and to offer sufficient evidence to warrant the corrections with regard to the questioned "married" status of Carlito and his siblings' parents, and the latter's citizenship. Since the changes sought were substantial in nature, they could only be granted through an adversarial proceeding in which indispensable parties should have been notified or impleaded. The trial court was also faulted for ordering the change of the name "Carlito John Kho" to "Carlito Kho" for non-compliance with jurisdictional requirements. The petition failed to allege Carlito's prior 3-year bona fide residence in Butuan City. The title of the petition did not also state Carlito's aliases and his true name as "Carlito John I. Kho."

ISSUES:

- (A) Whether Kho's request for change requires an adversarial proceeding. (YES)
- (B) Whether the failure to implead Marivel and Carlito's parents rendered the trial short of the required adversary proceeding. (NO)

RULING:

(A) It cannot be gainsaid that the petition involves the correction of not just clerical errors of a harmless and innocuous nature. Rather, the changes entail substantial and controversial amendments. For the change involving the nationality of Carlito's mother as reflected in his birth certificate is a grave and important matter that has a bearing and effect on the citizenship and nationality not only of the parents but also of the offspring. On the other hand, the deletion of the entry that Carlito's and his siblings' parents were "married" alters their filiation from "legitimate" to "illegitimate" with significant implications on their successional and other rights. Clearly, the changes sought can only be granted in an adversary proceeding. When all the procedural requirements under Rule 108 are followed, the appropriate adversary proceeding necessary to effect substantial corrections to the entries of the civil register is satisfied.

(B) The essential requisite for allowing substantial corrections of entries in the civil registry is that the true facts be established in an appropriate adversarial proceeding. This is embodied in Section 3, Rule 108 of the Rules of Court which states that 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.

Such requirement, however, may be cured by compliance with Section 4, Rule 108 which requires notice by publication. The purpose precisely of Section 4 is to bind the whole world to the subsequent judgment on the petition. The sweep of the decision would cover even parties who should have been impleaded under Section 3 but were inadvertently left out. It must be noted that a petition for

correction is an action in rem, an action against a thing and not against a person. The decision on the petition binds not only the parties thereto but the whole world. As such, it is validated essentially through publication. Publication is notice to the whole world that the proceeding has for its object to bar indefinitely all who might be minded to make an objection of any sort against the right sought to be established. It is the publication of such notice that brings in the whole world as a party in the case and vests the court with jurisdiction to hear and decide it. Considering so, it becomes unnecessary to rule on whether Marivel or the respondents' parents should have been impleaded as parties to the proceeding. It may not be amiss to mention that during the hearing, the city prosecutor who was acting as representative of the OSG did not raise any objection to the non-inclusion of Marivel and Carlito's parents as parties to the proceeding. Moreover, it seems highly improbable that Marivel was unaware of the proceedings to correct the entries in her children's birth certificates, especially since the notices, orders and decision of the trial court were all sent to the residence she shared with Carlito and the children.

**KILOSBAYAN FOUNDATION AND BANTAY KATARUNGAN FOUNDATION, *Petitioner*, -versus-
EXECUTIVE SECRETARY EDUARDO R. ERMITA; SANDIGANBAYAN JUSTICE GREGORY S. ONG,
Respondents.**

G.R. No. 177721, EN BANC, July 3, 2007, AZCUNA, J.

No substantial change or correction in an entry in a civil register can be made without a judicial order, and, under the law, a change in citizenship status is a substantial change. As such, the proposed change should be threshed out in a proper action. All the parties who may be affected by the entries must notified or represented and evidence must be submitted to prove the allegations of the complaint as well as to prove the contrary.

Republic Act No. 9048 provides in Section 2 (3) that a summary administrative proceeding to correct clerical or typographical errors in a birth certificate cannot apply to a change in nationality. Substantial corrections to the nationality or citizenship of persons recorded in the civil registry should, therefore, be effected through a petition filed in court under Rule 108 of the Rules of Court.

FACTS:

Executive Secretary Ermita announced the appointment of Gregory S. Ong as Associate Justice of the Supreme Court to fill up the vacancy created by the retirement of Associate Justice Romeo J. Callejo, Sr. After a few days, it was announced that the appointment was recalled or held in abeyance by the Malacañang in view of the question relating to the citizenship of Ong.

Petitioners contended that the subject appointment is patently unconstitutional. Ong is a natural-born Chinese citizen as shown by his birth certificate which also reveals that his father and mother are Chinese. Citing Article 410 and 412 of the Civil Code, they claimed that the said birth certificate is prima facie evidence of the fact that Ong's citizenship at birth is Chinese. Since it is not changed by a judicial order, the Judicial & Bar Council, as well as the whole world, is bound by what is stated therein. Moreover, petitioners asserted that the same prevails over Ong's new Identification Certificate issued by the Bureau of Immigration stating that he is a natural-born Filipino. It must be noted that his old Identification Certificate did not declare the same. Ong's remedy instead is to file an action to correct his citizenship as it appears in his birth certificate. As such, it was prayed that a Temporary Restraining Order (TRO) be issued to prevent and restrain Ong from assuming the office and discharging the functions of Associate Justice of the Court.

Ermita and Ong, on the other hand, claimed, among others, that the latter is a natural-born citizen. This was determined by the Bureau of Immigration and affirmed by the Department of Justice which have the authority and jurisdiction to make determination on matters of citizenship.

ISSUE:

Whether the TRO should be granted to prevent and restrain Ong from assuming the office and discharging the functions of Associate Justice of the Court. (YES)

RULING:

The Court takes judicial notice of the records of Ong's petition to be admitted to the Philippine bar. In the said petition, Ong alleged that he is qualified to be admitted to the Philippine bar because, among others, he is a Filipino citizen. His father, Eugenio Ong Han Seng, a Chinese citizen, was naturalized in 1964 when he was a minor of 11 years and thus he, too, thereby became a Filipino citizen. As part of his evidence, in support of his petition, he submitted the naturalization papers of his father as well as his birth certificate which states that he was a Chinese citizen at birth and that his mother as well as his father were a Chinese citizen. It is clear, therefore, that Ong is a naturalized Filipino citizen. The alleged subsequent recognition of his natural-born status by the Bureau of Immigration and the DOJ cannot amend the final decision of the trial court stating that Ong and his mother were naturalized along with his father.

No substantial change or correction in an entry in a civil register can be made without a judicial order, and, under the law, a change in citizenship status is a substantial change. As such, the proposed change should be threshed out in a proper action. All the parties who may be affected by the entries must notified or represented and evidence must be submitted to prove the allegations of the complaint as well as to prove the contrary.

Republic Act No. 9048 provides in Section 2 (3) that a summary administrative proceeding to correct clerical or typographical errors in a birth certificate cannot apply to a change in nationality. Substantial corrections to the nationality or citizenship of persons recorded in the civil registry should, therefore, be effected through a petition filed in court under Rule 108 of the Rules of Court.

REPUBLIC OF THE PHILIPPINES, *Petitioner*, -versus- TRINIDAD R.A. CAPOTE, *Respondent*.

G.R. No. 157043, FIRST DIVISION, February 2, 2007, CORONA, J.

A petition for change of name must be heard in an adversarial proceeding. A proceeding is adversarial if the party seeking relief has given legal warning to the other party and afforded the latter an opportunity to contest.

There is no doubt that the present petition does not fall under Rule 108 for it is not alleged that the entry in the civil registry suffers from clerical or typographical errors. In this regard, Capote satisfactorily complied with the requirements of an adversarial proceeding by publishing in a newspaper of general circulation the notice of the filing of the petition. With this, all interested parties were deemed notified and the whole world considered bound by the judgment therein. The lower court also furnished the OSG a copy thereof. The fact that no one opposed the petition did not deprive the court of its jurisdiction to hear the same nor does it make the proceeding less adversarial in nature. In any case, considering that

the OSG did not oppose the petition when it had the opportunity to do so, it cannot now complain that the proceedings in the lower court were not adversarial enough.

FACTS:

Trinidad R. A. Capote filed a petition for the change of name of her ward from Giovanni N. Gallamaso to Giovanni Nadores. It was alleged that Giovanni is the illegitimate natural child of Corazon P. Nadores and Diosdado Gallamaso. Considering that he was born prior to the effectivity of the New Family Code, his mother used the surname of his natural father despite the absence of marriage between them. Diosdado, however, failed to take up his responsibilities to him. Now fully aware of how he stands with his father, Giovanni desires to have his surname changed to that of his mother's.

The trial court gave due course to the petition and ordered the publication of the petition in a newspaper of general circulation in Southern Leyte once a week for 3 consecutive weeks. It also directed that the Local Civil Registrar be notified and that the OSG be sent a copy of the petition and order. No opposition to the petition was eventually filed. As such, after the reception of evidence, the trial court rendered a decision ordering the change of name from Giovanni N. Gallamaso to Giovanni Nadores. From this decision, the Republic, through the OSG, filed an appeal questioning the court in granting the petition in a summary proceeding.

ISSUE:

Whether the proceedings were sufficiently adversarial. (YES)

RULING:

A petition for change of name must be heard in an adversarial proceeding unlike in petitions for the cancellation or correction of clerical errors in entries in the civil registry under Rule 108 of the Rules of Court which may be decided through a summary proceeding. A proceeding is adversarial if the party seeking relief has given legal warning to the other party and afforded the latter an opportunity to contest.

There is no doubt that the present petition does not fall under Rule 108 for it is not alleged that the entry in the civil registry suffers from clerical or typographical errors. The relief sought clearly goes beyond correcting erroneous entries although by granting the petition, the result is the same. In this regard, Capote satisfactorily complied with the requirements of an adversarial proceeding by publishing in a newspaper of general circulation the notice of the filing of the petition. With this, all interested parties were deemed notified and the whole world considered bound by the judgment therein. The lower court also furnished the OSG a copy thereof. The fact that no one opposed the petition did not deprive the court of its jurisdiction to hear the same nor does it make the proceeding less adversarial in nature. In any case, considering that the OSG did not oppose the petition when it had the opportunity to do so, it cannot now complain that the proceedings in the lower court were not adversarial enough.

IN RE: PETITION FOR CHANGE OF NAME AND/OR CORRECTION/CANCELLATION OF ENTRY IN CIVIL REGISTRY OF JULIAN LIN CARULASAN WANG ALSO KNOWN AS JULIAN LIN WANG, TO BE AMENDED/CORRECTED AS JULIAN LIN WANG, JULIAN LIN WANG, DULY REPRESENTED BY HIS MOTHER ANNA LISA WANG, *Petitioners*, -versus- CEBU CITY CIVIL REGISTRAR, DULY REPRESENTED BY THE REGISTRAR OSCAR B. MOLO, *Respondent*.

G.R. No. 159966, SECOND DIVISION, March 30, 2005, TINGA, J.

Legitimate and legitimated children are given the right to bear the surnames of their father and their mother. Illegitimate children, on the other hand, are required to use the surname of their mother unless their father recognizes their filiation, in which case, they may bear the latter's surname.

In the case at bar, the only reason advanced by petitioner for the dropping of his middle name is convenience. How such change of name would make his integration into Singaporean society easier and convenient is not clearly established. That the continued use of his middle name would cause confusion and difficulty does not constitute proper and reasonable cause to drop it from his registered complete name.

FACTS:

Julian Lin Carulasan Wang was born in Cebu City on February 20, 1998 to parents Anna Lisa Wang and Sing-Foe Wang who were then not married to each other. When his parents subsequently got married on September 22, 1998, they executed a deed of legitimation of their son so that the child's name was changed from Julian Lin Carulasan to Julian Lin Carulasan Wang.

The parents of Julian Lin Carulasan Wang plan to stay in Singapore for a long time. Since middle names are not carried in a person's name in Singapore, they anticipate that Julian Lin Carulasan Wang will be discriminated there. Moreover, Carulasan sounds funny in Singapore's Mandarin language since they do not have the letter R but if there is, they pronounce it as L. It is for these reasons that the name of Julian Lin Carulasan Wang is requested to be changed to Julian Lin Wang.

The RTC rendered a decision denying the petition, finding that the reason given for the change of name did not fall within the grounds recognized by law. Since the State has an interest in the name of a person, names cannot be changed to suit the convenience of the bearers. The OSG, on the other hand, added that there is no showing that the dropping of the middle name Carulasan is in the best interest of the petitioner.

ISSUE:

Whether dropping the middle name should be allowed. (NO)

RULING:

Legitimate and legitimated children are given the right to bear the surnames of their father and their mother. Illegitimate children, on the other hand, are required to use the surname of their mother unless their father recognizes their filiation, in which case, they may bear the latter's surname. Applying the laws, an illegitimate child whose filiation is not recognized by the father bears only a given name and his mother's surname. He does not have a middle name. It is only when he is legitimated by the subsequent marriage of his parents or acknowledged by the father in a public

document or private handwritten instrument that he bears both his mother's surname as his middle name and his father's surname as his surname, reflecting his status as a legitimated child or an acknowledged illegitimate child.

In the case at bar, the only reason advanced by petitioner for the dropping of his middle name is convenience. How such change of name would make his integration into Singaporean society easier and convenient is not clearly established. That the continued use of his middle name would cause confusion and difficulty does not constitute proper and reasonable cause to drop it from his registered complete name.

In addition, petitioner is only a minor. Considering the nebulous foundation on which his petition for change of name is based, it is best that the matter of change of his name be left to his judgment and discretion when he reaches the age of majority. As he is of tender age, he may not yet understand and appreciate the value of his name. Granting of the same at this point may just prejudice him in his rights under our laws.

PLATON AND LIBRADA CERUILA, *Petitioners*, -versus- ROSILYN DELANTAR, REPRESENTED BY HER GUARDIAN, DEPARTMENT OF SOCIAL WELFARE and DEVELOPMENT, *Respondent*.

G.R. No. 140305, SECOND DIVISION, December 9, 2005, AUSTRIA-MARTINEZ, J.

Section 3, Rule 108 of the Rules of Court, states that:

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.

Unless all possible indispensable parties were duly notified of the proceedings, the same shall be considered as falling much too short of the requirements of the rules. In the case at bar, it is clear that no party could be more interested in the cancellation of Rosilyn's birth certificate than Rosilyn herself. Her filiation, legitimacy, and date of birth are at stake and her hereditary rights may be adversely affected thereby. Considering the Spouses Ceruila's failure to make Rosilyn a party to their petition, the same must be denied.

FACTS:

Spouses Platon and Librada Ceruila filed an action with the RTC for the annulment and cancellation of the birth certificate of Maria Rosilyn Telin Delantar. Prior to this, sometime in 1996, Rosilyn complained her father, Simplicio Delantar, for child abuse, particularly for prostitution. As a result, the latter was incarcerated and the former was committed in favor of DSWD as the whereabouts of the Librada, her mother, was unknown.

In the petition filed by Spouses Ceruila as stated above, they claimed that the birth certificate of Rosilyn was used as an instrument to the crime of simulation of birth and therefore was invalid and spurious considering that:

- Simplicio Delantar, the biological father therein, is merely the foster father and co-guardian in fact of Rosilyn. The name of real natural father is unknown;

- The parents reflected in said certificate as married were actually full blood brother and sister and therefore marriage between the two is virtually impossible;
- The status of Maria Rosilyn is a legitimate child.

During the hearing, no representative from the Civil Registrar of Manila appeared despite the fact that summons was sent to them.

The RTC eventually rendered a decision, granting the petition and cancelling the birth certificate of Rosilyn. Rosilyn, represented by her legal guardian, the DSWD, filed with the CA a petition for the annulment of said judgment. She claimed that she and her guardian were not notified of the first petition and the subsequent judgment and learned about the same only from the news.

The CA reversed RTC. It ruled that since Rosilyn, an indispensable party, was not served with summons, there was a violation of her right to due process.

ISSUE:

- A. Whether the petition for annulment and cancellation of the birth certificate of Rosilyn is a special proceeding. (YES)
- B. Whether the Spouses Ceruila complied with the requirements of Rule 108. (NO)

RULING:

(A) A petition assailing the truthfulness of any entry in the birth certificate, including the date of birth, is a special proceeding that falls under Rule 108 of the Rules of Court which governs the cancellation or correction of entries in the Civil Registry. In the case at bar, the fact of birth of Rosilyn was not questioned. Instead, the petition filed by Spouses Ceruila alleged that material entries in the subject birth certificate have been falsified.

(B) Section 3, Rule 108 of the Rules of Court, states that:

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.

As enunciated in Republic vs. Benemerito, unless all possible indispensable parties were duly notified of the proceedings, the same shall be considered as falling much too short of the requirements of the rules. In the case at bar, it is clear that no party could be more interested in the cancellation of Rosilyn's birth certificate than Rosilyn herself. Her filiation, legitimacy, and date of birth are at stake and her hereditary rights may be adversely affected thereby. The petitioners' claim that even though Rosilyn was never made a party to the proceeding, it is enough that her name was included in the caption of the petition, is without merit. Moreover, it must be noted that only the Civil Registrar of Manila was served summons, who, however, did not participate in the proceedings. This alone is clearly not sufficient to comply with the requirements laid down by the rules.

The petitioners' claim that the lack of summons on Rosilyn was cured by the publication of the order of the trial court setting the case for hearing for 3 consecutive weeks in a newspaper of general circulation, is also untenable. Summons must still be served, not for the purpose of vesting the courts

with jurisdiction, but to comply with the requirements of fair play and due process. This is but proper to afford the person concerned the opportunity to protect her interest if she so chooses. Although there were instances where the Court ruled that the satisfaction of the publication requirement cured the same defect, it must be remembered that earnest efforts were employed in those cases in bringing to court all possible interested parties. Such is not the case at bar.

**REPUBLIC OF THE PHILIPPINES, *Petitioner*, -versus- ROSELIE ELOISA BRINGAS BOLANTE
a.k.a. MARIA ELOISA BRINGAS BOLANTE, *Respondent*.
G.R. No. 160597, SECOND DIVISION, July 20, 2006, GARCIA, J.**

A person can be authorized to change his name appearing in his certificate of birth or civil registry upon showing not only of reasonable cause or any compelling reason which may justify such change, but also that he will be prejudiced by the use of his true and official name. Jurisprudence has recognized certain justifying grounds to warrant a change of name. Among them is when the change will avoid confusion.

In the case at bar, Bolante's submission for a change of name is with proper and reasonable reason. She has, since she started schooling, used the given name and has been known as Maria Eloisa. Her records in government offices including that of her driver's license and professional license all attest to her having used practically all her life the name Maria Eloisa Bringas Bolante. As such, the imperatives of avoiding confusion dictate that the instant petition is granted.

FACTS:

A petition for change of name was commenced by Roselie Eloisa Bringas Bolante also known as Maria Eloisa Bringas Bolante. In her petition before the RTC, she alleged, among other things, the following:

1. That she is a Filipino, of legal age, married, born to spouses Floriano B. Bolante and Paula B. Bringas and a resident since birth of Bangued, Abra;
2. That per records in the Office of the Municipal Civil Registrar, Bangued, Abra, her registered name is Roselie Eloisa Bringas Bolante which name, as far as she can remember, she did not use but instead the name Maria Eloisa Bringas Bolante;
3. That the name Maria Eloisa appears in all her school as well as in her other public and private records; and
4. That her married name is Maria Eloisa B. Bolante-Marbella.

Thus, to prevent confusion, Bolante prayed that her registered name be changed to conform to the name she has always carried and used.

ISSUES:

- A. Whether the Court acquired jurisdiction over the petition. (YES)
- B. Whether the desired change of name should be granted. (YES)

RULING:

(A) Sections 2 and 3, Rule 103 of the Rules of Court prescribe the procedural and jurisdictional requirements for a change of name. Non-compliance with these requirements would be fatal to the jurisdiction of the lower court to hear and determine a petition for change of name.

On the postulate that the initial hearing of a petition for a change of name cannot be set within 4 months from the last publication of the notice of such hearing, the Republic submits that the trial court did not acquire jurisdiction. This must fail. As gleaned from the records, the petition was filed on October 18, 2000 and set for hearing on February 20, 2001 via an Order issued on November 13, 2000. The notice of hearing was published in the November 23, and 30, 2000 and December 7, 2000 issues of the Norluzonian Courier. Counted from the last day, December 7, 2000, of publication of the order, the initial hearing scheduled on February 20, 2001 is indeed within the 4-month prohibited period prescribed under Section 3, Rule 103 of the Rules. Realizing the error committed, the lower court already rectified its mistake by rescheduling, with due notice to all concerned, the initial hearing for several times, finally settling for September 25, 2001, a date outside the prohibition.

The Republic's counter argument that the resetting, in any case, did not cure the jurisdictional defect since notice of the September 25, 2001 setting went unpublished, still must fail. While it is true that the in rem nature of a change of name proceeding necessitates strict compliance with all the jurisdictional requirements, particularly on publication, in order to vest the court with jurisdiction, during the initial hearing, the provincial prosecutor of Abra interposed no objection as to the genuineness, authenticity, relevancy or sufficiency of the exhibits presented to prove the jurisdictional requirements exacted by the Rules. In a very real sense, the Republic fully and knowingly acquiesced in the jurisdiction of the trial court. The peculiar circumstances obtaining in this case and the requirements of fair dealing demand that we accord validity to the subject proceedings.

It cannot be over-emphasized that in a petition for change of name, any interested person may appear at the hearing and oppose the petition. On behalf of the Government, the Solicitor General or his deputy shall appear. The government, as an agency of the people, represents the public and, therefore, the Solicitor General, who appears on behalf of the government, effectively represents the public. In this case, the Solicitor General deputized the provincial prosecutor of Abra for the purpose of appearing in the trial on his behalf. As it were, the provincial prosecutor of Abra was fully apprised of the new dates of the initial hearing. Accordingly, there was no actual need for a republication of the initial notice of the hearing.

(B)The State has an interest in the names borne by individuals for purposes of identification. Changing one's name is a privilege and not a right. Accordingly, a person can be authorized to change his name appearing in his certificate of birth or civil registry upon showing not only of reasonable cause or any compelling reason which may justify such change, but also that he will be prejudiced by the use of his true and official name.

Jurisprudence has recognized certain justifying grounds to warrant a change of name. Among these are: (a) when the name is ridiculous, dishonorable or extremely difficult to write or pronounce; (b) when the change will avoid confusion; (c) when one has been continuously used and been known since childhood by a Filipino name, and was unaware of alien parentage; (d) when the surname causes embarrassment and there is no showing that the desired change of name was for a fraudulent purpose or that the change of name will prejudice public interest.

In the case at bar, Bolante's submission for a change of name is with proper and reasonable reason. She has, since she started schooling, used the given name and has been known as Maria Eloisa. Her records in government offices including that of her driver's license and professional license all attest

to her having used practically all her life the name Maria Eloisa Bringas Bolante. As such, the imperatives of avoiding confusion dictate that the instant petition is granted.

**ROMMEL JACINTO DANTES SILVERIO, *Petitioners*, -versus - REPUBLIC OF THE PHILIPPINES,
Respondent.**

G.R. No. 174689, FIRST DIVISION, October 22, 2007, CORONA, J.

A change of name does not alter one's legal capacity or civil status. RA 9048 does not sanction a change of first name on the ground of sex reassignment. Rather than avoiding confusion, changing petitioner's first name for his declared purpose may only create grave complications in the civil registry and the public interest.

The petition in the trial court in so far as it prayed for the change of petitioner's first name was not within that court's primary jurisdiction as the petition should have been filed with the local civil registrar concerned, assuming it could be legally done. It was an improper remedy because the proper remedy was administrative, that is, that provided under RA 9048. It was also filed in the wrong venue as the proper venue was in the Office of the Civil Registrar of Manila where his birth certificate is kept. More importantly, it had no merit since the use of his true and official name does not prejudice him at all.

FACTS:

On November 26, 2002, petitioner Rommel Jacinto Dantes Silverio filed a petition for the change of his first name and sex in his birth certificate in the Regional Trial Court of Manila, Branch 8. The petition, docketed as SP Case No. 02-105207, impleaded the civil registrar of Manila as respondent.

Petitioner alleged in his petition that he was born in the City of Manila to the spouses Melecio Petines Silverio and Anita Aquino Dantes on April 4, 1962. His name was registered as "Rommel Jacinto Dantes Silverio" in his certificate of live birth (birth certificate). His sex was registered as "male." He further alleged that he is a male transsexual, that is, "anatomically male but feels, thinks and acts as a female" and that he had always identified himself with girls since childhood. Feeling trapped in a man's body, he consulted several doctors in the United States. He underwent psychological examination, hormone treatment and breast augmentation. His attempts to transform himself to a "woman" culminated on January 27, 2001 when he underwent sex reassignment surgery in Bangkok, Thailand.

From then on, petitioner lived as a female and was in fact engaged to be married. He then sought to have his name in his birth certificate changed from "Rommel Jacinto" to "Mely," and his sex from "male" to "female."

The RTC ruled in favor of the petitioner. On August 18, 2003, the Republic of the Philippines, thru the OSG, filed a petition for certiorari in the Court of Appeals. It alleged that there is no law allowing the change of entries in the birth certificate by reason of sex alteration. On February 23, 2006, the Court of Appeals rendered a decision in favor of the Republic.

ISSUE:

Whether or not petitioner may be allowed to change his name and sex in his birth certificate on the ground of sex reassignment.

RULING: NO.

A person's first name cannot be changed on the ground of sex reassignment. The State has an interest in the names borne by individuals and entities for purposes of identification. A change of name is a privilege, not a right. Petitions for change of name are controlled by statutes. In this connection, Article 376 of the Civil Code provides that no person can change his name or surname without judicial authority.

This Civil Code provision was amended by RA 9048 (Clerical Error Law). RA 9048 now governs the change of first name. It vests the power and authority to entertain petitions for change of first name to the city or municipal civil registrar or consul general concerned. The intent and effect of the 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. It likewise lays down the corresponding venue, form and procedure. In sum, the remedy and the proceedings regulating change of first name are primarily administrative in nature, not judicial.

Before a person can legally change his given name, he must present proper or reasonable cause or any compelling reason justifying such change. In addition, he must show that he will be prejudiced by the use of his true and official name. In this case, he failed to show, or even allege, any prejudice that he might suffer as a result of using his true and official name.

Under RA 9048, a correction in the civil registry involving the change of sex is not a mere clerical or typographical error. It is a substantial change for which the applicable procedure is Rule 108 of the Rules of Court. The acts, events or factual errors contemplated under Article 407 of the Civil Code include even those that occur after birth. However, no reasonable interpretation of the provision can justify the conclusion that it covers the correction on the ground of sex reassignment.

To correct simply means "to make or set aright; to remove the faults or error from" while to change means "to replace something with something else of the same kind or with something that serves as a substitute." The birth certificate of petitioner contained no error. All entries therein, including those corresponding to his first name and sex, were all correct. No correction is necessary.

"Status" refers to the circumstances affecting the legal situation (that is, the sum total of capacities and incapacities) of a person in view of his age, nationality and his family membership. A person's sex is an essential factor in marriage and family relations. It is a part of a person's legal capacity and civil status. But there is no such special law in the Philippines governing sex reassignment and its effects. This is fatal to petitioner's cause.

The changes sought by petitioner will have serious and wide-ranging legal and public policy consequences. First, even the trial court itself found that the petition was but petitioner's first step towards his eventual marriage to his male fiancé. However, marriage, one of the most sacred social institutions, is a special contract of permanent union between a man and a woman. One of its essential

requisites is the legal capacity of the contracting parties who must be a male and a female. To grant the changes sought by petitioner will substantially reconfigure and greatly alter the laws on marriage and family relations. It will allow the union of a man with another man who has undergone sex reassignment. Second, there are various laws which apply particularly to women such as the provisions of the Labor Code on employment of women, certain felonies under the Revised Penal Code and the presumption of survivorship in case of calamities under Rule 131 of the Rules of Court, among others. These laws underscore the public policy in relation to women which could be substantially affected if petitioner's petition were to be granted.

REPUBLIC OF THE PHILIPPINES, *Petitioner*, -versus- JENNIFER B. CAGANDAHAN, *Respondent*.

G.R. No. 166676, SECOND DIVISION, September 12, 2008, QUISUMBING, J.

In the absence of a law on the matter, the Court will not dictate on respondent concerning a matter so innately private as one's sexuality and lifestyle preferences, much less on whether or not to undergo medical treatment to reverse the male tendency due to CAH. The Court will not consider respondent as having erred in not choosing to undergo treatment in order to become or remain as a female. Neither will the Court force respondent to undergo treatment and to take medication in order to fit the mold of a female, as society commonly currently knows this gender of the human species. Respondent is the one who has to live with his intersex anatomy. To him belongs the human right to the pursuit of happiness and of health. Thus, to him should belong the primordial choice of what courses of action to take along the path of his sexual development and maturation. In the absence of evidence that respondent is an "incompetent" and in the absence of evidence to show that classifying respondent as a male will harm other members of society who are equally entitled to protection under the law, the Court affirms as valid and justified the respondent's position and his personal judgment of being a male.

FACTS:

On December 11, 2003, respondent Jennifer Cagandahan filed a Petition for Correction of Entries in Birth Certificate before the RTC, Branch 33 of Siniloan, Laguna.

In her petition, she alleged that she was born on January 13, 1981 and was registered as a female in the Certificate of Live Birth but while growing up, she developed secondary male characteristics and was diagnosed to have Congenital Adrenal Hyperplasia (CAH) which is a condition where persons thus afflicted possess both male and female characteristics. She further alleged that she was diagnosed to have clitoral hypertrophy in her early years and at age six, underwent an ultrasound where it was discovered that she has small ovaries. At age thirteen, tests revealed that her ovarian structures had minimized, she has stopped growing and she has no breast or menstrual development. She then alleged that for all interests and appearances as well as in mind and emotion, she has become a male person. Thus, she prayed that her birth certificate be corrected such that her gender be changed from female to male and her first name be changed from Jennifer to Jeff.

To prove her claim, respondent testified and presented the testimony of Dr. Michael Sionzon of the Department of Psychiatry, University of the Philippines-Philippine General Hospital. Dr. Sionzon issued a medical certificate stating that respondent's condition is known as CAH. He explained that genetically respondent is female but because her body secretes male hormones, her female organs did not develop normally and she has two sex organs – female and male. He testified that this condition is very rare, that respondent's uterus is not fully developed because of lack of female hormones, and that she has no monthly period. He further testified that respondent's condition is

permanent and recommended the change of gender because respondent has made up her mind, adjusted to her chosen role as male, and the gender change would be advantageous to her.

The RTC granted respondent's petition. The Court is convinced that petitioner has satisfactorily shown that he is entitled to the reliefs prayed for. Petitioner has adequately presented to the Court very clear and convincing proofs for the granting of his petition. It was medically proven that petitioner's body produces male hormones, and first his body as well as his action and feelings are that of a male. He has chosen to be male. He is a normal person and wants to be acknowledged and identified as a male. His name was change from Jennifer to Jeff and his gender from female to male.

Thus, this petition by the Office of the Solicitor General (OSG) seeking a reversal of the abovementioned ruling.

ISSUE:

Whether the trial court erred in ordering the correction of entries in the birth certificate of respondent to change her sex or gender, from female to male, on the ground of her medical condition known as CAH, and her name from "Jennifer" to "Jeff," under Rules 103 and 108 of the Rules of Court.

RULING: NO.

The determination of a person's sex appearing in his birth certificate is a legal issue and the court must look to the statutes. Under Rep. Act No. 9048, a correction in the civil registry involving the change of sex is not a mere clerical or typographical error. It is a substantial change for which the applicable procedure is Rule 108 of the Rules of Court.

Respondent undisputedly has CAH. This condition causes the early or "inappropriate" appearance of male characteristics. A person, like respondent, with this condition produces too much androgen, a male hormone. A newborn who has XX chromosomes coupled with CAH usually has a (1) swollen clitoris with the urethral opening at the base, an ambiguous genitalia often appearing more male than female; (2) normal internal structures of the female reproductive tract such as the ovaries, uterus and fallopian tubes; as the child grows older, some features start to appear male, such as deepening of the voice, facial hair, and failure to menstruate at puberty. About 1 in 10,000 to 18,000 children are born with CAH.

In deciding this case, we consider the compassionate calls for recognition of the various degrees of intersex as variations which should not be subject to outright denial. "It has been suggested that there is some middle ground between the sexes, a 'no-man's land' for those individuals who are neither truly 'male' nor truly 'female'." The current state of Philippine statutes apparently compels that a person be classified either as a male or as a female, but this Court is not controlled by mere appearances when nature itself fundamentally negates such rigid classification.

In the instant case, if we determine respondent to be a female, then there is no basis for a change in the birth certificate entry for gender. But if we determine, based on medical testimony and scientific development showing the respondent to be other than female, then a change in the subject's birth certificate entry is in order.

Ultimately, we are of the view that where the person is biologically or naturally intersex the determining factor in his gender classification would be what the individual, like respondent, having reached the age of majority, with good reason thinks of his/her sex. Respondent here thinks of himself as a male and considering that his body produces high levels of male hormones (androgen) there is preponderant biological support for considering him as being male. Sexual development in cases of intersex persons makes the gender classification at birth inconclusive. It is at maturity that the gender of such persons, like respondent, is fixed. Respondent here has simply let nature take its course and has not taken unnatural steps to arrest or interfere with what he was born with. And accordingly, he has already ordered his life to that of a male. Respondent could have undergone treatment and taken steps, like taking lifelong medication, to force his body into the categorical mold of a female but he did not. He chose not to do so. Nature has instead taken its due course in respondent's development to reveal more fully his male characteristics.

In so ruling we do no more than give respect to (1) the diversity of nature; and (2) how an individual deals with what nature has handed out. In other words, we respect respondent's congenital condition and his mature decision to be a male. Life is already difficult for the ordinary person. We cannot but respect how respondent deals with his unordinary state and thus help make his life easier, considering the unique circumstances in this case.

As for respondent's change of name under Rule 103, this Court has held that a change of name is not a matter of right but of judicial discretion, to be exercised in the light of the reasons adduced and the consequences that will follow. The trial court's grant of respondent's change of name from Jennifer to Jeff implies a change of a feminine name to a masculine name. Considering the consequence that respondent's change of name merely recognizes his preferred gender, we find merit in respondent's change of name. Such a change will conform with the change of the entry in his birth certificate from female to male.

**COMMISSION ON HIGHER EDUCATION, *Petitioner*, -versus - ATTY. FELINA S. DASIG,
Respondent.**

G.R. No. 172776, EN BANC, December 17, 2008, PER CURIAM

The procedure under Rule 108 of the Rules of Court was not applicable to the students who only wanted to correct entries in their academic records to conform to their birth certificates.

FACTS:

Respondent Felina Dasig (Dasig) was the Chief Education Program Specialist of the Standards Development Division, Office of Programs and Standards, of petitioner Commission on Higher Education (CHED). She had also served as the officer-in-charge of the Legal Affairs Service (LAS) of the CHED.

In a Memorandum dated 9 October 1998,⁴ the Director of the LAS brought to the attention of the CHED several complaints on the alleged anomalous activities of Dasig during her stint as the officer-in-charge of LAS. Attached to the memorandum were the sworn affidavits of the complainants. The complainants consisted of Rosalie Dela Torre (Dela Torre), Rocella Eje (Eje) and Jacqueline Ng (Ng), students who applied to have their names corrected in their scholastic records to conform with their birth certificates; Maximina Sister (Sister), the CHED Human Resource Management Assistant assigned to the Records Unit; and Don Cesar Mamaril (Mamaril), Leysamin Tebelin (Tebelin), Joemar

Delgado (Delgado), and Ellen Grace Nugpo (Nugpo), all from the CHED LAS staff. All the students alleged that Dasig tried to exact money from them under the pretense of attorney's fees in connection with their requests for correction of names in their academic records. Dasig's former staff at the LAS corroborated the allegations of the students. They also alleged that Dasig attempted to persuade them to participate in anomalous activities. Sister, in turn, claimed that Dasig refused to return the Official Record Book of the CHED which the latter borrowed from her.

Dasig submitted a Memorandum and a Counter-Affidavit to answer the charges against her. In her memorandum, she denied all the charges against her. She alleged that it was not within the CHED's power to entertain the request for change of name so she advised the students to file petitions in court. Dasig denied that the alleged closed-door meeting on 3 September 1998 with her former staff at the LAS in which she tried to persuade them to accept P20,000.00 from Ng had ever taken place for she was then allegedly in the Office of the Chairman for the Investigation and Performance Audit of Dr. Jaime Gellor, then President of the Central Mindanao University. As to the charge that she improperly took the Official Record Book on 7 September 1998 at around 3:00 p.m. and refused to return the same, Dasig insisted that she was inside the LAS hearing room during that time conducting the preliminary conference on the administrative complaint filed by Dr. Aleli Cornista against Dr. Magdalena Jasmin, Dr. Perlita Cabilangan, Dr. Arsenia Lumba, and Dr. Teresita de Leon, all from CHED Region 3, together with Special Investigators Buenaventura Macatangay (Macatangay) and Eulando Lontoc (Lontoc).

In her counter-affidavit, Dasig explained that she had not offered her services as a lawyer to any person and that she had never represented any clients other than the immediate members of her family ever since she was admitted to the bar. Dasig denied the allegation that she had offered to look for a lawyer for the petitioners since it was inconceivable to have a lawyer who would accept P5,000.00 as attorney's fees.

The CHED formed a hearing committee and designated the members to investigate the complaints against Dasig in Resolution No. 166-98.9 The hearing committee concluded that there was substantial evidence on record to hold Dasig liable for dishonesty, grave misconduct, and conduct prejudicial to the best interest of the service and recommended that she be dismissed. The Civil Service Commission upheld the decision of the CHED¹² and denied Dasig's motion for reconsideration. Dasig filed a Petition for Review under Rule 43 with the Court of Appeals. While the case was pending before the appellate court, this Court came out with a Resolution dated 1 April 2003 which ordered the disbarment of Dasig. Several high-ranking officers of the CHED filed an administrative case for disbarment against Dasig, charging her with gross misconduct in violation of the Attorney's Oath "for having used her public office to secure financial spoils to the detriment of the dignity and reputation of the CHED" with one of the grounds for disbarment being Dasig's exaction of money from Dela Torre, Eje and Ng.

ISSUE:

Whether or not correction of entries in the school records of students is within the ambit or Rule 108 of the Rules of Court.

RULING: NO.

The Court of Appeals erred when it found that Dasig had merely attempted to practice law while employed at the CHED in offering her services to the three students for the correction of their names through judicial proceedings under Rule 108. The procedure under Rule 108 of the Rules of Court was not applicable to the students who only wanted to correct entries in their academic records to conform to their birth certificates. Rule 108 is for the purpose of correcting or canceling entries in the civil registry involving (a) births; (b) marriages; (c) deaths; (d) legal separations; (e) judgments of annulments of marriage; (f) judgments declaring marriages void from the beginning; (g) legitimations; (h) adoptions; (i) acknowledgments of natural children; (j) naturalization; (k) election, loss or recovery of citizenship; (l) civil interdiction; (m) judicial determination of filiation; (n) voluntary emancipation of a minor; and (o) changes of name. Hence, there is no justification for Dasig to ask for money under the guise of attorney's fees and litigation expenses when it was her duty as the officer-in-charge of LAS to either approve or disapprove the students' request to change entries in their academic records to conform to their birth certificates.

FRANCLER P. ONDE, *Petitioner*, -versus - THE OFFICE OF THE LOCAL CIVIL REGISTRATION OF LAS PIÑAS CITY, *Respondent*.

G.R. No. 197174, THIRD DIVISION, September 10, 2014, VILLARAMA, JR., J.

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.

Furthermore, 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.

FACTS:

Petitioner filed a petition² for correction of entries in his certificate of live birth before the RTC and named respondent Office of the Local Civil Registrar of Las Piñas City as sole respondent. Petitioner alleged that he is the illegitimate child of his parents Guillermo A. Onde and Matilde DC Pakingan, but his birth certificate stated that his parents were married. His birth certificate also stated that his mother's first name is Tely and that his first name is Franc Ler. He prayed that the following entries on his birth certificate be corrected as follows:

Entry	From	To
1) Date and place of marriage of his parents	December 23, 1983 - Bicol	Not Married
2) First name of his mother	Tely	Matilde
3) His first name	Franc Ler	Francler

In its Order dated October 7, 2010, the RTC dismissed the petition for correction of entries on the ground that it is insufficient in form and substance. It ruled that the proceedings must be adversarial since the first correction is substantial in nature and would affect petitioner's status as a legitimate

child. It was further held that the correction in the first name of petitioner and his mother can be done by the city civil registrar under Republic Act (R.A.) No. 9048.

ISSUES:

1. Whether or not the Onde's first name and that of his mother appearing in his birth certificate may be changed by the civil registrar.
2. Whether or not the change in the entry of marriage of the petitioner's parents requires adversarial proceedings.

RULING:

1. **YES.** 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. 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.

In *Silverio v. Republic*, 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 the proceedings regulating change of first name are primarily administrative in nature, not judicial. In *Republic v. Cagandahan*, 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.

2. **YES.** 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*, the Court 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.

The Court also stressed 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.

REPUBLIC OF THE PHILIPPINES, *Petitioner*, -versus - MERLINDA L. OLAYBAR, *Respondent*.

G.R. No. 189538, THIRD DIVISION, February 10, 2014, PERALTA, J.

It is true that in special proceedings, formal pleadings and a hearing may be dispensed with, and the remedy [is] granted upon mere application or motion. However, a special proceeding is not always summary. The procedure laid down in Rule 108 is not a summary proceeding per se. It requires publication of the petition; it mandates the inclusion as parties of all persons who may claim interest which would be affected by the cancellation or correction; it also requires the civil registrar and any person in interest to file their opposition, if any; and it states that although the court may make orders expediting the proceedings, it is after hearing that the court shall either dismiss the petition or issue an order granting the same. Thus, as long as the procedural requirements in Rule 108 are followed, it is the appropriate adversary proceeding to effect substantial corrections and changes in entries of the civil register.

FACTS:

Merlina Olaybar requested from the NSO a Certificate of No Marriage (CENOMAR) as one of the requirements for her marriage with her boyfriend of five years. Upon receipt thereof, she discovered that she was already married to a certain Ye Son Sune, a Korean National, on June 24, 2002, at the Office of the MTCC. She denied having contracted said marriage and claimed that she did not know the alleged husband; she did not appear before the solemnizing officer; and, that the signature appearing in the marriage certificate is not hers. She, thus, filed a Petition for Cancellation of Entries in the Marriage Contract, especially the entries in the wife portion thereof.

During trial, respondent testified on her behalf and explained that she could not have appeared before Judge Mamerto Califlores, the supposed solemnizing officer, at the time the marriage was allegedly celebrated, because she was then in Makati working as a medical distributor in Hansao Pharma. She completely denied having known the supposed husband, but she revealed that she recognized the named witnesses to the marriage as she had met them while she was working as a receptionist in Tadel's Pension House. She believed that her name was used by a certain Johnny Singh, who owned a travel agency, whom she gave her personal circumstances in order for her to obtain a passport. She also presented as witness a certain Eufrocina Natinga, an employee of MTCC, who confirmed that the marriage of Ye Son Sune was indeed celebrated in their office, but claimed that the alleged wife who appeared was definitely not respondent.

Lastly, a document examiner testified that the signature appearing in the marriage contract was forged. The RTC granted the petition. Petitioner, however, moved for the reconsideration of the assailed Decision on the grounds that: (1) there was no clerical spelling, typographical and other innocuous errors in the marriage contract for it to fall within the provisions of Rule 108; and (2) granting the cancellation of all the entries in the wife portion of the alleged marriage contract is, in effect, declaring the marriage void ab initio.

ISSUE:

Whether or not the cancellation of the entry of marriage was proper.

RULING: YES.

Rule 108 of the Rules of Court provides the procedure for cancellation or correction of entries in the civil registry. The proceedings may either be summary or adversary. If the correction is clerical, then the procedure to be adopted is summary. If the rectification affects the civil status, citizenship or nationality of a party, it is deemed substantial, and the procedure to be adopted is adversary.

In filing the petition for correction of entry under Rule 108, respondent made the Local Civil Registrar of Cebu City, as well as her alleged husband Ye Son Sune, as parties-respondents. It is likewise undisputed that the procedural requirements set forth in Rule 108 were complied with.

Aside from the certificate of marriage, no such evidence was presented to show the existence of marriage. Rather, respondent showed by overwhelming evidence that no marriage was entered into and that she was not even aware of such existence. The testimonial and documentary evidence clearly established that the only "evidence" of marriage which is the marriage certificate was a forgery. While we maintain that Rule 108 cannot be availed of to determine the validity of marriage, we cannot nullify the proceedings before the trial court where all the parties had been given the opportunity to contest the allegations of respondent; the procedures were followed, and all the evidence of the parties had already been admitted and examined.

Respondent indeed sought, not the nullification of marriage as there was no marriage to speak of, but the correction of the record of such marriage to reflect the truth as set forth by the evidence. Otherwise stated, in allowing the correction of the subject certificate of marriage by cancelling the wife portion thereof, the trial court did not, in any way, declare the marriage void as there was no marriage to speak of.

RE: PETITION FOR DECLARATION OF ABSENCE OF ROBERTO L. REYES. ERLINDA REYNOSO REYES, *Petitioner*, -versus - HON, JOSE P. ALEJANDRO, in his capacity as Judge, Court of First Instance of Cavite, Branch II, Cavite City, *Respondent*.

G.R. No. L-32026, FIRST DIVISION, January 16, 1986, PATAJO, J.

The need to have a person judicially declared an absentee is when he has properties which have to be taken care of or administered by a representative appointed by the Court (Article 384, Civil Code); the spouse of the absentee is asking for separation of property (Article 191, Civil Code) or his wife is asking the Court that the administration of an classes of property in the marriage be transferred to her (Article 196, Civil Code). The petition to declare the husband an absentee and the petition to place the management of the conjugal properties in the hands of the wife may be combined and adjudicated in the same proceedings.

FACTS:

In a petition filed on October 25, 1969 Erlinda Reynoso prayed for the declaration of the absence of her husband Roberto L. Reyes alleging that her husband had been absent from their conjugal dwelling

since April 1962 and since then had not been heard from and his whereabouts unknown. The petition further alleged that her husband left no will nor any property in his name nor any debts.

The evidence presented by petitioner in support of her petition established that she and Roberto L. Reyes were married on March 20, 1960; that sometime in April 1962 her husband left the conjugal home due to some misunderstanding over personal matters; that since then petitioner has not received any news about the whereabouts of her husband; that they have not acquired any properties during their marriage and that they have no outstanding obligation in favor of anyone; that her only purpose in filing the petition is to establish the absence of her husband, invoking the provisions of Rule 107 of the New Rules of Court and Article 384 of the Civil Code.

After hearing the Court a quo dismissed the petition on the ground that since Roberto L. Reyes left no properties there was no necessity to declare him judicially an absentee.

ISSUE:

Whether or not the trial court erred in not declaring Roberto Reyes as an absentee.

RULING: NO.

A perusal of Rule 107 of the Rules of Court on absentees reveals that it is based on the provisions of Title XIV of the New Civil Code on absence. And the reason and purpose of the provisions of the New Civil Code on absence (Arts. 381 to 396) are: (1) The interest of the person himself who has disappeared; (2) The rights of third parties against the absentee, especially those who have rights which would depend upon the death of the absentee; and (3) The general interest of society which may require that property does not remain abandoned without someone representing it and without an owner.

It will thus be noted that said provisions of the New Civil Code are concerned with absence only with reference to its effects on property. Article 384, New Civil Code, which is reproduced from Article 184 of the old Code, and relied upon by herein petitioner, refers to the second period or stage of absence, and specifically indicates the precise moment when the same may begin. Thus, this article provides that after the lapse of two (2) years without any news about the absentee or since the receipt of the last news, and five (5) years in case the absentee has left a person in charge of the administration of his property, his absence may be declared by the Court. The primordial purpose of this declaration is to provide for an administrator of the property of the absentee. It cannot be said that because of the comma (,) between the words 'news' and 'and', the two-year period mentioned in the first part of the law has no reference to or bearing on the property of the absentee.

For the purposes of the civil marriage law, it is not necessary to have the former spouse judicially declared an absentee. The declaration of absence made in accordance with the provisions of the Civil Code has for its sole purpose to enable the taking of the necessary precautions for the administration of the estate of the absentee. For the celebration of civil marriage, however, the law only requires that the former spouse has been absent for seven consecutive years at the time of the second marriage, that the spouse present does not know his or her former spouse to be living, that such former spouse is generally reputed to be dead and the spouse present so believes at the time of the celebration of the marriage.

RICARDO S. SILVERIO, JR., *Petitioner*, -versus COURT OF APPEALS (Fifth Division) and NELIA S. SILVERIO-DEE, *Respondents*.

G.R. No. 178933, THIRD DIVISION, September 16, 2009, VELASCO, JR., J.

A final order is one that disposes of the subject matter in its entirety or terminates a particular proceeding or action, leaving nothing else to be done but to enforce by execution what has been determined by the court, while an interlocutory order is one which does not dispose of the case completely but leaves something to be decided upon.

Additionally, it is only after a judgment has been rendered in the case that the ground for the appeal of the interlocutory order may be included in the appeal of the judgment itself. The interlocutory order generally cannot be appealed separately from the judgment. It is only when such interlocutory order was rendered without or in excess of jurisdiction or with grave abuse of discretion that certiorari under Rule 65 may be resorted to.

FACTS:

The instant controversy stemmed from the settlement of estate of the deceased Beatriz Silverio. After her death, her surviving spouse, Ricardo Silverio, Sr., filed an intestate proceeding for the settlement of her estate. On November 16, 2004, during the pendency of the case, Ricardo Silverio, Jr. filed a petition to remove Ricardo C. Silverio, Sr. as the administrator of the subject estate. On November 22, 2004, Edmundo S. Silverio also filed a comment/opposition for the removal of Ricardo C. Silverio, Sr. as administrator of the estate and for the appointment of a new administrator. The RTC issued an Order granting the petition and removing Ricardo Silverio, Sr. as administrator of the estate, while appointing Ricardo Silverio, Jr. as the new administrator.

On January 26, 2005, Nelia S. Silverio-Dee filed a Motion for Reconsideration of the Order dated January 3, 2005, as well as all other related orders.

On February 4, 2005, Ricardo Silverio Jr. filed an Urgent Motion for an Order Prohibiting Any Person to Occupy/Stay/Use Real Estate Properties Involved in the Intestate Estate of the Late Beatriz Silverio, Without Authority from the Honorable Court. On May 31, 2005, the RTC issued an Omnibus Order affirming its Order dated January 3, 2005 and denying private respondent's motion for reconsideration. In the Omnibus Order, the RTC also authorized Ricardo Silverio, Jr. to, upon receipt of the order and immediately exercise his duties as administrator of the subject estate.

The RTC in its Order dated December 12, 2005 also recalled its previous order granting Ricardo Silverio, Jr. with letters of administration over the intestate estate of Beatriz Silverio and reinstating Ricardo Silverio, Sr. as the administrator. From the Order dated December 12, 2005, Ricardo Silverio, Jr. filed a motion for reconsideration which was denied by the RTC in an Order dated October 31, 2006. In the same order, the RTC also allowed the sale of various properties of the intestate estate of the late Beatriz Silverio to partially settle estate taxes, penalties, interests and other charges due thereon. Among the properties authorized to be sold was the one located at No. 3 Intsia Road, Forbes Park, Makati City.

On January 6, 2006, Nelia Silverio-Dee filed a Notice of Appeal dated January 5, 2006 from the Order dated December 12, 2005 while the Record on Appeal dated January 20, 2006 was filed on January 23, 2006.

On October 23, 2006, Ricardo Silverio, Jr. filed a Motion to Dismiss Appeal and for Issuance of a Writ of Execution against the appeal of Nelia Silverio-Dee on the ground that the Record on Appeal was filed ten (10) days beyond the reglementary period pursuant to Section 3, Rule 41 of the Rules of Court.

On April 2, 2007, the RTC issued an Order denying the appeal on the ground that it was not perfected within the reglementary period. The RTC further issued a writ of execution for the enforcement of the Order dated May 31, 2005 against private respondent to vacate the premises of the property. Private respondent filed a Petition for Certiorari and Prohibition (With Prayer for TRO and Writ of Preliminary Injunction) dated May 2, 2007 with the CA.

On May 4, 2007, the CA issued the assailed Resolution granting the prayer for the issuance of a TRO. In issuing the TRO, the CA ruled that the Notice of Appeal was filed within the reglementary period provided by the Rules of Court applying the "fresh rule period" enunciated by the Court in *Neypes v. Court of Appeals*. Afterwards, on July 6, 2007, the CA issued the assailed decision granting the petition of private respondent.

ISSUE:

Whether or not the Omnibus Order dated May 31, 2005 is an interlocutory order.

RULING: YES.

To our mind, the court a quo's ruling clearly constitutes a final determination of the rights of the petitioner as the appealing party. As such, the Omnibus Order, dated May 31, 2002 (the predecessor of the Order dated December 12, 2002) is a final order; hence, the same may be appealed, for the said matter is clearly declared by the rules as appealable and the proscription does not apply.

In the instant case, Nelia Silverio-Dee appealed the May 31, 2005 Order of the RTC on the ground that it ordered her to vacate the premises of the property located at No. 3 Intsia Road, Forbes Park, Makati City. On that aspect the order is not a final determination of the case or of the issue of distribution of the shares of the heirs in the estate or their rights therein. It must be borne in mind that until the estate is partitioned, each heir only has an inchoate right to the properties of the estate, such that no heir may lay claim on a particular property. Although the right of an heir over the property of the decedent is inchoate as long as the estate has not been fully settled and partitioned, the law allows a co-owner to exercise rights of ownership over such inchoate right.

It is, thus, relevant to note that in Rule 84, Sec. 2 of the Rules of Court, the administrator may only deliver properties of the estate to the heirs upon order of the Court. Similarly, under Rule 90, Sec. 1 of the Rules of Court, the properties of the estate shall only be distributed after the payment of the debts, funeral charges, and other expenses against the estate, except when authorized by the Court.

Verily, once an action for the settlement of an estate is filed with the court, the properties included therein are under the control of the intestate court. And not even the administrator may take possession of any property that is part of the estate without the prior authority of the Court.

In the instant case, the purported authority of Nelia Silverio-Dee, which she allegedly secured from Ricardo Silverio, Sr., was never approved by the probate court. She, therefore, never had any real interest in the specific property located at No. 3 Intsia Road, Forbes Park, Makati City. As such, the May 31, 2005 Order of the RTC must be considered as interlocutory and, therefore, not subject to an appeal.

Thus, private respondent employed the wrong mode of appeal by filing a Notice of Appeal with the RTC. Hence, for employing the improper mode of appeal, the case should have been dismissed.

The implication of such improper appeal is that the notice of appeal did not toll the reglementary period for the filing of a petition for certiorari under Rule 65, the proper remedy in the instant case. This means that private respondent has now lost her remedy of appeal from the May 31, 2005 Order of the RTC.

