

**JIMMY T. GO, PETITIONER, VS. ALBERTO T. LOOYUKO,  
RESPONDENT.***G.R. NO. 147923. October 26, 2007*

Ponente: VELASCO, JR., J.

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Before us are three (3) petitions. The first,[1] G.R. No. 147962, is for certiorari under Rule 65. It assails the February 12, 2001 Resolution[2] of the Court of Appeals (CA) in CA-G.R. SP No. 62438, which granted a Writ of Preliminary Injunction in favor of respondent Looyuko restraining the Orders of the Pasig City Regional Trial Court (RTC), Branch 69, from enforcing the Orders dated September 25, 2000,[3] December 19, 2000,[4] and December 29, 2000[5] in Civil Case No. 67921 entitled Jimmy T. Go v. Alberto T. Looyuko for Specific Performance, Accounting, Inventory of Assets and Damages; also questioned is the April 24, 2001 CA Resolution[6] which rejected petitioner's plea for reconsideration.

G.R. No. 147923[7] assails the September 11, 2000 CA Decision[8] in CA-G.R. SP No. 58639, which upheld the December 16, 1999[9] Makati City RTC Order denying the requested inhibition of RTC Judge Nemesio Felix (now retired) and the March 8, 2000 Order[10] which denied the recall of the December 16, 1999 Order and which likewise required the prosecution to make a formal offer of evidence. Also challenged is the March 27, 2001 CA Resolution[11] denying petitioner's Motion for Reconsideration.

The third, G.R. No. 154035,[12] assails the January 31, 2002 CA Decision[13] in CA-G.R. SP No. 62296, which affirmed the Makati City RTC May 9, 2000 Order[14] in Criminal Case No. 98-1643, denying petitioner's prayer to defer submission of the formal offer of evidence and at the same time granting leave to respondent to file demurrer to evidence, and the September 22, 2000 Order[15] denying reconsideration of the May 9, 2000 Order. Likewise challenged is the June 3, 2002 CA Resolution[16] of the CA disallowing petitioner's Motion for Reconsideration.

The second, G.R. No. 147923, and third, G.R. No. 154035, petitions under Rule 45 of the Rules of Court arose from Criminal Case No. 98-1643 entitled *People of the Philippines v. Alberto T. Looyuko* for Estafa under Article 315, paragraph 1 (b) of the Revised Penal Code before the Makati City RTC, Branch 56.

In G.R. No. 154035, we consolidated the three petitions having originated from the same criminal case involving the same parties with interrelated issues. Although the latter petition raises the issue of the existence of a business partnership and propriety of the conduct of the inventory of assets and properties of Noah's Ark Sugar Refinery in Civil Case No. 67921, all the foregoing actions trace their beginnings from the same factual milieu.[17]

**The Facts**

Petitioner Go and respondent Looyuko were business associates. Respondent is the registered owner of Noah's Ark Merchandising, a sole proprietorship, which includes Noah's Ark International, Noah's Ark Sugar Carriers,

Noah's Ark Sugar Truckers, Noah's Ark Sugar Repacker, Noah's Ark Sugar Insurers, Noah's Ark Sugar Terminal, Noah's Ark Sugar Building and the land on which the building stood, and Noah's Ark Sugar Refinery, and the plant/building/machinery in the compound and the land on which the refinery is situated. These businesses are collectively known as the Noah's Ark Group of Companies. Go was the business manager or chief operating officer of the group of companies.

Sometime in 1997, the business associates had a falling out that spawned numerous civil lawsuits. Among these actions are Civil Case No. 67921 and Criminal Case No. 98-1643 from which arose several incidents which eventually became subject of these consolidated petitions.

Criminal Case No. 98-1643

On May 21, 1998, petitioner filed *People of the Philippines v. Alberto T. Looyuko*, an Affidavit Complaint<sup>[18]</sup> before the Makati City RTC, Branch 56, charging respondent with Estafa under Article 315, paragraph 1 (b) of the Revised Penal Code. The case was docketed as Criminal Case No. 98-1643. Petitioner alleged that respondent misappropriated and converted in his name petitioner's 41,376 China Banking Corporation (CBC) shares of stock. Petitioner averred that he entrusted the stock certificates to respondent for the latter to sell. The Information reads---:

That sometime during the month of May, 1997 or prior thereto, in the City of Makati, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, received in trust from complainant Jimmy T. Go China Banking Corporation stock certificates numbers 25447, 25449, 25450, 26481, 28418, 30916, 32501, 34697 and 36713 representing the 41,376 shares of stocks of the complainant with China Banking Corporation, with a market value of P1,400.00 per share, more or less, with the obligation on the part of the accused to sell the same and remit the proceeds thereof to the complainant, but the accused, once in possession of said stock certificates, far from complying with his aforesaid obligation, with intent to gain and abuse of confidence, did then and there willfully, unlawfully and feloniously misappropriated, misapply and convert the said shares of stocks to his own personal benefit by causing the transfer of said stock certificates to his name considering that the same were endorsed in blank by the complainant out of the latter's trust to the accused, and the accused never paid the market value of said shares of stocks, which is P1,400.00 per share, more or less, or a total market value of P57,926,400.00 for the 41,376 shares of stocks, to the damage and prejudice of the complainant in the amount of P7,926,400.00.

CONTRARY TO LAW.<sup>[19]</sup>

After respondent pleaded "Not Guilty," and after the testimonies of the prosecution witnesses among them, Go and Amalia de Leon, an employee of CBC, who testified that certificates of stocks in Go's name were cancelled and new certificates were issued in Looyuko's name. Earlier, subpoena ad testificandum and subpoena duces tecum were issued to Peter Dee, President of CBC, Atty. Arsenio Lim, Corporate Secretary of CBC, and Gloria Padecio. The trial court also felt no need for the testimonies of Dee, Lim, and Padecio and ordered the prosecution to offer its evidence.

Petitioner filed a Motion for Reconsideration and asked that the prosecution be allowed to present its last witness from Amsteel Securities, Inc., Bohn Bernard J. Briones. The RTC granted the motion. However, at the conclusion of Briones' testimony, the prosecution moved to subpoena Alvin Padecio which was vehemently objected to by the defense. The trial court denied the motion. The prosecution thereafter opted to ask for ten (10) days to formally offer its documentary evidence. The trial court granted the request.

Instead of filing its formal offer of evidence, the prosecution filed an Urgent Motion for Reconsideration,<sup>[20]</sup> then a Supplemental Motion with Manifestation, and a Second Supplemental Motion with Manifestation,<sup>[21]</sup> all praying that the testimony of Alvin Padecio be allowed.

For his part, respondent filed a Motion to Declare the Prosecution as Having Waived its Right to Make a Formal Offer of Evidence.[22] Hence, petitioner filed an Omnibus Motion to Withdraw the Urgent Motion for Reconsideration with Motion for Inhibition.[23]

On December 16, 1999, the trial court denied petitioner's motion for inhibition;[24] petitioner's motion to declare the prosecution to have waived its right to file formal offer of evidence; and gave the prosecution a last chance to submit its formal offer of documentary evidence within ten (10) days from notice.[25]

Petitioner moved to defer compliance with the submission of its formal offer of documentary evidence pending petitioner's motion for reconsideration of the trial court's December 16, 1999 Order denying petitioner's motion for inhibition.[26] The RTC denied petitioner's motion and granted the prosecution a last opportunity to submit its formal offer of documentary evidence within five (5) days from notice.[27]

Frustrated, petitioner adamantly reiterated his motion for inhibition in a Manifestation/Motion[28] praying that the trial court reconsider its Order directing the prosecution to formally offer its documentary evidence in deference to the petition for certiorari it intends to file with the CA, where it would assail the December 16, 1999 and March 8, 2000 Orders denying the inhibition of the judge.

Subsequently, petitioner filed a Petition for Certiorari[29] under Rule 65 before the CA. It again sought the reversal of the orders denying his motion for inhibition. The petition was docketed as CA-G.R. SP No. 58639.

Meanwhile, before the RTC hearing the criminal case, respondent filed an Omnibus Motion[30] dated March 20, 2000 to declare petitioner to have rested his case on the basis of the prosecution's testimonial evidence and to grant respondent leave to file his demurrer to evidence. The RTC denied the Omnibus Motion. Petitioner timely filed a Motion for Reconsideration/Manifestation, which was denied. Respondent filed his demurrer to evidence incorporating in it his offer of evidence.

Petitioner filed another petition for certiorari before the CA, docketed as CA-G.R. SP No. 62296. It sought to reverse the orders of the trial court declaring petitioner to have waived his right to formally offer his documentary evidence and allowing respondent to file a demurrer to evidence.

While these motions were being considered by the trial court, petitioner filed an administrative case docketed as OCA I.P.I. No. 00-971-RTJ against the trial court Presiding Judge Nemesio S. Felix. It charged Judge Felix with Partiality, relative to Criminal Case No. 98-1643.

Citing the administrative case he filed against Judge Felix, petitioner filed a Second Motion for Voluntary Inhibition[31] before the trial court. The trial court denied the second motion.[32] His Motion for Reconsideration was opposed[33] by respondent.

Civil Case No. 67921

Meanwhile, during the pendency of Crim. Case No. 98-1643, on May 23, 2000, petitioner filed a Complaint [34] docketed as Civil Case No. 67921 entitled Jimmy T. Go v. Alberto T. Looyuko for Specific Performance, Accounting, Inventory of Assets and Damages against respondent before the Pasig City RTC. Petitioner claimed that in two (2) Agreements executed on February 9, 1982[35] and October 10, 1986,[36] respondent and petitioner agreed to have their venture registered with the Department of Trade and Industry (DTI) in the name of Looyuko as sole proprietor, and both agreed to be equally entitled to 50% of the business, goodwill, profits, and real and personal properties owned by the group of companies. Petitioner alleged that respondent had committed and continued to commit insidious acts to oust him from the ownership of half of the assets of the firms under Noah's Ark Group of Companies in breach of their agreements. Thus, petitioner's action for specific

performance, accounting, and inventory of assets and damages was instituted against respondent.

Respondent filed a motion to dismiss on the grounds of forum shopping, *litis pendentia*, and abandonment or laches. The motion to dismiss was denied.[37] The trial court likewise denied respondent's Motion for Reconsideration.[38] The trial court nevertheless granted petitioner's motion to conduct an inventory of the assets of the group of companies but under the direct supervision and control of the Branch Clerk of Court.[39]

On January 2, 2001, respondent filed before the CA a Petition for Certiorari[40] with application for a temporary restraining order (TRO) and preliminary injunction assailing the trial court's orders denying respondent's motion to dismiss and grant of the motion of petitioner to conduct an inventory.

Respondent also filed a Manifestation and Motion for Reconsideration of the grant of the motion to inventory before the trial court. Therein, respondent informed the trial court of his intention to elevate the denial of his motion to dismiss before the CA, praying that no further proceedings be conducted in view thereof. Apparently, respondent's petition for certiorari before the CA did not mention the fact of the Manifestation and Motion for Reconsideration filed and pending before the trial court.

After filing the petition for certiorari, respondent filed an Urgent Ex-Parte Motion to Admit Additional Annexes to Petition.[41] In the meantime, on January 5, 2001, the inventory of assets in the Noah's Ark Sugar Refinery was completed.

Three days after the CA issued a Resolution[42] enjoining the trial court from enforcing its orders denying the motion to dismiss and grant of motion to inventory, it set the hearing for the application of the injunctive writ on January 29, 2001.

On February 9, 2001, petitioner filed his opposition[43] to respondent's urgent motion to admit additional annexes to petition which was replied[44] by respondent with additional annexes appended thereto.

The Ruling of the Court of Appeals in  
CA-G.R. SP No. 58639 (Criminal Case No. 98-1643)

On September 11, 2000, the CA rendered the assailed Decision dismissing the petition.

The CA explained that the petition was initiated solely by petitioner and was dismissible for it did not implead nor have the participation of the Office of the Solicitor General. And, on the merits, the appellate court ruled that the voluntary inhibition prayed by petitioner had no legal and factual basis. The appellate court found that three (3) alleged grounds of partiality raised by petitioner were not badges of partiality.

The appellate court ruled that the denial of the testimony of three (3) witnesses and that of Alvin Padecio was an exercise of sound discretion by the judge. Besides, the CA added, Alvin Padecio, son of respondent, was entitled to the testimonial privilege set forth in Section 25,[45] Rule 130 of the Rules of Court. Moreover, the appellate court found baseless the other two (2) grounds of partiality. In fine, the CA held that mere allegation of partiality and bias will not suffice for a judge to voluntarily inhibit himself and shirk from responsibility of hearing the case.

On March 27, 2001, the appellate court likewise denied petitioner's Motion for Reconsideration. Thus, petitioner assails the above Decision and Resolution of the appellate court in CA-G.R. SP No. 58639 through a Petition for Review on Certiorari before us docketed as G.R. No. 147923.

The Ruling of the Court of Appeals in  
CA-G.R. SP No. 62296 (Criminal Case No. 98-1643)

On January 31, 2002, the appellate court in CA-G.R. SP No. 62296 rendered the assailed Decision. The CA in

dismissing the petition ruled that the trial court did not commit grave abuse of discretion in finding that the petitioner had waived his right to file a formal offer of documentary evidence and in allowing respondent to file a demurrer to evidence. It ratiocinated that the pendency of the issue of inhibition before the appellate court absent a TRO did not suspend the proceedings in the trial court. The CA pointed out that petitioner should have pursued his plea for injunctive relief before it or to file with the trial court his Formal Offer of Evidence Ex Abundantia Cautelam. Since petitioner pursued neither, he cannot fault the trial court from issuing the assailed orders.

Finally, on the issue of the demurrer to evidence, the CA held that such was seasonably filed by respondent. It ruled in this wise:

In the case before the Respondent Court, the Petitioner had presented its witnesses but had no documentary evidence to formally offer as it was considered to have waived the same by his intractable refusal to file its "Formal Offer of Evidence." Hence, the "Demurrer to Evidence," filed by the Private Respondent, was seasonably filed with the Respondent Court.[46]

Petitioner's Motion for Reconsideration was also denied. Hence, petitioner assails the above Decision and Resolution of the appellate court in CA-G.R. SP No. 62296 through a Petition for Review on Certiorari before us docketed as G.R. No. 154035.

The Ruling of the Court of Appeals in  
CA-G.R. SP No. 62438 (Civil Case No. 67921)

On February 12, 2001, the CA issued the assailed Resolution, granting a writ of preliminary injunction conditioned on the filing of a Php 50,000 bond. The CA ruled that the requisites for an injunctive writ were present and that the status quo at the inception of the case on May 23, 2000 must be observed. Thus, the appellate court enjoined the trial court from enforcing its Orders dated September 25, 2000, December 19, 2000, and December 29, 2000, and from conducting further proceedings in the case pending resolution of the certiorari case.

Petitioner's Motion for Reconsideration was denied through the appellate court's April 24, 2001 Resolution. Thus, petitioner assails the above Resolutions of the appellate court in CA-G.R. SP No. 62438 through a petition for certiorari under Rule 65 before us docketed as G.R. No. 147962.

The Issues

In G.R. No. 147923, petitioner Go raises the sole issue:

Whether the Honorable Court of Appeals committed reversible errors when it failed to apply the law and established jurisprudence on the matter by issuing the questioned Resolutions (sic) thereby affirming the questioned Orders of the Court a quo which were issued with grave abuse of discretion.

In G.R. No. 154035, petitioner Go raises the sole issue:

Whether the Honorable Court of Appeals committed reversible errors when it failed to apply the law and established jurisprudence on the matter by issuing the questioned Resolutions thereby affirming the questioned Orders of the Court a quo which were issued with grave abuse of discretion.

In G.R. No. 147962, petitioner Go alleges that the respondent CA acted with grave abuse of discretion and in excess of its jurisdiction in rendering the questioned Resolutions when:

- 1) It failed to dismiss the questioned Petition notwithstanding the fatal error committed by Looyuko in intentionally failing to await the resolution of his Motion for Reconsideration filed in the Court a quo before filing his Petition with the Court of Appeals.
- 2) It failed to dismiss the questioned Petition on the ground of Looyuko's failure to attach all relevant and

pertinent documents to his Petition.

3) It failed to dismiss the questioned Petition notwithstanding the fact that Looyuko violated the rule against forum-shopping.

4) It failed to apply the rule that consummated acts could no longer be restrained by injunction.

5) It granted Looyuko's prayer for injunction. Injunction should have been denied. Looyuko has unclean hands and he seeks equity without "doing equity." No irreparable damage exists and a plain and adequate legal remedy is available to him.

6) It fixed the amount of the injunction bond in the measly amount of P50,000.00.

Meanwhile, during the pendency of these petitions, respondent Looyuko died on October 29, 2004.[47]

#### The Court's Ruling

The petitions are partly meritorious.

G.R. Nos. 147923 and 154035

We will tackle G.R. Nos. 147923 and 154035 jointly since the issues raised are closely interwoven as the pending incidents arose from the same Crim. Case No. 98-1643.

Voluntary Inhibition: Not a remedy absent valid grounds

In G.R. No. 147923, petitioner strongly asserts that Presiding Judge Nemesio Felix has displayed manifest bias and partiality in favor of respondent by disallowing the presentation of the testimonies of the prosecution's vital witnesses, namely, Dee, Lim, Gloria Padecio, and Alvin Padecio, without any valid reason and in utter bad faith. Petitioner also foists the alleged badges of partiality in the conduct and attitude of the trial court judge during the proceedings; and that it is revealing that the respondent and his counsel knew the judge beforehand. Finally, petitioner points to the apparent animosity and enmity of Judge Felix in his Comment to the administrative case (OCA I.P.I. No. 00-971-RTJ) filed by petitioner against him.

We have ploughed through the records and we are constrained to agree with the findings of the appellate court. First, we find no manifest partiality. Indeed, the adverse rulings on the denial of the proposed testimonies of the prosecution's witnesses are judicial in nature. Absent proof that the trial court judge had acted in a wanton, whimsical or oppressive manner or for an illegal consideration, and similar reasons, in giving undue advantage to respondent, inhibition is not a remedy to oust the judge from sitting on the case.

Second, the other two (2) grounds raised by petitioner are also baseless. We reiterate the age-old rule in civil cases that one who alleges a fact has the burden of proving it and a mere allegation is not evidence.[48] Verily, petitioner has not shown substantial proof to bolster these allegations. It is quite revealing what was pointed out by Judge Felix in his December 16, 1999 Order, as quoted by the appellate court, that the allegation of respondent's counsel saying to petitioner that "Amin na si Judge" first came out only in petitioner's second supplemental motion with manifestation dated September 7, 1999. If it was indeed uttered by respondent's counsel, such would have been immediately stated in the prior pleadings of petitioner: the urgent motion for reconsideration dated August 26, 1999 and supplemental motion with manifestation dated August 31, 1999. Besides, in a string of cases, this Court has said that bias and prejudice, to be considered valid reasons for the voluntary inhibition of judges, must be proved with clear and convincing evidence. Bare allegations of partiality and prejudgment will not suffice.[49]

Third, on June 26, 2002, we dismissed the administrative case filed by petitioner against Judge Felix in OCA I.P.I.

No. 00-971-RTJ. Therein, we found no basis to administratively discipline respondent judge for manifest partiality. Verily, the assailed orders were issued with judicial discretion and no administrative liability attaches absent showing of illegal consideration or giving undue advantage to a party, and much less can we compel the trial court judge to inhibit himself absent valid grounds therefor.

Fourth, since the grounds raised by petitioner in his motion to inhibit are not among those expressly mentioned in Section 1, Rule 137 of the Revised Rules of Court, the decision to inhibit himself lies within the sound discretion of Judge Felix. Grounds raised outside the five (5) mandatory disqualification of judges enumerated in the first paragraph of Sec. 1 of Rule 137 are properly addressed to the sound discretion of the trial court judge hearing a case as pertinently provided for in the second paragraph of Sec. 1, Rule 137, thus:

SECTION 1. Disqualification of judges. — x x x

A judge may, in the exercise of his sound discretion, disqualify himself from sitting in a case, for just or valid reasons other than those mentioned above.

Thus, it is clearly within the discretion of the judge to voluntarily inhibit himself from sitting in a case or not.

Fifth, we fail to appreciate petitioner's contention that the harsh language in the comment of Judge Felix shows his apparent animosity and enmity against petitioner. We have gone over the 2nd Indorsement (Comment) of Judge Felix and we failed to find such animosity against petitioner. Be that as it may, the tenor of the comment is usual given the indignation and the bother that judges, and other court employees for that matter, have to go through when faced with an administrative case.

Finally, this issue has been mooted as Judge Nemesio Felix had compulsorily retired on December 19, 2004.

Grave abuse of discretion in the denial of additional witnesses

At this juncture, we come to the issue of denial of additional witnesses. Petitioner contends that the prosecution should have been given the opportunity to present four witnesses, namely, Dee, the President of CBC; Lim, Corporate Secretary of CBC; Gloria Padecio and Alvin Padecio, whom petitioner strongly avers are vital witnesses to prove the allegations in the Information as set out in the issues embodied in the Pre-Trial Order.

The contention of petitioner is well-taken.

It is basic that the case of the prosecution in a criminal case depends on the strength of its evidence and not on the weakness of the defense. This is so as proof beyond reasonable doubt is required in criminal cases. Thus, the prosecution must be afforded ample opportunity to present testimonial and documentary evidence to prove its case. A close perusal of the antecedent facts in the instant case shows that the prosecution had not been given this opportunity.

The Pre-Trial Order[50] of January 19, 1999 shows that the prosecution will present seven (7) witnesses and to resolve the issues on whether petitioner is only a mere employee of or a "50-50" partner of respondent. The prosecution was allowed to present only three (3) witnesses, namely, petitioner Jimmy T. Go, Amalia de Leon, representative of CBC, Bohn Briones, representative of and Credit Comptroller of Amsteel Securities, Inc.

It must be noted that after petitioner and de Leon presented their testimonies, the trial court ruled that the testimonies of Dee and Lim of the CBC, who were ready to testify, and that of Gloria Padecio, the common-law wife of respondent, were superfluous. Moreover, after much wrangling with the prosecution conceding the non-presentation of the three (3) witnesses, the testimony of Briones was allowed as final witness for the prosecution. But Briones' testimony left much to be desired as he was not able to testify on some points the prosecution considered vital to its case. Thus, the prosecution requested for the presentation of Alvin Padecio, the

son of respondent and Gloria Padecio, the alleged stock agent of Amsteel Securities, Inc. who handled the transaction involving the subject shares of stock of CBC. This was likewise denied by the trial court, which led to the motion for inhibition and administrative case against Judge Felix, and the adamant stand of petitioner not to rest his case by filing his formal offer of evidence until the testimony of Padecio is had.

It must be emphasized that in a catena of cases we have reiterated the principle that the matter of deciding who to present as a witness for the prosecution is not for the defendant or the trial court to decide, as it is the prerogative of the prosecutor.<sup>[51]</sup> It cannot be overemphasized that the trial court must accord full opportunity for the prosecution, more so in criminal cases, to adduce evidence to prove its case and to properly ventilate the issues absent patent showing of dilatory or delaying tactics. The reason is obvious: it is tasked to produce and adduce evidence beyond a reasonable doubt. Sans such evidence, a dismissal of the criminal case on a demurrer to the evidence is proper. In the case at bar, there was no showing that the presentation of the three (3) witnesses previously approved by the trial court would be dilatory and manifestly for delay.

The trial court anchored its ruling on the denial of the three (3) witnesses on the fact that the Pre-Trial Order already stipulated the fact that the certificates were issued in the name of petitioner Go, were indorsed in blank and delivered to respondent, and the certificates were subsequently transferred to respondent's name. The trial court ruled that these facts were already testified to by petitioner and de Leon. Moreover, the trial court also ruled that the testimony of Gloria Padecio was a superfluity as petitioner already testified to the alleged partnership between petitioner and respondent.

We cannot agree with the trial court and neither can we give imprimatur on the appellate court's affirmance thereof. We find that the trial court gravely abused its discretion in denying petitioner and the prosecution to present their witnesses.

Grave abuse of discretion implies such capricious and whimsical exercise of judgment as is equivalent to lack of jurisdiction. It is well-settled that an act of a court or tribunal may only be considered to have been done in grave abuse of discretion when the act was performed in a capricious or whimsical exercise of judgment which is equivalent to lack of jurisdiction. The abuse of discretion must be so patent and gross as to amount to an evasion of positive duty or to a virtual refusal to perform a duty enjoined or to act at all in contemplation of law, as where the power is exercised in an arbitrary and despotic manner by reason of passion or personal hostility.<sup>[52]</sup> An error of judgment committed in the exercise of its legitimate jurisdiction is not the same as "grave abuse of discretion." An abuse of discretion is not sufficient by itself to justify the issuance of a writ of certiorari.

We find that the trial court gravely abused its discretion in patently and arbitrarily denying the prosecution the opportunity to present four (4) witnesses in the instant criminal case. First, the testimonies of Dee and Lim from CBC would bolster and tend to prove whatever fact the prosecution is trying to establish. Truth to tell, only the testimony of de Leon corroborates petitioner's testimony on the alleged transfer from petitioner's name to that of respondent of the certificates of stock. More light can be shed on the transaction with the additional testimony of Dee and Lim.

Second, the superfluity of a testimony vis-à-vis what has already been proven can be determined with certainty only after it has been adduced. Verily, the testimonies of petitioner Go and de Leon on the issue of the transfer cannot be said to have truly proven and been corroborated with certainty as they are.

Third, the trial court cannot invoke its discretion under Sec. 6 of Rule 134, Rules of Court given that only two (2) witnesses were presented when it denied the testimony of the three (3) witnesses. Sec. 6 of Rule 134 pertinently provides:

SEC. 6. Power of the court to stop further evidence. — The court may stop the introduction of further

testimony upon any particular point when the evidence upon it is already so full that more witnesses to the same point cannot be reasonably expected to be additionally persuasive. But this power should be exercised with caution.

The above proviso clearly grants the trial court the authority and discretion to stop further testimonial evidence on the ground that additional corroborative testimony has no more persuasive value as the evidence on that particular point is already so full. Indeed, it was only petitioner Go, whose testimony may be considered self-serving who testified on the issue of the transfer. Certainly, the additional testimony of de Leon on the issue of the transfer cannot be considered as so adequate that additional corroborative testimony has no more persuasive value. Besides, the discretion granted by the above proviso has the clear caveat that this power should be exercised with caution, more so in criminal cases where proof beyond reasonable doubt is required for the conviction of the accused.

Fourth, in consonance with the immediate preceding discussion, petitioner Go's testimony on the alleged partnership is not confirmed and supported by any other proof with the exclusion of the testimony of Gloria Padecio. Certainly, it is imperative for the prosecution to prove by clear and strong evidence that the alleged partnership exists; otherwise, respondent Looyuko is entitled to exoneration as the element of trust is important in estafa by abuse of confidence. Corroborative testimony is a necessity given the nature of the criminal case.

Likewise, the trial court gravely abused its discretion in denying the prosecution to present the testimony of Alvin Padecio considering that Briones of Amsteel Securities, Inc. did not provide some details on the transfer. Alvin Padecio, petitioner claims, is the person who can shed light on these matters, more particularly if one considers the fact that he is the son of respondent Looyuko.

Based on the foregoing findings, we hold that the trial court whimsically, arbitrarily, and gravely abused its discretion amounting to a denial of the prosecution of its day in court.

#### Death of respondent extinguished criminal liability

Respondent Looyuko died on October 29, 2004. It is an established principle that the death of the accused pending final adjudication of the criminal case extinguishes the accused's criminal liability. If the civil liability directly arose from and is based solely on the offense committed, then the civil liability is also extinguished.[53]

In the case at bar, the civil liability for the recovery of the CBC stock certificates covering 41,376 shares of stock or their value does not directly result from or based solely on the crime of estafa but on an agreement or arrangement between the parties that petitioner Go would endorse in blank said stock certificates and give said certificates to respondent Looyuko in trust for petitioner for said respondent to sell the stocks covered by the certificates. In such a case, the civil liability survives and an action for recovery therefor in a separate civil action can be instituted either against the executor or administrator or the estate of the accused.

The case law on the matter reads:

- Corollarily, the claim for civil liability survives notwithstanding the death of the accused, if the same may also be predicated on a source of obligation other than delict. Article 1157 of the Civil Code enumerates these other sources of obligation from which the civil liability may arise as a result of the same act or omission:

- a.) Law
- b.) Contracts
- c.) Quasi-contracts
- d.) x x x

e.) Quasi-delicts

- Where the civil liability survives, as explained in Number 2 above, an action for recover therefore may be pursued but only by way of filing a separate civil action and subject to Section 1, Rule 111 of the 1985 Rules on Criminal Procedure as amended. This separate civil action may be enforced either against the executor/administrator or the estate of the accused, depending on the source of obligation upon which the same is based as explained above.[54](Emphasis supplied.)

On the other hand, Sec. 4, Rule 111 of the Rules on Criminal Procedure provides:

SEC. 4. Effect of death on civil actions. — The death of the accused after arraignment and during the pendency of the criminal action shall extinguish the civil liability arising from the delict.

However, the independent civil action instituted under section 3 of this Rule or which thereafter is instituted to enforce liability arising from other sources of obligation may be continued against the estate or legal representative of the accused after proper substitution or against said estate, as the case may be. The heirs of the accused may be substituted for the deceased without requiring the appointment of an executor or administrator and the court may appoint a guardian ad litem for the minor heirs. (Emphasis supplied.)

In the light of the foregoing provision, Crim. Case No. 98-1643 has to be dismissed by reason of the death of respondent Looyuko without prejudice to the filing of a separate civil action.

One last point. Petitioner Go filed the two petitions before the CA docketed as CA-G.R. SP No. 58639 and CA-G.R. SP No. 62296 involving incidents arising from the proceedings in Crim. Case No. 98-1643. It can be observed from the two petitions that they do not reflect the conformity of the trial prosecutor assigned to said criminal case. This is in breach of Sec. 5, Rule 110 of the Rules of Court that requires that all criminal actions shall be prosecuted “under the direction and control of a public prosecutor.” Although in rare occasions, the offended party as a “person aggrieved” was allowed to file a petition under Rule 65 before the CA without the intervention of the Solicitor General,[55] the instant petitions before the CA, as a general rule, should be filed by the Solicitor General on behalf of the State and not solely by the offended party.[56]

For non-compliance with the rules, the twin petitions could have been rejected outright. However, in view of the death of respondent Looyuko, these procedural matters are now mooted and rendered insignificant.

G.R. No. 147962

Appellate court’s discretion to give due course to petition

Petitioner strongly asserts that the CA gravely abused its discretion in failing to dismiss the petition in CA-G.R. SP No. 62438 on the ground of respondent’s failure to attach all relevant and pertinent documents to his petition, and it erroneously ruled that such procedural defect was cured by admitting respondent’s motion to admit additional annexes. Petitioner relies on *Manila Midtown Hotels and Land Corp., et al. v. NLRC*[57] and contends that *Director of Lands v. Court of Appeals*[58] cited by the CA is inapplicable.

We cannot agree with petitioner.

Sec. 1 of Rule 65 pertinently provides:

SECTION 1. Petition for certiorari. — When any tribunal, board or officer exercising judicial or quasi-judicial functions has acted without or in excess of its or his jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction, and there is no appeal, nor any plain, speedy, and adequate remedy in the ordinary course of law, a person aggrieved thereby may file a verified petition in the proper court, alleging the facts with certainty and praying that judgment be rendered annulling or modifying the proceedings of such tribunal, board or officer, and granting such incidental reliefs as law and justice may require.

The petition shall be accompanied by a certified true copy of the judgment, order or resolution subject thereof, copies of all pleadings and documents relevant and pertinent thereto, and a sworn certification of non-forum shopping as provided in the third paragraph of Section 3, Rule 46.

The above proviso clearly vests the appellate court the authority and discretion to give due course to the petitions before it or to dismiss the same when it is not sufficient in form and substance, the required pleadings and documents are not attached thereto, and no sworn certificate on non-forum shopping is submitted. And such must be exercised, not arbitrarily or oppressively, but in a reasonable manner in consonance with the spirit of the law. The appellate court should always see to it that justice is served in exercising such discretion.

In the case at bar, the appellate court exercised its discretion in giving due course to respondent Looyuko's petition in view of the policy of liberality in the application of the rules. Verily, petitioner has not shown that the appellate court abused its discretion in an arbitrary or oppressive manner in not dismissing the petition due to the non-attachment of some relevant pleadings to the petition. The miscue was cured when respondent submitted additional annexes to the petition. Neither has petitioner shown any manifest bias, fraud, or illegal consideration on the part of the appellate court to merit reconsideration for the grant of due course.

#### Respondent guilty of forum shopping

There was still a pending Motion for Reconsideration (to the Order of denial of Looyuko's Motion to Dismiss) filed by Looyuko in the court a quo when he instituted the petition before the CA on January 2, 2001. It is aggravated by the fact that the Motion for Reconsideration to the denial Order was filed on the same day or simultaneously with the filing of the Petition for Certiorari; hence, the petition is in the nature of forum shopping. The issues brought before the CA are similar to the issues raised in Looyuko's Motion for Reconsideration involving similar cause of action and reliefs sought, that is, to dismiss the basic complaint of petitioner Go. This Court in a catena of cases resolved that a Motion for Reconsideration is an adequate remedy in itself, and is a condition sine qua non to the prosecution of the independent, original, and extra ordinary special civil action of certiorari.[59] We must not lose sight of the fact that a Motion for Reconsideration (subsequently denied) is a pre-requisite before a Petition for Certiorari may properly be filed.[60]

Considering, that the Motion for Reconsideration has not been resolved by the court a quo, the petition (CA-G.R. SP No. 62438) was prematurely filed; hence, it should have been outrightly denied due course. Looyuko was remiss of his duty to inform the appellate court in his petition that there was a pending Motion for Reconsideration in the court a quo.

#### Consummated acts not restrained by injunctive writ

A close review of the antecedent facts bears out that, indeed, petitioner did not know of the petition for certiorari before the CA until he received a copy of the CA's January 8, 2001 Resolution on January 12, 2001. It is undisputed that petitioner received a copy of respondent's December 29, 2000 petition only on January 19, 2001.

Clearly, petitioner did not yet know of the pendency of the petition for certiorari before the CA when the inventory of the assets in Noah's Ark Sugar Refinery was completed on January 5, 2001. Thus, the appellate court committed reversible error when it held that petitioner proceeded at his own peril the conduct of the inventory in view of the pendency of the certiorari case in which the appellate court enjoined the trial court from proceeding with its January 8, 2001 Resolution. Verily, even before the CA granted the TRO and issued its January 8, 2001 Resolution, the proceeding to be enjoined, that is, the conduct of the inventory, had already been done. Thus, we agree with petitioner that *Verzosa v. Court of Appeals*[61] relied upon by the appellate court is not applicable.

The established principle is that when the events sought to be prevented by injunction or prohibition have already happened, nothing more could be enjoined or prohibited.[62] Indeed, it is a universal principle of law that an injunction will not issue to restrain the performance of an act already done. This is so, for the simple reason that nothing more can be done in reference thereto.[63] A writ of injunction becomes moot and academic after the act sought to be enjoined has already been consummated.[64]

In the case at bar, it is manifest that the inventory has already been conducted when the January 8, 2001 TRO and February 12, 2001 Writ of Injunction were issued. Thus, the issue of injunction has been mooted, and the injunctive writ must be nullified and lifted.

Inventory of assets does not prejudice the parties

Moreover, it must be noted that the inventory of assets granted by the trial court on December 29, 2000, which was completed on January 5, 2001, does not prejudice respondent Looyuko's right. Certainly, the rights of respondent over the inventoried assets in Noah's Ark Sugar Refinery have not been transgressed, set aside, diminished, or militated upon by the conduct of the inventory.

An inventory does not confer any rights. Thus, by conducting the inventory, petitioner had not been conferred any rights over the assets absent a final determination by the court on the main action for specific performance, accounting, and damages, as the inventory is only an ancillary remedy preparatory for the party to an action to institute other legal remedies for the protection of whatever right the party may have over the subject of the inventory.

Injunction, therefore, against the inventory of the assets covered by the December 29, 2000 Order should be lifted since the inventory has been completed and there is nothing to enjoin or restrain. Consequently, the February 12, 2001 CA Resolution on this matter will have to be modified.

Lower court to proceed absent any TRO or injunctive writ from this Court

With regard to the injunction on the September 25, 2000 and December 19, 2000 Orders which denied respondent's motion to dismiss and motion for reconsideration, respectively, which effectively prohibited the Pasig City RTC from conducting further proceedings in Civil Case No. 67921 until CA-G.R. SP No. 62438 is resolved, it is clear that more than six (6) years had elapsed since the April 24, 2001 CA Resolution was issued and still the CA petition of petitioner has not yet been resolved on the merits. It is observed that this Court did not issue a TRO or a writ of preliminary injunction against the CA from proceeding in CA-G.R. SP No. 62438. The CA should have proceeded to resolve the petition notwithstanding the pendency of G.R. No. 147962 before this Court. This is unequivocal from Sec. 7 of Rule 65 which provides that the "petition shall not interrupt the course of the principal case unless a TRO or a writ of preliminary injunction has been issued against the public respondent from further proceeding in the case." This rule must be strictly adhered to by the lower court notwithstanding the possibility that the proceedings undertaken by the lower court tend to or would render nugatory the pending petition before this Court. As long as there is no directive from this Court for the lower court to defer action in the case, the latter would not be faulted if it continues with the proceedings in said case.

Given the more than six (6) years that CA-G.R. SP No. 62438 has been pending with the CA, we deem it better to resolve the issue of the propriety of the denial by the trial court of respondent's motion to dismiss than remanding it to the CA.

Issue of denial of motion to dismiss

Respondent Looyuko anchored his motion to dismiss on the ground of forum shopping, *litis pendentia*, and

abandonment or laches. Respondent anchors his grounds of *litis pendentia* and forum shopping on the fact of the pendency of Civil Case No. 98-91153 entitled *Alberto T. Looyuko v. Jimmy T. Go a.k.a. Jaime Gaisano* and the Register of Deeds of Manila before the Manila RTC, Branch 36, and in Civil Case No. MC 98-038 entitled *Alberto T. Looyuko v. Jimmy T. Go a.k.a. Jaime Gaisano* and the Register of Deeds of Mandaluyong City before Mandaluyong City RTC, Branch 213.

Civil Case No. 98-91153 involves an action to amend Transfer Certificate of Title (TCT) Nos. 160277 and 160284 by deleting the name of petitioner Jimmy T. Go as co-owner. While Civil Case No. MC 98-038 is a petition to cancel the adverse claims annotated by petitioner in TCT No. 64070 in the name of respondent Alberto T. Looyuko and in TCT No. 3325 in the name of Noah's Ark Sugar Refinery. In both civil cases, petitioner has anchored his defense and adverse claims on the Agreements executed on February 9, 1982 and October 10, 1986, wherein the parties allegedly entered into and embodied in said agreements their true intent and relationship with respect to their business ventures in Noah's Ark Group of Companies, that is, for convenience and expediency, the parties agreed to have their ventures registered with the DTI in the name of respondent Looyuko only as sole proprietor while they are both equally entitled to 50% of the business, goodwill, profits, real and personal properties owned by the group of companies.

Respondent pointed out that that petitioner has prayed in Civil Case No. 98-91153 that the parties' agreement dated February 9, 1982 and October 10, 1986 be declared valid and binding, and in Civil Case No. MC 98-038 to order the Register of Deeds of Mandaluyong City to register petitioner Go's name as co-owner of the properties covered by TCT Nos. 64070 and 3325 by virtue of the February 9, 1982 and October 10, 1986 agreements.

Thus, respondent strongly argues that the issue regarding the validity and binding effect of the alleged partnership agreements dated February 9, 1982 and October 10, 1986 on which petitioner anchors his claim of co-ownership in the Noah's Ark Group of Companies has been squarely raised not only as a defense but also as basis of his prayer for positive relief. Respondent now contends that petitioner is barred by *litis pendentia* in filing Civil Case No. 67921 for Specific Performance, Accounting, Inventory of Assets and Damages anchored on the same issue of the disputed partnership agreements. Moreover, such filing duly recognized by the trial court constitutes forum shopping.

We cannot agree with respondent.

*Litis pendentia* and forum shopping not present

There is no basis for respondent's claim based on *litis pendentia* and forum shopping. For *litis pendentia* to be a ground for the dismissal of an action there must be: (1) identity of the parties or at least such as to represent the same interest in both actions; (2) identity of rights asserted and relief prayed for, the relief being founded on the same acts; and (3) the identity in the two cases should be such that the judgment which may be rendered in one would, regardless of which party is successful, amount to *res judicata* in the other.[65] On the other hand, forum shopping exists where the elements of *litis pendentia* are present, and where a final judgment in one case will amount to *res judicata* in the other.[66]

A brief perusal of the cause of action in Civil Case No. 67921 vis-à-vis those of Civil Case Nos. 98-91153 and MC 98-038 reveals that there is neither identity of rights asserted and reliefs prayed for, nor are the reliefs founded on the same acts. In this case, Civil Case No. 67921, the relief sought before the Pasig City RTC where the complaint for specific performance was filed by petitioner, was the enforcement of the disputed partnership agreements, whereas, in the Makati City and Mandaluyong City RTCs, the reliefs sought by petitioner who is a defendant and respondent, respectively, were merely as defense for his co-ownership over subject parcels of land and as defense for the adverse claims he had annotated in the titles of subject properties. Such defenses cannot be

equated with seeking relief for the enforcement of the disputed partnership agreements. Indeed, the complaint and petition filed by respondent in the Makati City and Mandaluyong City RTCs had different causes of action and sought different reliefs which did not stem from nor are founded from the same acts complained of. There is no basis, therefore, for petitioner's contention that respondent is guilty of forum shopping nor the instant complaint barred by *litis pendentia*.

Anent abandonment or laches, we fully agree with the trial court that there is no basis to dismiss the complaint in Civil Case No. 67921 on the grounds of laches and abandonment. Laches, being controlled by equitable considerations and addressed to the sound discretion of the trial court, is evidentiary in nature and thus can not be resolved in a motion to dismiss, as we have held in the fairly recent case of *Felix Gochan and Sons Realty Corporation v. Heirs of Raymundo Baba*.<sup>[67]</sup>

WHEREFORE, the petition in G.R. No. 147962 is GRANTED. The February 12, 2001 and April 24, 2001 Resolutions of the CA in CA-G.R. SP No. 62438 are REVERSED and SET ASIDE, and the Writ of Preliminary Injunction is LIFTED. The Petition for Certiorari of respondent Looyuko in CA-G.R. SP No. 62438 is DISMISSED for lack of merit, and the Orders dated September 25, 2000, December 19, 2000, and December 29, 2000 of the Pasig City RTC, Branch 69 are AFFIRMED. The Pasig City RTC, Branch 69 is hereby ordered to proceed with the case with dispatch.

The petition in G.R. No. 147923 is DENIED and the September 11, 2000 Decision and March 27, 2001 Resolution of the CA in CA-G.R. SP No. 58639 are AFFIRMED.

The petition in G.R. No. 154035 is GRANTED. The January 31, 2002 Decision and June 3, 2002 Resolution of the CA in CA-G.R. SP No. 62296 are REVERSED and SET ASIDE. Likewise, the Orders dated May 9, 2000 and September 22, 2000 of the Makati City RTC in Crim. Case No. 98-1643 are REVERSED and SET ASIDE.

However, in view of the demise of respondent Looyuko on October 29, 2004, the Makati City RTC is ordered to dismiss Crim. Case No. 98-1643 without prejudice to the filing of a separate civil action by petitioner Go.

No pronouncement as to costs.

**SO ORDERED.**

Quisumbing, (Chairperson), Carpio, and Tinga, JJ., concur.  
Carpio-Morales, J., I concur in the result.

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[1]Rollo (G.R. No. 147962), pp. 3-37.

[2]Id. at 40-44. The Resolution was penned by Associate Justice Marina L. Buzon (Chairperson) and concurred in by Associate Justices Wenceslao I. Agnir, Jr. and Bienvenido L. Reyes.

[3] Id. at 97-100, per Presiding Judge Lorifel Lacap Pahimna.

[4] Id. at 101-102.

[5] Id. at 103-104.

[6] Id. at 46-47.

[7]Rollo (G.R. No. 147923), pp. 12-56, Petition dated June 18, 2001.

[8] Id. at 59-69. The Decision was penned by Associate Justice Conrado M. Vasquez (Chairperson) and concurred

in by Associate Justices Mariano M. Umali and Rebecca de Guia-Salvador.

[9]Id. at 72-80, per Presiding Judge Nemesio S. Felix.

[10]Id. at 82.

[11]Id. at 71. The Resolution was penned by Associate Justice Conrado M. Vasquez (Chairperson) and concurred in by Associate Justices Rebecca de Guia-Salvador and Presiding Justice Cancio C. Garcia (now Associate Justice of this Court).

[12] Rollo (G.R. No. 154035), pp. 12-54, Petition dated August 7, 2002.

[13] Id. at 55-75. The Decision was penned by Associate Justice Romeo J. Callejo, Sr. (Chairperson, now a retired member this Court) and concurred in by Associate Justices Remedios Salazar-Fernando and Perlita J. Tria Tirona of the Eleventh Division.

[14]Id. at 77-78.

[15] Id. at 80.

[16]Id. at 76.

[17]Id. at 461-463. Memorandum dated July 14, 2004 submitted by Atty. Enriqueta Esguerra-Vidal, Clerk of Court, First Division, recommending the consolidation of the three cases.

[18] Id. at 83-84, dated April 24, 1998.

[19] Id. at 85.

[20]Id. at 235-243.

[21]Id. at 252-256.

[22] Id. at 147-149.

[23]Id. at 150-163.

[24] Rollo (G.R. No. 147923), pp. 72-80. (This is subject of CA-G.R. SP No. 58639 and later G.R. No. 147923.)

[25] Rollo (G.R. No. 154035), pp. 176-179.

[26] Id. at 180-183.

[27] Rollo (G.R. No. 147923), p. 82. (This is subject of CA-G.R. SP No. 58639 and later G.R. No. 147923.)

[28] Rollo (G.R. No. 154035), pp. 185-189.

[29]Rollo (G.R. No. 147923), pp. 101-121.

[30] Rollo (G.R. No. 154035), pp. 190-194.

[31]Id. at 335-343.

[32] Id. at 345-346.

[33] Id. at 355-358, Opposition to the Motion for Reconsideration dated February 12, 2001.

[34] Rollo (G.R. No. 147962), pp. 49-71.

[35] Id. at 195-197.

[36] Id. at 198-200.

[37] Id. at 97-100. (This is subject of CA-G.R. SP No. 62438 and later G.R. No. 147962.)

[38] Id. at 101-102. (This is subject of CA-G.R. SP No. 62438 and later G.R. No. 147962.)

[39] Id. at 103-104. (This is likewise subject of CA-G.R. SP No. 62438 and later G.R. No. 147962.)

[40] Id. at 72-96, dated December 29, 2000.

[41] Id. at 318-322.

[42] Id. at 150-151.

[43] Id. at 323-329.

[44] Id. at 330-335.

[45] SEC. 25. Parental and filial privilege. – No person may be compelled to testify against his parents, other direct ascendants, children or other direct descendants.

[46] Rollo (G.R. No. 154035), p. 74.

[47] Rollo (G.R. No. 147962), p. 552. Death Certificate of respondent Alberto T. Looyuko.

[48] *Luxuria Homes, Inc. v. Court of Appeals*, G.R. No. 125986, January 28, 1999, 302 SCRA 315, 325.

[49] *Joseph Estrada v. Gloria Macapagal-Arroyo*, G.R. No. 146738, March 2, 2001, 353 SCRA 452, 583.

[50] Rollo (G.R. No. 147923), pp. 257-261.

[51] *People v. Dagami*, G.R. No. 136397, November 11, 2003, 415 SCRA 482, 500; citing *People v. Tuvilla*, G.R. No. 88822, July 15, 1996, 259 SCRA 1. See also *People v. Morico*, G.R. No. 92660, July 14, 1995, 246 SCRA 214.

[52] *Intestate Estate of Carmen de Luna v. Intermediate Appellate Court*, G.R. No. 72424, February 13, 1989, 170 SCRA 246; *Litton Mills v. Galleon Traders*, G.R. No. L-40867, July 26, 1988, 163 SCRA 489; *Butuan Bay Export Co. v. Court of Appeals*, G.R. No. L-45473, April 28, 1980, 97 SCRA 297.

[53] *People v. Bayotas*, G.R. No. 102007, September 2, 1994, 236 SCRA 239, 255.

[54] Id. at 255-256.

[55] *People v. Calo, Jr.*, G.R. No. 88531, June 18, 1990, 186 SCRA 620, 624; and *People v. Santiago*, G.R. No. 80778, June 20, 1989, 174 SCRA 143, 153.

[56] *Republic v. Partisala*, No. L-61997, November 15, 1982, 118 SCRA 370, 373.

[57] G.R. No. 118397, March 27, 1998, 288 SCRA 259.

[58] G.R. No. L-47380, February 23, 1999, 303 SCRA 495.

[59] *Manila Post Publishing Co. v. Sanchez*, 81 Phil. 614 (1948); *Uy Chu v. Imperial and Uy Du*, 44 Phil. 27 (1922).

[60] *Ricafort v. Fernan, et al.*, 101 Phil. 575 (1957).

[61] G.R. Nos. 119511-13, November 24, 1998, 299 SCRA 100.

[62] Ramos, Sr. v. Court of Appeals, G.R. No. 80908, May 24, 1989, 173 SCRA 550.

[63] Manila Railroad Company v. Yatco, G.R. No. L-23056, May 27, 1968, 23 SCRA 735.

[64] PCIB v. NAMAWU-MIF, G.R. No. L-50402, August 19, 1982, 115 SCRA 873; Romulo v. Yñiguez, G.R. No. L-71908, February 4, 1986, 141 SCRA 263; Rivera v. Florendo, G.R. No. L-60066, July 31, 1986, 144 SCRA 647; Zabat v. Court of Appeals, G.R. No. 122089, August 23, 2000, 338 SCRA 551.

[65] Cebu International Finance Corp. v. Court of Appeals, G.R. No. 123031, October 12, 1999, 316 SCRA 488.

[66] Prubankers Association v. Prudential Bank & Trust Company, G.R. No. 131247, January 25, 1999, 302 SCRA 74.

[67] G.R. No. 138945, August 19, 2003, 409 SCRA 306, 315, citing Santos v. Santos, G.R. No. 133895, 2 October 2, 2001, 366 SCRA 395, 405–406, where we held, thus:

Though laches applies even to imprescriptible actions, its elements must be proved positively. Laches is evidentiary in nature which could not be established by mere allegations in the pleadings and can not be resolved in a motion to dismiss. (Emphasis supplied.)

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