

ARNOLD JAMES M. YSIDORO, PETITIONER, VS. HON. TERESITA J. LEONARDO- DE CASTRO, HON. DIOSDADO M. PERALTA AND HON. EFREN N. DE LA CRUZ, IN THEIR OFFICIAL CAPACITIES AS PRESIDING J...

G.R. No. 171513. February 06, 2012

Ponente: BRION, J.

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BRION, J.:

Before us are consolidated petitions assailing the rulings of the Sandiganbayan in Criminal Case No. 27963, entitled “People of the Philippines v. Arnold James M. Ysidoro.”

G.R. No. 171513 is a petition for certiorari and prohibition under Rule 65 of the Rules of Court (Rules) filed by petitioner Arnold James M. Ysidoro to annul the resolutions, dated July 6, 2005[1] and January 25, 2006,[2] of the Sandiganbayan granting the “Motion to Suspend Accused Pendente Lite.”

G.R. No. 190963, on the other hand, is a petition for certiorari under Rule 65 filed by the People of the Philippines through the Office of the Special Prosecutor (People) to annul and set aside the decision,[3] dated October 1, 2009, and the resolution,[4] dated December 9, 2009, of the Sandiganbayan which acquitted Ysidoro for violation of Section 3(e) of Republic Act (R.A.) No. 3019 (Anti-Graft and Corrupt Practices Acts), as amended.

The Antecedents

Ysidoro, as Municipal Mayor of Leyte, Leyte, was charged before the Sandiganbayan, with the following information:

That during the period from June 2001 to December 2001 or for sometime prior or subsequent thereto, at the Municipality of Leyte, Province of Leyte, Philippines, and within the jurisdiction of [the] Honorable Court, above-named accused, ARNOLD JAMES M. YSIDORO, a public officer, being the Municipal Mayor of Leyte, Leyte, in such capacity and committing the offense in relation to office, with deliberate intent, with manifest partiality and evident bad faith, did then and there willfully, unlawfully and criminally, withhold and fail to give to Nierna S. Doller, Municipal Social Welfare and Development Officer (MSWDO) of Leyte, Leyte, without any legal basis, her RATA for the months of August, September, October, November and December, all in the year 2001, in the total amount of TWENTY-TWO THOUSAND ONE HUNDRED TWENTY-FIVE PESOS (P22,125.00), Philippine Currency, and her Productivity Pay in the year 2000, in the amount of TWO THOUSAND PESOS (P2,000.00), Philippine Currency, and despite demands made upon accused to release and pay her the amount of P22,125.00 and P2,000.00, accused failed to do so, thus accused in the course of the performance of his official functions had deprived the complainant of her RATA and Productivity Pay, to the damage and injury of Nierna S. Doller and detriment of public service.[5]

Ysidoro filed an omnibus motion to quash the information and, in the alternative, for judicial determination of probable cause,[6] which were both denied by the Sandiganbayan. In due course, Ysidoro was arraigned and he pleaded not guilty.

The Sandiganbayan Preventively Suspends Ysidoro

On motion of the prosecution,[7] the Sandiganbayan preventively suspended Ysidoro for ninety (90) days in accordance with Section 13 of R.A. No. 3019, which states:

Any incumbent public officer against whom any criminal prosecution under a valid information under this Act or under Title 7, Book II of the Revised Penal Code or for any offense involving fraud upon government or public funds or property whether as a simple or as complex offense and in whatever stage of execution and mode of participation, is pending in court, shall be suspended from office.

Ysidoro filed a motion for reconsideration, and questioned the necessity and the duration of the preventive suspension. However, the Sandiganbayan denied the motion for reconsideration, ruling that -

Clearly, by well established jurisprudence, the provision of Section 13, Republic Act 3019 make[s] it mandatory for the Sandiganbayan to suspend, for a period not exceeding ninety (90) days, any public officer who has been validly charged with a violation of Republic Act 3019, as amended or Title 7, Book II of the Revised Penal Code or any offense involving fraud upon government of public funds or property.[8]

Ysidoro assailed the validity of these Sandiganbayan rulings in his petition (G.R. No. 171513) before the Court. Meanwhile, trial on the merits in the principal case continued before the Sandiganbayan. The prosecution and the defense presented their respective evidence.

The prosecution presented Nierna S. Doller as its sole witness. According to Doller, she is the Municipal Social Welfare Development Officer of Leyte. She claimed that Ysidoro ordered her name to be deleted in the payroll because her husband transferred his political affiliation and sided with Ysidoro's opponent. After her name was deleted from the payroll, Doller did not receive her representation and transportation allowance (RATA) for the period of August 2001 to December 2001. Doller also related that she failed to receive her productivity bonus for the year 2000 (notwithstanding her performance rating of "VS") because Ysidoro failed to sign her Performance Evaluation Report. Doller asserted that she made several attempts to claim her RATA and productivity bonus, and made representations with Ysidoro, but he did not act on her requests. Doller related that her family failed to meet their financial obligations as a result of Ysidoro's actions.

To corroborate Doller's testimony, the prosecution presented documentary evidence in the form of disbursement vouchers, request for obligation of allotment, letters, excerpts from the police blotter, memorandum, telegram, certification, order, resolution, and the decision of the Office of the Deputy Ombudsman absolving her of the charges.[9]

On the other hand, the defense presented seven (7) witnesses,[10] including Ysidoro, and documentary evidence. The defense showed that the withholding of Doller's RATA was due to the investigation conducted by the Office of the Mayor on the anomalies allegedly committed by Doller. For this reason, Ysidoro ordered the padlocking of Doller's office, and ordered Doller and her staff to hold office at the Office of the Mayor for the close monitoring and evaluation of their functions. Doller was also prohibited from outside travel without Ysidoro's approval.

The Sandiganbayan Acquits Ysidoro

In a decision dated October 1, 2009,[11] the Sandiganbayan acquitted Ysidoro and held that the second element of the offense – that there be malice, ill-motive or bad faith – was not present. The Sandiganbayan pronounced:

This Court acknowledges the fact that Doller was entitled to RATA. However, the antecedent facts and circumstances did not show any indicia of bad faith on the part of [Ysidoro] in withholding the release of Doller's RATA.

In fact, this Court believes that [Ysidoro] acted in good faith and in honest belief that Doller was not entitled to

her RATA based on the opinion of the COA resident Auditor and Section 317 of the Government Accounting and Auditing Manual.

It may be an erroneous interpretation of the law, nonetheless, [Ysidoro's] reliance to the same was a clear basis of good faith on his part in withholding Doller's RATA.

With regard to the Productivity Incentive Bonus, Doller was aware that the non-submission of the Performance Evaluation Form is a ground for an employee's non-eligibility to receive the Productivity Incentive Bonus:

a) Employees' disqualification for performance-based personnel actions which would require the rating for the given period such as promotion, training or scholarship grants, and productivity incentive bonus if the failure of the submission of the report form is the fault of the employees.

Doller even admitted in her testimonies that she failed to submit her Performance Evaluation Report to [Ysidoro] for signature.

There being no malice, ill-motive or taint of bad faith, [Ysidoro] had the legal basis to withhold Doller's RATA and Productivity pay.[12] (italics supplied)

In a resolution dated December 9, 2009,[13] the Sandiganbayan denied the prosecution's motion for reconsideration, reasoning that -

It must be stressed that this Court acquitted [Ysidoro] for two reasons: firstly, the prosecution failed to discharge its burden of proving that accused Ysidoro acted in bad faith as stated in paragraph 1 above; and secondly, the exculpatory proof of good faith xxx.

Needless to state, paragraph 1 alone would be enough ground for the acquittal of accused Ysidoro. Hence, the COA Resident Auditor need not be presented in court to prove that [Ysidoro] acted in good faith. This is based on the legal precept that "when the prosecution fails to discharge its burden, an accused need not even offer evidence in his behalf." [14] (italics supplied)

Supervening events occurred after the filing of Ysidoro's petition which rendered the issue in G.R. No. 171513 — i.e., the propriety of his preventive suspension — moot and academic. First, Ysidoro is no longer the incumbent Municipal Mayor of Leyte, Leyte as his term of office expired in 2007. Second, the prosecution completed its presentation of evidence and had rested its case before the Sandiganbayan. And third, the Sandiganbayan issued its decision acquitting Ysidoro of the crime charged.

In light of these events, what is left to resolve is the petition for certiorari filed by the People on the validity of the judgment acquitting Ysidoro of the criminal charge.

The People's Petition

The People posits that the elements of Section 3(e) of R.A. No. 3019 have been duly established by the evidence, in that:

First. [Ysidoro] was the Municipal Mayor of Leyte, Leyte when he ordered the deletion of private complainant's name in the payroll for RATA and productivity pay.

Second. He caused undue injury to [Doller] when he ordered the withholding of her RATA and productivity pay. It is noteworthy that complainant was the only official in the municipality who did not receive her RATA and productivity pay even if the same were already included in the budget for that year. x x x

Consequently, [Doller] testified that her family suffered actual and moral damages due to the withholding of her benefits namely: a) the disconnection of electricity in their residence; x x x b) demand letters from their creditors; x x x c) her son was dropped from school because they were not able to pay for his final exams; x x x

d) [h]er children did not want to go to school anymore because they were embarrassed that collectors were running after them.

Third. Accused clearly acted in evident bad faith as he used his position to deprive [Doller] of her RATA and productivity pay for the period mentioned to harass her due to the transfer of political affiliation of her husband.[15] (emphasis supplied)

The People argues[16] that the Sandiganbayan gravely abused its discretion, and exceeded its, or acted without, jurisdiction in not finding Ysidoro in bad faith when he withheld Doller's RATA and deprived her of her productivity bonus. The Sandiganbayan failed to take into account that: first, the Commission on Audit (COA) resident auditor was never presented in court; second, the documentary evidence showed that Doller continuously discharged the functions of her office even if she had been prevented from outside travel by Ysidoro; third, Ysidoro refused to release Doller's RATA and productivity bonus notwithstanding the dismissal by the Ombudsman of the cases against her for alleged anomalies committed in office; and fourth, Ysidoro caused Doller's name to be dropped from the payroll without justifiable cause, and he refused to sign the disbursement vouchers and the request for obligation of allotment so that Doller could claim her RATA and her productivity bonus.

In the same manner, the People asserts that the Sandiganbayan gravely abused its discretion when it ruled that Doller was not eligible to receive the productivity bonus for her failure to submit her Performance Evaluation Report. The Sandiganbayan disregarded the evidence showing the strained relationship and the maneuverings made by Ysidoro so that he could deny her this incentive.

In his Comment,[17] Ysidoro prays for the dismissal of the petition for procedural and substantive infirmities. First, he claims that the petition was filed out of time considering the belated filing of the People's motion for reconsideration before the Sandiganbayan. He argues that by reason of the late filing of the motion for reconsideration, the present petition was filed beyond the 60-day reglementary period. Ysidoro also argues that the 60-day reglementary period should have been counted from the People's receipt of the Sandiganbayan's decision since no motion for reconsideration was seasonably filed. Second, Ysidoro claims that the Sandiganbayan's ruling was in accord with the evidence and the prosecution was not denied due process to properly avail of the remedy of a writ of certiorari. And third, Ysidoro insists that he can no longer be prosecuted for the same criminal charge without violating the rule against double jeopardy.

The Issue Raised

The ultimate issue to be resolved is whether the Sandiganbayan gravely abused its discretion and exceeded its, or acted without, jurisdiction when it acquitted Ysidoro of the crime charged.

The Court's Ruling

We first resolve the preliminary issue raised by Ysidoro on the timeliness of the People's petition for certiorari. The records show that the motion for reconsideration was filed by the People before the Sandiganbayan on the last day of the 15-day reglementary period to file the motion which fell on October 16, 2009, a Friday. Although the date originally appearing in the notice of hearing on the motion was September 22, 2009 (which later on was corrected to October 22, 2009), the error in designating the month was unmistakably obvious considering the date when the motion was filed. In any case, the error cannot detract from the circumstance that the motion for reconsideration was filed within the 15-day reglementary period. We consider, too, that Ysidoro was not deprived of due process and was given the opportunity to be heard on the motion. Accordingly, the above error cannot be considered fatal to the right of the People to file its motion for reconsideration. The counting of the 60-day reglementary period within which to file the petition for certiorari will be reckoned from the receipt of the People of the denial of its motion for reconsideration, or on December 10, 2009. As the last day of the 60-day

reglementary period fell on February 8, 2010, the petition — which was filed on February 5, 2010 — was filed on time.

Nevertheless, we dismiss the petitions for being procedurally and substantially infirm.

A Review of a Judgment of Acquittal

Generally, the Rules provides three (3) procedural remedies in order for a party to appeal a decision of a trial court in a criminal case before this Court. The first is by ordinary appeal under Section 3, Rule 122 of the 2000 Revised Rules on Criminal Procedure. The second is by a petition for review on certiorari under Rule 45 of the Rules. And the third is by filing a special civil action for certiorari under Rule 65. Each procedural remedy is unique and provides for a different mode of review. In addition, each procedural remedy may only be availed of depending on the nature of the judgment sought to be reviewed.

A review by ordinary appeal resolves factual and legal issues. Issues which have not been properly raised by the parties but are, nevertheless, material in the resolution of the case are also resolved in this mode of review. In contrast, a review on certiorari under a Rule 45 petition is generally limited to the review of legal issues; the Court only resolves questions of law which have been properly raised by the parties during the appeal and in the petition. Under this mode, the Court determines whether a proper application of the law was made in a given set of facts. A Rule 65 review, on the other hand, is strictly confined to the determination of the propriety of the trial court's jurisdiction — whether it has jurisdiction over the case and if so, whether the exercise of its jurisdiction has or has not been attended by grave abuse of discretion amounting to lack or excess of jurisdiction.

While an assailed judgment elevated by way of ordinary appeal or a Rule 45 petition is considered an intrinsically valid, albeit erroneous, judgment, a judgment assailed under Rule 65 is characterized as an invalid judgment because of defect in the trial court's authority to rule. Also, an ordinary appeal and a Rule 45 petition tackle errors committed by the trial court in the appreciation of the evidence and/or the application of law. In contrast, a Rule 65 petition resolves jurisdictional errors committed in the proceedings in the principal case. In other words, errors of judgment are the proper subjects of an ordinary appeal and in a Rule 45 petition; errors of jurisdiction are addressed in a Rule 65 petition.

As applied to judgments rendered in criminal cases, unlike a review via a Rule 65 petition, only judgments of conviction can be reviewed in an ordinary appeal or a Rule 45 petition. As we explained in *People v. Nazareno*,^[18] the constitutional right of the accused against double jeopardy proscribes appeals of judgments of acquittal through the remedies of ordinary appeal and a Rule 45 petition, thus:

The Constitution has expressly adopted the double jeopardy policy and thus bars multiple criminal trials, thereby conclusively presuming that a second trial would be unfair if the innocence of the accused has been confirmed by a previous final judgment. Further prosecution via an appeal from a judgment of acquittal is likewise barred because the government has already been afforded a complete opportunity to prove the criminal defendant's culpability; after failing to persuade the court to enter a final judgment of conviction, the underlying reasons supporting the constitutional ban on multiple trials applies and becomes compelling. The reason is not only the defendant's already established innocence at the first trial where he had been placed in peril of conviction, but also the same untoward and prejudicial consequences of a second trial initiated by a government who has at its disposal all the powers and resources of the State. Unfairness and prejudice would necessarily result, as the government would then be allowed another opportunity to persuade a second trier of the defendant's guilt while strengthening any weaknesses that had attended the first trial, all in a process where the government's power and resources are once again employed against the defendant's individual means. That the second opportunity comes via an appeal does not make the effects any less prejudicial by the standards of reason, justice and conscience.^[19] (emphases supplied)

However, the rule against double jeopardy cannot be properly invoked in a Rule 65 petition, predicated on two (2) exceptional grounds, namely: in a judgment of acquittal rendered with grave abuse of discretion by the court; and where the prosecution had been deprived of due process.[20] The rule against double jeopardy does not apply in these instances because a Rule 65 petition does not involve a review of facts and law on the merits in the manner done in an appeal. In certiorari proceedings, judicial review does not examine and assess the evidence of the parties nor weigh the probative value of the evidence.[21] It does not include an inquiry on the correctness of the evaluation of the evidence.[22] A review under Rule 65 only asks the question of whether there has been a validly rendered decision, not the question of whether the decision is legally correct.[23] In other words, the focus of the review is to determine whether the judgment is per se void on jurisdictional grounds.[24]

Applying these legal concepts to this case, we find that while the People was procedurally correct in filing its petition for certiorari under Rule 65, the petition does not raise any jurisdictional error committed by the Sandiganbayan. On the contrary, what is clear is the obvious attempt by the People to have the evidence in the case reviewed by the Court under the guise of a Rule 65 petition. This much can be deduced by examining the petition itself which does not allege any bias, partiality or bad faith committed by the Sandiganbayan in its proceedings. The petition does not also raise any denial of the People's due process in the proceedings before the Sandiganbayan.

We observe, too, that the grounds relied in the petition relate to factual errors of judgment which are more appropriate in an ordinary appeal rather than in a Rule 65 petition. The grounds cited in the petition call for the Court's own appreciation of the factual findings of the Sandiganbayan on the sufficiency of the People's evidence in proving the element of bad faith, and the sufficiency of the evidence denying productivity bonus to Doller.

The Merits of the Case

Our consideration of the imputed errors fails to establish grave abuse of discretion amounting to lack or excess of jurisdiction committed by the Sandiganbayan. As a rule, misapplication of facts and evidence, and erroneous conclusions based on evidence do not, by the mere fact that errors were committed, rise to the level of grave abuse of discretion.[25] That an abuse itself must be "grave" must be amply demonstrated since the jurisdiction of the court, no less, will be affected.[26] We have previously held that the mere fact, too, that a court erroneously decides a case does not necessarily deprive it of jurisdiction.[27]

Jurisprudence has defined grave abuse of discretion amounting to lack or excess of jurisdiction in this wise:

Grave abuse of discretion is defined as capricious or whimsical exercise of judgment as is equivalent to lack of jurisdiction. The abuse of discretion must be patent and gross as to amount to an evasion of a positive duty or a virtual refusal to perform a duty enjoined by law, 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 and hostility.[28]

Under this definition, the People bears the burden of convincingly demonstrating that the Sandiganbayan gravely abused its discretion in the appreciation of the evidence. We find that the People failed in this regard.

We find no indication from the records that the Sandiganbayan acted arbitrarily, capriciously and whimsically in arriving at its verdict of acquittal. The settled rule is that conviction ensues only if every element of the crime was alleged and proved.[29] In this case, Ysidoro was acquitted by the Sandiganbayan for two reasons: first, his bad faith (an element of the crime charged) was not sufficiently proven by the prosecution evidence; and second, there was exculpatory evidence of his good faith.

As bad faith is a state of mind, the prosecution must present evidence of the overt acts or omissions committed by

Ysidoro showing that he deliberately intended to do wrong or cause damage to Doller by withholding her RATA. However, save from the testimony of Doller of the strained relationship between her and Ysidoro, no other evidence was presented to support Ysidoro's bad faith against her. We note that Doller even disproved Ysidoro's bad faith when she admitted that several cases had been actually filed against her before the Office of the Ombudsman. It bears stressing that these purported anomalies were allegedly committed in office which Ysidoro cited to justify the withholding of Doller's RATA.

The records also show other acts that tend to negate Ysidoro's bad faith under the circumstances. First, the investigation of the alleged anomalies by Ysidoro was corroborated by the physical transfer of Doller and her subordinates to the Office of the Mayor and the prohibition against outside travel imposed on Doller. Second, the existence of the Ombudsman's cases against Doller. And third, Ysidoro's act of seeking an opinion from the COA Auditor on the proper interpretation of Section 317 of the Government Accounting and Auditing Manual before he withheld the RATA. This section provides:

An official/employee who was wrongly removed or prevented from performing his duties is entitled to back salaries but not RATA. The rationale for the grant of RATA is to provide the official concerned additional fund to meet necessary expenses incidental to and connected with the exercise or the discharge of the functions of an office. If he is out of office, [voluntarily] or involuntarily, it necessarily follows that the functions of the office remain undischarged (COA, Dec. 1602, October 23, 1990). And if the duties of the office are not discharged, the official does not and is not supposed to incur expenses. There being no expenses incurred[,] there is nothing to be reimbursed (COA, Dec. 2121 dated June 28, 1979).[30]

Although the above provision was erroneously interpreted by Ysidoro and the COA Auditor, the totality of the evidence, to our mind, provides sufficient grounds to create reasonable doubt on Ysidoro's bad faith. As we have held before, bad faith does not simply connote bad judgment or negligence but imputes a dishonest purpose or some moral obliquity and conscious doing of a wrong or a breach of a sworn duty through some motive or intent, or ill-will to partake the nature of fraud.[31] An erroneous interpretation of a provision of law, absent any showing of some dishonest or wrongful purpose, does not constitute and does not necessarily amount to bad faith.[32]

Similarly, we find no inference of bad faith when Doller failed to receive the productivity bonus. Doller does not dispute that the receipt of the productivity bonus was premised on the submission by the employee of his/her Performance Evaluation Report. In this case, Doller admitted that she did not submit her Performance Evaluation Report; hence, she could not have reasonably expected to receive any productivity bonus. Further, we cannot agree with her self-serving claim that it was Ysidoro's refusal that led to her failure to receive her productivity bonus given that no other hard evidence supported this claim. We certainly cannot rely on Doller's assertion of the alleged statement made by one Leo Apacible (Ysidoro's secretary) who was not presented in court. The alleged statement made by Leo Apacible that "the mayor will get angry with him and he might be laid off,"[33] in addition to being hearsay, did not even establish the actual existence of an order from Ysidoro or of his alleged maneuverings to deprive Doller of her RATA and productivity bonus.

In light of these considerations, we resolve to dismiss the People's petition. We cannot review a verdict of acquittal which does not impute or show any jurisdictional error committed by the Sandiganbayan.

WHEREFORE, premises considered, the Court hereby resolves to:

1. DISMISS the petition for certiorari and prohibition, docketed as G.R. No. 171513, filed by Arnold James M. Ysidoro for being moot and academic.
2. DISMISS the petition for certiorari, docketed as G.R. No. 190963, filed by the People of the Philippines,

through the Office of the Special Prosecutor, for lack of merit.

SO ORDERED.

Carpio, (Chairperson), Perez, Sereno, and Reyes, JJ., concur.

[1] Rollo, G.R. No. 171513, pp. 14-16.

[2] Id. at 17-18.

[3] Rollo, G.R. No. 190963, pp. 42-50.

[4] Id. at 57-60.

[5] Rollo, G.R. No. 171513, p. 20.

[6] Id. at 33-45.

[7] Id. at 59-60.

[8] Supra note 2, at 18.

[9] Rollo, G.R. No. 190963, p. 43.

[10] They are: (1) Lolita Retorbar, Welfare Aide assigned at the Department of Social Welfare and Development, Leyte, Leyte; (2) Cristina Polinio, Youth Development Officer II, Municipal Social Welfare Office, Leyte, Leyte; (3) Dennis Q. Abellar, Human Resource Management Officer IV, Leyte, Leyte; (4) Ethel G. Mergolita, Municipal Accountant for the year 2000-2001, Leyte, Leyte; (5) Elsie M. Retorbar, Barangay Daycare worker, Leyte, Leyte; and (6) Domingo M. Elises, former Municipal Budget Officer, Leyte, Leyte.

[11] Supra note 3.

[12] Id. at 47-48.

[13] Supra note 4.

[14] Id. at 58.

[15] Rollo, G.R. No. 190963, pp. 20-24,

[16] Id. at 16-33

[17] Id. at 78-85.

[18] G.R. No. 168982, August 5, 2009, 595 SCRA 438.

[19] Id. at 450.

[20] *Galman v. Sandiganbayan*, 228 Phil. 42, 87 (1986).

[21] *People v. Sandiganbayan (First Division)*, G.R. No. 173396, September 22, 2010, 631 SCRA 128, 133, citing *First Corporation v. Former Sixth Division of the Court of Appeals*, G.R. No. 171989, July 4, 2007, 526 SCRA 564.

[22] Id. at 133.

[23] *People v. Nazareno*, supra note 18, at 451

[24] Ibid.

[25] Id. at 452.

[26] Id. at 452-453.

[27] Id. at 453.

[28] Marcelo G. Ganaden, et al. v. The Hon. Court of Appeals, et al., G.R. Nos. 170500 and 170510-11, June 1, 2011.

[29] Aisporna v. CA, et al., 198 Phil. 838, 848 (1982).

[30] Rollo, G.R. No. 190963, p. 47.

[31] Sampiano. v. Indar, A.M. No. RTJ-05-1953, December 21, 2009, 608 SCRA 597, 613.

[32] Cabungcal, et al. v. Cordova, et al., 120 Phil. 567, 572-573, (1964) insofar as it applies mutatis mutandis.

[33] Rollo, G.R. No. 190963, p. 26.

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