Republic of the Philippines
Supreme Court
Manila

EN BANC

MARILOU S. LAUDE AND MESEHILDA S. LAUDE, Petitioners,	**G.R. No. 217456**
-versus-	Present: SERENO, *C.J.*, CARPIO,* VELASCO, JR., LEONARDO-DE CASTRO, BRION, PERALTA, BERSAMIN, DEL CASTILLO, VILLARAMA, JR., PEREZ, MENDOZA, REYES, PERLAS-BERNABE,** LEONEN, and JARDELEZA,*** *JJ.*
HON. ROLINE M. GINEZ-JABALDE, PRESIDING JUDGE, BRANCH 74, REGIONAL TRIAL COURT OF THE CITY OF OLONGAPO; HON. PAQUITO N. OCHOA, JR., EXECUTIVE SECRETARY; HON. ALBERT F. DEL ROSARIO, SECRETARY OF THE DEPARTMENT OF FOREIGN AFFAIRS; HON. GEN. GREGORIO PIO P. CATAPANG, CHIEF OF STAFF OF THE ARMED FORCES OF THE PHILIPPINES; HON. EMILIE FE DELOS SANTOS, CHIEF CITY PROSECUTOR OF OLONGAPO CITY; AND L/CPL JOSEPH SCOTT PEMBERTON, Respondents.	**Promulgated:** November 24, 2015

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DECISION

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* On official leave.
** On leave.
*** On official leave.

LEONEN, *J.*:

Failure to meet the three-day notice rule for filing motions and to obtain the concurrence of the Public Prosecutor to move for an interlocutory relief in a criminal prosecution cannot be excused by general exhortations of human rights. This Petition fails to show any grave abuse of discretion on the part of the trial court judge. Furthermore, the accused, while undergoing trial and before conviction, is already detained in the Philippines in compliance with the obligations contained in the Agreement Between the Government of the United States of America and the Government of the Republic of the Philippines Regarding the Treatment of United States Armed Forces Visiting the Philippines (Visiting Forces Agreement).

This is a Petition for Certiorari[1] under Rule 65, with prayer for the issuance of a writ of mandatory injunction filed by Marilou S. Laude and Mesehilda S. Laude (petitioners).

On October 11, 2014, Jeffrey "Jennifer" Laude (Jennifer) was killed at the Celzone Lodge on Ramon Magsaysay Drive in Olongapo City allegedly by 19-year-old US Marine L/CPL Joseph Scott Pemberton (Pemberton).[2] On October 15, 2014, a Complaint for murder was filed by Jennifer's sibling, Marilou S. Laude, against Pemberton before the Olongapo City Office of the City Prosecutor.[3] On October 22, 2014, Pemberton was detained in Camp Aguinaldo, the general headquarters of the Armed Forces of the Philippines.[4]

On December 15, 2014, the Public Prosecutor filed an Information for murder against Pemberton before the Regional Trial Court in Olongapo City.[5] The case was docketed as Case No. 865-14, and was raffled to Branch 74.[6] A warrant of arrest against Pemberton was issued on December 16, 2014.[7] Pemberton surrendered personally to Judge Roline M. Ginez-Jabalde[8] (Judge Ginez-Jabalde) on December 19, 2014, and he was then arraigned.[9]

On the same day, Marilou S. Laude filed an Urgent Motion to Compel the Armed Forces of the Philippines to Surrender Custody of Accused to the

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1 *Rollo*, pp. 3–36.
2 Id. at 11.
3 Id.
4 Id.
5 Id. at 12.
6 Id.
7 Id.
8 Petitioners spelled Judge Roline M. Ginez-Jabalde's name as "Jinez-Jabalde" in their Petition. In the Order (*Rollo*, pp. 58–59) dated December 23, 2014, Judge Ginez-Jabalde affixed her signature above her name with "Ginez-Jabalde" as her surname. "Ginez-Jabalde" shall be used in this Decision.
9 *Rollo*, p. 12.

Olongapo City Jail and a Motion to Allow Media Coverage.[10] "The [M]otion was [scheduled] for hearing on December 22, 2014, at 2 p.m."[11] According to petitioners, they were only able to serve the Motion on Pemberton's counsel through registered mail.[12] In any case, they claim to have also "furnished a copy of the [M]otion personally . . . at the hearing of the [M]otion."[13]

On December 23, 2014, Judge Ginez-Jabalde denied petitioners' Urgent Motion for lack of merit, the dispositive portion of which reads:[14]

> Wherefore, the . . . *UrgentMotion* [sic] *to Compel the Armed Forces of the Philippines to Surrender Custody of Accused to the Olongapo City Jail* [is] denied for utter lack of merit.[15] (Emphasis in the original)

Petitioners received a copy of the Order on January 5, 2015.[16] On January 9, 2015, petitioners filed a Motion for Reconsideration.[17] On February 18, 2015, Judge Ginez-Jabalde issued an Order[18] denying petitioners' Motion for Reconsideration for lack of merit.

In a Resolution[19] dated April 21, 2015, respondents were required to file their Comment on the Petition. On June 5, 2015, public respondents, as represented by the Office of the Solicitor General, filed their (First) Motion for Extension of Time to File Comment[20] for 60 days. On the same day, Pemberton posted his Motion for Additional Time to File Comment[21] for 10 days. Pemberton filed his Comment by counsel on June 16, 2015,[22] while public respondents, through the Office of the Solicitor General, filed their Comment on September 23, 2015.[23]

Petitioners argue that "[r]espondent Judge committed grave abuse of discretion tantamount to an excess or absence of jurisdiction when she dismissed the Urgent Motion to Compel the Armed Forces of the Philippines to Surrender Custody o[f] Accused to the Olongapo City Jail [based] on mere technicalities[.]"[24] In particular, they argue that the three-day rule on

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10 Id. at 13.
11 Id.
12 Id.
13 Id.
14 Id. at 14.
15 Id.
16 Id.
17 Id. at 60–80.
18 Id. at 81.
19 Id. at 134.
20 Id. at 86–88.
21 Id. at 126–129.
22 Id. at 92–124.
23 Id. at 155–167.
24 Id. at 15, Petition.

motions under Rule 15, Section 4[25] of the 1997 Rules of Court is not absolute, and should be liberally interpreted when a case is attended by exigent circumstances.[26]

Petitioners advance that the rationale behind the three-day notice rule is satisfied when there is an opportunity to be heard, which was present in this case since Pemberton's counsel and the Public Prosecutor were present in the hearing of the two Motions filed by petitioners.[27] Petitioners allege that the court noted their attendance, and were able to make comments during the December 22, 2014 Motion hearing.[28] They assert that the rights of Pemberton were not compromised in any way.[29]

Petitioners also aver that the three-day notice rule should be liberally applied due to the timing of the arrest and arraignment.[30] "The Urgent Motion was set for hearing on December 22, 2014[.]"[31] This date preceded a series of legal holidays beginning on December 24, 2014, where all the courts and government offices suspended their work.[32] Petitioners point out that a "murder trial is under a distinctly special circumstance in that Paragraph 6, Article V of the Visiting Forces Agreement . . . provides for [a] one-year trial period[,] after which the United States shall be relieved of any obligations under said paragraph[.]"[33] Petitioners had to file and set the Motion hearing at the earliest possible date.[34]

Petitioners further argue that Judge Ginez-Jabalde should not have dismissed the Urgent Motion to Compel the Armed Forces of the Philippines to Surrender Custody of Accused to the Olongapo City Jail "considering that the Urgent Motion raised issues that are of transcendental importance and of primordial public interest."[35] Petitioners aver that under international human rights law, in particular the International Covenant on Civil and Political Rights and the United Nations Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, they have the right to access to justice,[36] which is "distinct from the power of the Public Prosecutors to

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25 RULES OF COURT, Rule 15, sec. 4 provides:
SECTION 4. Hearing of Motion. — Except for motions which the court may act upon without prejudicing the rights of the adverse party, every written motion shall be set for hearing by the applicant.
Every written motion required to be heard and the notice of the hearing thereof shall be served in such a manner as to ensure its receipt by the other party at least three (3) days before the date of hearing, unless the court for good cause sets the hearing on shorter notice.

26 *Rollo*, pp. 61–67, Marilou S. Laude's Motion for Reconsideration.

27 Id. at 17–19, Petition.

28 Id. at 19.

29 Id.

30 Id. at 20–22.

31 Id. at 21.

32 Id.

33 Id. at 21–22.

34 Id. at 22.

35 Id. at 24.

36 Id. at 24–26.

prosecute [the] criminal case."[37]

Furthermore, petitioners advance that Philippine authorities ought to "have primary jurisdiction over [r]espondent Pemberton's person while [he] is being tried [in] a Philippine Court[,]"[38] in accordance with Article V, paragraph (3)(b) of the Visiting Forces Agreement,[39] which states:

> 3. In cases where the right to exercise jurisdiction is concurrent, the following rules shall apply:
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> (a) **Philippine authorities shall have the primary right to exercise jurisdiction over all offenses committed by United States personnel** . . . (Emphasis and underscoring in the original)[40]

Petitioners argue that the custody of Pemberton must be ordered transferred to the Olongapo City Jail, considering that the crime involved is murder, which is non-bailable.[41] They aver that it is unconstitutional to refuse to put him "in the custody of Philippine jail authorities[,]" as such refusal "undermines the Constitutional Powers of [the Court] to hear a jurisdictional matter brought before it"[42] and to promulgate rules for the practice of law.[43] Petitioners argue that even though the Visiting Forces Agreement gives the United States the "sole discretion" to decide whether to surrender custody of an accused American military personnel to the Philippine authorities, "the rule is that . . . the Court [still] has control over any proceeding involving a jurisdictional matter brought before it, even if it may well involve the country's relations with another foreign power."[44]

As for the nonconformity of the Public Prosecutor, petitioners argue that the Public Prosecutor's refusal to sign the Urgent Motion to Compel the Armed Forces of the Philippines to Surrender Custody of Accused to the Olongapo City Jail rendered the requirement for conformity superfluous.[45] Petitioners allege that the Public Prosecutor's act is contrary to Department of Justice Secretary Leila M. De Lima's (Secretary De Lima) position on the matter.[46] They quote Secretary De Lima as having said the following statement in a news article dated December 17, 2014:

> The Philippines will now insist on the custody (of Pemberton) now that the (case) is filed in court and especially since the warrant of

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37 Id. at 27.
38 Id. at 28.
39 Id. at 28–29.
40 Id. at 29.
41 Id.
42 Id. at 31.
43 Id. at 32.
44 Id.
45 Id. at 22–23.
46 Id. at 23.

> arrest has been issued," De Lima told reporters in an ambush interview.[47]

Petitioners also quoted Secretary De Lima as having stated in another news article dated December 18, 2014 the following:

> Justice Secretary Leila De Lima stressed that Pemberton should be under the custody of Philippine authorities, following the filing of charges.
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> "There is also a provision in the Visiting Forces Agreement that, in cases of extraordinary circumstances, the Philippine government can insist on the custody and for me, there are enough such circumstances, such as cruelty and treachery, that justified the filing of the murder and not homicide," De Lima said.[48]

The contrary manifestations made by Secretary De Lima, according to petitioners, meant that "[t]he conformity of the Public Prosecutor . . . is a mere superfluity"[49] and was meant "to deny [p]etitioners' 'quest for justice[.]'"[50]

Due to the nature of the case, petitioners pray in this Petition that procedural requirements be set aside.[51]

In his Comment dated June 16, 2015, Pemberton argues that Judge Ginez-Jabalde did not commit grave abuse of discretion in denying the Urgent Motion to Compel the Armed Forces of the Philippines to Surrender Custody of Accused to the Olongapo City Jail since petitioners violated the three-day notice rule and failed to secure the conformity of the Public Prosecutor assigned to the case.[52] He claims that he "was not given an opportunity to be heard"[53] on petitioners' Motion.

In his counterstatement of facts, Pemberton avers that he voluntarily surrendered to the Regional Trial Court, Branch 74, on December 19, 2014.[54] On the same day, Marilou S. Laude filed an Urgent Motion to Compel the Armed Forces of the Philippines to Surrender Custody of the Accused to the Olongapo City Jail, and setting the Motion hearing for

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47 Id., *citing De Lima will insist on Pemberton custody*, THE DAILY TRIBUNE, December 17, 2014 <http://www.tribune.net.ph/headlines/de-lima-will-insist-on-pemberton-custody> (visited November 16, 2015).

48 Id., *citing No more Pemberton custody talks for PH and US, says DFA*, ASIAN JOURNAL, December 18, 2014 <http://asianjournal.com/news/no-more-pemberton-custody-talks-for-ph-and-us-says-dfa/> (visited November 16, 2015).

49 Id. at 22.

50 Id. at 24.

51 Id. at 28.

52 Id. at 97, Joseph Scott Pemberton's Comment.

53 Id.

54 Id. at 93.

December 22, 2015, but did not obtain the Public Prosecutor's conformity.[55] Marilou S. Laude also failed to personally serve a copy of the Urgent Motion on Pemberton at least three days prior to the hearing thereof.[56]

Pemberton further avers that on December 22, 2014, Judge Ginez-Jabalde heard the Urgent Motion to Compel the Armed Forces of the Philippines to Surrender Custody of the Accused to the Olongapo City Jail and a Motion to Suspend the Proceedings.[57] Counsel for Pemberton was in court to attend the hearing for the Motion to Suspend the Proceedings, but did not have knowledge of the Urgent Motion to Compel the Armed Forces of the Philippines to Surrender Custody of the Accused to the Olongapo City Jail filed by Marilou S. Laude.[58] Counsel for Pemberton received a copy of the Urgent Motion only "a few minutes"[59] before it was to be heard.[60]

On December 23, 2014, Judge Ginez-Jabalde denied Marilou S. Laude's Urgent Motion to Compel the Armed Forces of the Philippines to Surrender Custody of the Accused to the Olongapo City Jail for being devoid of merit.[61] Marilou S. Laude filed a Motion for Reconsideration on January 9, 2015,[62] without conformity of the Public Prosecutor.[63] On January 20, 2015, Pemberton filed his *Ad Cautelam* Opposition [To Private Complainant's Motion for Reconsideration], arguing that Judge Ginez-Jabalde correctly denied Marilou S. Laude's Urgent Motion due to the latter's "failure to comply with settled procedure regarding hearing of motions[.]"[64] Pemberton further argues that the custody over him "rightfully remain[ed] with the [United States] authorities. . . ." He cites Section 6 of the Visiting Forces Agreement, which provides that the "custody of any United States personnel over whom the Philippines is to exercise jurisdiction shall immediately reside with United States military authorities, if they so request, from the commission of the offense, until completion of all judicial proceedings."[65]

Pemberton further argues in his Comment that the presence of his counsel during the Urgent Motion to Compel the Armed Forces of the Philippines to Surrender Custody of the Accused to the Olongapo City Jail hearing did "not equate to an opportunity to be heard as to satisfy the purpose of the three-day notice rule."[66] Citing *Preysler, Jr. v. Manila*

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55 Id. at 93–94.
56 Id.
57 Id. at 94.
58 Id.
59 Id.
60 Id.
61 Id.
62 Id. at 60, Marilou S. Laude's Motion for Reconsideration.
63 Id. at 94, Joseph Scott Pemberton's Comment.
64 Id.
65 Id. at 95.
66 Id. at 97.

Southcoast Development Corporation,[67] *Cabrera v. Ng*,[68] and *Jehan Shipping Corporation v. National Food Authority*,[69] Pemberton avers that an opposing party is given opportunity to be heard when he is "afforded sufficient time to study the motion and to meaningfully oppose and controvert the same."[70] Even though his counsel was able to orally comment on the Urgent Motion,[71] Pemberton was deprived of any meaningful opportunity to study and oppose it, [72] having been furnished a copy a few minutes before the hearing.[73] Marilou S. Laude also failed to provide "justifiable reason for . . . failure to comply with the three-day notice that would warrant a liberal construction of the rules."[74]

Pemberton likewise argues that Marilou S. Laude, being only the private complainant, lacks the legal personality to file the Urgent Motion to Compel the Armed Forces of the Philippines to Surrender Custody of Accused to the Olongapo City Jail and the subsequent Motion for Reconsideration "without the conformity of the Public Prosecutor."[75] Quoting Rule 110, Section 5[76] of the Revised Rules of Criminal Procedure, Pemberton states that the Public Prosecutor's lack of consent "rendered the Urgent Motion a mere scrap of paper."[77] He adds that the defect is "not a mere technicality[.]"[78]

Pemberton also argues that Marilou S. Laude cannot rely on the alleged statements of Secretary De Lima for the following reasons:[79] First, Secretary De Lima did not direct the Olongapo City Office of the City Prosecutor to give its approval to the Urgent Motion and Motion for Reconsideration;[80] second, Secretary De Lima did not state that the Public Prosecutor should insist on turning over the custody of Pemberton to the Philippine authorities.[81] Neither was there any such order from Secretary De Lima.[82] Petitioners' claims are, therefore, without legal basis.[83]

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67 635 Phil. 598 (2010) [Per J. Carpio, Second Division].
68 G.R. No. 201601, March 12, 2014, 719 SCRA 199 [Per J. Reyes, First Division].
69 514 Phil. 166 (2005) [Per J. Panganiban, Third Division].
70 *Rollo*, p. 98, Joseph Scott Pemberton's Comment.
71 Id. at 99–100.
72 Id. at 99.
73 Id.
74 Id. at 100.
75 Id. at 101.
76 RULES OF COURT, Rule 110, sec. 5 provides:
SECTION 5. Who Must Prosecute Criminal Actions. — All criminal actions commenced by a complaint or information shall be prosecuted under the direction and control of the prosecutor. However, in Municipal Trial Courts or Municipal Circuit Trial Courts when the prosecutor assigned thereto or to the case is not available, the offended party, any peace officer, or public officer charged with the enforcement of the law violated may prosecute the case. This authority shall cease upon actual intervention of the prosecutor or upon elevation of the case to the Regional Trial Court.
77 *Rollo*, p. 101, Joseph Scott Pemberton's Comment.
78 Id.
79 Id. at 103.
80 Id.
81 Id.
82 Id.
83 Id.

According to Pemberton, petitioners' use of the "'right to access to justice' under international law did not excuse [p]etitioner Marilou [S. Laude] from securing the authority and conformity of the Public Prosecutor[.]"[84] He argues that both the International Covenant on Civil and Political Rights and the United Nations Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power "refer to national or domestic legislation in affording [victims] access to justice."[85] The Rules of Court and jurisprudence have established procedures for criminal proceedings, and these require Marilou S. Laude "to obtain authority and consent from the Public Prosecutor"[86] before filing a Motion in the ongoing criminal proceeding.[87]

As for the issue of custody under the Visiting Forces Agreement, Pemberton argues that there is a difference between "jurisdiction" and "custody."[88] He avers that jurisdiction is "the power and authority of a court to try, hear[,] and decide a case."[89] Pemberton does not dispute that "Philippine authorities have the primary right to exercise jurisdiction over offenses committed by [a] United States personnel[,] [which is] why the case is being tried [in] a Philippine court."[90] However, custody "pertains to [the] actual physical control over the person of the accused[,]"[91] and under the Visiting Forces Agreement, Pemberton argues that custody shall reside with the United States Military authorities, since the Visiting Forces Agreement expressly provides that "[t]he custody of any United States personnel . . . shall immediately reside with [the] United States military authorities . . . from the commission of the offense until completion of all judicial proceedings."[92]

Public respondents advance that Judge Ginez-Jabalde did not commit grave abuse of discretion when she denied the Urgent Motion to Compel the Armed Forces of the Philippines to Surrender Custody of Accused to the Olongapo City Jail.[93] Public respondents, through their Comment filed by the Office of the Solicitor General, argue that "[p]etitioners are not real parties in interest[.]"[94] They claim that "the real party in interest is the People [of the Philippines], represented by the public prosecutor in the lower court and by the Office of the Solicitor General . . . in the Court of Appeals and in the Supreme Court."[95] While public respondents recognize that petitioners may intervene as private offended parties, "the active conduct of .

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84 Id.
85 Id. at 104.
86 Id.
87 Id.
88 Id. at 108.
89 Id. at 109.
90 Id.
91 Id.
92 Id. at 110.
93 Id. at 160, Hon. Roline M. Ginez-Jabalde, et al.'s Comment.
94 Id. at 157.
95 Id. at 158.

. . trial [in a criminal case] is properly the duty of the public prosecutor."[96] The nonconformity of the Public Prosecutor in petitioners' Urgent Motion to Compel the Armed Forces of the Philippines to Surrender Custody of Accused to the Olongapo City Jail is fatal in light of its nature pertaining to the place of Pemberton's confinement.[97] The issue of confinement of an accused pertains to the criminal aspect of the case and "involves the right to prosecute[,] which [is lodged] exclusively to the People[.]"[98]

Referring to Rule 110, Section 5 of the Rules of Court, public respondents aver that the requirement for motions to be "filed in the name of and under the authority of the public prosecutor"[99] is not a mere technical requirement, but is part of "the essential, inherent, and exclusive power of the State to prosecute criminals[.]"[100] Public respondents counter petitioners' claim that the Public Prosecutor's approval is superfluous given the alleged position of Secretary De Lima in the newspaper articles. Citing *Feria v. Court of Appeals*, public respondents argue that newspaper articles are "hearsay evidence, twice removed"[101] and are "inadmissible" for having no probative value, "whether objected to or not."[102]

As for the three-day notice rule under the Rules of Court, public respondents argue that petitioners' failure to comply cannot be excused in light of the rule's purpose, that is, for the Motion's adverse party not to be surprised, granting one sufficient time to study the Motion and be able to meet the arguments contained in it.[103]

Public respondents argue that while the Visiting Forces Agreement "grants primary jurisdiction to Philippine authorities"[104] in this case, Pemberton's handover specifically to the Olongapo City Jail is unnecessary.[105] The Visiting Forces Agreement does not specify the place of an accused American personnel's confinement. The issue of custody is thus "best left to the discretion of the trial court."[106] According to public respondents, for so long as the present arrangement neither renders it difficult for Pemberton to appear in court when he is required nor impairs Judge Ginez-Jabalde's authority to try the case, the trial court may validly decide for Pemberton to remain where he currently is.[107]

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96 Id.
97 Id. at 159.
98 Id.
99 Id. at 160.
100 Id.
101 Id. at 161; *See also Feria v. Court of Appeals*, 382 Phil. 412, 423 (2000) [Per J. Quisumbing, Second Division].
102 *Rollo*, p. 161, Hon. Roline M. Ginez-Jabalde, et al.'s Comment.
103 Id.
104 Id. at 162.
105 Id.
106 Id.
107 Id. at 164.

Lastly, public respondents maintain that petitioners are not entitled to a mandatory injunction since they have no "clear and unmistakable right to the transfer of [respondent Pemberton] from Camp Aguinaldo to the Olongapo City Jail."[108] They underscore that "petitioners are private offended parties[,] not the real party in interest in [this] criminal case[.]"[109]

We dismiss the Petition.

I

The failure of petitioners to comply with the three-day notice rule is unjustified.

Rule 15, Section 4 of the Rules of Court clearly makes it a mandatory rule that the adverse party be given notice of hearing on the motion at least three days prior.

Failure to comply with this notice requirement renders the motion defective consistent with protecting the adverse party's right to procedural due process.[110] In *Jehan Shipping Corporation*:[111]

> As an integral component of procedural due process, ***the three-day notice required by the Rules is not intended for the benefit of the movant. Rather, the requirement is for the purpose of avoiding surprises that may be sprung upon the adverse party, who must be given time to study and meet the arguments in the motion before a resolution by the court.*** Principles of natural justice demand that the right of a party should not be affected without giving it an opportunity to be heard.[112] (Emphasis supplied, citations omitted)

While the general rule is that a motion that fails to comply with the requirements of Rule 15 is a mere scrap of paper, an exception may be made and the motion may still be acted upon by the court, provided doing so will neither cause prejudice to the other party nor violate his or her due process rights.[113] The adverse party must be given time to study the motion in order to enable him or her to prepare properly and engage the arguments of the movant.[114] In this case, the general rule must apply because Pemberton was

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108 Id. at 165.
109 Id.
110 *See Jehan Shipping Corporation v. National Food Authority*, 514 Phil. 166, 173–174 (2005) [Per J. Panganiban, Third Division].
111 514 Phil. 166 (2005) [Per J. Panganiban, Third Division].
112 *Jehan Shipping Corporation v. National Food Authority*, 514 Phil. 166, 173–174 (2005) [Per J. Panganiban, Third Division].
113 *See Anama v. Court of Appeals, et al.*, 680 Phil. 305, 313 (2012) [Per J. Mendoza, Third Division].
114 *See Jehan Shipping Corporation v. National Food Authority*, 514 Phil. 166, 173–174 (2005) [Per J. Panganiban, Third Division].

not given sufficient time to study petitioners' Motion, thereby depriving him of his right to procedural due process.

Petitioners admit that they personally furnished Pemberton a copy of the Urgent Motion to Compel the Armed Forces of the Philippines to Surrender Custody of Accused to the Olongapo City Jail only during the hearing.[115] They attempt to elude the consequences of this belated notice by arguing that they also served a copy of the Motion by *registered mail* on Pemberton's counsel.[116] They also attempt to underscore the urgency of the Motion by making a reference to the Christmas season and the "series of legal holidays"[117] where courts would be closed.[118] To compound their obfuscation, petitioners claim that the hearing held on December 22, 2014, attended by Pemberton's counsel sufficiently satisfied the rationale of the three-day notice rule.

These circumstances taken together do not cure the Motion's deficiencies. Even granting that Pemberton's counsel was able to comment on the motion orally during the hearing, which incidentally was set for another incident,[119] it cannot be said that Pemberton was able to study and prepare for his counterarguments to the issues raised in the Motion. Judge Ginez-Jabalde was correct to deny the Urgent Motion to Compel the Armed Forces of the Philippines to Surrender Custody of Accused to the Olongapo City Jail based on noncompliance of procedural rules. To rule otherwise would be to prejudice Pemberton's rights as an accused.

II

Petitioners also argue that the Urgent Motion to Compel the Armed Forces of the Philippines to Surrender Custody of Accused to the Olongapo City Jail is an assertion of their right to access to justice as recognized by international law and the 1987 Constitution. They justify the separate filing of the Motion as a right granted by Article 2, paragraph (3) of the International Covenant on Civil and Political Rights,[120] independent of "the power of the Public Prosecutors to prosecute [a] criminal case."[121]

Article 2, paragraph (3) of the International Covenant on Civil and Political Rights states:

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115 *Rollo*, p. 13, Petition.
116 Id.
117 Id. at 21.
118 Id.
119 Id. at 94, Joseph Scott Pemberton's Comment. The hearing scheduled for December 22, 2014 was for Joseph Scott Pemberton's Motion to Suspend the Proceedings.
120 Id. at 24–25, Petition.
121 Id. at 24.

> 3. Each State Party to the present Covenant undertakes:
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> (a) To ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity;
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> (b) To ensure that any person claiming such a remedy shall have his right thereto determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy;
>
> (c) To ensure that the competent authorities shall enforce such remedies when granted.[122]

There is no need to discuss whether this provision has attained customary status, since under treaty law, the Philippines, as a State Party,[123] is obligated to comply with its obligations under the International Covenant on Civil and Political Rights.[124] However, petitioners went too far in their interpretation, ignoring completely the nature of the obligation contemplated by the provision in an attempt to justify their failure to comply with a domestic procedural rule aimed to protect a human right in a proceeding, albeit that of the adverse party.

On March 29, 2004, the United Nations Human Rights Committee issued General Comment No. 31,[125] which pertained to the nature of the general legal obligations imposed by the International Covenant on Civil and Political Rights on State Parties. On Article 2, paragraph (3), the General Comment states:

> 15. ***Article 2, paragraph 3, requires that in addition to effective protection of Covenant rights[,] States Parties must ensure that individuals also have accessible and effective remedies to vindicate those rights***. Such remedies should be appropriately adapted so as to take account of the special vulnerability of certain categories of person, including in particular children. The Committee attaches importance to States Parties' ***establishing appropriate judicial and administrative mechanisms for***

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[122] United Nations Office of the High Commissioner for Human Rights, *International Covenant on Civil and Political Rights* <http://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx> (visited November 16, 2015).

[123] United Nations Treaty Collection, *Chapter IV, Human Rights, 4. International Covenant on Civil and Political Rights* <https://treaties.un.org/pages/viewdetails.aspx?chapter=4&src=treaty&mtdsg_no=iv-4&lang=en> (visited November 16, 2015).

[124] United Nations Office of the High Commissioner for Human Rights, *International Covenant on Civil and Political Rights* <http://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx> (visited November 16, 2015): The ICCPR provides in its Preamble that "[t]he States Parties to the present Covenant . . . [a]gree upon" the mandates in Articles 1–53 of the Convention.

[125] Human Rights Committee, Eightieth session, General Comment No. 31, The Nature of the General Legal Obligation Imposed on States Parties to the Covenant Adopted on 29 March 2004 (2187th meeting), CCPR/C/21/Rev.1/Add.13 <https://www1.umn.edu/humanrts/gencomm/hrcom31.html> (visited November 16, 2015).

> ***addressing claims of rights violations under domestic law.*** The Committee notes that the enjoyment of the rights recognized under the Covenant can be effectively assured by the judiciary in many different ways, including direct applicability of the Covenant, application of comparable constitutional or other provisions of law, or the interpretive effect of the Covenant in the application of national law. Administrative mechanisms are particularly required to give effect to the general obligation to investigate allegations of violations promptly, thoroughly and effectively through independent and impartial bodies. National human rights institutions, endowed with appropriate powers, can contribute to this end. A failure by a State Party to investigate allegations of violations could in and of itself give rise to a separate breach of the Covenant. Cessation of an ongoing violation is an essential element of the right to an effective remedy.
>
> 16. Article 2, paragraph 3, ***requires that States Parties make reparation to individuals whose Covenant rights have been violated.*** Without reparation to individuals whose Covenant rights have been violated, the obligation to provide an effective remedy, which is central to the efficacy of article 2, paragraph 3, is not discharged. In addition to the explicit reparation required by articles 9, paragraph 5, and 14, paragraph 6, the Committee considers that the Covenant generally entails appropriate compensation. The Committee notes that, where appropriate, reparation can involve restitution, rehabilitation and measures of satisfaction, such as public apologies, public memorials, guarantees of non-repetition and changes in relevant laws and practices, as well as bringing to justice the perpetrators of human rights violations.[126] (Emphasis supplied)

The obligation contemplated by Article 2, paragraph (3) is for the State Party to establish a system of accessible and effective remedies through judicial and administrative mechanisms. The present trial of Pemberton, to which petitioner, Marilou S. Laude, is included as a private complainant, indicates that there is a legal system of redress for violated rights. That petitioners chose to act on their own, in total disregard of the mechanism for criminal proceedings established by this court, should not be tolerated under the guise of a claim to justice. This is especially in light of petitioners' decision to furnish the accused in the case a copy of her Motion only during the hearing. Upholding human rights pertaining to access to justice cannot be eschewed to rectify an important procedural deficiency that was not difficult to comply with. Human rights are not a monopoly of petitioners. The accused also enjoys the protection of these rights.

III

The conformity of the Public Prosecutor to the Urgent Motion to Compel the Armed Forces of the Philippines to Surrender Custody of

[126] Id.

Accused to the Olongapo City Jail is not a mere "superfluity."[127] In *Jimenez v. Sorongon*,[128] this court held that in criminal cases, the People is the real party in interest, which means allowing a private complainant to pursue a criminal action on his own is a rare exception:[129]

> ***Procedural law basically mandates that "[a]ll criminal actions commenced by complaint or by information shall be prosecuted under the direction and control of a public prosecutor."*** In appeals of criminal cases before the CA and before this Court, the OSG is the appellate counsel of the People. . . .
>
> . . . .
>
> ***The People is the real party in interest in a criminal case and only the OSG can represent the People in criminal proceedings pending in the CA or in this Court. This ruling has been repeatedly stressed in several cases and continues to be the controlling doctrine.***
>
> ***While there may be rare occasions when the offended party may be allowed to pursue the criminal action on his own behalf (as when there is a denial of due process), this exceptional circumstance does not apply in the present case.***
>
> In this case, the petitioner has no legal personality to assail the dismissal of the criminal case since the main issue raised by the petitioner involved the criminal aspect of the case, *i.e.*, the existence of probable cause. The petitioner did not appeal to protect his alleged pecuniary interest as an offended party of the crime, but to cause the reinstatement of the criminal action against the respondents. This involves the right to prosecute which pertains exclusively to the People, as represented by the OSG.[130] (Emphasis supplied, citations omitted)

In this case, petitioners have not shown why the Motion may be allowed to fall under the exception. The alleged grave abuse of discretion of the Public Prosecutor was neither clearly pleaded nor argued. The duty and authority to prosecute the criminal aspects of this case, including the custody issue, are duly lodged in the Public Prosecutor. Her refusal to give her conforme to the Motion is an act well within the bounds of her position. That petitioners used as bases newspaper articles for claiming that the Public Prosecutor acted contrary to the position of Secretary De Lima cannot be given weight. Public respondents are correct in asserting that the proper remedy would have been for petitioners to have the act reversed by Secretary De Lima through proper legal venues.

IV

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127 *Rollo*, p. 22. Petition.
128 G.R. No. 178607, December 5, 2012, 687 SCRA 151 [Per J. Brion, Second Division].
129 Id. at 160.
130 Id. at 159–161.

Finally, petitioners argue that the Visiting Forces Agreement should be declared "unconstitutional insofar as it impairs the . . . power of the Supreme Court[.]"[131] They advance this argument in the context of their Motion to place Pemberton under the custody of Philippine authorities while the case is being tried,[132] with their prayer in this Petition phrased thus:

> (b) Declare the VFA unconstitutional insofar as it impairs the constitutional power of the Supreme Court to promulgate rules for practice before it, including the Rules of Criminal Procedure[.][133]

The constitutionality of an official act may be the subject of judicial review, provided the matter is not raised collaterally. In *Planters Products, Inc. v. Fertiphil Corporation*:[134]

> Judicial review of official acts on the ground of unconstitutionality may be sought or availed of through any of the actions cognizable by courts of justice, not necessarily in a suit for declaratory relief. . . ***The constitutional issue, however, (a) must be properly raised and presented in the case, and (b) its resolution is necessary to a determination of the case, i.e., the issue of constitutionality must be the very lis mota presented.***[135] (Emphasis supplied, citation omitted)

The constitutionality of the Visiting Forces Agreement is not the lis mota of this Petition. Petitioners started their Petition with a claim that their right to access to justice was violated, but ended it with a prayer for a declaration of the Visiting Forces Agreement's unconstitutionality. They attempt to create the connection between the two by asserting that the Visiting Forces Agreement prevents the transfer of Pemberton to Olongapo City Jail, which allegedly is tantamount to the impairment of this court's authority.

First, this Petition is not the proper venue to rule on the issue of whether the Visiting Forces Agreement transgresses the judicial authority of this court to promulgate rules pertaining to criminal cases. Second, the issues of criminal jurisdiction and custody during trial as contained in the Visiting Forces Agreement were discussed in *Nicolas v. Secretary Romulo, et al.*:[136]

> The VFA being a valid and binding agreement, the parties are required as a matter of international law to abide by its terms and provisions.

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131 *Rollo*, p. 33.
132 Id. at 28.
133 Id. at 33.
134 572 Phil. 270 (2008) [Per J. R. T. Reyes, Third Division].
135 Id. at 291.
136 598 Phil. 262 (2009) [Per J. Azcuna, En Banc].

The VFA provides that in cases of offenses committed by the members of the US Armed Forces in the Philippines, the following rules apply:

> Article V
> Criminal Jurisdiction
>
> xxx xxx xxx
>
> 6. The custody of any United States personnel over whom the Philippines is to exercise jurisdiction shall immediately reside with United States military authorities, if they so request, from the commission of the offense until completion of all judicial proceedings. United States military authorities shall, upon formal notification by the Philippine authorities and without delay, make such personnel available to those authorities in time for any investigative or judicial proceedings relating to the offense with which the person has been charged. In extraordinary cases, the Philippine Government shall present its position to the United States Government regarding custody, which the United States Government shall take into full account. In the event Philippine judicial proceedings are not completed within one year, the United States shall be relieved of any obligations under this paragraph. The one year period will not include the time necessary to appeal. Also, the one year period will not include any time during which scheduled trial procedures are delayed because United States authorities, after timely notification by Philippine authorities to arrange for the presence of the accused, fail to do so.

Petitioners contend that these undertakings violate another provision of the Constitution, namely, that providing for the exclusive power of this Court to adopt rules of procedure for all courts in the Philippines (Art. VIII, Sec. 5[5]). They argue that to allow the transfer of custody of an accused to a foreign power is to provide for a different rule of procedure for that accused, which also violates the equal protection clause of the Constitution (Art. III, Sec. 1. [sic]).

Again, this Court finds no violation of the Constitution.

The equal protection clause is not violated, because there is a substantial basis for a different treatment of a member of a foreign military armed forces allowed to enter our territory and all other accused.

The rule in international law is that a foreign armed forces allowed to enter one's territory is immune from local jurisdiction, except to the extent agreed upon. The Status of Forces Agreements involving foreign military units around the world vary in terms and conditions, according to the situation of the parties involved, and reflect their bargaining power. But the principle remains, *i.e.*, the receiving State can exercise jurisdiction over the forces of the sending State only to the extent agreed upon by the parties.

As a result, the situation involved is not one in which the power of this Court to adopt rules of procedure is curtailed or violated, but rather one in which, as is normally encountered around the world, the laws (including rules of procedure) of one State do not extend or apply — except to the extent agreed upon — to subjects of another State due to the recognition of extraterritorial immunity given to such bodies as visiting foreign armed forces.

Nothing in the Constitution prohibits such agreements recognizing immunity from jurisdiction or some aspects of jurisdiction (such as custody), in relation to long-recognized subjects of such immunity like Heads of State, diplomats and members of the armed forces contingents of a foreign State allowed to enter another State's territory. On the contrary, the Constitution states that the Philippines adopts the generally accepted principles of international law as part of the law of the land. (Art. II, Sec. 2).

Applying, however, the provisions of VFA, the Court finds that there is a different treatment when it comes to detention as against custody. The moment the accused has to be detained, *e.g.,* after conviction, the rule that governs is the following provision of the VFA:

> Article V
> Criminal Jurisdiction
>
> xxx xxx xxx
>
> Sec. 10. The confinement or detention by Philippine authorities of United States personnel shall be carried out in facilities agreed on by appropriate Philippines and United States authorities. United States personnel serving sentences in the Philippines shall have the right to visits and material assistance.

It is clear that the parties to the VFA recognized the difference between custody during the trial and detention after conviction, because they provided for a specific arrangement to cover detention. And this specific arrangement clearly states not only that the detention shall be carried out in facilities agreed on by authorities of both parties, but also that the detention shall be "by Philippine authorities."[137] (Emphasis supplied, citations omitted)

In any case, Pemberton is confined, while undergoing trial, in Camp Aguinaldo, which by petitioners' own description is the "General Head Quarters of the Armed Forces of the Philippines[.]"[138] *Their claim that the detention facility is under the "control, supervision[,] and jurisdiction of American military authorities"*[139] *is not substantiated.*

V

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137 Id. at 285–287.
138 *Rollo*, p. 11.
139 Id.

Petitioners' prayer for the issuance of a writ of mandatory injunction to compel public respondents to turn over the custody of Pemberton "from American military authorities to the OLONGAPO CITY JAIL"[140] is likewise denied for lack of merit. In *Semirara Coal Corporation v. HGL Development Corporation*:[141]

> It is likewise established that a ***writ of mandatory injunction is granted upon a showing that (a) the invasion of the right is material and substantial; (b) the right of complainant is clear and unmistakable; and (c) there is an urgent and permanent necessity for the writ to prevent serious damage.***[142] (Emphasis supplied, citation omitted)

Nowhere in their Petition did petitioners discuss the basis for their claim that they are entitled to the sought writ, let alone mention it in their arguments. This court cannot consider the issuance of a writ of mandatory injunction or a temporary restraining order without any legal and factual basis.

Besides, considering the extent of the scope of this court's power to issue a temporary restraining order, prayers for the issuance of a writ of mandatory injunction is usually unnecessary.

WHEREFORE, premises considered, the Petition for Certiorari is **DISMISSED** for lack of grave abuse of discretion resulting in lack or excess of jurisdiction. The prayer for the issuance of a writ of mandatory injunction is likewise **DENIED** for lack of merit.

SO ORDERED.

MARVIC M.V.F. LEONEN
Associate Justice

WE CONCUR:

MARIA LOURDES P. A. SERENO
Chief Justice

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[140] Id. at 33.
[141] 539 Phil. 532 (2006) [Per J. Quisumbing, Third Division].
[142] Id. at 545.

On official leave
ANTONIO T. CARPIO
Associate Justice

PRESBITERO J. VELASCO, JR.
Associate Justice

TERESITA J. LEONARDO-DE CASTRO
Associate Justice

ARTURO D. BRION
Associate Justice

DIOSDADO M. PERALTA
Associate Justice

LUCAS P. BERSAMIN
Associate Justice

MARIANO C. DEL CASTILLO
Associate Justice

MARTIN S. VILLARAMA, JR.
Associate Justice

JOSE PORTUGAL PEREZ
Associate Justice

JOSE CATRAL MENDOZA
Associate Justice

BIENVENIDO L. REYES
Associate Justice

On leave
ESTELA M. PERLAS-BERNABE
Associate Justice

On official leave
FRANCIS H. JARDELEZA
Associate Justice

CERTIFICATION

I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the court.

MARIA LOURDES P. A. SERENO
Chief Justice