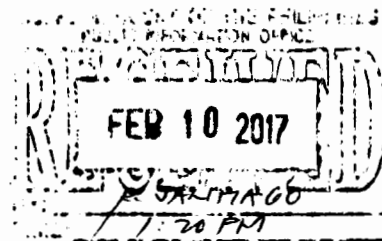




Republic of the Philippines
Supreme Court
 Manila



FIRST DIVISION

**TURKS SHAWARMA COMPANY/
 GEM ZEÑAROSA,**
Petitioners,

G.R. No. 207156

Present:

- versus -

SERENO, *C.J.*, Chairperson,
 LEONARDO-DE CASTRO,
 DEL CASTILLO,
 PERLAS-BERNABE, *and*
 CAGUIOA, *JJ.*

**FELICIANO Z. PAJARON and
 LARRY A. CARBONILLA,**
Respondents.

Promulgated:
JAN 16 2017

X ----- X

DECISION

DEL CASTILLO, J.:

The liberal interpretation of the rules applies only to justifiable causes and meritorious circumstances.

By this Petition for Review on *Certiorari*,¹ petitioner Turks Shawarma Company and its owner, petitioner Gem Zeñarosa (Zeñarosa), assail the May 8, 2013 Decision² of the Court of Appeals (CA) in CA-G.R. SP No. 121956, which affirmed the Orders dated March 18, 2011³ and September 29, 2011⁴ of the National Labor Relations Commission (NLRC) dismissing their appeal on the ground of non-perfection for failure to post the required bond.

Factual Antecedents

Petitioners hired Feliciano Z. Pajaron (Pajaron) in May 2007 as service crew and Larry A. Carbonilla (Carbonilla) in April 2007 as head crew. On April

¹ *Rollo*, pp. 3-28.

² *CA rollo*, pp. 454-459; penned by Associate Justice Romeo F. Barza and concurred in by Associate Justices Noel G. Tijam and Ramon A. Cruz.

³ NLRC records, pp. 222-226; penned by Commissioner Perlita B. Velasco and concurred in by Presiding Commissioner Gerardo C. Nograles and Commissioner Romeo L. Go.


⁴ *Id.* at 276-279; penned by Commissioner Perlita B. Velasco and concurred in by Presiding Commissioner Gerardo C. Nograles.

15, 2010, Pajaron and Carbonilla filed their respective Complaints⁵ for constructive and actual illegal dismissal, non-payment of overtime pay, holiday pay, holiday premium, rest day premium, service incentive leave pay and 13th month pay against petitioners. Both Complaints were consolidated.

Pajaron alleged that on April 9, 2010, Zeñarosa asked him to sign a piece of paper⁶ stating that he was receiving the correct amount of wages and that he had no claims whatsoever from petitioners. Disagreeing to the truthfulness of the statements, Pajaron refused to sign the paper prompting Zeñarosa to fire him from work. Carbonilla, on the other hand, alleged that sometime in June 2008, he had an altercation with his supervisor Conchita Marcillana (Marcillana) while at work. When the incident was brought to the attention of Zeñarosa, he was immediately dismissed from service. He was also asked by Zeñarosa to sign a piece of paper acknowledging his debt amounting to ₱7,000.00.

Both Pajaron and Carbonilla claimed that there was no just or authorized cause for their dismissal and that petitioners also failed to comply with the requirements of due process. As such, they prayed for separation pay in lieu of reinstatement due to strained relations with petitioners and backwages as well as nominal, moral and exemplary damages. Petitioners also claimed for non-payment of just wages, overtime pay, holiday pay, holiday premium, service incentive leave pay and 13th month pay.

Petitioners denied having dismissed Pajaron and Carbonilla; they averred that they actually abandoned their work. They alleged that Pajaron would habitually absent himself from work for an unreasonable length of time without notice; and while they rehired him several times whenever he returned, they refused to rehire him this time after he abandoned work in April 2009. As for Carbonilla, he was reprimanded and admonished several times for misbehavior and disobedience of lawful orders and was advised that he could freely leave his work if he could not follow instructions. Unfortunately, he left his work without any reason and without settling his unpaid obligation in the amount of ₱78,900.00, which compelled them to file a criminal case⁷ for estafa against him. In addition, criminal complaints⁸ for slander were filed against both Pajaron and Carbonilla for uttering defamatory words that allegedly compromised Zeñarosa's reputation as a businessman. Petitioners, thus, insisted that their refusal to rehire Pajaron and Carbonilla was for valid causes and did not amount to dismissal from employment. Finally, petitioners claimed that Pajaron and Carbonilla failed to substantiate their claims that they were not paid labor standards benefits.



⁵ Id. at 1-3 and 7-9.

⁶ Id. at 49.

⁷ Id. at 66-67.

⁸ Id. at 73-74 and 77-78.

Proceedings before the Labor Arbiter

In a Decision⁹ dated December 10, 2010, the Labor Arbiter found credible Pajaron and Carbonilla's version and held them constructively and illegally dismissed by petitioners. The Labor Arbiter found it suspicious for petitioners to file criminal cases against Pajaron and Carbonilla only after the complaints for illegal dismissal had been filed. Pajaron and Carbonilla were thus awarded the sum of ₱148,753.61 and ₱49,182.66, respectively, representing backwages, separation pay in lieu of reinstatement, holiday pay, service incentive leave pay and 13th month pay. The dispositive portion of the Labor Arbiter's Decision reads:

WHEREFORE, in light of the foregoing, judgment is hereby rendered declaring respondent TURKS SHAWARMA COMPANY, [liable] to pay complainants as follows:

I. FELICIANO Z. PAJARON, JR.

1. Limited backwages computed from April 9, 2010 up to the date of this Decision, in the amount of SIXTY EIGHT THOUSAND NINE HUNDRED NINETY EIGHT PESOS & 74/100 (Php68,998.74)
2. Separation pay, in lieu of reinstatement equivalent to one month's salary for every year of service computed from May 1, 2007 up to the date of this decision, in the amount of THIRTY ONE THOUSAND FIVE HUNDRED TWELVE PESOS (Php31,512.00);
3. Holiday pay, in the amount of TWELVE THOUSAND SIX HUNDRED EIGHTY ONE PESOS (Php12,681.00);
4. Service incentive leave pay, in the amount of FIVE THOUSAND FOUR HUNDRED THREE PESOS & 46/100 (Php5,403.46); and
5. Thirteenth month pay, in the amount of THIRTY THOUSAND ONE HUNDRED FIFTY EIGHT PESOS & 41/100 (Php30,158.41).

II. LARRY A. CARBONILLA

1. Separation pay, in lieu of reinstatement equivalent to one month's salary for every year of service computed from April 1, 2007 up to the date of this decision, in the amount of FORTY TWO THOUSAND AND SIXTEEN PESOS (Php42,016.00);
2. Holiday pay, in the amount of TWO THOUSAND PESOS (Php2,000.00);

⁹ Id. at 110-116; penned by Labor Arbiter Lutricia F. Quitevis-Alconcel.



3. Service incentive leave pay, in the amount of EIGHT HUNDRED THIRTY THREE PESOS & 33/100 (Php833.33); and
4. Thirteenth month pay, in the amount of FOUR THOUSAND THREE HUNDRED THIRTY THREE PESOS & 33/100 (Php4,333.33).

Other claims herein sought and prayed for are hereby denied for lack of legal and factual bases.

SO ORDERED.¹⁰

Proceedings before the National Labor Relations Commission

Due to alleged non-availability of counsel, Zeñarosa himself filed a Notice of Appeal with Memorandum and Motion to Reduce Bond¹¹ with the NLRC. Along with this, Zeñarosa posted a partial cash bond in the amount of ₱15,000.00,¹² maintaining that he cannot afford to post the full amount of the award since he is a mere backyard micro-entrepreneur. He begged the NLRC to reduce the bond.

The NLRC, in an Order¹³ dated March 18, 2011, denied the motion to reduce bond. It ruled that financial difficulties may not be invoked as a valid ground to reduce bond; at any rate, it was not even substantiated by proof. Moreover, the partial bond in the amount of ₱15,000.00 is not reasonable in relation to the award which totalled to ₱197,936.27. Petitioners' appeal was thus dismissed by the NLRC for non-perfection.

On April 7, 2011, petitioners, through a new counsel, filed a Motion for Reconsideration (with plea to give due course to the appeal)¹⁴ averring that the outright dismissal of their appeal was harsh and oppressive considering that they had substantially complied with the Rules through the posting of a partial bond and their willingness to post additional bond if necessary. Moreover, their motion to reduce bond was meritorious since payment of the full amount of the award will greatly affect the company's operations; besides the appeal was filed by Zeñarosa without the assistance of a counsel. Petitioners thus implored for a more liberal application of the Rules and prayed that their appeal be given due course. Along with this motion for reconsideration, petitioners tendered the sum of ₱207,435.53 representing the deficiency of the appeal bond.¹⁵



¹⁰ Id. at 115-116

¹¹ Id. at 120-139.

¹² Id. at 268.

¹³ Id. at 222-226.

¹⁴ Id. at 232-246.

¹⁵ Id. at 269.

In an Order¹⁶ dated September 29, 2011, the NLRC denied the Motion for Reconsideration, reiterating that the grounds for the reduction of the appeal bond are not meritorious and that the partial bond posted is not reasonable. The NLRC further held that the posting of the remaining balance on April 7, 2011 or three months and eight days from receipt of the Labor Arbiter's Decision on December 30, 2010 cannot be allowed, otherwise, it will be tantamount to extending the period to appeal which is limited only to 10 days from receipt of the assailed Decision.

Proceedings before the Court of Appeals

Petitioners filed a Petition for *Certiorari* with application for Writ of Preliminary Injunction and Temporary Restraining Order¹⁷ with the CA. They insisted that the NLRC gravely abused its discretion in dismissing the appeal for failure to post the required appeal bond.

On May 8, 2013, the CA rendered a Decision¹⁸ dismissing the Petition for *Certiorari*. It held that the NLRC did not commit any grave abuse of discretion in dismissing petitioners' appeal for non-perfection because petitioners failed to comply with the requisites in filing a motion to reduce bond, namely, the presence of a meritorious ground and the posting of a reasonable amount of bond. The CA stated that financial difficulties is not enough justification to dispense with the mandatory posting of a bond inasmuch as there is an option of posting a surety bond from a reputable bonding company duly accredited by the NLRC, which, unfortunately, petitioners failed to do. The CA noted that the lack of assistance of a counsel is not an excuse because petitioners ought to know the Rules in filing an appeal; moreover, ignorance of the law does not excuse them from compliance therewith.

Hence, this present Petition.

Issue

Petitioners insist that the CA erred in affirming the NLRC's dismissal of their appeal for the following reasons: first, there was substantial compliance with the Rules on perfection of appeal; second, the surrounding facts and circumstances constitute meritorious grounds to reduce the appeal bond; third, they exhibited willingness and good faith by posting a partial bond during the reglementary period; and lastly, a liberal interpretation of the requirement of an appeal bond would serve the desired objective of resolving controversies on the merits. Petitioners claim that there is a necessity to resolve the merits of their appeal since

¹⁶ Id. at 276-279.

¹⁷ CA *rollo*, pp. 3-25.

¹⁸ Id. at 454-459.



the Labor Arbiter's Decision declaring Pajaron and Carbonilla illegally terminated from employment was not based on substantial evidence.

Our Ruling

The Petition has no merit.

The Court has time and again held that “[t]he right to appeal is neither a natural right nor is it a component of due process. It is a mere statutory privilege, and may be exercised only in the manner and in accordance with the provisions of the law.”¹⁹ “The party who seeks to avail of the same must comply with the requirements of the rules. Failing to do so, the right to appeal is lost.”²⁰

Article 223 of the Labor Code, which sets forth the rules on appeal from the Labor Arbiter's monetary award, provides:

ART. 223. Appeal. — Decisions, awards, or orders of the Labor Arbiter are final and executory unless appealed to the Commission by any or both parties within ten (10) calendar days from receipt of such decisions, awards, or orders. Such appeal may be entertained only on any of the following grounds:

- (a) If there is prima facie evidence of abuse of discretion on the part of the Labor Arbiter;
- (b) If the decision, order or award was secured through fraud or coercion, including graft and corruption;
- (c) If made purely on questions of law; and
- (d) If serious errors in the finding of facts are raised which would cause grave or irreparable damage or injury to the appellant.

In case of a judgment involving a monetary award, an appeal by the employer may be perfected only upon the posting of a cash or surety bond issued by a reputable bonding company duly accredited by the Commission in the amount equivalent to the monetary award in the judgment appealed from.

x x x x. (Emphasis supplied)

Meanwhile, Sections 4 and 6 of Rule VI of the 2005 Revised Rules of Procedure of the NLRC, which were in effect when petitioners filed their appeal, provide:



¹⁹ *Boardwalk Business Ventures, Inc. v. Elvira A. Villareal (deceased)*, 708 Phil. 443, 452 (2013).

²⁰ *Ong v. Court of Appeals*, 482 Phil. 170, 177 (2004).

Section 4. Requisites for perfection of appeal. — (a) The Appeal shall be: 1) filed within the reglementary period as provided in Section 1 of this Rule; 2) verified by the appellant himself in accordance with Section 4, Rule 7 of the Rules of Court, as amended; 3) in the form of a memorandum of appeal which shall state the grounds relied upon and the arguments in support thereof, the relief prayed for, and with a statement of the date the appellant received the appealed decision, resolution or order; 4) in three (3) legibly typewritten or printed copies; and 5) accompanied by i) proof of payment of the required appeal fee; ii) posting of a cash or surety bond as provided in Section 6 of this Rule; iii) a certificate of non-forum shopping; and iv) proof of service upon the other parties.

b) A mere notice of appeal without complying with the other requisites aforestated shall not stop the running of the period for perfecting an appeal.

X X X X

Section 6. Bond. — In case the decision of the Labor Arbiter or the Regional Director involves a monetary award, an appeal by the employer may be perfected only upon the posting of a bond, which shall either be in the form of cash deposit or surety bond equivalent in amount to the monetary award, exclusive of damages and attorney's fees.

X X X X

No motion to reduce bond shall be entertained except on meritorious grounds, and upon the posting of a bond in a reasonable amount. The mere filing of a motion to reduce bond without complying with the requisites in the preceding paragraphs shall not stop the running of the period to perfect an appeal.

“It is clear from both the Labor Code and the NLRC Rules of Procedure that there is legislative and administrative intent to strictly apply the appeal bond requirement, and the Court should give utmost regard to this intention.”²¹ The posting of cash or surety bond is therefore mandatory and jurisdictional; failure to comply with this requirement renders the decision of the Labor Arbiter final and executory.²² This indispensable requisite for the perfection of an appeal “is to assure the workers that if they finally prevail in the case[,] the monetary award will be given to them upon the dismissal of the employer’s appeal [and] is further meant to discourage employers from using the appeal to delay or evade payment of their obligations to the employees.”²³

However, the Court, in special and justified circumstances, has relaxed the requirement of posting a supersedeas bond for the perfection of an appeal on technical considerations to give way to equity and justice.²⁴ Thus, under Section 6 of Rule VI of the 2005 NLRC Revised Rules of Procedure, the reduction of the

²¹ *Colby Construction and Management Corporation v. National Labor Relations Commission*, 564 Phil. 145, 156 (2007).

²² *Quiambao v. National Labor Relations Commission*, 324 Phil. 455, 461, 463 (1996).

²³ *Coral Point Development Corporation v. National Labor Relations Commission*, 383 Phil. 456, 463-464 (2000).

²⁴ *Nueva Ecija I Electric Cooperative, Inc. v. National Labor Relations Commission*, 380 Phil. 44, 54-55 (2000).

appeal bond is allowed, subject to the following conditions: (1) the motion to reduce the bond shall be based on meritorious grounds; and (2) a reasonable amount in relation to the monetary award is posted by the appellant. Compliance with these two conditions will stop the running of the period to perfect an appeal.

In the case at bar, petitioners filed a Motion to Reduce Bond together with their Notice of Appeal and posted a cash bond of ₱15,000.00 within the 10-day reglementary period to appeal. The CA correctly found that the NLRC did not commit grave abuse of discretion in denying petitioners' motion to reduce bond as such motion was not predicated on meritorious and reasonable grounds and the amount tendered is not reasonable in relation to the award. The NLRC correctly held that the supposed ground cited in the motion is not well-taken for there was no evidence to prove Zeñarosa's claim that the payment of the full amount of the award would greatly affect his business due to financial setbacks. Besides, "the law does not require outright payment of the total monetary award; [the appellant has the option to post either a cash or surety bond. In the latter case, appellant must pay only a] moderate and reasonable sum for the premium to ensure that the award will be eventually paid should the appeal fail."²⁵ Moreover, the absence of counsel is not a valid excuse for non-compliance with the rules. As aptly observed by the CA, Zeñarosa cannot feign ignorance of the law considering that he was able to post a partial bond and ask for a reduction of the appeal bond. At any rate, petitioners did not advance any reason for the alleged absence of counsel except that they were simply abandoned. Neither did petitioners explain why they failed to procure a new counsel to properly assist them in filing the appeal. Moreover, the partial bond posted was not reasonable. In the case of *McBurnie v. Ganzon*,²⁶ the Court has set a provisional percentage of 10% of the monetary award (exclusive of damages and attorney's fees) as reasonable amount of bond that an appellant should post pending resolution by the NLRC of a motion for a bond's reduction. Only after the posting of this required percentage shall an appellant's period to perfect an appeal be suspended. Applying this parameter, the ₱15,000.00 partial bond posted by petitioners is not considered reasonable in relation to the total monetary award of ₱197,936.27.

Petitioners, nevertheless, rely on a number of cases wherein the Court allowed the relaxation of the stringent requirement of the rule. In *Nicol v. Footjoy Industrial Corporation*,²⁷ the Court reversed the NLRC's denial of the appellant's motion to reduce bond upon finding adequate evidence to justify the reduction. In *Rada v. National Labor Relations Commission*²⁸ and *Blancaflor v. National Labor Relations Commission*,²⁹ the NLRC allowed the late payment of the bond because the appealed Decision of the Labor Arbiter did not state the exact amount to be awarded, hence there could be no basis for determining the amount of the bond to

²⁵ *Times Transportation Co., Inc. v. Sotelo*, 491 Phil. 756, 769 (2005).

²⁶ 719 Phil. 680, 713-714 (2013).

²⁷ 555 Phil. 275 (2007).

²⁸ 282 Phil. 80 (1992).

²⁹ 291-A Phil. 398 (1993).

be filed. It was only after the amount of superseades bond was specified by the NLRC that the appellants filed the bond. In *YBL (Your Bus Line) v. National Labor Relations Commission*,³⁰ the Court was propelled to relax the requirements relating to appeal bonds as there were valid issues raised in the appeal. In *Dr. Postigo v. Philippine Tuberculosis Society, Inc.*,³¹ the respondent therein deferred the posting of the bond and instead filed a motion to reduce bond on the ground that the Labor Arbiter's computation of the award is erroneous which circumstance justified the relaxation of the appeal bond requirement. In all of these cases, though, there were meritorious grounds that warranted the reduction of the appeal bond, which, as discussed, is lacking in the case at bench.

Petitioners, furthermore, claim that the NLRC's outright dismissal of their appeal was harsh and oppressive since they should still be given opportunity to complete the required bond upon the filing of their motion for reconsideration. Thus, they insist that their immediate posting of the deficiency when they filed a motion for reconsideration constituted substantial compliance with the Rules.

The contention is untenable.

The NLRC exercises full discretion in resolving a motion for the reduction of bond³² in accordance with the standards of meritorious grounds and reasonable amount. The "reduction of the bond is not a matter of right on the part of the movant [but] lies within the sound discretion of the NLRC x x x."³³

In order to give full effect to the provisions on motion to reduce bond, the appellant must be allowed to wait for the ruling of the NLRC on the motion even beyond the 10-day period to perfect an appeal. If the NLRC grants the motion and rules that there is indeed meritorious ground and that the amount of the bond posted is reasonable, then the appeal is perfected. If the NLRC denies the motion, the appellant may still file a motion for reconsideration as provided under Section 15, Rule VII of the Rules. If the NLRC grants the motion for reconsideration and rules that there is indeed meritorious ground and that the amount of the bond posted is reasonable, then the appeal is perfected. If the NLRC denies the motion, then the decision of the Labor Arbiter becomes final and executory.³⁴

The rulings in *Garcia v. KJ Commercial*³⁵ and *Mendoza v. HMS Credit Corporation*³⁶ cannot dissuade this Court from relaxing the rules. In *Garcia*, the NLRC initially denied the appeal of respondent therein due to the absence of meritorious grounds in its motion to reduce bond and unreasonable amount of

³⁰ 268 Phil. 169 (1990).

³¹ 515 Phil. 601 (2006).

³² *Ramirez v. Court of Appeals*, 622 Phil. 782, 798 (2009).

³³ *Nicol v. Footjoy Industrial Corporation*, supra note 27 at 287.

³⁴ *Garcia v. KJ Commercial*, 683 Phil. 376, 389 (2012).

³⁵ Id. at 392.

³⁶ 709 Phil. 756, 765-766 (2013).



partial bond posted. However, upon the posting of the full amount of bond when respondent filed its motion for reconsideration, the NLRC granted the motion for reconsideration on the ground of substantial compliance with the rules after considering the merits of the appeal. Likewise, in *Mendoza*, the NLRC initially denied respondents' Motion to Reduce Appeal Bond with a partial bond. Respondents thereafter promptly complied with the NLRC's directive to post the differential amount between the judgment award and the sum previously tendered by them. The Court held that the appeal was filed timely on account of respondents' substantial compliance with the requirements on appeal bond. In both *Garcia* and *Mendoza*, however, the NLRC took into consideration the substantial merits of the appealed cases in giving due course to the appeals. It, in fact, reversed the Labor Arbiters' rulings in both cases. In contrast, petitioners in the case at bench have no meritorious appeal as would convince this Court to liberally apply the rule.

Stated otherwise, petitioners' case will still fail on its merits even if we are to allow their appeal to be given due course. After scrupulously examining the contrasting positions and arguments of the parties, we find that the Labor Arbiters' Decision declaring Pajaron and Carbonilla illegally dismissed was supported by substantial evidence. While petitioners vehemently argue that Pajaron and Carbonilla abandoned their work, the records are devoid of evidence to show that there was intent on their part to forego their employment. In fact, petitioners adamantly admitted that they refused to rehire Pajaron and Carbonilla despite persistent requests to admit them to work. Hence, petitioners essentially admitted the fact of dismissal. However, except for their empty and general allegations that the dismissal was for just causes, petitioners did not proffer any evidence to support their claim of misconduct or misbehavior on the part of Pajaron and Carbonilla. "In termination cases, the burden of proof rests on the employer to show that the dismissal is for a just cause."³⁷ For lack of any clear, valid, and just cause in terminating Pajaron and Carbonilla's employment, petitioners are indubitably guilty of illegal dismissal.

All told, we find no error on the part of the CA in ruling that the NLRC did not gravely abused its discretion in dismissing petitioners' appeal for non-perfection due to non-compliance with the requisites of filing a motion to reduce bond.

[T]he merit of [petitioners'] case does not warrant the liberal application of the x x x rules x x x. While it is true that litigation is not a game of technicalities and that rules of procedure shall not be strictly enforced at the cost of substantial justice, it must be emphasized that procedural rules should not likewise be belittled or dismissed simply because their non-observance might

³⁷ *FLP Enterprises, Inc.-Francesec Shoes v. Dela Cruz*, G.R. No. 198093, July 28, 2014, 731 SCRA 168, 177.




result in prejudice to a party's substantial rights. Like all rules, they are required to be followed, except only for the most persuasive of reasons.³⁸

WHEREFORE, the Petition is **DENIED**. The May 8, 2013 Decision of the Court of Appeals in CA-G.R. SP No. 121956 is **AFFIRMED**.

SO ORDERED.

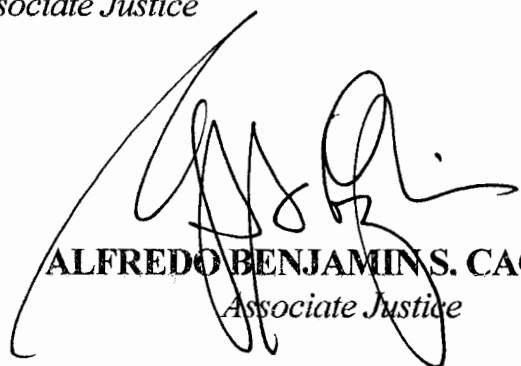

MARIANO C. DEL CASTILLO
Associate Justice

WE CONCUR:


MARIA LOURDES P. A. SERENO
Chief Justice
Chairperson


TERESITA J. LEONARDO-DECASTRO *Associate Justice*


ESTELA M. PERLAS-BERNABE *Associate Justice*


ALFREDO BENJAMINS S. CAGUIOA
Associate Justice

³⁸ *Colegio de San Juan de Letran v. Dela Rosa-Meris*, G.R. No. 178837, September 1, 2014, 734 SCRA 21, 37-38.

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, 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's Division.



MARIA LOURDES P. A. SERENO

Chief Justice

