



Republic of the Philippines
Supreme Court
 Manila

SUPREME COURT OF THE PHILIPPINES
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EN BANC

HON. ZALDY UY AMPATUAN,
 former Regional Governor,
 Autonomous Region in Muslim
 Mindanao,

G.R. No. 252007

Present:

Petitioner,

GESMUNDO, C.J.,
PERLAS-BERNABE, S.A.J.,
LEONEN,
CAGUIOA,
HERNANDO,
CARANDANG,
LAZARO-JAVIER,
INTING,
ZALAMEDA,
LOPEZ, M.,
GAERLAN,
ROSARIO,
LOPEZ, J.,
DIMAAMPAO*, and
MARQUEZ, JJ.

- versus -

COMMISSION ON AUDIT,
 Respondent.

Promulgated:

December 7, 2021

[Signature]

X-----X

DECISION

M. LOPEZ, J.:

This Petition for *Certiorari*¹ filed under Rule 65 of the Revised Rules of Court assails the Commission on Audit’s (COA) Resolution² dated August 15, 2019, which denied Zaldy Uy Ampatuan’s (petitioner) “Omnibus Motion for Reconsideration of Decision No. 2016-171 dated [July 29,] 2016 Denying

* On official leave.
¹ *Rollo*, pp. 3–29.
² *Id.* at 50.

J

Zaldy's Petition for Relief from Judgment; and Clarification (Re: Resolution of Zaldy's Petition for Exclusion dated [July 8,] 2016)³ (Omnibus MR).

ANTECEDENTS

The COA, through its Special Audit Office (SAO), conducted a special audit of the Office of the Regional Governor (ORG) in the Autonomous Region in Muslim Mindanao (ARMM) for the period of January 2008 to September 2009.⁴ Petitioner was then ARMM's Regional Governor.⁵ Based on the special audit, SAO Notice of Disallowance (ND) No. ORG-12-002-MDS/LF (08 & 09)⁶ dated January 13, 2012 was issued, disallowing an aggregate amount of ₱79,162,435.00, representing several payments to a certain supermarket (Superama). The amount was disbursed through cash advances taken by Adham G. Patadon (Patadon), ORG-ARMM's Chief-Supply Division/Special Disbursing Officer, purportedly for the purchase of office supplies and relief goods. The disbursements were found illegal and irregular on the following grounds:

- [1.] The cash advances were granted to Mr. Patadon without specific purpose in violation of COA Circular No. 97-002.
- [2.] The transactions ranging from ₱15,000[.00] to ₱5,000,000[.00] were paid in cash in violation of COA Circular No. 97-002 limiting the payments in cash to ₱15,000[.00] per transaction.
- [3.] As procurements reaching as high as ₱5,000,000[.00] were paid out of cash advances, these were not subject to public bidding in violation of the provisions of RA 9184. These were merely supported with invitation to bid/canvass which were all issued by Mr. Patadon.
- [4.] The transactions were supported with spurious and inadequate documents.
- [5.] The owner of the establishment denied transacting business with the ORG during the period [of] January 2008 to December 2009, issuing the purported invoices and receiving the corresponding payments made by the ORG.
- [6.] The needs for relief goods were not established as there were no documents submitted to the team despite repeated request to prove the occurrence of any calamity or requisition from end-users or concerned parties. The specific areas and the number of affected families/individuals were not even indicated in the Purchase Request which were all signed by Mr. Patadon as requisitioner.
- [7.] There were no evidences (*sic*) that the goods which were all received by Mr. Patadon were indeed distributed to and received by the intended beneficiaries as there were no distribution lists duly

³ Id. at 30-49.

⁴ Id. at 4-5.

⁵ Id. at 744.

⁶ Id. at 50-A-54.

acknowledged by the recipients indicating their names, addresses and signatures attached to the liquidation reports.

- [8.] As appearing on the Cash Invoices, the BIR purportedly authorized Superama to print the series 85001-105000 on October 11, 2006 under authority no. RDO 107-913-2006. Subsequently, on September 10, 2007, the BIR purportedly issued another authority to print as many as ten (10) series of invoices, with three (3) series overlapping with those previously authorized. On August 10, 2008, another BIR authority to print was purportedly issued which also covered series previously authorized, which is very unlikely. x x x
- [9.] Four (4) cash invoices amounting to ₱11,734,835[.00] bore serial numbers outside the supposed authorized series to be printed as appearing on the invoices themselves x x x.
- [10.] Series of cash invoices issued to the ORG were not dated in sequential order such that invoices with higher numbers were issued earlier than those with lower numbers which is not normal in a legitimate business transaction x x x.
- [11.] The invoices were purportedly printed by Angelica Press as printed on the face of the invoice. The Manager of [Superama] informed the team that their establishment has not contracted [with] Angelica Press for printing their invoices.⁷

Petitioner, as Regional Governor, was among those held liable to settle the disallowed amount for his alleged “failure to monitor the activities undertaken by [Patadon] considering the amounts and frequency of [the] cash advances drawn;”⁸ and “for failure to ensure that all resources of the government are managed, expended or utilized in accordance with law and regulations, and safeguarded against loss or wastage through illegal or improper disposition, with a view to ensuring efficiency, economy and effectiveness in the operations of the government.”⁹

On August 3, 2012, an Appeal¹⁰ was filed to the SAO Director, which sought to prove regularity in the questioned disbursements. On September 16, 2013, the Appeal was denied in SAO Decision No. 2013-011 in view of the irregularities that existed in the transactions.¹¹ A Petition for Review¹² was then filed before the COA Proper, but was denied in Decision No. 2014-244¹³ dated September 11, 2014 for being filed out of time and for lack of merit.¹⁴

⁷ Id. at 51–53.

⁸ Id. at 53.

⁹ Id. at 53.

¹⁰ Id. at 479–512.

¹¹ Id. at 535–536.

¹² Id. at 516–540.

¹³ Id. at 541–543.

¹⁴ Id. at 542–543.

Availing that they received the adverse decision on October 14, 2014, petitioner and the affected ORG officers filed a Motion for Reconsideration¹⁵ (MR) on November 6, 2014, which was likewise denied in a Resolution dated March 9, 2015 for “failure to raise [a] new matter or show sufficient ground to justify reconsideration of the assailed Decision.”¹⁶

On May 4, 2015, petitioner filed a Supplemental MR¹⁷ through a new counsel. He argued for the first time that his right to due process was violated because of the negligence of his former counsel. Specifically, petitioner claimed that he has not received the ND, yet his former counsel included him in the appeals; and that his signatures in the pleadings submitted by his former counsel were either obtained without explaining the consequences thereof, or mere electronic signatures inscribed without his consent. As such, he was not sufficiently apprised of the charges against him nor was he able to prepare and present his defenses. He then raised that he had no participation in the transactions subject of the ND.

Meantime, alleging that his new counsel received the notice of the denial of the MR, on May 22, 2015,¹⁸ petitioner filed a Petition for Relief from Judgment to the COA Commission Proper’s (COA Proper) Resolution dated March 9, 2015,¹⁹ raising the same claims of non-participation and due process violation.

In its Decision No. 2016-171²⁰ dated July 29, 2016, the COA Proper discussed the procedural infirmities of the Supplemental MR and Petition for Relief from Judgment, and ruled that petitioner was already bound by the allegations and arguments in the earlier pleadings. As such, the belatedly-raised personal defense of non-participation was no longer considered. The COA Proper also held that petitioner cannot validly blame his former counsel for the late filing of the pleadings, and for the failure to seasonably raise his personal defense because records show that he and his co-appellants personally signed and filed the Appeal, Petition for Review, and MR. Petitioner’s claim that his signature in these pleadings was obtained without being apprised of its repercussions, as well as the alleged forgery or use of his electronic signature without permission, was not supported by competent proof, thus:

WHEREFORE, premises considered, the [Supplemental MR] and [P]etition for [R]elief from [J]udgment are hereby **DISMISSED** for lack of merit. Accordingly, COA Decision No. 2014-244 dated September 11, 2014 and COA Resolution dated March 9, 2015 which affirmed Special Audit Office (SAO) Decision No. 2013-011 dated September 16, 2013 and SAO [ND] No. ORG-12-002-MDS/LF (08 & 09) dated January 13, 2012 relative

¹⁵ Id. at 544–551.

¹⁶ Id. at 589.

¹⁷ Id. at 552–588.

¹⁸ Id. at 9–10.

¹⁹ Id. at 589.

²⁰ Id. at 646–653.

to the cash advance of Mr. Adham G. Patadon for the payment of relief goods and office supplies purchased by ARMM from Superama amounting to ₱79,162,435.00, are **FINAL AND EXECUTORY**.²¹ (Emphases in the original)

Unyielding, petitioner filed an Omnibus MR²² that reiterates his arguments in the Supplemental MR and Petition for Relief from Judgment. The Omnibus MR also sought to clarify if his Petition for Exclusion dated July 8, 2016 was already resolved. In the assailed Resolution²³ dated August 15, 2019, the COA Proper dismissed the Omnibus MR for being a prohibited second MR. Hence, this petition.

Petitioner insists that his constitutional right to due process was violated due to the negligence of his counsel. He points out that he was already incarcerated for the “Maguindanao Massacre” when the COA proceedings started; hence, he merely relied upon his counsel, and was not able to personally monitor the status of the case or present his defense.²⁴ He imputes gross negligence upon his former counsel for filing late pleadings which did not embody his defense. He maintains that he never received a copy of the ND, and that his signatures in the pleadings prepared by his former counsel were either obtained without explanation of its consequences or were mere electronic signatures used without his consent.²⁵ Hence, he pleads for his case to be fully heard on its merits, arguing that the COA Proper committed grave abuse of discretion in sustaining his liability in the ND when no evidence points to his knowledge of or participation in the disallowed disbursements.

The Office of the Solicitor General, for the COA Proper, counters that the Omnibus MR was properly denied because the ND had already attained finality. Petitioner is not entitled to further relief as he was not prevented from taking an appeal by fraud, mistake, or excusable negligence. In any case, petitioner’s non-participation in the disbursed transactions cannot release him from liability given the substantial amounts and frequency of cash advances involved, which are demonstrative of his negligence in the management and monitoring of public funds.²⁶

ISSUE

Whether petitioner is entitled to a relief from a final and executory judgment.

RULING

We find merit in this petition.

²¹ Id. at 653.

²² Id. at 30–49.

²³ Id. at 50.

²⁴ Id. at 18.

²⁵ Id. at 34–39.

²⁶ Id. at 743–762.

At the outset, we note that petitioner does not deny that that the Appeal to the SAO Director was filed late. However, he disowns such lapse, maintaining that he never received a copy of the ND so the prescriptive period for the filing of appeal has not yet commenced as far as he is concerned. He also insists that his signatures in the Appeal, Petition for Review, and MR were either obtained by his former counsel without explaining the contents of the pleadings or were mere electronic signatures used without his permission.²⁷ These excuses, however, remained unsubstantiated. Hence, we find no reason to deviate from the COA Proper's ruling on the ND's finality.

The Court also observed that the present petition was filed late because it was erroneously taken under Rule 65. Pursuant to Rule 65, the petition was filed on March 10, 2020 or 60 days from receipt of the assailed COA Proper Resolution on January 10, 2020. Unfortunately, Rule 65 is not the proper remedy. Rule 64 governs the review of judgments and final orders or resolutions of the COA.²⁸ Under Section 1,²⁹ Rule XII of the 2009 Revised Rules of Procedure of the [COA] (RRPC), in relation to Section 3,³⁰ Rule 64 of the Rules, a petition for *certiorari* should be filed within 30 days from notice of the judgment sought to be reviewed. Procedurally, thus, the assailed COA Proper Resolution dated August 15, 2019 had also attained finality.

Be that as it may, the merits of the case oblige this Court to give due course to the petition. We are aware of the general policy of safeguarding the immutability of final judgments to put an end to what would otherwise be an endless litigation.³¹ Nonetheless, in the higher interest of substantial justice, we have previously allowed the relaxation of the doctrine of immutability when the case is meritorious.³² Indeed, the finality of a judgment was never an ironclad preclusion for this Court's exercise of judicial review. The Court is not powerless to set aside a final and executory judgment through *certiorari* when found to have been issued with grave abuse of discretion, amounting to

²⁷ Id. at 14.

²⁸ REVISED RULES OF COURT, Rule 64, SEC. 1. **Scope.** — This Rule shall govern the review of judgments and final orders or resolutions of the Commission on Elections and the Commission on Audit.

²⁹ 2009 Revised Rules of Procedure of the Commission on Audit, approved on September 15, 2009, Rule XII, SEC. 1. **Petition for *Certiorari*.** — Any decision, order or resolution of the Commission may be brought to the Supreme Court on *certiorari* by the aggrieved party **within thirty (30) days from receipt of a copy thereof in the manner provided by law and the Rules of Court.** x x x (Emphases supplied)

³⁰ SEC. 3. **Time to file petition.** — The petition shall be filed **within thirty (30) days from notice of the judgment or final order or resolution sought to be reviewed.** The filing of a motion for new trial or reconsideration of said judgment or final order or resolution, **if allowed under the procedural rules of the Commission concerned, shall interrupt the period herein fixed.** If the motion is denied, the aggrieved party may file the petition **within the remaining period,** but which shall not be less than five (5) days in any event, reckoned from notice of denial. (Emphases supplied)

³¹ *Republic of the Philippines v. Heirs of Cirilo Gotengco*, 824 Phil. 568, 578 (2018).

³² In the past the Court has allowed the relaxation of the doctrine of immutability when: (1) matters of life, liberty, honor or property are at stake; (2) special or compelling circumstances are present; (3) the case is meritorious; (4) the cause is not entirely attributable to the fault or negligence of the party favored by the suspension of the rules; (5) there is no showing that the review sought is merely frivolous and dilatory; or (6) the other party will not be unjustly prejudiced thereby. See *Ablong v. Commission on Audit*, G.R. No. 233308, August 18, 2020; *Estalilla v. Commission on Audit*, G.R. No. 217448, September 10, 2019, 919 SCRA 1, 15; and *Lanto v. Commission on Audit*, 808 Phil. 1025, 1038 (2017).

lack or excess of jurisdiction.³³ Grave abuse of discretion exists when the public respondent is guilty of an evasion of a positive duty or a virtual refusal to perform a duty enjoined by law or to act in contemplation of law, such as **when the judgment rendered is not based on law and evidence**, but on caprice, whim, and despotism.³⁴ When a judgment is found to have been tainted with grave abuse of discretion, it becomes wholly void;³⁵ and a void judgment can never become final and be perpetuated by simple reference to the principle of immutability of judgment.³⁶

After a careful review of this case, we find no legal and evidentiary bases to support a finding of liability in the ND against petitioner.

Foremost, SAO Decision No. 2013-011 sustained the ND, including petitioner's liability, on the ground that several irregularities attended the questioned disbursements, viz.:

- a. The supplier(s) denied transacting with the ORG-ARMM;
- b. The cash advances were granted successively and utilized in payment of transactions as much as Five Million Pesos ([P]5,000,000.00) which is unlikely and in violation of COA Circular N[o]. 97-002;
- c. All procurements were not subjected to public bidding in violation of Republic Act N[o]. 9184;
- d. The denial by the supplier of such transactions amounting to [P]79.162M cannot be taken lightly as these were paid out of cash advances and not by checks. Accordingly, these transactions were deemed spurious and questionable; the violation of COA Circular N[o]. 97-002 and RA 9184 are already grounds for disallowance; the arguments that the suppliers do not want to be paid in check and the tedious process in the preparation and processing of documents prompted the ORG to use the alternative mode of procurement called shopping, are also not acceptable; cash payment to a supplier is risky and impractical; and, that it is beyond the scope of shopping under RA 9184.³⁷

On the same considerations and for the late filing of the Appeal, Decision No. 2014-244 denied the Petition for Review and affirmed the ND in this manner:

³³ See *Diona v. Balangue*, 701 Phil. 19, 31 (2013); and *Arcelona v. Court of Appeals*, 345 Phil. 250, 264 (1997).

³⁴ *Ablong v. Commission on Audit*, supra note 31.

³⁵ *Imperial v. Judge Armes*, 804 Phil. 439, 473 (2017).

³⁶ *Id.*; In *Estalilla v. Commission Audit*, supra note 31, we ruled that the doctrine of immutability of judgment cannot prevail when: matters of life, honor, and property are at stake; (2) special or compelling circumstances are present; (3) the case is meritorious; (4) the cause is not entirely attributable to the fault or negligence of the party favored by the suspension of the rules; (5) there is no showing that the review sought is merely frivolous and dilatory; or (6) the other party will not be unjustly prejudiced thereby.

³⁷ *Rollo*, pp. 535-536; See also SAO ND No. ORG-12-002-MDS/LF (08 & 09), *rollo*, pp. 51-53; and Appeal, *rollo*, pp. 492-508.

Petitioners alleged in their [A]ppeal before the SAO Director that they received the [ND] on January 31, 2012 and February 2, 2012. They filed an [A]ppeal therefrom on August 3, 2012, beyond the six (6) months reglementary period to file an appeal. Nonetheless, the SAO Director relaxed the application of this Commission's procedural rules and rendered the subject decision. x x x

x x x x

The [A]ppeal before the SAO Director was essentially anchored on the emergency nature of the purchases and the explanation for the apparently spurious documents issued by the suppliers and for the denial of Superama transacting business with ORG-ARMM.

In SAO Decision No. 2013-011, the Director denied the appeal due to non-conduct of public bidding for the procurements, denial by the suppliers of having transacted with ORG-ARMM for purchases amounting to [P]79.162 [M]illion, violation of rules on cash advances such as payment in cash instead of checks[,] and excessive grant of cash advances even without prior liquidation.

The instant [P]etition for [R]eview raises substantially the same grounds and arguments proffered in the earlier appeal which were already considered and judiciously passed upon in the assailed Decision, hence, there is no point in discussing their merit a second time.

For having been filed out of time and for failure to present novel and substantive issues to justify the reversal of the decision, this Commission denied the instant Petition.

x x x x

WHEREFORE, the instant [P]etition for [R]eview is hereby **DENIED** for lack of merit. Accordingly, SAO Decision No. 2013-011 dated September 16, 2013, which affirmed SAO ND No. ORG-12-002-MDS/LF (08 & 09) dated January 13, 2012[,] holding petitioners liable for transactions considered illegal and irregular as defined under COA Circular No. 85-55A dated September 8, 1985, as amended by COA Circular No. 2012-003 dated October 29, 2012, in the total amount of [P]79,162,435 is **AFFIRMED**.³⁸ (Emphases supplied)

Subsequently, as petitioner's personal defense of non-participation in the disallowed transactions was belatedly raised, the COA Proper refused to have a separate discussion on petitioner's liability. Decision No. 2016-171 merely discussed the procedural infirmities of the Supplemental MR and Petition for Relief from Judgment, and upheld petitioner's liability as stated in the ND. The COA Proper disposed:

Having settled that petitioner is bound by the pleadings he signed and submitted before this Commission, that the same were either filed out of time or are prohibited pleadings, and that petitioner failed to present new and substantive issues to justify the reversal of the assailed decisions and

³⁸ Id. at 541-542.

resolutions, there is no need to discuss anew the substantive issues submitted by petitioner.³⁹

In the same way, the Omnibus MR was dismissed for being a prohibited pleading, and a rehash of the Supplemental MR and Petition for Relief from Judgment.⁴⁰

As can readily be gleaned from these COA issuances, petitioner's liability was sustained simply because the ND was affirmed in its entirety due to the irregularities found in the transactions. However, the SAO Director and the COA Proper failed to consider that none of such irregularities were imputed to petitioner. Under the ND, petitioner's liability was solely grounded upon his position as Regional Governor.⁴¹ As head of the ORG, petitioner was faulted for his alleged failure to monitor the acts of his subordinates who perpetrated the unlawful disbursements. Plainly, civil liability was imposed upon petitioner for his alleged "failure to ensure that all resources of the government are managed, expended or utilized in accordance with law and regulations, and safeguarded against loss or wastage through illegal or improper disposition"⁴² as provided in Section 2 of Presidential Decree (PD) No. 1445:

SEC. 2. Declaration of Policy. It is the declared policy of the State that all resources of the government shall be managed, expended or utilized in accordance with law and regulations, and safeguarded against loss or wastage through illegal or improper disposition, with a view to ensuring efficiency, economy and effectiveness in the operations of government. **The responsibility to take care that such policy is faithfully adhered to rests directly with the chief or head of the government agency concerned.** (Emphasis supplied)

The COA palpably erred in solely relying upon this general provision to impute liability upon petitioner. As will be discussed, governing laws and rules unequivocally specify that certain factors relative to the functions and the extent of participation of each public officer in the questioned transaction must be taken into account in determining whether an officer may be held financially liable for a disallowance. The corresponding civil liability in disallowances does not automatically fall upon the head or chief of the government agency.⁴³

Section 103 of PD No. 1445 explicitly states that "[e]xpenditures of government funds x x x in violation of law or regulations shall be a **personal liability of the official or employee found to be directly liable therefor.**"⁴⁴

³⁹ Id. at 652.

⁴⁰ Id. at 50.

⁴¹ Id. at 50-A-54.

⁴² Id at p. 53.

⁴³ See *Joson III v. Commission on Audit*, 829 Phil. 485, 501 (2017).

⁴⁴ Emphasis supplied.

This was exactly reiterated in Section 52,⁴⁵ Chapter 9, Subtitle B, Title I, Book V of the Administrative Code of 1987. Similarly, under Section 43,⁴⁶ Chapter 5, Book VI of the same Code, solidary liability for illegal expenditures falls on the “**official or employee authorizing or making [the] payment, or taking part therein, and [to] every person receiving such payment x x x.**”⁴⁷ Section 38, Chapter 9, Book I thereof also finds relevance:

SEC. 38. Liability of Superior Officers. — (1) A public officer shall not be civilly liable for acts done in the performance of his official duties, unless there is a clear showing of bad faith, malice or gross negligence.

x x x x

(3) **A head of a department or a superior officer shall not be civilly liable for the wrongful acts, omissions of duty, negligence, or misfeasance of his subordinates, unless he has actually authorized by written order the specific act or misconduct complained of.** (Emphasis supplied)

The COA had long recognized and adopted these rules in its own set of rules and regulations. Specifically, COA Circular No. 81-156⁴⁸ provides:

C. Liability of the Head of the Agency, Accountable Officer and Other Officials and Employees

1. The liability of an official or employee for disallowances or discrepancies in accounts audited **shall depend upon his participation in the transaction involved.** The accountability and responsibility of officials and employees for government funds and property as provided in Sections 101⁴⁹ and 102⁵⁰ of [PD No.] 1445 **do not necessarily give rise to liability for loss**

⁴⁵ **SEC. 52. General Liability for Unlawful Expenditures.** — Expenditures of government funds x x x in violation of law or regulations shall be a **personal liability of the official or employee found to be directly responsible therefor.** (Emphasis supplied)

⁴⁶ **SEC. 43. Liability for Illegal Expenditures.** — Every expenditure or obligation authorized or incurred in violation of the provisions of this Code or of the general and special provisions contained in the annual General or other Appropriations Act shall be void. Every payment made in violation of said provisions shall be illegal and **every official or employee authorizing or making such payment, or taking part therein, and every person receiving such payment shall be jointly and severally liable to the Government for the full amount so paid or received.**

x x x x (Emphasis supplied)

⁴⁷ Emphasis supplied.

⁴⁸ Entitled “Restating the Requirements for the Use of the Certificate of Settlement and Balances and Providing Guidelines on Its Issuance Including the Accounting Treatment Thereof,” approved on January 19, 1981.

⁴⁹ **SEC. 101. Accountable officers; bond requirement.**

1. Every officer of any government agency whose duties permit or require the possession or custody of government funds or property shall be accountable therefor and for the safekeeping thereof in conformity with la[w.]

⁵⁰ **SEC. 102. Primary and secondary responsibility.**

1. The head of any agency of the government is **immediately and primarily** responsible for all government funds and property pertaining to his agency.
2. Persons entrusted with the possession or custody of the funds or property under the agency head shall be **immediately** responsible to him, without prejudice to the liability of either party to the government.

or government funds or damage to property. (Citations and emphases supplied)

These rules were reiterated in the prevailing guidelines on how the COA should determine the liability of a public officer in relation to audit disallowances under COA Circular No. 2009-006⁵¹ or the Rules and Regulations for the Settlement of Accounts, *viz.*:

SEC. 16. Determination of Persons Responsible/Liable. –

16.1. The Liability of public officers and other persons for audit disallowances/charges shall be determined **on the basis of** (a) the nature of the disallowance/charge; **(b) the duties and responsibilities or obligations of officers/employees concerned;** and **(c) the extent of their participation in the disallowed transaction;** and (d) the amount of damage or loss to the government, thus:

16.1.1 Public officers who are custodians of government funds shall be liable for their failure to ensure that such funds are safely guarded against loss or damage; that they are expended, utilized, disposed of or transferred in accordance with law and regulations, and on the basis of prescribed documents and necessary records.

16.1.2 Public officers **who certify** as to the necessity, legality and availability of funds or adequacy of documents shall be liable according to their respective certifications.

16.1.3 Public officers **who approve or authorize** expenditures shall be liable for losses arising out of their negligence or failure to exercise the diligence of a good father of a family.

16.1.4 Public officers and other persons **who confederated or conspired** in a transaction which is disadvantageous or prejudicial to the government shall be held liable jointly and severally with those who benefitted therefrom. (Emphases supplied)

Verily, the sole proposition that an official is the head of the audited agency does not suffice to hold him or her personally liable for disallowances on account of his or her subordinate's actions. Liability depends upon the wrong committed and not solely by reason of being the head of an agency.⁵²

⁵¹ Approved on September 15, 2009.

⁵² *Cadiac v. Commission on Audit*, G.R. No. 251995, January 26, 2021; and *Joson III v. Commission on Audit*, supra note 43 at 503.

In the recent case of *Madera v. COA*,⁵³ we confirmed the long-standing rule that acts or omissions committed by public officers are not actionable, absent a clear showing that they were motivated by bad faith, malice, or gross negligence amounting to bad faith in the performance of their official duties.⁵⁴ This rule proceeds from the presumption of good faith and regularity in the performance of official duties enjoyed by public officials.⁵⁵ To overcome such presumption and hold them liable for their acts or omissions, manifest bad faith, malice, or gross negligence in the performance of their official duties must be proven. Bad faith or malice which warrants accountability in disallowance cases is characterized as follows:

“[E]vident bad faith” connotes[,] not only bad judgment[,] but also palpably and patently fraudulent and dishonest purpose to do moral obliquity or **conscious wrongdoing for some perverse motive or ill will**. It contemplates a state of mind affirmatively operating with furtive design or with some motive or self-interest or ill will or for ulterior purposes.⁵⁶ (Emphasis supplied)

On the other hand, negligence must be gross, which amounts to bad faith, that is:

[N]egligence characterized by the **want of even slight care**, or by **acting or omitting to act in a situation where there is a duty to act, not inadvertently but willfully and intentionally, with a conscious indifference to the consequences**, insofar as other persons may be affected. It is the omission of that care that even inattentive and thoughtless men never fail to give to their own property. **It denotes a flagrant and culpable refusal or unwillingness of a person to perform a duty**. In cases involving public officials, gross negligence occurs when a breach of duty is flagrant and palpable.⁵⁷ (Emphases supplied)

Here, it is of record that petitioner had no knowledge or participation in the approval or authorization of the disallowed disbursements. There was even no showing that the questioned transactions were submitted, or required to be submitted, to petitioner for approval. In fact, none of the documents upon which the ND was based were approved/signed by petitioner.⁵⁸ The COA consistently found that the disallowed expenditures were all carried out by Patadon as the ORG-ARMM’s Chief-Supply Division/Special Disbursing Officer, with the approval and certification of the other ORG officers.⁵⁹ There was no finding, much less proof, that petitioner confederated or conspired with Patadon and the other ORG officers to bring about the nefarious disbursements. Indubitably, these circumstances, which were not taken into

⁵³ G.R. No. 244128, September 8, 2020.

⁵⁴ See *Blaquera v. Hon. Alcala*, 356 Phil. 678, 765 (1998).

⁵⁵ See also *Alejandrino v. Commission on Audit*, G.R. No. 245400, November 12, 2019, 925 SCRA 403, 426-427; and *Gubat Water District v. Commission on Audit*, G.R. No. 222054, October 1, 2019.

⁵⁶ *Fuentes v. People*, 808 Phil. 586, 594 (2017); and See *Lumayna v. Commission on Audit*, 616 Phil. 929, 945 (2009).

⁵⁷ *Office of the Ombudsman v. De Leon*, 705 Phil. 26, 37-38 (2013).

⁵⁸ *Rollo*, pp. 55-477.

⁵⁹ See SAO ND No. ORG-12-002-MDS/LF (08 & 09), *id.* at 51-53; and Appeal, *id.* at 492-508.

consideration in the proceedings before the COA, evince a finding that petitioner did not act with manifest bad faith, malice, or gross negligence in the performance of his official duties. Hence, there is no legal nor evidentiary basis to hold petitioner personally liable for the return of the disallowed amount.

Our pronouncements in the oft-cited case of *Joson III v. COA*⁶⁰ are instructive. As Provincial Governor/head of the procuring entity, Joson III was similarly held solidarily liable in a disallowance because he approved a contract in favor of an ineligible bidder. The Court, however, found that it was not his direct responsibility to check the completeness of the requirements, and there was nothing that would have prompted him to be meticulous about it before giving his approval. We ruled, thus, that it was not unreasonable for him to believe in good faith that his subordinates performed their jobs regularly and checked such requirements before it was forwarded to him for approval. Further, the Court ruled that assuming Joson III committed a mistake, absolution from liability was warranted just the same as there was no showing that he was motivated by malice or gross negligence amounting to bad faith in failing to ensure completeness of the eligibility requirements.

In *Cadio v. COA*,⁶¹ Cadio was likewise excluded from solidary liability in the disallowance despite participation in the passage of the resolution approving the disallowed disbursement. We ruled:

The fact that petitioner is the presiding officer of the [Sangguniang Panlalawigan (SP)] and the Vice-Governor of Antique does not automatically include her among the persons liable for the disallowance. Petitioner could not be held liable simply because she was the final approving authority for the passage of the subject resolution. The actions taken by petitioner involved the very functions she had to discharge in the performance of her official duties as the presiding officer of the SP. She could not, therefore, be held civilly liable for such acts unless there is a clear showing of bad faith, malice, or gross negligence.

The mere signature of petitioner in the passage of the resolution without anything more could not be considered as a presumption of liability. It should be recalled that mere signature does not result to a liability of the official involved without any showing of irregularity on the document's face such that a detailed examination would be warranted. **Liability depends upon the wrong committed and not solely by reason of being the head of a government agency.**

Further, it would be unjust to include petitioner among the persons named liable in the disallowance not only because petitioner was not the one directly responsible for the passage of the resolution, but also because there was no showing that petitioner was ill-motivated or that she had personally profited from the transaction.⁶² (Citations omitted and emphases supplied)

⁶⁰ Supra note 51.

⁶¹ Supra note 51.

⁶² Id.

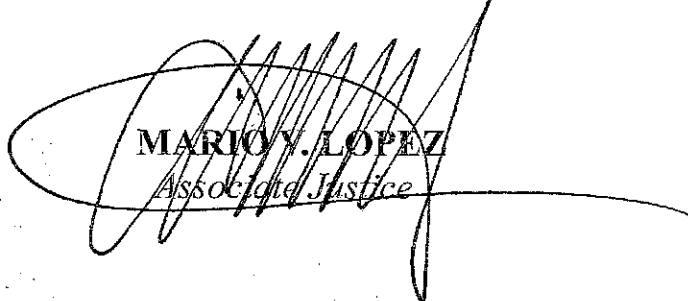
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In *Estalilla v. COA*,⁶³ we found that Estalilla had nothing to do with the disallowed disbursements beyond her issuance of the certificate of availability of funds as treasurer. There was no evidence that she had committed any wrongdoing in certifying the disbursements. Thus, despite finality of the NDs, the Court deleted Estalilla's solidary liability, ruling that such lack of evidence "should be reason enough to undo the declaration of her personal liability by the COA."⁶⁴ Similarly, in *Lanto v. COA*,⁶⁵ the Court gave due course to Lanto's belatedly-filed petition, and ruled that her good faith in certifying the disallowed disbursements, and absolute lack of knowledge of any irregularities therein, constituted compelling circumstances to justify her absolution from solidary liability.

Notably, in the foregoing cases, the public officers had direct participation in the approval or certification of the disallowed transaction, yet they were excluded from civil liability in view of the absence of bad faith, malice, or gross negligence. With greater reason in this case, petitioner should be absolved from civil liability because he had no participation or knowledge at all in the disallowed transaction/s. We stress, the public officer's position, without anything more, is insufficient to make such officer the party ultimately liable for the disallowed amount.⁶⁶ Absent a clear showing of wrongdoing and bad faith, malice, or gross negligence on the part of the public officer, the presumptions of good faith and regularity in the performance of official duty shall prevail.⁶⁷ Thus, the COA Proper gravely abused its discretion in sustaining petitioner's civil liability in the ND despite the established fact that petitioner did not approve, nor was he made aware of, the disallowed transactions.

FOR THESE REASONS, the Petition for *Certiorari* is **GRANTED**. The Commission of Audit's Resolution dated August 15, 2019 is **SET ASIDE**. Special Audit Office's Notice of Disallowance No. ORG-12-002-MDS/LF (08 & 09) dated January 13, 2012 is **MODIFIED** by **DELETING** petitioner Zaldy Uy Ampatuan's solidary liability in the disallowed amount.

SO ORDERED.


MARIO V. LOPEZ
Associate Justice

⁶³ G.R. No. 217448, September 10, 2019, 919 SCRA 1.

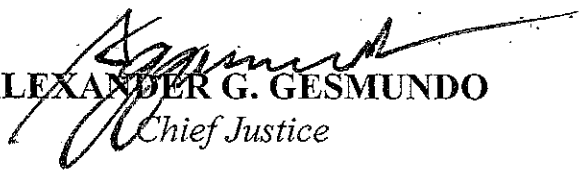
⁶⁴ Supra note 63 at 15.

⁶⁵ 808 Phil. 1025, 1039 (2017).

⁶⁶ See *Joson III v. Commission on Audit*, supra note 51 at 504.

⁶⁷ See *Madera v. Commission on Audit*, supra note 52; and *Collantes v. Marcelo*, 556 Phil. 794, 806 (2007).


WE CONCUR:



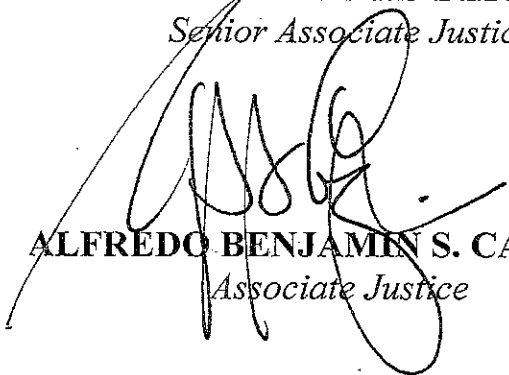
ALEXANDER G. GESMUNDO
Chief Justice



ESTELA M. PERLAS-BERNABE
Senior Associate Justice



MARVIC M.V. F. LEONEN
Associate Justice



ALFREDO BENJAMIN S. CAGUIOA
Associate Justice




RAMON PAUL L. HERNANDEZ
Associate Justice



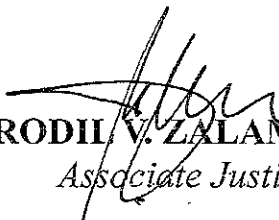
ROSALIND D. CARANDANG
Associate Justice



AMY C. LAZARO-JAVIER
Associate Justice



HENRI JEAN PAUL B. INTING
Associate Justice



RODIL V. ZALAMEDA
Associate Justice



SAMUEL H. GAERLAN
Associate Justice




RICARDO R. ROSARIO
Associate Justice

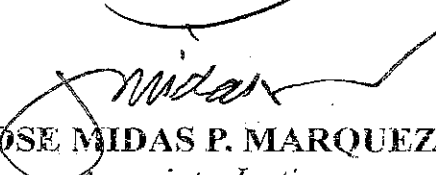


JHOSEP V. LOPEZ
Associate Justice

(on official leave)



JAFAR B. DIMAAMPAO
Associate Justice



JOSE MIDAS P. MARQUEZ
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, it is hereby certified 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.


ALEXANDER G. GESMUNDO
Chief Justice

CERTIFIED TRUE COPY



MARIA LUISA M. SANTILLA
Deputy Clerk of Court and
Executive Officer
OCC-En Banc, Supreme Court