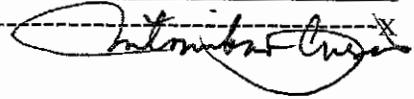


G.R. No. 222810 – Former Municipal Mayor Clarito A. Poblete, Municipal Budget Officer Ma. Dolores Jeaneth Bawalan, and Municipal Accountant Nephtali V. Salazar, *Petitioners*, v. Commission on Audit, *Respondent*.

Promulgated:

July 11, 2023

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CONCURRING AND DISSENTING OPINION

KHO, JR., J.:

I concur with the Court's finding that the disallowances made were proper. As duly held by the Court, the expenditures made by the Municipality of Silang contravened Section 350¹ of Republic Act No. 7160² or the Local Government Code of 1991 and Sections 46,³ 47,⁴ and 48⁵ of Chapter 8, Subtitle B, Title I, Book V of the Administrative Code⁶ when the projects done in the years 2004, 2006, and 2007 did not have any respective appropriations at the time of their implementation. In this relation, I likewise concur that the invocation by petitioner Clarito A. Poblete of the doctrine espoused in *Arias v. Sandiganbayan*⁷ is inapplicable in this case considering that a detailed examination of the 2010 budget is not required to show the irregularities of funding projects incurred in 2004, 2006, and 2007 through

¹ Section 350. Accounting for Obligations. — All lawful expenditures and obligations incurred during a fiscal year shall be taken up in the accounts of that year.

² Entitled "AN ACT PROVIDING FOR A LOCAL GOVERNMENT CODE OF 1991," approved on October 10, 1991.

³ Sec. 46. Appropriation Before Entering into Contract. — (1) No contract involving the expenditure of public funds shall be entered into unless there is an appropriation therefor, the unexpended balance of which, free of other obligations, is sufficient to cover the proposed expenditure; and

(2) Notwithstanding this provision, contracts for the procurement of supplies and materials to be carried in stock may be entered into under regulations of the Commission provided that when issued, the supplies and materials shall be charged to the proper appropriations account.

⁴ Sec. 47. Certificate Showing Appropriation to Meet Contract. — Except in the case of a contract for personal service, for supplies for current consumption or to be carried in stock not exceeding the estimated consumption for three (3) months, or banking transactions of government-owned or controlled banks, no contract involving the expenditure of public funds by any government agency shall be entered into or authorized unless the proper accounting official of the agency concerned shall have certified to the officer entering into the obligation that funds have been duly appropriated for the purpose and that the amount necessary to cover the proposed contract for the current calendar year is available for expenditure on account thereof, subject to verification by the auditor concerned. The certificate signed by the proper accounting official and the auditor who verified it, shall be attached to and become an integral part of the proposed contract, and the sum so certified shall not thereafter be available for expenditure for any other purpose until the obligation of the government agency concerned under the contract is fully extinguished.

⁵ Sec. 48. Void Contract and Liability of Officer. — Any contract entered into contrary to the requirements of the two (2) immediately preceding sections shall be void, and the officer or officers entering into the contract shall be liable to the Government or other contracting party for any consequent damage to the same extent as if the transaction had been wholly between private parties.

⁶ Executive Order No. 292 entitled "INSTITUTING THE ADMINISTRATIVE CODE OF 1987" (July 25, 1987).

⁷ 259 Phil. 794 (1989) [Per J. Gutierrez, Jr., *En Banc*].



appropriations made in 2010, which as previously discussed is in clear contravention of the law.

Moreover, I concur with the Court's resolution insofar as it finds that petitioners failed to file an appeal before the Commission on Audit (COA) within the reglementary period. This lapse in procedure bars petitioners from filing the present petition considering that the COA Regional Office's decision had already become final and executory for failure to appeal the same within the prescribed reglementary period under Section 48⁸ of Presidential Decree No. 1445⁹ and Section 3,¹⁰ Rule VII of the 2009 Revised Rules of Procedure of the COA. Thus, a judgment without proper appeal therefrom that lapses into finality becomes final and immutable — hence, the present petition should have been dismissed outright for being filed out of time.¹¹

Despite my concurrence with the foregoing disquisitions of the Court's resolution, I, however, respectfully express my disagreement from the Court's holding with respect to the determination of liabilities, particularly the non-applicability of the principle of *quantum meruit*. Considering the circumstances of the present case, the approving and certifying officers' liability should have been tempered by the principle of *quantum meruit* as established in *Torreta v. COA (Torreta)*¹² despite the Notices of Disallowance having become final and immutable.

In *Aguinaldo IV v. People (Aguinaldo IV)*,¹³ the Court, Justice Estela M. Perlas-Bernabe, reiterated the Court's appreciation of the doctrine of finality and immutability of judgment:

Time and again, the Court has repeatedly held that “a decision that has acquired finality becomes immutable and unalterable, and may no longer be modified in any respect, even if the modification is meant to correct erroneous conclusions of fact and law, and whether it be made by

⁸ Sec. 48. Appeal from decision of auditors. Any person aggrieved by the decision of an auditor of any government agency in the settlement of an account or claim may within six months from receipt of a copy of the decision appeal in writing to the Commission.

⁹ Entitled “ORDAINING AND INSTITUTING A GOVERNMENT AUDITING CODE OF THE PHILIPPINES,” (June 11, 1978).

¹⁰ Sec. 3. Period of Appeal. The appeal shall be taken within the time remaining of the six (6) months period under Section 4, Rule V, taking into account the suspension of the running thereof under Section 5 of the same Rule in case of appeals from the Director's decision, or under Sections 9 and 10 of Rule VI in case of decision of the [Adjudication and Selection Board].

¹¹ PD 1445, Sec. 51 provides:

Sec. 51. Finality of decisions of the Commission or any auditor. A decision of the Commission or of any auditor upon any matter within its or his jurisdiction, if not appealed as herein provided, shall be final and executory. (See also *Paguio v. COA*, G.R. No. 223547, April 27, 2021 [Per J. M. Lopez, *En Banc*], citing *Republic v. Heirs of Gotengco*, 824 Phil. 568 (2018) [Per J. Gesmundo, Third Division].

¹² G.R. No. 242925, November 10, 2020. [Per J. Gaerlan, *En Banc*].

¹³ G.R. No. 226615, January 13, 2021 [Special Second Division]. See also *Uy v. Del Castillo*, 814 Phil. 61 (2017) [Per J. Perlas-Bernabe, First Division]; *Bigler v. People*, 782 Phil. 158 (2016) [Per J. Perlas-Bernabe, First Division]; *Sumbilla v. Matrix Finance Corp.*, 762 Phil. 130 (2015) [Per J. Villarama, Jr., Third Division]; *Barnes v. Judge Padilla*, 500 Phil. 303 (2005) [Per J. Austria-Martinez, Second Division]; and *Sanchez v. COA*, 452 Phil. 665 (2003) [Per J. Bellosillo, *En Banc*].

the court that rendered it or by the Highest Court of the land. This principle, known as the doctrine of immutability of judgment, has a two-fold purpose, namely: (a) to avoid delay in the administration of justice and thus, procedurally, to make orderly the discharge of judicial business; and (b) to put an end to judicial controversies, at the risk of occasional errors, which is precisely why courts exist. Verily, it fosters the judicious perception that the rights and obligations of every litigant must not hang in suspense for an indefinite period of time. As such, it is not regarded as a mere technicality to be easily brushed aside, but rather, a matter of public policy which must be faithfully complied.” However, this doctrine “is not a hard and fast rule as the Court has the power and prerogative to relax the same in order to serve the demands of substantial justice considering: (a) matters of life, liberty, honor, or property; (b) the existence of special or compelling circumstances; (c) the merits of the case; (d) a cause not entirely attributable to the fault or negligence of the party favored by the suspension of the rules; (e) the lack of any showing that the review sought is merely frivolous and dilatory; and (f) that the other party will not be unjustly prejudiced thereby.”¹⁴

A reading of the Court’s discussion in *Aguinaldo IV* leads to the understanding that the doctrine of finality and immutability of judgment may still be relaxed “[...] in order to serve the demands of substantial justice considering: (a) matters of life, liberty, honor, or property; (b) the existence of special or compelling circumstances; (c) the merits of the case; (d) a cause not entirely attributable to the fault or negligence of the party favored by the suspension of the rules; (e) the lack of any showing that the review sought is merely frivolous and dilatory; and (f) that the other party will not be unjustly prejudiced thereby.”¹⁵

Here, the finality of the Notices of Disallowance may be relaxed based on the second, third, and sixth factors as cited above. In this relation, the Court’s ratiocination of the applicability of the principle of *quantum meruit* in *Torreta* exactly provides justification in relaxing the doctrine of finality and immutability of judgment. In allowing for the reduction of liability based on *quantum meruit*, the Court explained:

Verily, the peculiarity of cases involving government contracts for procurement of goods or services necessitates the promulgation of a separate guidelines for the return of the disallowed amounts. In these cases, it is deemed fit that the passive recipients be ordered to return what they received subject to the application of the principle of *quantum meruit*. ***Quantum meruit* literally means “as much as he deserves.” Under this principle, a person may recover a reasonable value of the thing he delivered or the service he rendered. The principle also acts as a device to prevent undue enrichment based on the equitable postulate that it is unjust for a person to retain benefit without paying for it. The principle of quantum meruit is predicated on equity.** In the case of *Geronimo v. COA*, it has been held that “the [r]ecovery on the basis of *quantum meruit*

¹⁴ Id., citation omitted.

¹⁵ See *Aguinaldo IV v. People*, supra; *Uy v. Del Castillo*, supra, at 75; *Bigler vs. People*, supra, at 166; *Sumbilla v. Matrix Finance Corporation*, supra, at 138; *Barnes v. Judge Padilla*, supra; and *Sanchez v. COA*, supra.

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was allowed despite the invalidity or absence of a written contract between the contractor and the government agency.” In *Dr. Eslao v. COA*, the Court explained that the denial of the contractor’s claim would result in the government unjustly enriching itself. The Court further reasoned that justice and equity demand compensation on the basis of *quantum meruit*. Thus, in applying this principle, the amount in which the petitioners together with the other liable individuals shall be equitably reduced.¹⁶ (emphasis and italics supplied)

Applying *Torreta*, the government unjustly enriching itself is a compelling circumstance for the Court to relax the doctrine of finality and immutability of judgment. In the same manner, the government will not be unjustly prejudiced in relaxing the principle because the government would have already benefited from the disbursement of public funds. Here, the government benefited because of the subject local projects by the Municipality of Silang. To require the approving and certifying officers to return the entire disallowed amount despite the Municipality of Silang having benefited therefrom would be contrary to the demands of justice and equity.

In this relation, I express my disagreement with the resolution’s finding that the principle of *quantum meruit* is inapplicable in the present case. In this case, petitioners invoked the principle following the case of *DPWH v. Ronaldo Quiwa (Quiwa)*.¹⁷ In debunking petitioners’ invocation of the principle, the Court held that the ruling in *Quiwa* is inapplicable considering that: (a) there was a prior appropriation in *Quiwa*; and (b) the factual milieu in *Quiwa* is exceptional since the services rendered was pursuant to an emergency project.¹⁸

However, the principle of *quantum meruit* should still be applied in this case even if the present disallowances arose from the invalidity of the contracts (*i.e.*, violation of the Local Government Code and Administrative Code). In *Torreta*, the Court reiterated that the principle of *quantum meruit* is applicable “despite the invalidity or absence of a written contract between the contractor and the government agency,”¹⁹ as in this case. To my mind, the invalidity of the projects due to lack of prior appropriation should not be a hindrance in ensuring that the government is not unjustly enriched from the benefits arising from the projects that have already been completed.

ACCORDINGLY, I vote to **REMAND** the case to the Commission on Audit for proper determination of the liabilities of the approving and certifying officers.


ANTONIO T. KHO, JR.

Associate Justice

¹⁶ *Torreta v. COA*, supra; citations omitted.

¹⁷ 675 Phil. 9 (2011) [Per J. Sereno, Second Division].

¹⁸ See Resolution, p. 10.

¹⁹ *Torreta*, supra note 12, citing *Geronimo v. COA*, 844 Phil. 651, 658 (2018) [Per J. J. Reyes, Jr., *En Banc*].

