

BY: Y/A
TIME: 2:10

REPUBLIC OF THE PHILIPPINES
SUPREME COURT
Manila

EN BANC

GEORGE P. CABREROS and
BARMEL B. ZUMEL,
Petitioners,

- versus -

G.R. No. 266713

COMMISSION ON AUDIT,
Respondent.

X ----- X
JESSIE MARIO B. DOSADO,
Petitioner,

-versus-

G.R. No. 270183

[Formerly UDK 17816]

COMMISSION ON AUDIT, HON.
MARIA CARMEN DELOS
SANTOS, HON JEANNELYN V.
DULAY, AND STATE AUDITOR
JAIME V. SERRANO,

Respondents.

X ----- X

NOTICE OF JUDGMENT

Sirs/Mesdames:

Please take notice that on July 30, 2024 a Resolution, copy attached herewith, was rendered by the Supreme Court in the above-entitled case, the original of which was received by this Office on November 27, 2024 at 9:25 a.m.

Very truly yours,

MARIFE M. LOMIBAO-CUEVAS
Clerk of Court

By:


MARIA LUISA M. SANTILLA
Deputy Clerk of Court

JAROMAY LAURENTE AND
ASSOCIATES LAW OFFICES (x)
Counsel for Petitioners in G.R. Nos 266713
2nd Floor, One Joroma Place
Congressional Avenue cor. San Beda Street
1106 Quezon City

THE CHAIRPERSON (x)
Commission on Audit
Commonwealth Avenue
Quezon City

E.M. BANAAG LAW OFFICE (x)
Counsel for Petitioner in G.R. No. 270183
Unit 2304, 23rd Floor, AIC Burgundy
Empire Tower
ADB Avenue corner Sapphire and
Garnet Roads, Ortigas Center, Pasig City

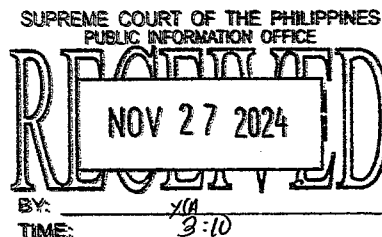
PUBLIC INFORMATION OFFICE (x)
OFFICE OF THE COURT
ADMINISTRATOR (x)
OFFICE OF THE CHIEF ATTORNEY (x)
PHILIPPINE JUDICIAL ACADEMY (x)
LIBRARY (x)
JUDICIAL RECORDS OFFICE (x)
Supreme Court, Manila

THE SOLICITOR GENERAL (x)
Office of the Solicitor General
134 Amorsolo Street
Legaspi Village, Makati City

JAIME V. SERRANO (x)
State Auditor V, Supervising Auditor
Office of the Auditor, Philippine Army
JEANNELYN V. DULAY (x)
OIC, Supervising Auditor
Auditor Group G-PA, OIC
Respondents
Commission on Audit
Commonwealth Avenue, Quezon City

MARIA CARMEN DELOS SANTOS (x)
Audit Team Leader
Respondent
Philippine Textile Research Institute (PTRI)
DOST Compound, General Santos Avenue
Bicutan, Taguig City





Republic of the Philippines
Supreme Court
Manila

EN BANC

GEORGE P. CABREROS and
BARMEL B. ZUMEL,
Petitioners,

G.R. No. 266713

— versus —

COMMISSION ON AUDIT,
Respondent.

X ----- X

JESSIE MARIO B. DOSADO,
Petitioner,

G.R. No. 270183
[Formerly UDK 17816]

— versus —

COMMISSION ON AUDIT,
HON. MARIA CARMEN DELOS
SANTOS, HON. JEANNELYN V.
DULAY, AND STATE AUDITOR
JAIME V. SERRANO,
Respondents.

Members:

GESMUNDO, C.J.,
LEONEN,
CAGUIOA,
HERNANDO,
LAZARO-JAVIER,
INTING,
ZALAMEDA,
LOPEZ, M.,
GAERLAN,
ROSARIO,
LOPEZ, J.,
DIMAAMPAO,
MARQUEZ,
KHO, JR., and
SINGH, JJ.

Promulgated:July 30, 2024

X - - - - - X

DECISION**LAZARO-JAVIER, J.:****The Case**

These consolidated Petitions for *Certiorari*¹ under Rule 64 in relation to Rule 65 of the Rules of Court, assail the following dispositions of respondent Commission on Audit (COA), *viz.*:

1. COA Resolution² in Decision No. 2017-243 dated August 18, 2017, affirming COA Decision³ in Decision No. 2015-054 dated March 9, 2015 on Notice of Disallowance (ND)⁴ No. 10-001-101(03) dated October 12, 2010 corresponding to the payment of PHP 5,103,000.00 for the purchase of Combat Clothing and Individual Equipment (CCIE) items for the Philippine Army of the Armed Forces of the Philippines (AFP) and on the solidary liability of Lieutenant Colonel George P. Cabreros (L/C Cabreros), Lieutenant Colonel Barmel B. Zumel (L/C Zumel), and Lieutenant Colonel Jessie Mario B. Dosado (L/C Cabreros et al.) to return the said amount; and

2. COA Resolution⁵ in Decision No. 2022-382 dated January 24, 2022, denying L/C Cabreros et al.'s respective motions for reconsideration.

The Antecedents

Sometime in February 2003, the Army Support Command (ASCOM) of the Philippine Army received from Colonel Cyrano Austria (COL Austria), Assistant Chief of Staff for Logistics of the Philippine Army six Procurement

¹ *Rollo* (G.R. No. 266713), pp. 3–28 and *rollo* (G.R. No. 270183 [formerly UDK 17816]), pp. 3–19.

² *Rollo* (G.R. No. 266713), pp. 228–233. Signed by Chairperson Michael G. Aguinaldo, Commissioners Jose A. Fabia and Isabel D. Agito of the Commission on Audit, Quezon City.

³ *Id.* at 234–238. Signed by Commissioner, Officer-in-Charge, Heidi L. Mendoza and Commissioners Jose A. Fabia and Isabel D. Agito of the Commission on Audit, Quezon City.

⁴ *Id.* at 239–240.

⁵ *Id.* at 189–196. Signed by Chairperson Michael G. Aguinaldo and Commissioner Roland C. Pondoc of the Commission on Audit, Quezon City.



Directives (PDs) for CCIE items to be used by the members of the Philippine Army during the celebration of the Philippine Army Day, Veterans Week, Independence Day, and other AFP-related activities.⁶ The details of the PDs are, as follows:

PD No.	Date	Items to be Procured	Amount
2003-04-0081	February 11, 2003	185 Sets of Gala with Green Pants	PHP 925,000.00
2003-04-0082	February 12, 2003	540 Perching Caps	PHP 972,000.00
2003-04-0083	February 13, 2003	165 Sets of Gala with Green Pants	PHP 825,000.00
2003-04-0084	February 14, 2003	540 White Pants	PHP 270,000.00
		540 Line Yards	PHP 459,000.00
2003-04-0085	February 17, 2003	540 Sets of Buttons	PHP 270,000.00
		540 Belts and Buckets	PHP 432,000.00
2003-04-0086	February 17, 2003	180 Sets of Gala with Green Pants	PHP 950,000.00
		Total:	PHP 5,103,000.00

Acting on the PDs, the Philippine Army's Bids, Negotiations and Acceptance Committee (BNAC) convened and instructed the ASCOM to conduct a canvass on the CCIE items sought to be procured. The BNAC was composed of Colonel Cesar Santos (COL Santos), as BNAC Chairman; Captain Ferdinand Fevidal (CAPT Fevidal), L/C Cabreros, and L/C Zumel, as BAC Members; and L/C Dosado, as BNAC Secretariat. Since the events were drawing near, the BNAC issued a resolution to procure the CCIE items through "shopping" due to its supposed urgency.⁷

Acting on the resolution, L/C Dosado, as BNAC Secretary, issued the *Certificates of Purchase through Shopping* containing the names of three suppliers and manufacturers, as well as the price quotations for the items. Out of three interested suppliers, the BNAC selected Dantes Executive Menswear since it purportedly offered the "lowest, fairest, and best-complying offer." Thereafter, COL Santos, L/C Zumel, and L/C Cabreros issued and signed the *Abstract of Canvass and Recommendation of Award, Certificate of Reasonableness of Price* dated February 25, 2003, and *Notice to Proceed* dated June 18, 2003.⁸

Subsequently, six separate Purchase Orders (POs) in favor of Dantes Executive Menswear were prepared and signed by Lieutenant General Gregorio Camiling, Jr. (LTG Camiling, Jr.), Commanding General of the Philippine Army; Colonel Custodio Salosagcol, Acting Commanding Officer

⁶ *Rollo* (G.R. No. 270183 [formerly UDK 17816]), p. 167.

⁷ *Id.* at 167-168.

⁸ *Id.* at 168.

of ASCOM; and Rolando Minel, Chief Accountant of the Philippine Army, who all certified that funds were available for the purpose.⁹

On June 19, 2003, the POs were forwarded to and received by Conrad Cuenca of Dantes Executive Menswear.¹⁰

On June 30, 2003, Disbursement Vouchers (DVs) on the POs were issued and signed by Brigadier General Severino P. Estrello (BG Estrello), Commanding General of the ASCOM. He certified that the expenses were necessary, lawful, and incurred under his supervision. It was LTG Camiling, Jr., who approved the payment while Atty. Editha Santos, Head of the Accounting Unit of the AFP, certified that the supporting documents were complete and proper.¹¹

On October 7, 2003, the *Memorandum* dated August 20, 2003 of State Auditor Manuel Baes was referred to the Office of the Ombudsman for fact-finding investigation in light of the following alleged irregularities in the procurement of the CCIE items, viz.: (1) the items procured were issued directly to the end-users without first recording them on the stock ledger card, hence, the physical existence of the delivery could not be ascertained; (2) the procurement was through shopping; and (3) the POs were prepared on the same date for the purchase of similar items, indicating that there was splitting of contracts which violated COA Circular No. 76-41 dated July 30, 1976.¹²

The Office of the Ombudsman nonetheless endorsed the case back to the COA on February 27, 2004 for fraud audit.¹³

On September 14, 2010, the COA reported to the Office of the Ombudsman that the CCIE items procured by the Philippine Army were delivered and issued to their respective requisitioning units and received by the end-users. The corresponding "*Memorandum Receipts*" bore the individual signatures of the beneficiary soldiers. The COA, however, noted that the items were procured without public bidding since the Philippine Army resorted to "shopping" as the mode of procuring the CCIE. For there was alleged splitting of contracts since the six POs were issued on the same date, by the same requisitioning office, and in favor of the same supplier.¹⁴

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.*

¹² *Rollo* (G.R. No. 270183 [formerly UDK 17816]), p. 168.

¹³ *Id.* at 169.

¹⁴ *Id.*



On October 12, 2010, the COA, through State Auditor Jaime V. Serrano issued ND No. 10-001-101-(03) disallowing the total payment of PHP 5,103,000.00 made to Dantes Executive Menswear.¹⁵

The basis of the disallowance was the splitting of six POs worth PHP 5,103,000.00 for the purchase of CCIE items to allegedly avoid public bidding in violation of COA Circular No. 76-41 and Republic Act No. 9184¹⁶ or the Government Procurement Reform Act. The COA held L/C Cabrerros et al. solidarily liable together with LTG Camiling, Jr., BG Estrella, COL Santos, Lieutenant Colonel Roberto A. Valencia, and Lieutenant Colonel Imelda L. Nadala as recommending and approving officers, and Dantes Executive Menswear as payee. L/C Cabrerros et al. received ND No. 10-001-101-(03) on October 29, 2010.¹⁷

Meantime, the Office of the Deputy Ombudsman for the Military and Other Law Enforcement Offices Fact-Finding Investigation Bureau (FIB-MOLEO) initiated criminal and administrative cases against the involved public officers from the Philippine Army,¹⁸ including L/C Cabrerros et al., for allegedly acting in conspiracy to defraud the government. Criminal cases for violation of Section 3(e) of Republic Act No. 3019¹⁹ or the Anti-Graft and Corrupt Practices Act (one count) and Falsification of Public Documents under Article 171 of the Revised Penal Code (six counts) were filed against them before the Sandiganbayan; and for Grave Misconduct before the Office of the Ombudsman.²⁰

Back to the COA case, on April 11, 2011, L/C Cabrerros et al. filed an *Appeal Memorandum* before the COA Regional Director–National Government Sector Cluster B (COA–NGS). They essentially claimed that “shopping” was an alternative method of procuring goods under the Implementing Rules and Regulations (IRR) of Executive Order No. 40, Series of 2001, provided the amount involved was PHP 1,000,000.00 or less.²¹

¹⁵ *Id.*

¹⁶ (2003).

¹⁷ *Rollo* (G.R. No. 270183 [formerly UDK 17816]), p. 169.

¹⁸ Including COL Cesar Santos, L/C Barmel Zumel, CAPT George Cabrerros, as members of the BAC, for certifying the Abstract for Procurement and Procurement Thru Shopping; BG Severino Estrella, as Commanding Officer of ASCOM, for certifying that the expenses are necessary, lawful and incurred under his direct supervision; LTG Gregorio Camiling, Commanding General of the Philippine Army, for approving the payment of the CCIE items despite knowledge that there was no public bidding conducted and for allowing the splitting of the procurement knowing fully well that he has acted in excess of his authority in proving the POs; COL Cyrano Austria, Assistant Chief of Staff for Logistics, for issuing the PDs and making them chargeable to inexistent fund in an ASA; Atty. Editha Santos, Accounting Unit Head, for certifying that all supporting documents are complete and proper and for certifying that fund is available using the ASAs issued by COL Austria; and Rolando Minel, Chief Accountant of the Philippine Army, for certifying that a fund was available using the ASAs issued by COL Austria, even fully knowing that there was still no fund available for that purpose.

¹⁹ (1960).

²⁰ *Rollo* (G.R. No. 270183 [formerly UDK 17816]), p. 169–170.

²¹ *Id.*



The Ruling of the COA-NGS

Under Decision No. 2012-002 dated February 6, 2012 (February 6, 2012 Decision), the COA-NGS denied the appeal for lack of merit and affirmed ND No. 10-001-101(03),²² viz.:

WHEREFORE, foregoing premises considered, the appeal is hereby DENIED for lack of merit and the Notice of Disallowance No. 10-001-101-(03) dated October 12, 2010, disallowing the total amount of [PHP]5,103,000.00 is hereby affirmed. This is without prejudice to the filing a further appeal with the Commission Proper, pursuant to the Rules on the Settlement of Account.²³

On February 29, 2012, L/C Cabreros et al. received the February 6, 2012 Decision. COA-NGS thereafter issued a Notice of Finality of Decision (NFD) dated April 30, 2013, which they received on September 5, 2013.²⁴

On October 4, 2013, L/C Cabreros et al. filed a petition for review before the COA Proper.²⁵

The Ruling of the COA Proper

By Decision No. 2015-054²⁶ dated March 9, 2015 (March 9, 2015 Decision), the COA Proper dismissed the petition for review for its late filing. It ruled that the February 6, 2012 Decision of the COA-NGS had already become final and executory.²⁷

On August 20, 2015, L/C Cabreros et al. filed their first motion for reconsideration following their receipt of the March 9, 2015 Decision on August 18, 2015.²⁸

Under its Resolution in Decision No. 2017-243²⁹ dated August 18, 2017 (August 18, 2017 Resolution), the COA Proper denied L/C Cabreros et al.'s first motion for reconsideration again for its late filing. Consequently, the COA Proper issued a Notice of Final Decision dated December 8, 2017, declaring the August 18, 2017 Resolution final and executory.³⁰

²² *Rollo* (G.R. No. 266713), pp. 282–283.

²³ *Id.* at 283.

²⁴ *Id.* at 235.

²⁵ *Id.*

²⁶ *Id.* at 234–237.

²⁷ *Id.* at 237.

²⁸ *Id.* at 229.

²⁹ *Id.* at 228–232.

³⁰ *Id.* at 263–264.

Then, on January 22, 2019, L/C Cabreros et al. filed a second motion for reconsideration but it was also denied by the COA Proper under its Resolution No. 2022-382³¹ dated January 24, 2022. The COA proper noted that a second motion for reconsideration is prohibited under the 2009 Revised Rules of Procedure of the Commission on Audit (2009 RRPC).

The Rulings of the Sandiganbayan and the Court of Appeals

In the *interim*, by Decision³² dated April 8, 2022, the Sandiganbayan acquitted all the accused-public officers from the Philippine Army, including L/C Cabreros et al., of one count of violation of Section 3(e) of Republic Act No. 3019 and six counts of Falsification of Public Documents under Article 171 of the Revised Penal Code.

The Sandiganbayan held that the prosecution failed to establish the element of “*corrupt intent, dishonest design, or some unethical interest*” to commit a violation of Section 3(e) of Republic Act No. 3019. There was no showing that the accused-public officers profited from the purchase of the CCIE items.³³

As for the charges of Falsification of Public Documents, the Sandiganbayan ruled that the prosecution failed to prove the due execution of the PDs and the Advice of Sub-allotments (ASAs) which were allegedly falsified by the accused-public officers. The prosecution only presented the photocopies of these documents and never, at any stage of the proceedings, presented their original copies.³⁴

In contrast, the Office of the Ombudsman found the accused-public officers, including L/C Cabreros et al., guilty of Grave Misconduct in the administrative cases filed against them.

Only L/C Dosado, L/C Cabreros, and L/C Zumel filed their separate appeals before the Court of Appeals. By Decision dated September 10, 2020, the Court of Appeals dismissed the administrative case against L/C Dosado. It ruled that nothing in the records showed how he participated in the alleged conspiracy to defraud the government. It was also not shown how he participated in directing and conducting the procurement process for the CCIE items nor in recommending the award of the procurement contracts since these duties belonged to the members of the BNAC. His role as the BNAC

³¹ *Id.* at 189–196.

³² *Rollo* (G.R. No. 266713), pp. 128–181. Penned by Associate Justice Ronald B. Moreno and concurred in by Associate Justices Amparo M. Cabotaje-Tang and Bernelito R. Fernandez.

³³ *Id.* at 155, 173.

³⁴ *Id.* at 173–179.

Secretariat was only to facilitate the bidding process, take custody of the procurement documents, and act as the center of communication for all parties involved. Simply put, his functions as BNAC Secretariat were purely ministerial in character since he only served as an administrative support for the BNAC. Considering that the element of “intent to commit a wrong” was not established, L/C Dosado’s dismissal from service was not warranted.³⁵

As for L/C Cabreros, by Decision³⁶ dated November 29, 2018, the Court of Appeals modified his administrative liability from grave misconduct to simple misconduct. The Court of Appeals noted that the Office of the Ombudsman itself declared that the element of “*corruption, clear intent to violate the law, or flagrant disregard of an established rule*” was not proved. There was also no proof that the government sustained losses when the BNAC resorted to “shopping” in the purchase of the CCIE items. The Court of Appeals nonetheless explained that although L/C Cabreros may not have participated in the splitting of contracts to procure the CCIE items for the Philippine Army, it should have cautioned him as a member of the BNAC that that public bidding, not shopping should have been the mode of purchase. For not raising this issue and for proceeding with his concurrence in adopting shopping as the mode of purchase, L/C Cabreros was guilty of simple misconduct.³⁷

On the other hand, L/C Zumel’s appeal still pends resolution by the Court of Appeals.

The Present Petitions

On May 5, 2023, L/C Cabreros and L/C Zumel filed their Petition for *Certiorari*³⁸ before the Court assailing COA Resolution No. 2017-243³⁹ dated August 18, 2017 and Resolution dated January 24, 2022 in Decision No. 2022-382, while L/C Dosado filed his separate Petition⁴⁰ on May 12, 2023. By Resolution⁴¹ dated August 22, 2023 both Petitions were consolidated.

L/C Cabreros et al. pray that the COA Resolution in Decision No. 2017-243 dated August 18, 2017 and Resolution in Decision No. 2022-382 dated January 24, 2022 be nullified.⁴² They ask the Court to relax the COA rules on

³⁵ *Rollo* (G.R. No. 266713), pp. 3–23 and *rollo* (G.R. No. 270183 [formerly UDK 17816]), pp. 3–17.

³⁶ *Rollo* (G.R. No. 266713), pp. 89–127. Penned by Associate Justice Rafael Antonio M. Santos and concurred in by Associate Justices Sesinando E. Villon and Justice Edwin D. Sorongon of the Eight Division, Court of Appeals, Manila.

³⁷ *Id.* at 101–128.

³⁸ *Rollo* (G.R. No. 266713), p. 23 and *rollo* (G.R. No. 270183 [formerly UDK 17816]), p. 18.

³⁹ *Rollo* (G.R. No. 266713), pp. 228–233.

⁴⁰ *Id.*

⁴¹ *Rollo* (G.R. No. 266713), pp. 307–308.

⁴² *Rollo* (G.R. No. 266713), pp. 3–24 and *rollo* (G.R. No. 270183 [formerly UDK 17816]), pp. 3–19.

the period to file appeal under the 2009 RRPC. They explain that their failure to file their appeals on time before the COA-NGS and the COA Proper was because the subject ND No. 10-001-101-(03) was not personally served on them. Instead, it was only served at the Headquarters of the Philippine Army. Thus, they were surprised to receive the NFD dated April 20, 2013. They admit that they were not familiar with the rules of procedure of the COA, and that they were not represented by a counsel before. They only trusted that the appeal filed for them by their senior officers, who were their co-accused before the Sandiganbayan, were correct and procedurally sound.⁴³

They argue further that as members of the BNAC, their participation was limited to signing the *Abstracts of Canvass and Recommendation of Award* and the issuance of the *Certificates of Purchase through Shopping* in accordance with the PDs. These acts were purely ministerial in nature. Too, there was nothing on the face of the PDs that should have made them doubt their validity. In fact, they had no hand in preparing or issuing the PDs and POs where the supposed irregularity of “splitting” had occurred. They only recommended that procurement be made through shopping because there was an urgent need to purchase the CCIE items and public bidding was no longer practical because the apparels were to be used already in just a month’s time.⁴⁴

They also assert that they could no longer be held liable for the value of the DVs because they have already been absolved from both criminal and administrative liabilities by the Sandiganbayan and the Court of Appeals, respectively. Lastly, they have proven that the funds subject of ND No. 10-001-101-(03) were actually used for the purpose for which they were intended.⁴⁵

In its Comment,⁴⁶ the COA, through the Office of the Solicitor General (OSG), argues that L/C Cabreros et al. filed their Petitions with the COA Proper way beyond the reglementary period under the 2009 RRPC and Presidential Decree No. 1445⁴⁷ or the Government Auditing Code of the Philippines. Consequently, the disallowance of PHP 5,103,000.00 under ND No. 10-001-101-(03) became final and executory. Too, L/C Cabreros et al.’s duties were not purely ministerial. L/C Dosado as BNAC Secretary, and L/C Cabreros and L/C Zumel as BNAC members, respectively, were required to exercise diligence in ensuring that no procurement rules or any law for that matter, were violated before recommending payment to their chosen supplier, Dantes Executive Menswear. L/C Cabreros et al.’s act of resorting to “shopping” instead of public bidding clearly caused injury to the government.


⁴³ *Rollo* (G.R. No. 266713), p. 4.

⁴⁴ *Id.* at 7.

⁴⁵ *Id.* at 14–18.

⁴⁶ *Id.* at 277–302.

⁴⁷ (1978).



Thus, they should not be excused from returning the disallowed amount. Lastly, the OSG notes that L/C Zumel has not yet been absolved of his administrative liability since his appeal is still pending before the Court of Appeals, while L/C Cabreros was in fact found liable for simple misconduct by the Court of Appeals.⁴⁸

Our Ruling

The Petitions are partly meritorious.

The Petition before the COA Proper was filed out of time but the Court relaxes the rule on immutability of judgment in the higher interest of substantial justice

The procedure for filing an appeal before the COA is governed by the 2009 RRPC, thus:

RULE V
PROCEEDINGS BEFORE THE DIRECTOR

....

Section 4. *When Appeal Taken.* — An Appeal must be filed within six (6) months after receipt of the decision appealed from.

Section 5. *Interruption of Time to Appeal.* — The receipt by the Director of the Appeal Memorandum shall stop the running of the period to appeal which shall resume to run upon receipt by the appellant of the Director’s decision.

....

RULE VII
PETITION FOR REVIEW TO THE COMMISSION PROPER

....

Section 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, . . .

....

Section 5. *Contents of Petition.* — The petition for review shall contain a concise statement of the facts and issues involved and the grounds relied

⁴⁸ Rollo (G.R. 266713), pp. 277–302.

upon for the review, and shall be accompanied by a certified true copy of the decision appealed from, together with certified true copies of such relevant portions of the record as are referred to therein and other supporting papers. The petition shall state the specific dates to show that it was filed within the reglementary period.

As ordained, an appeal to the COA Regional Director must be filed within six months or 180 days after receipt of the ND, and the appeal before the COA Proper shall be taken within the remaining period of six months under the proceedings before the Director.⁴⁹

Here, L/C Cabrereros et al. filed their *Appeal Memorandum* with the COA Regional Director–NGS Cluster B only on April 11, 2011 or after the lapse of 163 days from their receipt of the ND No. 10-001-101-(03) on October 29, 2010. Thus, since the appeal to the COA Proper should be filed within 180 days from October 29, 2010, they only had 17 days left. Records show, however, that they filed their appeal before the COA Proper only on October 4, 2013, or after 583 days reckoned from February 29, 2012 when they received the February 6, 2012 Decision of the COA Regional Director–NGS Cluster B.

Thus, as correctly ruled by the COA Proper, L/C Cabrereros et al.’s appeal before it was filed out of time. It therefore rendered the February 6, 2012 Decision of the COA–NGS final and immutable.

True, the Court emphasized in many cases that procedural rules should be treated with utmost respect and due regard since they are designed precisely to facilitate the adjudication of cases to remedy the worsening problem of delay in the resolution of rival claims and in the administration of justice.⁵⁰ Nonetheless, the principle of immutability of judgment admits of several exceptions,⁵¹ such as:

- (1) the correction of clerical errors;
- (2) the so-called *nunc pro tunc* entries which cause no prejudice to any party;
- (3) void judgments; and
- (4) whenever circumstances transpire after the finality of the decision rendering its execution unjust and inequitable.⁵²

The Court has further allowed the relaxation of the rule on finality of judgments in order to serve substantial justice,⁵³ taking into account:

⁴⁹ *Velasquez v. Commission on Audit*, 884 Phil. 319, 323 (2020) [Per J. J. Reyes, Jr., *En Banc*].

⁵⁰ *Razalan v. Commission on Audit*, G.R. No. 255366, November 9, 2021 [Notice, *En Banc*].

⁵¹ *Estrella v. Commission on Audit*, 910, Phil. 372, 389 [Per J. M. Lopez, *En Banc*].

⁵² *Id.*

⁵³ *Id.*

- (1) matters of life, liberty, honor, or property;
- (2) the existence of special or compelling circumstances;
- (3) the merits of the case;
- (4) a cause not entirely attributable to the fault or negligence of the party favored by the suspension of the rules;
- (5) a lack of any showing that the review sought is merely frivolous and dilatory; and
- (6) the other party will not be unjustly prejudiced thereby.⁵⁴

In *De Castro v. Commission on Audit*,⁵⁵ the Court resolved the case on the merits despite the fact that the petition before the Supreme Court was filed 10 days late since it involved disallowances amounting to more than PHP 30,000,000.00.

In *Razalan v. Commission on Audit*,⁵⁶ the Court also took cognizance of the petition and resolved it on the merits despite its late filing by eight days considering the hefty amount involved, and the fact that the municipality of Mayantoc, Tarlac and its constituents have actually benefited and continuously benefit from the construction of the Mayantoc Memorial Park Project.

Finally, the Court in *Estrella v. Commission on Audit*⁵⁷ resolved the case on the merits although the subject ND therein had already attained finality. There, the Court relaxed the rules on immutability of judgment and decreed that it would be the height of injustice to blindly yield to the principle of immutability and leave petitioner (Chua) liable for an erroneous substantial amount even if he was not given an opportunity to question the COA's disallowance.

Here, several circumstances are present which compel the Court to relax the procedural rules of the COA and to apply the exception to immutability of judgments, viz.: (1) the CCIE items procured by the Philippine Army worth PHP 5,103,000.00 were actually delivered and issued to their respective requisitioning units and received by the end-users right in time before the celebration of the Philippine Army Day, Veterans Week, Independence Day, and other AFP-related activities in 2003; (2) L/C Cabreros et al. were later acquitted by the Sandiganbayan from the charges of violation of Section 3(e) of Republic Act No. 3019 and Falsification of Public Documents under Article 171 of the Revised Penal Code; and (3) the Court of Appeals exonerated L/C Dosado from his administrative case and found L/C Cabreros liable only for simple misconduct.

⁵⁴ *Id.*

⁵⁵ 886 Phil. 104, 127–128 (2020) [Per J. Gaerlan, *En Banc*].

⁵⁶ G.R. No. 255366, November 9, 2021 [Notice, *En Banc*].

⁵⁷ 910 Phil. 372, 389 (2021) [Per J. M. Lopez, *En Banc*].

Verily, in the higher interest of substantial justice, the Court is compelled to take cognizance of the present Petitions and resolve them on the merits.

The COA did not commit grave abuse of discretion when it disallowed the payment of PHP 5,103,000.00.

Foremost, COA Circular No. 76-41 enumerates the different forms of “splitting” namely: (1) non-consolidation of requisitions for one or more items needed at or about the same time by the requisitioner; (2) issuance of two or more purchase orders based on two or more requisitions for the same or about the same time by different requisitioners; and (3) making two or more payments for one or more items involving one purchase order.⁵⁸

On the other hand, Republic Act No. 9184 or the Government Procurement Reform Act and its revised 2003 IRR, which was in effect when the events transpired, provide prohibitions against splitting of government contracts vis-à-vis the alternative mode of “shopping,” viz.:

ARTICLE XVI
Alternative Methods of Procurement

SECTION 48. Alternative Methods. — Subject to the prior approval of the Head of the Procuring Entity or his duly authorized representative, and whenever justified by the conditions provided in this Act, the Procuring Entity may, in order to promote economy and efficiency, resort to any of the following alternative methods of Procurement:

....

(d) *Shopping* — a method of Procurement whereby the Procuring Entity simply requests for the submission of price quotations for readily available off-the-shelf Goods or ordinary/regular equipment to be procured directly from suppliers of known qualification; ...

....

In all instances, the Procuring Entity shall ensure that the most advantageous price for the Government is obtained.

⁵⁸ Forms of Splitting:
1) Splitting of Requisitions consists in the non-consolidation of requisitions for one or more items needed at or about the same time by the requisitioner.
2) Splitting of Purchase Orders consists in the issuance of two or more purchase orders based on two or more requisitions for the same or at about the same time by different requisitioners; and
3) Splitting of Payments consists in making two or more payments for one or more items involving one purchase order.

....

IRR OF REPUBLIC ACT NO. 9184

SECTION 52. Shopping. — . . .

Shopping is a method of procurement of goods whereby the procuring entity simply requests for the submission of price quotations for readily available off-the-shelf goods or ordinary/regular equipment to be procured directly from suppliers of known qualifications. This method of procurement shall be employed only in any of the following cases:

- a) When there is an unforeseen contingency requiring immediate purchase: Provided, however, That the amount shall not exceed fifty thousand pesos ([PHP] 50,000); or
- b) Procurement of ordinary or regular office supplies and equipment not available in the Procurement Service involving an amount not exceeding two hundred fifty thousand pesos ([PHP] 250,000): Provided, however, That the procurement does not result in splitting of contracts, as provided in Section 54.1 of this IRR-A: Provided, further, That at least three (3) price quotations from bona fide suppliers shall be obtained.

The above amounts shall be subject to a periodic review by the [Government Procurement Policy Board] (GPPB). For this purpose, the GPPB shall be authorized to increase or decrease the said amount in order to reflect changes in economic conditions and for other justifiable reasons.

. . . .

SECTION 54. Terms and Conditions for the use of Alternative Methods.
—

54.1. Splitting of Government Contracts is not allowed. Splitting of Government Contracts means the division or breaking up of Government Contracts into smaller quantities and amounts, or dividing contract implementation into artificial phases or sub-contracts for the purpose of evading or circumventing the requirements of law and this IRR-A, especially the necessity of public bidding and the requirements for the alternative methods of procurement.

What is prohibited is the splitting of government contracts for the purpose of “evading or circumventing the necessity of public bidding and the requirements for the alternative methods of procurement.”

Here, no one among L/C Cabreros et al. was shown to have directly participated in the alleged splitting of contracts for the purchase of CCIE items worth PHP 5,103,000.00. Tracing back, COL Austria had already initiated the splitting of contracts when he sent six PDs to ASCOM sometime in February 2003 for the procurement of CCIE items to be used by the Philippine Army in its celebration of the Philippine Army Day, Veterans Week, Independence Day, and other AFP-related activities. At the onset, it was COL Austria who recommended that the procurement of CCIE items be split into six small contracts.

Notably, what the BNAC and its members did was merely to approve the six PDs, prepare, and sign the documents for the purchase of CCIE items from their chosen supplier, Dantes Executive Menswear, since they believed that it has the “lowest, fairest, and best-complying offer.”

This notwithstanding, the BNAC still violated Republic Act No. 9184 when it adopted “shopping” as the mode of procuring CCIE without a valid justification. Section 52 of Republic Act No. 9184 provides that “shopping” as an alternative method of procurement may be resorted to only: (a) when there is an unforeseen contingency requiring immediate purchase, provided the amount does not exceed PHP 50,000.00; or (b) when procuring ordinary or regular office supplies and equipment not available in the Procurement Service involving an amount not exceeding PHP 250,000.00.

In this case, L/C Cabreros et al. failed to show that the BNAC’s resort to “shopping” as the mode of procurement was justified either by an unforeseen contingency requiring immediate purchase or that the CCIE items were regular office supplies and equipment which were not available at the Procurement Service. Instead, their justification for resorting to “shopping” was because there was a supposed urgent need to purchase CCIE items and public bidding was not any more realistic since the PDs were made only in the latter part of February 2003, while the event during which CCIE items were to be used was too close or just about a month away. To be sure, this is not a valid justification to forego public bidding under the law and existing rules. In fine, the COA did not commit grave abuse of discretion when it issued ND No. 10-001-101-(03) disallowing the payment of PHP 5,103,000.00 to Dantes Executive Menswear, a transaction which was entered into through shopping instead of public bidding.

*L/C Cabreros et al. are excused
from the solidary liability to
return*

But in determining whether a certifying, approving, and authorizing officer is liable for the disapproved disbursement, we reckon with the following guidelines on return of disallowed amounts involving unlawful or irregular government contracts per *Torreta v. Commission on Audit*,⁵⁹ viz.:

1. If a Notice of Disallowance is set aside by the Court, no return shall be required from any of the persons held liable therein.
2. If a *Notice of Disallowance* is upheld, the rules on return are as follows:

⁵⁹ 889 Phil 1119, 1149 (2020) [Per J. Gaerlan, *En Banc*].

a. *Approving and certifying officers who acted in good faith, in the regular performance of official functions, and with the diligence of a good father of the family are not civilly liable to return* consistent with Section 38 of the Administrative Code of 1987.

b. Pursuant to Section 43 of the Administrative Code of 1987, *approving and certifying officers who are clearly shown to have acted with bad faith, malice, or gross negligence, are solidarily liable together with the recipients for the return of the disallowed amount.*

c. The civil liability for the disallowed amount may be reduced by the amounts due to the recipient based on the application of the principle of *quantum meruit* on a case to case basis.

d. These rules are without prejudice to the application of the more specific provisions of law, COA rules and regulations, and accounting principles depending on the nature of the government contract involved. (Emphasis supplied)

The Administrative Code of 1987,⁶⁰ Book I, Chapter 9, Sections 38 and 39⁶¹ also state that a public officer may only be held civilly liable for acts done in the performance of his or her official duty upon a clear showing that he or she performed such duty with "bad faith, malice, or gross negligence." The Administrative Code of 1987, Book VI, Chapter 5, Section 43,⁶² further underscores that if these elements are present, the guilty officers are jointly and solidarily liable for the disallowed amounts. More, under Section 103⁶³ of Presidential Decree No. 1445 or the Government Auditing Code of the

⁶⁰ Executive Order No. 292.

⁶¹ Section 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.

2) Any public officer who, without just cause, neglects to perform a duty within a period fixed by law or regulation, or within a reasonable period if none is fixed, shall be liable for damages to the private party concerned without prejudice to such other liability as may be prescribed by law.

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.

Section 39. Liability of Subordinate Officers. — No subordinate officer or employee shall be civilly liable for acts done by him in good faith in the performance of his duties. However, he shall be liable for willful or negligent acts done by him which are contrary to law, morals, public policy and good customs even if he acted under orders or instructions of his superiors.

⁶² Section 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.

Any official or employee of the Government knowingly incurring any obligation, or authorizing any expenditure in violation of the provisions herein, or taking part therein, shall be dismissed from the service, after due notice and hearing by the duly authorized appointing official. If the appointing official is other than the President and should he fail to remove such official or employee, the President may exercise the power of removal.

⁶³ Presidential Decree No. 1445 (1978) sec. 103. General liability for unlawful expenditures. Expenditures of government funds or uses of government property in violation of law or regulations shall be a personal liability of the official or employee found to be directly responsible therefor.

Philippines, unlawful expenditures shall be the personal liability of the official or employee found to be responsible for it.

The Court in *Celeste v. Commission on Audit*,⁶⁴ likewise ruled that those performing ministerial duties may be excused from the solidary liability to return because of good faith. Specifically, the duty to certify on the availability of funds and the completeness of signatures and supporting documents prior to payment is purely ministerial in character.

To determine L/C Cabrerros et al.’s respective liabilities here, the Court should first ascertain if their questioned acts are ministerial or discretionary in nature. If they were merely performing their ministerial duties, they ought to be excused from the solidary liability to return. On the other hand, if they were performing discretionary duties, applying the guidelines in *Torreta*, they are excused from solidary liability to return so long as they have performed such duties in “good faith.”

Here, L/C Cabrerros et al. acted in the following capacities:

Name	Position/Designation	Nature of Participation in the Transaction
L/C Dosado	BNAC Secretary	Issued the Certificates of Purchase through Shopping
L/C Cabrerros	BNAC Member	Issued the Abstract of Canvass and Recommendation of Award, Certificate of Reasonableness of Price, and Notice to Proceed.
L/C Zumel	BNAC Member	

We first discuss the liability of L/C Dosado.

Notably, after the BNAC issued a Resolution deciding that the CCIE items were to be procured through “shopping,” L/C Dosado, as BNAC Secretary, issued the *Certificates of Purchase through Shopping* containing the names of the three suppliers and manufacturers, as well as the prices they quoted for the items to be procured.

In *PNP-CIDG v. Villafuerte*,⁶⁵ the Court categorically held that the functions of the BAC Secretariat are purely ministerial in character because he or she only serves as administrative support for the BAC. The nature of the functions of the BAC Secretary under the Amended IRR-A of Republic Act No. 9184 confirms that respondent in the case did not possess the recommendatory authority of any kind, viz.:

⁶⁴ 904 Phil. 199, 207–213 (2021) [Per J. Caguioa, *En Banc*].
⁶⁵ 840 Phil. 243 (2018) [Per J. Caguioa, *En Banc*].

Section 14. BAC Secretariat. —

14.1. The head of the procuring entity shall create a Secretariat which will serve as the main support unit of the BAC. . . . The Secretariat shall have the following functions and responsibilities:

1. Provide administrative support to the BAC;
2. Organize and make all necessary arrangements for the BAC meetings;
3. Attend BAC meetings as Secretary;
4. Prepare Minutes of the BAC meetings;
5. Take custody of procurement documents and be responsible for the sale and distribution of bidding documents to interested bidders;
6. Assist in managing the procurement processes;
7. Monitor procurement activities and milestones for proper reporting to relevant agencies when required;
8. Consolidate PPMPs from various units of the procuring entity to make them available for review as indicated in Section 7 of this IRR-A;
9. Make arrangements for the pre-procurement and pre-bid conferences and bid openings; and
10. Be the central channel of communications for the BAC with end users, PMOs, other units of the line agency, other government agencies, providers of goods, civil works and consulting services, and the general public.⁶⁶

Similar to the BAC Secretary in *Villafuerte*, L/C Dosado was also performing ministerial functions when he acted on the BNAC's resolution to resort to shopping and issued the *Certificates of Purchase through Shopping*. His role was only to facilitate the bidding process, take custody of the procurement documents, and act as the center of communication for all the parties involved.

Further, as shown, the disallowance in this case was anchored on COL Austria's splitting of the CCIE items worth PHP 5,103,000.00 into six PDs which caused the subsequent decision of the BNAC to resort to shopping. L/C Dosado did not participate in the decision to proceed with "shopping" instead of public bidding. Therefore, L/C Dosado is excused from the solidary liability to return the disallowed amount since he had not participated in either the splitting of the PDs or in the BNAC's decision to resort to shopping.

We go now to the liabilities of *L/C Cabrerros* and *L/C Zumel*. As members of the BNAC, their first action after they received the six PDs for the procurement of the CCIE items was to instruct the ASCOM to conduct a canvass. The BNAC then formally resolved that the CCIE items were to be procured through "shopping" due to its urgency. After L/C Dosado issued the *Certificates through Shopping* containing the names of the three suppliers and manufacturers, they chose Dantes Executive Menswear. Then they issued and

⁶⁶ *Id.*

signed the *Abstract of Canvass and Recommendation of Award, Certificate of Reasonableness of Price, and Notice to Proceed*.

Unlike L/C Dosado, L/C Cabreros and L/C Zumel were not merely performing ministerial functions. They exercised their discretion in resolving that based on the PDs they received from COL Austria, they had to resort to “shopping” due to its urgency; and thereafter in choosing which supplier had the “lowest, fairest, and best-complying offer.” The crucial question: *Did L/C Cabreros and L/C Zumel act in good faith?*

As a rule, public officials are entitled to the presumption of good faith in the discharge of official duties. “*Good faith*” is a state of mind denoting “honesty of intention, and freedom from knowledge of circumstances which ought to put the holder upon inquiry; an honest intention to abstain from taking any unconscientious advantage of another, even though technicalities of law, together with the absence of all information, notice, or benefit or belief of facts which render transaction unconscientious.”⁶⁷ In a long line of cases,⁶⁸ the Court had ruled that there must be a clear showing of bad faith, malice, or gross negligence for public officers to be civilly liable for illegal expenditures. Otherwise, the presumptions of regularity and good faith operate to absolve them from said liability.

Ultimately, the issue of whether parties acted in bad faith or good faith or gross negligence is a question of fact.⁶⁹ The Sandiganbayan and the Court of Appeals have determined this question. Incidentally, both have ruled that good faith attended the assailed acts of L/C Cabreros and L/C Zumel.

By Decision dated April 8, 2022, the Sandiganbayan acquitted L/C Cabreros and L/C Zumel of violation of Section 3(e) of Republic Act No. 3019 and Falsification of Public Document under Article 171 of the Revised Penal Code. The Sandiganbayan explicitly ruled that there was an absence of “*corrupt intent, dishonest design, or some unethical interest*” on the part of L/C Cabreros and L/C Zumel. Additionally, there was no showing that they profited from the purchase of the CCIE items because the COA itself reported that the CCIE items which the Philippine Army procured were actually delivered and issued to their respective requisitioning units and received by the end-users and they were able to use the items for the celebration of the

⁶⁷ *Razalan v. Commission on Audit*, G.R. No. 255366, November 9, 2021 [Notice, *En Banc*].

⁶⁸ *See Alejandrino v. COA*, 866 Phil. 188, 208 (2019) [Per J. Carandang, *En Banc*]; *Gubat Water District v. COA*, 864 Phil. 71, 84–85 (2019) [Per J. Lazaro-Javier, *En Banc*]; *Madera v. COA*, 882 Phil. 744, 873 (2019) [Per J. Caguioa, *En Banc*]; *Montejo v. COA*, 837 Phil. 193, 207–208 (2018) [Per J. Peralta, *En Banc*]; *Career Executive Service Board v. COA*, 833 Phil. 433, 445–446 (2018) [Per J. Bersamin, *En Banc*]; *Development Bank of the Philippines v. COA*, 827 Phil. 818, 834 (2018) [Per J. Gesmundo, *En Banc*].

⁶⁹ *Mercado v. Ongpin*, 886 Phil. 822, 833 (2020) [Per J. Leonen, *En Banc*]; *see also Ganancial v. Cabugao*, 876 Phil. 1, 20–21 (2020) [Per J. Hernando, *En Banc*].

8

Philippine Army Day, Veterans Week, Independence Day, and other AFP related activities in 2003.

Similarly, by its final and executory Decision dated November 29, 2018,⁷⁰ the Court of Appeals, albeit finding L/C Cabreros liable for simple misconduct, found that there was “*lack of bad faith on his part.*” The Court of Appeals further noted that the government never sustained any loss by reason of the BNAC’s decision to resort to shopping in procuring the CCIE items where L/C Cabreros was a member.

On the issue of gross negligence, the same has been defined as the *palpable disregard of laws*, prevailing jurisprudence, and other applicable directives which betrays the presumption of good faith and regularity in the performance of official functions enjoyed by public officers.⁷¹

As earlier discussed, the Court of Appeals, per its final and executory Decision dated November 29, 2018,⁷² already made the factual finding that in issuing the Notice to Proceed with shopping as the mode of procurement, L/C Cabreros did not act with any “corruption, clear intent to violate the law, or *flagrant disregard of an established rule.*”⁷³ Although the Court of Appeals has yet to resolve L/C Zumel’s appeal, its final and executory Decision dated November 29, 2018 in favor of L/C Cabreros may equally apply to L/C Zumel since his participation in the disallowed transaction was essentially the same as that of L/C Cabreros, both being members of the BNAC.

Too, per the Decision⁷⁴ dated April 8, 2022 of the Sandiganbayan, L/C Cabreros and L/C Zumel were acquitted of violation of Section 3(e) of Republic Act No. 3019 for the prosecution’s failure to prove its elements as charged in the Information, which included lack of “evident bad faith, manifest partiality, or *gross inexcusable negligence.*”⁷⁵

In any event, the guidelines in *Torreta* with respect to return of disallowed amounts involving unlawful or irregular government contracts based on *quantum meruit* does not apply here.

⁷⁰ Per Court of Appeals’ Resolution dated June 18, 2019, its Decision dated November 29, 2018 had already attained finality with respect to the case of Cabreros since the Office of the Ombudsman neither filed a motion for reconsideration before it nor a Petition for Review on *Certiorari* before the Supreme Court.

⁷¹ *Estrella v. COA*, 910 Phil. 372, 387 (2021) [Per J. M. Lopez, *En Banc*].

⁷² Per Court of Appeals’ Resolution dated June 18, 2019, its Decision dated November 29, 2018 had already attained finality with respect to the case of Cabreros since the Office of the Ombudsman neither filed a motion for reconsideration before it nor a Petition for Review on *Certiorari* before the Supreme Court.

⁷³ *Rollo* (G.R. No. 266713), p. 123.

⁷⁴ *Id.* at 128–181.

⁷⁵ *Id.* at 173.


8

Quantum meruit literally means “as much as he or she deserves.” Under this principle, a person may recover a reasonable value of the thing he or she delivered or the service he or she 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*.⁷⁶

Here, to require L/C Cabreros and L/C Zumel to return the amount they have not received in the first place would go against the very essence of *quantum meruit* and equity. More so in light of the final and executory finding of the Court of Appeals that the government did not suffer any loss by reason of BNAC’s decision to resort to shopping in procuring the subject items. For as mentioned, the items procured were actually delivered and issued to their respective requisitioning units and received by the end-users. Most important, there was no finding at all that L/C Cabreros and L/C Zumel acted with gross negligence when they proceeded with shopping as a mode of procuring the subject items.

ACCORDINGLY, the Petitions are **GRANTED IN PART**. The Resolutions dated August 18, 2017 in Decision No. 2017-243 and January 24, 2022 in Decision No. 2022-382 of the Commission on Audit are **AFFIRMED WITH MODIFICATION**. Petitioners Lieutenant Colonel George P. Cabreros, Lieutenant Colonel Barmel B. Zumel, and Lieutenant Colonel Jessie Mario B. Dosado are **EXCUSED** from returning the disallowed amount of PHP 5,103,000.00.

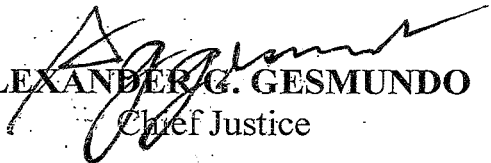
SO ORDERED.




AMY C. LAZARO-JAVIER
Associate Justice

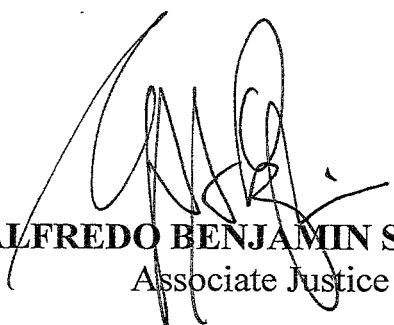
⁷⁶ *Torreta v. COA*, 889 Phil. 1119, 1159 (2020) [Per J. Gaerlan, *En Banc*].

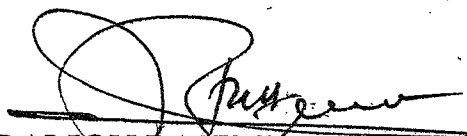
WE CONCUR:


ALEXANDER G. GESMUNDO
Chief Justice

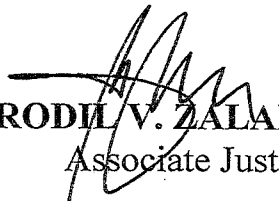
*I join Justice Singh's separate
concurring and dissenting*


MARVIC M. V. LEONEN
Senior Associate Justice

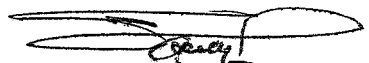

ALFREDO BENJAMIN S. CAGUIOA
Associate Justice



RAMON PAUL L. HERNANDO
Associate Justice



HENRI JEAN PAUL B. INTING
Associate Justice


RODIL V. ZALAMEDA
Associate Justice


MARIO V. LOPEZ
Associate Justice

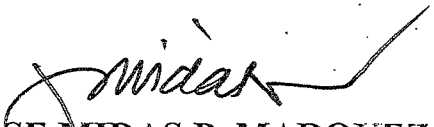

SAMUEL H. GAERLAN
Associate Justice


RICARDO R. ROSARIO
Associate Justice

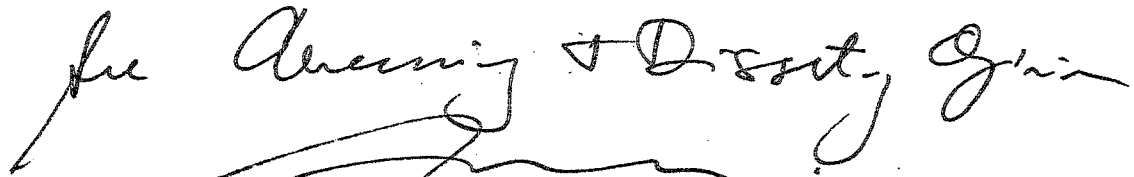

JHOSEP V. LOPEZ
Associate Justice


JAPAR B. DIMAAMPAO
Associate Justice

18

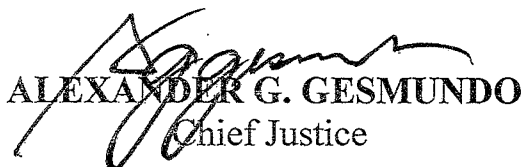

JOSE MIDAS P. MARQUEZ
Associate Justice


ANTONIO T. KHO, JR.
Associate Justice


MARIA FILOMENA D. SINGH
Associate Justice

CERTIFICATION

Pursuant to Article VIII, Section 13 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.


ALEXANDER G. GESMUNDO
Chief Justice



EN BANC

G.R. No. 266713 – LT. COL. GEORGE P. CABREROS and LT. COL. BARMEL B. ZUMEL, Petitioner v. COMMISSION ON AUDIT, Respondent

G.R. No. 270183 [Formerly UDK 17816] – LT. COL. JESSIE MARIO B. DOSADO, Petitioner v. COMMISSION ON AUDIT, HON. MARIA CARMEN DELOS SANTOS, HON. JEANNELYN V. DULAY, AND STATE AUDITOR JAIME V. SERRANO, Respondents.

Promulgated:

July 30, 2024

x----------x

CONCURRING & DISSENTING OPINION

SINGH, J.:

I concur in the Resolution's finding that the Commission on Audit (COA) did not commit grave abuse of discretion when it disallowed the payment of PHP 5,103,000.00 because the transaction was entered into through shopping instead of public bidding.¹

However, I dissent as to the Resolution's finding that petitioners Lieutenant Colonel (Lt. Col) George P. Cabreros and Lt. Col. Barmel B. Zumel must be excused from liability.²

As narrated in the Resolution, the COA disallowed the payments for six purchase orders (POs) for Combat Clothing and Individual Equipment (CCIE) by the Philippine Army of the Armed Forces of the Philippines (AFP), amounting to a total of PHP 5,103,000.00.³ The COA noted that the items were procured without public bidding, as the Philippine Army resorted to "shopping" as the mode of procuring the CCIE. According to the COA, this constitutes splitting of contracts since the six POs were issued on the same date, by the same requisitioning office, and in favor of the same supplier.⁴ The persons held liable for the disallowance were the Philippine Army Bids, Negotiations and Acceptance Committee (BNAC) Members, the Secretary of the BNAC, the recommending and approving officers, and the payee.⁵

¹ Resolution, pp. 12–14.

² *Id.* at 14–20.

³ *Id.* at 1–2.

⁴ *Id.* at 3–4.

⁵ *Id.* at 4.



Meanwhile, the Office of the Deputy Ombudsman for the Military and Other Law Enforcement Offices Fact-Finding Investigation Bureau (**FIB-MOLEO**), instituted criminal and administrative cases against the involved public officers from the Philippine Army, including the petitioners in this case, for allegedly acting in conspiracy to defraud the government.⁶

The COA Regional Director–National Government Sector Cluster B (**COA-NGS**) dismissed the appeal filed by the petitioners for lack of merit. On appeal to the COA Proper, the petition for review filed by the petitioners was dismissed for being filed out of time. The COA Proper ruled that the Decision of the COA–NGS had become final and executory.⁷

In the *interim*, the Sandiganbayan acquitted all accused public officers, including the petitioners due to the prosecution's failure to establish the elements of "*corrupt intent, dishonest design, or some unethical interest*" to commit violation of Section 3(e) of Republic Act No. 3019. According to the Sandiganbayan, there was no proof that the accused public officers profited from the purchase of the CCIE items.⁸

As for their administrative liabilities, the Office of the Ombudsman found the accused public officers, including the petitioners, guilty of Grave Misconduct. On appeal, the Court of Appeals (**CA**) dismissed the administrative case against Lt. Col. Jessie Mario B. Dosado. As for Lt. Col. George P. Cabreros, the CA downgraded his administrative liability from Grave Misconduct to Simple Misconduct because the CA found no bad faith on his part. On the other hand, the appeal of Lt. Col. Barmel B. Zumel before the CA is still pending.⁹

Subsequently, Lt. Col. Cabreros and Lt. Col. Zumel, both BNAC Members, and Lt. Col. Dosado, BNAC Secretary, filed the present Petitions before the Court.¹⁰

The Resolution states that the COA did not commit grave abuse of discretion when it disallowed the payment of PHP 5,103,000.00 due to splitting of government contracts. However, the draft Resolution excused the petitioners from solidary liability to return the disallowed amount.

The Resolution justified its findings that Lt. Col. Cabreros and Lt. Col. Zumel should be excused from liability based on the ruling of the Sandiganbayan that there was no "*corrupt intent, dishonest design, or some*

⁶ *Id.*

⁷ *Id.* at 5.

⁸ *Id.* at 6.

⁹ *Id.* at 7.

¹⁰ *Id.* at 8.



unethical interest" on the part of Lt. Col. Cabreros and Lt. Col. Zumel. Furthermore, the Resolution also noted that the CA found lack of bad faith on the part of Lt. Col. Cabreros. The Resolution likewise holds that although Lt. Col. Zumel's appeal is still pending before the CA, the Decision in favor of Lt. Col. Cabreros may be equally applied to him as they are both BNAC Members.

While I agree with the Resolution that Lt. Col. Dosado may be excused from solidary liability to return the disallowed amount, as he was merely performing ministerial functions as member of the BNAC Secretariat, I disagree that Lt. Col. Cabreros and Lt. Col. Zumel should be excused as well.

It bears noting that the Sandiganbayan dismissed the criminal cases against the petitioners not because of a finding of good faith, but because of a finding of lack of sufficient evidence that the accused public officers profited from the purchase of the CCIE items.¹¹ Further, a cursory reading of the Decision of the CA would show that the CA did not categorically declare that Lt. Col. Cabreros was in good faith. In fact, the CA noted that the BNAC committed an irregularity when it still decided to adopt shopping as the mode of procurement for the CCIE items despite the presence of circumstances which should have cautioned them against implementing the procurement through shopping, instead of public bidding.¹²

The BNAC of the Philippine Army is the equivalent to the Bids and Award Committee (**BAC**) under Republic Act No. 9184. As mandated by the said law, the BAC shall ensure that the procuring entity abides by the standards set forth by the procurement law. In proper cases, the BAC shall also recommend to the Head of the Procuring Entity the use of Alternative Methods of Procurement. Section 12 of the Implementing Rules and Regulations (**IRR**) of Republic Act No. 9184 reads:

SECTION 12. Functions of the BAC.

The BAC shall have the following functions: (a) advertise and/or post the invitation to bid/request for expressions of interest; (b) conduct pre-procurement and pre-bid conferences; (c) determine the eligibility of prospective bidders; (d) receive and open bids; (e) conduct the evaluation of bids; (f) undertake post-qualification proceedings; (g) resolve requests for reconsideration; (h) recommend award of contracts to the HoPE or his duly authorized representative; (i) recommend the imposition of sanctions in accordance with Rule XXIII; (j) recommend to the HoPE the use of Alternative Methods of Procurement as provided in Rule XVI hereof; k) conduct any of the Alternative Methods of Procurement; l) conduct periodic assessment of the procurement processes and procedures to streamline procurement activities pursuant to Section

¹¹ *Id.* at 6.

¹² *Rollo* (G.R. No. 266713), pp. 120-122.



3(c) of this IRR; and m) perform such other related functions as may be necessary, including the creation of a Technical Working Group (TWG)[.]

In this case, the BNAC issued a Resolution that the CCIE items should be procured through “shopping” due to its urgency.¹³ As discussed in the Resolution, the IRR of Republic Act No. 9184 allows the conduct of shopping when there is an unforeseen contingency requiring immediate purchase, only if the amount does not exceed the thresholds for the conduct of shopping.¹⁴

However, in this case, the six procurement directives, totaling PHP 5,103,000.00, clearly exceeded the threshold amount for the conduct of shopping. Despite the similarities in the items to be procured and the fact that they exceeded the threshold for competitive bidding, the BNAC still recommended shopping. The COA correctly characterized this as splitting of government contracts, which is prohibited. Consequently, the BNAC grossly erred in recommending the conduct of shopping, instead of competitive bidding.

Even assuming that there was no finding of bad faith on the part of Lt. Col. Cabrereros and Lt. Col. Zumel as BNAC Members, their clear disregard for the express requirements of Republic Act No. 9184 amounts to gross negligence.

Gross negligence has been so defined as negligence characterized by the want of even slight care, 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 consequences in so far as other persons may be affected. It is the omission of that care which even inattentive and thoughtless men never fail to take on their own property.¹⁵

Further, by jurisprudence, the palpable disregard of laws, prevailing jurisprudence, and other applicable directives amount to gross negligence, which overturns the presumption of good faith and regularity in the performance of official functions enjoyed by public officers.¹⁶


Lt. Col. Cabrereros and Lt. Col. Zumel, as BNAC Members, should have demonstrated a higher degree of diligence in carrying out their functions. Their roles extend beyond mere ceremonial duties, they have the obligation to ensure the proper conduct of public bidding, because it is the policy and

¹³ Resolution, p. 2.

¹⁴ *Id.* at 13.

¹⁵ *Securities and Exchange Commission v. COA*, G.R. No. 252198, April 27, 2021 [Per J. Lazaro-Javier, *En Banc*].

¹⁶ *Estrella v. COA*, G.R. No. 252079, September 14, 2021 [Per J. M. Lopez, *En Banc*].



medium adhered to in procurement of government contracts.¹⁷ Thus, the solidary liability to return the disallowed amount of Lt. Col. Cabreros and Lt. Col. Zumel, as BNAC Members must be upheld. However, applying the Court's pronouncement in *Torreta v. COA*,¹⁸ on the return of disallowed amounts in cases involving illegal or irregular government contracts, their liability may be reduced by the amounts due to the payees, based on the application of the principle of *quantum meruit*.

Based on the foregoing, I vote to **PARTLY GRANT** the Petitions. The Commission on Audit Proper Resolution No. 2017-043, dated August 18, 2017, and the Resolution, dated January 24, 2022, which upheld the disallowance of the payment of PHP 5,103,000.00 for the purchase of CCIE items, must be affirmed due to splitting of government contracts. Petitioner Lt. Col. Dosado should be exempt from solidary liability to return the disallowed amount, as he was merely carrying out ministerial duties as a member of the BNAC Secretariat. Conversely, petitioners Lt. Col. Cabreros and Lt. Col. Zumel cannot be excused from returning the disallowed amount, as they were grossly negligent in performing their duties as BNAC Members by allowing the resort to shopping, instead of conducting public bidding. However, their liability may be reduced by the amounts excused to be returned by the payees.



MARIA FILOMENA D. SINGH
Associate Justice

¹⁷ *Reyes v. Office of the Deputy Ombudsman for Luzon*, G.R. No. 230704, March 15, 2023 [Per. J. Gaerlan, Third Division].

¹⁸ 889 Phil. 1119 (2020) [Per J. Gaerlan, *En Banc*].

