

**EN BANC**

**[ G.R. No. 172580, July 23, 2008 ]**

**LOURDESITA M. BIBAS, PETITIONER, VS. OFFICE OF THE  
OMBUDSMAN (VISAYAS) AND COMMISSION ON AUDIT,  
REGIONAL OFFICE NO. VI, RESPONDENTS.**

**D E C I S I O N****CARPIO MORALES, J.:**

Lourdesita M. Bibas (petitioner) assails via this petition for review the Court of Appeals Resolution of June 16, 2005 dismissing her original action for certiorari and Resolution of April 6, 2006 denying her motion for reconsideration. Subject of petitioner's petition before the appellate court was the August 3, 2004 Order of the Office of the Ombudsman in Visayas (Ombudsman) finding her guilty of Dishonesty and dismissing her from government service.

Prior to her dismissal, petitioner was Disbursing Officer II in the City Treasurer's Office, Silay City. One of her duties as such included releasing of salaries for regular and casual employees of the Silay City government. Before each payday, she and her fellow disbursing officers would secure cash advances to defray the salaries, and after disbursement, they would present to their immediate supervisors the payrolls and remaining funds left in their possession. The supervisors would then issue the corresponding receipt for the returned funds.

On November 6, 2002, State Auditors Sheila S. Velmonte-Portal (Sheila) and Rogelio D. Acot (Acot) examined the cash and accounts of petitioner - the period covered by the audit is disputed by the parties. After the audit examination, Sheila sent to petitioner a demand letter inadvertently dated November 15, 2001 - the correct date being November 15, 2002 - stating thus:

x x x x

This is to inform you that in the examination of your cash and accounts as Disbursing Officer of Silay City on November 6, 2002, it was found that your cash was short by P990,341.10. This shortage was arrived at as follows:

Accountability	Cash Advance
Unliquidated balance as of 5/31/02	P 993,337.35
Balance per last cash exam June 6/02	383,328.91
June 6-Nov. 6	<u>11,525,082.55</u>
Sub-total	12,901,748.81
Credits to Accountability:	
Settlements June 6 - Nov. 6	11,728,822.71

Balance of Accountability	1,172,926.10
Cash & valid cash items produced by You & counted by us	
	182,585.00
<b>Shortage</b>	<b>P 990,341.10</b>
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In view of this, demand is hereby made of you to produce immediately the missing funds stated above. Also, please submit to us, within seventy-two (72) hours, a written explanation why this shortage occurred.

x x x x<sup>[1]</sup> (Emphasis and underscoring supplied)

By letter of November 25, 2002, petitioner explained that sometime in November 2000, she misplaced two bundles of paid payrolls in the amounts of P498,161.58 and P491,300; that, every now and then, Commission on Audit (COA) personnel would borrow her cash book and sometimes even her paid vouchers and payrolls for checking and verification; that she discovered the loss of the two bundles after an audit conducted in November 2000, hence, she reported the same to their Treasurer and their City Accountant Arsenal who both advised her to look for them; and that having failed despite exhaustive efforts to locate the payrolls, she decided to execute an affidavit of loss.

Her assertion that the payrolls were paid, and her veiled suggestion that the persons actually responsible for the loss of the payrolls were COA personnel notwithstanding, petitioner admitted her fault in the same letter of November 25, 2002, stating that she "cannot finger point at anybody but it was all due to [her] carelessness and negligence that all of these things happened." She thus asked for a chance to settle the amount at an opportune time and appealed for a compromise to pay it against her monthly salary.

By letter of **January 7, 2003**, Sheila amended the amount of shortage in the cash and accounts of petitioner indicated in the November 15, 2002 letter to petitioner, explaining thus:

x x x x

This is to inform you that we are amending the amount of the shortage we have previously demanded from you *from P990,341.10 to P989,461.10*. The P880.00 difference was due to late posting of your October 18 refund of P880.00 per OR # 0014951 by the Accounting Department.

#### Accountability/Cash Advances

Balance per last cash exam Jan. 19/00	P 0.00
Jan. 20 - Dec. 31/00	30,927,341.91
Jan. 1 - Dec. 31/01	33,701,037.87
Jan. 1 - Nov. 6/02	<u>26,666,949.56</u>
TOTAL	<u>P91,295,329.34</u>

Less: Credits to Accountability/ Liquidation

and/or cash settlements:

Jan. 20 - Dec. 31/00	P 29,937,880.81
Jan. 1 - Dec. 31/01	33,701,037.87
Jan. 1 - Nov. 6/02	26,484,364.56

TOTAL	P 90,123,283.24
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Balance of Accountability	P 1,172,046.10
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Less: Cash and valid cash items produced by you and counted by us	<u>182,585.00</u>
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<b>Shortage</b>	<b>P 989,461.10</b>
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x x x x<sup>[2]</sup> (Italics in the original; underscoring supplied)

This letter merited no reply from petitioner.

Sheila and Acot's report on the results of the November 6, 2002 audit, together with the Joint Affidavit dated March 18, 2003, was forwarded on April 22, 2003 by the COA to the Ombudsman for evaluation. The case was, after evaluation, docketed by the Ombudsman as OMB-V-A-03-0239-E, for Dishonesty.

By Decision of March 17, 2004, the Ombudsman, crediting petitioner's defense that her failure to account for the shortage was due to her inadvertent misplacement of the two bundles of payrolls, held her liable merely for Conduct Prejudicial to the Best Interest of the Service and imposed the penalty of six months suspension without pay.

Upon motion for reconsideration of the COA, however, the Ombudsman modified its Decision, by the challenged Order of August 3, 2004, finding petitioner guilty of Dishonesty and imposing upon her the penalty of dismissal from the service. Petitioner's motion for reconsideration of this Order was denied by the Ombudsman by Order of October 25, 2004.

Petitioner thereupon filed a petition for certiorari with the Court of Appeals which, by Resolution of June 16, 2005, dismissed it outright on procedural grounds, namely, an original action for certiorari was the wrong remedy, the proper remedy being appeal; petitioner failed to state the date she received the assailed orders; only photocopies of the assailed orders were submitted; and there was no explanation why service was not done personally.

Petitioner's motion for reconsideration of the appellate court's June 16, 2005 Resolution was denied by Resolution of April 6, 2006 for having been filed twenty-two (22) days late. Against petitioner's contention that the reglementary period should be counted from the day she personally obtained a copy of the June 16, 2005 Resolution when she visited her then counsel, and not the date when her counsel received copy thereof, the Court of Appeals echoed the rule that notice to counsel is notice to the client.

Hence, the present petition praying for the setting aside of the above-mentioned resolutions of the Court of Appeals and for the remand of the case to the appellate court for review on the merits. In the alternative, the petition prays that the

decision of the Ombudsman be reversed.

To the petition the COA through counsel and the Ombudsman through the Office of the Solicitor General filed their respective comments.

In issue in this controversy is whether the Court of Appeals erred in dismissing petitioner's action for certiorari by a strict application of procedural rules and of the rule that negligence of counsel is binding on the client.

Without disputing the procedural lapses that led to the dismissal of her petition by the appellate court, petitioner proffers that a relaxation of the Rules is warranted given that 1) her case involves the penalty of dismissal from the service, 2) her petition is clearly meritorious, and 3) the lapses were solely attributable to her former counsel's negligence.

Petitioner cites *Baylon v. Fact-finding Intelligence Bureau*<sup>[3]</sup> which held that the rule that a client is bound by the mistakes of counsel may be relaxed when its application would result in serious injustice. In that case, the Court considered the seriousness of the administrative penalty involved, which was suspension from public office. That was not the only circumstance, however, which the Court took into account, viz:

We find attendant in the case at bar transcendental considerations which outweigh rules of procedure thereby providing justification for the suspension of their application. **Petitioner's evidence and arguments in support of her claim of innocence of the charge of grave misconduct have indeed cast doubt on the veracity of the Ombudsman's factual conclusions** in the subject administrative case against her. We cannot thus simply brush aside petitioner's protestations of lack of administrative culpability for the sake of sticking to technicalities when **the merits of her cause are crying out for proper judicial determination.**

The tardiness of the appeal of petitioner before the Court of Appeals undoubtedly stemmed from her counsel's *faux pas* in the remedy pursued to assail the Ombudsman's questioned Memorandum Reviews. In the normal course of things, petitioner would have been covered by the general rule that a client is bound by the negligence or mistakes of his counsel. Yet, the **patent merits** of petitioner's cause for the nullification of her suspension from public office nag the Court towards the realization that to deny her the instant petition now based merely on the fiction that the counsel's negligence binds the client is to unjustly seal petitioner's fate without the benefit of a review of the correctness and justness of her imposed administrative liability. Hers, thus, is a case of an extremely different kind; the exception to the rule on the effects of the counsel's mistake or negligence, for the application of the rule would result in serious injustice to petitioner. **Especially in this case where she had nothing to do with her counsel's mistake and negligence,** thus clearly falling within the ambit of the reasons provided for by *Ginete* for the relaxation of the rules.<sup>[4]</sup> (Emphasis and underscoring supplied)

Petitioner likewise cites *Ginete v. Court of Appeals*<sup>[5]</sup> wherein the therein petitioners challenged the dismissal by the appellate court of their appeal for their failure to file their Appellants' Brief on time despite the extension given. In directing the appellate court to admit the Appellants' Brief, this Court held that "the lawyer's negligence without any participatory negligence on the part of petitioners is a sufficient reason to set aside the resolutions of the Court of Appeals."<sup>[6]</sup> This ruling should, however, be read in the context of the other statements of the Court in the same case, to wit:

In this Court's perusal of the records of the case, it appears that the lower court disregarded and misappreciated certain documents presented by petitioners in proving filiation as allowed by the Civil Code and the Rules of Court. Second, it seems to have misapplied the established presumptions in cases of marriage and filiation. Third, the forgery of the signature of the Notary Public in one of the questioned Deeds of Sale appears to have been clearly established by petitioners and unsatisfactorily and insufficiently rebutted by private respondents.

In view of these circumstances, this Court finds it imperative for the Court of Appeals to review the findings of fact made by the trial court. For while this Court may review factual findings of the lower court, it will not preempt the Court of Appeals in reviewing the same and reappreciating the evidence presented by petitioners to resolve factual questions.

Prior resolution of the aforecited issues is necessary in order to determine the question of original ownership over the subject parcels of land which in turn would resolve the question of succession. Said questions pertain to factual matters that could best be resolved by the Court of Appeals which is mandated to examine and review the findings of fact made by the lower court.

The demands of substantial justice and fair play make it absolutely necessary for the court to completely, judiciously and satisfactorily resolve said questions of fact. Failure to give due course to the appeal and to resolve those questions might give rise to the impression that the courts may be fostering and promoting injustice if and when the appellants' or petitioners' case turns out to be meritorious.<sup>[7]</sup>  
(Emphasis and underscoring supplied)

There have thus been instances when lack of participatory negligence of a party and the seriousness of the penalty imposed on it persuaded the Court to relax procedural rules as well as the time-honored rule regarding the binding effect of counsel's negligence. Alongside these considerations, the question of whether a case is meritorious, at least on its face, carries much weight in determining whether a relaxation of the rules is warranted. Indeed, it would hardly make much sense to allow a late or improperly filed appeal and disregard the rule on the binding effect of counsel's negligence when it is evident that a party is, at all events, unable to present a convincing case on the merits. In such instances, allowing the appeal to run its course would be a mere waste of time, both for the parties and the appellate court.