G.R. Nos. 180880-81 – KEPPEL CEBU SHIPYARD, INC., *petitioner v.* **PIONEER INSURANCE AND SURETY CORPORATION**, *respondent.*

G.R. Nos. 180896-97 – PIONEER INSURANCE AND SURETY CORPORATION, *petitioner v.* **KEPPEL CEBU SHIPYARD, INC.**, *respondent.*

Promulgated:

SEPTEMBER 18, 2012

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DISSENTING OPINION

BRION, *J.*:

I maintain my dissent, based on my objections against the reopening of the final judgment in this case and its acceptance by the Court *En Banc* for its review on the merits. Thus, ***I vote to DENY what effectively is the third motion for reconsideration in this case***.

In a September 25, 2009 Decision, the Second Division of the Supreme Court, thru Justice Antonio Eduardo B. Nachura, modified the Court of Appeals' (*CA's*) December 20, 2007 amended decision in CA-G.R. SP Nos. 74018 and 73934. It ordered Keppel Cebu Shipyard, Inc. (*KCSI*) to pay Pioneer Insurance and Surety Corporation (*Pioneer*) ₱329,747,351.91, with 6% interest per annum from the time the Request for Arbitration was filed until the Decision's finality, plus 12% interest per annum on the said amount or any balance thereof from the Decision's finality until it is paid.

In a June 21, 2010 Resolution, the Court **denied with finality** KCSI's *first* motion for reconsideration.

KCSI requested that the cases be referred to the Court *En Banc*, and set for oral arguments its second motion for reconsideration ***and*** its July 30, 2010 letter. KCSI's September 29, 2010 letter requested for the status of its July 30, 2010 letter.

In an October 20, 2010 Resolution, the Court **denied** the *second* motion for reconsideration and noted KCSI's July 30, 2010 and September 29, 2010 letters.

On November 4, 2010, after denial of KCSI's 2nd motion for reconsideration, the Decision of the Court became final and executory, and was recorded in the Book of Entries of Judgments.

On November 23, 2010, KCSI filed in a belated shot in the dark and **without leave of court**, a *Motion to Reopen Proceedings and Motion to Refer to the Court En Banc*, claiming that the Court gravely erred when it failed to consider the CA's principal and most crucial finding that both Pioneer and KCSI were guilty of negligence, and that their joint negligence was the cause of the fire that destroyed the vessel; thus, the shared liability of both parties on a 50-50 basis. In support of its motion to refer the case to the Court *En Banc*, KCSI posited that these cases involve issues of transcendental importance and of paramount public interest, as it would purportedly establish a precedent allowing courts to deny any litigant due process of law.

Pioneer filed a Manifestation alleging that KCSI did not mention the fact that an Entry of Judgment had already been made, and the September 25, 2009 Decision had already been recorded in the Book of Entries of Judgments. It also stated that on November 22, 2010, before KCSI filed its motion to reopen, it was given a copy of the motion for issuance of a writ of execution that Pioneer filed with the Construction Industry Arbitration Commission (*CIAC*) on that date.

In a December 6, 2010 letter to the Office of the Chief Justice, KCSI bewailed the Court's reversal of the purported uniform findings of the CA and the CIAC, without elevating the entire records of the case.

On December 13, 2010, KCSI filed its supplemental motion (to its *Motion to Reopen Proceedings and Motion to Refer to the Court En Banc*), alleging that it was denied its substantive rights to due process; that the limitation-of-liability clause under the Shiprepair Agreement between KCSI and WG&A is valid, such that WG&A is estopped to question the same, and that the imposition of the 6% interest is unwarranted.

The Court *En Banc* deliberated on the case and by a vote of 10 in favor[*] and three against,[**] with two abstentions,[***] it decided to lift the entry of judgment and to reopen the case. ***In acting as it did, the Court violated the most basic principle underlying the legal system – the immutability of final judgments – thereby acting without authority and outside of its jurisdiction. It grossly glossed over the violation of technical rules in its haste to override its own final and executory ruling.***

First. The elementary concept of immutability of judgments A basic principle that supports the stability of a judicial system, as well as the social, economic and political ordering of society, is the ***principle of immutability of judgments.*** "[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 or law and whether it* [*will be*] *made by the court that rendered it or by the highest court of the land***."[1] "Once a judgment or order becomes final, all the issues between the parties are deemed resolved and laid to rest."[2] No additions can

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[*] *JJ*. Carpio, Morales, De Castro, Peralta, Del Castillo, Abad, Perez, Mendoza, Villarama, and Sereno.

[**] *JJ*. Nachura, Velasco, and Brion.

[***] *C.J.* Corona, and *J*. Bersamin.

[1] *Genato v. Viola*, G.R. No. 169706, February 5, 2010, 611 SCRA 677, 690; *Marcelo v. Philippine Commercial International Bank (PCIB)*, G.R. No. 182735, December 4, 2009, 607 SCRA 778, 790; and *Heirs of Maura So v. Obliosca*, G.R. No. 147082, January 28, 2008, 542 SCRA 406, 418.

[2] *Marcelo v. Philippine Commercial International Bank (PCIB), supra*; *Ang v. Grageda*, G.R. No. 166239, June 8, 2006, 490 SCRA 424, 440; and *Salva v. Court of Appeals*, G.R. No. 132250, March 11, 1999, 304 SCRA 632, 645.

be made to the decision, and no other action can be taken on it,[3] except to order its execution.[4]

As recited above, the decision in this case was originally resolved by the unanimous vote of a Division of the Court. The Division also voted unanimously in denying the motion for reconsideration that subsequently came, and even in the denial of the second motion for reconsideration that followed. The Court changed its vote, however, on the subsequent (effectively, the third) motion for reconsideration, it set aside the final judgment and opened the case anew for review on the merits.

Faced with a renewed assault on the merits of a final judgment, the Court had only one recourse open to it – to simply note the motion (effectively, the third motion for reconsideration); it did not even have to deny this motion as it was way past the prohibited phase of filing pleadings under the express terms of the Rules of Court.[5] That the Court instead opened the case for further review despite the express prohibition of the Rules bodes ill for the respondent as this reopening could not but be a prelude to the reversal of the Division's final and executory judgment.

The capacity, capability and potential for imaginative ideas of those engaged in the law, in arguing about the law and citing justifications for their conclusions, have been amply demonstrated over the years and cannot be doubted. In this endeavor, however, lawyers should not forget that certain underlying realities exist that should be beyond debate, and that cannot and should not at all be touched even by lawyers' convincing prowess. They should not forget that their arguments and conclusions do not stand by themselves and do not solely address the dispute at hand; *what they say and conclude create ripple effects on the law and jurisprudence that ultimately*

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[3] *Natalia Realty, Inc. v. Rivera*, G.R. No. 164914, October 5, 2005, 472 SCRA 189, 197; *Toledo-Banaga v. Court of Appeals*, G.R. No. 127941, January 28, 1999, 302 SCRA 331, 341.

[4] *Times Transit Credit Cooperative, Inc. v. NLRC*, G.R. No. 117105, March 2, 1999, 304 SCRA 11, 17; and *Yu v. National Labor Relations Commission*, G.R. Nos. 111810-11, June 16, 1995, 245 SCRA 134, 142.

[5] RULES OF COURT, Rule 52, Section 1, in relation to Rule 56, Section 4.

become tsunamis enveloping the greater society where the law stands as an instrument aimed at fostering social, political and economic order.

In the context of the actions of the Supreme Court – the highest court that decides on the interpretation of the law with binding effect for the whole country – it cannot simply disregard fundamental principles (such as the principle of immutability of judgments) in its actions without causing damage to itself and to the society that it serves. ***A supreme court exists in a society and is supported by that society as a necessary and desirable institution because it can settle disputes and can do this with finality. Its rulings lay to rest the disputes that can otherwise disrupt the harmony in society.***

This is the role that courts generally serve; specific to the Supreme Court – as the highest court – is the finality, at the highest level, that it can bestow on the resolution of disputes. Without this element of finality, the core essence of courts, and of the Supreme Court in particular, completely vanishes.

This is the reality that must necessarily confront the Court in its present action in reopening its ruling on a case that it has thrice passed upon. After the Court's unsettling action in this case, ***society will inevitably conclude that the Court, by its own action, has established that judgments can no longer achieve finality in this country***; an enterprising advocate, who can get a Justice of the Court interested in the reopening of the final judgment in his case, now has an even greater chance of securing a reopening and a possible reversal, even of final rulings, because the Court's judgment never really becomes final. Others in society may think further and simply conclude that this Supreme Court no longer has a reason for its being, as it no longer fulfills the basic aim justifying its existence. ***At the very least, the Court loses ground in the areas of respect and credibility***.

Second. ***The Court's loss of jurisdiction once judgment attains finality.*** The Rules of Court amply provides the rules on the finality of judgments,[6] supported by established rulings on this point.[7] In fact, the Rules itself expressly provides that no second motion for reconsideration shall be entertained.[8] The operational reason behind this rule is not hard to grasp – a party has 15 days to move for reconsideration of a decision or final resolution, and, thereafter, the decision lapses to finality if no motion for reconsideration is filed. If one is filed, the denial of the motion for reconsideration signals the finality of the judgment. Thereafter, no second motion for reconsideration shall be entertained. At that point, the final judgment begins to carry the effect of *res adjudicata* – the rule, expressly provided in the Rules of Court, that a judgment or final order is, with respect to the matter directly adjudged or as to any other matter that could have been adjudged, binding on the parties and can no longer be reopened;[9] execution or implementation of the judgment thereafter follows.[10] ***Most importantly, at that point, the court – even the Supreme Court – loses jurisdiction over the case except for purposes of its execution.***

In the present case, the Supreme Court has bent backwards to accommodate a second motion for reconsideration pursuant to its Internal Rules. After the denial of this 2nd motion for reconsideration, an entry of judgment was even made. At this point, the ***Supreme Court clearly no longer has jurisdiction to touch or reopen the case because the judgment has lapsed to finality and an entry of final judgment has, in fact, been made evidencing its finality.*** Even the Constitution itself recognizes that the reopening of a case that has lapsed to finality is outside the powers of the Supreme Court; ***the express constitutional power given to the Supreme***

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6 RULES OF COURT, Rule 36, Section 2.

7 See *Government Service Insurance System v. Regional Trial Court of Pasig, Branch 71,* G.R. Nos. 175393 and 177731, December 18, 2009, 608 SCRA 552; *Gomez v. Correa,* G.R. No. 153923, October 2, 2009, 602 SCRA 40; *Obieta v. Cheok,* G.R. No. 170072, September 3, 2009, 598 SCRA 86; *Dacanay v. Yrastorza, Sr.,* G.R. No. 150664, September 3, 2009, 598 SCRA 20; *Julie's Franchise Corporation v Ruiz,* G.R. No. 180988, August 28, 2009, 597 SCRA 463; and *Heirs of Emiliano San Pedro v. Garcia,* G.R. No. 166988, July 3, 2009, 591 SCRA 593.

8 RULES OF COURT, Rule 52, Section 2, in relation to Rule 56, Section 4.

9 RULES OF COURT, Rule 39, Section 47(b).

10 RULES OF COURT, Rule 39, Section 1.

Court is to review judgments of lower courts, on appeal or on certiorari, and not to reopen and review its own judgment that has lapsed to finality.[11] Thus, the Court itself effectively becomes a transgressor for acting with grave abuse of discretion that the Constitution itself, under Section 1, Article VIII, has mandated the Court to check in all areas and branches of government. It becomes a question now of the old dilemma bedeviling all governments – **who will guard and check on the guardians**? Unnerving, to say the least, for the ordinary citizen who goes about his or her daily life relying on the order that the community has established by social compact.

Third. The interest of the original victor is unduly prejudiced by an unwarranted departure from the doctrine of finality of judgment. The finality of a judgment is a consequence that directly affects the immediate parties to a case. In a sense, it affects the public as well because the public must respect the finality of the judgment that prevails between the immediate parties. Where a ruling affects the public at large, as in the declaration of the constitutionality or unconstitutionality of a statute, the Court's declaration is binding on the general public.

Under this scheme, it is only right and proper that the Supreme Court itself be bound by the finality of the judgment because: (1) the finality is by reason of the Rules that the Court itself promulgated; and (2) of societal reasons deeper than what the Rules of Court expressly provides. If the rules for the immediate parties and the public were to be one of finality, while the rule for the Court is one of flexibility and non-binding effect because the Court may reopen at will and revisit even final rulings, what results is a ***monumental imbalance in the legal structure*** that the Constitution and our laws could not have intended. If an imbalance were intended or tolerated, then a serious restudy must perhaps be made – for a society with a heavy tilt towards unregulated power cannot but at some point fall, or, at the very least, suffer from it. If no imbalance is intended and the system is correct,

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[11] CONSTITUTION, Article VIII, Section 5(2).

then the Court may be seriously out of sync in respecting the system and must rectify its ways.

The most graphic example perhaps of the resulting imbalance is the effect of a reopened decision on the respondent, as in this case. Let it be remembered that a judgment that becomes final does not do so in a vacuum. It affects the parties and one effect is on the prevailing party ***whose rights under the final judgment vest on the proceeds of the judgment.*** This vested right is the reason why a writ of execution follows. When and if a final judgment is reopened, the Court effectively dispossesses the winning party of its right and entitlement to what the final decision decrees, ***all because the Court at that point wants to change its mind on a matter that is already outside of its jurisdiction to rule upon***. This is no less than an act of injustice that is hard to live down for an institution whose guiding light and objective is justice.

Fourth. The recognized exceptions to the rule on immutability rise above the individual interest of the parties. The Rules of Court themselves recognize that the doctrine of finality of judgment is not absolute. Thus, these Rules allow, on specific grounds and for specific periods, petitions for annulment of judgment, petitions for relief from judgment, (and even petition for certiorari) as extraordinary and equitable remedies. The Supreme Court itself allows a second motion for reconsideration under its Internal Rules, but only a second motion and under very specific terms; the Internal Rules do not allow a third motion for reconsideration and no rules exist to guide (a party) and govern a third motion for reconsideration filed by a defeated litigant. If the Court allowed exceptions at all under our jurisprudence, these exceptions only came because of strong justification.

Under the Rules of Court, the only recognized exceptions to the rule on the non-reviewability of final judgments are the correction of clerical errors, the so-called *nunc pro tunc* entries which cause no prejudice to any

party, void judgments, and when relief from judgment is provided when circumstances transpire rendering the execution of a final decision unjust and inequitable.[12]

To be sure, none of these exceptions exists in the present case. The majority has not claimed that the Second Division's September 25, 2009 Decision and its subsequent resolutions denying KCSI's first and second motions for reconsideration are void on due process ground or for lack of jurisdiction. On the contrary, the majority rejected KCSI's claims to this effect.[13] Rather, in entertaining KCSI's present motion and to justify the Court's assumption of jurisdiction, the majority could only rely on the overly abused legal precept of serving "substantial justice." The decision, though, is silent on the manner by which *substantial justice* may truly be served.

The review of a final and executory decision, when it does occur, must necessarily take into account the nature of the decision. When the final decision is valid, it cannot be the subject of review, even by the Court *En Banc*.[14] Neither can a review be entertained because of error in the judgment; ***the Supreme Court is supreme because its judgment is final, not because it cannot err***. A judgment even if erroneous is still valid if rendered within the scope of the courts' authority or jurisdiction. It is only when the decision is void, as when there is denial of due process or when it is rendered by a court without jurisdiction, that there can be a reopening of the case. The reason, of course, is that a void judgment is no judgment at all,

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[12] *Peña v. Government Service Insurance System (GSIS)*, G.R. No. 159520, September 19, 2006, 502 SCRA 383, 404; *Siy v. National Labor Relations Commission*, G.R. No. 158971, August 25, 2005, 468 SCRA 154, 161-162; and *Sacdalan v. Court of Appeals*, G.R. No. 128967, May 20, 2004, 428 SCRA 586.

[13] *Ponencia*, pp. 11-12.

[14] In *Apo Fruits Plantation v. Court of Appeals*, G.R. No. 164195, April 30, 2008, the Court stated:

> The Court *En Banc* is not an appellate tribunal to which appeals from a Division of the Court may be taken. A Division of the Court is the Supreme Court as fully and veritably as the Court *En Banc* itself, and a decision of its Division is as authoritative and final as a decision of the Court *En Banc.* Referrals of cases from a Division to the Court *En Banc* do not take place as just a matter of routine but only on such specified grounds as the Court in its discretion may allow.

But the allowable discretion the Court has does not include the resuscitation of a final and executory judgment without the most compelling of reasons laid down in the decision itself.

and a new one must be entered in the fulfillment of the courts' dispute resolution function.

Beyond these recognized exceptions, the Court has on several occasions modified or even reversed its rulings which have already become final and executory. These were done even if the questioned ruling already pertained to the execution aspect of the case on the forceful reasoning that the "*fallo* without any basis at all in fact and in law or in the opinion portion of the decision from which it draws its breath and life can only be considered as **null and void**."[15] In most (if not all) of these instances, however, the Court's ultimate decision, at the very least, rests on sufficiently compellingly grounds. A brief survey of some of these cases is in order.[16]

In *San Miguel Corporation v. National Labor Relations Commission,*[17] the Court reinstated the petition it had dismissed and reviewed the case on the merits after admitting that it had "prematurely" denied the petitioner's 1st motion for reconsideration.

In *Galman v. Sandiganbayan,*[18] the Court initially dismissed the petition and the motion for reconsideration subsequently filed. On second motion for reconsideration *filed with prior leave*, the Court set aside its previous actions and granted the petition upon finding that there were serious violations of the People's right to **due process**. The Court took a similar action on a second motion for reconsideration filed *with prior leave* in *Philippine Consumers Foundation v. National Telecommunications Commission.*[19]

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15 *Republic v. De Los Angeles*, G.R. No. L-26112, October 4, 1971, 41 SCRA 422.

16 There are usually two instances or stages when the doctrine of finality of judgment is engaged; *first*, when a decision is rendered by a lower court or tribunal and the same is affirmed or modified on appeal by the Supreme Court *or* the ruling at the trial or appellate level becomes final without reaching the Supreme Court and its reconsideration on the merits is sought; *second*, when the decision becomes final whether at the trial or appellate level and the case have reached the execution stage which spawned litigation anew. The first instance is what is before the Court.

17 G.R. No. 82467, June 29, 1989, 174 SCRA 510.

18 G.R. No. L-72670, September 12, 1986, 144 SCRA 43.

19 G.R. No. L-63318, August 18, 1984, 131 SCRA 200. The Court stated: "*It should be emphasized that the resolution of this Court xxx denying the first motion for reconsideration did not state that the*

In *Vir-Jen Shipping and Marine Services v. National Labor Relations Commission,*[20] the Court *En Banc* entertained a third motion for reconsideration (previously denied twice by a Division of the Court) under its **constitutional authority** to resolve conflicting rulings laid down by different Divisions of the Court. In *Cosio v. de Rama,*[21] the Court partially granted the petitioner's plea on a second for reconsideration on the ground that what is involved is a "difficult question of law."

In *Munoz v. Court of Appeals,*[22] the Court reversed the judgment of acquittal on a second motion for reconsideration and opted to "resolve the same on its merits, rather than on mere procedural considerations" considering that what is at stake is the individual **liberty of an accused**; in this case, the Court initially dismissed the petition *for being filed late* (and the motion for reconsideration subsequently filed)[23]

In *Manotok IV v. Barque*,[24] after denying the petition and the two motions subsequently filed,[25] the Court *En Banc* recalled the entry of judgment and proceeded to reevaluate the cases "on a *pro hac vice* basis," considering that conflicting rulings of the Court on administrative reconstitution of titles is in issue. More importantly, the "militating concern" of the Court *En Banc* in accepting and reviewing the cases is on the "stability of the Torrens system of registration" and "**not so much the particular fate of the parties.**"

In *Barnes v. Padilla,*[26] in recalling the entry of judgment, the Court relieved a party from the procedural negligence of his counsel (which made

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denial is final." The decision was rendered in 1984 at the time when the 1964 Rules of Court expressly allows a second motion for reconsideration (Section 1, Rule 52).

[20] G.R. No. L-58011, November 18, 1983, 125 SCRA 577.

[21] G.R. No. L-18452, May 20, 1966, 17 SCRA 207.

[22] G.R. No. 125451, January 20, 2000, 322 SCRA 741; August 22, 2001.

[23] *Tan Tiac Chiong v. Hon. Cosico*, 434 Phil. 753 (2002).

[24] G.R. No. 162335, December 18, 2008, 574 SCRA 468.

[25] A Motion for Reconsideration and Motion for Leave to File a Second Motion for Reconsideration with the Motion for Reconsideration attached.

[26] 482 Phil. 903 (2004).

the appellate ruling lapsed into finality) because otherwise, the petitioner would suffer serious injustice.[27]

More importantly, in the case of *Apo Fruits Plantation v. Land Bank of the Philippines*,[28] - penned by this writer - the Court granted what is effectively the petitioner's third motion for reconsideration (with regard to the deletion of the award of interest originally awarded to it) *due to the* "**transcendental importance**" of the case in light of the constitutional underpinning involved - the agrarian reform program of the government - ***and*** the assailed decision's inconsistency with settled jurisprudence. Pointedly, the Court said:

> **To claim, as the assailed Resolution does, that only private interest is involved in this case is to forget that an expropriation involves the government as a necessary actor**. It forgets, too, that under eminent domain, the constitutional limits or standards apply to government who carries the burden of showing that these standards have been met. **Thus, to simply dismiss this case as a private interest matter is an extremely shortsighted view that this Court should not leave uncorrected**.
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> The assailed decision patently and legally wrong, but is also morally unconscionable for being grossly unfair and unjust. if we continue to deny the petitioners' present motion for reconsideration, we would – illogically and without much thought to the fairness that the situation demands – uphold the interests of the LBP, not only at the expense of the landowners but also that of substantial justice as well.

What runs throughout these cases, where the Court took an extraordinary step, is the presence of an exceptionally justifying circumstance of a fundamental value which goes beyond the interests of the litigants. It is the presence of this exceptional character that imposes upon the Court a measure of self-regulation to prevent itself from committing the very grave abuse of discretion which under the Constitution it is designed to perform as a checking measure.[29] Without this exceptional character, the underlying public policy in the crafting and applying the doctrine of

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27 *See Sanchez v. Court of Appeals*, 404 SCRA 544.
28 G.R. No. 164195, October 12, 2010.
29 CONSTITUTION, Article VIII, Section 1, par. 2.

immutability should dictate the Court's action; for, parties come to court to litigate on a dispute and not to prolong and perpetuate the dispute itself at the expense of supposed victor. The Court should not allow itself to be a party to this perpetuation for –

> Every litigation must come to an end once a judgment becomes final, executory and unappealable. For just as a losing party has the right to file an appeal within the prescribed period, the winning party also has the correlative right to enjoy the finality of the resolution of his case by the execution and satisfaction of the judgment, which is the "life of the law."[30]

What the majority cited in justifying the En Banc's action in making an on-the-merits review of the case is the Court's own *Internal* Rules on matters or cases which calls for *En Banc* attention. This provision, however, does not altogether rule out the *Rules of Court's* prohibition against the filing of a second or subsequent motion for reconsideration, much less of a motion filed without prior leave – as was done here.[31] Worse, the majority's reasoning "that there were serious allegations in the petition that if the decision of the Court would not be vacated, there would be far-reaching effect on similar cases" finds absolutely no substantiation at all anywhere in the decision!

***Fifth*: Grant of motions for reconsideration subsequent to the finality of judgment.** A still debatable instance when a final decision can be reopened is through action on a second motion for reconsideration under Section 3, Rule 15 of the Internal Rules of the Supreme Court.[32] The rule states:

> **Sec. 3. *Second motion for reconsideration***. – The Court shall not entertain a second motion for reconsideration, and any exception to this rule can only be granted in the higher interest of justice by the Court *en*

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30 *Bongcac v. Sandiganbayan*, G.R. Nos. 156687-88, May 21, 2009.

31 The cases cited by the *ponencia* are likewise inapt. *Firestone Ceramics v. Court of Appeals* involves an *En Banc* action to take cognizance of a *first* motion for reconsideration *pending* with a Division. On the other hand, *Lu v. Lu* involves conflicting rulings of the Court of which only the Court *En Banc* has constitutional authority to ultimately resolve. *People v. Ebio* involves the issue of doubt on the constitutionality of the *En Banc's* action for lack of quorum, which warranted a re-deliberation. *Ebio* involves the Court's action on a *first* Motion for Reconsideration.

32 A.M. No. 10-4-20-SC, The Internal Rules of the Supreme Court, effective May 22, 2010.

> *banc* upon a vote of at least two-thirds of its actual membership. There is reconsideration "in the higher interest of justice" when the assailed decision is not only legally erroneous, but is likewise patently unjust and potentially capable of causing unwarranted and irremediable injury or damage to the parties. A second motion for reconsideration can only be entertained before the ruling sought to be reconsidered becomes final by operation of law or by the Court's declaration**.** [italics supplied]

Under this provision (***that lays hidden in the Court's Internal Rules and is not reflected in the Rules of Court***), a second motion for reconsideration *shall not* be entertained, except in the "higher interest of justice" by a two-thirds vote of the Court *En Banc*'s members. Aside from the voting requirements, a movant must substantially show that a reconsideration of the Court's ruling is necessary in the higher interest of justice, which standard is satisfied upon proving that the assailed ruling is both (1) legally erroneous, and (2) patently unjust and potentially capable of causing unwarranted and irremediable injury or damage to the parties.

Clearly, even under this debatable Internal Rules provision, the judicially subjective standard employed - i.e., whether the case is of sufficient importance - to merit the En Banc's consideration is in itself insufficient to disregard the settled black-letter rule on immutability of a final judgment. In fact, if KCSI itself as petitioner is convinced that its cause is of sufficient importance to merit the attention of the En banc, it could not have moved for the referral of the case to En banc *only after* it failed to obtain a judgment favorable to it.

Then again, even this avenue under the Internal Rules may be closed, as the Court is proscribed from accepting motions for reconsideration filed after the finality of the assailed decision. In this case, KCSI filed its motion to reopen (a third motion for reconsideration), without leave of court, after the denial of its second motion for reconsideration, when a motion for the issuance of execution was already staring it in the face. This move can only be described as a brazen shot in the dark, unsupported by legal reason that the majority in the Court saw fit to entertain.

It was through the opening provided by the questionable provision of the Internal Rules that KCSI's *Motion to Reopen Proceedings and Motion to Refer to the Court En Banc* sought its entry. Significantly, aside from a fig leaf reference to violation of due process (for allegedly deciding the case without the original records), the presented justification essentially referred to cited legal errors committed in the Court's three considerations of the case, *i.e.,* in the original *ponencia* and in the two motion for reconsideration that were denied.

An eyebrow-raising aspect is that all the Court's three considerations and ruling on the case were unanimous; not one dissent or sliver of a dissent was ever made. Yet, those who voted for the reopening were the same Members of the Division who supported the *ponencia*, except only for the *ponente*. Most unsettling of all is the realization that the Court's revisit of resolved issues, under the guise of "higher interest of justice," will mean the abandonment of settled principles of law to accommodate KCSI's arguments that had been considered and unanimously turned down in the Court's Decision and Resolutions.

These disturbing thoughts invariably lead to the question: if no finality can be secured even under the glaringly clear circumstances of this case, can the country's adjudication system be in grave peril? I do not believe that the problem so far is systemic; the system has had (and it still does have) its share of problems, but these have not been on the finality of judgments as this principle has been with the Court in its more that a hundred years of existence. The problem, as I see it, is individual and remediable. If only the Court and its Members will go back to first principles, and will truly reflect on the place, role, and relevance of the Court in contemporary society, then our judicial system can be and can remain the stable and reliable system that society expects it to be.

For all these reasons, I vote to **DENY** KCSI's third motion for reconsideration for lack of jurisdiction, and to reiterate the finality of the Decision of the Second Division dated September 25, 2009.

ARTURO D. BRION
Associate Justice