Republic of the Philippines
Supreme Court
Manila

SECOND DIVISION

PEDRO G. RESURRECCION, JOSEPH COMETA and CRISEFORO LITERATO, JR., Petitioners,	**G.R. No. 192866**
	Present:
	CARPIO, *J., Chairperson,*
	BRION,
	DEL CASTILLO,
- versus -	PEREZ, and
	PERLAS-BERNABE, *JJ.*
PEOPLE OF THE PHILIPPINES, Respondent.	Promulgated:
	JUL 0 9 2014

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

DECISION

BRION, *J.*:

Before us is a petition for review on *certiorari*[1] assailing the February 11, 2010 decision[2] and the July 10, 2010 resolution[3] of the Sandiganbayan in Criminal Case Nos. 25235-39, finding Pedro G. Resurreccion, Joseph Cometa, Criseforo Literato, Jr. (*collectively petitioners*) and Pilarito Orejas guilty of violating Section 3(e) of Republic Act No. 3019. Resurreccion was also convicted of malversation of public funds as defined under Article 217 of the Revised Penal Code (*RPC*).

The Antecedent Facts

At the time material to the controversy, the petitioners occupied their respective positions in the local government unit of the Municipality of Pilar, Surigao del Norte: Resurreccion was the Municipal Mayor; Cometa

---

1 Under Rule 45 of the Rules of Court; *rollo*, pp. 11-23.

2 Id. at 26-77; penned by Associate Justice Alexander G. Gesmundo, and concurred in by Associate Justice Norberto Y. Geraldez and Associate Justice Rodolfo A. Ponferrada.

3 Id. at 82-83.

was the Municipal Budget Officer; and Literato was the Municipal Engineer. The other accused, Wilfredo B. Consigo[4] and Orejas, were the Municipal Treasurer and Municipal Accountant, respectively.

The State Auditor, Romeo Corral Uy, of the Commission on Audit (*COA*) Regional Office No. 13 of Butuan City and Freda Paller Napana of the Provincial Auditor's Office in Surigao City conducted a special audit and post audit of the various disbursements, transactions and financial accounts of the Municipality of Pilar, Surigao del Norte. The audit team's examination covered the period from 1992 to 1994.

In his COA Special Audit Report (*COA Report*),[5] Auditor Uy reported that several disbursements of money for the payment of construction materials intended for the improvement of the Municipal Building, amounting to ₱831,420.17, ₱23,000.00, ₱158,394.00 and ₱163,000.00, were awarded to Kent Marketing, Samuel Trigo and Domingo Tesiorna without public bidding, in violation of Sections 362 of Republic Act No. 7160.[6] Auditor Uy also found that the basic procedures for the disbursement of public funds under Section 362 and 367 of Republic Act No. 7160,[7] Section 4(6) of Presidential Decree No. 1445[8] and Section 9 of COA Circular No. 92-382 dated July 3, 1992 were not followed. As a result, Auditor Uy characterized the disbursements as irregular expenditures for not adhering to the aforementioned rules and regulations. Other irregularities found to have been committed included:

---

4 Consigo died during the pendency of the case; records, vol. 2, p. 130-C.

5 Records, vol. 2, pp. 285-319.

6 SECTION 362. Call for Bids. - When procurement is to be made by local government units, the provincial or city general services officer or the municipal or barangay treasurer shall call bids for open public competition. The call for bids shall show the complete specifications and technical descriptions of the required supplies and shall embody all terms and conditions of participation and award, terms of delivery and payment, and all other covenants affecting the transaction. In all calls for bids, the right to waive any defect in the tender as well as the right to accept the bid most advantageous to the government shall be reserved. In no case, however, shall failure to meet the specifications or technical requirements of the supplies desired be waived.

7 SECTION 367. Procurement through Personal Canvass. - Upon approval by the Committee on Awards, procurement of supplies may be effected after personal canvass of at least three (3) responsible suppliers in the locality by a committee of three (3) composed of the local general services officer or the municipal or barangay treasurer, as the case may be, the local accountant, and the head of office or department for whose use the supplies are being procured. The award shall be decided by the Committee on Awards.

Purchases under this Section shall not exceed the amounts specified hereunder for all items in any one (1) month for each local government unit:

Provinces and Cities and Municipalities within the Metropolitan Manila Area:
First and Second Class - One hundred fifty thousand pesos (P150,000.00)
Third and Fourth Class - One hundred thousand pesos (P100,000.00)
Fifth and Sixth Class - Fifty thousand pesos (P50,000.00)
Municipalities:
First Class - Sixty thousand pesos (P60,000.00)
Second and Third Class - Forty thousand pesos (P40,000.00)
Fourth Class and Below - Twenty thousand pesos (P20,000.00)

8 Section 4. *Fundamental principles.* Financial transactions and operations of any government agency shall be governed by the fundamental principles set forth hereunder, to wit:

x x x x

6. Claims against government funds shall be supported with complete documentation.

1. The purchases were made not through public bidding in violation of Sections 362 and 367 of Republic Act No. 7160;

2. There was no proof that the purchases were approved by the Committee on Awards as required under Section 367 of Republic Act No. 7160;

3. The disbursements were made in cash in violation of Section 9 of COA Circular No. 92-382 dated July 3, 1992;

4. The disbursements were not supported by complete documentation, in violation of Section 4(6) of Presidential Decree No. 1445;

5. There were no agency inspections, reports and deliveries;

6. Some of the construction/filling materials were purchased from unlicensed suppliers; and

7. The quantity procured exceeded the quantity per program of work.

Auditor Uy likewise reported that the municipality paid then Mayor Resurreccion the amount of ₱3,000.00 as reimbursement for his donation to the religious organization, Knights of Columbus of Pilar, in violation of Section 29(2), Article VI of the Constitution and Section 335 of Republic Act No. 7160. He found that the item of expenditure, taken from the municipality's Development Fund, is tantamount to malversation of public funds or illegal diversion of public funds, pursuant to Sections 217 and 220 of the RPC.

Additionally, Auditor Uy found that two unapproved and unauthorized payrolls, representing the honoraria for unspecified purpose, in the amounts of ₱32,000.00 and ₱47,000.00 were fully disbursed, in violation of Sections 179(h) and 289 of the Government Accounting and Auditing Manual (*GAAM*). Pertinent portions of the COA Report read:

> 1. Two unapproved payrolls representing honorarium (sic) and for unspecified purpose, in the amount of ₱47,000.00 and ₱32,000.00, respectively, were reported fully disbursed although ₱20,000.00 of which was not acknowledged by payees. [Moreover], they were not supported with authority to pay honorarium in violation of Section 289 [of the] GAAM[,] Volume 1.
>
> x x x x
>
> 2. The Municipality paid Mayor Pedro G. Resurrec[c]ion in the amount of ₱3,000.00 as reimbursement for donation to religious organization, in violation of Article VI, Section 29, No. 2 of the Philippine Constitution and Section 335 of R.A. 7160.
>
> x x x x

> 5. Purchase of construction materials and one (1) unit typewriter amounting [to] ₱831,420.17 and ₱23,000.00, respectively[,] were made without public bidding in violation of Section 362 of Republic Act No. 7160. Moreover, ₱790,741.67 of the said construction materials were paid in cash and not supported with complete documentation, in violation of Section 9 of COA Circular No. 92-382 and Section 4 (6) of P.D. 1445, respectively. Thus, were considered irregular expenditures.
>
> x x x x
>
> 6. Lumber materials and filling materials totaling ₱158,394.00 and ₱163,000.00, respectively, were purchased not through public bidding. Moreover, they were purchased from unlicensed suppliers and its quantity exceeded the quantity as programmed. Thus, the said disbursements were considered irregular expenditures.[9]

The petitioners, together with their co-accused Consigo and Orejas, were charged with violation of Section 3(e) of Republic Act No. 3019 before the Sandiganbayan: Resurreccion, Consigo and Cometa were charged with four counts of violation of Section 3(e) of Republic Act No. 3019 in Criminal Case Nos. 25235, 25237, 25238 and 25239; Orejas was charged with two counts in Criminal Case Nos. 25235 and 25237; while Literato was charged with two counts in Criminal Case Nos. 25238 and 25239. Resurreccion was also charged with malversation of public funds.

On arraignment, all the accused pleaded not guilty. During the pre-trial, the parties entered into the following stipulation of facts:

> 1. That the accused admit their positions in the government as stated in the Informations;
>
> 2. That prosecution admits the authenticity, genuineness and due execution of defense'[s] exhibits from Exhibits "1" to "9" with submarkings inclusive;
>
> 3. The defense admits the authenticity, genuineness and due execution of x x x exhibits "A" to "Z" with submarkings inclusive[.][10]

Evidence of the Prosecution

The prosecution presented Auditor Uy and Auditor Napana as its witnesses. Auditor Uy confirmed the COA Report findings in his testimony before the Sandiganbayan. His testimony was corroborated by Auditor Napana who testified that the purchases of construction materials by the municipality were made without conducting a public bidding; that the disbursements were made in cash and not in check; and that she disallowed the disbursement of funds pertaining to the reimbursement of cash donation to the religious organization.

---

9 *Supra* note 5, at 291-307.

10 Records, volume 1, p. 352.

After the prosecution had rested its case, the accused filed a Demurrer to Evidence,[11] which the Sandiganbayan denied.

Evidence of the Defense

Despite the ample opportunity given, the accused still failed to present evidence on their behalf. The accused, however, were able to file their memorandum[12] where they alleged that the prosecution's evidence fell short of the settled yardstick which would justify their conviction for violation of Section 3(e) of Republic Act No. 3019. There, they argued that the head of an agency can resort to any of the modes of procurement prescribed by law as long as it is advantageous to the government.

Resurreccion also justified the lack of public bidding by claiming that a resort to public bidding for all the municipality's transactions in procurement would be a financial burden for a 4th or 5th class municipality like Pilar.[13]

Resurreccion further claimed that his act of using the amount of ₱3,000.00 from his discretionary funds to pay the members of the Knights of Columbus of Pilar does not constitute the crime of malversation. Even assuming that the payments were made to the members of the Knights of Columbus of Pilar, there was no violation of the principle of separation of the church and the state since the Knights of Columbus of Pilar is not a religious institution.[14]

Anent the unauthorized grant of monetary benefits, the accused averred that the payment of honoraria to the government employees is allowed under Section 288 of the GAAM and that the law does not require an authority from the Provincial Government to grant the same.

The Ruling of the Sandiganbayan

In its decision[15] dated February 11, 2010, the Sandiganbayan found the prosecution's evidence more persuasive.

- *Criminal Case Nos. 25235 and 25237*

Criminal Case Nos. 25235 and 25237 involve procurement and payment of construction materials without the benefit of public bidding and adequate documentary support. The Sandiganbayan found that all the elements under Section 3(e) of Republic Act No. 3019 were duly established by the prosecution's evidence: *first*, the petitioners are all public officials; *second*, the public officials acted with manifest partiality and evident bad

---

11 Records, volume 3, pp. 16-32.
12 Id. at 76-87.
13 Ibid.
14 Records, vol. 2, pp. 320-321.
15 Records, vol. 3, pp. 171-222.

faith in awarding government contracts without following the prescribed procedure; and *third*, the petitioners gave unwarranted benefits to Kent Marketing, Samuel Trigo and Domingo Tesiorna, which resulted in undue injury to the government.

The Sandiganbayan observed that the procurements for which the public funds were disbursed did not undergo public bidding. It relied largely on the COA report issued by Auditor Uy and the post audit of Auditor Napana showing that the disbursement vouchers involved were issued without complying with the auditing rules and regulations (*i.e., rule on public bidding, payment of cash instead of checks and rule on supporting documents*) and hence illegal. It also noted that the lack of public bidding and the irregularities attending the disbursement of public funds were not denied by the accused.

Both in Criminal Case Nos. 25235 and 25237, the Sandiganbayan convicted Resurreccion and Orejas of violation of Section 3(e) of Republic Act No. 3019, as amended; and acquitted Cometa for failure of the prosecution to prove his guilt beyond reasonable doubt.

- *Criminal Case Nos. 25238 and 25239*

In Criminal Case Nos. 25238 and 25239, the Sandiganbayan found that the payment of honoraria to the personnel of the Provincial Engineer's Office (*PEO*) without authority and legal basis was tainted with irregularities. It noted that the monetary grant to the PEO personnel had no legal ground to stand on as the same was not authorized under Section 288 of the GAAM on the grant of honoraria and per diem. Relying on the COA Report, it ruled that the grant of unauthorized honoraria gave unwarranted benefits to the recipients which resulted in undue injury to the government.

In Criminal Case No. 25238, the Sandiganbayan convicted Literato Jr. of violation of Section 3(e) of Republic Act No. 3019; and acquitted Resurreccion and Cometa for failure of the prosecution to prove their guilt beyond reasonable doubt.

In Criminal Case No. 25239, the Sandiganbayan convicted Cometa of violation of Section 3(e) of Republic Act No. 3019; and acquitted Resurreccion and Literato for failure of the prosecution to prove their guilt beyond reasonable doubt.

- *Criminal Case No. 25236*

Anent the charge for malversation against Resurreccion in Criminal Case No. 25236, the Sandiganbayan found that all the elements are present: *first*, Resurreccion was a public officer at the time of the commission of the crime; *second*, the ₱3,000.00 reimbursement came from the 20% Development Fund; *third*, by virtue of his position as Mayor of Pilar,

Resurreccion was accountable for the public funds; and *fourth*, by reimbursing the donation he made to a religious organization, Resurreccion allowed a third person (*Knights of Columbus*) to take the ₱3,000.00 from the 20% Development Fund without legal basis. Accordingly, the Sandiganbayan convicted Resurreccion and ordered him to pay a fine of ₱3,000.00.

The petitioners sought, but failed, to obtain a reconsideration.[16] Hence, this present petition.

The Petitioners' Arguments

The petitioners contend that the Sandiganbayan gravely erred in convicting them based only on the evidence presented by the prosecution. They attribute their failure to present evidence to their former counsel's (*Atty. Manuel Corpuz's*) negligence and claim that they were denied due process of law. They argue that Atty. Corpuz's failure to inform them about the developments affecting their case and the scheduled hearing for the reception of evidence – resulting in the waiver of presentation of defense evidence, as they were not able to present evidence in their behalf – constitutes gross negligence that warrants the application of the exception to the general rule that "negligence and dereliction of duty of the counsel bind the client."[17]

The petitioners likewise argue that the Sandiganbayan gravely erred when it denied their motion for reconsideration on the mere technical ground that their motion lacked the required notice of hearing. They insist that the 1st Division of the Sandiganbayan committed an oversight as there was, in fact, a notice of hearing attached to their motion for reconsideration.

The OSP's Comment

The Office of the Special Prosecutor (*OSP*) prays for the denial of the petition for lack of merit. The OSP submits: (1) that the client is bound by the mistakes of his counsel; (2) that the circumstances, which would justify an exception to the rule, are not present in the present case; (3) that the allegedly negligent act of a counsel could not be categorized as constituting gross negligence; (4) that the petitioners' claim of gross negligence was belatedly raised; (5) that the petitioners are not without fault as they failed to periodically keep in touch with their counsel; and (6) that the denial of the petitioners' motion for reconsideration was in accordance with the rules.

Issues Raised

There are only two issues presented for our resolution:

---

16 Id. at 232-235.

17 *Mortel v. Kerr*, G.R. No. 156296, November 12, 2012, 685 SCRA 1, 15.

(1) Whether the negligence of the former counsel of the petitioners in allegedly not informing them about the status of their case, resulting in their failure to present evidence and, consequently, to the waiver of their right to present evidence, is a valid ground to set aside the judgment for conviction.

(2) Whether the 1st Division of the Sandiganbayan correctly denied the petitioners' motion for reconsideration on the ground that the motion did not contain a notice of hearing.

Our Ruling

We find the petition devoid of merit.

We note, at the outset, that the petitioners do not question the correctness of the Sandiganbayan's finding of guilt based on the merits of the case. In fact, the petitioners never denied their non-compliance of the government auditing rules and regulations, specifically the lack of public bidding and supporting documents. In their petition, the petitioners simply make the belated claim that the Sandiganbayan gravely erred in convicting them based solely on the evidence presented by the prosecution. They blame the alleged negligence of Atty. Corpuz for their failure to present evidence and, ultimately, in the waiver of their right to present the same. They contend that Atty. Corpuz's failure to communicate with them for nearly three years constitutes gross negligence resulting to deprivation of their right to due process of law.

We have meticulously gone over the entire records and find that Atty. Corpuz was not guilty of gross negligence.

Negligence of the Counsel de Parte Binds the Petitioners

Nothing is more settled than the rule that the negligence and mistakes of the counsel are binding on the client.[18] The rationale behind this rule is that a counsel, once retained, is said to have the authority, albeit impliedly, to do all acts necessary or, at least, incidental to the prosecution of the case in behalf of his client, such that any act or omission by counsel within the scope of his authority is treated by law as the act or omission of the client himself.[19] It is only in cases involving gross or palpable negligence of the counsel, or when the application of the general rule amounts to an outright deprivation of one's property or liberty through technicality, or where the interests of justice so require, when relief is accorded to a client who has suffered thereby.[20]

As can be gleaned from the records, hearings were scheduled by the Sandiganbayan for the parties' presentation of evidence. However, due to

---

18 *Legarda v. Court of Appeals*, G.R. No. 94457, March 18, 1991, 195 SCRA 418, 419.
19 *Bejarasco, Jr. v. People*, G.R. No. 159781, February 2, 2011, 641 SCRA 328, 330-331.
20 *Callangan v. People*, 526 Phil. 239, 245 (2006).

the repeated absences of the accused and the prosecution witnesses; as well as the motions for cancellation filed both by the prosecution and the defense counsels,[21] the hearings had been postponed several times. Although the postponements were not solely attributable to the petitioners, Atty. Corpuz cannot also be entirely faulted.

Records also reveal that the petitioners have all executed their respective written waivers of appearance during the prosecution's presentation of evidence which the court approved.[22] When it was the defense's turn to present its witnesses, Resurreccion and his co-accused failed to appear during the hearing.[23] On the first scheduled date, the petitioners failed to attend because of the inclement weather.[24] By agreement of the parties, the hearing was set on another date but the petitioners were still absent, compelling the court to cancel the hearing.[25] The hearing was again moved to another date but despite notices given to the petitioners, and a stern warning from the court that their absence on the next scheduled hearing would warrant the termination of the presentation of their evidence, the petitioners again failed to appear.[26] Verily, Atty. Corpuz cannot be faulted for the waiver of the petitioners' defense.

"For a claim of a counsel's [gross] negligence to prosper, nothing short of clear abandonment of the client's cause must be shown."[27] "[T]he gross negligence[, too,] should not be accompanied by the client's own negligence or malice."[28]

Here, Atty. Corpuz was present all throughout the presentation of the prosecution's evidence. While he allegedly failed to communicate with the petitioners for nearly three years and to inform them about the status of their case, this omission, however, does not amount to abandonment that qualifies as gross negligence. If at all, the omission is only an act of simple negligence, and not gross negligence that would warrant the annulment of the proceedings below.

Besides, as far as the court is concerned, the petitioners were already duly notified, through their counsel, of the entire proceedings in the case.[29] If they failed to inquire from their counsel as to the status and developments of

---

[21] Records, volume 1, pp. 464-465; volume 2, pp. 13, 43, 45, 68, 86, 95, 100-A, 102, 102-B, 115, 123, 130, 140, 218, 234-A, 508-A.

[22] Records, volume 2, pp. 110, 140 and 215.

[23] Records, volume 2, p. 508-A, volume 3, pp. 59, 63.

[24] Records, volume 3, p. 59.

[25] Id. at 63.

[26] Records, volume 1, pp. 464-465.

[27] *Multi-Trans Agency Phils., Inc. v. Oriental Assurance Corp.*, G.R. No. 180817, June 23, 2009, 590 SCRA 675, 691.

[28] *Bejarasco, Jr. v. People, supra* note 19, at 331.

[29] In *Manaya v. Alabang Country Club, Inc.*, 552 Phil. 226, 233 (2007), the court held that: "It is axiomatic that when a client is represented by counsel, notice to counsel is notice to client. In the absence of a notice of withdrawal or substitution of counsel, the Court will rightly assume that the counsel of record continues to represent his client and receipt of notice by the former is the reckoning point of the reglementary period."

their case, they alone should be blamed. As held in *Bejarasco, Jr. v. People*:[30]

> Truly, a litigant bears the responsibility to monitor the status of his case, for no prudent party leaves the fate of his case entirely in the hands of his lawyer. It is the client's duty to be in contact with his lawyer from time to time in order to be informed of the progress and developments of his case; hence, to merely rely on the bare reassurances of his lawyer that everything is being taken care of is not enough. [citation omitted]

As clients, it is the petitioners' correlative duty to be in contact with Atty. Corpuz from time to time to inform themselves of the status of their case.[31] Considering that what is at stake is their liberty, they should have exercised the standard of care which an ordinarily prudent man devotes to his business. The petitioners cannot simply leave the fate of their case entirely to their counsel and later on pass the blame to the latter. "Diligence is required not only from lawyers but also from their clients."[32]

The Petitioners Were Not Denied Due Process

In any event, we note that even assuming that Atty. Corpuz had indeed been grossly negligent in not communicating with them for three years, it cannot be said that the petitioners had been deprived of due process of law. As shown above, the petitioners were not denied their day in court and were, in fact, afforded ample opportunity to present evidence in their defense.

The petitioners, through Atty. Corpuz filed a series of pleadings and motions, such as: comment/opposition to the prosecution's formal offer of evidence,[33] motion to file a demurrer to evidence,[34] demurrer to evidence[35] and memorandum.[36] The petitioners were likewise well-represented by Atty. Corpuz who was present all throughout the presentation of the prosecution's evidence; while Resurreccion was present during the July 29, 2003 hearing and during the completion of prosecution witness Auditor Uy's examination.[37] Under these circumstances, it is clear that the petitioners were given reasonable opportunity to be heard. The petitioners cannot now complain that they were deprived of due process of law.

We have consistently held that the essence of due process is simply an opportunity to be heard, or an opportunity to explain one's side or an opportunity to seek for a reconsideration of the action or ruling complained

---

30 *Supra* note 18, at 331.
31 *Somosot v. Lara*, A.C. No. 7024, January 30, 2009, 577 SCRA 158, 173.
32 *Lumbre, et al. v. Court of Appeals (First Division) et al.*, 581 Phil. 390, 403 (2008) citing *Delos Santos v. Elizalde*, 543 Phil. 12, 17 (2007).
33 Records, volume 2, pp. 481-482.
34 Id. at 512-513.
35 Records, volume 3, pp. 16-32.
36 Id. at 76-87.
37 Order dated July 13, 2004; records, volume 2, p. 95.

of.[38] For as long as the parties are given the opportunity to present their cause of defense, their interest in due course as in this case, it cannot be said that there was denial of due process.

Denial Of The Petitioners' Motion For Reconsideration Was Proper

Anent the issue of whether the Sandiganbayan erred in denying the petitioners' motion for reconsideration on the sole ground that the motion lacked the required notice of hearing, the Rules of Court require that every written motion be set for hearing by the movant, except those motions which the court may act upon without prejudicing the rights of the adverse party. The notice of hearing must be addressed and served to all parties at least three days before the hearing. It must specify the time and date of the hearing of the motion.[39] Sections 4 and 5, Rule 15 of the 1997 Rules of Civil Procedure provide:

> SECTION 4. Hearing of motion. — Except for motions which the court may act upon without prejudicing the rights of the adverse party, every written motion shall be set for hearing by the applicant. Every written motion required to be heard and the notice of the hearing thereof shall be served in such a manner as to ensure its receipt by the other party at least three (3) days before the date of hearing, unless the court for good cause sets the hearing on shorter notice.
>
> SECTION 5. Notice of hearing. The notice of hearing shall be addressed to all parties concerned, and shall specify the time and date of the hearing which must not be later than ten (10) days after the filing of the motion.

A motion which does not meet the requirements of Sections 4 and 5, Rule 15 of the 1997 Rules of Civil Procedure is considered pro forma; it is nothing but a worthless piece of paper which the clerk has no right to receive and the court has no authority to act upon.[40] "Service of [a] copy of a motion containing notice of the time and place of hearing of said motion is a mandatory requirement and the failure of the movant to comply with [the] said requirements renders his motion fatally defective.[41]

In the present case, the motion for reconsideration filed by the petitioners before the Sandiganbayan reads as follows:

> NOTICE OF HEARING
>
> The Division Clerk of Court
> 1st Division, Sandiganbayan, Quezon City
> Greetings:

---

38 *Ray Peter O. Vivo v. Philippine Amusement and Gaming Corporation (PAGCOR)*, G.R. No. 187854, November 12, 2013.

39 *Tan v. CA*, 356 Phil. 1058, 1067 (1998).

40 Ibid.

41 *Pojas v. Gozo-Dalole*, G.R. No. 76519, December 21, 1990, 192 SCRA578; citations omitted.

> Please x x x submit the foregoing Motion for Reconsideration of Decision for the immediate consideration and approval by this Honorable Division as soon as receipt is made hereof.
>
> (SGD)
> ATTY. LEO T. EDUARTE
>
> COPY FURNISHED: BY PERSONAL SERVICE
> The Honorable Trial Prosecutors
> 1st Division
> Sandiganbayan, Quezon City[42]

The notification, however, only prays for the submission of the motion for reconsideration and approval of the court, without stating the time, date and place of the hearing of the motion. It was, therefore, not the notice of hearing contemplated by the rules as the same has not been set for hearing. In *Manila Surety and Fidelity Co., Inc. v. Batu Const. and Co., et al*,[43] we declared that:

> The written notice referred to evidently is that prescribed for motions in general by Rule 15, [S]ections 4 and 5 (formerly Rule 26), which provide that such notice shall state the time and place of hearing and shall be served upon all the parties concerned at least three days in advance. And according to Section 6 of the same Rule[,] no motion shall be acted upon by the court without proof of such notice. Indeed[,] it has been held that in such a case the motion is nothing but a useless piece of paper. The reason is obvious: unless the movant sets the time and place of hearing[,] the court would have no way to determine whether that party agrees to or objects to the motion, and if he objects, to hear him on his objection, since the Rules themselves do not fix any period within which he may file his reply or opposition.

Similarly, we held in *Sembrano v. Judge Ramirez*[44] that:

> [A] motion without notice of hearing is a mere scrap of paper. It does not toll the running of the period of appeal. This requirement of notice of hearing equally applies to a motion for reconsideration. Without such notice, the motion is *pro forma*. And a *pro forma* motion for reconsideration does not suspend the running of the period to appeal.

Since the motion for reconsideration filed by the petitioners did not contain the time, date and place for the hearing, the motion is nothing but a useless scrap of paper, a pro forma motion, hence, properly dismissible by the Sandiganbayan.

WHEREFORE, the instant petition is **DENIED** for lack of merit. The decision dated February 11, 2010 and the resolution dated July 10, 2010

---

42 *Rollo*, p. 81.
43 121 Phil. 1221, 1224 (1965); citations omitted.
44 248 Phil. 260, 266-267 (1988); citations omitted.

of the Sandiganbayan in Criminal Case Nos. 25235-39 are hereby **AFFIRMED**.

SO ORDERED.

ARTURO D. BRION
Associate Justice

WE CONCUR:

ANTONIO T. CARPIO
Associate Justice
Chairperson

MARIANO C. DEL CASTILLO
Associate Justice

JOSE PORTUGAL PEREZ
Associate Justice

ESTELA M. PERLAS-BERNABE
Associate Justice

ATTESTATION

I attest 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's Division.

ANTONIO T. CARPIO
Associate Justice
Chairperson, Second Division

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, and the Division Chairperson's Attestation, 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's Division.

MARIA LOURDES P. A. SERENO
Chief Justice