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SECOND DIVISION

[G.R. No. 212979. February 18, 2019]

MA. ANTONETTE LOZANO, *petitioner, vs.* **JOCELYN K. FERNANDEZ,** *respondent.*

SYLLABUS

1. **REMEDIAL LAW; CIVIL PROCEDURE; CERTIFICATION AGAINST FORUM SHOPPING; PETITIONER'S CERTIFICATE AGAINST FORUM SHOPPING FULLY CONTAINED THE INFORMATION REQUIRED THEREIN.—** Under Section 5, Rule 7 of the Rules of Court, the following details must be stated in the certificate against forum shopping: (a) the party has not commenced any action involving the same issues in any court or tribunal, or that there is no pending case involving the same issue to the best of his knowledge; (b) a complete statement of the present status if there is such other pending action; and (c) notify the court wherein the complaint or initiatory pleading is filed, within five (5) days should the party thereafter learn that the same or similar action has been filed or is pending. Lozano's certificate against forum shopping fully contained the information required and was written in the very words used by the Rules of Court. Contrary to Fernandez's position the rules do not make use of the phrase "promptly inform" as it specifically provides that the party should notify the court within five days from discovering a similar case pending before another court.

2. **ID.; ID.; PETITION FOR REVIEW ON *CERTIORARI* UNDER RULE 45; LIMITED ONLY TO QUESTIONS OF LAW; QUESTION OF FACT DISTINGUISHED FROM QUESTION OF LAW; WHILE PETITIONER RAISED QUESTIONS OF FACT, THE COURT OPTED TO RESOLVE THE CASE AND RELAX THE STRICT APPLICATION OF THE RULES.—** A question of fact pertains to the truth or falsity of the alleged acts or involves an examination of the probative value of the evidence presented. Meanwhile, a question of law arises when there is doubt to what the law is on certain state of facts — it can be resolved

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without reviewing or evaluating the evidence. In her petition for review on *certiorari*, Lozano raises questions of fact. Her challenge on the validity of the Waiver is a question of fact as it revolves around the probative value and due execution of the said document. In addition, Lozano's claim that there was no tolerance is likewise a factual issue considering that the CA had found sufficient evidence to prove Fernandez's tolerance. x x x It is true that in a petition for review on *certiorari* under Rule 45 of the Rules of Court, only questions of law may be raised. Nevertheless, the said rule admits of exception such as when the conclusion is based on speculation or conjectures, or there is a misapprehension of facts. In addition, the Court may relax the strict application of the rules of procedure in the exercise of its equity jurisdiction when its rigid application will tend to obstruct rather than serve the broader interests of justice in light of the prevailing circumstances of the case.

3. **ID.; EVIDENCE; A NOTARIZED DOCUMENT CAN BE SET ASIDE ONLY BY CLEAR AND CONVINCING EVIDENCE.—** Lozano merely claims that she never appeared before a notary public and her true obligation with Fernandez was merely a loan with collateral. However, mere allegations, without supporting evidence, are insufficient to discredit the validity of notarized documents. This is especially true considering that uncorroborated allegations do not even meet the threshold of preponderance of evidence. Lozano errs in concluding that she had overcome the presumption of regularity because other than her unsubstantiated statements, the records are bereft of evidence to indicate any irregularity in the contents of the document or to the act of notarization itself.

4. **ID.; SPECIAL CIVIL ACTIONS; UNLAWFUL DETAINER BASED ON TOLERANCE; OVERT ACTS INDICATIVE OF TOLERANCE OR PERMISSION ON THE PART OF THE PLAINTIFF MUST BE SUFFICIENTLY PROVED; INACTION IS INSUFFICIENT TO ESTABLISH TOLERANCE AS IT INDICATES NEGLIGENCE RATHER THAN TOLERANCE.—** In an action for unlawful detainer based on tolerance, the acts of tolerance must be proved. Bare allegations of tolerance are insufficient and there must be acts indicative of tolerance. x x x [F]or there to be tolerance, complainants in an unlawful detainer must prove that they had

consented to the possession over the property through positive acts. After all, tolerance signifies permission and not merely silence or inaction as silence or inaction is negligence and not tolerance. In the present case, Fernandez's alleged tolerance was premised on the fact that she did not do anything after the Waiver was executed. However, her inaction is insufficient to establish tolerance as it indicates negligence, rather than tolerance, on her part. As above-mentioned, inaction should not be confused with tolerance as the latter transcends silence and connotes permission to possess the property subject of an unlawful detainer case. Thus, even assuming the Waiver was valid and binding, its execution and Fernandez's subsequent failure to assert her possessory rights do not warrant the conclusion that she tolerated Lozano's continued possession of the property in question, absent any other act signifying consent. x x x Fernandez cannot simply claim that she had tolerated Lozano's possession because she did not do anything after the execution of the Waiver as silence does not equate to tolerance or permission. In short, the execution of the Waiver alone is not tantamount to the tolerance contemplated in unlawful detainer cases. The absence of an overt act indicative of tolerance or permission on the part of the plaintiff is fatal for a case for unlawful detainer.

APPEARANCES OF COUNSEL

Karaan and Karaan Law Office for petitioner.
The Law Firm of Penullar & Associates for respondent.

D E C I S I O N

REYES, J. JR., *J.*:

Before the Court is a petition for review on *certiorari* under Rule 45 of the Rules of Court seeking to reverse and set aside the November 22, 2013 Decision[1] and the June 13, 2014 Resolution[2] of the Court of Appeals (CA) in CA-G.R. SP No.

[1] Penned by Associate Justice Romeo F. Barza, with Associate Justices Noel G. Tijam and Ramon A. Cruz, concurring; *rollo*, pp. 155-165.

[2] *Id.* at 184-185.

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125107, which affirmed the November 3, 2011 Decision[3] in Civil Case No. 38-0-2011 of the Regional Trial Court (RTC), Branch 72, Olongapo City.

The present controversy revolves around a parcel of land and its improvements in CM Subdivision, New Cabalan, Olongapo City currently declared for taxation purposes under the name of respondent Jocelyn K. Fernandez (Fernandez).

Respondent's position

On December 11, 2006, petitioner Ma. Antonette Lozano (Lozano) executed a Waiver and Transfer of Possessory Rights (Waiver)[4] over the subject property in favor of Fernandez. After the execution of the document, Fernandez continued to tolerate Lozano's possession over the property. On July 15, 2009, she sent a demand letter[5] to Lozano ordering her to vacate the premises. Because Lozano failed to leave the property, Fernandez was constrained to file an action for unlawful detainer against her before the Municipal Trial Court in Cities, Branch 2, Olongapo City (MTCC).[6]

Petitioner's position

Since 1996, Lozano had owned and possessed the subject property. She never recalled signing any Waiver in Fernandez's favor. Lozano explained that Fernandez duped her into signing a blank document, which was later converted to a Waiver. She denied having appeared before a notary public to notarize the said document. Lozano claimed that the real contract between her and Fernandez was a loan with mortgage as evidenced by the fact that she remained in possession of the property even after the execution of the said Waiver and that she had issued checks in payment of the loan. She pointed out that Fernandez was engaged in the business of lending imposing unconscionable

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[3] Penned by Presiding Judge Richard A. Paradeza; *id*. at 83-89.

[4] *Id*. at 34-36.

[5] *Id*. at 37.

[6] *Id*. at 156.

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interest and was in the practice of securing collateral from the lendee.[7]

MTCC Decision

In its February 16, 2011 Decision,[8] the MTCC dismissed Fernandez's complaint for unlawful detainer. It explained that Fernandez only filed the present case for ejectment three years after she gained possessory rights over the property. The MTCC expounded that Fernandez's cause of action had prescribed as the complaint was filed after one year from the time the possession became unlawful. It added that Fernandez failed to prove that she tolerated Lozano's possession over the property. Thus, it disposed:

> WHEREFORE, in view of the foregoing, judgment is hereby rendered in the following manner:
>
> 1. Ordering the dismissal of the complaint of the plaintiff for lack of cause of action and for want of merit; [and]
>
> 2. Ordering the Plaintiff to pay the Defendant reasonable attorney's fees in the amount of ₱20,000.00.
>
> SO [ORDERED].[9]

Aggrieved, Fernandez appealed to the RTC.

RTC Decision

In its November 3, 2011 Decision, the RTC granted Fernandez's appeal. It explained that after the execution of the Waiver on December 11, 2006, Lozano's possession over the property was merely tolerated by Fernandez. The RTC noted that after the ten-day period to vacate stated in the demand letter, Lozano's continued possession over the land became illegal. It expounded that tolerance is presumed from the fact that after the execution of the Waiver, Fernandez did not ask

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[7] *Id*. at 11-12.

[8] Penned by Presiding Judge Jacinto C. Gonzales; *id*. at 59-61.

[9] *Id.* at 61.

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Lozano to vacate the land. Thus, the RTC concluded that it was Fernandez who was entitled to attorney's fees under Article 2208 of the Civil Code. In addition, it awarded rentals in favor of Fernandez as a consequence of her being deprived of possession over the parcel of land. The RTC disposed:

> **WHEREFORE**, premises considered, the appeal is hereby GRANTED. The Decision dated February 16, 2011 of the Municipal Trial Court in Cities, Branch 2, Olongapo City in Civil Case No. 7238 for unlawful detainer is hereby **RECONSIDERED, REVERSED AND SET ASIDE**. Accordingly, judgment is hereby rendered in favor of the plaintiff and against the defendant, ordering:
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> 1. The defendant and all persons claiming rights under it to vacate the premises located at CNI Subdivision, New Cabalan, Olongapo City it is presently occupying;
>
> 2. The defendant to pay plaintiff the amount of five thousand (₱5,000.00) pesos per month as rentals for use of the property from July 20, 2009 up to the time it actually vacates the place;
>
> 3. The defendant to pay the plaintiff the amount of twenty thousand (₱20,000.00) pesos as attorney's fees; and
>
> 4. To pay the cost of litigation.
>
> SO ORDERED.[10]

Undeterred, Lozano appealed to the CA.

CA Decision

In its November 22, 2013 Decision, the CA affirmed the RTC Decision. The appellate court elaborated that the MTCC should have resolved the genuineness and due execution of the Waiver because its determination is necessary for a proper and complete adjudication of the issue of possession. It, however, upheld the said document as Lozano failed to present evidence to discredit a notarized document. The CA agreed that there was tolerance when after the execution of the Waiver, Fernandez allowed Lozano to continue possessing the land. Further, the appellate court upheld the grant of rentals as courts may order

[10] *Id.* at 89.

the award of an amount representing arrears of rent or reasonable compensation for the use and occupation of the premises. Also, the CA sustained the award of attorney's fees because it is allowed when claimants are compelled to litigate with third persons or incur expenses to protect their interest by reason of an unjustified act or omission on the part of the party from whom it is sought. Thus, it ruled:

WHEREFORE, the petition is **DENIED DUE COURSE** and **DISMISSED**.

SO ORDERED.[11]

Unsatisfied, Lozano moved for reconsideration but it was denied by the CA in its June 13, 2014 Resolution.

Hence, this present petition raising:

The Issues

I

[WHETHER] THE [CA] GROSSLY ERRED IN SUSTAINING THE DECISION OF THE RTC ORDERING THE EJECTMENT OF THE PETITIONER FROM THE SUBJECT PROPERTY NOTWITHSTANDING THAT THERE WAS NO TOLERANCE IN CONTEMPLATION OF THE LAW ON EJECTMENT THAT WAS PROVEN[; AND]

II

[WHETHER] THE [CA] GROSSLY ERRED IN [SUSTAINING] THE DECISION OF THE RTC ORDERING THE PAYMENT OF REASONABLE RENTALS AND ATTORNEY'S FEES IN FAVOR OF THE RESPONDENT AT THE EXPENSE OF THE PETITIONER NOTWITHSTANDING THE ABSENCE OF PROOF OF FACTUAL AND LEGAL BASIS THEREFOR.[12]

Lozano argued that the CA erred in granting probative value on the Waiver because she was able to prove that its execution was irregular considering that it was not the true agreement

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[11] *Id*. at 164.

[12] *Id*. at 12.

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she had with Fernandez and that she had never appeared before a notary public. She reiterated that Fernandez took advantage of her poor understanding of legal documentation when the latter made her sign a blank document which was later converted into the Waiver. Lozano assailed that Fernandez did not present sufficient evidence to establish that the latter merely tolerated the former's possession of the property. She faulted the CA in relying only on Fernandez and her witness' affidavits as they were self-serving and lacked evidentiary value.

Lozano expounded that the complaint for unlawful detainer was also filed beyond the one-year prescriptive period. She explained that assuming the Waiver was valid, the complaint should be filed within one year therefrom as it gave Fernandez possessory rights over the property. She lamented that Fernandez filed the complaint only after three years had elapsed from the execution of the said document.

Finally, Lozano bewailed that the award of rentals and attorney's fees was improper. She averred that Fernandez had the burden of proof to prove her entitlement to rentals, which she failed to do so. On the other hand, Lozano highlighted that the award of the attorney's fees only existed in the dispositive portion of the RTC Decision and was not explained in its body. She believed that it violated the settled rule that the legal reason for the award of attorney's fees should be stated in the body of the decision.

In her Comment[13] dated February 25, 2015, Fernandez countered that Lozano's petition for review on *certiorari* should be dismissed as it raised questions of fact. In addition, she noted that the certificate against forum shopping did not contain the undertaking that "the petitioner shall promptly inform the aforesaid courts and other [tribunals]" should the petitioner learn of the filing or pendency of the same or similar action or proceeding.

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[13] *Id*. at 189-191.

In her Manifestation[14] dated March 11, 2015, Lozano stated that she opted to no longer file a Reply after reviewing the allegations of Fernandez's Comment.

The Court's Ruling

Fernandez assails that Lozano's petition for review on *certiorari* should be dismissed outright as it is procedurally infirm. She notes that Lozano's certificate of non-forum shopping did not contain the undertaking to promptly inform the court should she learn of the filing or pendency of the same or similar action.

Under Section 5, Rule 7 of the Rules of Court, the following details must be stated in the certificate against forum shopping: (a) the party has not commenced any action involving the same issues in any court or tribunal, or that there is no pending case involving the same issue to the best of his knowledge; (b) a complete statement of the present status if there is such other pending action; and (c) notify the court wherein the complaint or initiatory pleading is filed, within five (5) days should the party thereafter learn that the same or similar action has been filed or is pending. Lozano's certificate against forum shopping fully contained the information required and was written in the very words used by the Rules of Court. Contrary to Fernandez's position the rules do not make use of the phrase "promptly inform" as it specifically provides that the party should notify the court within five days from discovering a similar case pending before another court.

Fernandez also argues that Lozano's petition for review on *certiorari* should be dismissed for raising questions of fact. A question of fact pertains to the truth or falsity of the alleged acts or involves an examination of the probative value of the evidence presented.[15] Meanwhile, a question of law arises when there is doubt to what the law is on certain state of facts — it can be resolved without reviewing or evaluating the evidence.[16]

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[14] *Id*. at 193-195.

[15] *Republic v. Malabanan*, 646 Phil. 631, 637 (2010).

[16] *Id*.

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In her petition for review on *certiorari*, Lozano raises questions of fact. Her challenge on the validity of the Waiver is a question of fact as it revolves around the probative value and due execution of the said document. In addition, Lozano's claim that there was no tolerance is likewise a factual issue considering that the CA had found sufficient evidence to prove Fernandez's tolerance. In particular, the CA appreciated in Fernandez's favor her affidavit and of a certain Michael Gascon (Gascon) stating that Fernandez had tolerated Lozano's possession after the execution of the Waiver. Thus, it calls for the examination or review of the probative value of evidence on record.

It is true that in a petition for review on *certiorari* under Rule 45 of the Rules of Court, only questions of law may be raised.[17] Nevertheless, the said rule admits of exception such as when the conclusion is based on speculation or conjectures, or there is a misapprehension of facts.[18] In addition, the Court may relax the strict application of the rules of procedure in the exercise of its equity jurisdiction when its rigid application will tend to obstruct rather than serve the broader interests of justice in light of the prevailing circumstances of the case.[19]

Having settled the procedural issues, the Court finds that Lozano's petition for review on *certiorari* is meritorious.

Notarized document set aside only for clear and convincing evidence

Lozano vehemently denies having executed the Waiver claiming that her true agreement with Fernandez was a loan with the subject property as collateral. She laments that Fernandez took advantage of her lack of knowledge and understanding over legal documentation when the latter made her sign a blank document, which was later converted to a Waiver.

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[17] *Abedes v. Court of Appeals*, 562 Phil. 262, 278 (2007).

[18] *Pascual v. Burgos*, 116 Phil. 167, 182 (2016).

[19] *Curammeng v. People*, 799 Phil. 575, 581 (2016).

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Lozano does not contest that the Waiver was notarized. She, however, claims that she had established that she had not validly executed the said document and had overcome the presumption of regularity of notarized documents.

The act of notarization is not a hollow formality as it carries with it the legal effect of converting a private document to a public document, which is presumed regular, admissible in evidence without need for proof of its authenticity and due execution, and entitled to full faith and credit upon its face.[20] In *Heirs of Spouses Liwagon v. Heirs of Spouses Liwagon*,[21] the Court ruled that the presumption of regularity of notarized documents may be overcome by clear and convincing evidence and not by mere preponderance of evidence, to wit:

> Both the trial and appellate courts correctly ruled in favor of the due execution of the subject Deed of Sale which was duly acknowledged and recorded by Atty. Alfredo Abayon in his notarial registry. It is a rule in our jurisdiction that the act of notarization by a notary public converts a private document into a public document, making it admissible in evidence without further proof of its authenticity. By law, a notarial document is entitled to full faith and credit upon its face. **It enjoys the presumption of regularity and is a *prima facie* evidence of the facts stated therein — which may only be overcome by evidence that is clear, convincing and more than merely preponderant. Without such evidence, the presumption must be upheld.**[22] (Citations omitted and emphasis supplied)

In the present case, Lozano merely claims that she never appeared before a notary public and her true obligation with Fernandez was merely a loan with collateral. However, mere allegations, without supporting evidence, are insufficient to discredit the validity of notarized documents. This is especially true considering that uncorroborated allegations do not even meet the threshold of preponderance of evidence. Lozano errs

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[20] *Spouses Aboitiz v. Spouses Po*, G.R. No. 208450, June 5, 2017.

[21] 748 Phil. 675 (2014).

[22] *Id*. at 686.

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in concluding that she had overcome the presumption of regularity because other than her unsubstantiated statements, the records are bereft of evidence to indicate any irregularity in the contents of the document or to the act of notarization itself.

Tolerance is more than mere passivity

On the basis of the said Waiver, Fernandez claims that she had acquired possession of the said property. She adds that she tolerated Lozano's continued possession thereof after she did not exert her right after the execution of the said document.

In an action for unlawful detainer based on tolerance, the acts of tolerance must be proved.[23] Bare allegations of tolerance are insufficient and there must be acts indicative of tolerance.[24] In *Reyes v. Heirs of Deogracias Forlales*,[25] the Court had expounded on the concept of tolerance in unlawful detainer cases, to wit:

> Professor Tolentino defines and characterizes "tolerance" in the following manner:
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> [. . .] acts merely tolerated are those which by reason of neighborliness or familiarity, the owner of property *allows* his neighbor or another person to do on the property; they are generally those particular services or benefits which one's property can give to another without material injury or prejudice to the owner, who *permits* them out of friendship or courtesy. They are acts of little disturbances which a person, in the interest of neighborliness or friendly relations, *permits* others to do on his property, such as passing over the land, tying a horse therein, or getting some water from a well. And even though this is *continued* for a long time, no right will be acquired by prescription. [...]
>
> There is tacit consent of the possessor to the acts which are merely tolerated. Thus, *not every case of knowledge and silence on the part*

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[23] *Dr. Carbonilla v. Abiera*, 639 Phil. 473, 482 (2010).

[24] *The Iglesia De Jesucristo Jerusalem Nueva of Manila, Philippines, Inc. v. Dela Cruz*, G.R. No. 208284, April 23, 2018.

[25] 787 Phil. 541 (2016).

of the possessor can be considered mere tolerance. **By virtue of tolerance that is considered as an authorization, permission or license, acts of possession are realized or performed. The question reduces itself to the existence or non-existence of the permission.**[26] (Citation omitted, emphasis in the original)

In other words, for there to be tolerance, complainants in an unlawful detainer must prove that they had consented to the possession over the property through positive acts. After all, tolerance signifies permission and not merely silence or inaction as silence or inaction is negligence and not tolerance.[27]

In the present case, Fernandez's alleged tolerance was premised on the fact that she did not do anything after the Waiver was executed. However, her inaction is insufficient to establish tolerance as it indicates negligence, rather than tolerance, on her part. As above-mentioned, inaction should not be confused with tolerance as the latter transcends silence and connotes permission to possess the property subject of an unlawful detainer case. Thus, even assuming the Waiver was valid and binding, its execution and Fernandez's subsequent failure to assert her possessory rights do not warrant the conclusion that she tolerated Lozano's continued possession of the property in question, absent any other act signifying consent.

In addition, contrary to the appreciation of the CA, the affidavits[28] of Fernandez and Gascon do not prove that the former tolerated Lozano's possession of the property. A close perusal of the averments in their affidavits reveals that they merely concluded that Lozano's possession was by mere tolerance. The affidavits were bereft of any statement describing positive acts of Fernandez manifesting tolerance or permission. The CA erred in giving weight to these affidavits as they do not contain specific averments of tolerance and merely stated unfounded conclusions.

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[26] *Id*. at 554-555.

[27] *Javelosa v. Tapus*, G.R. No. 204361, July 4, 2018.

[28] *Rollo*, pp. 129-130.

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Again, Fernandez cannot simply claim that she had tolerated Lozano's possession because she did not do anything after the execution of the Waiver as silence does not equate to tolerance or permission. In short, the execution of the Waiver alone is not tantamount to the tolerance contemplated in unlawful detainer cases. The absence of an overt act indicative of tolerance or permission on the part of the plaintiff is fatal for a case for unlawful detainer.[29]

WHEREFORE, the petition is **GRANTED**. The February 16, 2011 Decision in Civil Case No. 7238 of the Municipal Trial Court in Cities, Branch 2, Olongapo City is **REINSTATED**.

SO ORDERED.

Carpio, S.A.J. (*Chairperson*), *Perlas-Bernabe, Caguioa*, and *Hernando*,[*] *JJ.*, concur.

SECOND DIVISION

[G.R. No. 213502. February 18, 2019]

JERLINDA M. MIRANDA, *petitioner, vs.* **THE CIVIL SERVICE COMMISSION and THE DEPARTMENT OF HEALTH,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; PETITION FOR REVIEW UNDER RULE 43 OF THE RULES OF COURT, PROPER REMEDY IN CASE AT BAR; A SPECIAL CIVIL ACTION FOR *CERTIORARI*

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[29] *Jose v. Alfuerto*, 699 Phil. 307, 320-321 (2012).

[*] Additional Member per S.O. No. 2630 dated December 18, 2018.