Supreme Court E-Library

EN BANC

[G.R. No. 224516; July 6, 2021]

MARITES DOMATO-TOGONON, *Petitioner*, *v*. **THE COMMISSION ON AUDIT, THE REGIONAL DIRECTOR FOR LEGAL AND ADJUDICATION OFFICE, and THE REGIONAL DIRECTOR OF COA REGIONAL OFFICE XII,** *Respondents*.

D E C I S I O N

LEONEN, *J.*:

As a rule, the seller must bear all the expenses of the sale's execution and registration. The parties may decide on a different agreement, but it must be stipulated in their contract. Without a contrary stipulation, the general rule shall apply.

For this Court's resolution is a Petition for Certiorari[1] challenging the Resolution[2] of the Commission on Audit-Proper, which affirmed its earlier Decision[3] upholding the validity of Notice of Disallowance Nos. 05-001-101(04) and 05-002-101 (03).

In 2001, Executive Order Nos. 24 and 25 were issued creating a City Appraisal Committee and Task Force on Lot Purchase (City Appraisal Committee). Tasked with finding the best location for

---

[1] *Rollo*, pp. 10-35. With prayer for the Issuance of Temporary Restraining Order and/or Writ of Preliminary Injunction.

[2] Id. at 37. The December 23, 2015 Resolution in COA CP Case No. 2011-40 was penned by Director IV, Commission Secretary Nilda B. Plaras of the Commission on Audit, Commonwealth Avenue, Quezon City, Philippines.

[3] Id. at 65-70. The July 2, 2013 Decision in Decision No. 2013-092 was signed by Chairperson Ma. Gracia Pulido-Tan and Commissioners Heidi L. Mendoza and Rowena V. Guanzon of the Commission on Audit, Commonwealth Avenue, Quezon City, Philippines.

Supreme Court E-Library

Koronadal City's new city hall building, it sent out invitations to several landowners who might be interested in selling their land.[4]

Among the landowners who responded were the heirs of Plomillo, who expressed their willingness to sell their property denominated as Lot 80, PLS-246-D. Through Rechil Plomillo (Rechil), they offered[5] to sell their property for ₱30,000,000.00, inclusive of all costs and other incidental expenses.[6] Later, they sent another letter[7] lowering their offered price to ₱22,000,000.00, provided that the city government shoulder all transfer expenses, thus:

> We will lower our offer from ₱30 Million to ₱22 M (net) with all expenses relative to the transfer such as: Documentation Expenses, Capital Gains Tax, Estate Taxes, Transfer Tax and Documentary Tax shall be shouldered by the City Government, except realty taxes; and while the boundary problems, conflicts, disputes, if there be any from third party or tenants, it shall be on our account, and shall defend the vendee from all kinds of claims whosoever or whatsoever.[8]

Finding the offer to be reasonable, the City Appraisal Committee endorsed the property to Mayor Fernando Q. Miguel (Mayor Miguel), the local chief executive of Koronadal City, who in turn caused its evaluation.[9] Following a positive recommendation, he sought authority from the Sangguniang Panlungsod to purchase the property.[10]

On August 14, 2003, the Sangguniang Panlungsod passed Resolution No. 746,[11] which authorized Mayor Miguel to enter

---

[4] Id. at 12.

[5] Id. at 84.

[6] Id. at 12.

[7] Id. at 85.

[8] Id.

[9] Id. at 12.

[10] Id.

[11] Id. at 131-132.

Supreme Court E-Library

into a deed of sale with the heirs of Plomillo. The Resolution abided by the terms the heirs of Plomillo had set.[12]

Koronadal City, as represented by Mayor Miguel, later entered into a Deed of Absolute Sale[13] with the heirs of Plomillo. However, nowhere did it state that the city government would shoulder the expenses of the transfer.

As such, Koronadal City paid the following amounts:

Particulars	Payee	Amount
Purchase Price	Heirs of Plomillo	₱22,000,000.00
Notarial Fees	Atty. Joffrey Montefrio	₱419,000.00
Capital Gains, Documentary and Estate Tax	Bureau of Internal Revenue	₱112,429.32
Transfer Tax	Koronadal Register of Deeds	₱1,643.70
Documentary and Capital Gains Tax	Bureau of Internal Revenue	₱1,650,000.00
Transfer Fee Tax	Koronadal City	₱110,000.00
Registration Fee	Register of Deeds	₱105,330.00
	Total	₱24,398,403.02[14]

On post-audit, the audit team issued Audit Observation Memorandum Nos. 04-06 and 04-08 after it had found the payments of the taxes and fees irregular, for being contrary to law and regulations.[15]

The Commission on Audit's Regional Cluster Director in Cotabato City then issued Notice of Disallowance Nos. 05-001-101(04) and 05-002-101(03). The amount of ₱2,398,403.02, which represented the total costs of transferring the title, was

---

[12] Id. at 132.

[13] Id. at 133-137.

[14] Id. at 66.

[15] Id. at 263.

Supreme Court E-Library

disallowed for violating Bureau of Internal Revenue Regulations No. 13-85.[16]

The following individuals were held liable under the Notice of Disallowances:

Name	Position
Fernando Q. Miguel	City Mayor
Jose C. Ledda	City Vice Mayor
Imelda A. Tamayo Edwin G. Abris Jose G. Agreda Jose Henry D. Aguirre Rebecca C. Bona Marites R. Domato-Togonon Geral Paul Duremdes Juanito Lagasca, Jr. Sergio S. Morales, Jr. Gregorio B. Ogoy Pablito S. Subere Roberto L. Sungga Meljoy Camarinas	Members of the [Sangguniang Panlungsod] of Koronadal [City]
Heirs of Plomillo	Vendor[17]

All of those held liable appealed, among them Marites Domato-Togonon (Togonon),[18] a member of the Sangguniang Panlungsod.

On May 18, 2006, the Commission on Audit's Legal and Adjudication Office rendered a Decision[19] affirming the Notices of Disallowance:

Wherefore, premises considered, this Office hereby affirms the assailed ND Nos. 05-001-101(04) dated January 18, 2005 and 05-002-

[16] Id. at 65-67 and 263.

[17] Id. at 263-264.

[18] Id. at 264.

[19] Id.

Supreme Court E-Library

101(03) dated January 25, 2005 and hereby excludes the Hon. Jose C. Ledda, Vice Mayor, Hon. Rebecca C. Bona, Hon. Pablito S. Subere and Hon. Jose Henry D. Aguirre, all members of the Sangguniang Panlun[g]sod of Koronadal City, from the list of persons liable in the herein Notice of Disallowance.[20]

When their motions and appeals were denied,[21] Togonon and the other concerned officials[22] filed a Petition for Review before the Commission on Audit.[23] Nonetheless, in its Decision,[24] the Commission on Audit denied the petition for review and upheld the Notices of Disallowance:

WHEREFORE, the petition is **DENIED.** Accordingly, LAO-Local Resolution No. 2007-014 dated 11 July 2007, affirming LAO-Local Decision No. 2006-63 dated May 18, 2006 which upheld ND Nos. 05-001-101(04) and 05-002-101(3) dated January 18, 2005 and January 25, 2005, respectively, in the total amount of ₱2,398,403.02, is **AFFIRMED**.[25] (Emphasis in the original)

The Commission on Audit agreed with the Legal and Adjudication Office's finding that Koronadal City's payment of taxes and fees was an indirect imposition of tax against the city. It ruled that Section 133 (o) of the Local Government Code prohibits the enactment of measures that impose taxes, fees, or charges on local government units.[26]

It further decreed that nowhere in the Local Government Code does it authorize the Sangguniang Panlungsod to legislate exemptions or to shift the burden of national taxes, especially when

---

[20] Id. at 264.

[21] Id. at 265.

[22] Id. Jose Agreda, Juanito Lagasca, Gerald Paul Duremdes, Mel Joy Camarinas, Roberto Sunga, and Gregorio Ogoy.

[23] Id. Jose Agreda, Juanito Lagasca, Gerald Paul Duremdes, Mel Joy Camarinas, Roberto Sunga and Gregorio Ogoy.

[24] Id. at 65-69.

[25] Id. at 69.

[26] Id. at 68.

Supreme Court E-Library

it benefits a particular individual.[27] It likewise noted that the Deed of Absolute Sale did not state that the notarial and registration fees shall be shouldered by Koronadal City, as the vendee.[28]

Nonetheless, the Commission on Audit acknowledged that it had no power to nullify legislative enactments and, therefore, did not declare Resolution No. 746 void.[29]

On September 16, 2013, the Commission on Audit's Decision became final, and a corresponding Notice of Finality of Decision was issued.[30]

Mayor Miguel and Togonon moved to set aside the Notice of Finality of Decision, contending that neither of them received a copy of the Decision.[31]

The Commission on Audit Proper *En Banc* later lifted the Notice insofar as Togonon was concerned. She was given 30 days to file a motion for reconsideration.[32] Togonon did move for reconsideration, but it was dismissed in the December 23, 2015 Resolution for her failure to raise new matters to modify the assailed Decision.[33]

Aggrieved, Togonon filed before this Court a Petition for Certiorari against public respondent Commission on Audit, along with the Legal and Adjudication Office and the Regional Director of the Commission on Audit's Regional Office XII.

Petitioner argues that the Commission on Audit gravely abused its discretion when it did not recognize the payment of taxes as part of the contract's consideration.[34] She stresses that in agreeing

---

[27] Id.

[28] Id.

[29] Id. at 69.

[30] Id. at 265.

[31] Id.

[32] Id.

[33] Id. at 298.

[34] Id. at 14.

Supreme Court E-Library

to shoulder the taxes, Koronadal City was not disadvantaged when it paid ₱24,398,403.02, as it saved ₱5,601,596.98 from the original ₱30,000,000.00. She notes that this was much lower than the property's estimated fair market value of ₱34,000,000.00.[35]

Petitioner contends further that Resolution No. 746 was not an indirect imposition of tax on Koronadal City, since it merely authorized the local chief executive to enter into a deed of sale. She likewise avers that Koronadal City simply exercised its corporate function when it entered into the Deed of Absolute Sale with the heirs of Plomillo.[36]

Additionally, petitioner insists that the Commission on Audit gravely abused its discretion when it disregarded the Office of the Ombudsman's resolution in Case No. OMB-M-C-04-0536-L, which later on became the Sandiganbayan case of *People v. Miguel*, docketed as Criminal Case No. SB-08-CRM-0018. This resolution, she notes, upheld the Deed of Absolute Sale's validity and the Sangguniang Panlungsod's authority to enact Resolution No. 746.[37]

In its Comment,[38] the Commission on Audit asserts that Koronadal City's payment of taxes and fees violated laws and regulations. It argues, among others, that: (1) the obligation to pay capital gains tax, documentary stamp tax, and expenses for the sale's execution and registration falls on the seller;[39] (2) the heirs of Plomillo should shoulder the expenses for the settlement of the Plomillo estate;[40] (3) the Local Government Code prohibits payment of notarial fees to private lawyers;[41] (4) the Code also requires the imposition of tax to be in the form of

---

[35] Id. at 17.

[36] Id. at 19-23.

[37] Id. at 25.

[38] Id. at 258-295.

[39] Id. at 273-276.

[40] Id. at 276-277.

[41] Id. at 278.

Supreme Court E-Library

an ordinance;[42] and (5) the shifting of burden to pay national taxes constituted an invalid indirect imposition of taxes.[43]

In her Reply,[44] petitioner claims that public respondent overlooked the seller's written offer and Resolution No. 746 evidencing the parties' agreement regarding the payment of taxes and fees.[45] Moreover, citing Department of the Interior and Local Government Legal Opinion No. 05, series of 2016, she insists that Koronadal City may engage the services of a private lawyer in notarizing documents.[46]

For this Court's resolution is the issue of whether or not public respondent Commission on Audit gravely abused its discretion in upholding Notice of Disallowance Nos. 05-001-101(04) and 05-002-101(03).

Subsumed in this are the following issues:

First, whether or not public respondent Commission on Audit gravely abused its discretion when it did not consider Koronadal City's payment of taxes as part of the contract's consideration;

Second, whether or not public respondent Commission on Audit gravely abused its discretion when it regarded Resolution No. 746 as an indirect imposition of tax;

Third, whether or not public respondent Commission on Audit gravely abused its discretion when it deemed Koronadal City's hiring of a private lawyer prohibited; and

Finally, whether or not petitioner Marites Domato-Togonon should be held liable to pay the disallowed amount.

The Petition is partly meritorious.

---

[42] Id. at 282-283.

[43] Id. at 284.

[44] Id. at 347-376.

[45] Id. at 350-352.

[46] Id. at 356-358.

Supreme Court E-Library

I

The Commission on Audit, as the guardian of public funds, has been vested with a wide latitude of powers "over all accounts pertaining to government revenue and expenditures and the uses of public funds and property[.]"[47] It is endowed with the "exclusive authority to define the scope of its audit and examination, establish the techniques and methods for such review, and promulgate accounting and auditing rules and regulations."[48] Article IX-D, Section 2 (2) of the Constitution states:

> (2) The Commission shall have exclusive authority, subject to the limitations in this Article, to define the scope of its audit and examination, establish the techniques and methods required therefor, and promulgate accounting and auditing rules and regulations, including those for the prevention and disallowance of irregular, unnecessary, excessive, extravagant, or unconscionable expenditures, or uses of government funds and properties.

Thus, the Commission on Audit has the power to disallow the disbursement and use of government funds on any of the following grounds:

1) That the expenditure is illegal or contrary to law;

2) That the expenditure is irregular or "incurred without adhering to established rules, regulations, procedural guidelines, policies, principles or practices that have gained recognition in law" or "in violation of applicable rules and regulations other than the law;"

3) That the expenditure is unnecessary, the incurrence of which "could not pass the test of prudence or the diligence of a good father of a family, thereby denoting non-responsiveness to the exigencies of the service;"

4) That the expenditure is excessive or "incurred at an immoderate quantity and exorbitant price;"

---

[47] *Sanchez v. Commission on Audit*, 575 Phil. 428, 434 (2008) [Per J. Tinga, En Banc].

[48] Id. at 434-435.

Supreme Court E-Library

5) That the expenditure is extravagant or "immoderate, prodigal, lavish, luxurious, waste grossly excessive, and injudicious;" or

6) That the expenditure is unconscionable or "unreasonable and immoderate, and which no man in his right sense would make, nor a fair and honest man would accept as reasonable and incurred in violation of ethical and moral standards."[49] (Citations omitted)

The Commission on Audit's exercise of its audit power is one of the constitutional mechanisms of checks and balances inherent in our system of government.[50] Thus, this Court generally sustains its rulings, as long as they are not tainted by grave abuse of discretion, in which case this Court intervenes to correct them.[51] *Delos Santos v. Commission on Audit*[52] teaches:

At the outset, it must be emphasized that the CoA is endowed with enough latitude to determine, prevent, and disallow irregular, unnecessary, excessive, extravagant or unconscionable expenditures of government funds. It is tasked to be vigilant and conscientious in safeguarding the proper use of the government's, and ultimately the people's property. The exercise of its general audit power is among the constitutional mechanisms that gives life to the check and balance system inherent in our form of government.

Corollary thereto, it is the general policy of the Court to sustain the decisions of administrative authorities, especially one which is constitutionally-created, such as the CoA, not only on the basis of the doctrine of separation of powers but also for their presumed expertise in the laws they are entrusted to enforce. Findings of administrative agencies are accorded not only respect but also finality when the decision and order are not tainted with unfairness or arbitrariness that would

---

[49] *Manankil v. Commission on Audit*, G.R. No. 217342, October 13, 2020 <https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/66556/>[Per J. Inting, En Banc].

[50] *Delos Santos v. Commission on Audit*, 716 Phil. 322 (2013) [Per J. Perlas-Bernabe, En Banc].

[51] *Miralles v. Commission on Audit*, 818 Phil. 380 (2017) (Per J. Bersamin, En Banc].

[52] 716 Phil. 322 (2013) [Per J. Perlas-Bernabe, En Banc].

Supreme Court E-Library

amount to grave abuse of discretion. It is only when the CoA has acted without or in excess of jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction, that this Court entertains a petition questioning its rulings.[53]

Grave abuse of discretion refers to "an evasion of a positive duty or a virtual refusal to perform a duty enjoined by law or to act in contemplation of law, such as when the assailed decision or resolution rendered is not based on law and the evidence but on caprice, whim and despotism."[54]

Here, petitioner argues that the Commission on Audit gravely abused its discretion when it failed to consider Koronadal City's payment of taxes as part of the contract's consideration. She insists that the agreement that Koronadal City would shoulder the registration expenses was evidenced by the seller's written offer and Resolution No. 746.

The arguments lack merit.

Section 15 of the Local Government Code states that "[e]very local government unit created or recognized under this Code is a body politic and corporate endowed with powers to be exercised by it in conformity with law." Being corporate entities, local government units have the power to acquire real property and enter into contracts.[55]

Under Section 455, it is the mayor, as the city's chief executive, who shall represent the local government unit "in all its business

---

[53] Id. at 332-333.

[54] *Miralles v. Commission on Audit*, 818 Phil. 380, 389-390 (2017) [Per J. Bersamin, En Banc].

[55] Local Govt. Code, Sec. 22 states:

SECTION 22. *Corporate Powers*. — (a) Every local government unit, as a corporation, shall have the following powers:

(1) To have continuous succession in its corporate name;

(2) To sue and be sued;

(3) To have and use a corporate seal;

(4) To acquire and convey real or personal property;

(5) To enter into contracts; and

(6) To exercise such other powers as are granted to corporations, subject to the limitations provided in this Code and other laws[.]

Supreme Court E-Library

transactions and sign in its behalf all . . . contracts . . . and such other documents upon authority of the sangguniang panlungsod or pursuant to law or ordinance[.]"[56]

Here, the Sangguniang Panlungsod of Koronadal City passed Resolution No. 746, which authorized then Mayor Miguel to enter into a deed of sale with the heirs of Plomillo. It provides:

WHEREAS, the City of Koronadal is in need to purchase a lot for various government purposes such as, establishments of a new City Hall Site, different regional field offices and public transport terminal;

. . . .

WHEREAS, after deliberation and scrutiny by the executive department of the offers, the local Chief Executive have (sic) endorsed the property of the heirs of Plomillo (Lot 80, Pls-246-D) containing an area of Seventy Four Thousand Three Hundred Seventy Seven square meters as one of the lots preferred to be purchased by the city government;

WHEREAS, the offer of the heirs of Plomillo for the said lot is Twenty Two Million pesos excluding all the expenses that may be incurred relative to the transfer of ownership of the lot except realty taxes;

. . . .

NOW, THEREFORE, on joint sponsorship of the Committee on Finance, the Sangguniang Panlungsod of the City of Koronadal;

RESOLVE, as it is hereby resolved, to grant authority to the Local Chief Executive Hon. Fernando Q. Miguel to enter into a Deed of

---

[56] Local Govt. Code, Sec. 455 states:

SECTION 455. *Chief Executive; Powers, Duties and Compensation*. — (a) The city mayor, as chief executive of the city government, shall exercise such powers and perform such duties and functions as provided by this Code and other laws.

(b) For efficient, effective and economical governance the purpose of which is the general welfare of the city and its inhabitants pursuant to Section 16 of this Code, the city mayor shall:

(1) Exercise general supervision and control over all programs, projects, services, and activities of the city government, and in this connection, shall:

. . . .

(vi) Represent the city in all its business transactions and sign in its behalf all bonds, contracts, and obligations, and such other documents upon authority of the sangguniang panlungsod or pursuant to law or ordinance[.]

Supreme Court E-Library

Sale with the heirs of Plomillo for its purchase of Lot 80, Pls-246-D containing an area of Seventy Four Thousand Three Hundred Seventy Seven (74,377) square meters in the amount of Twenty Two Million (₱22,000,000.00) pesos;

. . . .

RESOLVED FURTHERMORE, that all other expenses relative to the transfer of ownership of the lot such as documentation, estate tax, documentary tax, capital gain tax and transfer tax will be borne by the City Government[.][57] (Emphasis in the original)

Accordingly, Koronadal City, through Mayor Miguel, entered into the Deed of Absolute Sale with the heirs of Plomillo:

NOW, THEREFORE, for and in consideration of the sum of **TWENTY TWO MILLION PESOS (₱22,000,000.00), Philippine Currency**, receipt of which amount is hereby acknowledged to the full satisfaction by the **VENDORS** from the **VENDEE**, the **VENDORS** hereby sell, cede, transfer and convey in a manner that is absolute all their rights, interests and participations over that certain parcel of land embraced in **OCT [No]. 13811** in favor of the **VENDEE**[,] its heirs, successors, interests and assigns free from liens and encumbrances such that the whole area may now be registered in the name of the **VENDEE**[.][58] (Emphasis in the original)

The Commission on Audit upheld the disallowance after finding, among others, that nothing in the Deed of Absolute Sale states that the expenses for the sale's execution and registration shall be shouldered by Koronadal City, as the vendee.

This Court agrees with the Commission on Audit's findings.

Article 1487 of the Civil Code provides that "[t]he expenses for the execution and registration of the sale shall be borne by the vendor, unless there is a stipulation to the contrary." In *Vive Eagle Land, Inc. v. Court of Appeals*,[59] this Court explained:

---

[57] *Rollo*, pp. 131-132.

[58] Id. at 135.

[59] 486 Phil. 674 (2004) [Per J. Callejo, Sr., Second Division].

Supreme Court E-Library

> [U]nder Article 1487 of the New Civil Code, the expenses for the registration of the sale should be shouldered by the vendor unless there is a stipulation to the contrary. In the absence of any stipulation of the parties relating to the expenses for the registration of the sale and the transfer of the title to the vendee, Article 1487 shall be applied in a supplementary manner.[60] (Citation omitted)

Here, as the Commission on Audit found, the Deed of Absolute Sale has no stipulation on the expenses for the sale's execution and registration being shouldered by the vendee. Accordingly, the general rule shall apply: The vendor shall bear the cost of the sale's execution and registration.

Nevertheless, petitioner alleges that the Commission on Audit should not have restricted itself to the Deed of Absolute Sale. She claims that the circumstances and documents which paved the way for its execution should have been considered, insisting that the exceptions to the Parol Evidence Rule apply.[61]

Petitioner's arguments deserve scant consideration.

The Parol Evidence Rule is codified in Rule 130, Section 9 of the Revised Rules on Evidence. It provides in part:

> SECTION 9. *Evidence of written agreements*. — When the terms of an agreement have been reduced to writing, it is considered as containing all the terms agreed upon and there can be, between the parties and their successors[-]in[-]interest, no evidence of such terms other than the contents of the written agreement.

Under the Parol Evidence Rule, when the parties' agreement has been reduced into writing, this written agreement is "the sole repository and memorial of everything"[62] they agreed on. All their prior and contemporaneous agreements are deemed included in the written document. Thus, "as between them and their successors-in-interest, such writing becomes exclusive evidence of the terms

---

[60] Id.

[61] *Rollo*, pp. 353-354.

[62] *Allied Banking Corp. v. Cheng Yong*, 509 Phil. 95, 105 (2005) [Per J. Garcia, Third Division].

Supreme Court E-Library

thereof and any verbal agreement which tends to vary, alter or modify the same is not admissible."[63]

The rule prohibits "any addition to or contradiction of the terms of a written agreement by testimony or other evidence purporting to show that different terms were agreed upon by the parties[.]"[64] Agreements not found in the written document are considered waived or abandoned by the parties.[65]

This rule, however, admits of exceptions. The succeeding paragraphs of Rule 130, Section 9 state:

> However, a party may present evidence to modify, explain or add to the terms of the written agreement if he puts in issue in his pleading:
>
> (a) An intrinsic ambiguity, mistake or imperfection in the written agreement;
>
> (b) The failure of the written agreement to express the true intent and agreement of the parties thereto;
>
> (c) The validity of the written agreement; or
>
> (d) The existence of other terms agreed to by the parties or their successors in interest after the execution of the written agreement.

In her Reply, petitioner cites the first and second exceptions. In *Spouses Amoncio v. Benedicto*,[66] this Court laid down the requisites for these exceptions to apply:

> The first exception applies when the ambiguity or uncertainty is readily apparent from reading the contract. The wordings are so defective that what the author of the document intended to say cannot be deciphered. It also covers cases where the parties commit a mutual mistake of fact, or where the document is manifestly incomplete as the parties do not intend to exhibit the whole agreement but only to define some of its terms.

---

[63] Id. at 105-106.

[64] *Spouses Edrada v. Spouses Ramos*, 505 Phil. 672, 677-678 (2005) [Per J. Tinga, Second Division].

[65] Id.

[66] 582 Phil. 217 (2008) [Per J. Corona, First Division].

Supreme Court E-Library

The second exception includes instances where the contract is so obscure that the contractual intention of the parties cannot be understood by mere inspection of the instrument. Thus, extrinsic proof of its subject matter, of the relation of the parties and of the circumstances surrounding them when they entered into the contract may be received as evidence.[67] (Citations omitted)

Neither of the exceptions applies in this case. In contrast to the first exception, petitioner does not ascribe mistake or ambiguity to the Deed of Absolute Sale. As to the second, the terms of the Deed of Absolute Sale are clear and without obscurity. As *Ortañez v. Court of Appeals*[68] teaches, the second exception only applies when:

. . . the written contract is so ambiguous or obscure in terms that the contractual intention of the parties cannot be understood from a mere reading of the instrument. In such a case, extrinsic evidence of the subject matter of the contract, of the relations of the parties to each other, and of the facts and circumstances surrounding them when they entered into the contract may be received to enable the court to make a proper interpretation of the instrument.[69] (Citation omitted)

Accordingly, since none of the exceptions to the Parol Evidence Rule apply, the terms and conditions under the Deed of Absolute Sale shall prevail.

II

Neither can petitioner rely on Resolution No. 746 to claim that the city government's payment of taxes was proper.

"The power to tax 'is an attribute of sovereignty,' and as such, inheres in the State."[70] The same is not true for local government units, which are merely territorial and political subdivisions of the

---

[67] Id. at 227- 228.

[68] 334 Phil. 514 (1997) [Per J. Francisco, Third Division].

[69] Id. at 519-520.

[70] *Pelizloy Realty Corp. v. Province of Benguet*, 708 Phil. 466 (2013) [Per J. Leonen, Third Division].

Supreme Court E-Library

State.[71] Their power to tax must be prescribed by law.[72] Article X, Section 5 of the Constitution provides:

> SECTION 5. Each local government unit shall have the power to create its own sources of revenues and to levy taxes, fees, and charges subject to such guidelines and limitations as the Congress may provide, consistent with the basic policy of local autonomy. Such taxes, fees, and charges shall accrue exclusively to the local governments.

The local government units' exercise of taxing power is not absolute. The Local Government Code provides its scope, limitations, and exemptions.[73] Particularly, Section 133 (o) states:

> SECTION 133. *Common Limitations on the Taxing Powers of Local Government Units*. — Unless otherwise provided herein, the exercise of the taxing powers of provinces, cities, municipalities, and barangays shall not extend to the levy of the following:
>
> . . . .
>
> (o) Taxes, fees or charges of any kind on the National Government, its agencies and instrumentalities, and local government units.

This Court agrees with the Commission on Audit's finding that Section 133(o) proscribes local legislative bodies from enacting legislative measures that effectively impose taxes, fees, or charges on local government units. It correctly said:

> This Commission agrees with the observation in the assailed decision that the payment by the City of Koronadal of such taxes as transfer fees, documentary stamp and capital gains constitutes an indirect imposition of a tax against the City, much less by the City's own SP. Under Section 133(o) of the Local Government Code (LGC), the exercise of the taxing powers of cities does not extend to the levy of "**taxes, fees, or charges of any kind** on the National Government, its agencies and instrumentalities, **and local government units**." In effect, the SP is

---

[71] *Id.*

[72] *Demaala v. Commission on Audit*, 754 Phil. 28 (2015) [Per J. Leonen, En Banc].

[73] *Mactan Cebu International Airport Authority v. Marcos*, 330 Phil. 392 (1996) [Per. J. Davide, Jr., Third Division].

Supreme Court E-Library

barred by the LGC from enacting any legislative measure that burdens the City of Koronadal, which has separate legal personality as a political subdivision of the State, from paying taxes.

Moreover, several of the taxes and fees whose payments were shifted to the City of Koronadal are those mandated by national legislation passed by Congress. Taxes on capital gains, estate and documentary stamps are all imposed under the National Internal Revenue Code (NIRC). Nothing in the LGC allows a Sanggunian to legislate exemptions or the shifting of burden of national taxes — much less to the effect of benefitting particular individuals.[74] (Emphasis in the original)

The prohibition under Section 133(o) cannot be circumvented by entering into a contract and assuming responsibility for the payment of taxes and fees. What cannot be legally done directly cannot be done indirectly.[75]

III

"Taxes are the enforced proportional contributions from persons and [properties][,] levied by the State by virtue of its sovereignty for the support of [the] government and for all [its] public needs."[76] They are the nation's lifeblood through which the State's objectives are realized.[77]

Taxes may be classified as direct and indirect. Direct taxes are those demanded from the same person actually liable to pay it.[78] Examples of direct taxes are individual income tax, corporate income tax, transfer taxes such as estate tax and donor's tax,

---

[74] *Rollo*, pp. 301-302.

[75] *Tawang Multi-purpose Cooperative v. La Trinidad Water District*, 661 Phil. 390 (2011) [Per J. Carpio, En Banc].

[76] *Republic v. Philippine Rabbit Bus Lines, Inc.*, 143 Phil. 158, 163 (1970) [Per J. Fernando. En Banc].

[77] *Visayas Geothermal Power Co. v Commissioner of Internal Revenue*, 735 Phil. 321 (2014) [Per J. Mendoza, Third Division].

[78] *Commissioner of Internal Revenue v. Philippine Long Distance Telephone Co.*, 514 Phil. 255 (2005) [Per J. Garcia, Third Division].

Supreme Court E-Library

residence tax, and immigration tax.[79] On the other hand, indirect taxes, such as value-added tax and percentage tax,[80] are those in which "the incidence of taxation falls on one person but the burden thereof can be shifted or passed on to another person, such as when the tax is imposed upon goods before reaching the consumer who ultimately pays for it."[81] As further explained in *Commissioner of Internal Revenue v. Philippine Long Distance Telephone Company*:[82]

> . . . Based on the possibility of shifting the incidence of taxation, or as to who shall bear the burden of taxation, taxes may be classified into either direct tax or indirect tax. In context, direct taxes are those that are exacted from the very person who, it is intended or desired, should pay them; they are impositions for which a taxpayer is directly liable on the transaction or business he is engaged in. On the other hand, indirect taxes are those that are demanded, in the first instance, from, or are paid by, one person in the expectation and intention that he can shift the burden to someone else. Stated elsewise, indirect taxes are taxes wherein the liability for the payment of the tax falls on one person but the burden thereof can be shifted or passed on to another person, such as when the tax is imposed upon goods before reaching the consumer who ultimately pays for it. When the seller passes on the tax to his buyer, he, in effect, shifts the tax burden, not the liability to pay it, to the purchaser as part of the price of goods sold or services rendered[.][83] (Citations omitted)

Here, the taxes involved are the capital gains tax, documentary stamp tax, and estate tax.

Section 24(D)(1) of the 1997 National Internal Revenue Code[84] provides for the payment of capital gains tax. It states:

---

[79] *Maceda v. Macaraig, Jr.*, 295 Phil. 252, 272 (1993) [Per J. Nocon, En Banc].

[80] Id. at 272.

[81] *Asia International Auctioneers, Inc. v. Commissioner of Internal Revenue*, 695 Phil. 852, 859 (2012) [Per J. Perlas-Bernabe, Second Division].

[82] 514 Phil. 255 (2005) [Per J. Garcia, Third Division].

[83] Id. at 255-256.

[84] Republic Act No. 8424 (1997).

Supreme Court E-Library

(D) Capital Gains from Sale of Real Property. —

(1) In General. — The provisions of Section 39(B) notwithstanding, a final tax of six percent (6%) based on the gross selling price or current fair market value as determined in accordance with Section 6(E) of this Code, whichever is higher, is hereby imposed upon capital gains presumed to have been realized from the sale, exchange, or other disposition of real property located in the Philippines, classified as capital assets, including pacto de retro sales and other forms of conditional sales, by individuals, including estates and trusts: Provided, That the tax liability, if any, on gains from sales or other dispositions of real property to the government or any of its political subdivisions or agencies or to government-owned or -controlled corporations shall be determined either under Section 24(A) or under this Subsection, at the option of the taxpayer[.]

In relation, Section 56(A)(3) of the same Code provides:

SECTION 56. Payment and Assessment of Income Tax for Individuals and Corporations. —

(A) Payment of Tax. —

. . . .

(3) Payment of Capital Gains Tax. — The total amount of tax imposed and prescribed under Sections 24(C), 24(D), 27(E)(2), 28(A)(8)(c) and 28(B)(5)(c) shall be paid on the date the return prescribed therefor is filed by the person liable thereto: Provided, That if the seller submits proof of his intention to avail himself of the benefit of exemption of capital gains under existing special laws, no such payments shall be required: Provided, further, That in case of failure to qualify for exemption under such special laws and implementing rules and regulations, the tax due on the gains realized from the original transaction shall immediately become due and payable, and subject to the penalties prescribed under applicable provisions of this Code: Provided, finally, That if the seller, having paid the tax, submits such proof of intent within six (6) months from the registration of the document transferring the real property, he shall be entitled to a refund of such tax upon verification of his compliance with the requirements for such exemption.

Supreme Court E-Library

"[C]apital gains tax is a final tax assessed on the presumed gain derived by citizens and resident aliens, as well as estates and trusts, from the sale or exchange of real property."[85] It is regarded as a tax on passive income and is therefore the seller's liability, not the buyer.[86]

On the other hand, documentary stamp tax is that which is "levied on the exercise by persons of certain privileges conferred by law for the creation, revision, or termination of specific legal relationships through the execution of specific instruments."[87] An example of this privilege is conveyance of real property.[88]

Title VII of the National Internal Revenue Code governs the payment of documentary stamp taxes. Sections 173 and 196 state:

> SECTION 173. Stamp Taxes Upon Documents, Loan Agreements, Instruments and Papers. — Upon documents, instruments, loan agreements and papers, and upon acceptances, assignments, sales and transfers of the obligation, right or property incident thereto, there shall be levied, collected and paid for, and in respect of the transaction so had or accomplished, the corresponding documentary stamp taxes prescribed in the following Sections of this Title, by the person making, signing, issuing, accepting, or transferring the same wherever the document is made, signed, issued, accepted or transferred when the obligation or right arises from Philippine sources or the property is situated in the Philippines, and at the same time such act is done or transaction had: Provided, That whenever one party to the taxable document enjoys exemption from the tax herein imposed, the other party thereto who is not exempt shall be the one directly liable for the tax.
>
> . . . .

---

[85] *Vive Eagle Land, Inc. v. Court of Appeals*, 486 Phil. 674, 687 (2004) [Per J. Callejo, Sr., Second Division].

[86] *Fort Bonifacio Development Corp. v. Commissioner of Internal Revenue*, 602 Phil. 100 (2009) [Per J. Tinga, En Banc]. *See* also *Fort Bonifacio Development Corp. v. Commissioner of Internal Revenue*, 694 Phil. 7 (2012) [Per J. Del Castillo, En Banc]; *Republic v. Soriano*, 755 Phil. 187 (2015) [Per J. Peralta, Third Division].

[87] *Philippine Home Assurance Corp. v. Court of Appeals*, 361 Phil. 368, 369 (1999) [Per J. Mendoza, Second Division].

[88] Id.

Supreme Court E-Library

SECTION 196. Stamp Tax on Deeds of Sale and Conveyances of Real Property. — On all conveyances, deeds, instruments, or writings, other than grants, patents or original certificates of adjudication issued by the Government, whereby any land, tenement or other realty sold shall be granted, assigned, transferred or otherwise conveyed to the purchaser, or purchasers, or to any other person or persons designated by such purchaser or purchasers, there shall be collected a documentary stamp tax, at the rates herein below prescribed, based on the consideration contracted to be paid for such realty or on its fair market value determined in accordance with Section 6(E) of this Code, whichever is higher: Provided, That when one of the contracting parties is the Government, the tax herein imposed shall be based on the actual consideration[.]

In *Philacor Credit Corporation v. Commissioner of Internal Revenue*,[89] this Court explained who is liable to pay for the documentary stamp tax:

The persons primarily liable for the payment of the DST are the person[s] (1) making; (2) signing; (3) issuing; (4) accepting; or (5) transferring the taxable documents, instruments or papers. Should these parties be exempted from paying tax, the other party who is not exempt would then be liable.

. . . .

Revenue Regulations No. 9-2000 interprets the law more widely so that all parties to a transaction are primarily liable for the DST, and not only the person making, signing, issuing, accepting or transferring the same becomes liable as the law provides. It provides:

> SEC. 2. *Nature of the Documentary Stamp Tax and Persons Liable for the Tax*. —
>
> (a) In General. — The documentary stamp taxes under Title VII of the Code is a tax on certain transactions. It is imposed against "the person making, signing, issuing, accepting, or transferring" the document or facility evidencing the aforesaid transactions. Thus, in general, it may be imposed on the transaction itself or upon the document underlying such act. **Any of the parties thereto shall be liable for the full amount of the tax due**: Provided, however, that as between themselves, the said parties may agree on who shall be liable or how they may share on the cost of the tax.

---

[89] 703 Phil. 26 (2013) [Per J. Brion, Second Division].

Supreme Court E-Library

> (b) Exception. — Whenever one of the parties to the taxable transaction is exempt from the tax imposed under Title VII of the Code, the other party thereto who is not exempt shall be the one directly liable for the tax.[90] (Emphasis in the original, citation omitted)

As a rule, the liability to pay documentary stamp taxes falls on any of the parties. The parties may, however, agree on who shall shoulder the amount due. Nonetheless, when one of them enjoys exemption from paying documentary stamp taxes, the liability falls on the other party who is not tax-exempt.[91]

As for paying estate taxes, the National Internal Revenue Code states:

> SECTION 91. Payment of Tax. —
>
> . . . .
>
> (C) Liability for Payment. — The estate tax imposed by Section 84 shall be paid by the executor or administrator before delivery to any beneficiary of his distributive share of the estate. Such beneficiary shall, to the extent of his distributive share of the estate, be subsidiarily liable for the payment of such portion of the estate tax as his distributive share bears to the value of the total net estate.

Furthermore, under Revenue Regulations No. 2-2003, as cited by public respondent, the liability to pay estate tax primarily falls on the executor or administrator, and subsidiarily on the heir or beneficiary:

> SECTION 9. TIME AND PLACE OF FILING ESTATE TAX RETURN AND PAYMENT OF ESTATE TAX DUE. —
>
> . . . .
>
> (G) Liability for payment. — The estate tax imposed under the Code shall be paid by the executor or administrator before the delivery of the distributive share in the inheritance to any heir or beneficiary. Where there are two or more executors or administrators, all of them are severally

---

[90] Id. at 36-38.

[91] *Republic v. Soriano*, 755 Phil. 187 (2015) [Per *J*. Peralta, Third Division].

Supreme Court E-Library

liable for the payment of the tax. The estate tax clearance issued by the Commissioner or the Revenue District Officer (RDO) having jurisdiction over the estate, will serve as the authority to distribute the remaining/ distributable properties/share in the inheritance to the heir or beneficiary.

The executor or administrator of an estate has the primary obligation to pay the estate tax but the heir or beneficiary has subsidiary liability for the payment of that portion of the estate which his distributive share bears to the value of the total net estate. The extent of his liability, however, shall in no case exceed the value of his share in the inheritance.

As to the taxes on the transfer of real property ownership, Section 135,[92] in relation to Section 151,[93] of the Local Government Code states that cities are allowed to impose tax on the sale or on any other mode of transferring ownership or title of real property.

---

[92] LOCAL GOVT. CODE, Sec. 135 states:

SECTION 135. *Tax on Transfer of Real Property Ownership*. — (a) The province may impose a tax on the sale, donation, barter, or on any other mode of transferring ownership or title of real property at the rate of not more than fifty percent (50%) of the one percent (1%) of the total consideration involved in the acquisition of the property or of the fair market value in case the monetary consideration involved in the transfer is not substantial, whichever is higher. The sale, transfer or other disposition of real property pursuant to R.A. No. 6657 shall be exempt from this tax.

(b) For this purpose, the Register of Deeds of the province concerned shall, before registering any deed, require the presentation of the evidence of payment of this tax. The provincial assessor shall likewise make the same requirement before cancelling an old tax declaration and issuing a new one in place thereof. Notaries public shall furnish the provincial treasurer with a copy of any deed transferring ownership or title to any real property within thirty (30) days from the date of notarization.

It shall be the duty of the seller, donor, transferor, executor or administrator to pay the tax herein imposed within sixty (60) days from the date of the execution of the deed or from the date of the decedent's death.

[93] LOCAL GOVT. CODE, Sec. 151 states:

SECTION 151. *Scope of Taxing Powers*. — Except as otherwise provided in this Code, the city may levy the taxes, fees, and charges which the province or municipality may impose: *Provided, however*, That the taxes, fees and charges levied and collected by highly urbanized and independent component cities shall accrue to them and distributed in accordance with the provisions of this Code[.]

Supreme Court E-Library

The duty of paying the tax imposed shall be for the seller or transferor's account.

Accordingly, it is the heirs of Plomillo, as sellers, who are duty bound to pay the taxes, fees, or charges relating to the transfer of real property.

IV

The Commission on Audit maintains that Section 481 of the Local Government Code prohibits local government units from engaging the services of a private lawyer, Atty. Joffrey Montefrio (Atty. Montefrio). It cites the February 23, 2015 Sandiganbayan ruling in *People v. Miguel*, docketed as Criminal Case No. SB-08-CRM-0018, and insists that it is the legal officer, as chief legal counsel of the local government unit, that is duty bound to handle its legal affairs.[94]

The Commission on Audit further cites Commission on Audit Circular No. 98-002, which proscribes local government units from using public funds as payment for the services of private lawyers or firms.[95]

Petitioner counters that the engagement of a private lawyer for notarization is not prohibited under Section 481 of the Local Government Code.[96] Citing Department of the Interior and Local Government Legal Opinion No. 05, series of 2016, she avers that the notarization of contracts is considered the duty of a provincial or city legal officer only when it is provided by law or ordinance.[97]

Legal Opinion No. 05-2016 was issued after petitioner's counsel, Attorney Eufemio A. Simtim, Jr. (Atty. Simtim), had sent a letter to the Department of the Interior and Local Government on November 4, 2015, requesting its opinion. Among others, he asked, "Is notarization part of the duties and functions of the

---

[94] *Rollo*, pp. 278-279.

[95] Id.

[96] Id. at 356.

[97] Id. at 356-358.

Supreme Court E-Library

provincial or city legal officer? If it is, does it include the duty to notarize the contracts and other documents executed by the component barangays and their officials?"[98]

In answering these queries, the Department noted that the Sandiganbayan rendered *Miguel* in 2015, finding Mayor Miguel guilty of violating Section 3(e) of Republic Act No. 3019. It further noted that this Court has since denied Mayor Miguel's appeal in a September 2, 2015 Resolution in *Miguel v. People*:

- On 23 February 2015, a Decision was rendered by the Sandiganbayan (2nd Division) in Crim. Case No. SB-08-CRM-0018, [the] pertinent portion of which reads:

  "***Having been City Mayor for many years already prior to the purchase of the Plomillo property by the City of Koronadal, accused Miguel knew or ought to have known that the legal services of the Provincial Legal office headed by Atty. Sucaldito can be solicited and availed of for free, rather than unnecessarily spend P419,000.00 in government funds to pay a private lawyer for such services.*** *More importantly, accused Miguel knew or ought to have known that local government units are actually prohibited from engaging the services of a private lawyer, except only in extraordinary or exceptional circumstances and under certain conditions none of which were present when he contracted the services of Atty. Montefrio.*

  . . . .

  Atty. Romel S. Sucaldito, the Provincial Legal Officer of the Province of South Cotabato, where the City of Koronadal is a component city, declared that his legal services, which include notarization of legal documents, was available and could have been availed of by the City of Koronadal.

  . . . .

- The Supreme Court issued a Resolution dated 02 September 2015 in G.R. No. 218664 *(Fernando Q. Miguel vs. People of the Philippines)*, which states:

  "Considering the allegations, issues and arguments adduced in the petition for review on certiorari assailing the Decision

[98] Id. at 365.

Supreme Court E-Library

> *dated 23 February 2015 and Resolution dated 25 May 2015 of the Sandiganbayan in Crim. Case No. SB-08-CRM-0018, the Court resolves to DENY the petition for failure to sufficiently show any reversible error in the assailed judgment to warrant the exercise of this Court's discretionary appellate jurisdiction."*[99] (Emphasis in the Original)

Mayor Miguel moved for reconsideration of the case, which this Court had yet to resolve by then. Thus, the Department responded to Atty. Simtim's queries as follows:

> The Decision dated 23 February 2015 rendered by the Sandiganbayan (2nd Division) in Crim. Case No. SB-08-CRM-0018, has established, albeit impliedly, that when a city has no legal officer, it behooves upon the provincial legal officer to extend legal assistance to and notarize for free the Deed of Sale executed by the city.
>
> While it is true that Decisions rendered by the Sandiganbayan are not jurisprudential and therefore cannot yet be a basis of any official action as it is possible that it will be eventually overturned, we cannot close our eyes to and thus brush aside the fact that the Supreme Court, the highest court of the land, already issued a Resolution dated 02 September 2015 denying the petition for review on *certiorari* filed by Mayor Fernando Q. Miguel. . . . Accordingly, the Supreme Court affirmed all the findings of the Sandiganbayan . . ., including the issue relative to the duty of the provincial legal officer to extend legal assistance to and notarize for free the Deed of Sale executed by the City, whenever there is no available city legal officer.
>
> In view of the foregoing and considering that the same issue is the crux of your letter-request, you are hereby advised to take utmost precaution and thus consider the development in Crim. Case No. SB-08-CRM-0018 with the Supreme Court in taking future actions and/or decisions. While the parties . . . are different from the parties involved in your instant request, the same local government unit is involved, that is, the City of Koronadal.
>
> Be that as it may, for purposes of academic discussion considering that the Department is mandated primarily to interpret the provisions of Republic Act. No. 7160 or the Local Government Code of 1991 and without prejudice to the outcome of Crim. Case No. SB-08-CRM-0018

---

[99] *Id.* at 367-368.

with the Supreme Court, [by] which the Department must always abide, we are of the view that notarization of contracts and other documents executed by the component barangays and their officials is part of the duties and functions of the provincial or city legal officer when so provided by law or ordinance pursuant to Section 481 (b)(5) of the Local Government Code of 1991 which mandates the Provincial and City Legal Officer, and even the Municipal Legal Officer (if available), to "*(Exercise such other powers and perform such other duties and functions as may be prescribed by law or ordinance*."

Hence, if the City of Koronadal or the Province of South Cotabato has an existing ordinance which mandates the City Legal Officer or the Provincial Legal Officer, respectively, to notarize contracts and other documents executed by the component barangays and their officials, then it becomes his duty.

In the absence of such ordinance, we are of the view that it is not[.][100]

This Court stresses that Commission on Audit Circular No. 98-002, which the Commission on Audit cites, amended Commission on Audit Circular Nos. 86-255[101] dated April 2, 1986 and 95-011[102] dated December 4, 1995.

Circular No. 86-255 provides:

SUBJECT Inhibition against employment by government agencies and instrumentalities, including government-owned or controlled corporations, of private lawyers to handle their legal cases.

It has come to the attention of this Commission that notwithstanding restrictions or prohibitions on the matter under existing laws, certain government agencies, instrumentalities, and government-owned and/or controlled corporations, notably government banking and financing institutions, persist in hiring or employing private lawyers or law

---

[100] *Id.* at 369-370.

[101] COA Circular No. 86-255, available at <https://www.coa.gov.ph/index.php/2013-06-19-13-06-41/1-circulars/category/4480-cy-1986?download=17043:cy-1986> (last accessed on July 6, 2021).

[102] COA Circular No. 95-2011, available at <https://www.coa.gov.ph/phocadownloadpap/userupload/Issuances/Circulars/Circ1995/COA_C95-011.pdf> (last accessed on July 6, 2021).

Supreme Court E-Library

practitioners to render legal services for them and/or to handle their legal cases in consideration of fixed retainer fees, at times in unreasonable amounts, paid from public funds. In keeping with the retrenchment policy of the present administration, this Commission frowns upon such a practice.

Accordingly, it is hereby directed that, henceforth, the payment out of public funds of retainer fees to private law practitioners who are so hired or employed without the prior written conformity and acquiescence of the Solicitor General or the Government Corporate Counsel, as the case may be, as well as the written concurrence of the Commission on Audit shall be disallowed in audit and the same shall be a personal liability of the officials concerned.

This Circular shall take effect on April 15, 1986.

In *Polloso v. Hon. Gangan*,[103] this Court explained the purpose of Circular No. 86-255:

> It bears repeating that the purpose of the circular is to curtail the unauthorized and unnecessary disbursement of public funds to private lawyers for services rendered to the government. This is in line with the Commission on Audit's constitutional mandate to promulgate accounting and auditing rules and regulations including those for the prevention and disallowance of irregular, unnecessary, excessive, extravagant or unconscionable expenditures or uses of government funds and properties.[104] (Citation omitted)

In 1995, by reason of this Court's pronouncement in *Municipality of Pililla, Rizal v. Court of Appeals*,[105] the Commission on Audit issued Circular No. 95-011 to amend Circular No. 86-255. It provides:

> For the information and guidance of all concerned, quoted hereunder are excerpts from the decision of the Supreme Court in the case of the *Municipality of Pililla, Rizal vs. Court of Appeals, et al.*, G.R. No. 105909, promulgated on June 28, 1994:

---

[103] *Polloso v. Gangan*, 390 Phil. 1101 (2000) [Per J. Kapunan, En Banc].

[104] Id. at 1103-1104.

[105] 303 Phil. 502 (1994) [Per J. Regalado, Second Division].

Supreme Court E-Library

> "Under the above-provision (Section 1683 of the Revised Administrative Code), complemented by Section 3, Republic Act No. 2264, the Local Autonomy Law, only the Provincial Fiscal and the Municipal Attorney can represent a Province or Municipality in their lawsuits. The provision is mandatory. The municipality's authority to employ a private lawyer is expressly limited only to situations where the Provincial Fiscal is disqualified to represent it.
>
> "For the aforementioned exception to apply, the fact that the Provincial Fiscal Disqualified to handle the Municipality's case must appear on record. In the instant case, there is nothing in the records to show that the Provincial Fiscal is disqualified to act as Counsel for the Municipality of Pililla on appeal, hence the appearance of herein private Counsel is without authority of law."

The decision of the Supreme Court in the above case clearly indicates that where a government agency is provided by law with a legal officer or office who or which can handle its legal requirements or cases in courts, it (agency) may not be allowed to hire the services of private lawyers for a fee, chargeable against public funds, unless exceptional or extraordinary circumstances obtain as exemplified in the above-cited case of *Municipality of Pililla, Rizal vs. Court of Appeals, [et] al.*

Accordingly and pursuant to this Commission's exclusive authority to promulgate accounting and auditing rules and regulations, including for the prevention and disallowance of irregular, unnecessary, excessive, extravagant and/or unconscionable expenditure or uses of public funds and property (Sec. 2-2, Art. IX-D, Constitution), public funds shall not be utilized for payment of the services of a private legal counsel or law firm to represent government agencies in court or to render legal services for them. In the event that such legal services cannot be avoided or is justified under extraordinary or exceptional circumstances, the written conformity and acquiescence of the Solicitor General or the Government Corporate Counsel, as the case may be, and the written concurrence of the Commission on Audit shall first be secured before the hiring or employment of a private lawyer or law firm.

This amends or modifies COA Circular No. 86-255, dated April 2, 1986 and all other existing COA issuances inconsistent herewith.[106]

---

[106] COA Circular No. 95-2011.

Supreme Court E-Library

On June 9, 1998, the Commission on Audit promulgated Circular No. 98-002,[107] amending Circular Nos. 86-255 and 95-011. Its pertinent portions provide:

> In view thereof, the last paragraph of COA Circular Numbers 95-011 and 86-255, dated December 4, 1995 and April 2, 1986, respectively, are hereby amended insofar as LGUs are concerned, to read as follows:
>
> "Accordingly and pursuant to this Commission's exclusive authority to promulgate accounting and auditing rules and regulations, including for the prevention and disallowance of irregular, unnecessary, excessive, extravagant and/or unconscionable expenditure or uses of public funds and property (Sec. 2-2, Art. IX-D, Constitutional, public funds shall not be utilized for payment of the services of a private legal counsel or law firm to represent government agencies and instrumentalities, including government-owned or controlled corporations and local government units in court or to render legal services for them. In the event that such legal services cannot be avoided or is justified under extraordinary or exceptional circumstances for government agencies and instrumentalities, including government-owned or controlled corporations, the written conformity and acquiescence of the Solicitor General or the Government Corporate Counsel, as the case may be, and the written concurrence of the Commission on Audit shall first be secured before the hiring or employment of a private lawyer or law firm. With respect to local government units, only in those instances provided in par. 3(1), Section 481 of R.A. 7160, which states, thus:
>
> > "x x x x: Provided, That, in actions or proceedings where a component city or municipality is a party adverse to the provincial government or to another component city or municipality, a special legal officer may be employed to represent the adverse party";
>
> may public funds be utilized as payment for the services of a private legal counsel or law firm."[108]

These circulars prohibit the hiring of private lawyers and law firms by government agencies and instrumentalities, government-

---

[107] COA Circular No. 98-002, available at <https://www.coa.gov.ph/phocadownloadpap/userupload/Issuances/Circulars/Circ1998/COA_C98-002.pdf> (last accessed on July 6, 2021).

[108] COA Circular No. 98-002.

Supreme Court E-Library

owned or controlled corporations, and local government units to represent them in court or to render legal services.

This rule, however, is not absolute. Local government units may avail the services of private lawyers and law firms under certain conditions.

To reiterate, Circular No. 95-011 states that "where a government agency is provided by law with a legal officer or office who or which can handle its legal requirements or cases in courts, it (agency) may not be allowed to hire the services of private lawyers for a fee, chargeable against public funds, unless exceptional or extraordinary circumstances obtain[.]" Circular No. 98-002 states that only in instances provided in Section 481 (b)(3)(i) of the Local Government Code may local government units use public funds to pay for a private lawyer's or a law firm's services.

Furthermore, *Mancenido v. Court of Appeals*[109] teaches:

> The Court has previously ruled on the representation of a local government unit by a private attorney. In *Municipality of Bocaue v. Manotok*, . . . and succeeding cases, we held that only when the provincial fiscal is disqualified may the municipal council be authorized to hire the services of a special attorney. We reiterated this in *De Guia v. Auditor General*. . . In *Enriquez, Sr. v. Gimenez*, . . . we enumerated the instances when the provincial public prosecutor is disqualified from representing a particular municipality, *i.e.*, when the jurisdiction of a case involving the municipality lies with the Supreme Court, when the municipality is a party adverse to the provincial government or to some other municipality in the same province, and when in a case involving the municipality, the provincial prosecutor, his spouse, or his child is involved as a creditor, heir, legatee, or otherwise.[110] (Emphasis in the original, citations omitted)

In this case, petitioner asserts that the prohibition only contemplates the hiring of a private lawyer or law firm to represent the local government unit in a lawsuit. She says notarization is not

---

[109] 386 Phil. 627 (2000) [Per J. Quisumbing, Second Division].

[110] Id. at 634.

Supreme Court E-Library

included in the prohibition as it does not involve the representation of any party to the contract.[111]

Polloso defines the extent of the phrase "handling of legal cases":

> . . . *[T]he prohibition covers the hiring of private lawyers to render any form of legal service.* It makes no distinction as to whether or not the legal services to be performed involve an actual legal controversy or court litigation. Petitioner insists that the prohibition pertains only to "handling of legal cases," perhaps because this is what is stated in the title of the circular. To rely on the title of the circular would go against a basic rule in statutory construction that a particular clause should not be studied as a detached and isolated expression, but the whole and every part of the statute must be considered in fixing the meaning of any of its part.[112] (Emphasis supplied, citation omitted)

Evidently, the Commission on Audit's circulars cover any form of legal service that may be offered by private lawyers or law firms.

It is undisputed that public funds were disbursed and used for the services of Atty. Montefrio in notarizing the deed of sale. However, nowhere in the records does it show that Koronadal City complied with the circulars before payment was made for the services rendered by Atty. Montefrio.

V

Be that as it may, petitioner should not be held liable for the disallowed amount.

In *Madera v. Commission on Audit*,[113] this Court characterized the approving or authorizing officials' liability to return the disallowed amount as civil in nature. It ruled:

> Correspondingly, personal liability to return the disallowed amounts must be understood as civil liability based on the loss incurred by the

---

[111] *Rollo*, p. 358.

[112] *Polloso v. Gangan*, 390 Phil. 1101 (2000) [Per J. Kapunan, En Banc].

[113] *Madera v. Commission on Audit*, G.R. No. 244128, September 8, 2020 <https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/66435> [Per J.Caguioa, En Banc].

Supreme Court E-Library

government because of the transaction, while administrative or criminal liability may arise from irregular or unlawful acts attending the transaction. This should be the starting point of determining who must return. The existence and amount of the loss and the nature of the transaction must dictate upon whom the liability to return is imposed.[114] (Citation omitted)

In *Abellanosa v. Commission on Audit*,[115] this Court further clarified:

When a public officer is to be held civilly liable in his or her capacity as an approving/authorizing officer, the liability is to be viewed from the public accountability framework of the Administrative Code. This is because *the civil liability is rooted on the errant performance of the public officer's official functions, particularly in terms of approving/authorizing the unlawful expenditure*[.][116] (Emphasis in the original)

In determining the extent of liability, this Court in *Madera* has adopted the following guidelines:

In view of the foregoing discussion, the Court pronounces:

1. If a Notice of Disallowance is set aside by the Court, no return shall be required from any of the persons held liable therein.

2. If a Notice of Disallowance is upheld, the rules on return are as follows:

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

b. Approving and certifying officers who are clearly shown to have acted in bad faith, malice, or gross negligence are, pursuant to Section 43 of the Administrative Code of 1987, [solidarily] liable to return only the net disallowed amount which, as discussed herein, excludes amounts excused under the following Sections 2c and 2d.

c. Recipients — whether approving or certifying officers or mere passive recipients — are liable to return the disallowed amounts respectively

---

[114] Id.

[115] G.R. No. 185806, November 17, 2020, <https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/66732>[Per J. Perlas-Bernabe, En Banc].

[116] Id.

Supreme Court E-Library

received by them, unless they are able to show that the amounts they received were genuinely given in consideration of services rendered.

d. The Court may likewise excuse the return of recipients based on undue prejudice, social justice considerations, and other bona fide exceptions as it may determine on a case to case basis.[117]

Torreta v. Commission on Audit,[118] however, recognized that the *Madera* guidelines do not squarely apply to disallowance cases involving unlawful or irregular government contracts. It acknowledged that since government contracts, by their very nature, provide for the disbursement of public funds for the procurement of services or property, a different set of guidelines should be observed.[119] This Court thus adopted the following guidelines:

Accordingly, we hereby adopt the proposed guidelines on return of disallowed amounts in cases involving unlawful/irregular government contracts submitted by herein Justice Perlas-Bernabe, to wit:

1. If a Notice of Disallowance is set aside by the Court, no return shall be required from any of the persons held liable therein.

2. If a Notice of Disallowance is upheld, the rules on return are as follows:

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

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

---

[117] *Madera v. Commission on Audit*, G.R. No. 244128, September 8, 2020 <https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/66435>[Per J. Caguioa, En Banc].

[118] G.R. No. 242925, November 10, 2020 <https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/66953> [Per J. Gaerlan, En Banc].

[119] Id. Citing J. Perlas-Bernabe's Separate Concurring Opinion in *Torreta v. Commission on Audit*, G.R. No. 242925, November 10, 2020 [Per J. Gaerlan, En Banc].

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

d. These rules are without prejudice to the application of the more specific provisions of law, COA rules and regulations, and accounting principles depending on the nature of the government contract involved.[120] (Citation omitted)

From these, this Court finds that petitioner is not liable for the disallowed amount.

Book I, Chapter 9, Section 38(1) of the Administrative Code requires that bad faith, malice, or gross negligence be proven before public officials are held liable. It states:

SECTION 38. *Liability of Superior Officers*. — (1) A public officer shall not be civilly liable for acts done in the performance of his official duties, unless there is a clear showing of bad faith, malice or gross negligence.

Abellanosa explained the reason for this rule:

The need to first prove bad faith, malice, or gross negligence before holding a public officer civilly liable traces its roots to the State agency doctrine — a core concept in the law on public officers. From the perspective of administrative law, public officers are considered as agents of the State; and as such, acts done in the performance of their official functions are considered as acts of the State. In contrast, when a public officer acts negligently, or worse, in bad faith, the protective mantle of State immunity is lost as the officer is deemed to have acted outside the scope of his official functions; hence, he is treated to have acted in his personal capacity and necessarily, subject to liability on his own.[121] (Citation omitted)

Here, the evidence on record does not show that petitioner's actuations were attended by bad faith, malice, or gross negligence. Her consistent stance was that the city government was not put at a disadvantage, but was benefited from the reduced offer by the

---

[120] *Id.*

[121] G.R. No. 185806 (Resolution), November 17, 2020 <https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/66732>[Per J. Perlas-Bernabe, EnBanc].

Supreme Court E-Library

heirs of Plomillo.[122] As petitioner narrated, after the City Appraisal Committee had found the heirs' offer reasonable and advantageous to Koronadal City, it endorsed the property to Mayor Miguel. It forwarded, among others, a suppletory report indicating that the property's fair market value was ₱34,000,000.00 and that their offer was acceptable.[123] After further evaluation, Mayor Miguel sought authority from the Sangguniang Panlungsod, of which petitioner was a member. Resolution No. 746 was then passed, authorizing Mayor Miguel to enter into a deed of sale with the heirs of Plomillo.[124]

Finally, this Court notes that the disallowed amount involves taxes which have accrued to the government. To reiterate, the disallowed amount consists of capital gains tax, documentary stamp tax, estate tax, and transfer taxes, among others. These taxes were paid to the government. The notarial fees were likewise paid for the services provided by Atty. Montefrio. Requiring petitioner to return the disallowed amount would twice benefit the government from the property acquired and the services rendered.

WHEREFORE, the Petition is **PARTIALLY GRANTED.** The December 23, 2015 Resolution of the Commission on Audit in COA CP Case No. 2011-40 is **AFFIRMED** with **MODIFICATION** in that petitioner Marites Domato-Togonon is **EXCUSED** from the civil obligation of returning the disallowed amount of ₱2,398,403.02.

SO ORDERED.

Gesmundo, C.J., Perlas-Bernabe, Caguioa, Hernando, Carandang, Lazaro-Javier, Inting, Zalameda, M. Lopez, Gaerlan, Rosario, and *J. Lopez, JJ.*, concur.

APPEARANCES OF COUNSEL

Eufemio A. Simtim, Jr. for petitioner.
The Solicitor General for respondents.

---

[122] *Rollo*, pp. 16-17.

[123] Id. at 12 and 17-19.

[124] Id. at 12-13.