Republic of the Philippines
Supreme Court
Manila

EN BANC

OPHELIA HERNAN,
Petitioner,

- *versus* -

THE HONORABLE SANDIGANBAYAN,
Respondent.

G.R. No. 217874

Present:

SERENO, *C.J.*,
CARPIO,
VELASCO, JR.,
LEONARDO-DE CASTRO,
PERALTA,
BERSAMIN,*
DEL CASTILLO,
PERLAS-BERNABE,
LEONEN,
JARDELEZA,**
CAGUIOA,
MARTIRES,***
TIJAM,
REYES, and
GESMUNDO,** *JJ.*

Promulgated:

December 5, 2017

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DECISION

PERALTA, *J.*:

Before the Court is a special civil action for *certiorari* under Rule 65 of the Rules of Court seeking to reverse and set aside the Resolution[1] dated

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* On wellness leave.
** On leave.
*** No part.
[1] Penned by Associate Justice Teresita V. Diaz-Baldos, with Associate Justices Napoleon E. Inoturan and Maria Cristina J. Cornejo, concurring; *rollo*, pp. 35-39.

February 2, 2015 and Decision[2] dated November 13, 2009 of the Sandiganbayan 2nd Division which affirmed, with modification, the Decision dated June 28, 2002 of the Regional Trial Court (*RTC*), Branch 7, Baguio City convicting petitioner of the crime of malversation of public funds in Criminal Case No. 15722-R.

The antecedent facts are as follows:

In October 1982, petitioner Ophelia Hernan joined the Department of Transportation and Communication (*DOTC*), Cordillera Administrative Region (*CAR*) in Baguio City wherein she served as an accounting clerk. In September 1984, she was promoted to the position of Supervising Fiscal Clerk by virtue of which she was designated as cashier, disbursement and collection officer.[3] As such, petitioner received cash and other collections from customers and clients for the payment of telegraphic transfers, toll fees, and special message fees. The collections she received were deposited at the bank account of the DOTC at the Land Bank of the Philippines (LBP), Baguio City Branch.[4]

On December 17, 1996, Maria Imelda Lopez, an auditor of the Commission on Audit (*COA*), conducted a cash examination of the accounts handled by petitioner as instructed by her superior, Sherelyn Narag. As a result, Lopez came across deposit slips dated September 19, 1996 and November 29, 1996 bearing the amounts of ₱11,300.00 and ₱81,348.20, respectively.[5] Upon close scrutiny, she noticed that said deposit slips did not bear a stamp of receipt by the LBP nor was it machine validated. Suspicious about what she found, she and Narag verified all the reports and other documents turned-over to them by petitioner.[6] On the basis of said findings, Narag sent a letter to the LBP to confirm the remittances made by petitioner. After adding all the deposits made and upon checking with the teller's blotter, Nadelline Orallo, the resident auditor of LBP, found that no deposits were made by petitioner for the account of DOTC on September 19, 1996 for the amount of ₱11,300.00 and November 29, 1996 for the amount of ₱81,340.20.[7]

Thereafter, the LBP's officer-in-charge, Rebecca R. Sanchez, instructed the bank's teller, Catalina Ngaosi, to conduct their own independent inquiry. It was discovered that on September 19, 1996, the only deposit in favor of the DOTC was that made by its Ifugao office in the

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2 Penned by Associate Justice Teresita V. Diaz-Baldos, with Associate Justices Edilberto G. Sandoval and Samuel R. Martires, concurring; *id.* at 40-49.

3 *Id.* at 6-7.

4 *Id.* at 103.

5 *Id.* at 41-42.

6 *Id.*

7 *Id.* at 103.

Lagawe branch of the LBP.[8] This prompted Lopez to write to petitioner informing her that the two (2) aforesaid remittances were not acknowledged by the bank. The auditors then found that petitioner duly accounted for the ₱81,348.20 remittance but not for the ₱11,300.00. Dissatisfied with petitioner's explanation as to the whereabouts of the said remittance, Narag reported the matter to the COA Regional Director who, in turn wrote to the LBP for confirmation. The LBP then denied receiving any ₱11,300.00 deposit on September 19, 1996 from petitioner for the account of the DOTC.[9] Thus, the COA demanded that she pay the said amount. Petitioner, however, refused. Consequently, the COA filed a complaint for malversation of public funds against petitioner with the Office of the Ombudsman for Luzon which, after due investigation, recommended her indictment for the loss of ₱11,300.00.[10] Accordingly, petitioner was charged before the RTC of Baguio City in an Information, the accusatory portion of which reads:

> That on or about September 16, 1996, or sometime prior or subsequent thereto, in the City of Baguio, Philippines, and within the jurisdiction of this Honourable Court, the above-named accused, a public officer, being then the Disbursing Officer of the Department of Transportation and Communications, Baguio City, and as such an accountable officer, entrusted with and responsible for the amount of ₱11,300.00 which accused received and collected for the DOTC, and intended for deposit under the account of DOTC with the Land Bank of the Philippines-Baguio City, by reason of her position, while in the performance of her official functions, taking advantage of her position, did then and there, wilfully, feloniously, and unlawfully misappropriate or consent, or through abandonment or negligence, permit other persons to take such amount of ₱11,300.00 to the damage and prejudice of the government.
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> CONTRARY TO LAW.[11]

Upon arraignment on July 31, 1998, petitioner pleaded not guilty to the offense charged. Hence, trial on the merits ensued.

To establish its case, the prosecution presented the testimonies of two (2) COA auditors, namely, Maria Lopez and Sherelyn Narag as well as three (3) LBP employees, namely, Rebecca Sanchez, Catalina Ngaosi, and Nadelline Orallo.[12] In response, the defense presented the lone testimony of petitioner, which can be summarized as follows:

On September 19, 1996, petitioner and her supervisor, Cecilia Paraiso, went to the LBP Baguio branch and personally deposited the exact amount

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8 *Id.*
9 *Id.* at 104.
10 *Id.* at 43.
11 *Id.* at 9.
12 *Id.* at 105-106.

of ₱11,300.00 with accomplished deposit slips in six (6) copies.[13] Since there were many clients who came ahead of her, she decided to go with her usual arrangement of leaving the money with the teller and telling her that she would just come back to retrieve the deposit slip. Thus, she handed the money to Teller No. 2, whom she identified as Catalina Ngaosi. Upon her return at around 3 o'clock in the afternoon, she retrieved four (4) copies of the deposit slip from Ngaosi. She noticed that the same had no acknowledgment mark on it. Being contented with the initials of the teller on the deposit slips, she returned to her office and kept them in her vault. It was only during the cash count conducted by auditor Lopez when she found out that the said amount was not remitted to the account of the LBP. When demand was made on her to return the amount, she requested that she be allowed to pay only after investigation of a complaint of Estafa that she would file with the National Bureau of Investigation against some personnel of the bank, particularly Catalina Ngaosi.[14] The complaint, however, was eventually dismissed.[15]

After trial, the RTC found petitioner guilty beyond reasonable doubt of the crime charged in the Information. The dispositive portion of the decision states:

> WHEREFORE, in view of all the foregoing, judgment is hereby rendered convicting accused Ophelia Hernan of Malversation and hereby sentences her, after applying the Indeterminate Sentence Law, to suffer imprisonment from 7 years, 4 months, and 1 day of *prision mayor* medium period, as minimum, to 11 years, 6 months and 21 days of *prision mayor* as maximum period to *reclusion temporal* maximum period, as maximum, and to pay a fine of ₱11,300.00.
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> Accused Ophelia Hernan is further sentenced to suffer the penalty of perpetual special disqualification.
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> Likewise, accused Ophelia Hernan is hereby ordered to pay back to the government the amount of ₱11,300.00 plus legal interest thereon at the rate of 12% per annum to be computed from the date of the filing of the Information up to the time the same is actually paid.
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> Costs against the accused.
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> SO ORDERED.[16]

Erroneously, petitioner appealed to the Court of Appeals (*CA*), which affirmed her conviction but modified the penalty imposed. Upon motion, however, the CA set aside its decision on the finding that it has no appellate jurisdiction over the case. Instead, it is the Sandiganbayan which has

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13 *Id.* at 7.
14 *Id.* at 43.
15 *Id.*
16 *Id.* at 40-41.

exclusive appellate jurisdiction over petitioner occupying a position lower than Salary Grade 27.[17] Petitioner's new counsel, Atty. Leticia Gutierrez Hayes-Allen, then appealed the case to the Sandiganbayan. In a Decision dated November 13, 2009, the Sandiganbayan affirmed the RTC's judgment of conviction but modified the penalty imposed, the dispositive portion of which reads:

> WHEREFORE, in view of all the foregoing, the appealed decision is hereby AFFIRMED, with the modifications that the indeterminate penalty to be imposed on the accused should be from 6 years and 1 day of *prision mayor* as minimum, to 11 years, 6 months, and 21 days of *prision mayor* as maximum, together with the accessory penalties under Article 42 of the Revised Penal Code, and that interest of only 6% shall be imposed on the amount of P11,300.00 to be restored by the accused.
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> SO ORDERED.[18]

Petitioner filed a Motion for Reconsideration dated December 21, 2009 alleging that during the trial before the RTC, her counsel was unable to elicit many facts which would show her innocence. Said counsel principally failed to present certain witnesses and documents that would supposedly acquit her from the crime charged. The Sandiganbayan, however, denied the motion in a Resolution dated August 31, 2010 on the ground that evidence not formally offered before the court below cannot be considered on appeal.[19]

On June 26, 2013, the Resolution denying petitioner's Motion for Reconsideration became final and executory and was recorded in the Book of Entries of Judgments.[20] On July 26, 2013, petitioner's new counsel, Atty. Meshack Macwes, filed an *Urgent Motion to Reopen the Case with Leave of Court and with Prayer to Stay the Execution.*[21] In a Resolution[22] dated December 4, 2013, however, the Sandiganbayan denied the motion and directed the execution of the judgment of conviction. It noted the absence of the following requisites for the reopening of a case: (1) the reopening must be before finality of a judgment of conviction; (2) the order is issued by the judge on his own initiative or upon motion; (3) the order is issued only after a hearing is conducted; (4) the order intends to prevent a miscarriage of justice; and (5) the presentation of additional and/or further evidence should be terminated within thirty (30) days from the issuance of the order.[23]

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17 *Id.* at 41.
18 *Id.* at 48.
19 *Id.* at 50-53.
20 *Id.* at 67.
21 *Id.* at 101.
22 *Id.* at 30-34.
23 *Id.* at 32.

Unfazed, petitioner filed on January 9, 2014 a *Petition for Reconsideration with Prayer for Recall of Entry of Judgment in lieu of the Prayer for Stay of Execution of Judgment* praying for a reconsideration of the Sandiganbayan's recent Resolution, that the case be reopened for further reception of evidence, and the recall of the Entry of Judgment dated June 26, 2013.[24] In a Resolution dated February 2, 2015, the Sandiganbayan denied the petition for lack of merit. According to the said court, the motion is clearly a third motion for reconsideration, which is a prohibited pleading under the Rules of Court. Also, the grounds raised therein were merely a rehash of those raised in the two previous motions. The claims that the accused could not contact her counsel on whom she merely relied on for appropriate remedies to be filed on her behalf, and that she has additional evidence to present, were already thoroughly discussed in the August 31, 2010 and December 4, 2013 Resolutions. Moreover, the cases relied upon by petitioner are not on point.[25]

On May 14, 2015, petitioner filed the instant petition invoking the following arguments:

> I.
> THE SANDIGANBAYAN GRAVELY ERRED AS IT ACTED WITH GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN CONCLUDING THAT THE MOTION TO REOPEN WAS FILED OUT OF TIME CONSIDERING THE EXTRAORDINARY AND EXCEPTIONAL CIRCUMSTANCES SURROUNDING THE CASE.
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> II.
> THE SANDIGANBAYAN GRAVELY ERRED AS IT ACTED WITH GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN FINDING THAT THE EVIDENCE INTENDED TO BE PRESENTED BY PETITIONER SHOULD HER MOTION FOR REOPENING BE GRANTED, WAS PASSED UPON BY THE TRIAL COURT.
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> III.
> THE SANDIGANBAYAN GRAVELY ERRED AS IT ACTED WITH GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN PRONOUNCING THAT THE MOTION TO REOPEN AND THE PETITION FOR RECONSIDERATION FILED BY PETITIONER ARE CONSIDERED AS THE SECOND AND THIRD MOTIONS TO THE DENIAL OF THE DECISION.

Petitioner posits that her counsel, Atty. Hayes-Allen, never received the August 31, 2010 Resolution of the Sandiganbayan denying her Motion for Reconsideration. This is because notice thereof was erroneously sent to

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24 *Id.* at 33.
25 *Id.* at 37.

said counsel's previous office at Poblacion, La Trinidad, Benguet, despite the fact that it was specifically indicated in the Motion for Reconsideration that the new office is at the Public Attorney's Office of Tayug, Pangasinan, following her counsel's appointment as public attorney. Thus, since her counsel was not properly notified of the subject resolution, the entry of judgment is premature.[26] In support of her assertion, she cites Our ruling in *People v. Chavez*,[27] wherein We held that an entry of judgment without receipt of the resolution is premature.

Petitioner also claims that during trial, she could not obtain the necessary evidence for her defense due to the fact that the odds were against her. Because of this, she asks the Court to relax the strict application of the rules and consider remanding the case to the lower court for further reception of evidence.[28] In particular, petitioner seeks the reception of an affidavit of a certain John L. Ziganay, an accountant at the Department of Science and Technology (*DOST*), who previously worked at the DOTC and COA, as well as two (2) deposit slips. According to petitioner, these pieces of evidence would show that the ₱11,300.00 deposited at the Lagawe branch of the LBP was actually the deposit made by petitioner and not by a certain Lanie Cabacungan, as the prosecution suggests. This is because the ₱11,300.00 deposit made by Cabacungan consists of two (2) different amounts, which, if proper accounting procedure is followed, shall be recorded in the bank statement as two (2) separate amounts and not their total sum of ₱11,300.00.[29] Thus, the Sandiganbayan's denial of petitioner's motion to reopen the case is capricious, despotic, and whimsical since the admission of her additional evidence will prevent a miscarriage.

Finally, petitioner denies the Sandiganbayan's ruling that her motion to reopen and petition for reconsideration are considered as a second and third motion for reconsideration, and are thus, prohibited pleadings. This is because the additional evidence she seeks to introduce were not available during the trial of her case.

The petition is devoid of merit.

At the outset, the Court notes that as pointed out by respondent Office of the Special Prosecutor, petitioner's resort to a petition for *certiorari* under Rule 65 of the Rules of Court is an improper remedy. In determining the appropriate remedy or remedies available, a party aggrieved by a court order, resolution or decision must first correctly identify the nature of the order, resolution or decision he intends to assail.[30] It bears stressing that the

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26 *Id.* at 16-17.
27 411 Phil. 482, 490 (2001).
28 *Rollo*, pp. 21-22.
29 *Id.* at 23-24.
30 *Spouses Bergonia v. Court of Appeals*, 680 Phil. 334, 339 (2012).

extraordinary remedy of *certiorari* can be availed of only if there is no appeal or any other plain, speedy, and adequate remedy in the ordinary course of law.[31] If the Order or Resolution sought to be assailed is in the nature of a final order, the remedy of the aggrieved party would be to file a petition for review on *certiorari* under Rule 45 of the Rules of Court. Otherwise, the appropriate remedy would be to file a petition for *certiorari* under Rule 65.[32] Petitioner, in the instant case, seeks to assail the Sandiganbayan's Resolutions dated December 4, 2013 and February 2, 2015 wherein said court denied her motion to reopen the malversation case against her. Said resolutions are clearly final orders that dispose the proceedings completely. The instant petition for *certiorari* under Rule 65 is, therefore, improper.

Even if We assume the propriety of petitioner's chosen action, the Court still cannot grant the reliefs she prays for, specifically: (1) the reversal of the Sandiganbayan's December 4, 2013 and February 2, 2015 Resolutions denying her motion to reopen and petition for reconsideration; (2) the reopening of the case for further reception of evidence; and (3) the recall of the Entry of Judgment dated June 26, 2013.[33]

First of all, there is no merit in petitioner's claim that since her counsel was not properly notified of the August 31, 2010 Resolution as notice thereof was erroneously sent to her old office address, the entry of judgment is premature. As the Court sees it, petitioner has no one but herself to blame. Time and again, the Court has held that in the absence of a proper and adequate notice to the court of a change of address, the service of the order or resolution of a court upon the parties must be made at the last address of their counsel on record.[34] It is the duty of the party and his counsel to device a system for the receipt of mail intended for them, just as it is the duty of the counsel to inform the court officially of a change in his address.[35] If counsel moves to another address without informing the court of that change, such omission or neglect is inexcusable and will not stay the finality of the decision. The court cannot be expected to take judicial notice of the new address of a lawyer who has moved or to ascertain on its own whether or not the counsel of record has been changed and who the new counsel could possibly be or where he probably resides or holds office.[36]

Here, it is undisputed that petitioner's counsel failed to inform the court of the change in her office address from Poblacion, La Trinidad, Benguet, to the Public Attorney's Office in Tayug, Pangasinan. The fact that

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31 *Id.*

32 *Id.*

33 *Rollo*, p. 26.

34 *Garrucho, v. Court of Appeals, et al.*, 489 Phil. 150, 156 (2005).

35 *Id.*

36 *Karen and Kristy Fishing Industry et al. v. The Honorable Court of Appeals, Fifth Division*, 562 Phil. 236, 243 (2007).

said new address was indicated in petitioner's Motion for Reconsideration does not suffice as "proper and adequate notice" to the court. As previously stated, courts cannot be expected to take notice of every single time the counsel of a party changes address. Besides, it must be noted that petitioner even expressly admitted having received the subject resolution "sometime in September or October 2010."[37] Easily, she could have informed her counsel of the same. As respondent posits, it is not as if petitioner had no knowledge of the whereabouts of her counsel considering that at the time of the filing of her Motion for Reconsideration, said counsel was already with the PAO.[38] Moreover, the Court cannot permit petitioner's reliance on the *Chavez* case because there, petitioner did not receive the resolution of the Court of Appeals through no fault or negligence on his part.[39] Here, however, petitioner's non-receipt of the subject resolution was mainly attributable not only to her counsel's negligence but hers, as well. Thus, the Court deems it necessary to remind litigants, who are represented by counsel, that they should not expect that all they need to do is sit back, relax and await the outcome of their case. They should give the necessary assistance to their counsel for what is at stake is their interest in the case. It is, therefore, their responsibility to check the status of their case from time to time.[40]

To recall, petitioner, on December 21, 2009, filed her Motion for Reconsideration seeking a reversal of the Sandiganbayan's November 13, 2009 Decision which affirmed the RTC's ruling convicting her of the crime of malversation. In a Resolution dated August 31, 2010, the Sandiganbayan denied petitioner's Motion for Reconsideration. Said resolution became final in the absence of any pleading filed thereafter, and hence, was recorded in the Book of Entries of Judgments on June 26, 2013. Subsequently, on July 12, 2013, petitioner, through her new counsel, filed an *Urgent Motion to Reopen the Case with Leave of Court and with Prayer to Stay the Execution*, which was denied through the Sandiganbayan's Resolution dated December 4, 2013.[41] Undeterred, petitioner filed her *Petition for Reconsideration with Prayer for Recall of Entry of Judgment in lieu of the Prayer for the Stay of Execution of Judgement* on January 9, 2014 which was likewise denied in the Sandiganbayan's February 2, 2015 Resolution.

It seems, therefore, that petitioner waited almost an entire three (3)-year period from the denial of her Motion for Reconsideration to act upon the malversation case against her through the filing of her urgent motion to reopen. In fact, her filing of said motion may very well be prompted only by her realization that the case has finally concluded by reason of the entry of judgment. Stated otherwise, the Court is under the impression that had she not heard of the recording of the August 31, 2010 Resolution in the Book of

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37 *Rollo*, P. 18.
38 *Id.* at 116.
39 *Id.* at 37.
40 *Garrucho v. Court of Appeals, et al.*, *supra* note 34, at 157.
41 *Rollo*, p. 36.

Entries of Judgments on June 26, 2013, petitioner would not even have inquired about the status of her case. As respondent puts it, the urgent motion to reopen appears to have been filed as a substitute for the lost remedy of an appeal via a petition for review on *certiorari* before the Court.[42] On this inexcusable negligence alone, the Court finds sufficient basis to deny the instant petition.

Second of all, petitioner's claim that the Sandiganbayan's denial of her motion to reopen the case is capricious, despotic, and whimsical since the admission of her additional evidence will prevent a miscarriage has no legal nor factual leg to stand on. Section 24, Rule 119 and existing jurisprudence provide for the following requirements for the reopening a case: (1) the reopening must be before the finality of a judgment of conviction; (2) the order is issued by the judge on his own initiative or upon motion; (3) the order is issued only after a hearing is conducted; (4) the order intends to prevent a miscarriage of justice; and (5) the presentation of additional and/or further evidence should be terminated within thirty days from the issuance of the order.[43]

But as the Sandiganbayan ruled, the absence of the first requisite that the reopening must be before the finality of a judgment of conviction already cripples the motion. The records of the case clearly reveal that the August 31, 2010 Resolution of the Sandiganbayan denying petitioner's Motion for Reconsideration had already become final and executory and, in fact, was already recorded in the Entry Book of Judgments on June 26, 2013. Moreover, petitioner's supposed predicament about her former counsel failing to present witnesses and documents should have been advanced before the trial court.[44] It is the trial court, and neither the Sandiganbayan nor the Court, which receives evidence and rules over exhibits formally offered.[45] Thus, it was, indeed, too late in the day to advance additional allegations for petitioner had all the opportunity to do so in the lower court. An appellate court will generally not disturb the trial court's assessment of factual matters except only when it clearly overlooked certain facts or where the evidence fails to substantiate the lower court's findings or when the disputed decision is based on a misapprehension of facts.[46]

Ultimately, it bears stressing that the Court does not find that the Sandiganbayan acted in a capricious, despotic, or whimsical manner when it denied petitioner's motion to reopen especially in view of the fact that the rulings it seeks to refute are legally sound and appropriately based on the evidences presented by the parties. On this score, the elements of

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42 *Id.* at 114.
43 *Id.* at 32.
44 *Id.*
45 *Id.* at 33.
46 *Id.* at 31-32.

malversation of public funds under Article 217 of the Revised Penal Code (*RPC*) are: (1) that the offender is a public officer; (2) that he had the custody or control of funds or property by reason of the duties of his office; (3) that those funds or property were public funds or property for which he was accountable; and (4) that he appropriated, took, misappropriated or consented or, through abandonment or negligence, permitted another person to take them. This article establishes a presumption that when a public officer fails to have duly forthcoming any public funds with which he is chargeable, upon demand by any duly authorized officer, it shall be *prima facie* evidence that he has put such missing funds to personal uses.[47]

As duly found by the trial court, and affirmed by the Sandiganbayan, petitioner's defense that she, together with her supervisor Cecilia Paraiso, went to the LBP and handed the subject ₱11,300.00 deposit to the teller Ngaosi and, thereafter, had no idea as to where the money went failed to overcome the presumption of law. For one, Paraiso was never presented to corroborate her version. For another, when questioned about the subject deposit, not only did petitioner fail to make the same readily available, she also could not satisfactorily explain its whereabouts. Indeed, in the crime of malversation, all that is necessary for conviction is sufficient proof that the accountable officer had received public funds, that she did not have them in her possession when demand therefor was made, and that she could not satisfactorily explain her failure to do so.[48] Thus, even if it is assumed that it was somebody else who misappropriated the said amount, petitioner may still be held liable for malversation. The Court quotes, with approval, the trial court's ruling, *viz.*:

> **Even if the claim of Hernan, *i.e.*, that she actually left the amount of ₱11,300.00 and the corresponding deposit slip with the Bank Teller Ngaosi and she came back to retrieve the deposit slip later, is to be believed and then it came out that the said ₱11,300.00 was not credited to the account of DOTC with the Land Bank and was in fact missing, still accused Hernan should be convicted of malversation because in this latter situation she permits through her inexcusable negligence another person to take the money. And this is still malversation under Article 217.**[49]

Said ruling was, in fact, duly reiterated by the Sandiganbayan in its Decision, thus:

> Shifting our gaze to the possibility that it was the bank teller Catalina Ngaosi who misappropriated the amount and should therefore be held liable, as the accused would want to portray, the Court doubts the tenability of that position. As consistently ruled by jurisprudence, a public

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47 *Id.* at 45.
48 *Id.* at 47.
49 *Id.* at 120.

> officer may be held liable for malversation even if he does not use public property or funds under his custody for his personal benefit, but consents to the taking thereof by another person, or, through abandonment or negligence, permitted such taking. **The accused, by her negligence, simply created the opportunity for the misappropriation. Even her justification that her deposits which were not machine-validated were nonetheless acknowledged by the bank cannot fortify her defense. On the contrary, it all the more emphasizes her propensity for negligence each time that she accepted deposit slips which were not machine-validated, her only proof of receipt of her deposits.**[50]

In view of the foregoing, the Court agrees with the Sandiganbayan's finding that petitioner's motion to reopen and petition for reconsideration are practically second and third motions for reconsideration from its Decision dated November 13, 2009. Under the rules, the motions are already prohibited pleadings under Section 5, Rule 37 of the Rules of Court due to the fact that the grounds raised in the petition for reconsideration are merely a rehash of those raised in the two (2) previous motions filed before it. These grounds were already thoroughly discussed by the Sandiganbayan in its subject resolutions. Hence, as duly noted by the Sandiganbayan, in the law of pleading, courts are called upon to pierce the form and go into the substance, not to be misled by a false or wrong name given to a pleading because the title thereof is not controlling and the court should be guided by its averments.[51] Thus, the fact that the pleadings filed by petitioner are entitled *Urgent Motion to Reopen the Case with Leave of Court and with Prayer to Stay Execution* and *Petition for Reconsideration with Prayer for Recall of Entry of Judgment in lieu of the Prayer for Stay of Execution of Judgment* does not exempt them from the application of the rules on prohibited pleadings.

Let it be remembered that the doctrine of finality of judgment is grounded on the fundamental principle of public policy and sound practice that, at the risk of occasional error, the judgment of courts and the award of quasi-judicial agencies must become final on some definite date fixed by law. The only exceptions to the general rule are the correction of clerical errors, the so-called *nunc pro tunc* entries which cause no prejudice to any party, void judgments, and whenever circumstances transpire after the finality of the decision which render its execution unjust and inequitable.[52] None of the exceptions is present in this case.

Indeed, every litigation must come to an end once a judgment becomes final, executory and unappealable. Just as a losing party has the right to file an appeal within the prescribed period, the winning party also has the correlative right to enjoy the finality of the resolution of his case by

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50 *Id.* at 47. (Emphasis ours; citation omitted)

51 *Id.* at 38.

52 *Judge Angeles v. Hon. Gaite*, 661 Phil. 657, 674 (2011).

the execution and satisfaction of the judgment, which is the "life of the law." To frustrate it by dilatory schemes on the part of the losing party is to frustrate all the efforts, time and expenditure of the courts. It is in the interest of justice that this Court should write *finis* to this litigation.[53]

The foregoing notwithstanding, the Court finds that it is still necessary to reopen the instant case and recall the Entry of Judgment dated June 26, 2013 of the Sandiganbayan, not for further reception of evidence, however, as petitioner prays for, but in order to modify the penalty imposed by said court. The general rule is that a judgment that has acquired finality becomes immutable and unalterable, and may no longer be modified in any respect even if the modification is meant to correct erroneous conclusions of fact or law and whether it will be made by the court that rendered it or by the highest court of the land.[54] When, however, circumstances transpire after the finality of the decision rendering its execution unjust and inequitable, the Court may sit *en banc* and give due regard to such exceptional circumstance warranting the relaxation of the doctrine of immutability. The same is in line with Section 3(c),[55] Rule II of the Internal Rules of the Supreme Court, which provides that cases raising novel questions of law are acted upon by the Court *en banc*. To the Court, the recent passage of Republic Act (*R.A.*) No. 10951 entitled *An Act Adjusting the Amount or the Value of Property and Damage on which a Penalty is Based and the Fines Imposed Under the Revised Penal Code Amending for the Purpose Act No. 3815 Otherwise Known as the "Revised Penal Code" as Amended* which accordingly reduced the penalty applicable to the crime charged herein is an example of such exceptional circumstance. Section 40 of said Act provides:

> SEC. 40. Article 217 of the same Act, as amended by Republic Act. No. 1060, is hereby further amended to read as follows:
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> > ART. 217. *Malversation of public funds or property; Presumption of malversation.* - Any public officer who, by reason of the duties of his office, is accountable for public funds or property, shall appropriate the same, or shall take or misappropriate or shall consent, through abandonment or negligence, shall permit any other person to take such public funds, or property, wholly or partially, or shall otherwise be guilty of the misappropriation or malversation of such funds or property, shall suffer:

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53 *De Leon v. Public Estates Authority*, 640 Phil. 594, 612 (2010).

54 *Apo Fruits Corporation and Hijo Plantation, Inc. v. The Hon. Court of Appeals and Land Bank of the Philippines*, 622 Phil. 215, 230 (2009).

55 Section 3(c) of the Internal Rules of the Supreme Court (A.M. No. 10-4-20-SC, as amended) provides:

Section 3. *Court en banc matters and cases.* – The Court *en banc* shall act on the following matters and cases:

x x x x

(c) cases raising novel questions of law;

> **1. The penalty of *prision correccional* in its medium and maximum periods, if the amount involved in the misappropriation or malversation does not exceed Forty thousand pesos (₱40,000.00).**
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> x x x x
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> In all cases, persons guilty of malversation shall also suffer the penalty of perpetual special disqualification and a fine equal to the amount of the funds malversed or equal to the total value of the property embezzled.

Pursuant to the aforequoted provision, therefore, We have here a novel situation wherein the judgment convicting the accused, petitioner herein, has already become final and executory and yet the penalty imposed thereon has been reduced by virtue of the passage of said law. Because of this, not only must petitioner's sentence be modified respecting the settled rule on the retroactive effectivity of laws, the sentencing being favorable to the accused,[56] she may even apply for probation,[57] as long as she does not possess any ground for disqualification,[58] in view of recent legislation on probation, or R.A. No. 10707 entitled *An Act Amending Presidential Decree No. 968, otherwise known as the "Probation Law of 1976," As Amended,* allowing an accused to apply for probation in the event that she is sentenced to serve a maximum term of imprisonment of not more than six (6) years when a judgment of conviction imposing a non-probationable penalty is

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56 *People v. Morilla*, 726 Phil. 244, 255 (2014).

57 Section 1 of R.A. No. 10707 provides:

SECTION 1. Section 4 of Presidential Decree No. 968, as amended, is hereby further amended to read as follows:

SEC. 4. Grant of Probation. — Subject to the provisions of this Decree, the trial court may, after it shall have convicted and sentenced a defendant for a probationable penalty and upon application by said defendant within the period for perfecting an appeal, suspend the execution of the sentence and place the defendant on probation for such period and upon such terms and conditions as it may deem best. No application for probation shall be entertained or granted if the defendant has perfected the appeal from the judgment of conviction: **Provided, That when a judgment of conviction imposing a non-probationable penalty is appealed or reviewed, and such judgment is modified through the imposition of a probationable penalty, the defendant shall be allowed to apply for probation based on the modified decision before such decision becomes final.** The application for probation based on the modified decision shall be filed in the trial court where the judgment of conviction imposing a non-probationable penalty was rendered, or in the trial court where such case has since been re-raffled. In a case involving several defendants where some have taken further appeal, the other defendants may apply for probation by submitting a written application and attaching thereto a certified true copy of the judgment of conviction.

58 Section 2 of R.A. No. 10707 provides:

SEC. 2. Section 9 of the same Decree, as amended, is hereby further amended to read as follows:

SEC. 9. Disqualified Offenders. — The benefits of this Decree shall not be extended to those:

a. sentenced to serve a maximum term of imprisonment of more than six (6) years;

b. convicted of any crime against the national security;

c. who have previously been convicted by final judgment of an offense punished by imprisonment of more than six (6) months and one (1) day and/or a fine of more than one thousand pesos (₱1,000.00);

d. who have been once on probation under the provisions of this Decree; and

e. who are already serving sentence at the time the substantive provisions of this Decree became applicable pursuant to Section 33 hereof."

appealed or reviewed, and such judgment is modified through the imposition of a probationable penalty.[59]

Thus, in order to effectively avoid any injustice that petitioner may suffer as well as a possible multiplicity of suits arising therefrom, the Court deems it proper to reopen the instant case and recall the Entry of Judgment dated June 26, 2013 of the Sandiganbayan, which imposed the penalty of six (6) years and one (1) day of *prision mayor*, as minimum, to eleven (11) years, six (6) months, and twenty-one (21) days of *prision mayor*, as maximum. Instead, since the amount involved herein is ₱11,300.00, which does not exceed ₱40,000.00, the new penalty that should be imposed is *prision correccional* in its medium and maximum periods, which has a prison term of two (2) years, four (4) months, and one (1) day, to six (6) years. The Court, however, takes note of the presence of the mitigating circumstance of voluntary surrender appreciated by the Sandiganbayan in favor of petitioner.[60] Hence, taking into consideration the absence of any aggravating circumstance and the presence of one (1) mitigating circumstance, the range of the penalty that must be imposed as the maximum term should be *prision correccional* medium to *prision correccional* maximum in its minimum period, or from two (2) years, four (4) months, and one (1) day, to three (3) years, six (6) months, and twenty (20) days, in accordance with Article 64[61] of the RPC. Applying the Indeterminate Sentence Law, the range of the minimum term that should be imposed upon petitioners is anywhere within the period of *arresto mayor*, maximum to *prision correccional* minimum with a range of four (4) months and one (1) day to two (2) years and four (4) months. Accordingly, petitioner is sentenced to suffer the indeterminate penalty of six (6) months of *arresto mayor*, as minimum, to three (3) years, six (6) months, and twenty (20) days *prision correccional*, as maximum.

On a final note, judges, public prosecutors, public attorneys, private counsels, and such other officers of the law are hereby advised to similarly apply the provisions of RA No. 10951 whenever it is, by reason of justice and equity, called for by the facts of each case. Hence, said recent legislation shall find application in cases where the imposable penalties of the affected crimes such as theft, qualified theft, estafa, robbery with force upon things, malicious mischief, malversation, and such other crimes, the penalty of which is dependent upon the value of the object in consideration thereof,

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59 *Supra* note 57.

60 *Rollo*, p. 47.

61 Article 64 of the Revised Penal Code provides:

Article 64. Rules for the application of penalties which contain three periods. - In cases in which the penalties prescribed by law contain three periods, whether it be a single divisible penalty or composed of three different penalties, each one of which forms a period in accordance with the provisions of Articles 76 and 77, the court shall observe for the application of the penalty the following rules, according to whether there are or are not mitigating or aggravating circumstances:

x x x x

2. When only a mitigating circumstances is present in the commission of the act, they shall impose the penalty in its minimum period.

have been reduced, as in the case at hand, taking into consideration the presence of existing circumstances attending its commission. For as long as it is favorable to the accused, said recent legislation shall find application regardless of whether its effectivity comes after the time when the judgment of conviction is rendered and even if service of sentence has already begun. The accused, in these applicable instances, shall be entitled to the benefits of the new law warranting him to serve a lesser sentence, or to his release, if he has already begun serving his previous sentence, and said service already accomplishes the term of the modified sentence. In the latter case, moreover, the Court, in the interest of justice and expediency, further directs the appropriate filing of an action before the Court that seeks the reopening of the case rather than an original petition filed for a similar purpose.

Indeed, when exceptional circumstances exist, such as the passage of the instant amendatory law imposing penalties more lenient and favorable to the accused, the Court shall not hesitate to direct the reopening of a final and immutable judgment, the objective of which is to correct not so much the findings of guilt but the applicable penalties to be imposed.

Henceforth: (1) the Directors of the National Penitentiary and Correctional Institution for Women are hereby ordered to determine if there are accused serving final sentences similarly situated as the accused in this particular case and if there are, to coordinate and communicate with the Public Attorney's Office and the latter, to represent and file the necessary pleading before this Court in behalf of these convicted accused in light of this Court's pronouncement; (2) For those cases where the accused are undergoing preventive imprisonment, either the cases against them are non-bailable or cannot put up the bail in view of the penalties imposable under the old law, their respective counsels are hereby ordered to file the necessary pleading before the proper courts, whether undergoing trial in the RTC or undergoing appeal in the appellate courts and apply for bail, for their provisional liberty; (3) For those cases where the accused are undergoing preventive imprisonment pending trial or appeal, their respective counsels are hereby ordered to file the necessary pleading if the accused have already served the minimum sentence of the crime charged against them based on the penalties imposable under the new law, R.A. No. 10951, for their immediate release in accordance with A.M. No. 12-11-2-SC or the *Guidelines For Decongesting Holding Jails By Enforcing The Rights Of Accused Persons To Bail And To Speedy Trial*;[62] and (4) Lastly, all courts, including appellate courts, are hereby ordered to give priority to those cases covered by R.A. No. 10951 to avoid any prolonged imprisonment.

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[62] Sec. 5. Release after service of minimum imposable penalty. – The accused who has been detained for a period at least equal to the minimum of the penalty for the offense charged against him shall be ordered released, motu proprio or on motion and after notice and hearing, on his own recognizance without prejudice to the continuation of the proceedings against him. [Sec. 16, Rule 114 of the Rules of Court and Sec. 5 (b) of R.A. 10389]

WHEREFORE, premises considered, the instant petition is **DENIED.** The Resolution dated February 2, 2015 and Decision dated November 13, 2009 of the Sandiganbayan 2nd Division are **AFFIRMED** with **MODIFICATION**. Petitioner is hereby sentenced to suffer the indeterminate penalty of six (6) months of *arresto mayor,* as minimum term, to three (3) years, six (6) months, and twenty (20) days *prision correccional,* as maximum term.

Let copies of this Decision be furnished to the Office of the Court Administrator (*OCA*) for dissemination to the First and Second Level courts, and also to the Presiding Justices of the appellate courts, the Department of Justice, Office of the Solicitor General, Public Attorney's Office, Prosecutor General's Office, the Directors of the National Penitentiary and Correctional Institution for Women, and the Integrated Bar of the Philippines for their information, guidance, and appropriate action.

Likewise, let the Office of the President, the Senate of the Philippines, and the House of Representatives, be furnished copies of this Decision for their information.

SO ORDERED.

DIOSDADO M. PERALTA
Associate Justice

WE CONCUR:

MARIA LOURDES P. A. SERENO
Chief Justice

ANTONIO T. CARPIO
Associate Justice

PRESBITERO J. VELASCO, JR.
Associate Justice

TERESITA J. LEONARDO-DE CASTRO
Associate Justice

On wellness leave
LUCAS P. BERSAMIN
Associate Justice

MARIANO C. DEL CASTILLO
Associate Justice

ESTELA M. PERLAS-BERNABE
Associate Justice

MARVIC M.V.F. LEONEN
Associate Justice

On leave
FRANCIS H. JARDELEZA
Associate Justice

ALFREDO BENJAMIN S. CAGUIOA
Associate Justice

No part. Prior action in SB
SAMUEL R. MARTIRES
Associate Justice

NOEL GIMENEZ TIJAM
Associate Justice

ANDRES B. REYES, JR.
Associate Justice

On leave
ALEXANDER G. GESMUNDO
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court.

MARIA LOURDES P. A. SERENO
Chief Justice

CERTIFIED XEROX COPY:
FELIPA B. ANAMA
CLERK OF COURT, EN BANC
SUPREME COURT