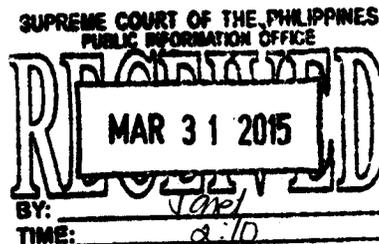




Republic of the Philippines  
Supreme Court  
Manila

FIRST DIVISION

NOTICE



Sirs/Mesdames:

*Please take notice that the Court, First Division, issued a Resolution dated March 11, 2015 which reads as follows:*

**“G.R. No. 194063 - RODERICK LIM GO, Petitioner, v. JAMES L. KING, Respondent.**

At the core of this appeal is the validity of the resolutions of the Secretary of Justice granting the petitioner’s motion to annul the resolution issued two years earlier authorizing the filing of the information charging the petitioner and several others with kidnapping and serious illegal detention, and directing the withdrawal of the information already filed in the Regional Trial Court in Cebu City. The respondent naturally assailed the action of the Secretary of Justice on *certiorari* in the Court of Appeals (CA) on the ground that the Secretary of Justice thereby committed grave abuse of discretion amounting to lack or excess of jurisdiction.

In its decision promulgated on July 22, 2009,<sup>1</sup> the CA granted the respondent’s petition for *certiorari*, and nullified and set aside the assailed resolutions issued on June 20, 2005<sup>2</sup> and February 3, 2006<sup>3</sup> by then Secretary of Justice Raul M. Gonzalez respectively nullifying the previous resolution, and denying the motion for reconsideration. The CA concluded that, indeed, the Secretary of Justice had gravely abused his discretion in annulling the previous resolution, and directing the withdrawal of the information.

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<sup>1</sup> *Rollo*, pp. 64-78; penned by Associate Justice Stephen C. Cruz, with Associate Justice Florito S. Macalino and Associate Justice Rodil V. Zalameda concurring.

<sup>2</sup> *Id.* at 222-249.

<sup>3</sup> *Id.* at 250-255.

The petitioner sought reconsideration, but the CA denied his motion on September 21, 2010.<sup>4</sup>

Hence, this appeal, with the petitioner submitting:

1. RESPONDENT COURT OF APPEALS COMMITTED A REVERSIBLE ERROR WHEN IT ENTERTAINED A FATALLY DEFECTIVE PETITION FOR CERTIORARI ASSAILING THE RESOLUTIONS OF THE SECRETARY OF JUSTICE WHICH PETITION DID NOT COMPLY WITH THE RULES PARTICULARLY SUPREME COURT A.M. 02-8-13 SC AND THE 2004 NOTARIAL ACT WHICH IS A FATAL DEFECT AND ALSO WHICH ASSAILED A NON EXISTING RESOLUTION ALLEGEDLY DATED AUGUST 6, 2005 AND OCTOBER 8, 2005.
2. RESPONDENT COURT OF APPEALS, COMMITTED A REVERSIBLE ERROR IN REVERSING AND SETTING ASIDE AS NULL AND VOID, THE RESOLUTIONS OF SECRETARY OF JUSTICE RAUL M. GONZALEZ DATED JUNE 20, 2005 AND FEBRUARY 3, 2006, WHICH MODIFIED THE CRIME CHARGED AGAINST PETITIONER RODERICK LIM GO, TO SLIGHT PHYSICAL INJURIES INSTEAD OF KIDNAPPING WITH SERIOUS ILLEGAL DETENTION AND SERIOUS PHYSICAL INJURIES.<sup>5</sup>

### Ruling of the Court

The petition for review on *certiorari* is denied. The CA did not err in declaring the Secretary of Justice to have committed grave abuse of discretion amounting to lack or excess of jurisdiction.

The first ground harps on the supposed formal defects of the respondent's petition for *certiorari*, with the petitioner asserting that the respondent did not sign the verification and certification on non-forum shopping attached to his petition for *certiorari* but only affixed his thumbprint thereon, without submitting any picture or identification card, in violation of A.M. 02-8-13 SC and the 2004 Notarial Act. Thus, the respondent's petition for *certiorari* was fatally defective.

The petitioner's claim is misplaced.

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<sup>4</sup> Id. at 96-100.

<sup>5</sup> Id. at 24-25.

Under Section 4 and Section 5, Rule 7 of the *Rules of Court*, the verification and certification on non-forum shopping are required of the pleader. The respondent clearly met the requirement, for, as the CA put it:

x x x What is in issue here is whether King “has read the pleading and that the allegations therein are true and correct of his knowledge and belief”. Respondents have not shown otherwise. Furthermore, Sec. 4, Rule 7 of the Rules of Court, the applicable rule on the matter does not provide a specific form for an affiant’s signature. Where the law does not distinguish, courts should also not distinguish.

In any case, a cross or mark made by a person even though he is able to read and write is still valid if the document, is in all other respects, a valid one.<sup>6</sup>

The petitioner insists that the respondent’s petition for *certiorari* in the CA was made even more defective because it assailed non-existent resolutions dated August 6, 2005 and October 8, 2005 of the Secretary of Justice.

The insistence of the petitioner was unwarranted. We note that the CA *motu proprio* corrected the dates of the assailed resolutions because the dates of August 6, 2005 and October 8, 2005 were typographical errors. It appears that all throughout the petition, references were made to the resolutions of Secretary Gonzalez issued on June 20, 2005 and February 3, 2006 as the assailed resolutions; and that the dates August 6, 2005 and October 8, 2005 appeared only in the petitioner’s prayer for reliefs. The *motu proprio* corrections by the CA were proper, therefore, because they were intended to correct plainly typographical errors. Nothing of substance was affected by the corrections. Even Grace Go, a respondent in the CA, conceded that Secretary Gonzalez did not ever issue resolutions dated August 6, 2005 and October 8, 2005.<sup>7</sup>

Anent the second ground whereby the petitioner contests the nullification of the assailed resolutions of the Secretary of Justice that had downgraded the crime charged against him from kidnapping and serious illegal detention to slight physical injuries, it is shown that the CA struck down Secretary Gonzalez’ resolutions mainly for two reasons, namely: (a) that Secretary Gonzalez issued a finding of lack of probable cause and ordered the withdrawal of charges already filed in court against the

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<sup>6</sup> Id. at 71-72.

<sup>7</sup> Id. at 97-98.

petitioner and his co-accused despite a contrary final ruling on the matter having been already made by this Court, and further took cognizance of, and favorably ruled on the illegal motion to annul the resolution filed by the petitioner; and (b) that the assailed resolutions of Secretary Gonzalez were issued with grave abuse of discretion amounting to lack or excess of jurisdiction.

The petition cannot be upheld. In explaining its action, the CA cogently stated:

Respondents defended Secretary Gonzalez' acts by further arguing that he merely acted within his power to review resolutions of his subordinates and that the determination of the probable cause during a preliminary investigation is an executive function. They also argued that King failed to exhaust administrative remedies as he should have first appealed to the Office of the President before resorting to this Court. Lastly, respondents point out that the *August 6, 2003 Resolution* of Chief State Prosecutor Zuño overturned by Secretary Gonzalez was void as the former had no authority to issue the same.

We are not persuaded.

The fact that Chief State Prosecutor Zuño was without authority to issue the *August 6, 2003 Resolution* is, to Us, not an excuse for Secretary Gonzalez to revisit a case which has long been settled. In the first place, it was Roderick Go who invoked the jurisdiction of the DOJ when he filed his *Petition for Review* before it. He participated in the proceedings and even sought reconsideration when Chief State Prosecutor Zuño did not rule in his favour. Roderick Go is clearly in estoppel to assail the authority of Chief State Prosecutor Zuño. It is not fair for a party who had invoked the jurisdiction of a particular body in a particular matter, to afterwards deny the very existence of the jurisdiction he once acknowledged. He cannot have his cake and eat it too.

Besides, the fact that the issuance of the resolution was outside of Chief State Prosecutor Zuño's authority should not in any way prejudice King. It was something beyond his control. It was not King who ordered the Chief State Prosecutor to sign the *August 6, 2003 Resolution*. He should not bear the burden of the ill effects of something that he had no hand in doing.

On the other hand, there can be no quibbling about the Secretary of Justice's power to review resolutions of his subordinates; this has long been settled. It is settled too that the power to determine the existence of the probable cause is an executive function. It must be stressed,

however, that these powers are not absolute. This Court may review the resolution of the Secretary of Justice on a *Petition for Certiorari* under Rule 65 of the 1997 Rules of Civil Procedure, as amended, on the ground that he committed grave abuse of discretion amounting to excess or lack of jurisdiction.

An aggrieved party may even file directly a *Petition for Certiorari* before this Court without adhering to the principle of exhaustion of administrative remedies because such rule is not ironclad. The doctrine is relative, and its flexibility is called upon by the peculiarity and uniqueness of the factual and circumstantial settings of a case. In the past, the principle has been disregarded when (1) the respondent is a department secretary whose acts, as an alter ego of the President, bears the implied and assumed approval of the latter; (2) the rule does not provide a plain, speedy and adequate remedy; and (3) the administrative action is patently illegal amounting to lack or excess of jurisdiction; all these circumstances are attendant in the instant case.

The patent illegality of the assailed resolution is clearly evident when Secretary Gonzalez exonerated Grace Go and Petillos, when earlier, the Supreme Court had already decided with finality that probable cause exist for the filing of a kidnapping case against them.

Nothing is more settled in law than that when a final judgment is executory, it thereby becomes immutable and unalterable. The judgment may no longer be modified in any respect, even if the modification is meant to correct what is perceived to be an erroneous conclusion of fact or law, and regardless of whether the modification is attempted to be made by the court rendering it or by the highest Court of the land. The doctrine is founded on considerations of public policy and sound practice that, at the risk of occasional errors, judgments must become final at some definite point in time.

Thus, it was reversible error for the Secretary Gonzalez to order for the withdrawal of the information against Grace Go and Petillos. The assailed resolution had **the effect of illegally reversing and subverting a final decision of the highest court of the land.**

The orderly administration of justice requires that the judgments/resolutions of a court or quasi-judicial body must reach a point of finality set by the law, rules, and regulations. The noble purpose is to write *finis* to dispute once and for all. This is a fundamental principle in our justice system, without which there would be no end to litigations. **Utmost respect and adherence to this principle must always be maintained by those who exercise the power of adjudication. Any act, which violates such principle, must immediately be struck down.**

Clearly, Secretary Gonzalez committed grave abuse of discretion which implies a capricious and whimsical exercise of judgment that is equivalent to lack of jurisdiction. His indifference to the final decision

of the Supreme Court and his act of bending the rules in order to accommodate Roderick Go's motion shows that the secretary exercised his power in an arbitrary manner by reason of passion and personal hostility.

This is more evident if we consider the fact that the Spouses Go and Petillos are, up to now, still in hiding. On this issue, King argued:

92. Respondents Roderick, Grace and Petillos who are fugitives were rewarded the questioned Resolution at the expense of making a mockery of the administration of justice. Moreover, the Honorable Secretary of Justice Gonzalez did more than just making a mockery of the administration of justice. He whimsically and arbitrarily violated the settled doctrine that "an accused who, after the filing of the information, is at large and has not been apprehended or otherwise submitted himself to the jurisdiction of the court, cannot be granted any other relief by the Courts until he submits himself to the jurisdiction or is arrested."

93. It is respectfully submitted that the Resolution dismissing the petition for review and motion for reconsideration of respondent Roderick should be maintained and the Motion to Annul Resolution should be annulled for being void ab initio. The fugitive respondents should not be afforded any relief. Their refusal to submit themselves to the jurisdiction of the court means that they have virtually no respect to the court and the administration of justice. They have little respect, if any, to the authorities and our judicial system. Granting them any relief would be making a mockery of justice. More so, it will diminish the authority and degrade the dignity of the Courts. The reason according to the Supreme Court is that "it prevents resort to the pernicious practice whereby an accused could just send another in his stead to seek relief without recognizing the jurisdiction of the court by his personal appearance."

Respondents, all four of them, are very silent on this issue. Indeed, it is unfair and unjust for respondents to seek affirmative relief while at the same time being fugitives from justice and utterly disregarding courts processes.<sup>8</sup>

The explanation by the CA is succinct and unassailable. The 2000 National Prosecution Service Rule on Appeal did not allow the filing of the petitioner's motion to annul considering that his proper remedy was to appeal the resolution of the Investigating Prosecutor by petition for review. This remedy of appeal was availed of by him. If the ruling on his appeal

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<sup>8</sup> Id. at 74-77.

was adverse, he could then have resorted to the special civil action for *certiorari* in the CA on the ground of grave abuse of discretion amounting to lack or excess of jurisdiction. That he did not do so was his own undoing. Nonetheless, he thereby exhausted the remedies available to him.

In any case, the petitioner's motion to annul could not be favorably acted upon because it equated to a second motion for reconsideration, a motion that was expressly prohibited by Section 13 of the 2000 National Prosecution Service Rule on Appeal. Worse, the motion to annul was brought more than two years from the denial of his petition for review;<sup>9</sup> hence, even assuming that his motion to annul was allowed by the relevant rule of procedure, its filing was made way beyond the permissible period to do so in the regular course of proceedings.

We adopt the aforequoted explanation of its action by the CA, and declare that Secretary Gonzalez, in undoing the action of Chief State Prosecutor Jovencito Zuño and in directing the withdrawal of the information already filed in court, gravely abused his discretion amounting to lack or excess of jurisdiction.

**WHEREFORE**, the Court **AFFIRMS** the decision promulgated by the Court of Appeals on July 22, 2009; and **ORDERS** the petitioner to pay the costs of suit.

**SO ORDERED.”**

Very truly yours,

  
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<sup>9</sup> Id. at 73.

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