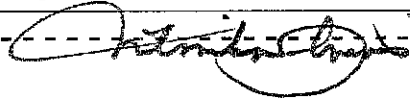


EN BANC

G.R. No. 261207 – TOPBEST PRINTING CORPORATION, as duly represented by SHIRLEY L. DIONISIO, Petitioner, v. SOFIA C. GEMORA, in her capacity as Director IV of the Commission on Audit, EDNA P. SALAGUBAN, Supervising Auditor, and FAHAD BIN ABDUL MALIK N. TOMAWIS, Audit Team Leader, Respondents.

Promulgated:
August 22, 2023

X-----X



CONCURRING AND DISSENTING OPINION

CAGUIOA, J.:

I concur with the *ponencia* that the Notice of Disallowance (ND) No. 19-001-207542-(17)¹ was validly issued and the Commission on Audit (COA) National Government Audit Sector (NGAS) Cluster 1 Decision No. 2022-014² (COA-NGAS Decision) had become final for Topbest Printing Corporation's (Topbest) failure to exhaust administrative remedies.

However, I maintain that the doctrine of finality of judgment should yield to the higher interest of substantial justice to allow Topbest to retain the payment it received from the National Printing Office (NPO). Thus, I vote to remand the case for the determination of Topbest's liability, if any, after deducting the value of the lease, of its equipment and services based on *quantum meruit*.

To synthesize the facts of this case, NPO entered into Equipment Lease Agreements (ELAs) with several printers, among them Topbest, to fulfill its daily printing activities. NPO awarded to Topbest a contract for the lease of Lot 2: one unit-4 Stations Web/Continuous Form Machine with Collator, min. size: 4.5" with a contract price of PHP 49,500,000.00 in 2016.³ The following year, Topbest was issued a Notice of Award for Lot 2 of the Printing Capacity Augmentation Project Phase 1, intended to be Joint Venture Undertaking with the NPO.⁴ However, NPO applied the same terms and condition of the ELA except for the payment being on a "per-usage basis" as shown in the work orders issued by NPO.

¹ *Rollo*, pp. 41-59.

² *Id.* at 31-40.

³ *Ponencia*, p. 2.

⁴ *Id.* at 3.



This arrangement was flagged in a 2017 Audit Observation Memorandum (AOM) as contrary to Government Procurement Policy Board (GPPB) Resolution No. 05-2010⁵ dated October 29, 2010. Specifically, it was found that the arrangement was subcontracting in the guise of an ELA, in direct contravention of the policy that “[t]he appropriate RGP engaged by the procuring entity shall directly undertake the printing services for the contracts entered into, and cannot engage, subcontract, or assign any private printer to undertake the performance of the printing service.”⁶ This prohibition noted in the AOM is Audit Criteria 4.6⁷ in GPPB Resolution No. 05-2010 and is reiterated in Section 22(a)⁸ of the 2017 General Appropriations Act⁹ (GAA).

The AOM matured into ND No. 19-001-207542-(17)¹⁰ dated January 22, 2019. The ELAs entered into by NPO with the printers were considered by COA as subcontracting agreements and the rental fees paid therefor were disallowed as irregular expenses. Pursuant to the ND, Topbest was held liable to return PHP 6,039,057.54 it received from NPO as rental fees.

Topbest repaired directly to this Court on Rule 64, mistakenly believing that it only had one day to file its Petition for Review before the COA-Commission Proper. It had two. The Court strictly but rightly held that there remained to Topbest a plain, speedy, and adequate remedy and thus, direct resort to this Court was improper.

All that being said, I join Associate Justice Antonio T. Kho, Jr. and maintain that the circumstances in this case call for the relaxation of the rule on finality of judgment. In *Estalilla v. Commission on Audit*,¹¹ the Court stated:

⁵ Approving the Guidelines on the Procurement of Printing Services, approved on October 29, 2010.

⁶ *Rollo*, p. 42.

⁷ Audit Criteria 4.6. The appropriate RGP engaged by the procuring entity shall directly undertake the printing services for the contracts entered into, and cannot engage, subcontract, or assign any private printer to undertake the performance of the printing service. Available at https://www.coa.gov.ph/wp-content/uploads/ABC-Help/Updated_Guidelines_in_the_Audit_of_Procurement/part%202/B-NEGO%20Agency-To-Agency-6.htm (last accessed on August 22, 2023).

⁸ Sec. 22. **Printing Expenditures.** All agencies of the government shall engage the services of the National Printing Office, Bangko Sentral ng Pilipinas and APO Production Unit as recognized government printers (RGPs) for the printing of accountable forms and sensitive, high quality or high volume requirements, subject to the following:

(a) The RGPs shall undertake the printing requirements themselves and shall not sub-contract any portion thereof to other printers; and

⁹ Republic Act No. 10924 (2016), An Act Appropriating Funds for the Operation of the Government of the Republic of the Philippines from January One to December Thirty-One, Two Thousand and Seventeen, and for Other Purposes.

¹⁰ *Rollo*, pp. 41–59.

¹¹ 862 Phil. 77 (2019) [Per C.J. Bersamin, *En Banc*].

The Court has further allowed the relaxation of the rigid rule on the immutability of a final judgment in order to serve substantial justice in considering: (1) matters of life, liberty, honor or property; or (2) the existence of special or compelling circumstances; or (3) the merits of the case; or (4) a cause not entirely attributable to the fault or negligence of the party favored by the suspension of the rules; or (5) a lack of any showing that the review sought is merely frivolous and dilatory; or (6) that the other party will not be unjustly prejudiced thereby.¹² (Citation omitted)

Save for Topbest's procedural misstep being entirely attributable to itself, this case presents all considerations identified in *Estalilla*.

First, the disallowance implicates Topbest's property—the rental fees it received for the lease of its equipment.

Second, it is a compelling circumstance that unjust enrichment will result as the effect of upholding the disallowance is that requisitioning agencies had their printing jobs fulfilled and NPO generated income to run its operations through the use of Topbest's equipment free-of-charge.

Third and *fifth*, save for the procedural misstep, Topbest's cause to retain the rental fees despite the disallowance is meritorious because it performed its obligation to NPO under the ELAs, and thus, it cannot be said that the petition is merely frivolous or dilatory.

Lastly, the government will not be unjustly prejudiced by Topbest's retention of the rental fees when the government, through NPO and the requisitioning agencies, accepted, and benefited from the use of Topbest's equipment.

*The terms of the contract between
NPO and Topbest encompass lease*

To start, I maintain that the ELA entered into by NPO with Topbest, by its terms, is a contract of lease. Under the terms of the ELA, Topbest leased to NPO Lot 2: one unit-4 Stations Web/Continuous Form Machine with Collator, min. size: 4.5", which shall be in tiptop running condition and shall be manned/operated by NPO operators assigned at the lessor's premises.¹³ There is nothing in the ELA provisions that would lend to a conclusion that it was a subcontracting agreement. In fact, the COA-NGAS Decision¹⁴ stated:

¹² *Id.* at 91-92.

¹³ *Rollo*, p. 173, Equipment Lease Agreement dated June 28, 2016, Clauses 1.1 and 1.2.

¹⁴ *Id.* at 31-40.

Records disclosed that the NPO entered into an ELA with [Topbest] to provide additional facilities and increase NPO's capabilities to serve its purpose.

A scant reading of the ELA provide[s] simple lease agreements between the NPO and the private printers. In fact, in the naked eye, the provisions of the ELAs are valid in form and in substance. Item 3 of the ELA is read as follows:

3. RENTAL FEE

3.2 The Lessee shall pay the Lessor after the completion of the job order (JO)/work order (WO) on running basis. The rental fee for the aforementioned machines shall be computed on the value of the output from the machines on running basis only.¹⁵

Nonetheless, the COA-NGAS still found the terms of the contract ambiguous and hence, justified its resort to other "extrinsic evidence" to determine the true nature of the ELA. It ultimately concluded that the arrangement between NPO and Topbest was a subcontracting agreement because Topbest did not only supply the equipment but included the entire cost of production. The relevant portion of the Decision reads:

However, scrutiny and examination of the records show that the payments are made not on the value of the output from the machine on running basis but at the rate of 85% and 15% between the private printers and the NPO, respectively, of the total cost of JO/WO. From the Billing Statements the 85% of the value of the JO/WO represents only the rental fee, and thus, it appears that the remaining 15% represents the labor, raw materials, and revenue costs.

The [Audit Team-NPO]" inquired [into] the basis of the term of payment for all of the ELAs, however, the NPO answered that 85% and 15% division relative to the total cost of the JOs/WOs was only the decision of the Head of the NPO in 2012 without any guidelines and supporting documents to justify this term of payment.

A further research revealed that a Technical Evaluation Report dated May 11, 2012 was issued by this Technical Service Division, National Government Sector A, this Commission, relative to the Review and Evaluation of contracts of leases of printing services of the NPO and [Topbest]. In the said Report, it was revealed what constituted the 85% and 15% division, Item 4, Letter E, states that:

The unit cost per [JOs] to the lessor was considered standard transaction costs between NPO and its government clients from which NPO deducts 15% as

¹⁵ *Id.* at 37.

its profit. The rental costs and materials cost are taken from the remaining amount (85%) of the [JO]. ...

Applying this, it becomes clear that the 15% represented the profit of the NPO from the JOs/WOs, it also confirms that the 85% does not only represent the rental fee but also includes the material cost, maintenance cost, power, operator and etc. Given this additional information, we now ask, is the ELA just Lease Contract, considering it's not only the equipment but including the entire costs of production or did the NPO farm out the JOs/WOs and reserved the 15% of its cost as its profit?¹⁶ (Emphasis supplied)

However, apart from the conclusion that "the 85% does not only represent the rental fee but also includes the material cost, maintenance cost, power, operator and etc.,"¹⁷ **nothing in the cited Technical Evaluation Report definitively confirmed that it was Topbest that did the printing.** As to the bundling of other costs, the Invitation to Submit Proposal¹⁸ provides:

Capital outlay and operating expense required under the proposed joint venture arrangement/s, except for personnel and marketing costs, shall be for the exclusive account of the selected JV partner/s. The Revenue Sharing Arrangement shall be set forth in the **Instruction to Private Sector Participants (ITPSP) which shall be made available by the Secretary of the NPO Joint Venture Special Committee.**¹⁹ (Emphasis in the original)

This will naturally be the arrangement, given that NPO receives no funding to acquire plant, property, or equipment (PPE) from its regular appropriations and thus is constrained to rely on leasing printing equipment from private sector partners to increase the capacity of its printing operations. In turn, the printing operations generate income that allows NPO to sustain itself—to pay for the salaries of its personnel, and to maintain its own PPE, among others. NPO's regular appropriations for 2017 did not include any appropriation for capital outlay or operating expense pertaining to PPE not belonging to it.

Regrettably, the majority appears to have misunderstood the import of the maintenance and other costs of production bundled into the rental fees:

While Topbest alleges that under Article 1654 of the Civil Code, the lessor has the duty to make necessary repairs, it should be clarified that the maintenance cost and labor cost are not usually included in the rental fee in ordinary lease agreements. Ordinary lease agreements are arrangements where one party is allowed to use a property owned by the other party for a fee. It does not cover a situation where the owner of the property not only

¹⁶ *Id.* at 37–38.

¹⁷ *Id.* at 38.

¹⁸ *Id.* at 179–182, Invitation to Apply for Eligibility and to Submit Proposal for a Joint Venture Undertaking with the National Printing Office in the Augmentation of Printing Capacity Phase I.

¹⁹ *Id.* at 180.

leases it to another person but also obligates the lessee to perform the lessors' work, after which they split the revenue. This was precisely what the Notice of Disallowance and the Decision found questionable in the NPO's and Topbest's transactions.²⁰

This is not borne by the ND, or by the COA-NGAS Decision. Nowhere did the COA-NGAS Decision refer to any act that Topbest as lessor required NPO as lessee. To repeat, the COA-NGAS Decision anchored its finding that it was a subcontracting agreement because it considered the 85% payment as covering the entire costs of production. Even the maintenance of the leased equipment undertaken by Topbest as owner and lessor was construed as evidence of subcontracting. This, in the face of Topbest's adamant assertion that it entered into a contract of lease and performed its obligation to turn over and maintain its equipment in good working condition and maintain NPO in quiet enjoyment of the leased equipment under the said contract of lease, without having ever performed the printing for NPO.

NPO was constrained to enter into ELAs due to the provisions of Executive Order No. 378 and the special provisions of its annual appropriations

The most important reason to relax the rule on finality of judgment in this case is the nature of NPO as an income-generating and self-sustaining agency. Section 3 of Executive Order No. 378, s. 2004²¹ provides:

SEC. 3. In the exercise of its functions, the amount to be appropriated for the programs, projects and activities of the NPO in the General Appropriations Act (GAA) shall be limited to its income without additional financial support from the government.

This is confirmed and implemented by the appropriations for NPO and the special provisions for their release in the annual GAA.

The 2017 GAA provides:

²⁰ *Ponencia*, p. 15.

²¹ Amending Section 6 of Executive Order No. 285 Dated 25 July 1987 by Removing the Exclusive Jurisdiction of the National Printing Office (NPO) Over the Printing Services Requirements of Government Agencies and Instrumentalities, approved on October 25, 2004.

D. NATIONAL PRINTING OFFICE

For general administration and support, and operations, as indicated hereunderP 129,314,000

	<u>Current Operating Expenditures</u>			Total
	Personnel Services	Maintenance and Other Operating Expenses	Capital Outlays	
PROGRAMS				
General Administration and Support	P 24,962,000			P 24,962,000
Operations	104,352,000			104,352,000
MFO 1: NATIONAL PRINTING SERVICES	104,352,000			104,352,000
Total, Programs	129,314,000			129,314,000
TOTAL NEW APPROPRIATIONS	<u>P129,314,000</u>			<u>P129,314,000</u>

The 2017 GAA Special Provisions for the NPO provide:

Special Provision(s)

1. **Revolving Fund for the National Printing Office.** The revolving fund constituted from income derived from the production and other printing activities of the National Printing Office (NPO) shall be used to cover its operating requirements consistent with Section 3 of E.O. No. 378 s. 2004. Disbursements shall be made in accordance with budgeting, accounting, and auditing rules and regulations.

Disbursements or expenditures by the NPO in violation of the above requirements shall be void and shall subject the erring officials and employees to disciplinary actions in accordance with Section 43, Chapter 5 and Section 80, Chapter 7, Book VI of E.O. 292, and to appropriate criminal action under existing penal laws.

The NPO shall submit to the DBM, the Speaker of the House of Representatives, the President of the Senate of the Philippines, the House Committee on Appropriations and Senate Committee on Finance, either in printed form or by way of electronic document, quarterly reports on income and expenditures. The Director of NPO and the Agency's web administrator or his/her equivalent shall be responsible for ensuring that said quarterly reports are likewise posted in the NPO website.

2. **Appropriations for the National Printing Office.** The amount of One Hundred Twenty Nine Million Three Hundred Fourteen Thousand Pesos (P129,314,000) appropriated herein for Personnel Services shall only be released upon submission by the NPO to the DBM of a certification from

the BTr that the corresponding amount sourced from collections under this fund has been deposited with the National Treasury: PROVIDED, That the DBM is authorized to make an advance release to cover the first month Personnel Services requirements of the NPO in the event the revolving fund is not sufficient to provide for the said requirements: PROVIDED, FURTHER, That the expenditures sourced from this fund shall be consistent with the performance indicators identified herein and shall be considered the commitment and accountability of the Director of the NPO.

The NPO shall submit to the DBM, the Speaker of the House of Representatives, the President of the Senate of the Philippines, the House Committee on Appropriations and the Senate Committee on Finance, quarterly reports on income and expenditures. The Director of the NPO and the agency's web administrator or his/her equivalent shall be responsible for ensuring that said quarterly reports are likewise posted on the official website of the NPO.

Failure to comply with any of the foregoing shall render any disbursement from said income void, and shall subject the erring officials and employees to disciplinary actions in accordance with Section 43, Chapter 5 and Section 80, Chapter 7, Book VI of E.O. 292 s. 1987 and to appropriate criminal action under existing laws.

Similarly, NPO had no Capital Outlay appropriation from 2010 and no maintenance and other operating expenses (MOOE) from 2015 to 2017 when the ELA was flagged and disallowed. Across these years and couched in different phrasing, the condition for the release of NPO's budget it needs to run its operations and to pay its personnel is this: **it must first realize that income**. In other words, NPO funds itself from income from operations. For the period relevant to the controversy, expectedly, NPO was not among the offices that received budgetary support from the National Government.²²

Prior to this, NPO had been able to subcontract printing activities under the provisions of Memorandum Order No. 38, s. 1998. NPO was authorized to conduct public bidding and award to winning private printers the printing jobs that it cannot undertake due to incapacity. The printing shall be under the strict control of NPO and in the presence of representatives from NPO, COA, and the requisitioning agency. Under these arrangements, NPO shall pay the printers for the services they have rendered.

In COA's recommendation and finding, it found that the ELAs were subcontracting arrangements under the assumption that the printing was done by the private printers. However, as stated, the ELAs under their terms are valid leases. This is consistent with the COA recommendation in the 2017

²² Budgetary Support to Government Corporations by Recipient Corporations, 2015–2017. Updated Budget of Expenditures and Sources of Financing Tables Based on FY 2017 GAA, available at <https://www.dbm.gov.ph/wp-content/uploads/BESF/BESF2017/B20.pdf> (last accessed on August 22, 2023).

Annual Audit Report for NPO to enter into valid leases of equipment instead of subcontracting.

Given the above, the injustice in this situation is clear: Topbest had effectively contributed to the funding of NPO's appropriations and the fulfillment of printing requirements of requisitioning agencies. And now the majority opinion is requiring Topbest to effectively let its equipment be used for free and refund the amounts paid to it.

Even if the ND is valid, Topbest should be allowed to retain the rentals

Even if the majority opinion were correct that the ND was valid—because the agreements are, indeed, subcontracting agreements in the guise of ELAs, it should not bar retention by Topbest of the rentals.

Topbest coherently argues:

73. *Assuming arguendo* that the NPO indeed committed violations of the GPPB Resolution No. 05-2010 and [Republic Act] No. 9184 in its transactions with the private printers, petitioner cannot be held liable for the same.

74. For one, there is nothing in the records which would show that petitioner Topbest was even remotely aware of the alleged “unscrupulous practice” of the NPO. What is clear is that petitioner entered into an *Equipment Lease Agreement* with the NPO, wherein the former would lease its printing machine to the latter. All of the evidence at hand in relation to the agreement entered into between petitioner and the NPO point to one conclusion – that petitioner agreed only to a lease contract.

75. To reiterate petitioner's submissions in its *Appeal Memorandum*:

“First: Under the *Notice of Award* dated 13 September 2017, it is stated that appellant is awarded with Lot 2 of the Printing Capacity Augmentation Project Phase 1, as provided under the *Online Invitation to Bid* dated 10 July 2017 which provides: “*Joint provision of property, plant[,] and equipment, including consumables and services for use in the printing of various specialized/customized accountable and non-accountable forms[.]*”

Nowhere is it stated in both the aforesaid *Notice of Award* and the *Invitation to Bid* that the printing would be made by the NPO's prospective Joint Venture partner.

Second: The re-implementation of the *Equipment Lease Agreement* dated 28 June 2016 enabled the NPO to comply with the requirements of the GPPB's Resolution No.



05-2010 which prohibits the subcontracting of printing projects. This is due to the provision of the aforesaid lease agreement which provides that “*the leased machines shall be in tip top running condition which shall be manned/operated by NPO operators assigned at the Lessor’s premises.*”

All told, the attendant circumstances clearly show that, in fact, a contract of lease over a printing equipment was entered into by the NPO and [Topbest] and not a subcontracting agreement.”

76. Absent any basis to say otherwise, petitioner cannot be made to suffer the consequences of an allegedly illegal act committed by another entity beyond what it has agreed to. It behooves us to acknowledge that the ELA is the contract petitioner signed. Clearly, petitioner entered only into a lease agreement with the NPO, which is not prohibited under any law. To hold petitioner liable for violating a law due to the acts of another is blatantly ignoring the demands of due process and the very basic tenets of justice.²³

I agree. As stated, the ELA is a lease, and even if it were not, Topbest should be able to retain the rentals it was paid.

The case of *Torreta v. COA*²⁴ laid down the rules on return of disallowed amounts in cases involving irregular government contracts, to wit:

1. If a [ND] is set aside by the Court, no return shall be required from any of the persons held liable therein.
2. If a [ND] 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.
 - 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

²³ *Rollo*, pp. 20–21.

²⁴ 889 Phil. 1119 (2020) [Per J. Gaerlan, *En Banc*].

accounting principles depending on the nature of the government contract involved.²⁵ (Emphasis supplied)

The Court in *Torreta* further explained the principle of *quantum meruit* as follows:

Quantum meruit literally means “as much as he deserves.” Under this principle, **a person may recover a reasonable value of the thing he delivered or the service he rendered.** The principle also acts as **a device to prevent undue enrichment based on the equitable postulate that it is unjust for a person to retain benefit without paying for it.** The principle of *quantum meruit* is predicated on equity. In the case of *Geronimo v. COA*, it has been held that “the [r]ecovery on the basis of *quantum meruit* was allowed despite the invalidity or absence of a written contract between the contractor and the government agency.” In *Dr. Eslao v. COA*, the Court explained that the denial of the contractor’s claim would result in the government unjustly enriching itself. The Court further reasoned that justice and equity demand compensation on the basis of *quantum meruit*. Thus, in applying this principle, the amount in which the petitioners together with the other liable individuals shall be equitably reduced.²⁶ (Emphasis supplied; citations omitted)

In *Torreta*, the Court acknowledged the technicalities involved in fixing the amount that should ultimately be returned by the persons solidarily liable under the ND. Accordingly, the Court remanded the case to the COA for the determination of amount of liability of therein petitioners, applying the generally accepted accounting rules and COA rules and regulations.

In the case of *Puentevella v. COA*,²⁷ the Court likewise applied *quantum meruit* to reduce therein petitioner’s liability and that of his non-appealing co-respondent. The Court clarified that the rehabilitation of Paglaum Stadium, as well as the repairs and refurbishments of the sports facilities, were undertaken and delivered in time for the conduct of the 23rd Southeast Asian Games. Despite the impropriety of the contract with the different contractors and suppliers, the Court determined they are still entitled to retain the reasonable value of their deliveries and services. Hence, the Court remanded the case to the COA for the determination of the proper amount of civil liability.

To recall, the amounts paid by the NPO to Topbest represent 85% of the total cost of job orders or work orders from the NPO’s clients. These are payments for services actually rendered to the government, and this is not disputed in this case. While Topbest’s arrangement with the NPO failed to comply with the relevant GPPB issuances, the fact remains that the government benefited from Topbest’s printing services, the rendering of which entailed the consumption of resources supplied by Topbest. These

²⁵ *Id.* at 1159–1160.

²⁶ *Id.* at 1148–1149.

²⁷ G.R. No. 254077, August 2, 2022 [Per J. Dimaampao, *En Banc*].

resources have become expenses which can no longer be replaced or recouped if Topbest is ordered to refund the entire amount it received from the NPO.

This situation is precisely what is contemplated by the principle of *quantum meruit*. If Topbest is made to return all the amounts it was paid, the government would have effectively enjoyed printing services for nine months (April to December 2017),²⁸ completely free of charge.

The *ponencia* rejects the application of the principle of *quantum meruit* in favor of Topbest because it availed of the wrong remedy against the COA-NGAS Decision which affirmed the subject disallowance. Because of this procedural error, the COA-NGAS Decision became final and executory. The *ponencia* cites immutability of judgments to essentially say that the COA-NGAS Decision can no longer be altered, and that none of the recognized exemptions to this principle are present in this case. Finally, the *ponencia* also says that the government would not be unjustly enriched by Topbest's refund because the return of the subject amounts "is a just cause" and is required by law given the immutable nature of the COA-NGAS Decision.

Respectfully, the *ponencia* misunderstands both *quantum meruit* and unjust enrichment.

At the end of the day, the principles of *quantum meruit* and unjust enrichment are rooted in fairness and substantial justice. In *EPG Construction Co. v. Hon. Vigilar*,²⁹ the Court rejected the Department of Public Works and Highways' act of evading the payment of contracts that had been completed, and from which the government had already benefited, **despite the fact that the said contracts were void**. The Court held:

Although this Court agrees with respondent's postulation that **the "implied contracts," which covered the additional constructions, are void, in view of violation of applicable laws, auditing rules and lack of legal requirements**, we nonetheless find the instant petition laden with merit and uphold, in the interest of substantial justice, petitioners-contractors' right to be compensated for the "additional constructions" on the public works housing project, applying the principle of *quantum meruit*.

... Equally important is the glaring fact that the construction of the housing units had already been completed by petitioners-contractors and the subject housing units had been, since their completion, under the control and disposition of the government pursuant to its public works housing project.

²⁸ See the COA-NGAS Decision, *rollo*, p. 31.

²⁹ 407 Phil. 53 (2001) [Per J. Buena, Second Division].

To our mind, it would be the apex of injustice and highly inequitable for us to defeat petitioners-contractors' right to be duly compensated for actual work performed and services rendered, where both the government and the public have, for years, received and accepted benefits from said housing project and reaped the fruits of petitioners-contractors' honest toil and labor.³⁰ (Emphasis supplied; citation omitted)

Relevantly, the Court has, on many occasions, relaxed the rule on immutability of judgments in the interest of substantial justice. In *Republic of the Philippines v. Dagondon*,³¹ the Court delved into the merits of a case for reconstitution of an Original Certificate of Title and even resolved the same in favor of therein petitioner despite the fact that the decision of the court *a quo* had already become final and executory because of therein petitioner's failure to timely file a motion for reconsideration. The Court said that the mandatory nature of the rule on immutability of final judgments "**was not designed to be an inflexible tool to excuse and overlook prejudicial circumstances. Hence, the doctrine must yield to practicality, logic, fairness, and substantial justice.**"³²

The earlier cited case of *Estalilla* also strongly supports the substantial justice considerations in the instant case. *Estalilla* involved a COA disallowance of payments made under a contract between the government (the Municipality of Cabuyao, Laguna) and a private entity. The payments were disallowed because they were charged to the municipality's 2005 budget, despite having been incurred in 2004, contrary to Republic Act No. 7160 (the Local Government Code) and Presidential Decree No. 1445 (Auditing Code of the Philippines). Despite therein petitioner's belated efforts to appeal the NDs issued against her, the Court relaxed the rule on immutability of judgments given the social justice considerations: the gross disparity between her salary and the amount she is being held liable for.

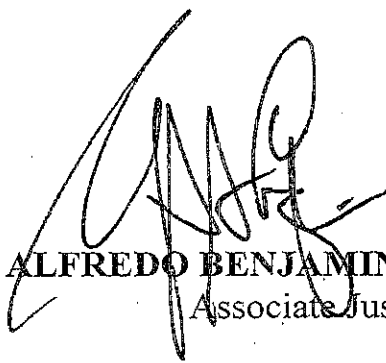
As stated at the outset, the very same principles in *Estalilla* as to the relaxations of the rule on finality of judgment must be applied to the instant case. Despite the irregularity of its arrangement with the NPO, Topbest rendered services to the government, services which were the core of its business and from which the government undeniably benefited. To reap these benefits and at the same time retain the compensation due for those services constitutes grave injustice on the part of the government and must not be allowed by this Court.

³⁰ *Id.* at 61 and 64.

³¹ 785 Phil. 210 (2016) [Per J. Perlas-Bernabe, First Division].

³² *Id.* at 215-216. (Citation omitted.)

ACCORDINGLY, I vote to **PARTLY GRANT** the Petition for *Certiorari* and **REMAND** the case to the Commission on Audit for the determination of petitioner Topbest Printing Corporation's liability in Notice of Disallowance No. 19-001-207542-(17) after the application of *quantum meruit*.



ALFREDO BENJAMIN S. CAGUIOA
Associate Justice