EN BANC

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

Promulgated:

August 22, 2023

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CONCURRING AND DISSENTING OPINION

KHO, JR., *J.*:

I concur with the *ponencia* insofar as it upheld that the disallowance made by the Commission on Audit (COA) on the payments made to petitioner Topbest Printing Corporation (petitioner) for violating Republic Act No. 9970,[1] or the "General Appropriations Act of 2010," and Government Procurement Policy Board Resolution No. 05-2010 which prohibit the National Printing Office (NPO) from subcontracting its printing work.

Further, I similarly concur with the *ponencia*'s finding that petitioner failed to file an appeal before the COA within the reglementary period. Hence, petitioner is now barred from filing the present petition considering that the COA National Government Audit Sector (NGAS) Cluster 1 decision has already become final and executory for failure to appeal the same within the prescribed reglementary period under Section 48[2] of Presidential Decree No. 1445 and Section 3,[3] Rule VII of the 2009 Revised Rules of Procedure of the COA. Thus, a judgment without proper appeal therefrom that lapses into finality becomes final and immutable – hence, the present petition should have been dismissed outright for being filed out of time.[4]

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1 Entitled "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 Ten, and for Other Purposes," approved on January 1, 2010.

2 Section 48. *Appeal from Decision of Auditors.* – Any person aggrieved by the decision of an auditor of any government agency in the settlement of an account or claim may within six months from receipt of a copy of the decision appeal in writing to the Commission.

3 Section 3. *Period of Appeal.* – The appeal shall be taken within the time remaining of the six (6) months period under Section 4, Rule V, taking into account the suspension of the running thereof under Section 5 of the same Rule in case of appeals from the Director's decision, or under Sections 9 and 10 of Rule VI in case of decision of the [Adjudication and Selection Board].

4 Presidential Decree No. 1445, Section 51 provides:

> Section 51. Finality of decisions of the Commission or any auditor. A decision of the Commission or of any auditor upon any matter within its or his jurisdiction, if not appealed as herein provided, shall be final and executory.

While I concur with the foregoing disquisitions of the *ponencia*, I, however, respectfully diverge from the *ponencia*'s holding with respect to the determination of liabilities. Considering the circumstances of the present case, I opine that the amount to be returned by petitioner should have been tempered by the principle of *quantum meruit* as established in *Torreta v. COA*[5] (*Torreta*) despite the Notice of Disallowance having become final and immutable.

The doctrine of finality and immutability of judgment is not a hard and fast rule. In *Aguinaldo IV v. People*[6] (*Aguinaldo IV*), the Court, through Justice Estela M. Perlas-Bernabe, reiterated the Court's appreciation of the doctrine of finality and immutability of judgment:

> Time and again, the Court has repeatedly held that "a decision 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 and law, and whether it be made by the court that rendered it or by the Highest Court of the land. This principle, known as the doctrine of immutability of judgment, has a two-fold purpose, namely: (a) to avoid delay in the administration of justice and thus, procedurally, to make orderly the discharge of judicial business; and (b) to put an end to judicial controversies, at the risk of occasional errors, which is precisely why courts exist. Verily, it fosters the judicious perception that the rights and obligations of every litigant must not hang in suspense for an indefinite period of time. As such, it is not regarded as a mere technicality to be easily brushed aside, but rather, a matter of public policy which must be faithfully complied." However, this doctrine "is not a hard and fast rule as the Court has the power and prerogative to relax the same in order to serve the demands of substantial justice considering: (a) matters of life, liberty, honor, or property; (b) the existence of special or compelling circumstances; (c) the merits of the case; (d) a cause not entirely attributable to the fault or negligence of the party favored by the suspension of the rules; (e) the lack of any showing that the review sought is merely frivolous and dilatory; and (f) that the other party will not be unjustly prejudiced thereby."[7]

A reading of the Court's discussion in *Aguinaldo IV* leads to the understanding that the doctrine of finality and immutability of judgment may still be relaxed despite the absence of the known exceptions "in order to serve the demands of substantial justice considering: (*a*) matters of life, liberty,

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(See also Paguio v. Commission on Audit, G.R. No. 223547, April 27, 2021, citing *Republic v. Heirs of Cirilo Gotengco*, G.R. No. 226355, January 24, 2018.)

5 G.R. No. 242925, November 10, 2020. [Per J. Gaerlan, En Banc]

6 G.R. No. 226615. January 13, 2021 [*En Banc*]. See also *Uy v. Del Castillo*, 814 Phil. 61 (2017) [Per J. Perlas-Bernabe, First Division]; *Bigler v. People*, 782 Phil. 158 (2016) [Per J. Perlas-Bernabe, First Division]; *Sumbilla v. Matrix Finance Corporation*, 762 Phil. 130 (2015) [Per J. Villarama, Jr., Third Division]; *Barnes v. Padilla*, 482 Phil. 903 (2004) [Per J. Austria-Martinez, Second Division]; *Sanchez v. Court of Appeals*, 452 Phil. 665 (2003) [Per J. Bellosillo, *En Banc*].

7 *Aguinaldo IV v. People*, id., citing *Uy v. Del Castillo*, id. at 74-75 (2017).

honor, or property; (*b*) ***the existence of special or compelling circumstances***; (*c*) ***the merits of the case***; (*d*) a cause not entirely attributable to the fault or negligence of the party favored by the suspension of the rules; (*e*) the lack of any showing that the review sought is merely frivolous and dilatory; and (*f*) ***that the other party will not be unjustly prejudiced thereby***."[8]

Here, the finality of the COA NGAS Cluster 1 decision may be relaxed based on the second, third, and sixth factors as cited above. In this relation, the Court's ratiocination of the applicability of the principle of *quantum meruit* in *Torreta* exactly provides justification in relaxing the doctrine of finality and immutability of judgment. In allowing for the reduction of liability based on *quantum meruit*, the Court explained:

> Verily, the peculiarity of cases involving government contracts for procurement of goods or services necessitates the promulgation of a separate guidelines for the return of the disallowed amounts. In these cases, it is deemed fit that the passive recipients be ordered to return what they received subject to the application of the principle of *quantum meruit*. ***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.[9] (Emphasis supplied)

Applying *Torreta*, the government unjustly enriching itself is a compelling circumstance for the Court to relax the doctrine of finality and immutability of judgment. In the same manner, the government will not be unjustly prejudiced in relaxing the principle because the government would have already benefitted from the disbursement of public funds. Here, the government benefited as a result of using petitioner's equipment and its performance of printing services which arose from the agreement entered between petitioner and NPO. To require petitioner to return the entire amount that it received from NPO would be contrary to the demands of justice and equity.

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8 Id.

9 *Torreta v. COA*, G.R. No. 242925, November 10, 2020; citations omitted.

ACCORDINGLY, I vote to **REMAND** the case to the Commission on Audit for the determination of petitioner Topbest Printing Corporation's liability in the Notice of Disallowance No. 19-001-207542-17.

ANTONIO T. KHO, JR.
Associate Justice