

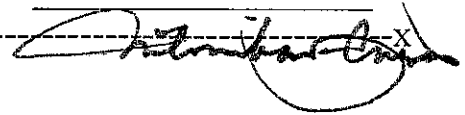
*EN BANC*

**G.R. No. 258159 – EFRAIM C. GENUINO, *Petitioner* v. COMMISSION ON AUDIT (COA), COMMISSION PROPER, OFFICE OF THE DIRECTOR, CORPORATE GOVERNMENT SECTOR, CLUSTER 6, represented by DIRECTOR JOSEPH B. ANACAY, and OFFICE OF THE SUPERVISING AUDITOR, represented by BELEN B. LADINES in her capacity as COA Supervising Auditor – Philippine Amusement and Gaming Corporation, *Respondents*.**

Promulgated:

June 13, 2023

X-----



**CONCURRING AND DISSENTING OPINION**

**KHO, JR., J.:**

I concur with the *ponencia* insofar as it upholds the Court's ruling in *Genuino v. Commission on Audit* dated February 13, 2023 (2023 *Genuino* Decision),<sup>1</sup> which held that the Commission on Audit (COA) *now has the power to examine and audit all funds pertaining to government-owned or controlled corporations with original charters* including that of the Philippine Amusement and Gaming Corporation (PAGCOR). The 2023 *Genuino* Decision overturned the doctrine holding that the COA had limited jurisdiction over PAGCOR as enunciated in the original Decision<sup>2</sup> dated June 15, 2021 (2021 *Genuino* Decision) and the earlier case of *Figueroa v. Commission on Audit* dated April 27, 2021 (2021 *Figueroa* Decision).<sup>3</sup>

I likewise concur with the *ponencia* in upholding the 2023 *Genuino* Decision's finding that the latter's ruling is intended to be prospective in application following the ruling in *People v. Jabinal*,<sup>4</sup> where the new doctrine "*should not apply to parties who had relied on the old doctrine and acted on the faith thereof.*"<sup>5</sup>

However, I respectfully express my dissent on the *ponencia*'s determination of the propriety of the disallowance and the petitioner's liability despite the pronouncement made in the 2023 *Genuino* Decision, as restated by the present *ponencia*, that the new doctrine on the expanded audit jurisdiction of the COA shall be applied prospectively. In this regard, I take

<sup>1</sup> G.R. Nos. 230818 & 244540, February 14, 2023 [Per J. Hernando, *En Banc*].

<sup>2</sup> G.R. No. 230818 [Per J. Delos Santos, *En Banc*].

<sup>3</sup> G.R. Nos. 213212, 213497, and 213655 [Per J. Gaerlan, *En Banc*].

<sup>4</sup> 154 Phil. 565 (1974) [Per J. Antonio, Second Division].

<sup>5</sup> *Id.*



this opportunity to reiterate the views I made in my Concurring and Dissenting Opinion in the 2023 *Genuino* Decision (2023 *Genuino* Opinion), where I posited that the ruling in the 2023 *Genuino* Decision should not be applied to the disbursement made herein following the rules of retroactivity and prospectivity of judicial decisions. Salient portions of said Opinion read:<sup>6</sup>

In *Senarillos v. Hermosisima*,<sup>[7]</sup> the Court *En Banc*, speaking through Justice Jose Benedicto Luis L. Reyes, laid down the fundamental rule that interpretations of the law made by the Supreme Court constitute part of the law as of the date it was originally passed since the Court's construction merely establishes the contemporaneous legislative intent that the interpreted law carried into effect.<sup>[8]</sup>

However, this canonical rule on retroactivity of judicial rulings admits of an exception. In *People v. Jabinal*,<sup>[9]</sup> the Court, through Associate Justice Felix Q. Antonio, first laid down the rule that a new doctrine made by the Court shall be applied prospectively when an old doctrine is overruled and a different view is adopted, *viz*[:]

It will be noted that when appellant was appointed Secret Agent by the Provincial Governor in 1962, and Confidential Agent by the Provincial Commander in 1964, the prevailing doctrine on the matter was that laid down by Us in *People vs. Macarandang* (1959) and *People vs. Lucero* (1958). Our decision in *People vs. Mapa* reversing the aforesaid doctrine came only in 1967. The sole question in this appeal is: Should appellant be acquitted on the basis of Our rulings in *Macarandang* and *Lucero*, or should his conviction stand in view of the complete reversal of the *Macarandang* and *Lucero* doctrine in *Mapa*? The Solicitor General is of the first view, and he accordingly recommends reversal of the appealed judgment.

Decisions of this Court, although in themselves not laws, are nevertheless evidence of what the laws mean, and this is the reason why under Article 8 of the New Civil Code, "Judicial decisions applying or interpreting the laws or the Constitution shall form a part of the legal system x x x." The interpretation upon a law by this Court constitutes, in a way, a part of the law as of the date that law was originally passed, since this Court's construction merely establishes the contemporaneous legislative intent that the law thus construed intends to effectuate. The settled rule supported by numerous authorities is a restatement of the legal maxim "*legis interpretatio legis vim obtinet*" - the interpretation placed upon the written law by a competent court has the

<sup>6</sup> See my Concurring and Dissenting Opinion in *Genuino v. COA*, G.R. Nos. 230818 & 244540, February 14, 2023.

<sup>7</sup> 100 Phil. 501 (1956) [Per J. J.B.L. Reyes].

<sup>8</sup> *Id.* See also *People v. Jabinal*, *supra*; *Commissioner of Internal Revenue v. Republic Cement Corporation*, 233 Phil. 507 (1987) [Per J. Cortes, *En Banc*]; *Eagle Realty Corporation v. Republic*, 579 Phil. 355 (2008) [Per J. Nachura, Third Division]; *Republic v. Remman Enterprises*, 727 Phil. 608 (2014) [Per J. B. Reyes, First Division].

<sup>9</sup> *Supra*.

force of law. The doctrine laid down in *Lucero* and *Macarandang* was part of the jurisprudence, hence, of the law, of the land, at the time appellant was found in possession of the firearm in question and when he was arraigned by the trial court. It is true that the doctrine was overruled in the *Mapa* case in 1967, but when a doctrine of this Court is overruled and a different view is adopted, the new doctrine should be applied prospectively, and should not apply to parties who had relied on the old doctrine and acted on the faith thereof. This is especially true in the construction and application of criminal laws, where it is necessary that the punishability of an act be reasonably foreseen for the guidance of society.

It follows, therefore, that considering that appellant was conferred his appointments as Secret Agent and Confidential Agent and authorized to possess a firearm pursuant to the prevailing doctrine enunciated in *Macarandang* and *Lucero*, under which no criminal liability would attach to his possession of said firearm in spite of the absence of a license and permit therefor, appellant must be absolved. Certainly, appellant may not be punished for an act which at the time it was done was held not to be punishable.<sup>[10]</sup>

The rationale behind the rule on prospectivity of judicial decisions was expounded by the Court *En Banc*, through Justice Florenz D. Regalado, in *Columbia Pictures, Inc. v. Court of Appeals*,<sup>[11]</sup> viz.:

It is consequently clear that a judicial interpretation becomes a part of the law as of the date that law was originally passed, subject only to the qualification that when a doctrine of this Court is overruled and a different view is adopted, and more so when there is a reversal thereof, the new doctrine should be applied prospectively and should not apply to parties who relied on the old doctrine and acted in good faith. To hold otherwise would be to deprive the law of its quality of fairness and justice then, if there is no recognition of what had transpired prior to such adjudication.

x x x x

Withal, even the proposition that the prospectivity of judicial decisions imports application thereof not only to future cases but also to cases still ongoing or not yet final when the decision was promulgated, should not be countenanced in the jural sphere on account of its inevitably unsettling repercussions. x x x.<sup>[12]</sup>

Based on the foregoing rulings by the Court, the rule on prospectivity of judicial decisions applies to cases where parties relied on a

<sup>10</sup> Id.

<sup>11</sup> 329 Phil. 875 (1996).

<sup>12</sup> Id.

previous ruling of the Court. Thus, it appears from these Court decisions that the old doctrine – that [the] COA has limited jurisdiction over disbursements made by PAGCOR – applies only to the period between the finality of the 2021 *Genuino* Decision and the finality of the present *ponencia*, and that the new doctrine – that the audit jurisdiction of [the] COA covers all funds of PAGCOR regardless of source – applies to transactions made after the finality of the present *ponencia*. This is because the approving and certifying officers may rely on the 2021 *Genuino* Decision in good faith in making disbursements covering the period between the two *ponencias*.

Similar to the 2023 *Genuino* Decision, the present *ponencia* applied the new doctrine for transactions made prior to the finality of the old doctrine as enunciated in the 2021 *Genuino* Decision. In particular, the present *ponencia* held that petitioner could not have relied on the 2021 *Genuino* Decision as the disallowed transactions occurred in 2008 and 2009, *viz.*:

The Court, in this case, relies in large part on the pronouncements in the 2023 *Genuino* Decision to anchor this Decision.

While the 2023 *Genuino* Decision is intended to be prospective in application, in order to “not affect parties who had relied on, and acted upon, the force of former contrary views,” the Court finds that this statement would not apply with regard to *Genuino* specifically in relation to the facts of this case.

The disallowed transactions in this case occurred in 2008 and 2009, while the transaction disallowed in the 2023 *Genuino* Decision occurred in 2010. It can hardly be said, therefore, that *Genuino* could have relied on the doctrine the Court laid down in the 2021 *Genuino* Decision, which was promulgated on June 15, 2021, and which was reversed, after judicious study, in the 2023 *Genuino* Decision. If *Genuino* is liable for the transaction subject of the 2023 *Genuino* Decision, he must, with equal force, be held liable for the transactions subject of this case.<sup>13</sup>

Following the cited discussion in the 2023 *Genuino* Opinion, the present *ponencia* however should not have made a determination of the petitioner’s liability herein following the rules on retroactivity and prospectivity of judicial decisions as earlier discussed herein.

Furthermore, my aforementioned Concurring and Dissenting Opinion cited *Philippine International Trading Corporation v. COA (PITC)*,<sup>14</sup> wherein the Court *En Banc*, through Justice Teresita J. Leonardo-De Castro, held that its prior ruling in relation to the interpretation of Executive Order No. 756 should **retroactively apply** considering that it did not reverse an old doctrine nor adopt a new one:

<sup>13</sup> See *ponencia*, pp. 5-6.

<sup>14</sup> 821 Phil. 144 (2017).

Applying the foregoing disquisition to the present case, the Court disagrees with PITC's position that the Decision in G.R. No. 183517 should be applied prospectively.

As the COA correctly argued, the Decision in G.R. No. 183517 neither reversed an old doctrine nor adopted a new one. The Court merely construed therein the meaning and application of Section 6 of Executive Order No. 756 by taking into consideration the rationale behind the provision, its interplay with pre-existing retirement laws, and the subsequent enactments and statutes that eventually repealed the same. **Prior to the Decision in G.R. No. 183517, there was no other ruling from this Court that explained the nature of the retirement benefits under Section 6 of Executive Order No. 756. Thus, the Court's interpretation of the aforesaid provision embodied in the Decision in G.R. No. 183517 retroacts to the date when Executive Order No. 756 was enacted.**<sup>15</sup>  
(Emphasis and underscoring supplied)

Similarly applying *PITC* to the present case, the 2021 *Genuino* Decision enunciating the old doctrine that the COA had a limited auditing jurisdiction over PAGCOR should be retroactively applied and remain in force when it comes to disbursements made prior to the said case. ***Similar to PITC, the 2021 Figueroa Decision and thereafter the 2021 Genuino Decision neither reversed an old doctrine nor adopted a new one. In fact, the 2021 Genuino Decision even reiterated the earlier 2021 Figueroa Decision which was the first case addressing the issue of the COA's audit jurisdiction over disbursements made by PAGCOR prior to the present cases.*** As I have previously stated, to hold otherwise amounts to the Court punishing parties who relied on their long-standing belief in good faith that the COA only had limited jurisdiction – based on the PAGCOR Charter – which was in fact reaffirmed by all the members of the Court *En Banc* in the 2021 *Genuino* Decision.

Moreover, it is likewise worth reiterating that the present situation of petitioner is ***akin to the badges of good faith*** as discussed in *Madera v. COA*.<sup>16</sup> In the said case, the Court, through Justice Alfredo Benjamin S. Caguioa, adopted Justice Marvic M.V.F. Leonen's badges of good faith in determining an officer's liability. The badges of good faith are:

- (1) Certificates of Availability of Funds pursuant to Section 40 of the Administrative Code, (2) In-house or Department of Justice legal opinion, (3) **that there is no precedent disallowing a similar case in jurisprudence;**<sup>[17]</sup> (4) that it is traditionally practiced within the agency and no prior disallowance has been issued, [and] (5) **with regard the question**

<sup>15</sup> Id. at 156-157.

<sup>16</sup> G.R. No. 244128, September 8, 2020. [*En Banc*].

<sup>17</sup> Prior to the 2021 *Figueroa* and *Genuino* Decisions, there was no case law which affirmed the disallowance made by COA.

**of law, that there is a reasonable textual interpretation on its legality.**<sup>[18]</sup> (Emphases supplied)

In view of the foregoing, I maintain the view that the Court's reversal made in the 2023 *Genuino* Decision ***should not be applied*** to the disbursements made in the disallowance made herein. Hence, the Court should no longer look into the propriety of the disbursement as well as the corresponding liabilities of the approving and/or certifying officers and the recipients herein.

**ACCORDINGLY**, I vote to **PARTLY GRANT** the petition and **SET ASIDE** the Commission on Audit Decision Nos. 2019-115 dated April 22, 2019 and 2021-263 dated October 7, 2021.

  
**ANTONIO T. KHO, JR.**  
Associate Justice

---

<sup>18</sup> The present *ponencia* and the 2021 *Figueroa* and *Genuino* Decisions exhibit reasonable textual interpretation on the legality of the disbursements made by PAGCOR.