SUPREME COURT
SECOND DIVISION

METROMEDIA TIMES CORPORATION and/or ROBINA GOKONGWIE-PE,
***Petitioner*,**

-versus-

G.R. No. 154295
July 29, 2005

JOHNNY PASTORIN,
***Respondent*.**
x----------x

D E C I S I O N

TINGA, *J.*:

At issue in this Petition for Review[1] on certiorari under Rule 45 is whether or not lack of jurisdiction over the subject matter of the case, heard and decided by the labor arbiter, may be raised for the first time before the National Labor Relations Commission (NLRC) by a litigant who had actively participated in the proceedings, which it belatedly questioned.

The facts, culled from the records, are as follows:

Johnny Pastorin (Respondent) was employed by Metromedia Times Corporation (Petitioner) on 10 December 1990 as a Field Representative/Collector. His task entailed the periodic collection of

receivables from dealers of petitioner's newspapers. Prior to the subject incident, respondent claimed to have received a termination letter dated 7 May 1998 from management terminating his services for tardiness effective 16 June 1988. Respondent, member of Metro Media Times Employees Union, was not dismissed due to the intervention of the labor union, the collective bargaining agent in the company.

In May 1998, he obtained a loan from one of the dealers whom he dealt with, Gloria A. de Manuel (De Manuel), amounting to Nine Thousand Pesos (P9,000.00). After paying One Thousand One Hundred Twenty-five Pesos (P1,125.00), respondent reneged on the balance of his loan. De Manuel wrote a letter dated 6 July 1998 to petitioner, and seeking assistance for collection on the remainder of the loan. She claimed that when respondent became remissed on his personal obligation, he stopped collecting periodically the outstanding dues of De Manuel.[2]

On 9 July 1998, petitioner sent a letter addressed to respondent, requiring an explanation for the transaction with De Manuel, as well as for his failure to pay back the loan according to the conditions agreed upon. In his reply letter[3] dated 13 July 1998, respondent admitted having incurred the loan, but offered no definitive explanation for his failure to repay the same.

Petitioner, through a Memorandum[4] dated 24 August 1998, imposed the penalty of suspension on respondent for 4 days, from 27 August to 1 September 1998, for violating Company Policy No. 2.17[5] and ordered his transfer to the Administration Department.

On 2 September 1998, respondent wrote a letter[6] to petitioner, stating that he wanted to sign a transfer memo before assuming his new position.

On September 7, 1998, he was handed the Payroll Change Advice[7] (PCA), indicating his new assignment to the Traffic and Order Department of Metromedia. Nonetheless, respondent stopped reporting for work. On 16 September 1998, he sent a letter[8] to petitioner communicating his refusal to accept the transfer.

Respondent duly filed a complaint for constructive dismissal, non-payment of backwages and other money claims with the labor arbiter, a copy of which petitioner received on 28 September 1998. The complaint was resolved in favor of respondent. In a Decision[9] dated 28 May 1999, Labor Arbiter Manuel P. Asuncion concluded that respondent did not commit insubordination or disobedience so as to warrant his transfer, and that petitioner was not aggrieved by respondent's failure to settle his obligation with De Manuel. The dispositive portion read:

> WHEREFORE, the respondents are hereby ordered to reinstate the complainant to his former position, with full backwages from the time his salary was withheld until he is actually reinstated. As of this date, the complainant's backwages has reached the sum of P97,324.17. The respondents are further directed to pay the complainant his 13th month pay for 1998 in the sum of P3,611.89. The claims for allowance and unpaid commission are dismissed for lack of sufficient basis to make an award.
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> SO ORDERED.[10]

Petitioner lodged an appeal with the NLRC, raising as a ground the lack of jurisdiction of the labor arbiter over respondent's complaint. Significally, this issue was not raised by petitioner in the proceedings before the Labor Arbiter. In its Decision[11] dated 16 March 2001, the NLRC reversed the Labor Arbiter on the ground that thee latter had no jurisdiction over the case, it being a grievance issue properly cognizable by the voluntary arbitrator. The decretal portion of the NLRC Decision reads:

> WHEREFORE, the decision under review is REVERSED and SET ASIDE, and a new one entered, DISMISSING the complaint for lack of jurisdiction.
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> SO ORDERED.[12]

The motion for reconsideration having been denied on 18 May 2001, respondent elevated the case before the Court of Appeals (CA) through a petition for certiorari[13] under Rule 65.

The CA Fifteenth Division reversed the Decision of NLRC, and reinstated the earlier ruling of the Labor Arbiter. Adopting the doctrines by this Court in the cases of Alfredo Marquez vs. Sec. of Labor[14] and ABS-CBN Supervisors Employees Union Members vs. ABS-CBN Broadcasting Corporation,[15] the CA ruled that the active participation of the party against whom the action was brought, coupled with his failure to object to the jurisdiction of the court or quasi-judicial body where the action is pending, is tantamount to an invocation of that jurisdiction and a willingness to abide by the resolution of the case and will bar said party from later on impugning the court or body's jurisdiction. The appellate court then disposed the case in this wise:

> WHEREFORE, foregoing premises considered, the petition having merit, in fact and in law, is hereby GIVEN DUE COURSE. Accordingly, the challenged resolution/decision and orders of public respondent NLRC are hereby REVERSED and SET ASIDE and the decision of the Labor Arbiter dated May 28, 1999 REINSTATED with a slight modification, that the 13th month pay be in the amount of P7,430.50. No costs.
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> SO ORDERED.[16]

Petitioner sought reconsideration[17] of the above Decision[18] but the CA denied the motion in the assailed Resolution[19] dated 27 June 2002. Hence, its recourse to this Court, elevating the following issues:

I.

> WHETHER OR NOT METROMEDIA IS ESTOPPED FROM QUESTIONING THE JURISDICTION OF THE LABOR ARBITER OVER THE SUBJECT MATTER OF THE CASE FOR THE FIRST TIME ONLY IN THEIR APPEAL BEFORE THE NLRC.

II.

> WHETHER OR NOT THE AWARD OF 13TH MONTH PAY BY THE LABOR ARBITER MAY BE MODIFIED, NOTWITHSTANDING THAT THE SAME WAS NEVER ASSIGNED AS AN ERROR.

Anent the first assignment of error, there are divergent jurisprudential doctrines touching on this issue. On the one hand are the cases of Martinez vs. Merced,[20] Marquez vs. Secretary of Labor,[21] Ducat vs. Court of Appeals,[22] Bayoca vs. Nogales,[23] Jimenez vs. Patricia,[24] Centeno vs. Centeno,[25] and ABS-CBN Supervisors Employee Union Members vs. ABS-CBN Broadcasting Corporation,[26] all adhering to the doctrine that a party's active participation in the actual proceedings before a court without jurisdiction will estop him from assailing such lack of jurisdiction. Respondent heavily relies on this doctrinal jurisprudence.

On the other hand, the cases of Dy vs. NLRC,[27] La Naval Drug vs. CA,[28] De Rossi vs. CA[29] and Union Motors Corporation vs. NLRC[30] buttress the position of petitioner that jurisdiction is conferred by law and lack of jurisdiction may be questioned at any time even on appeal.

The Court of Appeals adopted the principles in the cases of Martinez, Marquez and ABS-CBN in resolving the jurisdictional issue presented for its resolution, to wit:

> Indeed, we agree with petitioner that private respondent was estopped from raising the question of jurisdiction before public respondent NLRC and the latter gravely abused its discretion in addressing said question in private respondents' favor. As early as Martinez vs. De la Merced, 174 SCRA 182, the Supreme Court has clearly ruled thus: "For it has been consistently held by this Court that while lack of jurisdiction may be assailed at any stage, a party's active participation in the proceedings before a court without jurisdiction will estop such party from assailing such lack of jurisdiction."

> The same principle was adopted by the Highest Tribunal in the case of Alfredo Marquez vs. Sec. of Labor, 171 SCRA 337 and quoted in the latter case of ABS-CBN Supervisors Employees Union Members vs. ABS-CBN Broadcasting Corporation, 304 SCRA 497, where it was ruled that: "The active participation of the party against whom the action was brought, coupled with his failure to object to the jurisdiction of the court or quasi-judicial body where the action is pending, is tantamount to an invocation of that jurisdiction and a willingness to abide by the resolution of the case and will bar said party from later on impugning the court or body's jurisdiction."[31]

We rule differently. A cursory glance at these cases will lead one to the conclusion that a party who does not raise the jurisdictional question at the outset will be estopped to raise it on appeal. However, a more circumspect analysis would reveal that the cases cited by respondent do not fall squarely within the issue and factual circumstances of the instant case. We proceed to demonstrate.

The notion that the defense of lack of jurisdiction may be waived by estoppel on the party invoking the same most prominently emerged in Tijam vs. Sibonghanoy.[32] Indeed, the Marquez case relied upon by the CA is in turn grounded on Tijam, where We held that:

> x x x a party can not invoke the jurisdiction of a court to secure affirmative relief against his opponent and, after obtaining or failing to obtain such relief, repudiate or question that same jurisdiction (Dean vs. Dean, 136 Or. 694, 86 A.L.R. 79). In the case just cited, by way of explaining the rule, it was further said that the question whether the court had jurisdiction either of the subject-matter of the action or of the parties is barred from such conduct not because the judgment or order of the court is valid and conclusive as an adjudication, but for the reason that such a practice can not be tolerated—obviously for reasons of public policy.
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> Furthermore, it has also been held that after voluntarily submitting a cause and encountering an adverse decision on the merits, it is too late for the loser to question the jurisdiction or power of the court. And in Littleton vs. Burges, 16 Wyo, 58, the

> Court said that it is not right for a party who has affirmed and invoked the jurisdiction of a court in a particular matter to secure an affirmative relief, to afterwards deny that same jurisdiction to escape a penalty.[33]

However, Tijam represented an exceptional case wherein the party invoking lack of jurisdiction did so only after fifteen (15) years, and at a stage when the proceedings had already been elevated to the Court of Appeals. Even Marquez recognizes that Tijam stands as an exception, rather than a general rule.[34] The CA perhaps though felt comfortable citing Marquez owing to the pronouncement therein that the Court would not hesitate to apply Tijam even absent the extraordinary circumstances therein:

> "where the entertainment of the jurisdictional issue at a belated stage of the proceedings will result in a failure of justice and render nugatory the constitutional imperative of protection to labor."[35]

In this case, jurisdiction of the labor arbiter was questioned as early as during appeal before the NLRC, whereas in Marquez, the question of jurisdiction was raised for the first time only before this Court. The viability of Marquez as controlling doctrine in this case is diminished owing to the radically different circumstances in these two cases. A similar observation can be made as to the Bayoca and Jimenez cases.[36]

Neither do the other like-minded cases squarely settle the issue in favor of the respondent. In the case of Martinez, the issue is not jurisdiction by estoppel but waiver of preliminary conference. In that case, we said:

> As pointed out by petitioners, private respondents had at least three opportunities to raise the question of lack of preliminary conference first, when private respondents filed a motion for extension of time to file their position paper; second, at the time when they actually filed their position paper in which they sought affirmative relief from the Metropolitan Trial Court; and third; when they filed a motion for reconsideration of the order of the Metropolitan Trial Court expunging from the records the

> position paper of private respondents, in which motion private respondents even urged the court to sustain their position paper. And yet, in none of these instances was the issue of lack of preliminary conference raised or even hinted at by private respondents. In fine, these are acts amounting to a waiver of the irregularity of the proceedings. For it has been consistently held by this Court that while lack of jurisdiction may be assailed at any stage, a party's active participation in the proceedings before a court without jurisdiction will estop such party from assailing such lack of jurisdiction.[37]

The case of Ducat was categorical in saying that if the parties acquiesced in submitting an issue for determination by the trial court, they are estopped from questioning the jurisdiction of the same court to pass upon the issue. But this should be taken in the context of the "agreement" of the parties. We quote from said case:

> Petitioner's filing of a Manifestation and Urgent Motion to Set Parameters of Computation is indicative of its conformity with the questioned order of the trial court referring the matter of computation of the excess to SGV and simultaneously thereafter, the issuance of a writ of possession. If petitioner thought that subject order was wrong, it could have taken recourse to the Court of Appeals but petitioner did not. Instead he manifested his acquiescence in the said order by seeking parameters before the trial court. It is now too late for petitioner to question subject order of the trial court. Petitioner cannot be allowed to make a mockery of judicial processes, by changing his position from one of the agreement to disagreement, to suit his needs. If the parties acquiesced in submitting an issue for determination by the trial court, they are estopped from questioning the jurisdiction of the same court to pass upon the issue. Petitioner is consequently estopped from questioning subject order of the trial court.[38]

Centeno involved the question of jurisdiction of the Department of Agrarian Reform Arbitration Board (DARAB). The Court did rule therein that "participation by certain parties in the administrative proceedings without raising any objection thereto, bars them from any jurisdictional infirmity after an adverse decision is rendered

against them."[39] Still, the Court did recognize therein that the movants questioning jurisdiction had actually sought and litigated for affirmative reliefs before the DARAB in support of a submitted counterclaim. No similar circumstance obtains in this case concerning the petitioner.

Evidently, none of these cited precedents squarely operates as stare decisis on this case, involving as they did different circumstances. The question now lies as to whether the precedents cited by petitioner are more apropos to this case.

Petitioner seeks to convince this Court that the instant case falls squarely within the purview of this Court's ruling in the case of Dy. Admittedly, a different factual mileu was present insofar as the questioned jurisdiction was alleged to have been properly lodged in the SEC instead of NLRC. Yet the rationale employed by the Court therein warrants serious consideration. The aforementioned case was ruled in this wise:

> More importantly, estoppel cannot be invoked to prevent this Court from taking up the question of jurisdiction, which has been apparent on the face of the pleadings since the start of litigation before the Labor Arbiter. It is well settled that the decision of a tribunal not vested with appropriate jurisdiction is null and void. Thus, in Calimlim vs. Ramirez, this Court held:
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> > "A rule that had been settled by unquestioned acceptance and upheld in decisions so numerous to cite is that the jurisdiction of a court over the subject matter of the action is a matter of law and may not be conferred by consent or agreement of the parties. The lack of jurisdiction of a court may be raised at any stage of the proceedings, even on appeal. This doctrine has been qualified by recent pronouncements which stemmed principally from the ruling in the cited case of Sibonghanoy. It is to be regretted, however, that the holding in said case had been applied to situations which were obviously not contemplated therein. The exceptional circumstances involved in Sibonghanoy which justified the departure from the accepted concept of non-waivability of objection

to jurisdiction has been ignored and, instead a blanket doctrine had been repeatedly upheld that rendered the supposed ruling in Sibonghanoy not as the exception, but rather the general rule, virtually overthrowing altogether the time honored principle that the issue of jurisdiction is not lost by waiver or by estoppel.

x x x

"It is neither fair nor legal to bind a party by the result of a suit or proceeding which was taken cognizance of in a court which lacks jurisdiction over the same irrespective of the attendant circumstances. The equitable defense of estoppel requires knowledge or consciousness of the facts upon which it is based. The same thing is true with estoppel by conduct which may be asserted only when it is shown, among others, that the representation must have been made with knowledge of the facts and that the party to whom it was made is ignorant of the truth of the matter (De Castro vs. Gineta, 27 SCRA 623). The filing of an action or suit in a court that does not possess jurisdiction to entertain the same may not be presumed to be deliberate and intended to secure a ruling which could later be annulled if not favorable to the party who filed such suit or proceeding in a court that lacks jurisdiction to take cognizance of the same, such act may not at once be deemed sufficient basis of estoppel. It could have been the result of an honest mistake or of divergent interpretation of doubtful legal provisions. If any fault is to be imputed to a party taking such course of action, part of the blame should be placed on the court which shall entertain the suit, thereby lulling the parties into believing that they pursued their remedies in the correct forum. Under the rules, it is the duty of the court to dismiss an action `whenever it appears that court has no jurisdiction over the subject matter.' (Section 2, Rule 9, Rules of Court) Should the Court render a judgment without jurisdiction, such judgment may be impeached or annulled for lack of jurisdiction (Sec. 30, Rule 132, Ibid), within ten (10) years

> from the finality of the same (Art. 1144, par. 3, Civil Code)."[40]

The jurisdiction of the Labor Arbiter was assailed in the cases of De Rossi vs. NLRC[41] and Union Motors Corporation vs. NLRC[42] during appeal to the NLRC. Since the same circumstance obtains in this case, the rulings therein, favorable as they are to the petitioner, are germane.

In De Rossi, this Court elucidated:

> Petitioner maintains that MICC can not question now the issue of jurisdiction of the NLRC, considering that MICC did not raise this matter until after the case had been brought on appeal to the NLRC. However, it has long been established as a rule, that jurisdiction of a tribunal, agency, or office, is conferred by law, and its lack of jurisdiction may be questioned at any time even on appeal. In La Naval Drug Corporation vs. Court of Appeals, 236 SCRA 78, 90, this Court said:
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> > "Lack of jurisdiction over the subject matter of the suit is yet another matter. Whenever it appears that the court has no jurisdiction over the subject matter, the action shall be dismissed. This defense may be interposed at any time, during appeal or even after final judgment. Such is understandable, as this kind of jurisdiction is conferred by law and not within the courts, let alone the parties, to themselves determine or conveniently set aside."[43]
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> We held in the Union Motors Case:
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> > The long-established rule is that jurisdiction over a subject matter is conferred by law. [Ilaw at Buklod ng Manggaggawa vs. NLRC, 219 SCRA 536 (1993); Atlas Developer & Steel Industries, Inc. vs. Sarmiento Enterprises, Inc., 184 SCRA 153 (1990); Tijam vs. Sibonghanoy, 23 SCRA 29, 30 (1968)]. Estoppel does not apply to confer jurisdiction to a tribunal that has none over a cause of action. Where it appears that the court or tribunal has no jurisdiction, then the defense may be

> interposed at any time, even on appeal or even after final judgment. Moreover, the principle of estoppel cannot be invoked to prevent this court from taking up the question of jurisdiction.[44]

The rulings in Lozon vs. NLRC[45] addresses the issue at hand. This Court came up with a clear rule as to when jurisdiction by estoppel applies and when it does not:

> Lack of jurisdiction over the subject matter of the suit is yet another matter. Whenever it appears that the court has no jurisdiction over the subject matter, the action shall be dismissed (Section 2, Rule 9, Rules of Court). This defense may be interposed at any time, during appeal (Roxas vs. Rafferty, 37 Phil. 957) or even after final judgment (Cruzcosa vs. Judge Concepcion, et al., 101 Phil. 146). Such is understandable, as this kind of jurisdiction is conferred by law and not within the courts, let alone the parties, to themselves determine or conveniently set aside. In People vs. Casiano (111 Phil. 73, 93-94), this Court, on the issue of estoppel, held:
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> > "The operation of the principle of estoppel on the question of jurisdiction seemingly depends upon whether the lower court actually had jurisdiction or not. If it had no jurisdiction, but the case was tried and decided upon the theory that it had jurisdiction, the parties are not barred, on appeal, from assailing such jurisdiction, for the same 'must exist as a matter of law, and may not be conferred by consent of the parties or by estoppel' (5 C.J.S., 861-863). However, if the lower court had jurisdiction, and the case was heard and decided upon a given theory, such, for instance, as that the court had no jurisdiction, the party who induced it to adopt such theory will not be permitted, on appeal, to assume an inconsistent position—that the lower court had jurisdiction. Here, the principle of estoppel applies. The rule that jurisdiction is conferred by law, and does not depend upon the will of the parties, has no bearing thereon.[46] *(Emphasis supplied)*

Verily, Lozon, Union Motors, Dy and De Rossi aptly resolve the jurisdictional issue obtaining in this case. Applying the guidelines in Lozon, the labor arbiter assumed jurisdiction when he should not. In fact, the NLRC correctly reversed the labor arbiter's decision and ratiocinated:

> What appears at first blush to be an issue which pertains to the propriety of complainant's reassignment to another job on account of his having contracted a private loan, is one which may be considered as falling within the jurisdiction of the Office of the Labor Arbiter. Nevertheless, since the complainant is a union member, he should be bound by the covenants provided for in the Collective Bargaining Agreement.[47]
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> x x x
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> Based on the foregoing considerations, it appears that the issue of validity of complainant's reassignment stemmed from the exercise of a management prerogative which is a matter apt for resolution by a Grievance Committee, the parties having opted to consider such as a grievable issue. Further, a review of the records would show that the matter of reassignment is one not directly related to the charge of complainant's having committed an act which is inimical to respondents' interest, since the latter had already been addressed to by complainant's service of a suspension order. The transfer, in effect, is one which properly falls under Section 1, Article IV of the Collective Bargaining Agreement and, as such, questions as to the enforcement thereof is one which falls under the jurisdiction of the labor arbiter."[48]

In line with the cases cited above and applying the general rule that estoppel does not confer jurisdiction, petitioner is not estopped from assailing the jurisdiction of the labor arbiter before the NLRC on appeal.

Respondent relied solely on estoppel to oppose petitioner's claim of lack of jurisdiction on the part of the labor arbiter. He adduced no other legal ground in support of his contention that the Labor Arbiter had jurisdiction over the case. Thus, his claim falls flat in light of our

pronouncement, and more so considering the NLRC's correct observation that jurisdiction over grievance issues, such as the propriety of the reassignment of a union member falls under the jurisdiction of the voluntary arbitrator.

Since jurisdiction does not lie with the Labor Arbiter, it is futile to discuss about the computation of the 13th month pay.

WHEREFORE, the questioned decision of the Labor Arbiter and the Court of Appeals are hereby **REVERSED** and **SET ASIDE**, and the decision of the NLRC in dismissing the complaint for lack of jurisdiction **REINSTATED**.

SO ORDERED.

PUNO, *J.*, *(Chairman)*, AUSTRIA-MARTINEZ, CALLEJO, SR., and CHICO-NAZARIO, *JJ.*, concur.

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[1] Rollo, pp. 10-28.
[2] Id. at 87.
[3] Id. at 88-89.
[4] Id. at 90-91.
[5] Particularly, for "committing other culpable acts or omission not embraced by other provisions which caused damage to company interest." Id. at 90.
[6] Id. at 92.
[7] Id. at 93.
[8] Id. at 95.
[9] Id. at 118-122.
[10] Id. at 122
[11] Penned by Presiding Commissioner Raul T. Aquino, concurred in by Commissioners Victoriano R. Calaycay and Angelita A. Gacutan; Id. At 149-159.
[12] Id. at 158-159.
[13] Id. at 161-185.
[14] G.R. No. 80685, March 16, 1989, 171 SCRA 337, 346.
[15] 364 Phil. 133 (1999).
[16] Rollo, p. 44.
[17] Id. at 48-58.
[18] Penned by Associate Justice Jose L. Sabio, Jr. and concurred in by Associate Justices Oswaldo. D. Agcaoili and Sergio L. Pestaño.
[19] Id. at 47.
[20] G.R. No. 82039, June 20, 1989, 174 SCRA 182.

[21] Supra note 14.
[22] 379 Phil. 753 (2000).
[23] G.R. No. 119652, January 20, 2000, 340 SCRA 154.
[24] G.R. No. 134651, September 18, 2000, 340 SCRA 525.
[25] G.R. No. 140825, October 13, 2000, 343 SCRA 153.
[26] Supra note 15.
[27] 229 Phil. 234 (1986).
[28] G.R. No. 103200, August 31, 1994, 236 SCRA 78.
[29] 373 Phil. 17 (1999).
[30] 373 Phil. 310 (1999).
[31] Rollo, pp. 43-44.
[32] 131 Phil. 556 (1968).
[33] Id. at 564.
[34] Marquez vs. Sec. of Labor, supra, note 14.
[35] Ibid.
[36] To be sure, the Court is not unaware of the ruling in Calimlim vs. Ramirez, G.R. No. L-34362, November 19, 1982, 118 SCRA 399, reiterated in Dy vs. NLRC, G.R. No. 68544, October 27, 1986, 146 SCRA 211, to the effect that the ruling in Sibonghanoy being an exception to the general rule that the lack of jurisdiction of a court may be raised at any stage of the proceedings, even on appeal should not be applied in the absence of the pivotal element of laches." Marquez, supra note 14.
[37] Martinez vs. Merced, supra note 20 at 189 citing Tajonera vs. Lamoroza, (1981) 110 SCRA 438; Nieta vs. Manila Banking Corporation, (1983) 124 SCRA 455.
[38] Ducat vs. Court of Appeals, supra note 22 at 768-769.
[39] Centeno vs. Centeno, supra note 25 at 159-160.
[40] Dy vs. NLRC, supra note 27 at 242-244.
[41] 373 Phil. 17 (1999).
[42] 373 Phil. 310 (1999).
[43] Supra note 41 at 26-27.
[44] Supra note 42 at 322.
[45] 310 Phil. (1995).
[46] Id. at 12-13.
[47] Rollo, p. 154.
[48] Id. at 157-158.