

REPUBLIC OF THE PHILIPPINES
SANDIGANBAYAN
Quezon City
FOURTH DIVISION

PEOPLE OF THE PHILIPPINES,
Plaintiff,

-versus-

SB-12-CRM-0206
For: Violation of Section
3(e) of R.A. No. 3019

RODOLFO NOEL I. LOZADA, JR.
and JOSE ORLANDO I. LOZADA,
Accused.

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PEOPLE OF THE PHILIPPINES,
Plaintiff,

-versus-

SB-12-CRM-0207
For: Violation of Section
3(h) of R.A. No. 3019

RODOLFO NOEL I. LOZADA, JR
Accused.

Present:
HERNANDEZ, J., *Chairperson*
QUIROZ, J. and
ECONG, J.

PROMULGATED:

x-----x

August 23 2016
Jose Hilario Lopez

JOINT DECISION

Econg, J.:

Accused Rodolfo Noel I. Lozada, Jr. ("accused Rodolfo Lozada"), then President and Chief Executive Officer (CEO) of the Philippine Forest Corporation (PFC) and his brother, Jose Orlando I. Lozada ("accused Orlando Lozada"), were charged with violation of Section 3(e) of Republic Act No. 3019, which is docketed as SB-12-CRM-0206, while accused Rodolfo Lozada is also charged for violation of Section 3 (h) of the same law, which is docketed as SB-12-CRM-0207. The two separate Informations are quoted as follows:

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SB-12-CRM-0206

(For violation of Section 3(e) of
RA No. 3019)

That on or about December 18, 2007, or sometime prior or subsequent thereto, in the City of Taguig, Philippines and within the jurisdiction of this Honorable Court, the herein accused RODOLFO NOEL LOZADA, JR. y IMPERIAL, a high-ranking public official, being then the President and Chief Executive Officer (CEO) of the Philippine Forest Corporation, with Salary Grade 30, while in the performance of his official function, committing the offense in relation to office and taking advantage of his official position, and in conspiracy with accused JOSE ORLANDO LOZADA y IMPERIAL, did then and there willfully, unlawfully, and feloniously, through evident bad faith and/or manifest partiality, award the leasehold right over 6.599 hectares of public land under the Lupang Hinirang Program of the Philippine Forest Corporation, to his brother, accused JOSE ORLANDO LOZADA y IMPERIAL, despite knowledge that the latter did not undergo the prescribed application process, when as President and CEO of the Philippine Forest Corporation, it was his duty to award leasehold rights and to ensure that all applicants should go through the regular application process, and accused JOSE ORLANDO LOZADA y IMPERIAL for accepting such award notwithstanding knowledge of the absence of such required application process, thereby giving unwarranted benefit, preference and advantage to accused JOSE ORLANDO LOZADA y IMPERIAL over other qualified beneficiaries of the program, to the prejudice of public interest.

CONTRARY TO LAW.¹

¹ Information, Records, pp. 1-2.

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SB-12-CRM-0207

(For violation of Section 3(h) of
RA No. 3019)

That on or about the year 2007 to 2008, or sometime prior or subsequent thereto, in the City of Taguig, Philippines and within the jurisdiction of this Honorable Court, the herein accused RODOLFO NOEL LOZADA, JR. y IMPERIAL, a high-ranking public official, being then the President and Chief Executive Officer (CEO) of the Philippine Forest Corporation, with Salary Grade 30, while in the performance of his official function, committing the offense in relation to office and taking advantage of his official position, did then and there willfully, unlawfully, and criminally, cause the award of a leasehold right over a public land under the Lupang Hinirang Program of the Philippine Forest Corporation, to Transforma Quinta, Inc., a private corporation in which he has a direct or indirect financial or pecuniary interest, having been appointed, in conjunction with his wife, Ma. Violeta C. Lozada, by Transforma Quinta, Inc. via Board Resolution to act for and in its behalf certain financial transactions, when as President and CEO of the Philippine Forest Corporation, it was his duty to award leasehold rights to qualified beneficiaries who are legally entitled thereto, to the prejudice of the Government and public interest.

CONTRARY TO LAW.²

On August 23, 2012, both accused filed a Motion to hold in abeyance further proceedings until preliminary investigation is completed.³ They then filed a Motion for Reconsideration dated September 4, 2012 before the Office of the Ombudsman praying that the latter set aside its Resolution dated December 29, 2011 finding probable cause

² Information, Records, pp. 1-3.

³ Records, Volume I, pp. 119-123.

against the accused.⁴ On October 19, 2012, this Court granted the motion to hold in abeyance the proceedings and directed the prosecution to resolve the motion for reconsideration of the accused.⁵ Pursuant to the directive of the Court, the prosecution filed its Manifestation⁶ and submitted a copy of its Memorandum dated December 13, 2012 denying the motion of both accused.

When arraigned on March 6, 2013, both accused pleaded not guilty to the charges against them. The pre-trial proceedings were terminated on April 29, 2013. The prosecution started its presentation of witnesses on May 29, 2013. The prosecution then submitted to the Court its Memorandum on June 2, 2016 while the accused submitted their Memorandum on June 17, 2016.

To prove its case, the prosecution marked and offered⁷ in evidence Exhibits "A" to "F", "F-1", "G" to "T", "V", "W", "Z", "AA" to "FF", inclusive of all the submarkings, which were admitted⁸ by this Court subject to the appreciation of their respective probative values. The prosecution presented witnesses Honorio Diaz, Jr.⁹, Antonia Barros¹⁰, Aurelia Alido¹¹, Filemon Cecilio Cabungcal¹², Erwin Krishna Santos¹³, Rholie Besoña¹⁴, Ofelia Veloira¹⁵, Leonor Cleofas¹⁶, Nicasio Rollan III¹⁷, and Atty. Laurrie Layne Cristobal¹⁸.

On the other hand, the defense marked and offered¹⁹ in evidence Exhibits "1", "2", "3", "4", "5", "6", "6-a", "6-b", "6-c", "6-d", "6-e", "7", "8", "9", "10", "11", "12", "13", "14", "15", "15-a", "16", "16-a", "16-b", "16-c" and submarkings, "16-d" and submarkings, "16-e" and submarkings, "16-f" and "17", which

⁴ Records, Volume I, pp. 138-148.

⁵ Minute Resolution, Records, Volume I, pp. 155-156..

⁶ Manifestation, dated January 9, 2013 and received by the Court on the same date.

⁷ Consolidated Formal Offer of Evidence, dated April 11, 2014 and filed on the same date.

⁸ Minute Resolution, dated July 3, 2014.

⁹ TSN, dated May 29, 2013.

¹⁰ *Ibid.*

¹¹ *Ibid.*

¹² TSN, dated September 18, 2013.

¹³ TSNs, dated September 18 and 19, 2013.

¹⁴ TSN, dated November 4, 2013.

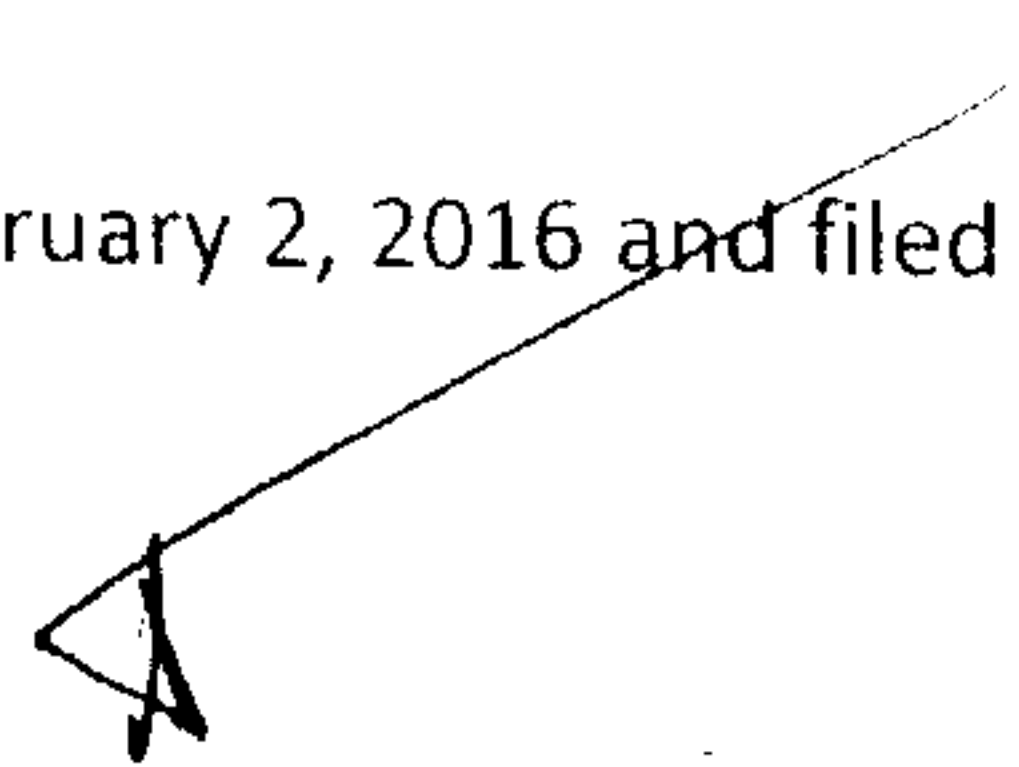
¹⁵ TSN, dated January 27, 2014.

¹⁶ *Ibid.*

¹⁷ *Ibid.*

¹⁸ TSN, dated March 5, 2014.

¹⁹ Formal Offer of Defense Evidence, dated February 2, 2016 and filed on the same date.



were admitted²⁰ by this Court subject to the appreciation of their probative value. The defense presented as witnesses accused Rodolfo Noel I. Lozada²¹, Aileen Maqueda²², accused Jose Orlando I. Lozada²³, Gerardo Cariño²⁴, Atty. Howard Arzadon²⁵, and Atty. Adzrah Arbision Juljani²⁶.

Facts

The Philippine Forest Corporation (PFC) was created and established as a subsidiary corporation pursuant to the Natural Resources Development Corporation (NRDC) Board Resolution dated January 2005 in order to undertake, among others, the agro-reforestation program of the Department of Environment and Natural Resources (DENR).²⁷ One of its incorporators was accused Rodolfo Noel I. Lozada.²⁸ Accused Rodolfo Lozada was elected as President of the PFC during the organizational meeting of its stockholders and Board of Directors (BOD) on January 26, 2006.²⁹ On the same date, the BOD passed a Board Resolution which states:

“RESOLVED, as it is hereby resolved to authorize the Corporation, to negotiate, purchase, exchange, sell, distribute or otherwise deal with *Jatropha curcas* seeds, seedlings, plantlets and planting materials and *Jatropha* oil and/or *Jatropha* Methyl Ester, as well as to enter into any and all agreements or contracts in respect to the propagation and plantation of *Jatropha curcas*, in furtherance of and for the implementation of the reforestation and bio-fuel programs of the government, at the price and under such terms and conditions fair and reasonable to the Corporation and in accordance with the Government Procurement Reform Act and the applicable administrative rules and regulations, and for this purpose, the Corporation hereby appoints and designates the Corporation’s President, **Rodolfo Noel I. Lozada, Jr.**, to make, execute, sign and/or deliver any and all documents, agreements and/or contracts, as well as to negotiate and determine the terms and conditions thereof, necessary to effect the transactions

²⁰ Minute Resolution, dated May 4, 2016.

²¹ TSN, dated February 2, 2015.

²² TSN, dated March 18, 2015.

²³ *Ibid.*

²⁴ TSN, dated May 6, 2015.

²⁵ TSN, dated January 19, 2016.

²⁶ *Ibid.*

²⁷ Exhibit “3”.

²⁸ Exhibit “F” and Exhibit “1”.

²⁹ Exhibit “H” and Exhibit “4”.

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entered into by said Corporation for this purpose." As such, he shall exercise the functions of the President as stated under Section 2, Article IV of the By-Laws of the Corporation.

"RESOLVED, as it is hereby further resolved, to authorize the Corporation to grant or award usufructuary right or other similar right of possession and/or development right to any and all qualified persons, natural or juridical, over the public land awarded or ceded to the Corporation by the Department of Environment and Natural Resources, as well as enter into joint venture agreement or other contracts with land owner, for the development of the land (public or private land) into Jatropha plantation and/or any agro-forestry projects at the price and under such terms and conditions fair and reasonable to the Corporation and in accordance with law and the applicable administrative rules and regulations, and for this purpose, the Corporation hereby appoints and designates the Corporation's President, **Rodolfo Noel I. Lozada, Jr.**, to make, execute, sign and/or deliver any and all documents, agreements and/or contracts, as well as to negotiate and determine the terms and conditions thereof, necessary to effect the transactions entered into by said Corporation for this purpose." As such he shall exercise the functions of the President as stated under Section 2, Article IV of the By-Laws of the Corporation.³⁰

In accordance with its purposes, the PFC implemented a Lupang Hinirang Program or a leasehold rights program wherein leasehold rights over idle public lands are to be awarded to applicants or bidders following the required application process during the tenure of accused Rodolfo Lozada as President. On September 24, 2007, the PFC BOD passed Resolution Nos. 14 and 15.³¹ Resolution No. 14, Series of 2007 states:

RESOLVED AS IT IS HEREBY RESOLVED, authorizing the Philforest management to prepare development plan for the 2,900 hectares idle lands within the resettlement area of Laiban Dam Project made available by the MWSS to Philforest under MOA dated November 9, 2006 for development, management and/or administration for agro-forestry projects, including but not limited to Jatropha curcas L. (Tuba-tuba) plantations located at San Ysiro, Brgy.

³⁰ Exhibit "G" and Exhibit "5" ..

³¹ On January 19, 2016, both parties stipulated that the signatures of former corporate secretaries, Atty. Howard Arzadon and Atty. Adzrah Arbision are on both Resolutions. Their testimonies were dispensed with. (TSN, dated January 19, 2016)



San Jose, Antipolo City, in the pursuit of the preparation of development plan, Philforest is authorized to conduct boundary survey, parcellary survey, planning, mapping and monumenting of the said area into a family or individual grantee, small and medium and industrial enterprises models, and to hire the services of technical personnel or group to conduct such activities.

RESOLVED FURTHER, in line with ultimate and primary goal of Philforest to make the land productive, and to increase economic productivity and easing and correcting the incidence of poverty, the Philforest management is hereby granted the authority to lease rights through auction process to these lands at a floor price of Five Hundred (P500.00) Pesos per hectare per year, and a one-time payment of P1,000.00 for the parcellary and monumenting cost for every hectare applied for. Areas will be awarded through the issuance of a Lupang Hinirang Certificates supported by the Economic Productivity out of Idle Land (EPIL) Agreements with a duration of twenty-five (25) years renewable for another 25 years to be signed by the President and CEO of Philforest.

RESOLVED FINALLY, that the income and/or revenues derived from the lease of these lands shall form part of the operating budget of Philforest, and the utilization of said income is hereby authorized.³²

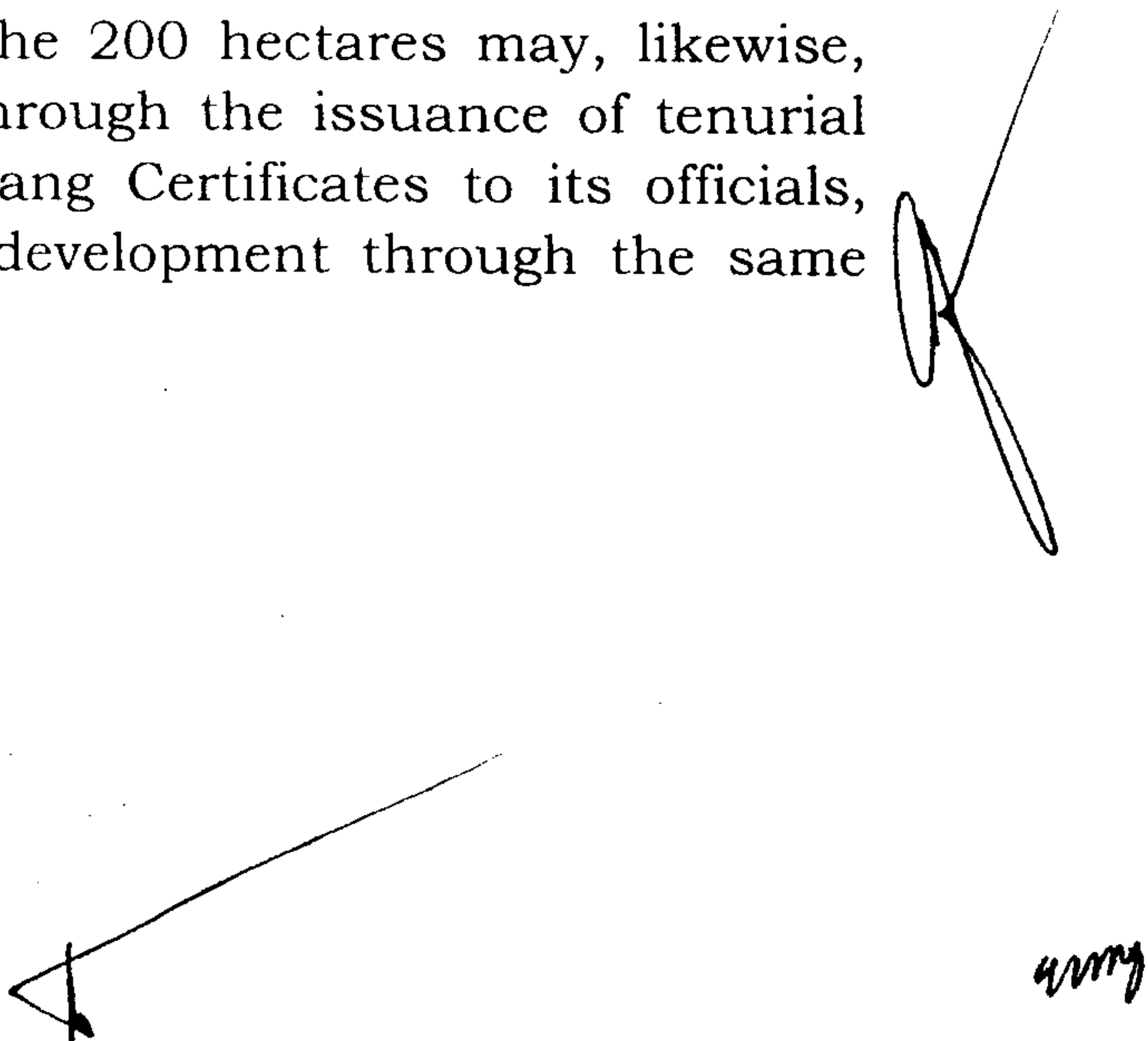
Resolution No. 15, on the other hand, provides:

RESOLVED AS IT IS HEREBY RESOLVED, to authorize the Philforest management to set-aside from the 2,900 hectares in the MWSS within the resettlement area of Laiban Dam Project some Two Hundred (200) hectares for its own area for development into an agro-forestry projects and to *Jatropha curcas* L. (Tuba-tuba) plantations.

RESOLVED FINALLY, that the 200 hectares may, likewise, be allocated and awarded through the issuance of tenurial rights and/or Lupang Hinirang Certificates to its officials, staff and personnel for its development through the same auction process.³³

³² Exhibit "6-a".

³³ Exhibit "6-b".

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According to the PFC President for the year 2013, prosecution witness Erwin Krishna N. Santos, there are three categories under this Lupang Hinirang Program, namely:

1. Family Farm Package – grant or award of lease of around 1 to 10 hectares of forest lands;
2. Small Medium Enterprise Package – grant or award of lease of 11 to 500 hectares of forest lands; and
3. Industrial Farm Package – grant or award of lease of 501 hectares and above of forest lands.³⁴

In order to avail of the Family Farm Package, the applicants must submit the following requirements:

1. A certified National Statistics Office (NSO) Birth Certificate;
2. Barangay Clearance;
3. Recent Cedula; and,
4. Auction Kit containing the application and bid form.³⁵

The procedure for the pre-qualification, auction and award is laid out in the Terms of Reference (TOR)³⁶ and in the Land Auction Flow Chart³⁷. Thus, it is required that:

1. The PFC will publish in two newspapers of general circulation and in at least two local newspapers for two consecutive weeks an invitation to apply for bidding.
2. The interested individual will obtain the Auction Kit for a fee of Php500. This kit will contain the application form, the TOR, the bid form, applicant's envelope, and video CD.
3. The applicant will submit the completed or accomplished forms together with the other requirements. The applicant will pay the bid bond.
4. The Land Auction Committee and the Bids and Awards Committee (BAC) will then evaluate the

³⁴ TSN, dated September 18, 2013, pp. 37-38.

³⁵ *Ibid.*

³⁶ Exhibit "J".

³⁷ Exhibit "BB".



documents. Names of qualified applicants will be posted at the PENRO (Provincial Environment and Natural Resources Officer) and CENRO (Community Environment and Natural Resources Officer) offices of the DENR and City ENRO (Environment and Natural Resources Officer) of Antipolo City at the City Hall within six working days after the deadline of submission.

5. Bid proposals will be submitted to the Committee. There will then be opening of the bids.
6. The abstract of bidders will be prepared and presented to the provincial and municipal heads at the provincial capitol.
7. The area subject of the bid shall be awarded to the bidder with the highest bid price offer.
8. A Notice of Award will then be issued by the Committee within seven working days after the last day of the bidding. Names of awardees shall be posted at the PENRO, CENRO offices and barangay halls within six working days after the last day of bidding.
9. Within fifteen working days after the payment of the bid price, the EPIL agreement and EPIL Certificate together with the map of the area will be signed and awarded to the winning bidder.
10. The first year management rights will then be paid.³⁸

Records show that in the List of Bidders of Leasehold Rights Over Public Land Granted by the PFC³⁹, accused Jose Orlando I. Lozada's ("accused Orlando Lozada") name was included.⁴⁰ Accused Orlando Lozada is the brother of accused Rodolfo Noel Lozada (accused Rodolfo Lozada). Based on his service record⁴¹ and the Contract Services Agreement⁴² between him and PFC, he was a consultant/confidential assistant at the office of PFC President with a contractual status from October 1, 2005 until February 7, 2008.

³⁸ *Ibid*, pp. 38-40.

³⁹ Exhibit "K".

⁴⁰ Exhibit "K-1".

⁴¹ Exhibits "16-a" and "16-b".

⁴² Exhibits "16-c", "16-d" and "16-e".

Accused Orlando Lozada was also issued a Payment Order Slip⁴³ with billing date, December 21, 2007, and with Billing Statement No. IV-JOIL-2424242K-1 for the lease of the said 6.599 hectares for the amount of Php 13,198.00. He paid PFC the same amount as evidenced by Official Receipt⁴⁴ dated January 23, 2008 representing the fee for the lease of 6.599 hectares. Witness Erwin Krishna Santos stated that this payment refers to the first year management rights fee.⁴⁵

In his favor, PFC issued a Notice of Award⁴⁶ of a family farm which is specifically described as Block No. 2 Lot Nos. 42, 43, 55, 56 and 68 located in *Barangay* San Jose, Antipolo City, Region IV-A. This Notice of Award dated December 18, 2007 was signed by accused Rodolfo Lozada.⁴⁷ Accused Orlando Lozada signed in the *conforme* part.⁴⁸

Accused Orlando Lozada's name was likewise listed as one of the grantees under item number 168 in the List of Grantees of Leasehold Rights for the month of January 2008 (Report No. 001-0001-08)⁴⁹.

On the other hand, there was evidence presented to show that accused Rodolfo Lozada was allegedly involved with Transforma Quinta, Inc. (TQI), a private domestic corporation. Prosecution witness, Nicasio Rollan III, stated that he was one of the incorporators of TQI and one of its Board of Directors.⁵⁰ The other incorporators of TQI were witness Filemon Cecilio Cabungcal, Cyril Rocke, Rouel Stephen Lozada Dones and Rolyd Cruz.⁵¹ Witness Rollan testified that TQI authorized accused Rodolfo Lozada and/or his wife, Ma. Violeta O. Cruz, to act on certain financial transactions of the corporation.⁵² This TQI Board Resolution⁵³ dated October 5, 2007 specifically states:

⁴³ Exhibit "N".

⁴⁴ Exhibit "M".

⁴⁵ TSN, dated September 18, 2013, p. 74.

⁴⁶ Exhibit "L".

⁴⁷ Exhibit "L-1".

⁴⁸ Exhibit "L-2".

⁴⁹ Exhibit "FF".

⁵⁰ TSN, dated January 27, 2014.

⁵¹ Exhibit "O-2".

⁵² TSN, dated January 27, 2014.

⁵³ Exhibit "T".

We the undersigned members of the Board of Directors of TRANSFORMA QUINTA, INC., a corporation duly organized and existing under the laws of the Philippines, with principal office located in Ortigas City, have this 5 October 2007, in a meeting wherein a quorum was present, unanimously approved and adopted the following resolutions:

“RESOLVED, that RODOLFO NOEL I. LOZADA, JR. and/or MA. VIOLETA C. LOZADA be, as they are hereby, authorized to sign, for and in behalf of the Corporation any documents, papers, instruments, checks, withdrawal slips, debit and credit instructions, fund transfer instructions, check encashment/endorsement, forms, agreements, or contracts as may be appropriate with respect to the Corporation’s bank account at Equitable-PCI Bank, C Raymundo, Pasig City Rosario Branch;

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In relation to the aforementioned, the prosecution presented the transcript of stenographic notes⁵⁴ of the proceedings of the Senate investigation conducted on February 8, 2008, wherein accused Rodolfo Lozada appeared before the Committees on Accountability of Public Officers and Employees, Trade and Commerce, and National Defense and Security regarding the approval of the Philippines’ broadband contract with ZTE. In the said TSN, accused Rodolfo Lozada made the following statements:

SEN. DEFENSOR SANTIAGO. ...Ang problema ko lang dito ay ito. Meron na akong kopya ng resolution noong Transforma Quinta, pero meron pa akong dagdag na kopya na... says there was a Board Resolution stating, “Resolved that Rodolfo Noel Lozada, Jr. and/or Ma. Violeta Lozada be as they are hereby authorized to sign for and in behalf of the corporation any document.”

Kaya in other words, you were dealing with yourself. You as the head of the Philippine Forest Corporation, you leased a certain piece of land, I think, 50 hectares in Antipolo to your own corporation. That is what this document ...

MR. LOZADA. Can I answer, Madam Senator?

⁵⁴ Exhibit “V”.

SEN. DEFENSOR SANTIAGO. Yes, of course, always.

MR. LOZADA. Madam Senator, I would admit to that. Kasi ho 'yong ano namin, lahat ng trabaho namin pabungahin ang tiwangwang na lupa. Alam n'yo, I would admit, I guess, in public, to the nation, there were certain things I did in my life that, I guess, upon reflection I would lose some respect to myself. But all the remaining respect I have in myself, madam, I don't want to lose na. I'd like whatever respect I have in myself to keep it pa. If I will go along with this NBN, I guess I'm going to lose it all. I'm afraid I'm going to lose my soul. So, yes, I admit to that, *mea culpa*.⁵⁵

But during the trial of this case, accused Rodolfo Lozada denied awarding a leasehold right under the Lupang Hinirang Program to his brother or to TQI during his tenure as President of PFC.⁵⁶ He said that there was no Economic Productivity out of Idle Lands (EPIL) Agreement nor a Lupang Hinirang Award issued to either accused Orlando Lozada or TQI.⁵⁷ What was issued to his brother and to TQI were their respective Notices of Award. Accused Rodolfo Lozada maintains that a Notice of Award will simply notify the applicant that his application was reviewed already and its issuance comes before the award of leasehold rights, the EPIL Agreement and Lupang Hinirang Certificate.⁵⁸ He said that the operative act in order to award a leasehold right is the signing of the EPIL Agreement and the issuance of the Lupang Hinirang Certificate.⁵⁹ He emphasized that these two are the instruments that will consummate the leasehold agreement between the government and the public.⁶⁰ He stated that the application of accused Orlando Lozada still went through the regular procedure except that it was segregated under Board Resolution No. 15.⁶¹ According to him, accused Orlando Lozada was his executive or confidential assistant at PFC hence, his application fell under Board Resolution No. 15.⁶²

Moreover, accused Rodolfo Lozada testified that he even asked assistance from the Commission on Audit (COA). On February 20, 2007, he wrote the COA requesting that a

⁵⁵ *Ibid*, pp. 99-100.

⁵⁶ TSN, dated February 2, 2015, pp. 13-14.

⁵⁷ *Ibid*. p. 16.

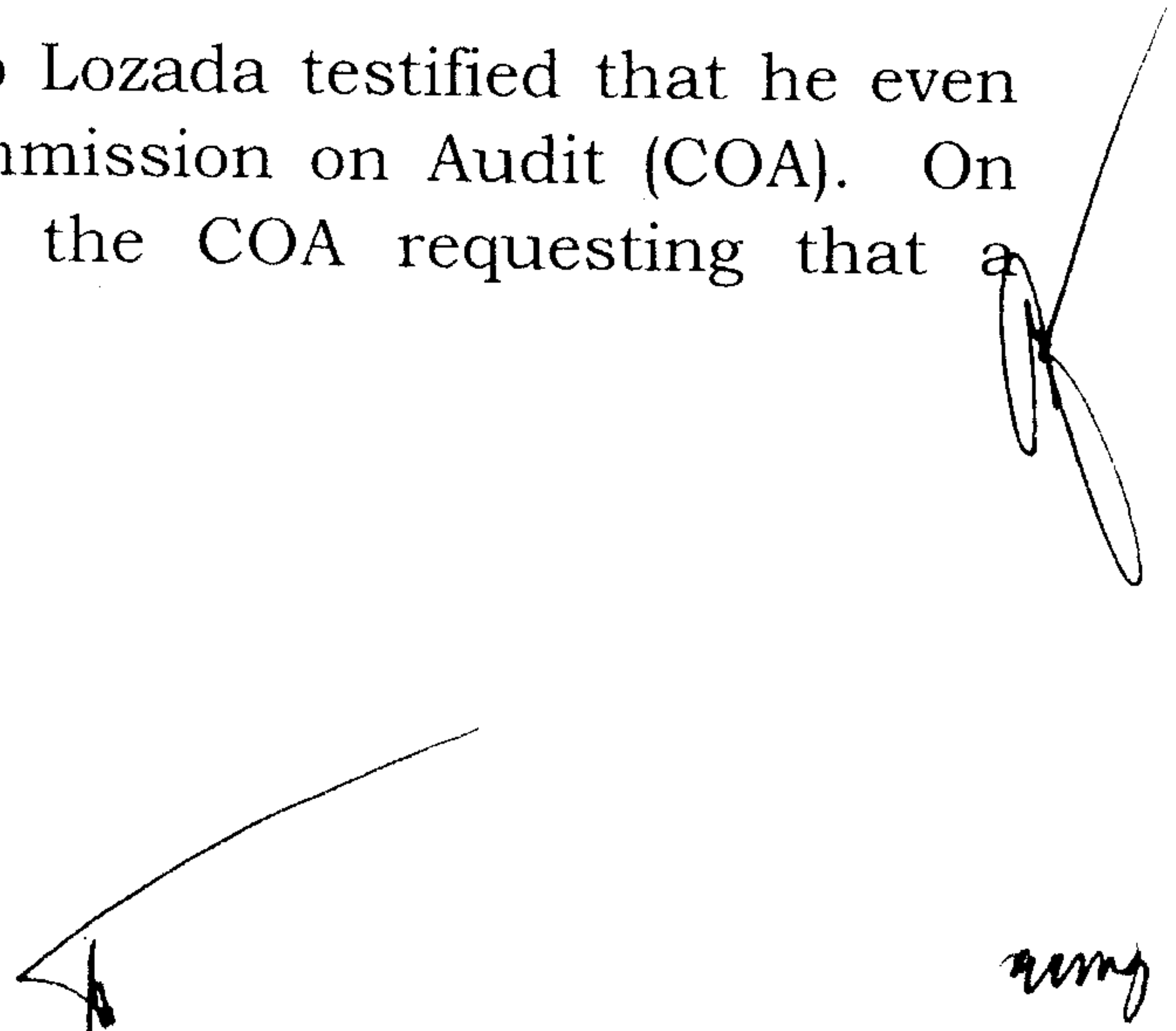
⁵⁸ *Ibid*, pp. 17-18.

⁵⁹ *Ibid*, p. 19.

⁶⁰ *Ibid*, p. 36.

⁶¹ *Ibid*, p. 40.

⁶² *Ibid*, p. 60.



resident auditor be assigned at PFC. However, Director Tito S. Nabua of the Corporate Government Sector, Cluster V, COA, replied that the request cannot be granted due to lack of personnel in his Cluster.⁶³ COA Assistant Commissioner Jaime P. Naranjo of the Corporate Government Sector also wrote accused Rodolfo Lozada informing him that COA could not provide a resident auditor to handle PFC/s external audit requirements.⁶⁴

His brother, accused Orlando Lozada, explained that he submitted his application form to the Lupang Hinirang Committee composed of technical group of foresters.⁶⁵ He confirmed that he received a Notice of Award and affixed his *conforme*.⁶⁶

Issues

Based on the facts established in evidence, are the Lozada brothers, Rodolfo and Orlando, guilty of violation of Section 3 (e) of R.A. No. 3019 by conspiring with each other?

Do the facts presented by the Prosecution establish the guilt of accused Rodolfo Lozada for violation of Section 3 (h) of R.A. No. 3019?

Discussion

SB-12-CRM-0206

In the instant case, the Lozada brothers are charged with violation of Section 3 (e), R.A. No. 3019, which reads:

Sec. 3. Corrupt practices of public officers. — In addition to acts or omissions of public officers already penalized by existing law, the following shall constitute corrupt practices of any public officer and are hereby declared to be unlawful:

xxx xxx xxx

⁶³ Exhibit "7".

⁶⁴ Exhibit "8".

⁶⁵ TSN, dated March 18, 2015, pp. 25-26.

⁶⁶ *Ibid*, p. 33.



(e) Causing any undue injury to any party, including the Government, or giving any private party any unwarranted benefits, advantage or preference in the discharge of his official administrative or judicial functions through manifest partiality, evident bad faith or gross inexcusable negligence. This provision shall apply to officers and employees of offices or government corporations charged with the grant of licenses or permits or other concessions.

In order to be held liable for violation of Section 3 paragraph (e) of R.A. No. 3019, as amended, the following elements must concur: (1) the accused is a public officer discharging administrative, judicial or official functions; (2) he must have acted with manifest partiality, evident bad faith or inexcusable negligence; and (3) his action has caused undue injury to any party, including the Government, or has given any party any unwarranted benefit, advantage or preference in the discharge of his functions.⁶⁷

The first element of the crime is certainly present as there is no issue that accused Rodolfo Lozada, who at the time of the commission of the offense, was the President and Chief Executive Officer (CEO) of Philippine Forest Corporation (PFC), a subsidiary of the Natural Resources Development Corporation (NRDC), a government-owned and controlled corporation under the Department of Environment and Natural Resources (DENR). From the purpose and objective of PFC, it could be surmised that it was charged with the responsibility of granting permits and concessions over idle forest lands for a period of twenty five (25) years, renewable for another twenty five (25) years to individuals and corporations found to be technically capable.

Anent the second element of the crime, the prosecution was able to establish through testimonial and documentary evidence that accused Orlando Lozada was allowed by PFC to pay for his application for a Family Farm under the Lupang Hinirang Project through a Payment Order Slip with billing date, December 21, 2007, and with Billing Statement No. IV-

⁶⁷ Katigbak v. Sandiganbayan, G.R. No. 140183, July 10, 2003, 453 Phil 515-543.

JOIL-2424242K-1 for the lease of the said 6.599 hectares in the amount of Php 13,198.00. Accused Orlando Lozada then paid this amount and was issued Official Receipt dated January 23, 2008 representing the fee for the first year of lease of 6.599 hectares. Accused Rodolfo Lozada issued a Notice of Award of a family farm which is specifically described as Block No. 2 Lot Nos. 42, 43, 55, 56 and 68 located in *Barangay* San Jose, Antipolo City, Region IV-A. The Notice of Award, dated December 18, 2007, was signed in the *conforme* part by accused Orlando Lozada. He was also listed as one of the grantees under item number 168 in the List of Grantees of Leasehold Rights for the month of January 2008 (Report No. 001-0001-08).

The prosecution was able to satisfactorily prove that accused Orlando Lozada was issued a Notice of Award despite the fact that he did not participate in the procedure for the pre-qualification, auction and award as laid out in the Terms of Reference (TOR). It is supposed that this procedure was adopted in order to ensure that the entities that will be awarded the rights over the idle lands are qualified natural or juridical entities with sufficient financial and technical capabilities to undertake their proposed project. Some of the mandatory requirements for submission to the PFC prior to the issuance to the applicant of an Order of Payment were not even complied with.⁶⁸

When the Lozada brothers testified, they did not controvert the non-compliance with the procedure laid down in the Terms of Reference (TOR). Their defense is that the application and the eventual issuance of a Notice of Award to accused Orlando was because of Resolution No. 15 of PFC dated September 24, 2007, allocating 200 hectares of the forest lands in the MWSS within the resettlement area of Laiban Dam Project to its officials, staff and personnel under the Lupang Hinirang Project.

But, it is very clear from Resolution No. 15 itself that the allocation and award to its officials, staff and personnel of any tenurial rights under this project can only be done if "the same auction process" is observed. The phrase "the same auction process" can only refer to the process adopted by PFC in its

⁶⁸ TSN, dated September 18, 2013, p. 75.

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grant of the Family Farm Package under the Lupang Hinirang Project. In other words, the official, staff or employee applying for the tenurial right must be able to present all the mandatory requirements, pay the appropriate fees, and submit his bid proposal which is found to be beneficial to the government by the PFC through its Committee. Unfortunately, both accused were not able to establish that the "auction process" was ever complied with.

Moreover, it is worth stressing that even if allocation and award to the officials, staff and employees of tenurial rights do not require the "auction process", still accused Orlando Lozada should not have been issued an Order of Payment and a Notice of Award. This is because, from accused Orlando's admission and documentary evidence⁶⁹, he is a consultant of PFC. In the contract that he presented to this Court, the non-existence of an employer-employee relation is clearly provided for. As consultant, he could therefore, not be considered to be within the purview of "PFC official, staff and employees". Therefore, the privilege accorded to the officials, staff and employees could not be extended to accused Orlando Lozada. Since he is not a qualified applicant under Resolution No. 15 of the PFC, he should have applied and undergone the regular process under the Family Farm Package.

All the above-described acts of accused Rodolfo Lozada have established the second element of Section 3 (e) of R.A. No. 3019. This element may be committed in three ways—i.e., through manifest partiality, evident bad faith or gross inexcusable negligence.

Proof of any of these three in connection with the prohibited acts mentioned in Section 3 (e) of R.A. No. 3019 is enough to convict.

On the meaning of "partiality," "bad faith," and "gross negligence," the Court has elucidated:

"Partiality" is synonymous with "bias" which "excites a disposition to see and report matters as they are wished for rather than as they are." "Bad faith does not

⁶⁹ Exhibits "16-a", "16-b", "16-c", "16-d" and "16-e".

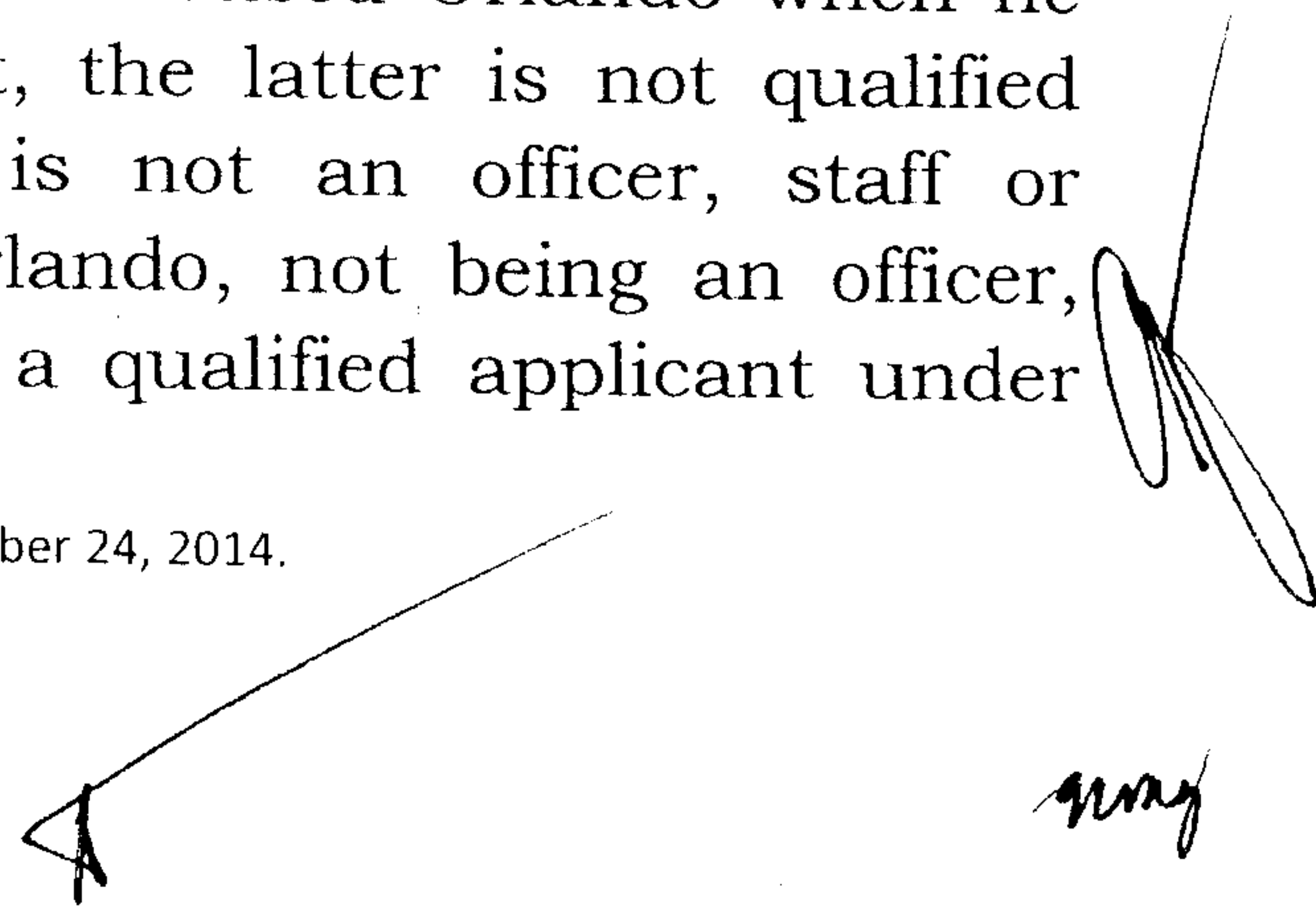


simply connote bad judgment or negligence; it imputes a dishonest purpose or some moral obliquity and conscious doing of a wrong; a breach of sworn duty through some motive or intent or ill will; it partakes of the nature of fraud." "Gross negligence has been so defined as negligence characterized by the want of even slight care, acting or omitting to act in a situation where there is a duty to act, not inadvertently but wilfully and intentionally with a conscious indifference to consequences in so far as other persons may be affected. It is the omission of that care which even inattentive and thoughtless men never fail to take on their own property."⁷⁰

In allowing his brother, accused Orlando, to apply for tenurial rights under the Lupang Hinirang Project under Resolution No. 15, accused Rodolfo Lozada acted with manifest partiality and evident bad faith. The accused brothers must surely know of the status of accused Orlando at PFC as a consultant and therefore, not an employee thereof. In the case of accused Orlando, he signed his Contract Services Agreement⁷¹ stating clearly his relation to PFC. Considering that as consultant, accused Orlando directly reports to accused Rodolfo who is the President and CEO of PFC, it is presumed that the latter knows that the former is his consultant. Thus, in issuing the Order of Payment directing Orlando to pay for the application fees, signing the Notice of Award of an area of public forest consisting of 6.599 hectares for lease for a period of 25 years, renewable for the same period and including accused Orlando's name in the list of Grantees of Leasehold Rights, accused Rodolfo was not only biased as defined above, but also possessed the intent or motive to grant leasehold rights to accused Orlando when he knows that in truth and in fact, the latter is not qualified because he (accused Orlando) is not an officer, staff or employee of PFC. Therefore, Orlando, not being an officer, staff or employee of PFC is not a qualified applicant under

⁷⁰ Coloma, Jr. v. Sandiganbayan, G.R. No. 205561, September 24, 2014.

⁷¹ Exhibits "16-c", "16-d" and "16-e".



Resolution No. 15 of the the PFC Board. He should have undergone the regular auction process in securing the tenurial rights under the Lupang Hinirang project.

But, the non-compliance of all the steps of the auction process for the granting of a family farm lease over the public idle lands under the Lupang Hinirang project—i.e., from the acceptance of the application form of accused Orlando by PFC, the issuance of the Order of Payment even when it is not clear that all the mandatory requirements were attached, the issuance of the Notice of Award to accused Orlando despite the lack of evaluation of the bid from the Land Auction Committee and the BAC and a showing that his proposal is the highest bid proposal for the area applied for and the inclusion of accused Orlando's name in the List of Grantees of Leasehold Rights for the month of January 2008, all points to one single fact, which is, the existence of manifest partiality and evident bad faith of accused Roland Lozada, when he signed the Notice of Award.

The Lozada brothers further claim that accused Rodolfo could not be found guilty of violation of Section 3(e), R.A. No. 3019 because accused Rodolfo did not sign the Economic Productivity out of Idle Land (EPIL) Agreement and the Lupang Hinirang Certificate in favor of accused Orlando Lozada. They assert that it is this Agreement and the Certificate that vest tenurial right to the grantee over the specific idle forest land. They claim that the lease contract or agreement between the individual, accused Orlando and government represented by PFC, was not signed and the former's tenurial right was not yet perfected.

While their assertion maybe true, the acceptance of the application, payment of the fees, the issuance of the Notice of Award which was already accepted by the applicant accused Orlando, as well as the inclusion of the latter's name in the List of Grantees, had already vested upon him (accused Orlando), at the very least, a preferential right over any other applicant for the specific area of public land that he applied for.

In the case of award of public (alienable) lands to an individual, the Supreme Court held that when an applicant has complied with requirements including all the terms and conditions that would entitle him to a patent over a public land, then he already acquired a vested interest therein, and is



to be regarded as the equitable owner thereof.⁷² The Supreme Court further elucidated:

*Where the right to a patent has once become vested in a purchaser of public lands, it is equivalent, so far as the Government is concerned, to a patent actually issued. The execution and delivery of the patent after the right to it has become complete are the mere ministerial acts of the officers charged with that duty. . . . Even without a patent, a perfected homestead is a property right in the fullest sense, unaffected by the fact that the paramount title to the land is still in the Government. Such land may be conveyed or inherited.*⁷³

In case of mining rights over mineral lands, whenever the a mineral agreement or any other tenurial instrument has not yet been granted, but the application has already been lodged, accepted by the Department of Environment and Natural Resources (DENR) and processed by it, the applicant is considered to have a preferential right or a vested prior right. Of this kind of right, the Supreme Court has this to say:

*Moreover, a preferential right would at most be an inchoate right to be given priority in the grant of a mining agreement. It has not yet been transformed into a legal and vested right unless approved by the MGB or DENR Secretary. Even if Blue Ridge has a preferential right over the subject mining claims, it is still within the competence and discretion of the DENR Secretary to grant mineral agreements to whomever he deems best to pursue the mining claims over and above the preferential status given to Blue Ridge. Besides, being simply a preferential right, it is ineffective to dissolve the pre-existing or subsisting mining lease contracts of Macroasia.*⁷⁴

In the instant case, regardless of whether accused Orlando Lozada already has an equitable right, a prior vested right or simply a preferential right over the public land applied for by reason of the Award given by accused Rodolfo, which he accepted, this clearly shows the benefit that he received as a result of the manifest partiality and evident bad faith of

⁷² Heirs of Gamos v. Heirs of Frando, G.R. No. 149117, December 16, 2004, 488 Phil 140-157.

⁷³ *Ibid.*

⁷⁴ Blue Ridge Mineral Corporation v. Secretary of the DENR, et al., G.R. No. 172936, December 19, 2007.

accused Rodolfo. Therefore, the presence of the third element of violation of Section 3 (e), R.A. No. 3019 is certain.

On the other hand, on the issue of conspiracy between the Lozada brothers, the presence of which would make both guilty of the crime charged, this Court believes that the brothers conspired so that the lease of idle public land accused Orlando applied for would be awarded to him.

The Supreme Court has elucidated that conspiracy exists:

...when two or more persons come to an agreement concerning the commission of a felony and decide to commit it. Direct proof of previous agreement to commit a crime is not necessary. Conspiracy may be deduced from the mode and manner in which the offense was perpetrated, or inferred from the acts of the accused themselves when such point to a joint purpose and design, concerted action, and community of interest. It is, however, settled that the same degree of proof required for establishing the crime is likewise required to support a finding of conspiracy. In other words, conspiracy must be shown to exist as clearly and as convincingly as the commission of the offense itself in order to uphold the fundamental principle that no one shall be found guilty of a crime except upon proof beyond reasonable doubt.⁷⁵

Conspiracy is a state of mind which becomes manifest in the acts of the accused. By reason of the unity in the intent, the act of one accused becomes the act of all of them. The different acts of accused Rodolfo and Orlando, which although separate and distinct, but when taken collectively, indicate the unity in intent and design.

In order to establish the existence of conspiracy, unity of purpose and unity in the execution of an unlawful objective by the accused must be proven. Direct proof is not essential to show conspiracy. It is enough that there be proof that two or more persons acted towards the accomplishment of a common unlawful objective through a chain of circumstances, even if there was no actual meeting among them.⁷⁶

⁷⁵ Pecho v. Sandiganbayan, G.R. No. 111399, November 14, 1994.

⁷⁶ Bacasmas v. Sandiganbayan, G.R. No. 189343, 189369, 189553, July 10, 2013.

In another case, the Supreme Court explained conspiracy of the accused in graft and corruption cases in this wise:

Conspiracy is present when one concurs with the criminal design of another, indicated by the performance of an overt act leading to the crime committed. To establish conspiracy, direct proof of an agreement concerning the commission of a felony and the decision to commit it is not necessary. It may be inferred from the acts of the accused before, during or after the commission of the crime which, when taken together, would be enough to reveal a community of criminal design, as the proof of conspiracy is perhaps most frequently made by evidence of a chain of circumstances. Once established, all the conspirators are criminally liable as co-principals regardless of the degree of participation of each of them, for in contemplation of the law the act of one is the act of all.⁷⁷

In the instant case, accused Orlando Lozada, a consultant of PFC, was allowed by the said government-owned and controlled corporation to submit his application. The PFC processed the same and in fact allowed him to pay. He was then issued by the President of PFC, his very own brother and accused Rodolfo Lozada, a Notice of Award knowing fully well that his brother was not an officer, staff or employee of PFC. There was no auction conducted which was required under the PFC's established procedure. All these acts taken together show the common criminal design of the two accused.

Lastly, there are no other circumstances present that would either mitigate or aggravate the guilt of both accused.

SB-12-CRM-0207

Only accused Rodolfo Lozada is charged by the Office of the Ombudsman for violation of Section 3 (h), R.A. No. 3019 because as President of PFC, he signed and issued a Notice of Award of a lease over a parcel of idle public land under the

⁷⁷ Domingo v. Sandiganbayan, G.R. No. 149175, 149406, October 25, 2005, 510 Phil 691-708.

Lupang Hinirang Project in favor of Transforma Quinta, Inc. (TQI), a private domestic corporation, which appointed him and his wife to be their representative in certain financial/banking transactions.

The provision, which accused Rodolfo Lozada, is charged with reads:

Sec. 3. Corrupt practices of public officers. — In addition to acts or omissions of public officers already penalized by existing law, the following shall constitute corrupt practices of any public officer and are hereby declared to be unlawful:

xxx xxx xxx

(h) Directly or indirectly having financial or pecuniary interest in any business, contract or transaction in connection with which he intervenes or takes part in his official capacity, or in which he is prohibited by the Constitution or by any law from having any interest.

The following are the elements that are to be established in order to prove a violation of Section 3 (h) of RA No. 3019:

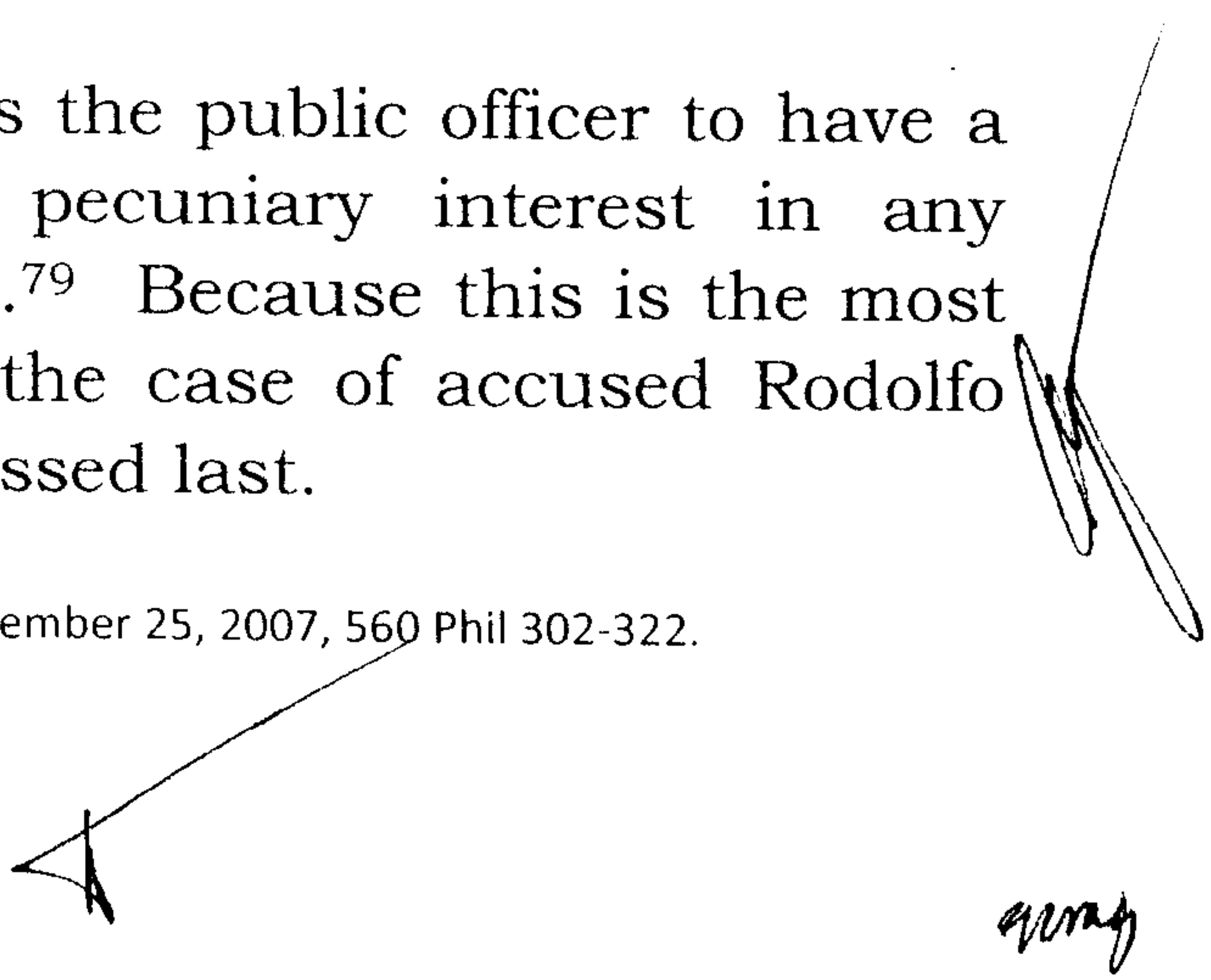
- 1. The accused is a public officer;*
- 2. He has a direct or indirect financial or pecuniary interest in any business, contract, or transaction; and*
- 3. He either (a) intervenes or takes part in his official capacity in connection with such interest, or (b) is prohibited from having such interest by the Constitution or by any law.⁷⁸*

The presence of the first element in this case is obvious. It was already discussed that accused Rodolfo Lozada was a public officer, being the President and Chief Executive Officer of Philippine Forest Corporation (PFC), a government-owned and controlled corporation being a subsidiary of the National Resources Development Corporation, at the time material to this case.

The second element requires the public officer to have a direct or indirect financial or pecuniary interest in any business, contract or transaction.⁷⁹ Because this is the most crucial element of the crime in the case of accused Rodolfo Lozada, its existence will be discussed last.

⁷⁸ Caballero v. Sandiganbayan, G.R. Nos. 137355-58, September 25, 2007, 560 Phil 302-322.

⁷⁹ *Ibid.*



As regards the third element of Section 3(h), R.A. No. 3019, it is established in jurisprudence that there are two modes by which a public officer can have a direct or indirect financial or pecuniary interest in any business contract or transaction.

The first mode is when the public officer intervenes or takes part in his official capacity in connection with his financial or pecuniary interest in any business, contract or transaction. The second mode is when he is prohibited from having such an interest by the Constitution or by law.⁸⁰

The information alleges that accused Rodolfo Lozada violated Section 3(h), R.A. No. 3019 through the first mode—i.e., he signed the Notice of Award in favor of Transforma Quinta Inc. (TQI), of which he is alleged to have a financial or pecuniary interest. That accused Rodolfo signed the Notice of Award of the public idle land to TQI was established by the prosecution. As a matter of fact, this was not denied by the accused. They simply claim that although there was a Notice of Award issued in favor of TQI, the same was not perfected.

Therefore, if the second element is present in this case, then accused Rodolfo Lozada is guilty of violation of Section 3(h) of R.A. No. 3019. Otherwise, he should be held innocent. In other words, did accused Rodolfo Lozada have financial or pecuniary interest in TQI itself or in its leasehold application?

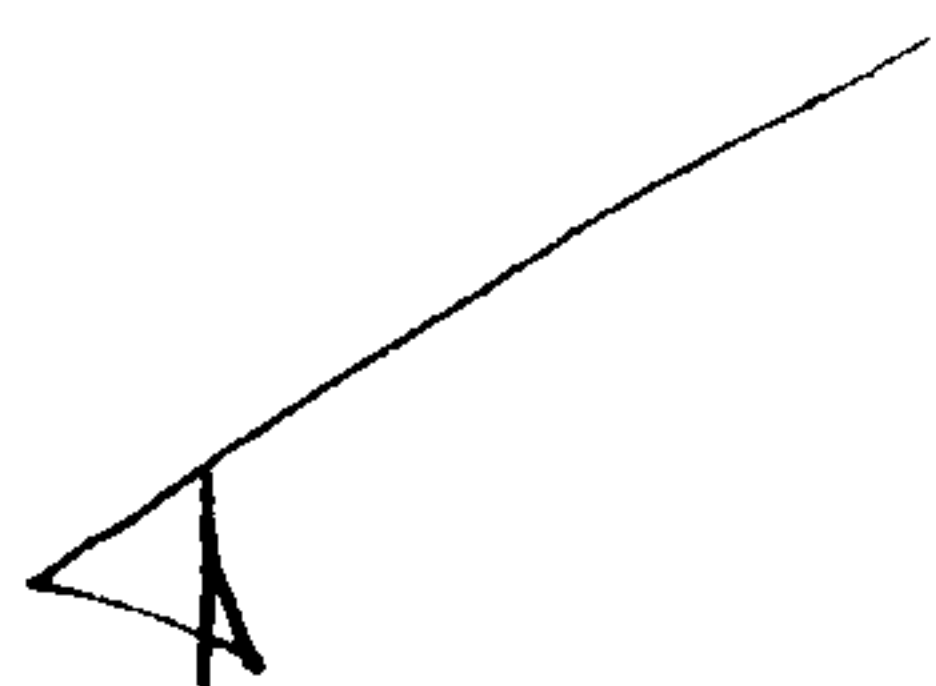
To prove this element, the prosecution presented the following: a.) the Board Resolution giving accused Rodolfo and his wife, a Special Power of Attorney to represent the corporation in bank transactions, and b.) the testimony of Filemon Cecilio Añel Cabungcal.

The existence and due execution of the Board Resolution⁸¹ giving Rodolfo and his spouse the authority to transact with Banco de Oro-Equitable PCI bank, C. Raymundo Pasig City Rosario branch, for and in behalf of the corporation was not even questioned by the accused.

Moreover, the testimony of Cabungcal is supposed to be corroborated by witness Nicasio Rollan III but the latter's testimony was dispensed with after the parties stipulated that Rollan was one of the incorporators and Board of Directors of

⁸⁰ *Ibid.*

⁸¹ Exhibit "T".



TQI and that the corporation authorized accused Rodolfo Lozada and his wife to act on certain financial transactions.⁸² Cabungcal testified in this manner:

Q : Thank you. Now Sir, how is Rodolfo Noel I. Lozada, Jr. connected with the Transforma Quinta Incorporated aside from being the appointed representative of the corporation in certain transactions?

A : Sir, he is connected based on the Board Resolution, and to my recollection, it is basically trying to get everyone's idea that investing in agriculture at that time was good, Sir.⁸³

There is no direct evidence to prove financial or pecuniary interest. This element is supposed to be proven by specific circumstantial evidence, which are the Board Resolution and the testimonial evidence. However, the Supreme Court ruled:

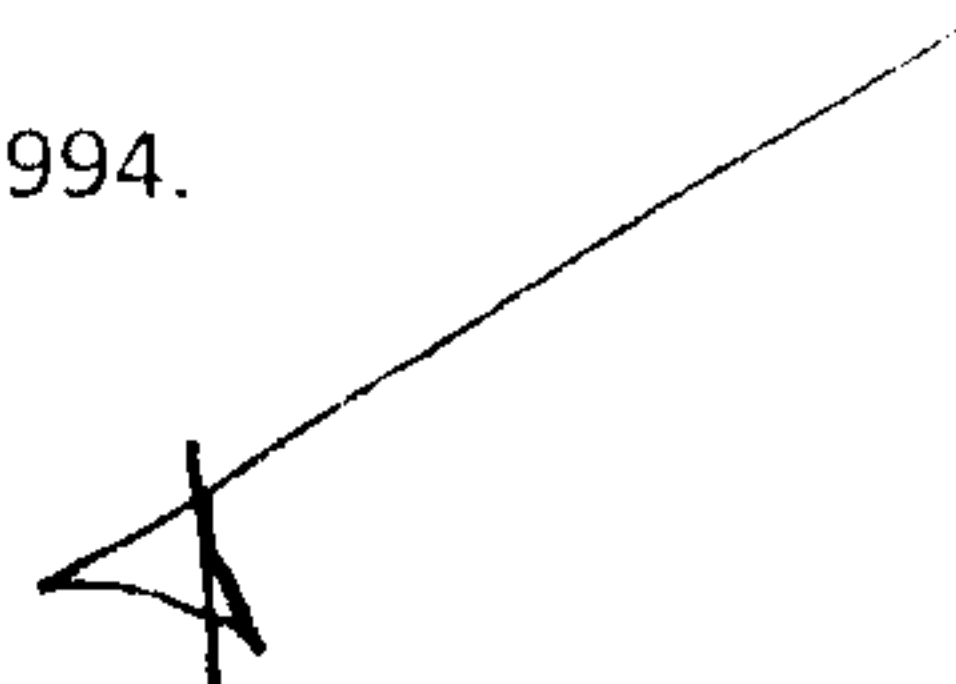
Under Section 4, Rule 133 of the Rules of Court, circumstantial evidence would be sufficient to convict if (a) there is more than one circumstance; (b) the facts from which the inferences are derived are proven; and (c) the combination of all the circumstances is such as to produce a conviction beyond reasonable doubt. As jurisprudentially formulated, a judgment of conviction based on circumstantial evidence can be upheld only if the circumstances proven constitute an unbroken chain which leads to one fair and reasonable conclusion pointing to the accused, to the exclusion of all others, as the guilty person, i.e., the circumstances proven must be consistent with each other, consistent with the hypothesis that the accused is guilty, and at the same time inconsistent with any other hypothesis except that of guilty.⁸⁴

It would appear that the second element of the crime charged was not established beyond reasonable doubt. The fact of financial or pecuniary interest in the transaction or in Transforma Quinta, Inc. was not clearly established by the prosecution. Both pieces of circumstantial evidence—the

⁸² TSN, dated January 27, 2014, p. 23.

⁸³ TSN, dated September 18, 2013, p. 23.

⁸⁴ Pecho v. Sandiganbayan, G.R. No. 111399, November 14, 1994.



authority to represent the corporation in certain banking transactions and that accused Rodolfo Lozada broached the idea to the corporation about investing in agriculture, did not establish beyond reasonable doubt the financial or pecuniary interest of accused Rodolfo Lozada.

The prosecution was not able to explain the purpose of the Board Resolution of TQI. It was not able to relate it to the financial interest of accused Rodolfo Lozada. It is uncertain which is prior, the Board Resolution or the application for leasehold of idle public lands, or whether there exists any relation between the two facts.

On the other hand, whether accused Rodolfo Lozada encouraged the corporation to invest in agriculture is vague and ambivalent. It could be understood in its plain language that he simply brought to the corporation the idea of investing in agriculture given its primary purpose. This statement was not elucidated by the witness at all. But, certainly, it could not be concluded that accused Rodolfo encouraged the corporation to apply for a leasehold right under the Lupang Hinirang Project.

Therefore, because the prosecution's evidence was not able to establish the guilt of accused Rodolfo Lozada beyond reasonable doubt and because of the constitutional presumption of innocence, he must be acquitted of the charge of violation of Section 3(h) of R.A. No. 3019, even though there is doubt on his innocence.

Verdict

WHEREFORE, premises considered, judgment is hereby rendered in the following criminal cases, to wit:

- A. In Criminal Case No. SB-12-CRM-0206, finding accused **Rodolfo Noel I. Lozada, Jr.** and accused **Jose Orlando I. Lozada** **GUILTY BEYOND REASONABLE DOUBT** of violation of Section 3(e) of R.A. No. 3019, as amended, and
 - a. Applying the Indeterminate Sentence Law (ISL), they are hereby sentenced to suffer



an imprisonment of Six (6) years, as minimum to Ten (10) Years and One (1) day, as maximum;

b. Accused Rodolfo Noel I. Lozada, Jr. is further disqualified from holding public office;

c. No pronouncement as to costs.

B. In Criminal Case No. SB-12-CRM-0207, finding accused **Rodolfo Noel I. Lozada, Jr. NOT GUILTY** and is **ACQUITTED** of the charge of violation of Section 3(h) of R.A. No. 3019.

The cash bond posted by accused Rodolfo Noel I. Lozada, Jr. in Criminal Case No. SB-12-CRM-0207 is hereby cancelled and he is allowed to withdraw the same from the Cashier's Office of this Court, subject to any liability on the bond. The hold departure order issued by this Court in Criminal Case No. SB-12-CRM-0207 against accused Rodolfo Noel I. Lozada, Jr. is lifted and set aside.

SO ORDERED.

Quezon City, Metro Manila, Philippines.

Geraldine Faith A. Econg
GERALDINE FAITH A. ECONG
Associate Justice


WE CONCUR:

Jose R. Hernandez
JOSE R. HERNANDEZ
Associate Justice
Chairperson

Alex L. Quiroz
ALEX L. QUIROZ
Associate Justice

A T T E S T A T I O N

I attest that the conclusions in the above decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.


JOSE R. HERNANDEZ
Associate Justice
Chairperson

C E R T I F I C A T I O N

Pursuant to Article VIII, Section 13, of the Constitution, and the Division Chairman's Attestation, it is hereby certified that the conclusions in the above decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.


AMPARO M. CABOTAJE-TANG
Presiding Justice

