

**REPUBLIC OF THE PHILIPPINES
SANDIGANBAYAN
QUEZON CITY**

FIFTH DIVISION

PEOPLE OF THE PHILIPPINES,

Plaintiff,

SB-14-CRM-0239

For: Plunder

-vs-

**JOSE "JINGGOY" P. EJERCITO
ESTRADA, ET AL.,**

Present:

Accused.

**LAGOS, J., Chairperson
MENDOZA-ARCEGA, and
CRUZ*, JJ.**

Promulgated:

June 13, 2017 *led*

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RESOLUTION

MENDOZA-ARCEGA, J.:

For resolution is the Motion for Reconsideration filed by the Anti-Money Laundering Council (AMLC), through counsels, on March 13, 2017.

In the said motion, the AMLC alleges that: 1) the Memorandum under Item No. 1 (a) is confidential and irrelevant, as it is merely recommendatory and does not reflect the final resolution or decision of the AMLC as a collegial body. Moreover, the said Memorandum contains sensitive and confidential information that may not be divulged, because it does not only pertain to the investigation on Ms. Napoles but includes other individuals who are still under investigation; 2) the documents under Item No. 2 of the Request for Subpoena are not relevant. The documents under Item No. 2 are not indispensable for accused Estrada to know the methodology used by the AMLC in its investigation; 3) the Currency Transaction Reports (CTRs) and Suspicious Transactions Reports (STRs) submitted by covered persons concerning Ms. Napoles are confidential and not relevant to the present case. Under R.A. 9160,

* Sitting as special member pursuant to Administrative Order No. 025-2017 dated 1 February 2017.

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as amended, when covered persons file a CTR or STR with the AMLC, the officers and employees of the reporting institution are prohibited from divulging the fact that such STR or CTR has been reported to the AMLC. In fact, any officer or employee who violates said prohibition may be held criminally liable. Also, the CTRs and the STRs pertaining to Ms. Napoles are not relevant because they are not the bases for the Inquiry Report prepared by the AMLC. 4) the subject subpoena *duces tecum* is unreasonable and oppressive, as it compels the AMLC to directly violate Rule 22 (b) of the RIRR of RA 9160, RA 1405, and indirectly violate Section 9 (c) of RA 9160; and 5) The correspondences, communications (Item No. 2), CTRs and STRs (Item No. 3) sought to be produced were not identified with particularity and /or definiteness. The accused's failure to particularly identify the CTRs or STRs he wants to be produced in Court is crucial because without specifying the reports, the AMLC might violate the confidentiality of these banks accounts and transactions.

The accused, in his Opposition dated April 7, 2017, avows that: 1) the AMLC did not cite any law or rule that says that the document subject of the Subpoena is confidential. Citing the case of *Banco Filipino v. Monetary Board*¹ the accused asserts that statutes declaring certain official records confidential must be liberally construed and an exception thereto is deemed implied when the records are needed in a court of justice.; 2) As to the relevancy of the documents listed in Item 2 of the Subpoena, the accused argued that the same is relevant as it will allow the accused to inquire into the methodology used by the AMLC in coming up with its reports and recommendations; 3) third, the STRs and CTRs are no longer confidential considering that the reports have been used against accused and Napoles, which served as the official recommendation on the part of the government. Since the AMLC used the reports, the same may be subject to inquiry by the adverse party. As held in the case of *Chavez v. Public Estates Authority*,² the claim of confidentiality by a government investigative body can no longer be invoked after they submitted reports and recommendations arising from an investigation. Furthermore, the argument that the production of the STRs and the CTRs would result in the indirect violation of Section 9 (c) of RA 9160 is also wrong, as the Court pointed out that such provision only applies to officers and employees of covered institutions and does not cover the AMLC itself; 4) the claim of the AMLC that the Subpoena is unreasonable is without merit. To reiterate, it is the AMLC itself which is being compelled to produce the subject documents and no other, thus the supposed violation of RA No. 9160, RA No. 1405 and Section 9 (c) and IRR of RA 9160 is inapplicable. Finally, as regards the allegation that the documents to be produced were not described with particularity, the accused avers that the description of the documents to be produced is sufficient, as the Subpoena specifies the documents as only those whose relation to the investigation conducted by the AMLC into the so-called PDAF Scam is evident.

Hence, this resolution.

Considering that the first four issues raised by the AMLC (1. confidentiality and relevance of Memorandum No. 1 (a); 2. relevance of Item No. 2 of the Request

¹ 142 SCRA 523 (1986).

² GR No. 133250, July 9, 2002.

for Subpoena; 3. Confidentiality and relevance of the CTRs and the STRs; and 4. The alleged violation of R.A. 9160) were already discussed and resolved in the Court's Resolution dated February 21, 2017, the only issue to be resolved is whether or not the correspondence, communication and documents sought to be produced were identified with particularity.

Well settled is the rule that before a Court issues a subpoena *duces tecum*, the same must pass both the test of relevancy and the test of definiteness. Since the first test was already resolved by this Court, we now examine if the documents sought to be produced are reasonably described and readily identifiable as prescribed under the law.

The cases of *Liebenow vs. Philippine Vegetable Oil Co*³; and *Sy Jong Chuy v. Reyes*⁴, are enlightening at this point, wherein the Supreme Court pronounced:

The foregoing discussion will disclose that there are two factors involved in the correct solution of the question before us. The first fact which must be made to appear by clear and unequivocal proof, as a condition precedent to the right of a court, and, by analogy, an internal revenue officer, to require a person to deliver up for examination by the court or an internal revenue officer his private books and papers, is their relevancy; **and the second fact which must be established in the same manner is the specification of the documents and an indication of them with as much precision as is fair and feasible.** (Emphasis supplied)

Moreover, in the case of *Vallejo v. Court of Appeals*⁵, it is shown that there is no exact measure of definiteness, so much so that the law did not contemplate a technical description of the documents sought to be produced. In a case where the description of the documents stated in a search warrant was in issue, the Supreme Court explained that: "The law does not require that the things to be seized must be described in precise and minute details as to leave no room for doubt on the part of the searching authorities."

Applying the above rulings to the instant case, the subpoena *duces tecum* of the accused requests for specific documents regarding the investigation conducted by the AMLC in the so-called PDAF Scam, rather than an all-encompassing request for all documents that may be found in their possession. Such description qualifies as sufficient in view of the fact that the accused has unquestionably no access to the same. Considering that the accused has no access to the documents sought, it is impossible for him to describe or identify the same with particularity.

To reiterate, the assailed subpoena *duces tecum* passed the definiteness test, as it calls for the production of specific documents. Furthermore, to deny the accused

³ 39 Phils. 60, 67 (1918).

⁴ G.R. No. 38375, (December 22, 1933), 59 PHIL 244-265.

⁵ G.R. No. 156413, [April 14, 2004], 471 PHIL 670-689.

this process is to deny him of his constitutional right to compulsory process to produce evidence in his behalf. The need for the documents and his right to compulsory process outweigh the claims of the AMLC of confidentiality, irrelevancy, and generality, specially taking into account that the crime charged is grave in character that may result in the deprivation of constitutionally enshrined rights.

As a final note, the AMLC's assertion that the subpoena is crafted in a general tenor is incredible because a reading of their motions will reveal that it can in itself determine or identify the documents sought to be produced because it can make a judgment of whether the same are relevant or not in the resolution of the instant case, thus, again, attesting to the sufficiency of the description contained in the subpoena.

WHEREFORE, in the light of the foregoing, the Court resolves to **DENY** the Motion for Reconsideration of the Anti-Money Laundering Council for lack of merit.

SO ORDERED.


MARIA THERESA V. MENDOZA-ARCEGA
Associate Justice

WE CONCUR:


RAFAEL R. LAGOS
Chairperson


REYNALDO P. CRUZ
Associate Justice