



Republic of the Philippines
SANDIGANBAYAN
Quezon City

SIXTH DIVISION

PEOPLE OF THE PHILIPPINES,

Plaintiff,

-versus-

PROCESO MALIGALIG,

LAWAS
Accused,

SB-CRM-17-0736 - 0737

For: Violation of Sec. 3 (e) of R.A. No. 3019, and Malversation of Public Funds through Falsification of Public Document

PRESENT:

FERNANDEZ, S.J., J.,¹ Chairperson
MIRANDA, J., &
MUSNGI, J.²

Promulgated:

OCT 10 2017

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RESOLUTION

MIRANDA, J.:

This resolves: 1), Accused Proceso L. Maligalig's Alternative Motion to Quash or to Suspend Proceedings (*Ex Abudanti Ad Cautelam*) dated May 12, 2017 (motion to quash); and 2), the Plaintiff's Comment/Opposition dated June 9, 2017.

In his motion to quash, the accused prays that the two (2) informations be quashed on the ground of lack of jurisdiction of the Court over the case and the person of the accused, and lack of authority of the Office of the

¹ J. Ponferrada, Chairperson of the 6th Division when the present incident was submitted for resolution, retired on September 13, 2017. J. Fernandez, SJ will participate in the resolution of the present incident in view of her assumption as Chairperson of the 6th Division on the same date. (As per Administrative Order (A.O.) No. 314-2017 dated September 13, 2017: Revised Internal Rules of the Sandiganbayan, Rule XII, Section 2)

Ombudsman to file the informations against him. The accused alleges that he is not a public officer, and that the Bataan Shipyard and Engineering Co., Inc. (BASECO) is not a government-owned or -controlled corporation (GOCC). Alternatively, the accused prays that his arraignment be suspended on the ground of the existence of a prejudicial question. The accused insists that the final determination of whether BASECO's assets are ill-gotten in a pending civil case before the Sandiganbayan will determine whether the Court has jurisdiction over the case and the accused.

In its comment/opposition, the Plaintiff, through the Office of the Special Prosecutor (OSP), contends that: a) the jurisdiction of the Court is determined by the allegations in the informations; 2) the informations allege that the accused is a public officer being then the President and Board Member of BASECO, a GOCC, and thus, within the jurisdiction of the Sandiganbayan; 3) the accused admitted in his Counter-Affidavit dated June 30, 2014, that he was appointed as a Director of BASECO by former President Gloria Macapagal-Arroyo from 2001 to 2011; 4) the issue on ownership of the shares of BASECO is immaterial in determining the jurisdiction of the Court in this case; and 5) there is no prejudicial question in this case because the issue on the ownership of the shares of BASECO will not affect any of the elements of crimes charged in the informations.

The Court, after a thorough review of the cases, holds that it has jurisdiction over the cases and the person of the accused, and that there is no prejudicial question. Accordingly, the motion to quash should be denied.

The jurisdiction of a court over criminal cases is determined by the allegations in the complaint or information. Once jurisdiction is shown, the court may validly take cognizance of the case.³

The two (2) informations filed against the accused allege:

SB-CRM-17-0736

That on March 29, 2010, or sometime prior or subsequent thereto, in the City of Manila, Metro Manila, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused **PROCESO LAWAS MALIGALIG, a public officer, being then the President and a member of the Board of Directors of the Bataan Shipyard and Engineering Co., Inc. (BASECO), a government-owned or -controlled corporation**, in the discharge of his administrative and/or official functions and taking

advantage of his official position, did then and there, willfully, unlawfully and criminally, with evident bad faith or gross inexcusable negligence, execute a Release, Waiver and Quitclaim in favor of Northstar Transport Facilities, Inc. (Northstar) without authority from the BASECO Board of Directors, and receive from Northstar the amount of PhP3,554,000.00 as full settlement of its total arrearages of PhP4,819,198.13 to BASECO for the period May 2009 to February 2010 covered by the Contract of Lease dated September 15, 2006 between BASECO, as lessor, and Northstar, as lessee, over BASECO properties including the eastern portion of the land area known as Engineer Island and accretions in Port Area, Manila totaling 17,896.10 square meters more or less, and not remit the amount of PhP3,554,000.00 to BASECO, causing undue injury to BASECO and the Government in the total amount of PhP4,819,198.13 that was due from Northstar, and giving Northstar unwarranted benefits and advantage.

CONTRARY TO LAW.⁴

SB-CRM-17-0737

That on March 29, 2010, or sometime prior or subsequent thereto, in the City of Manila, Metro Manila, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused **PROCESO LAWAS MALIGALIG, a public officer, being then the President and a member of the Board of Directors of the Bataan Shipyard and Engineering Co., Inc. (BASECO), a government-owned or -controlled corporation,** and as such by reason of his office and duties is responsible and accountable for public funds entrusted to and received by him, committing the complex crime charged herein while in the performance of or in relation to office and taking advantage of his official position, did then and there, willfully, unlawfully and feloniously, appropriate, take or misappropriate the amount of PhP3,554,000.00 under his charge and custody and which he received from Northstar Transport Facilities, Inc. (Northstar) as full settlement of its total arrearages of PhP4,819,198.13 to BASECO for the period May 2009 to February 2010 under the Contract of Lease dated September 15, 2006 between BASECO, as lessor, and Northstar, as lessee, over BASECO properties including the eastern portion of the land area known as Engineer Island and accretions in Port Area, Manila totaling 17,896.10 square meters more or less, by means of falsifying the Release, Waiver and Quitclaim dated March 29, 2010 that he executed in favor of Northstar by making an untruthful statement therein that he executed a Release, Waiver and Quitclaim to implement the Resolutions approved on March 24, 2010 by the BASECO Board of Directors in its special board meeting when, in truth and in

fact, said statement is absolutely false because the BASECO Board of Directors neither approved nor issued such Resolutions, and for which the accused has a legal obligation to disclose the truth about the absence of such Resolutions, to the damage and prejudice of BASECO, the Government and the public interest in the aforestated amount.

CONTRARY TO LAW.⁵

Both informations clearly state that the accused is a public officer, being then the President and a member of the Board of Directors of BASECO, a GOCC. There is thus no doubt that the Court has jurisdiction over the cases and over the person of the accused.

Section 2 (b) of R.A. No. 3019 defines a public officer as one that *“includes elective and appointive officials and employees, permanent or temporary, whether in the classified or unclassified or exempt service receiving compensation, even nominal, from the government as defined in the preceding paragraph.”* Section 2 (a) provides that *“Government includes the national government, the local governments, the government-owned and government-controlled corporations, and all other instrumentalities or agencies of the Republic of the Philippines and their branches.”*

The accused was appointed as member of the Board of Directors and eventually President of BASECO by former President Gloria Macapagal-Arroyo. This fact is admitted by the accused himself in his Counter-Affidavit dated June 30, 2014 that he filed with the Office of the Ombudsman.

Moreover, BASECO is a GOCC supervised by the Presidential Commission on Good Government (PCGG) per the Classification of GOCCs by Sectors of the Governance Commission for Government-Owned or -Controlled Corporations.

The jurisdiction of a court to try a criminal case is to be determined at the time of the institution of the action, not at the time of the commission of the offense.⁶

The cases before this Court were filed on April 7, 2017. The prevailing law is Section 4 of Presidential Decree (P.D.) No. 1606, as further amended by R.A. No. 10660, which states:

SEC. 4. *Jurisdiction.* – The Sandiganbayan shall exercise exclusive original jurisdiction in all cases involving:

a. Violations of Republic Act No. 3019, as amended, otherwise known as the Anti-Graft and Corrupt Practices Act, Republic Act No. 1379, and Chapter II, Section 2, Title VII, Book II of the Revised Penal Code, where one or more of the accused are officials occupying the following positions in the government, whether in a permanent, acting or interim capacity, at the time of the commission of the offense:

(1) Officials of the executive branch occupying the positions of regional director and higher, otherwise classified as Grade '27' and higher, of the Compensation and Position Classification Act of 1989 (Republic Act No. 6758), specifically including:

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(g) Presidents, directors or trustees, or managers of government-owned or -controlled corporations, state universities or educational institutions or foundations.

b. Other offenses or felonies whether simple or complex with other crimes committed by the public officials and employees mentioned in subsection a. of this section in relation to their office.⁷

In the cases before the Court, the accused, the President and member of the Board of Directors of BASECO, was charged with violation of Section 3 (e) of R.A. No. 3019 and Malversation of Public Funds through Falsification of Public Documents under Section 217, in relation to Section 171 (4), of the Revised Penal Code. The position of the accused and the two (2) cases are included in the enumeration of public officers and cases falling under the jurisdiction of the Sandiganbayan pursuant to P.D. No. 1606, as

further amended by R.A. No. 10660. The Sandiganbayan therefore has jurisdiction over these offenses and the person of the accused.

Consequently, it is the Office of the Ombudsman that has the authority to file the cases against the accused with the Sandiganbayan.

On the allegation of the existence of a prejudicial question, the accused argues that the present criminal cases should be suspended pending a final determination by the Sandiganbayan of the ownership of the shares of stock of BASECO in a separate civil case.

A prejudicial question is defined as one based on a fact distinct and separate from the crime but so intimately connected with it that it determines the guilt or innocence of the accused, and for it to suspend the criminal action, it must appear not only that said case involves facts intimately related to those upon which the criminal prosecution would be based but also that in the resolution of the issue or issues raised in the civil case, the guilt or innocence of the accused would necessarily be determined. The rationale behind the principle of suspending a criminal case in view of a prejudicial question is to avoid two conflicting decisions.⁸

Section 7, Rule 111 of the 2000 Revised Rules of Criminal Procedure provides the following elements of a prejudicial question: 1), the **previously instituted civil action** involves an issue similar or intimately related to the issue raised in the **subsequent** criminal action; and 2), the resolution of such issue determines whether or not the criminal action may proceed.

In these cases, the issue whether the shares of stock of BASECO are ill-gotten wealth of former President Ferdinand E. Marcos is neither similar nor intimately related to the issue in these criminal cases. It will also not determine whether the present criminal cases may proceed. The ruling in the ill-gotten wealth case will not determine the guilt or innocence of the accused because he was a public officer of a GOCC at the time the alleged offenses were committed. Moreover, the elements of violation of Section 3 (e) of R.A. No 3019 and Malversation of Public Funds through Falsification of Public Documents do not include the determination of whether the shares of Stock of BASECO are ill-gotten.

Besides, in *Cojuangco v. Roxas*,⁹ the Supreme Court stated that the business of BASECO belonged to the government or its capitalization came from public funds, but which landed in private hands. In *Republic v.*

COCOFED,¹⁰ the Supreme Court stated that BASECO was owned and controlled by then President Ferdinand Marcos, through nominees, during his administration, by taking undue advantage of his public office and/or using his powers, authority, or influence, and that it was by and through the same means that BASECO had taken over the business and/or assets of the National Shipyard and Engineering Co., Inc. and other government-owned or -controlled entities.

By filing the motion to quash, the accused hypothetically admits the facts alleged in the informations. Such facts clearly show or constitute a violation of Section 3 (e) of R.A. No. 3019, as amended.

Hence, the court in resolving the motion cannot consider facts contrary to those alleged in the information or which do not appear on the face of the information except those admitted by the Prosecution.¹¹

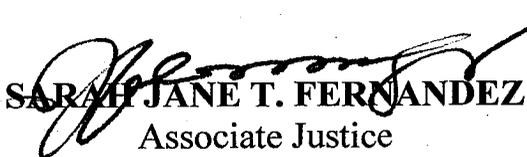
It must be emphasized, however, that the innocence or guilt of the accused for violation of Section 3 (e) of R.A. No. 3019, as charged in the information, is subject to the evidence to be presented by the parties in the trial of these cases.

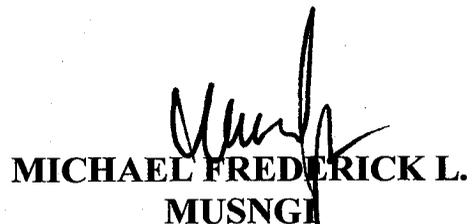
WHEREFORE, the Alternative Motion to Quash or to Suspend Proceedings dated May 12, 2017 is **DENIED**. The arraignment and pre-trial of accused Proceso L. Maligalig shall proceed as scheduled.

SO ORDERED.


KARL B. MIRANDA
Associate Justice

WE CONCUR:


SARAH JANE T. FERNANDEZ
Associate Justice
Chairperson


MICHAEL FREDERICK L. MUSNGI
Associate Justice