



REPUBLIC OF THE PHILIPPINES  
SANDIGANBAYAN  
QUEZON CITY

SPECIAL THIRD DIVISION

REPUBLIC  
OF THE  
PHILIPPINES,

Plaintiff,

Civil Case No. 0009

For: Reconveyance, Reversion,  
Accounting, Restitution  
and Damages

- versus -

JOSE L. AFRICA, *et al.*,  
Defendants.

Present:

CABOTAJE-TANG, P.J.,  
Chairperson  
FERNANDEZ, B., J.  
QUIROZ, A.<sup>1</sup>, J.

Promulgated:

July 30, 2019 

X-----X

RESOLUTION

CABOTAJE-TANG, PJ:

For resolution are the following motions:

1. *Motion to Resolve the Main Case* dated February 1, 2018 filed by the plaintiff;<sup>2</sup> and
2. *Manifestation (Re Plaintiff's "Motion to Resolve the Main Case") and Alternative Motion for the Issuance of an Order relative/leading to the "holding of a Stockholders' Meeting at*

<sup>1</sup> Sitting as a Special Member per Administrative Order No. 264-2018 dated May 3, 2018

<sup>2</sup> pp. 460-467, Vol LXXII, Record



x-----x

*ETPI to elect a new Board of Directors*” dated February 28, 2018 filed by Victor Africa.<sup>3</sup>

In its motion, the plaintiff contends that this case has been submitted for decision since June 2010, together with all the incident cases. Thus, it prays that the case be now decided on the merits to serve the best interest of justice.<sup>4</sup>

Victor Africa joins the plaintiff in praying that the Court consider an early resolution of this case. Citing **Africa vs. Sandiganbayan**<sup>5</sup> and several Resolutions of the Court, Victor Africa contends that, in the alternative, should the Court be unable to resolve the case earlier, he prays for the following reliefs:

- a. “provisionally determine whether there is sufficient evidence to allow the sequestration to continue for all or some of the shares” (as directed by the Supreme Court .. and as has already been started by this Honorable Court;
- b. order PCGG – should the Honorable Court (i) “provisionally determine ... (that) there is sufficient evidence to allow the sequestration to continue for all or some of the shares” – to justify why it (and not the registered owner/s of the sequestered shares should be the one to vote the sequestered shares (as mandated by the Supreme Court to be the burden of PCGG .. this Honorable Court applying the “two-tiered test” on such justification);
- c. “order the holding of a stockholders’ meeting at ETPI to elect a new Board of Directors” (as directed by the Supreme

<sup>3</sup> pp. 490-493, Vol. LXXIII, Record

<sup>4</sup> p. 2, Motion; p. 461, Record

<sup>5</sup> 704 SCRA 74 (2013)

x-----x

Court .. and which this Honorable Court had set to be the step subsequent to the provisional determination);

According to Victor Africa, the holding of a stockholders' meeting "will work justice to the owners of the "sequestered shares" who have long been deprived by the PCGG of their right to represent and vote their shares .. without PCGG justifying - and providing under the "two-tiered test" - its authority to act as representatives/voters thereof."

The Eastern Telecommunications Philippines, Inc. (ETPI) filed its Comment dated March 16, 2018, to Victor Africa's Manifestation and Alternative Motion. It manifested that only 22.2% of its issued and outstanding shares are sequestered and that the remaining 77.8% are owned and held by private individuals and entities who are not parties to this case. Thus, it prays that should the Court order the conduct of an ETPI stockholders' meeting for purposes of voting a director, only one (1) Board seat representing the 22.2% of sequestered share should be voted upon.<sup>6</sup>

The Court finds Victor Africa's alternative motion without merit.

To be sure, the Court had already considered and passed upon the said alternative prayer of Victor Africa to hold a stockholders' meeting at the ETPI to elect a new Board of Directors based on **Africa vs. Sandiganbayan** in its Resolution promulgated on February 15, 2017. This Resolution denied Africa's Motion for the Issuance of an Order for the "Holding of a Stockholders' meeting at ETPI to Elect a New Board of Directors." In the said Resolution, the Court held that while the Supreme Court in **Africa vs. Sandiganbayan**, ruled that the Sandiganbayan has the authority to order the holding of a stockholders' meeting at ETPI, it did not rule that the Sandiganbayan should order the holding of a stockholders' meeting; the Court would have to

<sup>6</sup> pp. 542-542-A, Vol. LXXIII, Record

x-----x

provisionally determine if sequestration should continue for all or some of the shares which necessarily involves passing upon the merits of the pertinent motion, to wit:<sup>7</sup>

Victor Africa contends that in compliance with the Supreme Court's directive in the Decision in *Africa vs. Sandiganbayan*, this Court should order the holding of a stockholders' meeting at ETPI. The dispositive portion of the said Decision reads:

xxx

Finally, in G.R. No. 184636, the Court **SETS ASIDE** the Sandiganbayan's Resolution dated December 7, 2007 denying petitioner Victor Africa's petition for the holding of a stockholders' meeting to elect a new ETPI Board of Directors and Resolution dated July 29, 2008 denying his motion for reconsideration.

The Court **DIRECTS** the Sandiganbayan to immediately set an irrevocable deadline for the PCGG to complete the presentation of its evidence in the forfeiture case involving sequestered ETPI shares of stock and thereafter, to provisionally determine whether there is sufficient evidence to allow the sequestration to continue for all or some of the shares, without prejudice to the taking of further proceedings to conclude the action. The Sandiganbayan shall then order the holding of a stockholders' meeting at ETPI to elect a new Board of Directors, where the sequestered shares may be voted based on the Court's provisional findings.

SO ORDERED.

(underscoring supplied)

Furthermore, he insists that a stockholders' meeting can be held only upon this Court's order. The Court disagrees.

<sup>7</sup> at pp. 4-7, Resolution promulgated on February 15, 2017; pp. 604-607, Vol. LXXII, Record

x-----x

The Court notes that Victor Africa filed his Motion on July 21, 2015. On July 20, 2015, the day before the filing of the said motion, a stockholders' meeting for the purpose of electing the Board of Directors was held at ETPI. It appears that by filing his Motion immediately after a stockholders' meeting was actually held Victor Africa wants this Court to invalidate the July 20, 2015 meeting, as well as the election of the Board of Directors conducted therein.

As the merits. First. in Africa, G.R. 184636 was brought about by this Court Resolution which denied Victor Africa's *Petition to Allow Stockholders' Meeting for an Election of Directors to be Called/Conducted by Petitioner* for lack of jurisdiction. **In setting aside the said Resolution, the Supreme Court ruled that the Sandiganbayan has the authority to order the holding of a stockholders' meeting at ETPI. But it bears stressing that having the authority to issue the order does not mean that this Court is mandated to do so even in the absence of any valid ground. The Court must still look into the merits of the motion.**<sup>8</sup>

That the Supreme Court directed this Court to determine whether sequestration should continue seems to imply that the issue of whether or not the PCGG can vote the sequestered shares has been raised. Here, no such issue was raised. Victor Africa merely claims that another stockholders' meeting should be held because of the directive of the Supreme Court and also because the meeting held on July 20, 2015 was invalid for not having been done pursuant to an order from this Court.

Second, as averred by ETPI and plaintiff-Republic, there is nothing in the dispositive portion, or in the entire Decision for that matter, that suggests that a stockholders' meeting can only be held after an order is issued by this Court. Thus, in the absence of any order- whether from the Supreme Court or this Court - enjoining the holding of a stockholders' meeting, ETPI's

<sup>8</sup> emphasis supplied

x-----x

stockholders can very well hold the said meeting even without an order from this Court.

Section 50 of the Corporation Code provides for the requirements for the holding of the annual stockholders' meeting. To wit:

Sec. 50. Regular and special meeting of stockholders or members. - Regular meetings of stockholders or members shall be held annually on a date fixed in the by-laws, or if not so fixed, on any date in April of every year as determined by the board of directors or trustees: *Provided*, That written notice of regular meetings shall be sent to all stockholders or members of record at least two (2) weeks prior to the meeting, unless a different period is required by the by-laws.

Special meetings of stockholders or members shall be held at anytime deemed necessary or as provided in the by-laws; *Provided, however*, That at least one (1) week written notice shall be sent to all stockholders or members, unless otherwise provided in the by-laws.

Notice of any meeting may be waived, expressly or impliedly, by any stockholder or member.

xxx

Here, it appears that Victor Africa was actually present in the stockholder' meeting held on July 20, 2015, In his *Reply*, he stated:



6. Also: Just to set the records straight: Republic/PCGG alleged that while movant attended the stockholders' meeting he "did not raise any issue as to the validity or propriety of the said meeting."

Republic/PCGG should have first conferred with its representative at the



x-----x

meeting as well as with ETPI, on whether there is basis for the allegation. The fact is that Movant took the floor immediately after the meeting was called to order.. to make of record the ETPI disregard of the Supreme Court directive and of the Sandiganbayan implementation thereof. (Indeed, the tape recording of this portion of the meeting – in the tape recorder of Movant.. and of ETPI’s “Corporate Secretary” – will show how the issue of validity and propriety was raised by Movant)

Victor Africa has not shown that there was failure to comply with the requirements of Sec. 50 of the Corporation Code or the By-Laws of ETPI. Neither has he cited any defect that would render the July 20, 2015 stockholders’ meeting invalid. Thus, the said meeting is presumed to be valid and there is no need to hold another stockholders’ meeting for the same purpose.

**WHEREFORE**, the Court (1) **DENIES** Victor Africa’s *Alternative Motion for the Issuance of an Order relative/leading to the “holding of a Stockholders’ Meeting at ETPI to elect a new Board of Directors”* dated February 28, 2018, for lack of merit; and (2) **NOTES** plaintiff’s Motion to Resolve the Main Case dated February 1, 2018 and Victor Africa’s *Manifestation (Re Plaintiff’s “Motion to Resolve the Main Case”)*.

**SO ORDERED.**  
Quezon City, Metro Manila

  
**AMPARO M. CABOTAJE-TANG**  
Presiding Justice  
Chairperson



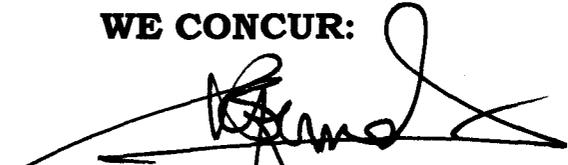


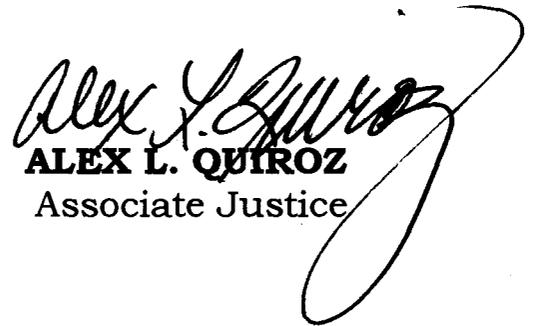
**Resolution**  
Civil Case No. 0009  
RP vs. Africa

- 8 -

x-----x

**WE CONCUR:**

  
**BERNELITO R. FERNANDEZ**  
Associate Justice

  
**ALEX L. QUIROZ**  
Associate Justice

