REPUBLIC OF THE PHILIPPINES
Sandiganbayan
Quezon City

FOURTH DIVISION

Minutes of the proceedings held on October 11, 2018.

Present:

Hon. ALEX L. QUIROZ	Associate Justice
Hon. REYNALDO P. CRUZ	Associate Justice
Hon. BAYANI H. JACINTO	Associate Justice

The following resolution was adopted:

CRIM. CASE NO. 26558 – PEOPLE OF THE PHILIPPINES, *Plaintiff*, v. **JOSEPH EJERCITO ESTRADA, ET.AL.,** *Accused.*

Before this Court are the following:

I. Prosecution's **Compliance with Manifestation** dated August 10, 2018;[1] and

II. Accused Jaime C. Dichaves' **Comment/opposition (Re: Compliance with Manifestation of the Prosecution dated August 10, 2018)** dated September 26, 2018.[2]

CHRONOLOGICAL ANTECEDENTS

On August 24, 2017, during the hearing on accused Dichaves' *Urgent Omnibus Motion in Regard Issuance of Warrant of Arrest Against Jaime C. Dichaves in the Above-Entitled Case*,[3] the Court issued an Order[4] directing the prosecution, **first**, to submit the respective affidavits of Federico C. Pascual, Carlos A. Arellano, and Willie Ng Ocier and the *Affidavit of Recantation* of Ocier, and, **second**, to have these affidavits re-affirmed by affiants Pascual, Arellano, and Ocier.

On September 14, 2017, as partial compliance, the prosecution submitted the respective affidavits of Pascual, Arellano, and Ocier.[5] It however asked for a 10-day extension to submit Ocier's *Affidavit of Recantation*, which extension was granted by the Court in its Resolution dated October 9,

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1 Records, Volume 65, pp. 379 – 394.
2 *Id.*, pp. 406 – 415.
3 *Id.*, pp. 78 – 82.
4 *Id.*, p. 165.
5 *Id.*, pp. 168 – 195.

2017.[6] In the same Resolution, the Court reiterated its directive for the affidavits to be re-affirmed.[7]

The prosecution submitted Ocier's *Affidavit of Recantation* on October 27, 2017.[8]

With respect to the re-affirmed affidavits, during the hearing on October 27, 2017, the Court issued an Order giving the prosecution another thirty (30) days for their submission.[9]

On November 24, 2017, the prosecution filed another *Ex-Parte Motion for Additional Time,* asking for an additional 15 days to submit the re-affirmed affidavit of Ocier.[10] As to Pascual and Arellano, the prosecution reported to the Court that per *Action Report* dated November 17, 2017 of the Office of the Special Prosecutor's Case Revival Monitoring & Execution Bureau, affiant Arellano has since died on February 20, 2013, while affiant Pascual's whereabouts is yet to be determined.[11]

The prosecution sought another extension on December 11, 2017 in its *Ex-Parte Motion for Extension of Time.*[12] The Court issued a Resolution on December 12, 2007 granting the Motion and giving an additional fifteen (15) days to the prosecution for the submission of Ocier's re-affirmed affidavits.[13]

Still, on January 8, 2018, the prosecution moved for another extension, manifesting to the Court that affiant Pascual has been located and will be subpoenaed, and that affiant Ocier is abroad, per the Process Server's Return dated December 11, 2017.[14]

On January 10, 2018, the Court issued a Resolution giving the prosecution until January 20, 2018 to submit its compliance, but cautioned that no further extension will be given, considering the numerous extensions that have already been granted by the Court.[15]

The period of extension for compliance by the prosecution having lapsed without any compliance forthcoming, the Court denied the prosecution's *Manifestation with Very Respectful Motion for Additional Time to Submit Compliance* filed on February 1, 2018[16] and submitted for resolution the motion of accused Dichaves.[17]

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6 *Id.*, p. 212.
7 *Ibid.*
8 *Id.*, pp. 243 - 266.
9 *Id.*, p. 268.
10 *Id.*, pp. 279 – 288.
11 *Ibid.*
12 *Id.*, pp. 294 – 297.
13 *Id.*, p. 300.
14 *Id.*, pp. 303 – 305.
15 *Id.*, p. 306.
16 *Id.*, pp. 315 – 318.
17 *Id.*, pp. 320 – 321.

On May 7, 2018, the Court issued a Resolution noting accused Dichaves' *Urgent Omnibus Motion in Regard Issuance of Warrant of Arrest Against Jaime C. Dichaves in the Above-Entitled Case* and directing the prosecution to present additional evidence.

Thus, the prosecution's *Compliance with Manifestation* dated August 10, 2018 and accused Dichaves' *Comment/Opposition* thereto dated September 26, 2018.

In its *Compliance with Manifestation*, the prosecution insists that the Court is duty-bound to take into consideration the evidence presented during the trial of former President Joseph Ejercito Estrada, et.al., in determining the existence of probable cause for the issuance of a warrant of arrest against accused Dichaves.

On the other hand, accused Dichaves, in his *Comment/Opposition*, argues that the duty of a judge to determine probable cause to issue a warrant of arrest is a personal one, as stressed in Section 2, Article III of the 1987 Constitution. He also points out that instead of submitting additional evidence, the prosecution, in its "*Compliance with Manifestation*," merely listed the 'testimonial evidence' and 'documentary evidence' that were adduced during the plunder trial of former President Joseph Ejercito Estrada which it stated that it "will likewise utilize against Jaime C. Dichaves during his plunder trial to prove his major role in the consummation of the purchase of Belle shares by the SSS and GSIS and in the deposits in the Jose Velarde accounts of former Pres. Estrada as alleged in paragraphs (c) and (d), respectively of the Amended Information."

The accused also observed that from the inception of the proceedings, it was clear that what the court was endeavoring to do was to give the prosecution the opportunity to provide the basis for the court to comply with the requirements of the Constitution for the issuance of a warrant of arrest, but the prosecution regretfully dealt with this casually and merely submitted a list. Dichaves argues that when, at the inception of the case, the liberty of an accused is already at risk, the application of his or her constitutional rights in regard the issuance of a warrant of arrest must be more stringent, but as it is, the prosecution's list of 'testimonial evidence' and 'documentary evidence' on its face violates the Constitution.

The accused notes that the list, both testimonial and documentary, would further show that the witnesses are representatives of banks that are already dissolved or otherwise inexistent, or would involve checks, microfilm copy of checks and deposit slips, as well as bank statements from the same dissolved banks, namely Far East Bank and Trust Company, International Exchange Bank, and Equitable PCI Bank which on their face are inadmissible as evidence. That is perhaps the reason that these pieces of evidence were not submitted for the appreciation of the Honorable Court but were merely listed.

The accused reiterates that well-entrenched in jurisprudence is the requirement that the evidence, for the purpose of determining probable cause for the issuance of a warrant of arrest must be submitted/presented before the issuing judge. He points out that the determination of probable cause by the prosecutor is for a purpose different from that which is to be made by the judge and that since their objectives are different, the judge cannot rely solely on the report of the prosecutor in finding probable cause to justify the issuance of a warrant of arrest. The judge must decide independently and, hence, he must have supporting evidence other than the prosecutor's bare report upon which to legally sustain his own findings on the existence (or nonexistence) of a probable cause to issue an arrest order.

The accused laments that since the filing of his *Urgent Motion* on April 3, 2017, the prosecution sought an extension of time equivalent to 180 days and the issue on probable cause against him has been pending for more than one year now, notwithstanding, no single piece of relevant and admissible evidence against him to show that he committed the offense of plunder has been submitted by the prosecution. He now posits that the only credible reason that to this date the prosecution has not submitted the required admissible and relevant evidence to show probable cause is that there is simply none.

DISCUSSION

Upon the filing of Information in court, trial court judges must determine the existence or non-existence of probable cause based on their **personal evaluation** of the prosecutor's report and its supporting documents. They may dismiss the case, issue an arrest warrant, or require the submission of additional evidence.[18]

The task of the presiding judge when the Information is filed with the court is first and foremost to determine the existence or non-existence of probable cause for the arrest of the accused. The purpose of the mandate of the judge to first determine probable cause for the arrest of the accused is to insulate from the very start those falsely charged with crimes from the tribulations, expenses and anxiety of a public trial.[19]

Under the Constitution[20] and the Revised Rules of Criminal Procedure, a judge is mandated to personally determine the existence of probable cause after his personal evaluation of the prosecutor's resolution and the

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18 Liza L. Maza, et al. v. Hon. Evelyn A. Turla, in her capacity as Presiding Judge of the Regional Trial Court of Palayan City, et al., G.R. No. 187094, February 15, 2017.

19 Teodoro C. Borlongan, Jr., et al. v. Magdaleno M. Pea, et al., G.R. No. 143591, May 5, 2010.

20 Section 2, Article III of the 1987 Constitution.

Section 2. The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures of whatever nature and for any purpose shall be inviolable, and no search warrant or **warrant of arrest shall issue except upon probable cause to be determined PERSONALLY by the judge** after examination under oath or affirmation of the complainant and the witnesses he may produce, and particularly describing the place to be searched and the persons or things to be seized.

supporting evidence for the crime charged. These provisions command the judge to refrain from making a mindless acquiescence to the prosecutor's findings and to conduct his own examination of the facts and circumstances presented by both parties.[21]

In *People v. Castillo and Mejia*,[22] the Supreme Court ruled:

> "There are two kinds of determination of probable cause: executive and judicial. The executive determination of probable cause is one made during preliminary investigation. It is a function that properly pertains to the public prosecutor who is given a broad discretion to determine whether probable cause exists and to charge those whom he believes to have committed the crime as defined by law and thus should be held for trial. Otherwise stated, such official has the quasi-judicial authority to determine whether or not a criminal case must be filed in court. Whether or not that function has been correctly discharged by the public prosecutor, *i.e.*, whether or not he has made a correct ascertainment of the existence of probable cause in a case, is a matter that the trial court itself does not and may not be compelled to pass upon.
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> The judicial determination of probable cause, on the other hand, is one made by the judge to ascertain whether a warrant of arrest should be issued against the accused. The judge must satisfy himself that based on the evidence submitted, there is necessity for placing the accused under custody in order not to frustrate the ends of justice. If the judge finds no probable cause, the judge cannot be forced to issue the arrest warrant.
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> The difference is clear: The executive determination of probable cause concerns itself with whether there is enough evidence to support an Information being filed. The judicial determination of probable cause, on the other hand, determines whether a warrant of arrest should be issued. In *People v. Inting*:[23]
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> > "x x x Judges and Prosecutors alike should distinguish the preliminary inquiry which determines probable cause for the issuance of a warrant of arrest from the preliminary investigation proper which ascertains whether the offender should be held for trial or released. Even if the two inquiries are conducted in the course of one and the same proceeding, there should be no confusion about the objectives. The determination of probable cause for the warrant of arrest is made by the Judge. The preliminary investigation proper—whether or not there is reasonable ground to believe that the accused is guilty of the offense charged and, therefore, whether or not he should be subjected to the expense, rigors and embarrassment of trial—is the function of the Prosecutor."

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21 Ma. Gracia Hao and Danny Hao v. People of the Philippines, G.R. No. 183345, September 17, 2014.

22 607 Phil. 754 (2009) (Per J. Quisumbing, Second Division).

23 G.R. No. 88919, July 25, 1990, 187 SCRA 788 (Per J. Gutierrez, Jr., *En Banc*).

> While it is within the trial court's discretion to make an independent assessment of the evidence on hand, it is only for the purpose of determining whether a warrant of arrest should be issued. The judge does not act as an appellate court of the prosecutor and has no capacity to review the prosecutor's determination of probable cause; rather, the judge makes a determination of probable cause independent of the prosecutor's finding."

While the determination of probable cause to charge a person of a crime is the sole function of the prosecutor, the trial court may, in the protection of one's fundamental right to liberty, dismiss the case if, upon a personal assessment of the evidence, it finds that the evidence does not establish probable cause.[24]

Although jurisprudence and procedural rules allow it, a judge must always proceed with caution in dismissing cases due to lack of probable cause, considering the preliminary nature of the evidence before it. It is only when he or she finds that the evidence on hand absolutely fails to support a finding of probable cause that he or she can dismiss the case.[25] Cognizant of this, this Court proceeded to assess the evidence on record against the accused, but after thoroughly reviewing and assessing the evidence of the prosecution against the accused, it found that the evidence on hand failed to support a finding of probable cause against the accused. Hence, in its Resolution dated May 7, 2018, it directed the prosecution to present additional evidence within five (5) days from notice.

THE COURT'S RULING

In its *Compliance with Manifestation* filed on August 14, 2018, the prosecution argues that this Court is bound to take due consideration of the evidence presented during the trial of former President Joseph Ejercito Estrada, et al., in determining the existence of probable cause for the issuance of a warrant of arrest against accused Jaime C. Dichaves, which thus leads to this question –

Is the Court bound to take cognizance of the evidence presented during the trial of former President Joseph Ejercito Estrada, et al. in determining the existence of probable cause against the accused Dichaves?

The Court finds in the negative. To this, Section 47, Rule 130 of the Rules of Court provides:

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24 Mendoza v. People of the Philippines, G.R. No. 197293, April 21, 2014.
25 *Ibid.*

SEC. 47. *Testimony or deposition at a former proceeding.* The testimony or deposition of a witness deceased or unable to testify, given in a former case or proceeding, judicial or administrative, involving the same parties and subject matter, may be given in evidence against the adverse party who had the opportunity to cross-examine him.

In the present case, accused Dichaves never had the opportunity to cross-examine the witnesses.

Under Article III, Section 14(2) of the 1987 Constitution, the accused has the right to meet the witnesses against him face to face. Under Rule 115 Section 1(f) of the Rules of Court, he has the right to confront and cross-examine the witnesses against him at the trial, a fundamental right which is part of due process.

The right of a party to confront and cross-examine opposing witnesses in a judicial litigation, be it criminal or civil in nature, or in proceedings before administrative tribunals with quasi-judicial powers, is a fundamental right which is part of due process. However, the right is a personal one which may be waived, expressly or impliedly, by conduct amounting to a renunciation of the right of cross-examination. Thus, where a party has had the opportunity to cross-examine a witness but failed to avail himself of it, he necessarily forfeits the right to cross-examine and the testimony given on direct examination of the witness will be received or allowed to remain in the record.[26] In this case, considering that accused Dichaves was not present during the trial of former President Estrada, he never had the opportunity to cross-examine the witnesses and hence, he cannot be deemed to have waived his right to cross-examine them.

Apparently, the Court required the prosecution to submit the re-affirmed affidavits of affiants Pascual, Arellano, and Ocier, including the second affidavit of Ocier (*Affidavit of Recantation*), for its consideration.

Ocier's *Affidavit of Recantation* executed on January 10, 2012 was neither considered during the preliminary investigation conducted by the Office of the Ombudsman nor was it presented during the trial.

Ocier executed his *Affidavit of Recantation* after more than four (4) years since the promulgation of judgment against former President Joseph Ejercito Estrada, Jose "Jinggoy" Estrada, and Atty. Edward S. Serapio on September 12, 2007. Considering the lapse of time, this *Affidavit of Recantation* has to be clarified in order to evaluate whether it would support the existence of probable cause for the issuance of a warrant of arrest.

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[26] Savory Luncheonette v. *Lakas ng Manggagawang Pilipino*, 62 SCRA 258 (1975), People v. Hon. Alberto Seneris, et.al., G.R. No. L-48883, August 6, 1980.

In the case of *Victor Jose Tan Uy v. Office of the Ombudsman*,[27] the Supreme Court held that petitioner therein Victor Jose Tan Uy's right to due process was violated when he was not afforded the opportunity to contest the documentary evidence presented in a previous preliminary investigation conducted by the Office of the Ombudsman. The Supreme Court held:

> "In light of the due process requirement, the standards that *at the very least* assume great materiality and significance are those enunciated in the leading case of *Ang Tibay v. Court of Industrial Relations.* This case instructively tells us - in defining the basic due process safeguards in administrative proceedings - that *the decision* (by an administrative body) *must be rendered on the evidence presented at the hearing, or at least contained in the record and disclosed to the parties affected; only by confining the administrative tribunal to the evidence disclosed to the parties, can the latter be protected in their right to know and meet the case against them; it should not, however, detract from the tribunals duty to actively see that the law is enforced, and for that purpose, to use the authorized legal methods of securing evidence and informing itself of facts material and relevant to the controversy.*
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> Mindful of these considerations, we hold that the petitioners right to due process has been violated.
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> xxxxxxxx
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> The critical evidence linking the petitioner to the plunder case is his identification through the *identification documents.* This notwithstanding and quite inexplicably, the *identification documents* despite the fatal infirmity the Sandiganbayan found in the first preliminary investigation - were once again not given to the petitioner in the subsequent Sandiganbayan-ordered preliminary investigation to inform him of his alleged links to the charges under the complaint-affidavits.
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> How and why this happened was never satisfactorily explained in the parties various submissions. Based on the records of what actually transpired at the Sandiganbayan-ordered preliminary investigation, we can glean the Ombudsmans intent to either confront and identify the petitioner through Ma. Caridad Manahan-Rodenas, or at least to introduce the *Rodenas sworn statement* and the *identification documents* into the preliminary investigation records through her own personal appearance. For these purposes, the Ombudsman specifically called the petitioner and Rodenas to a clarificatory hearing that unfortunately did not result in either of these possibilities; the petitioner did not personally attend the hearing and Rodenas herself failed to show up. At the same time, the Ombudsman was forced, upon the insistence of the petitioners counsel, to consider the inquiry submitted for resolution based on the records then existing. Thus, the Ombudsman still failed to establish in the Sandiganbayan-ordered preliminary investigation the direct link between the individual identified by aliases and the petitioner.

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27 G.R. No. 156399-400, June 27, 2008.

Unfortunately for the Ombudsman, the holding of the clarificatory hearing, in which Rodenas and the petitioner were the invitees, is replete with implications touching on the existence of probable cause at that stage of the proceedings. To be sure, the prosecutor (Ombudsman) cannot be faulted for calling the clarificatory hearing as it is within his authority to do so. As a rule, however, no clarificatory hearing is necessary if the evidence on record already shows the existence of probable cause; conversely, a clarificatory hearing is necessary to establish the probable cause that up to the time of the clarificatory hearing has not been shown. This implication becomes unavoidable for the present case, given the reason for the Sandiganbayans order to conduct another preliminary investigation for the petitioner, and in light of the evidence so far then presented which, as in the first preliminary investigation, did not link the petitioner to the assumed names or aliases appearing in the Information.

Under the above circumstances, the respondent Ombudsman could only fall back on the simple response that *due process cannot be compartmentalized; the court proceedings participated in by the accused-movant* (the petitioner) *form part and parcel of such due process in the same manner that the further preliminary investigation is inseparable from the said court proceedings.* We do not however find this response sufficiently compelling to save the day for the respondent. That the petitioner may have actual prior knowledge of the *identification documents* from proceedings elsewhere is not a consideration sufficiently material to affect our conclusion. Reasonable opportunity to controvert evidence and ventilate ones cause in a proceeding requires full knowledge of the relevant and material facts *specific* to that proceeding. One cannot be expected to respond to collateral allegations or assertions made, or be bound by developments that transpired, in some other different although related proceedings, except perhaps under situations where facts are rendered conclusive by reason of judgments between the same parties - a situation that does not obtain in the present case. Otherwise, surprise which is anathema to due process may result together with the consequent loss of adequate opportunity to ventilate ones case and be heard. Following *Ang Tibay*, a decision in a proceeding must be rendered based on the evidence presented at the hearing (*of the proceeding*), or at least contained in the record (*of the proceeding*) and disclosed to the parties affected (*during or at the proceeding*).

Thus, we cannot agree with the Ombudsmans position that the petitioner should controvert the *identification documents* because they already form part of the records of the preliminary investigation, having been introduced in various incidents of Crim. Case No. 26558 then pending with the Sandiganbayan. The rule closest to a definition of the inter-relationship between records of a preliminary investigation and the criminal case to which it relates is Section 8 (b), Rule 112 of the Revised Rules of Court which provides that *the record of the preliminary investigation, whether conducted by a judge or a prosecutor, shall not form part of the record of the case; the court, on its own initiative or on motion of any party, may order the production of the record or any of its parts when necessary in the resolution of the case or any incident therein, or when it is introduced as an*

evidence in the case by the requesting party. This rule, however, relates to the use of preliminary investigation records in the criminal case; no specific provision in the Rules exists regarding the reverse situation. We are thus guided in this regard by the basic due process requirement that the right to know and to meet a case requires that a person be fully informed of the pertinent and material facts *unique to the inquiry* to which he is called as a party respondent. Under this requirement, reasonable opportunity to contest evidence as critical as the *identification documents* should have been given the petitioner at the Sandiganbayan-ordered preliminary investigation as part of the facts he must controvert; *otherwise, there is nothing to controvert as the burden of evidence lies with the one who asserts that a probable cause exists.* The Ombudsmans failure in this regard tainted its findings of probable cause with grave abuse of discretion that effectively nullifies them. We cannot avoid this conclusion under the constitutional truism that *in the hierarchy of rights, the Bill of Rights takes precedence over the right of the State to prosecute, and when weighed against each other, the scales of justice tilt towards the former.*"

In the above case, the right to due process of an accused was violated when he failed to controvert documentary evidence during preliminary investigation, then much more so during the trial of the case.

The next question is this – **can this Court take judicial notice of the records of Criminal Case No. 26558 during the trial of former President Estrada in the present case, as against Jaime C. Dichaves?**

Again, We rule in the negative.

In the case of *Republic v. Sandiganbayan, Jose L. Africa, et.al.*,[28] the Supreme Court held:

"Judicial notice is the cognizance of certain facts that judges may properly take and act on without proof because these facts are already known to them. Put differently, it is the assumption by a court of a fact without need of further traditional evidentiary support. The principle is based on convenience and expediency in securing and introducing evidence on matters which are not ordinarily capable of dispute and are not *bona fide* disputed.

The foundation for judicial notice may be traced to the civil and canon law maxim, *manifesta (or notoria) non indigent probatione*. The taking of judicial notice means that the court will dispense with the traditional form of presentation of evidence. In so doing, the court assumes that the matter is so notorious that it would not be disputed.

The concept of judicial notice is embodied in Rule 129 of the Revised Rules on Evidence. Rule 129 either requires the court to take

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[28] G.R. No. 152375, December 16, 2011.

judicial notice, *inter alia*, of the official acts of the x x x judicial departments of the Philippines, or gives the court the discretion to take judicial notice of matters ought to be known to judges because of their judicial functions. On the other hand, a party-litigant may ask the court to take judicial notice of any matter and the court may allow the parties to be heard on the propriety of taking judicial notice of the matter involved. In the present case, after the petitioner filed its *Urgent Motion and/or Request for Judicial Notice*, the respondents were also heard through their corresponding oppositions.

In adjudicating a case on trial, generally, courts are not authorized to take judicial notice of the contents of the records of other cases, even when such cases have been tried or are pending in the same court, and notwithstanding that both cases may have been tried or are actually pending before the same judge. This rule though admits of exceptions.

As a matter of convenience to all the parties, a court *may* properly treat all or any part of the original record of a case filed in its archives as read into the record of a case pending before it, when, **with the knowledge of**, *and* **absent an objection from, the adverse party, reference is made to it for that purpose**, by name and number or in some other manner by which it is sufficiently designated; or when the original record of the former case or any part of it, is actually withdrawn from the archives at the court's direction, at the request or with the consent of the parties, and admitted as a part of the record of the case then pending.

Courts must also take judicial notice of the records of another case or cases, where sufficient basis exists in the records of the case before it, warranting the dismissal of the latter case.

The issue before us does not involve the applicability of the rule on mandatory taking of judicial notice; neither is the applicability of the rule on discretionary taking of judicial notice seriously pursued. Rather, the petitioner approaches the concept of judicial notice from a *genealogical perspective* of treating whatever evidence offered in any of the children cases Civil Case 0130 as evidence in the parent case Civil Case 0009 - or of the whole family of cases. To the petitioner, the supposed relationship of these cases warrants the taking of judicial notice.

We strongly disagree. *First*, the supporting cases the petitioner cited are inapplicable either because these cases involve only a single proceeding or an exception to the rule, which proscribes the courts from taking judicial notice of the contents of the records of other cases. *Second*, the petitioners proposition is obviously obnoxious to a system of orderly procedure. The petitioner itself admits that the present case has generated a lot of cases, which, in all likelihood, involve issues of varying complexity. If we follow the logic of the petitioners argument, we would be espousing judicial confusion by indiscriminately allowing the admission of evidence in one case, which was presumably found

competent and relevant in another case, simply based on the supposed lineage of the cases. It is the duty of the petitioner, as a party-litigant, to properly lay before the court the evidence it relies upon in support of the relief it seeks, instead of imposing that same duty on the court. We invite the petitioners attention to our prefatory pronouncement in *Lopez v. Sandiganbayan*:

> Down the oft-trodden path in our judicial system, by common sense, tradition and the law, the Judge in trying a case sees only with judicial eyes as he ought to know nothing about the facts of the case, except those which have been adduced judicially in evidence. Thus, when the case is up for trial, the judicial head is empty as to facts involved and *it is incumbent upon the litigants to the action to establish by evidence the facts upon which they rely*. (emphasis ours)

We therefore refuse, in the strongest terms, to entertain the petitioners argument that we should take judicial notice of the Bane deposition."

(Emphasis supplied)

Applying the above pronouncement, this Court cannot take judicial notice of the testimonial and documentary evidence presented during the trial of former President Estrada, as against accused Jaime Dichaves, since this Court is not authorized to take judicial notice of the contents of the records of other cases, even when such cases have been tried or are pending in the same court, and notwithstanding that both cases may have been tried or are actually pending before the same judge. Although the rule admits of exceptions, it is not applicable to this case considering that a court may properly treat all or any part of the original record of a case filed in its archives as read into the record of a case pending before it, when, with the knowledge of an absent an objection from the adverse party, reference is made to it for that purpose. As it is, the accused objects to the evidence.

At this juncture, the Court reiterates its assessment of the evidence on record against the accused, as it has made known to the parties through its Resolution promulgated on May 7, 2018, *viz* –

> "While the determination of probable cause to charge a person of a crime is the sole function of the prosecutor, the trial court may, in the protection of one's fundamental right to liberty, dismiss the case if, upon a personal assessment of the evidence, it finds that the evidence does not establish probable cause.
>
> Although jurisprudence and procedural rules allow it, a judge must always proceed with caution in dismissing cases due to lack of probable cause, considering the preliminary nature of the evidence before it. It is only when he or she finds that the evidence on hand absolutely fails to support a finding of probable cause that he or she

can dismiss the case. On the other hand, if a judge finds probable cause, he or she must not hesitate to proceed with arraignment and trial in order that justice may be served.

Cognizant of the above-mentioned rule, this Court will now proceed to assess the evidence on record against the accused.

After thoroughly reviewing and assessing the evidence of the prosecution against the accused, this Court finds that the evidence on hand fails to support a finding of probable cause against the accused.

A perusal of the Affidavit dated 12 February 2001 of Carlos A. Arellano discloses that it did not mention as all any participation of the accused. The accused was merely mentioned at being at the home of then President Joseph Ejercito Estrada when Arellano was at the Presidential Residence.

The Affidavit dated 07 February 2001 of Federico Pascual does not mention at all the name of the accused.

The Affidavit dated 02 March 2001 of Willy Ng Ocier mentions that the accused is a second cousin of Ocier and that the accused was voted as a member of the Board of Directors of Belle Corporation. Ocier recounts talking with the accused about investments with the GSIS and SSS and subsequent sale of Belle Corporation shares and handing over of a check to the accused. But in his subsequent Affidavit dated January 10, 2012, Ocier clarified that the accused had nothing to do with the purchase of Belle shares by the GSIS and SSS and that he just gave the amount of P189,700.00 to the accused as a personal investment.

If the above affidavits are the only primary evidence against the accused at this point in time, they appear insufficient to support a finding of probable cause against the accused.

Having ordered the prosecution to submit the affidavits constituting evidence against the accused, this Court finds it already moot and academic to rule on the accused's prayers in his "*Urgent Omnibus Motion in Regard to Issuance of Warrant of Arrest Against Jaime C. Dichaves in the Above-Titled Case.*"

WHEREFORE, finding the supporting evidence for the existence of probable cause to be insufficient, let the prosecution present additional evidence within five (5) days from notice. The "*Urgent Omnibus Motion in Regard to Issuance of Warrant of Arrest Against Jaime C. Dichaves in the Above-Titled Case*" is **NOTED**."

In view of the foregoing, considering that the prosecution failed to present sufficient evidence to support a finding of probable cause against accused Jaime C. Dichaves, and considering further that Willy Ng Ocier's first affidavit executed on March 2, 2001 and *Affidavit of Recantation* executed

on January 10, 2012 have not been re-affirmed despite the prosecution having been given more than one year to do so, due process having hereby accorded the prosecution, the Court is constrained to dismiss this case.

WHEREFORE, for failure of the prosecution to present additional evidence to support the existence of probable cause, the case against accused Jaime C. Dichaves is hereby **DISMISSED**.

QUIROZ, J., *Chairperson*

CRUZ, J.

JACINTO, J.