



REPUBLIC OF THE PHILIPPINES  
*Sandiganbayan*  
Quezon City

SIXTH DIVISION

MINUTES of the proceedings held on November 19, 2018

PRESENT:

**HON. SARAH JANE T. FERNANDEZ**.....Associate Justice  
**HON. KARL B. MIRANDA**.....Associate Justice  
**HON. KEVIN NARCE B. VIVERO**.....Associate Justice

The following resolution was adopted:

**SB-16-CRM-0769** –

**PEOPLE vs. BENJAMIN S. ABALOS, SR.**

In his *Motion for Leave of Court to Admit Attached Second Motion for Reconsideration (of the Resolution dated October 8, 2018)*,<sup>1</sup> accused Benjamin S. Abalos, Sr. prays that this Court admit the attached *Second Motion for Reconsideration* on the ground of “extraordinarily persuasive reasons.” The prosecution opposed the accused’ Motion.<sup>2</sup>

This Court resolves to **DENY** the accused’ Motion.

This Court denied (1) the accused’ *Motion for Leave to File Demurrer to Evidence*<sup>3</sup> in the Resolution dated September 11, 2018,<sup>4</sup> and (2) his *Motion for Reconsideration (of the Resolution dated 11 September 2018)*<sup>5</sup> in the Resolution dated October 8, 2018.<sup>6</sup> Upon the denial of a motion for leave to file a demurrer to evidence, an accused may present evidence in his or her defense, or in the alternative, file a demurrer to evidence without leave of court, subject to the legal consequence of filing such demurrer without leave of court.<sup>7</sup>

The accused’ arguments in the attached *Second Motion for Reconsideration* sought to be admitted, as to the lack of the IRR, and as to whether the absence of a public bidding equates to the grant of an unwarranted

<sup>1</sup> Dated October 22, 2018; Record, Vol. 2, pp. 354-355

<sup>2</sup> *Comment/Opposition* dated November 8, 2018 and filed on November 12, 2018

<sup>3</sup> Dated August 13, 2018; Record, Vol. 2, pp. 294-299

<sup>4</sup> Record, Vol. 2, pp. 312-315

<sup>5</sup> Record, Vol. 2, pp. 319-331

<sup>6</sup> Record, Vol. 2, pp. 343-346

<sup>7</sup> *Rules of Court. Rule 119, Sec. 23. Demurrer to Evidence.* – x x x

x x x. When the demurrer to evidence is filed without leave of court, the accused waives the right to present evidence and submits the case for judgment on the basis of the evidence for the prosecution.

x x x

benefit, are matters of defense, which will be passed upon in the resolution of the present case. His other arguments are a rehash of those in his previous motions. It appears that the accused' instant Motion is a mere dilatory tactic, or a misuse of Court processes, in contravention of the Code of Professional Responsibility.<sup>8</sup> Delay is precisely what is sought to be avoided in denying a motion for leave to file a demurrer to evidence.<sup>9</sup>

Counsel for the accused is **STERNLY WARNED** that continued misuse of judicial processes shall be dealt with more severely.

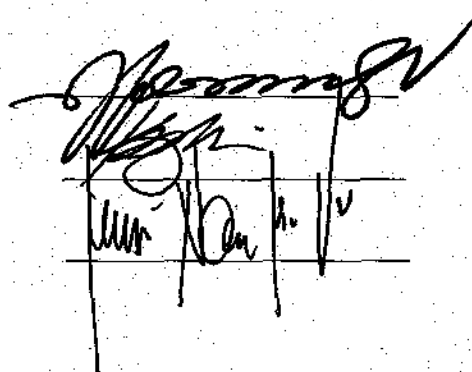
**SO ORDERED.**

**APPROVED:**

**FERNANDEZ, SJ, J.,** *Chairperson*

**MIRANDA, J.**

**VIVERO, J.**

Handwritten signatures of the judges: Fernandez, SJ, J., Miranda, J., and Vivero, J. The signatures are written in black ink over three horizontal lines.

<sup>8</sup> **Rule 10.03** – A lawyer shall observe the rules of procedure and shall not misuse them to defeat the ends of justice.

**Rule 12.04** – A lawyer shall not unduly delay a case, impede the execution of a judgment or misuse Court processes.

<sup>9</sup> Please see *Bernardo v. Court of Appeals*, G.R. No. 119010, September 5, 1997