



REPUBLIC OF THE PHILIPPINES
SANDIGANBAYAN
Quezon City

FOURTH DIVISION

PEOPLE OF THE PHILIPPINES,
Plaintiff,

Crim. Case No. SB-18-CRM-0525

For: Violation of Section 3(h) of R. A. No. 3019
As amended.


-versus-

JOSEFINA M. BARRION,
PONCIANO S. BARRION,
and FERDINAND NIÑO M.
BARRION,
Accused.

Present:

QUIROZ, J., *Chairperson*
CRUZ, J.
JACINTO, J.

Promulgated on:

JAN 10 2019 

X -----X

RESOLUTION

CRUZ, J.

This resolves (1) the Motion for Reconsideration dated 05 November 2018 of accused Josefina M. Barrion, Ponciano S. Barrion and Ferdinand Niño M. Barrion (hereinafter collectively referred to as "accused") and (2) the Prosecution's Opposition (Re: *Motion for Reconsideration dated November 5, 2018 filed by the accused*) dated 27 November 2018.

The accused move for reconsideration¹ of this Court's Resolution² dated 09 October 2018, which denied their Motion to

¹ Records, pp. 252-254

² Records, pp. 239-243



RESOLUTION

PP vs. Josefina M. Barrion, et al.
Case No. SB-18-CRM-0525

Page 2 of 4

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Quash dated 14 August 2018 for lack of merit. Essentially, the accused still insist that the Court has no jurisdiction to try and hear their case because accused Josefina Barrion's ("Josefina") position as Engineer IV and designation as Officer-in-Charge of the Engineering Office do not equate to the position of an Officer-in-Charge City Engineer, considering that as an OIC of the Engineering Office, she merely signs the administrative matters (*sic*) related to such office but she does not discharge the duties and responsibilities of the City Engineer, nor does she enjoy the salaries and benefits thereof.

The prosecution opposed³ the motion, claiming that it should be denied for being filed out of time and for non-compliance with the required notice of hearing provided under Sections 4 and 5, Rule 15 of the Revised Rules of Court. Furthermore, the prosecution claims that it is not material that accused Josefina only acts as an OIC of the Engineering Office. The prosecution emphasizes that R.A. 8249 explicitly provides that public officials occupying the positions enumerated therein are within the jurisdiction of this Court regardless of whether they hold such positions in a permanent, acting, or interim capacity at the time the offense was committed. Citing jurisprudence, the prosecution reiterates that it is the position held and not the salary grade which determines this Court's jurisdiction over the case.

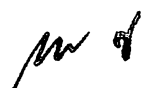
The accused's motion must be denied.

Under the Revised Guidelines for Continuous Trial of Criminal Cases (A. M. No. 15-06-10-SC), a motion for reconsideration of the resolution of a meritorious motion shall be filed within a non-extendible period of five (5) calendar days from receipt of such resolution.⁴ In this case, the accused admit receipt of this Court's assailed resolution on 18 October 2018. From said date, they had five (5) calendar days or until 23 October 2018 within which to file their Motion for Reconsideration. Ergo, when they filed the present motion on 05 November 2018, the reglementary period of five (5) calendar days for the filing thereof had already lapsed, and thus, the said motion was belatedly filed. Concomitantly, the Revised Guidelines for Continuous Trial of Criminal Cases (A. M. No. 15-06-10-SC) further instructs that a motion that does not conform with the requirements stated therein shall be considered unmeritorious and shall be denied outright.⁵

³ Records, pp. 258-262

⁴ See second to the last paragraph of the Revised Guidelines for Continuous Trial of Criminal Cases, III. Procedure, (2) Motion, (c) Meritorious Motions.

⁵ See the last paragraph of the Revised Guidelines for Continuous Trial of Criminal Cases, III. Procedure,



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Likewise, the Court also confirms that the present motion did not contain the required notice of hearing. The adverse effect of such non-compliance is expounded in the case of *Ethel Acampado, et al., vs. Lourdes R. Cosmilla, et al.*,⁶ to wit:

xxxx The Motion for Reconsideration is a contentious motion that needs to comply with the required notice and hearing and service to the adverse party as mandated by the following provisions of the Revised Rules of Court:

RULE 15. SEC. 4. *Hearing of motion.* — Except for motions which the court may act upon without prejudicing the rights of the adverse party, every written motion shall be set for hearing by the applicant.

Every written motion required to be heard and the notice of the hearing thereof shall be served in such a manner as to ensure its receipt by the other party at least three (3) days before the date of hearing, unless the court for good cause sets the hearing on shorter notice.

SEC. 5. *Notice of hearing.* — The notice of hearing shall be addressed to all parties concerned, and shall specify the time and date of the hearing which must not be later than ten (10) days after the filing of the motion.

SEC. 6. *Proof of service necessary.* — No written motion set for hearing shall be acted upon by the court without proof of service thereof.

The foregoing requirements — that the notice shall be directed to the parties concerned, and shall state the time and place for the hearing of the motion — are mandatory, and if not religiously complied with, the motion becomes *pro forma*. A motion that does not comply with the requirements of Sections 4 and 5 of Rule 15 of the Rules of Court is a worthless piece of paper which the clerk of court has no right to receive and which the court has no authority to act upon. xxxx

Notably, in the case of *Marciano Alcaraz vs. Judge Fatima Gonzales-Asdala, Regional Trial Court, Branch 87, Quezon City*,⁷ it was further explained that the important aspect of the above judicial pronouncement is the absence of any duty on the part of the court to take action on a motion wanting a valid notice of hearing. The Supreme Court held, thus:

(2) Motion, (c) Meritorious Motions.

⁶ G. R. No. 198531, September 28, 2015

⁷ A. M. No. RTJ-11-2272, February 16, 2011

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xxxx the Rules of Court places upon the movant, and not with the court, the obligations both to secure a particular date and time for the hearing of his motion and to give a proper notice thereof on the other party. It is precisely the failure of the movant to comply with these obligations, which reduces an otherwise actionable motion to a mere scrap of paper not deserving of any judicial acknowledgment.
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Still, even if the Court were to brush aside these infirmities, the present motion will still be denied for lack of merit because the said motion failed to raise any novel and substantial issue that would warrant a reconsideration, much less a reversal of the Court's assailed resolution.⁸

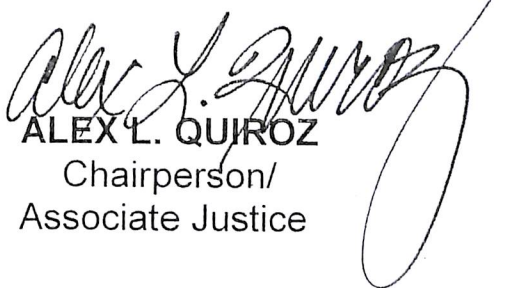
WHEREFORE, premises considered, the accused's Motion for Reconsideration dated 05 November 2018, is hereby **DENIED** for being filed out of time.

Let their **ARRAIGNMENT** and **PRE-TRIAL** set on 14 January 2019, at 1:30 P. M., proceed as scheduled.

SO ORDERED.


REYNALDO P. CRUZ
Associate Justice

We Concur:


ALEX L. QUIROZ
Chairperson/
Associate Justice


BAYANI H. JACINTO
Associate Justice

⁸ The case of Madeleine Mendoza-Ong vs. Sandiganbayan and People of the Philippines (440 SCRA 423, p. 425) categorically held that it would be a useless ritual for the Court to reiterate itself when there are no new and substantial arguments raised that would warrant a reconsideration of the Court's resolution.