



REPUBLIC OF THE PHILIPPINES
SANDIGANBAYAN
QUEZON CITY

FIFTH DIVISION

PEOPLE OF THE PHILIPPINES,
Plaintiff,

Criminal Case No.:

SB-08-CRM-0307 to 0370

FOR 0307 to 0338: Violation of Sec. 3(e), RA 3019

FOR 0339 to 0370: Falsification of Public Documents

- versus -

CELSO Z. FERNANDEZ, III
Accused.

Present:

Lagos, J., Chairperson,
Mendoza –Arcega, J., and
Corpus-Mañalac, J.

Promulgated:

March 13, 2019 led

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RESOLUTION

MENDOZA-ARCEGA, J.:

This resolves accused Celso Z. Fernandez III's undated *Manifestation and Motion*¹ filed on February 27, 2019.

Accused Fernandez manifests and pleads before this Court the following matters:

1. That he be allowed to substitute and/or transfer the markings on the Mortgage Bank Receipts ("MBR's") earlier presented, compared and marked during the pre-trial to the copies thereof duly certified by Ms. Alma M. dela Chica, Chief Cash Management Division of the National Home Mortgage Finance Corporation ("NHMFC"). He requests that this manifestation be duly noted by the Court and the

¹ Record, Volume 6, pages 466-467.

RESOLUTION

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same be considered as compliance to its oral order made in open court on February 12, 2019;

2. Additionally, upon careful consideration, he would like to withdraw his oral manifestation that he will no longer present any witness. Instead, he would like to present, with leave of court, the person of Ms. Alma dela Chica to testify on the payments by the thirty-eight (38) lawful beneficiaries and/or substitutes which payments were duly covered by the copies of the MBR's.

In its *Comment/Opposition* to the Manifestation and Motion, the prosecution counters that:

1. The accused, through counsel, manifested in open court that he is no longer presenting other witnesses and would instead file the appropriate pleading relative to the marking of documentary evidence;
2. The accused for some reasons asked for an extension to file the appropriate pleading which was granted by the Court giving him until February 23, 2019;
3. Instead, the prosecution received this Manifestation and Motion that he is withdrawing his earlier manifestation in open court and seeks leave of court to present a witness in view of the objections made by the prosecution in open court;
4. The accused was given its last opportunity to present its witness during the hearing on February 12, 2019 but opted not to present any more witnesses and rather requests for transfer of marking of the certified copies of documents by Ms. Alma dela Chica of the NHMFC in order to be part of the evidence;
5. The prosecution opposed on the ground that no originals of the documents from the NHMFC were ever presented for comparison and that said certified copies apparently did not emanate from the files under the custody of the certifying officer but were photocopied from the photocopies with markings that could have only been provided by the accused. Hence, these documents cannot be considered as duly certified even if testified to by the certifying officer;
6. Despite the objections, the accused, through his counsel, confirmed that he will not present any other witness when the court asked if it will not present the certifying officer as a witness;
7. Accused did not also mention his intention to present another witness when he asked for an extension to file the appropriate



pleadings. Thus, his request for leave of court to present another witness is not fair and justified under the circumstances. Accused is bound by the commitments made before this court and cannot withdraw the same at his whim in disregard of court procedures;

8. Finally, this Motion also violates the ten-day notice rule. The undated Manifestation and Motion was received by the prosecution on February 27, 2019 and set for hearing on March 11, 2019 and will further delay the case;

Upon perusal of the records of this case together with the pleadings filed by the parties, the Court finds it appropriate to **grant** the accused's motion.

On February 12, 2019, this Court issued an order stating that counsel for the accused manifested that he will no longer present additional testimonial evidence for the defense and he is given a period of five days from such date to file his intended pleading, a similar period is given to the prosecution to file its comment. The accused asked for extension of time to file the pleading, the Court granted the same, hence, this present motion.

We cannot find any reason to deny the accused the right to replace the provisional markings made during the pre-trial to a certified true copy of the Mortgage Bank Receipts (MBR's). Similarly, the said documentary exhibits are to be certified by Ms. Dela Chica, who shall be presented as a defense witness. In the interest of substantial justice, the presentation of Ms. Dela Chica, although belated, may be allowed. The accused should not be precluded to present witnesses, until he has rested his case. It must be borne in mind that the accused faces sixty-three (63) charges for which, if convicted, would be punished by prison terms. Above all, the right of the accused to be heard under the Constitution must be given utmost importance. Specifically, no person shall be held to answer for a criminal offense without due process of law and he shall have the right to be heard by himself and counsel.²

As to the prosecution's opposition that this Motion violates the ten-day rule, We disagree. The following provisions under Rule 15 of the Rules of Court are applicable:

“Section 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

² Section 14, Article III.

the date of hearing, unless the court for good cause sets the hearing on shorter notice.

Section 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.”


It has been settled that the date of delivery of pleading to a private letter-forwarding agency is not to be considered as the date of filing thereof in court, and that in such cases, the date of actual receipt by the court, and not the date of delivery to the private carrier, is deemed the date of filing of that pleading.³ The present motion was filed in court on February 27, 2019 which is more than ten (10) days prior to the scheduled hearing on March 11, 2019. The general rule is that the three-day notice requirement in motions under Sections 4 and 5 is mandatory. The purpose of the three-day notice requirement, which was established not for the benefit of the movant but rather for the adverse party, is to avoid surprises upon the latter and to grant it sufficient time to study the motion and to enable it to meet the arguments interposed therein.⁴ However, when the adverse party had been afforded the opportunity to be heard, and has been indeed heard through the pleadings filed in opposition to the motion, the purpose behind these provisions is deemed realized.⁵ Thus, We cannot say that the accused failed to comply with these requirements given the present circumstances.

WHEREFORE, accused Celso Z. Fernandez III’s Motion for the substitution and/or transfer of markings made upon the Mortgage Bank Receipts (MBR’s) during the pre-trial to the copies that are duly certified by Alma M. dela Chica and to present Alma M. dela Chica as his witness, is hereby **GRANTED**. Let a *subpoena ad testificandum* be issued to the said witness for her to appear and testify on April 3, 2019 at 1:30 in the afternoon.

SO ORDERED.


MARIA THERESA V. MENDOZA-ARCEGA
Associate Justice

WE CONCUR:


RAFAEL R. LAGOS
Associate Justice
Chairperson


MARYANN E. CORPUS -MAÑALAC
Associate Justice

³ PNB vs. CIR, G.R. No. 172458, December 14, 2011, citing Benguet Electric Corp., Inc. vs. NLRC, 209 SCRA 60-61.

⁴ Cabrera vs. Ng, G.R. No. 201601, March 12, 2014, citing United Pulp and Paper Co., Inc. vs. Acropolis Central Guaranty Corporation, G.R. No. 171750, January 25, 2012.

⁵ Id.