



REPUBLIC OF THE PHILIPPINES
Sandiganbayan
Quezon City

FOURTH DIVISION

PEOPLE OF THE PHILIPPINES,
Plaintiff,

- versus -

NACIANCENO MEJOS
PACALIOGA, JR.,

Accused.

**CRIM. CASES NOS. SB-
18-CRM-0116 to 0121**

For: Violation of Section 8,
R.A. No. 6713 and Perjury
under Article 183, Revised
Penal Code

Present:

QUIROZ, J., *Chairperson*

CRUZ, J.

JACINTO, J.

Promulgated on:

MAR 04 2019 *[Signature]*

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RESOLUTION

CRUZ, J.

This resolves accused-movant Nacianceno Mejos Pacalioga, Jr.'s (Pacalioga, for brevity) Motion to Quash/Dismiss (With Entry of Appearance of Counsel) ¹ dated 23 January 2019 and the prosecution's Comment/Opposition (on the Motion to Quash/Dismiss)² dated 15 February 2019.

¹ Records, pp. 153-162.

² *Id.*, pp. 179-183.

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Pacalioga moves to quash the Informations on the grounds that the facts charged do not constitute an offense and that the Informations contain averments which, if true, would constitute a lawful excuse or justification.³

He claims that he had already transferred ownership of the parcels of land covered by ten (10) tax declarations (the Subject Property) by way of Deeds of Quitclaim and/or Waiver of Rights to Romeo L. Dumayon on 3 March 1997 and to Dumingag United Subanen Association (DUSA) on 17 March 2008 and 9 January 2009; thus, he no longer had to include the Subject Property in his Statement of Assets, Liabilities and Net Worth (SALN) for the years 2011, 2012 and 2014.

He maintains that the Subject Property were already identified, delineated and declared as part of the ancestral domain, for which a Certificate of Ancestral Domain Title (CADT) was issued in 2004. He posits that, since Section 60 of R.A. No. 8731 or the Indigenous Peoples Rights Act (IPRA) exempts all lands certified to be ancestral domains from real property taxes, special levies and other forms of exaction, the tax declarations covering the Subject Property should be cancelled by the municipal assessor upon the issuance of a CADT. He argues that, if at all, his only fault was that he was negligent in not requesting the municipal assessor to cancel the tax declarations over the Subject Property in view of the IPRA and the issuance of the CADT.

The prosecution counters that Pacalioga's allegations in his motion to quash are all matters of defense that need to be threshed out in a full-blown trial and are not proper in such motion. It maintains that the six (6) Informations against him are all sufficient in form and substance. It emphasizes that a motion to quash must be based on a defect in the information which is evident on its face; thus, evidence *aliunde* or matters extrinsic of the information are not to be considered. In particular, the prosecution points out that Pacalioga's claim that the Subject Property no longer belonged to him in 2011, 2012 and 2014, are matters yet to be presented, proven and considered by the Court during trial. It argues that his mere assertion of non-ownership of the Subject Property cannot be considered at this time when he has not yet presented his cases and in fact has not yet been arraigned.

The prosecution asserts that the allegations in the Informations in Criminal Cases Nos. SB-18-CRM-0116 to 0118 set forth all the

³ Section 3, paragraphs (a) and (h), respectively, of Rule 117 of the Revised Rules of Criminal Procedure.

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elements of violation of Section 8, R.A. No. 6713, while those in Criminal Cases Nos. SB-18-CRM-0119 to 0121 sufficiently allege all the elements of Perjury under Article 183 of the Revised Penal Code.

The motion lacks merit.

A motion to quash an information is the mode by which an accused assails the validity of a criminal information filed against him/her for insufficiency on its face in point of law, or for defects which are apparent in the face of the information. It is a hypothetical admission of the facts alleged in the information, for which reason, the court cannot consider allegations contrary to those appearing on the face of the information.⁴

The Supreme Court further explained in *People v. Odtuhan*:⁵

x x x Evidence *aliunde* or matters extrinsic of the information are not to be considered. To be sure, a motion to quash should be based on a defect in the information which is evident on its fac[e]. Thus, if the defect can be cured by amendment or if it is based on the ground that the facts charged do not constitute an offense, the prosecution is given by the court the opportunity to correct the defect by amendment. If the motion to quash is sustained, the court may order that another complaint or information be filed except when the information is quashed on the ground of extinction of criminal liability or double jeopardy.

To determine if the subject Informations validly charge the offenses of violation of Section 8 of R.A. No. 6713 and Perjury, the Court must examine if the material facts alleged in the Informations will establish the essential elements of the offenses charged as defined in the law, without considering matters *aliunde*.⁶

Criminal Cases Nos. SB-18-CRM-0116 to 0118

The Informations for violation of Section 8 of R.A. No. 6713, save for the dates of commission of the offense and the reckoning dates of the subject SALNs, uniformly read as follows:

That on or about 3 May 2012,⁷ or sometime prior or subsequent thereto, in the Municipality of Dumingag, Zamboanga del Sur, Philippines, and within the jurisdiction of this Honorable Court, accused **NACIANCENO MEJOS PACALIOGA, JR.**, a high-ranking public officer, being then the Municipal Mayor of Dumingag,

⁴ *Antone v. Beronilla*, G.R. No. 183824, 8 December 2010.

⁵ G.R. No. 191566, 17 July 2013.

⁶ *Dela Chica v. Sandiganbayan*, G.R. No. 144823, 8 December 2003.

⁷ Indicated as "17 April 2013" in Criminal Case No. SB-18-CRM-0117 (Records, pp. 4-6) and "22 April 2015" in Criminal Case No. SB-18-CRM-0118 (*Id.*, pp. 7-9).

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Zamboanga del Sur, and as such had the obligation to accomplish, submit or file his complete and truthful declaration under oath of all his assets, liabilities, net worth and financial or business interests, committing the crime in relation to office and in utter disregard of his official obligation, did then and there willfully, unlawfully and criminally fail to declare in his sworn Statement of Assets, Liabilities, and Net Worth with Disclosure of Business Interest and Financial Connections and Identification of Relatives in the Government Service as of 31 December 2011,⁸ his ten (10) agricultural lands situated in Dumingag, as required of every public officer under the law, to the damage and prejudice of the public interest.

CONTRARY TO LAW.⁹

Section 8 of R.A. No. 6713, the provision of law allegedly violated, reads as follows:

Section 8. Statements and Disclosure. — Public officials and employees have an obligation to accomplish and submit declarations under oath of, and the public has the right to know, their assets, liabilities, net worth and financial and business interests including those of their spouses and of unmarried children under eighteen (18) years of age living in their households.

(A) Statements of Assets and Liabilities and Financial Disclosure. — All public officials and employees, except those who serve in an honorary capacity, laborers and casual or temporary workers, shall file under oath their Statement of Assets, Liabilities and Net Worth and a Disclosure of Business Interests and Financial Connections and those of their spouses and unmarried children under eighteen (18) years of age living in their households.

The two documents shall contain information on the following:

- a) real property, its improvements, acquisition costs, assessed value and current fair market value;
- b) personal property and acquisition cost;
- c) all other assets such as investments, cash on hand or in banks, stocks, bonds, and the like;
- d) liabilities, and;
- e) all business interests and financial connections.

The documents must be filed:

- a) within thirty (30) days after assumption of office;
- b) on or before April 30, of every year thereafter; and
- c) within thirty (30) days after separation from the service.

⁸ Indicated as "31 December 2012" in Criminal Case No. SB-18-CRM-0117 and "31 December 2014" in Criminal Case No. SB-18-CRM-0118.

⁹ Information in Criminal Case No. SB-18-CRM-0116, Records, pp. 1-3.

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All public officials and employees required under this section to file the aforesated documents shall also execute, within thirty (30) days from the date of their assumption of office, the necessary authority in favor of the Ombudsman to obtain from all appropriate government agencies, including the Bureau of Internal Revenue, such documents as may show their assets, liabilities, net worth, and also their business interests and financial connections in previous years, including, if possible, the year when they first assumed any office in the Government.

Husband and wife who are both public officials or employees may file the required statements jointly or separately.

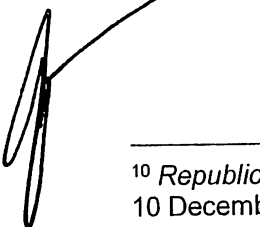

The Statements of Assets, Liabilities and Net Worth and the Disclosure of Business Interests and Financial Connections shall be filed by:

- (1) Constitutional and national elective officials, with the national office of the Ombudsman;
- (2) Senators and Congressmen, with the Secretaries of the Senate and the House of Representatives, respectively; Justices, with the Clerk of Court of the Supreme Court; Judges, with the Court Administrator; and all national executive officials with the Office of the President;
- (3) Regional and local officials and employees, with the Deputy Ombudsman in their respective regions;
- (4) Officers of the armed forces from the rank of colonel or naval captain, with the Office of the President, and those below said ranks, with the Deputy Ombudsman in their respective regions; and
- (5) All other public officials and employees, defined in Republic Act No. 3019, as amended, with the Civil Service Commission.

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As can be gathered from the above-quoted Section 8 of R.A. No. 6713, the elements of violation thereof are the following:

- (1) that the accused is a public official or employee;
- (2) that the accused is required by law to accomplish and submit a complete, truthful and sworn SALN;¹⁰

 ¹⁰ Republic v. Sereno, G.R. No. 237428, 11 May 2018, citing Casimiro v. Rigor, G.R. No. 206661, 10 December 2014. ✓ 

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- (3) that the accused fails to submit a complete, truthful and sworn SALN with the proper agency within the period prescribed by law.

On the other hand, the Informations allege the following:

- (1) that Pacalioga was the Municipal Mayor of Dumingag, Zamboanga del Sur on the dates material to the cases;
- (2) that he had the obligation to accomplish, submit or file his complete, truthful and sworn SALN for the years 2011, 2012 and 2014; and
- (3) that he willfully, unlawfully and criminally failed to declare in his sworn SALNs for the years 2011, 2012 and 2014 his ten (10) agricultural lands (Subject Property) situated in Dumingag.

The foregoing allegations in the Informations, when placed side by side with the elements of violation of Section 8 of R.A. No. 6713, will reveal that the facts alleged in the Informations, if admitted hypothetically, establish all the elements of the said offense. Thus, the ground that the facts charged in the Informations do not constitute violation of Section 8 of R.A. No. 6713 does not lie.

Criminal Cases Nos. SB-18-CRM-0119 to 0121

The identical Informations for Perjury, save for the dates of commission of the crime and the years covered by the subject SALNs, read as follows:

That on or about 3 May 2012,¹¹ or sometime prior or subsequent thereto, in the Municipality of Dumingag, Zamboanga del Sur, Philippines, and within the jurisdiction of this Honorable Court, accused **NACIANCENO MEJOS PACALIOGA, JR.**, a high-ranking public officer, being then Municipal Mayor of the Municipality of Dumingag, Zamboanga del Sur, while in the performance of his official functions, committing the offense in relation to office and taking advantage of his position, did then and there willfully, unlawfully and feloniously make a false statement upon a material matter in his sworn Joint Statement of Assets, Liabilities, and Net Worth with Disclosure of Business Interest and Financial Connections and Identification of Relatives in the Government Service for the year 2011,¹² subscribed under oath before a competent person authorized to administer oaths, when he

¹¹ Indicated as "17 April 2013" in Criminal Case No. SB-18-CRM-0120 (Records, pp. 13-15) and "22 April 2015" in Criminal Case No. SB-18-CRM-0121 (*Id.*, pp. 16-18).

¹² Stated as "2012" in Criminal Case No. SB-18-CRM-0120 and "2014" in Criminal Case No. SB-18-CRM-0121.

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made it appear therein that he did not own the ten (10) agricultural lands situated in Dumingag, when in truth and in fact, as accused very well knew that the said statement was false since the same real properties were owned by or registered under his name, thereby making a willful and deliberate assertion of falsehood in a sworn statement required to be filed under Section 7 of Republic Act No. 3019 and Section 8 of Republic Act No. 6713, to the damage and prejudice of the public interest.

CONTRARY TO LAW.¹³

Article 183 of the Revised Penal Code, as amended, that defines and penalizes the crime of Perjury, reads:

Article 183. False testimony in other cases and perjury in solemn affirmation. – The penalty of *arresto mayor* in its maximum period to *prisión correccional* in its minimum period shall be imposed upon any person, who knowingly makes untruthful statements and not being included in the provisions of the next preceding articles, shall testify under oath, or make an affidavit, upon any material matter before a competent person authorized to administer an oath in cases in which the law so requires.

Any person who, in case of a solemn affirmation made in lieu of an oath, shall commit any of the falsehoods mentioned in this and the three preceding articles of this section, shall suffer the respective penalties provided therein.

Perjury, or the willful and corrupt assertion of a falsehood under oath or affirmation administered by authority of law on a material matter,¹⁴ consists of the following elements:

- (1) that the accused made a statement under oath or executed an affidavit upon a material matter;
- (2) that the statement or affidavit was made before a competent officer, authorized to receive and administer oath;
- (3) that in the statement or affidavit, the accused made a willful and deliberate assertion of a falsehood;
- (4) that the sworn statement or affidavit containing the falsity is required by law or made for a legal purpose.¹⁵

The Informations for Perjury allege the following:

¹³ Information in Criminal Case No. SB-18-CRM-0119, Records, pp. 10-12.

¹⁴ *Villanueva v. Secretary of Justice*, G.R. No. 162187, 18 November 2005.

¹⁵ *Union Bank v. People*, G.R. No. 192565, 28 February 2012. *q*

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- (1) that on the dates material to the cases, Pacalioga made sworn SALNs for the years 2011, 2012 and 2014;
- (2) that he subscribed his SALNs for 2011, 2012 and 2014 under oath before competent persons authorized to administer oaths;
- (3) that in his SALNs for the years 2011, 2012 and 2014, he willfully, unlawfully and feloniously made false statements upon a material matter when he made it appear therein that he did not own the Subject Property, when in truth and in fact, he very well knew that said statements were false since the same real properties were owned by or registered under his name;
- (4) that the SALNs were required to be filed under Section 7 of R.A. No. 3019 and Section 8 of R.A. No. 6713.

Again, a cursory comparison between the foregoing elements of perjury with the abovementioned allegations of the Informations will readily show that all the elements of perjury are present in the Informations. Therefore, the ground that the facts charged in the Informations do not constitute the crime of perjury also has no basis.

As regards the second ground in his motion to quash, *i.e.*, that the Informations contain averments which, if true, would constitute a lawful excuse or justification, Pacalioga relies on his defenses that he already transferred ownership of the Subject Property years before he filed his SALNs for 2011, 2012 and 2014 and that the Subject Property, being covered by IPRA and for which a CADT was issued in favor of the transferees-members of the indigenous community, were no longer his. Such allegations, however, are not found anywhere in the herein Informations. The rule remains that the legal excuse or justification must be apparent from the allegations of the Informations and that matters extrinsic thereto are not considered. As aptly stated in *Los Baños v. Pedro*:¹⁶

On the other hand, **we do not see on the face or from the averments of the Information any legal excuse or justification.** The cited basis, in fact, for Pedro's motion to quash was a Comelec Certification (dated September 24, 2001, issued by Director Jose P. Balbuena, Sr. of the Law Department, Committee on Firearms and

¹⁶ G.R. No. 173588, 22 April 2009. *y*



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Security Personnel of the Comelec, granting him an exemption from the ban and a permit to carry firearms during the election period) that Pedro attached to his motion to quash. This COMELEC Certification is a **matter *aliunde* that is not an appropriate motion to raise in, and cannot support, a motion to quash grounded on legal excuse or justification found on the face of the Information.** Significantly, no hearing was ever called to allow the prosecution to contest the genuineness of the COMELEC certification. (emphasis supplied)

All told, Pacalioga fails to substantiate his arguments regarding the existence of the grounds of a motion to quash in these cases.

WHEREFORE, premises considered, the Court **DENIES** accused-movant Nacienceno Mejos Pacalioga, Jr.'s Motion to Quash/Dismiss.


Let the arraignment and pre-trial proceed, as scheduled, on 15 March 2019 at 1:30 in the afternoon.

SO ORDERED.


REYNALDO P. CRUZ
Associate Justice

We Concur:


ALEX L. QUIROZ
Chairperson/
Associate Justice


BAYANI H. JACINTO
Associate Justice