



REPUBLIC OF THE PHILIPPINES
SANDIGANBAYAN
Quezon City

THIRD DIVISION

PEOPLE OF THE PHILIPPINES,
Plaintiff,

SB-16-CRM-0327

For: Violation of Section 3(e)
of R.A. No. 3019, as amended.

- versus -

**EFRAIM C. GENUINO, RAFAEL A.
FRANCISCO, EDWARD KING,
RENE C. FIGUEROA, ESTER P.
HERNANDEZ, VALENTE C.
CUSTODIO, WILLIAM I.
RAMIREZ, MARK P. JOSEPH,**
Accused.

SB-16-CRM-0328

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

Present:

Cabotaje-Tang, A.M., *PJ*,
Chairperson,
FERNANDEZ, B.R., *J*, and
MORENO, R.B., *J*.

Promulgated:

MARCH 9, 2022

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RESOLUTION

Moreno, J.:

For resolution are the following:

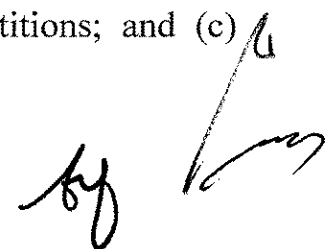
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1. Accused Efraim C. Genuino's "MANIFESTATION AND MOTION" received through email on September 16, 2021;¹
2. Accused Efraim C. Genuino's, "MANIFESTATION AND MOTION" received through email on October 20, 2021;²
3. Prosecution's "MOTION WITH LEAVE OF COURT TO ADMIT ATTACHED OPPOSITION (RE: MANIFESTATION AND MOTION FILED BY ACCUSED GENUINO)" received through email on November 25, 2021;³
4. Prosecution's "OPPOSITION (RE: MANIFESTATION AND MOTION FILED BY ACCUSED GENUINO)" received through email on November 25, 2021;⁴
5. Prosecution's "MANIFESTATION WITH MOTION FOR LEAVE OF COURT TO ADMIT ATTACHED OPPOSITION (RE: MANIFESTATION AND MOTION FILED BY ACCUSED EFRAIM C. GENUINO RELATING TO THE COA DECISION NO. 2020-153 DATED JANUARY 28, 2020) received through email on December 12, 2021;⁵
6. Prosecution's "OPPOSITION (RE: MANIFESTATION AND MOTION FILED BY ACCUSED EFRAIM C. GENUINO RELATING TO THE COA DECISION NO. 2020-153 DATED JANUARY 28, 2020) received through email on December 12, 2021;⁶

Genuino's Manifestation and Motion

In his Manifestation and Motion, accused Genuino, through counsel, states that in 2011, the Commission on Audit (COA) issued Notices of Disallowance Nos. 2011-003(10) dated July 20, 2011, and 2011-004(10) dated August 24, 2011, against the transactions involving the direct remittances made by the Philippine Amusement and Gaming Corporation (PAGCOR) to Philippine Athletic Sports Association (PASA), which pertains to the following expenses incurred and paid using Philippine Sports Commission's (PSC) share in PAGCOR's income: (a) funding for Development and Training Programs for athletes for the 2012 London Olympics; (b) equipment for aquatic training and competitions; and (c)

1 Record, Vol. V, pp. 11 to 36.
 2 Record, Vol. V, pp. 44 to 67.
 3 Record Vol. V, pp. 143 – 146.
 4 Record Vol. V, pp. 147 – 153.
 5 Record Vol. V, pp. 160 – 163.
 6 Record Vol. V, pp. 164 – 169.



software technology programs that would monitor swimmers' performance levels.

Under the said Notices of Disallowances, the foregoing transactions were deemed "unnecessary" and "irregular expenditures" incurred "without legal basis". Subsequently, upon automatic review, the COA CGS-Cluster C ruled to lift the said Notices of Disallowances against accused Genuino in its Decision No. 2012-008 dated November 14, 2012.

The decision of COA CGS-Cluster C was further affirmed by the COA Commission Proper in its Decision No. 2020-153 dated January 28, 2020, and has become final and executory as indicated in the Notice of Finality of Decision No. 2021-172 dated July 8, 2021.

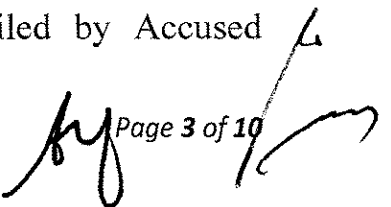
According to Genuino, the COA Commission Proper's pronouncement in Decision No. 2012-153 dated January 28, 2020, confirms that neither Genuino, nor the other accused had control or discretion over the use of the funds which were disbursed to PASA. As such, Genuino alleges that, applying the COA's reasoning, there is no basis to hold him criminally liable for violations of Section 3(e) and 3(h) of R.A. No. 3019, as amended, on the ground that he had no knowledge or participation in PASA's decision to transact with, or engage the services of third parties. Genuino further alleges that the prosecution failed to prove that he has any interest, financial or otherwise, in PASA or the entities to which PASA used the funds, including TRACE and TAC.

Accused Genuino claims that the purpose for which the funds disbursed by PAGCOR to PASA were used, or the training expenses of the national athletes, were never questioned by prosecution. In relation thereto, Genuino avers that the pieces of evidence presented by the prosecution show that the funds were spent in accordance with PSC's mandate of sports development under R.A. No. 6847.

Consequently, Genuino moves that the Court note the Commission on Audit's: (a) Decision No. 2020-153 dated January 28, 2020; and (b) "Notice of Finality of Decision No. 2021-172 dated July 8, 2021, which lifted the Notices of Disallowance Nos. 2011-003(10) dated July 20, 2011, and 2011-004(10) dated August 24, 2011.

The Prosecution's Opposition

In its Manifestation with Motion for Leave of Court to Admit Attached Opposition (Re: Manifestation and Motion filed by Accused

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Efraim C. Genuino Relating to the COA Decision No. 2020-153 dated January 28, 2020) received through email on December 12, 2021, the Prosecution moves for leave of court to admit the attached Opposition (Re: Manifestation and Motion filed by Accused Genuino) on the ground that it has inadvertently failed to file its opposition with regard to the COA decision.

In the attached Opposition, the Prosecution submits that the COA issuances, namely, the Decision No. 2020-153 dated January 28, 2020 and the Decision No. 2021-172 dated July 8, 2021 should not be considered in the resolution of the cases at bar based on the following reasons: first, the COA Cluster Decision No. 2012-008 dated November 14, 2012, which was affirmed by COA Proper Decision No. 2020-153 dated January 28, 2020, should not be considered in the resolution of the cases at bar considering that the issue which was resolved before the COA was solely for PASA's utilization of the funds. Second, the Prosecution argues that, based on jurisprudence, the disallowance cases resolved by COA are for purposes of exacting only civil liability from payees in disallowance cases. Third, the prosecution submits that the Office of the Ombudsman is not bound by the COA findings or the lack thereof, citing the case of *Librado M. Cabrera, et. al. v. Hon. Marcelo, et. al.*⁷ Consequently, the prosecution moves that the motion of accused Efraim Genuino be denied for lack of merit.

Genuino's October 20, 2021 Manifestation and Motion

In his Manifestation and Motion dated October 20, 2021, Genuino states that contrary to the informations, PAGCOR's income is not considered as "public funds" which may only be disbursed pursuant to "government auditing and accounting rules and regulations."

Citing *Genuino v. Commission on Audit*, G.R. No. 230818, June 15, 2021, Genuino alleges that the COA is neither authorized nor empowered to conduct a sweeping or general audit on all of PAGCOR's funds since COA's audit jurisdiction is limited only to the 5% franchise tax and the 50% share of the government in PAGCOR's gross earnings. Genuino opines that the funds directly remitted to PASA came from PAGCOR's income but which do not form part of the 5% franchise tax or the Government's 50% share.

Moreover, Genuino alleges that the Board exercised its power in good faith when it remitted the funds to PASA on the ground that the issue of whether the funds transferred by PAGCOR to PASA should be considered as part of PAGCOR's private corporate funds, and not characterized as

⁷ *Librado M. Cabrera, Fe M. Cabrera, and Luther Leonor v. Hon. Simeon V. Marcelo, in his capacity as Ombudsman, The Hon. Sandiganbayan (Fourth Division), and Franco P. Casanova*, G.R. Nos. 157419-20, December 13, 2004.

“public funds” is a difficult question of law, citing the Supreme Court ruling in *Mendiola v. People*, G.R. No. 89983-84, March 6, 1992.

Accordingly, Genuino moves that the Court: (a) note and consider the Supreme Court’s En Banc Decision dated June 15, 2021, in G.R. No. 230818 in the resolution of the cases; and (b) pursuant to said Decision, hold and declare as private and corporate funds the total amount of Php37,063,488.21 which PAGCOR directly remitted to PASA in the case at bar, and thus, necessarily rule that the following elements of a violation of Section 3 (e) of R.A. No. 3019, as amended are absent: (i) evident bad faith, manifest partiality or gross inexcusable negligence on the part of the accused in the disbursement of said funds; and (ii) undue injury to the Government or to any party, or unwarranted benefits to PASA or TAC, as a result of such disbursement by PAGCOR.

The Prosecution’s Opposition

In their Motion with Leave of Court to Admit attached Opposition (Re: Manifestation and Motion filed by Accused Genuino))” received through email on November 25, 2021, the prosecution states that it received on October 6, 2021, the Resolution dated September 17, 2021, of this Court. Initially, the prosecution has a period of ten (10) days from receipt of the said resolution or until October 16, 2021, within which to file its Opposition. Meanwhile, the Supreme Court issued its Administrative Circular No. 83-2021 dated October 18, 2021, lifting the suspension of service and filing of pleadings and ordered the resumption of the period for filing and service thereof seven (7) calendar days from October 20, 2021 or on October 27, 2021.

Despite the said suspension and subsequent lifting of the period for the filing and service of pleadings, the prosecution failed to file the Opposition on or before October 27, 2021 on account of the alleged heavy volume of equally important legal work. As such, Plaintiff moves for leave of court to admit the attached Opposition.

In its Opposition (Re: Manifestation and Motion Filed By Accused Genuino) received through email on November 25, 2021, the prosecution contends that the Supreme Court ruling in *Genuino v. Commission on Audit*, G.R. No. 230818, June 15, 2021 is not on all fours with the instant cases, hence the principle of *stare decisis* finds no application. Moreover, the prosecution argues that the funds directly released to PASA are public funds, citing the Supreme Court ruling in *Vide Confederation of Coconut Farmers Organizations of the Phil., Inc. v. Aquino III*,⁸ and Section 3(2) of Presidential Decree No. 1445 otherwise known as the Government Auditing Code of the Philippines.

⁸ *Vide Confederation of Coconut Farmers Organizations of the Phil., Inc. v. Aquino III*, G.R. No. 217965, August 8, 2017, citing *Republic v. COCOFED, et. al.*, 423 Phil. 735 (2001)

Moreover, the prosecution argues that pursuant to Section 26 of R.A. No. 6847, PAGCOR is mandated by law to automatically remit five (5%) of its gross income to the PSC to constitute the National Sports Development Fund (NSDF). According to the prosecution, the NSDF is earmarked to be spent and used solely for public purposes. As such, the funds subject of these cases, comprising of the 5% of PAGCOR's gross income are public funds and the direct remittance of these funds to PASA is illegal.

Lastly, the prosecution prays for the denial of the Motion of Genuino to declare the amount of Php37,063,488.21 as private and corporate funds of PAGCOR.

THE COURT'S RULING:

Accused Efraim C. Genuino, through counsel's, "MANIFESTATION AND MOTION" received through email on September 16, 2021.

We do not agree with accused Genuino that by applying the COA Commission Proper's pronouncements in Decision No. 2020-153 dated January 28, 2020, he cannot be held criminally liable for violations of Section 3(e) and 3(h) of R.A. No. 3019, as amended.

While the findings of administrative bodies, like the COA Commission Proper, are generally accorded with great respect by the courts by reason of their special knowledge and expertise over matters falling under their jurisdiction, the same principle only applies to cases which initially originated from the said administrative bodies and which are now pending before the Courts. The same principle does not find application in cases involving different parties, facts, and issues. To note, the Decision No. 2020-153 dated January 28, 2020, and the Decision No. 2021-172 dated July 8, 2021, pertain to the lifting of Notices of Disallowances against the transactions involving the direct remittances made by PAGCOR to PASA, and which relates to the Memorandum of Agreement entered into by PASA and Mr. Jose Arne A. Navarra, an accredited Technical Official of the Federation Internationale de Natation (FINA). On the other hand, the cases at bar involve the funds directly released by PAGCOR to PASA which were allegedly used by TAC for the use of its aquatic facility as well as to defray "accounts payable" in favor of TAC, a sports facility allegedly owned and controlled by accused Genuino and his family. Here, it is clear that the foregoing COA decisions and the instant cases pertain to different factual antecedents and involve different parties and issues. As such, the findings made by the COA in the said decisions do not find any application to the case at bar.



The information specifically mentioned “gross inexcusable negligence” and “conspiracy” in indicting the accused. In *Uriarte v. People*,⁹ the Supreme Court explained that Section 3(e) of RA 3019 may be committed either by *dolo*, as when the accused acted with evident bad faith or manifest partiality, or by *culpa*, as when the accused committed gross inexcusable negligence. “Gross inexcusable negligence” refers to negligence characterized by the want of even the slightest care, acting or omitting to act in a situation where there is a duty to act, not inadvertently but willfully and intentionally, with conscious indifference to consequences insofar as other persons may be affected.

As correctly pointed out by the prosecution in their Opposition, citing the case of *Mario M. Madera, et. al. v. Commission on Audit*,¹⁰ the liability of the officials involved in the alleged unlawful expenditures is only civil in nature. On the other hand, the liability under R.A. No. 3019, as amended, is both criminal and civil in nature. It is clear therefore that an indictment before the COA for alleged unlawful expenditures does not preclude an indictment under R.A. No. 3019, as amended. Moreover, in the *Madera v. COA*¹¹ case, the Supreme Court also reiterated that good faith is not a defense available to the officers who have participation in the approval and release of the disallowed government funds.

In the case at bar, the prosecution alleges that Genuino violated Section 26 of Republic Act No. 6847 otherwise known as The Philippine Sports Commission Act and Section 7(a) of Presidential Decree No. 1869. The foregoing provisions states:

Section 26, Republic Act No. 6847:

“To finance the country’s integrated sports development program, including the holding of the national games and all other sports competition at all levels throughout the country as well as the country’s participation at international sports competitions, such as, but not limited to, the Olympic, Asian, and Southeast Asian Games, and all other international competitions, sanctioned by the International Olympic Committee and the International Federations, x x x five percent (5%) of the gross income of the Philippine Amusement and Gaming Corporation, x x x shall be automatically remitted directly to the Commission and are hereby constituted as the National Sports Development Fund. x x x

⁹ *Demie L. Uriarte v. People of the Philippines*, G.R. No. 169251, December 20, 2006.

¹⁰ *Mario M. Madera, Beverly C. Mananguite, Carissa D. Galing, and Josefina O. Pelo v. Commission on Audit (COA) and COA Regional Office No. VIII*, G.R. No. 244128, September 8, 2020.

¹¹ *Id.*

Section 7(a) of Presidential Decree No. 1869:

(a) To allocate and distribute, with the approval of the Office of the President of the Philippines, the earnings of the Corporation earmarked to finance infrastructure and socio-civil projects.

It is clear from the foregoing provisions of laws that the authority of herein accused to enter into the subject MOA with PASA is not absolute as his exercise thereof is subject to existing laws, rules, and regulations. In fact, the accused is duty-bound and expected to understand and know the law that he is tasked to implement and the unexplained failure to do so bars him from claiming that he acted with good faith in the performance of his duties.

Accused Efraim C. Genuino, through counsel's, "MANIFESTATION AND MOTION" received through email on October 20, 2021.

Pursuant to Section 1, Rule 129 of the Rules of Court, a court shall take judicial notice, without the introduction of evidence of the official acts of the judicial departments of the Philippines.

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.¹²

In his Manifestation and Motion received on October 20, 2021, accused Genuino moved that the Court hold and declare as private and corporate funds the total amount of Php37,063,488.21 which PAGCOR directly remitted to PASA, pursuant the Supreme Court ruling in *Genuino v. Commission on Audit* (G.R. No. 230818, June 15, 2021). In effect, the accused wants this Court to apply the doctrine of law of the case in the present case. The doctrine of law of the case simply means that whatever is once irrevocably established as the controlling legal rule of decision between the same parties in the same case continues to be the law of the case, whether or not it is correct on general principles, as long as the facts on

¹² *Republic v. Sandiganbayan*, et al., 678 Phil. 358, 425 (2011), citing Oscar M. Herrera, 5 Remedial Law, 1999, p. 72.

which such decision was predicated continue to be the facts of the case before the court.¹³

Prescinding therefrom, it is obvious that this doctrine finds application only in subsequent proceedings of the same case. It does not bind parties, more so, the Court, in another case, even if it involves the same parties. It is without question that the present cases are not the same case as the case in G.R. No. 230818. The petition in G.R. No. 230818 relates to the financial assistance extended by PAGCOR to Pleasant Village Homeowners Association, which is a private entity. On the other hand, the present cases involve the direct remittance of fund representing a portion of Philippine Sports Commission's (PSC) 5% share in the Philippine Amusement and Gaming Corporation's (PAGCOR) income, to the Philippine Amateur Swimming Association ("PASA"). Clearly, they are two (2) different and distinct cases. Thus, the doctrine of the law of the case is inapplicable here.

Even under the principle of *stare decisis*, the manifestation and motion filed by accused Genuino will not stand. The doctrine of *stare decisis et non quieta movere* (to adhere to precedents and not to unsettle things which are established) is embodied in Article 8 of the Civil Code of the Philippines which provides, thus:

“ART. 8. Judicial decisions applying or interpreting the laws or the Constitution shall form a part of the legal system of the Philippines.”

The doctrine of *stare decisis* enjoins adherence to judicial precedents. It requires courts in a country to follow the rule established in a decision of the Supreme Court thereof. That decision becomes a judicial precedent to be followed in subsequent cases by all courts in the land. The doctrine of *stare decisis* is based on the principle that once a question of law has been examined and decided, it should be deemed settled and closed to further argument.¹⁴

This doctrine is one of policy grounded on the necessity for securing certainty and stability of judicial decisions. As such, when a court has laid down a principle of law as applicable to a certain state of facts, it will adhere to that principle and apply it to all future cases in which the facts are substantially the same.¹⁵

It should be noted that G.R. No. 230818 and the instant cases do not have similar set of facts. To reiterate, the petition in G.R. No. 230818 relates to the financial assistance extended by PAGCOR to Pleasant Village Homeowners Association, which is a private entity. On the other hand, the present cases involve the direct remittance of fund representing a portion of

¹³ *Development Bank of the Philippines v. Guarina Agricultural and Realty Development Corporation*, 724 Phil. 209 – 226 (2014).

¹⁴ *Fermin v. People*, G.R. No. 157643, March 28, 2008, 550 SCRA 132, citing *Castillo v. Sandiganbayan*, 427 Phil. 785, 793 (2002).

¹⁵ *Carmelo Lazatin, et. al. v. Hon. Disierto and Sandiganbayan*, G.R. No. 147097, June 5, 2009).

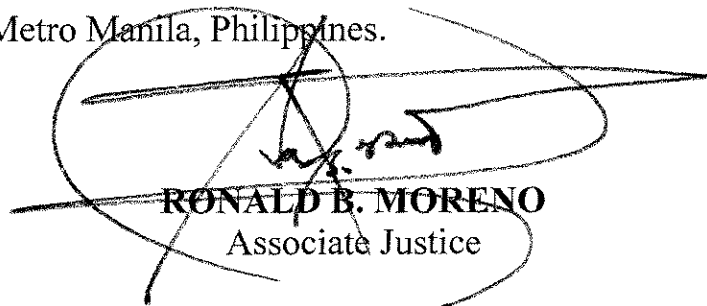
Philippine Sports Commission's (PSC) 5% share in the Philippine Amusement and Gaming Corporation's (PAGCOR) income, to the Philippine Amateur Swimming Association ("PASA"). Moreover, the ruling of the Supreme Court in G.R. No. 230818 should only be given restricted application considering that the disposition of the said case relates only to the grave abuse of discretion committed by COA in conducting an audit of PAGCOR's accounts beyond the 5% franchise tax and 50% of the Government's share in its gross earnings as stated in Section 15 of P.D. 1869. Contrary to the assertions made by Genuino, the Supreme Court made no pronouncement whether the financial assistance granted to PVHA was violative of the public purpose requirement under P.D. No. 1445.

The Court's pronouncements in this consolidated resolution should not be seen in any way as favoring the prosecution. To be sure, the prosecution is still bound to prove the guilt of the accused for the crimes charged beyond reasonable doubt. Failure to meet this degree of proof would result in the acquittal of the accused.

WHEREFORE, in light of all the foregoing, the Manifestations and Motions filed by accused Efraim C. Genuino, received through email on September 16, 2021 and October 20, 2021, respectively, are **DENIED** for lack of merit.

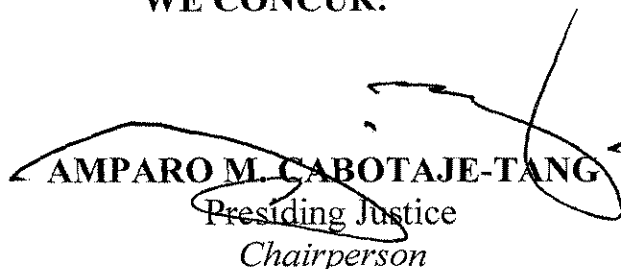
SO ORDERED.

Quezon City, Metro Manila, Philippines.

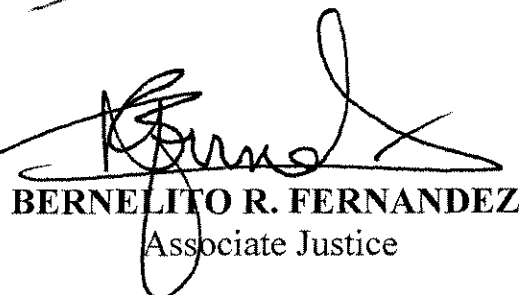


RONALD B. MORENO
Associate Justice

WE CONCUR:



AMPARO M. CABOTAJE-TANG
Presiding Justice
Chairperson



BERNELITO R. FERNANDEZ
Associate Justice