



Republic of the Philippines
SANDIGANBAYAN
Quezon City

THIRD DIVISION

PEOPLE OF THE PHILIPPINES,

Plaintiff,

-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-0327

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


SB-16-CRM-0328

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

Present:

CABOTAJE-TANG, A.M.
P.J.,
Chairperson,
FERNANDEZ, B.R., J. and
MORENO, R.B. J.

Promulgated:

May 16, 2022 

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RESOLUTION

Moreno, J.:

For resolution is the Motion for Reconsideration¹ filed by accused Efraim C. Genuino on March 14, 2022, assailing this Court's Decision dated March 9, 2022, which denied his two (2) Manifestations and Motions

¹ Record, Vol. V, pp. 271-321.

received through email on September 16, 2021, and October 20, 2021, respectively.

The Motion for Reconsideration

In his motion, Genuino moves for the reconsideration of the Court's Resolution on the ground that the Philippine Amusement and Gaming Corporation's ("PAGCOR") disbursements to the Philippine Amateur Swimming Association ("PASA") were sourced from PAGCOR's Operating Expenses Fund ("OPEX Fund"), which are not public funds, as the Supreme Court *en banc* ruled in its decision dated June 15, 2021, in G.R. No. 230818, and Decision dated April 27, 2021, in GR No. 21355, both entitled "*Genuino v. Commission on Audit*."

In support of his main argument, Genuino opined that the nature of PAGCOR's OPEX Fund as part of PAGCOR's private corporate funds has been passed upon and settled by the Supreme Court in G.R. No. 230818 and G.R. No. 213655. As such, according to Genuino, this Court is bound by the said Supreme Court rulings by virtue of the principle of *stare decisis*.

Aside from the issue of the applicability of the principle of *stare decisis*, Genuino likewise alleged that PAGCOR's disbursement to PASA did not result in any undue injury to the Government or to any private entity, citing the failure of the Plaintiff's own evidence to show undue injury resulting from the questioned transactions. Moreover, Genuino opined that PAGCOR's Board exercised its power in good faith 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 "public fund", is a difficult question of law.

Consequently, Genuino moves that the Court reverse and set aside its Resolution dated March 9, 2022, and consider the Supreme Court's Decisions in G.R. No. 230818 and G.R. No. 213655, both entitled "*Genuino v. Commission on Audit, et al.*" in the resolution of these cases.

The Comment/Opposition

In its Opposition² received by the Court through electronic mail on March 18, 2022, the Prosecution alleged that Genuino failed to raise substantial arguments or pointed out serious errors or irregularities that would warrant the reversal of this Court's Resolution dated March 9, 2022.

² Record, Vol. V, pp. 330-333.

The Prosecution asserts that the funds directly released to PASA are public funds on the ground that PAGCOR is mandated by law to automatically remit five percent (5%) of its gross income to the Philippine Sports Commission ("PSC") to constitute the National Sports Development Fund ("NSDF") pursuant to the provision of Section 26 of Republic Act No. 6847. Likewise, the Prosecution contended that Genuino's arguments relate to matters when a decision is already rendered on the merits of the case.

Accordingly, the Prosecution prays that the Court deny Genuino's Motion for Reconsideration dated March 11, 2022, for lack of merit.

THE COURT'S RULING

After due consideration, we **deny** the motion for reconsideration for lack of merit.

The principle of stare decisis is inapplicable to the instant cases.

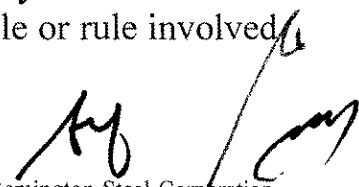
We stress at the outset that Genuino's arguments in the present motion were essentially a mere rehash of the matters he raised in his Manifestation and Motion received through email on October 20, 2021. Even if we are to consider the issues he raised herein, we find the same to be unmeritorious.

In his Motion for Reconsideration, Genuino opined that the nature of PAGCOR's OPEX Fund as part of PAGCOR's private corporate funds has been passed upon and settled by the Supreme Court in G.R. No. 230818 and G.R. No. 213655. Considering the foregoing, Genuino argues that this Court is bound by the Supreme Court's conclusion of law in G.R. No. 230818 and G.R. No. 213655 pursuant to the principle of stare decisis.

Stare decisis et non quieta movere which means "to adhere to precedents, and not to unsettle things which are established."³ Under the doctrine, when the Supreme Court has once 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, where facts are substantially the same.⁴ The doctrine of stare decisis is based upon the legal principle or rule involved.

³ Chinese Young Men's Christian Association of the Philippine Islands v. Remington Steel Corporation, G.R. No. 159422, March 28, 2008, citing Black's Law Dictionary, Fifth Edition.

⁴ *Id.*, citing *Horne v. Moody*, 146 S.W.2d 505 (1940).



and not upon a judgment which results therefrom. In this particular sense *stare decisis* differs from *res judicata* which is based upon the judgment.⁵

The doctrine of *stare decisis* is one of policy grounded on the necessity for securing certainty and stability of judicial decisions, thus:

Time and again, the court has held that it is a very desirable and necessary judicial practice that 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. *Stare decisis et non quieta movere*. Stand by the decisions and disturb not what is settled. *Stare decisis* simply means that for the sake of certainty, a conclusion reached in one case should be applied to those that follow if the facts are substantially the same, even though the parties may be different. It proceeds from the first principle of justice that, absent any powerful countervailing considerations, like cases ought to be decided alike. Thus, where the same questions relating to the same event have been put forward by the parties similarly situated as in a previous case litigated and decided by a competent court, the rule of *stare decisis* is a bar to any attempt to relitigate the same issue.⁶ (Underscoring supplied)

Based on the foregoing definition of the principle of *stare decisis*, it is apparent that before the principle is made to apply in a certain case, the following must be determined: the state of facts; the questions raised in the previous case, and the principle of law laid down by the Court.

A reading of the G.R. No. 230818 and G.R. No. 213655 shows that these cases involve the remittances made by the PAGCOR to private entities. To reiterate, G.R. No. 230818 relates to the financial assistance extended by PAGCOR to Pleasant Village Homeowners Association (“PVHA”). Likewise, G.R. No. 213655 involves the remittance of funds by PAGCOR in favor of Batang I Was Droga (“BIDA”) Foundation, Inc. for the purchase of movie tickets. In both cases, it was proved by evidence that the questioned funds were sources from PAGCOR’s Operating Expenses Fund, in particular, its marketing expenses.

As to the issues involved, the Petitioner in G.R. No. 230818 raised the issue of whether the Commission on Audit (“COA”) exceeded its audit jurisdiction over PAGCOR. On the other hand, Petitioner in G.R. No. 213655 put into the issue whether the COA committed grave abuse of discretion amounting to lack or excess of jurisdiction in issuing and affirming the assailed notice of disallowance.

⁵ *Id.*

⁶ *Id.* citing *Pines City Educational Center v. National Labor Relations Commission*, G.R. No. 96779, November 10, 1993, 227 SCRA 655, 665; *Associated Sugar, Inc. v. Commissioner of Customs*, 204 Phil. 289, 295 (1982).

As to principle of law laid down, in both the G.R. No. 230818 and G.R. No. 213655 the Supreme Court held that COA has limited audit jurisdiction under Section 15 of Presidential Decree No. 1869. Under the said provision, the governmental audit was limited to the five percent (5%) franchise tax and the Government's fifty percent (50%) share of the gross earnings. The Supreme Court held that Section 15 of PD 1869 was specifically decreed to allow PAGCOR greater flexibility in generating revenues.

More specifically, in G.R. No. 230818, the Supreme Court explained that:

The aforequoted provision is unequivocal that with respect to PAGCOR, the COA's audit jurisdiction is limited to the 5% franchise tax and 50% share of the Government in its gross earnings. This express limitation on COA's general audit power was purposely adopted to provide some flexibility in PAGCOR's operations, to wit:

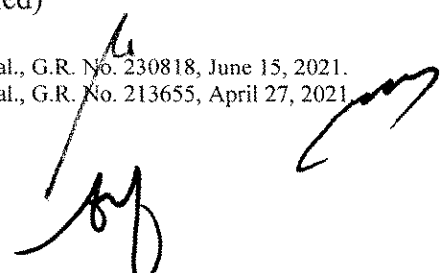
WHEREAS, to make it more dynamic and effective in its tasks, PAGCOR should now be reorganized by (a) increasing the participation of the private sector in the subscription of the authorized capital stock of PAGCOR and by adjusting the share of the Government in the gross earning to 50%; provided, that the annual income of the Government is not less than P150 Million and, if it is less, then the share of the Government shall be 60% of the gross earnings; (b) providing for a settlement of the portion of the Government's share that was utilized for the stabilization of casino operations, and (c) providing for greater flexibility in operation by limiting governmental audit only to the determination of the 5% franchise tax and the Government's share of 50% of the gross earnings.⁷ (Underscoring supplied)

On the other hand, in G.R. No. 213655, the Supreme Court reasoned that:

Cognizant of the above-stated principle of statutory construction, Section 15 must not be read in isolation, but as part of the entire PAGCOR Charter. Indeed, it bears stressing that P.D. No. 1869 was enacted to increase the participation of the private sector in the subscription of the authorized capital stock of PAGCOR. To this end, the share of the Government in the gross earnings was adjusted to fifty percent (50%). Likewise, to provide for greater flexibility in PAGCOR's operations, governmental audit was limited to the five percent (5%) franchise tax and the Government's fifty percent (50%) share of the gross earnings. This allows PAGCOR greater flexibility in generating revenues. Towards this end, the relevant provisions of P.D. No. 1869 were decreed.⁸ (Underscoring supplied)

⁷ Efraim C. Genuino v. Commission on Audit, et al., G.R. No. 230818, June 15, 2021.

⁸ Efraim C. Genuino v. Commission on Audit, et al., G.R. No. 213655, April 27, 2021



Based on the foregoing discussions, the principle of *stare decisis* should not be made applicable in the instant case.

First, there is no similarity of factual antecedents. Both G.R. No. 230818 and G.R. No. 213655 relate to the remittances of funds made by PAGCOR to private entities. In both cases, the petitioners were able to prove that the remitted funds were sourced from the PAGCOR's OPEX funds. In G.R. No. 230818, the Supreme Court found that the financial assistance granted by PAGCOR to PVHA was sourced from PAGCOR's marketing expenses. Likewise, in G.R. No. 213655, the Supreme Court held that the remitted amount was apparently sourced from PAGCOR's OPEX Fund, particularly its marketing expenses as shown by PAGCOR's Statement of Income and Expenses, which is integrated into its Annual Audit Report ("AAR").

On the other hand, the instant cases involve the direct remittance of funds representing a portion of PSC's 5% share in the PAGCOR income, to the PASA, which is a government entity. To note, the PSC's 5% share in the PAGCOR income is mandated by Section 26 of Republic Act No. 6847 ("R.A. No. 6847") otherwise known as The Philippine Sports Commission Act. Moreover, the question of whether the funds given to PASA were actually sourced from PAGCOR's OPEX Fund requires the appreciation and evaluation of the evidence by this Court, which are not matters to be resolved through a mere Motion and Manifestation.

Secondly, there is no similarity in the issues involved in G.R. No. 230818, G.R. No. 213655, and the instant cases. To recapitulate, the Petitioners in both the G.R. No. 230818 and G.R. No. 213655, put into issue the jurisdiction of the COA to conduct a governmental audit over PAGCOR's funds. Here, we are faced with two (2) Informations alleging violations of Section 3(e) and Section 3(h) of R.A. No. 3019, as amended.

Lastly, the principles of law laid down by the Supreme Court in G.R. No. 230818 and G.R. No. 213655 do not automatically apply to the instant cases considering that there is still no finding that the questioned funds were sourced from PAGCOR's OPEX Fund. To note, the Supreme Court held that if the funds were sourced out of PAGCOR's OPEX Funds, it is not subject to governmental audit since it is already apparent that it neither comes from the five percent (5%) franchise tax nor PAGCOR's fifty percent (50%) gross earnings.

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Genuino raised matters in his Motion for Reconsideration which should be properly threshed out when the case is submitted for decision.

In his Motion for Reconsideration, Genuino also raised the following arguments: the funds transferred by PAGCOR to PASA are sourced from PAGCOR's OPEX Funds; PAGCOR's disbursement to PASA did not result in any undue injury to the Government or to any private entity, citing the failure of the Plaintiff's own evidence to show undue injury resulting from the questioned transactions; and the Board exercised its power in good faith 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 "public fund, is a difficult question of law.

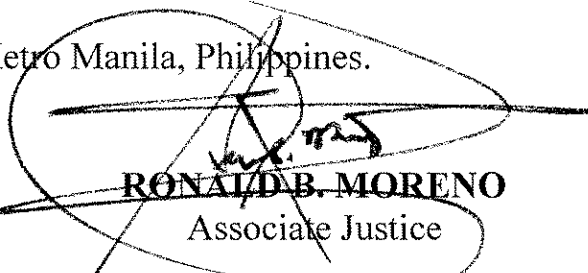
To reiterate, these matters require the appreciation and evaluation of the evidence and the actual determination of the substantive issues by the Court, which could only be properly threshed out when the case is submitted for decision and not in a mere motion.

All told, the Court's pronouncements in this 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 of the crimes charged beyond reasonable doubt. Failure to meet this degree of proof would result in the acquittal of the accused.

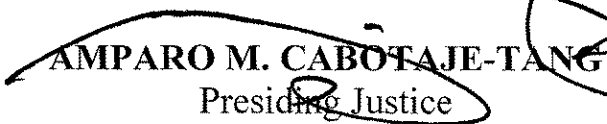
WHEREFORE, in light of all the foregoing, the Court **DENIES** the Motion for Reconsideration filed by accused Efraim C. Genuino on March 14, 2022, for lack of merit.


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