REPUBLIC OF THE PHILIPPINES
Sandiganbayan
QUEZON CITY

SIXTH DIVISION

MINUTES of the Proceedings held on August 22, 2022

PRESENT:

Hon. SARAH JANE T. FERNANDEZ	-	**Chairperson**
Hon. KARL B. MIRANDA	-	**Associate Justice**
Hon. KEVIN NARCE B. VIVERO	-	**Associate Justice**

The following resolution was adopted in the following case:

Crim. Case No. SB-18-CRM-0498 – PEOPLE VS. PROCESO ALCALA, ET AL.

This resolves the following:

a. Accused Mañalac's *Motion to Expunge Judicial Affidavit of Elsa E. Marcos*;[1]

b. Accused Alcala's *Comment with Manifestation*;[2] and,

c. The prosecution's *Consolidated Comment/Opposition (Re: (1) Accused Mañalac's Motion to Expunge Judicial Affidavit of Elsa E. Marcos dated July 20, 2022 and (2) Accused Alcala's Comment with Manifestation to the Admission of Elsa Marcos' Judicial Affidavit).*[3]

Accused Mañalac moves for the expunction of the *Judicial Affidavit* of prosecution's intended witness Ms. Elsa Marcos on the following grounds:

a. The subject *Transcript of Stenographic Notes* (TSN) pertains to a testimony not taken before this Court, but before the 7th Division; [4]

b. The TSN dated October 14, 2021 in Crim. Case No. SB-18-CRM-0499 and 0502 was not listed in the *Pre-Trial Order* or reserved during the *Pre-Trial Proceedings*. Hence, expungable on the basis of inequity and unfair surprise foisted by the prosecution; [5]

c. Ms. Marcos, the alleged stenographer, is not the proper person to authenticate the same; [6]

d. The testimony has no materiality, relevancy, and connectivity in the present case; [7]

e. The presentation of his testimony taken before another Division of this Court will be violative of his right against self-incrimination; [8]

[1] Dated July 20, 2022 and filed on July 26, 2022 through electronic mail.
[2] Dated July 28, 2022 and filed on same date through electronic mail.
[3] Dated July 29, 2022 and filed on August 1, 2022 through electronic mail.
[4] *p.1, Motion to Expunge Judicial Affidavit of Elsa E. Marcos.*
[5] *pp.1-2, Motion to Expunge Judicial Affidavit of Elsa E. Marcos.*
[6] *p.2, Motion to Expunge Judicial Affidavit of Elsa E. Marcos.*
[7] *p.2, Motion to Expunge Judicial Affidavit of Elsa E. Marcos.*
[8] *p.2, Motion to Expunge Judicial Affidavit of Elsa E. Marcos.*

g. It is a fishing expedition which is proscribed by the Rules; [10]

h. The testimony of the accused in SB-18-CRM-0499 and SB-18-CRM-0502 is to apprise the Court (7th Division) that any monetary or valuable contribution in a foundation is not an asset nor a liability, and therefore cannot be includible or reportable in the Statement of Assets Liabilities and Net Worth (SALN); [11]

i. The TSN is limited to the cross examination. The direct examination was not included. The piecemeal and irrelevant evidence is injurious to accused Mañalac's interest. [12]

Accused Alcala adopted the legal arguments of accused Mañalac and moved for the expunction of the *Judicial Affidavit* of Ms. Elsa Marcos and the *TSN* dated October 15, 2021 in SB-18-CRM-0499 and 0502 on the following grounds:

a. They are not in the nature of rebuttal evidence, but are in fact, additional direct evidence; [13]

b. The offer of the testimony in Ms. Marcos' Judicial Affidavit did not state that her testimony and the document she will identify are in the nature of rebuttal evidence against a specific testimonial, documentary, or object evidence for the accused; [14]

c. The testimony of Ms. Marcos and the TSN dated October 14, 2021 are irrelevant and hearsay evidence against accused Alcala. [15]

In its *Comment*, the prosecution argued:

a. Ms. Marcos is being presented merely to identify and authenticate the TSN subject matter of her *Judicial Affidavit*. [16]

b. The TSN is intended to rebut accused Mañalac's Exhibits 2 and 3, which were offered to prove that he is not part of the non-profit foundation and that he has no relative within the restrictive degree per Rules of the *Department of Agriculture Accreditation Committee*. The TSN will show that accused Mañalac, in a separate proceeding, made a judicial admission that he is one of the incorporators of *Isa Akong Magsasaka Foundation, Inc. (IAMFI)*, and that the other incorporators are members of his immediate family and his parents-in-law. [17]

c. The TSN is the prosecution's rebuttal documentary evidence and will be offered only upon termination of testimonial evidence, which is when the objections to the documentary evidence are warranted and allowed. It is improper at this point to use the objections pertaining to admissibility of documents as a means to prevent the testimony of Ms. Marcos. [18]

d. Ms. Marcos is the most competent person to identify and authenticate the TSN since she prepared the same as Court Stenographer, her signatures appear in each and every page thereof, and she was the one who certified as to its contents. [19]

e. Every prosecution evidence is potentially injurious to the interest of the accused. [20]

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[10] *p.3, Motion to Expunge Judicial Affidavit of Elsa E. Marcos.*
[11] *p.3, Motion to Expunge Judicial Affidavit of Elsa E. Marcos.*
[12] *p.3, Motion to Expunge Judicial Affidavit of Elsa E. Marcos.*
[13] *p.1, Comment with Manifestation* of accused Alcala.
[14] *p.2, Comment with Manifestation* of accused Alcala.
[15] *p.1, Comment with Manifestation* of accused Alcala.
[16] *p.2, Consolidated Comment /Opposition* of the prosecution.
[17] *pp.2-3, Consolidated Comment /Opposition* of the prosecution.
[18] *p.2, Consolidated Comment /Opposition* of the prosecution.
[19] *p.2, Consolidated Comment /Opposition* of the prosecution.
[20] *p.2, Consolidated Comment /Opposition* of the prosecution.

The Court resolves to **DENY**: a) accused Manalac's *Motion to Expunge the Testimony of Elsa Marcos;* and, b) accused Alcala's motion to expunge the *Judicial Affidavit* of Ms. Marcos and the TSN dated October 15, 2021.

First. While the offer of the testimony listed in the *Judicial Affidavit* of Ms. Marcos failed to demonstrate that her intended testimony will be rebuttal in nature, the prosecution was able to establish in its *Comment* that the document to be identified by Ms. Marcos will be rebuttal in nature, *i.e.*, to refute Exhibits 2 and 3 of accused Mañalac.

Second. Contrary to the assertions of accused Mañalac, a stenographer is competent to identify and authenticate the TSN that he or she took and prepared.

Third. Witnesses and the documents intended to be presented on rebuttal and on sur-rebuttal are not required, nor expected to be listed in the *Pre-Trial Briefs* of the parties. Necessarily, they will not be included in the *Pre-Trial Order*.

Finally. All the other grounds raised by accused Alcala and accused Mañalac refer to the admissibility and probative value of the TSN dated October 15, 2021. It is settled that objections on the admissibility of an object or documentary evidence must be raised at the proper time, *i.e.*, when the object or document is formally offered in evidence. In *Magsino v. Magsino*,[21] the Supreme Court explained:

> Thus, it is basic in the rule of evidence that objection to evidence must be made after the evidence is formally offered. Thus, Section 35, Rule 132 of the 1997 Rules of Court, provides when to make an offer of evidence, thus:
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> > SEC. 35. *When to make offer.* — As regards the testimony of a witness, the offer must be made at the time the witness is called to testify.
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> > Documentary and object evidence shall be offered after the presentation of a party's testimonial evidence. Such offer shall be done orally unless allowed by the court to be done in writing.
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> On the other hand, Section 36, Rule 132 of the same rules, provides when objection to the evidence offered shall be made, thus:
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> > SEC. 36. *Objection. — Objection to evidence offered orally must be made immediately after the offer is made.*
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> > Objection to a question propounded in the course of the oral examination of a witness shall be made as soon as the grounds therefor shall become reasonably apparent.
> >
> > An offer of evidence in writing shall be objected to within three (3) days after notice of the offer unless a different period is allowed by the court.
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> In other words, objection to oral evidence must be raised at the earliest possible time, that is after the objectionable question is asked or after the answer is given if the objectionable issue becomes apparent only after the answer was given. In case of documentary evidence, offer is made after all the witnesses of the party making the offer have testified, specifying the purpose for which the evidence is being offered. It is only at this time, and not at any other, that objection to the documentary evidence may be made.
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> Objections to documentary evidence should likewise be timely raised. True, petitioner acted prematurely when it objected to the psychological report at the time when it is still being identified. Objection to documentary evidence must be made at the time it is

[21] G.R. No. 205333, February 18, 2019.

formally offered, not earlier. Because at that time the purpose of the offer has already been disclosed and ascertained. Suffice it to say that the identification of the document before it is marked as an exhibit does not constitute the formal offer of the document as evidence for the party presenting it. Objection to the identification and marking of the document is not equivalent to objection to the document when it is formally offered in evidence. What really matters is the objection to the document at the time it is formally offered as an exhibit. However, while objection was prematurely made, this does not mean that petitioner had waived any objection to the admission of the same in evidence. Petitioner can still reiterate its former objections, this time seasonably, when the formal offer of exhibits was made.

At any rate, it must be stressed that admissibility of evidence should not be confused with its probative value. Admissibility refers to the question of whether certain pieces of evidence are to be considered at all, while probative value refers to the question of whether the admitted evidence proves an issue. Thus, a particular item of evidence may be admissible, but its evidentiary weight depends on judicial evaluation within the guidelines provided by the rules of evidence.

The pronouncement of the Supreme Court in *Interpacific Transit, Inc. v. Aviles*,[22] is also apropos:

In assessing this evidence, the lower courts confined themselves to the best evidence rule and the nature of the documents being presented, which they held did not come under any of the exceptions to the rule. There is no question that the photocopies were secondary evidence and as such were not admissible unless there was ample proof of the loss of the originals; and neither were the other exceptions allowed by the Rules applicable. The trouble is that in rejecting these copies under Rule 130, Section 2, the respondent court disregarded an equally important principle long observed in our trial courts and amply supported by jurisprudence.

This is the rule that objection to documentary evidence must be made at the time it is formally offered as an exhibit and not before. Objection prior to that time is *premature.*

It is instructive at this point to make a distinction between *identification* of documentary evidence and its *formal offer* as an exhibit. The first is done in the course of the trial and is accompanied by the marking of the evidence as an exhibit. The second is done only when the party rests its case and *not before.* The mere fact that a particular document is identified and marked as an exhibit does not mean it will be or has been offered as part of the evidence of the party. The party may decide to formally offer it if it believes this will advance its cause, and then again it may decide not to do so at all. In the latter event, the trial court is, under Rule 132, Section 35, not authorized to consider it.

Objection to the documentary evidence must be made *at the time it is formally offered,* not earlier. The identification of the document before it is marked as an exhibit does not constitute the formal offer of the document as evidence for the party presenting it. Objection to the identification and marking of the document is not equivalent to objection to the document when it is formally offered in evidence. What really matters is the objection to the document at the time it is formally offered as an exhibit.

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In People v. Teodoro, a document being identified by a prosecution witness was objected to as merely secondary, whereupon the trial judge ordered the testimony stricken out. This Court, in holding the objection to be premature, said:

> It must be noted that *the Fiscal was only identifying the official records of service of the defendant preparatory to introducing them as evidence . . . The time for the presentation of the records had not yet come*; presentation was to be made after their identification. For what purpose and to what end the Fiscal would introduce them as evidence was not yet stated or disclosed . . . The objection of counsel for the defendant was, therefore, premature, especially

[22] G.R. No. 86062, June 6, 1990.

> as the Fiscal had not yet stated for what purpose he would introduce the said records . . .
>
> *The time for objecting the evidence is when the same is offered.* (Emphasis supplied).

The objection of the defense to the photocopies of the airway bills while they were being identified and marked as exhibits did not constitute the objection it should have made when the exhibits were formally offered in evidence by the prosecution. No valid and timely objection was made at that time. And it is no argument to say that the earlier objection should be considered a continuing objection under Sec. 37 of Rule 132, for that provision obviously refers to a single objection to a class of evidence (testimonial or documentary) which when first offered is considered to encompass the rest of the evidence. The presumption is, of course, that there was an offer and a seasonable objection thereto. But, to repeat, no objection was really made in the case before us because it was not made at the proper time.

In view of the foregoing, the Court will **ALLOW** the presentation of Ms. Elsa Marcos as a witness on rebuttal for the prosecution. The hearing for the presentation of rebuttal evidence scheduled on August 23, 2022 at 1:30 p.m. shall proceed as scheduled.

SO ORDERED.

APPROVED:

FERNANDEZ, S.J., *J.*, *Chairperson*

MIRANDA, *J.*

VIVERO, *J.*