



REPUBLIC OF THE PHILIPPINES  
**SANDIGANBAYAN**  
Quezon City

**THIRD DIVISION**

**PEOPLE OF THE PHILIPPINES,**  
*Plaintiff,*

Criminal Case No.  
**SB-22-CRM-0138**  
*For: Violation of Section*  
*3(e), R.A. No. 3019*  
**SB-22-CRM-0139** to  
**0142**  
*For: Malversation of*  
*Public Funds*

*-versus-*

**GONDELINA GUADALUPE,**  
**AMATA, ET AL.,**  
*Accused,*

*Present:*

Cabotaje-Tang, A.M., *PJ,*  
*Chairperson*  
Fernandez, B.R., *J.* and  
Moreno, R.B., *J.*

PROMULGATED:

October 10, 2022 *Jc*

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**RESOLUTION**

**Moreno, J.:**

For resolution is the *Entry of Appearance with Omnibus Motion Ad Cautelam* (1) *To Produce the Complete Records of the Preliminary Investigation Supporting the Allegations in the Informations;* (2) *To Quash the Informations;* and (3) *To Suspend Arraignment/Proceedings* filed by

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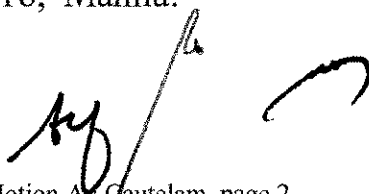
accused Janet Lim Napoles through her counsels on August 22, 2022. The prosecution (through the Office of the Special Prosecutor) filed its *Opposition x x x* on September 14, 2022.

In her motion, Napoles prayed that her arraignment, as well as the proceedings in SB-22-CRM-0138 to 0142, be suspended on the ground of prejudicial question. She also prayed that the present Informations be quashed and that the said cases against her be dismissed.

With regard to her motion for the production of the complete records of the preliminary investigation, Napoles claimed that there was nothing in the records of the preliminary investigation attached to the Information that will support the allegations that she “organized and controlled AEPFFI, whose very existence was for the purpose of diverting PDAF allocations.”<sup>1</sup> She added that the records attached to the Informations “do not show that she is an incorporator, owner, proprietor, member of the Board of Trustees, duly authorized representative, officer or even an employee of the said NGO.”<sup>2</sup> Accordingly, Napoles moved for the dismissal of the present criminal cases due to the insufficiency of the records attached to the Information.

On her motion to quash the Information, Napoles claimed that the prosecution’s failure to indict and/implead Agri & Economic Program for Farmers Foundation, Inc. (AEPFFI) violate the requirement of established liability to pierce the veil of corporate fiction of the said NGO. According to Napoles, the fact that she is not an incorporator, owner, proprietor, member of the board of Trustees, duly recognized representative officer or employee of AEPFFI makes the allegation in the Information a mere conclusion of law. She thus maintained that the subject Informations should be quashed for lack of jurisdiction over the offense charged since the said Informations do not charge any offense against her “over which the Honorable Court can validly exercise its jurisdiction, and for lack of jurisdiction over the person of the NGO AEPFFI whose veil of corporate fiction is sought to be pierced x x x.”<sup>3</sup>

As regards her motion to suspend arraignment, Napoles argued that the arraignment and the proceedings in SB-22-CRM-0138 to 0142 should be suspended on the ground of prejudicial question considering the pendency of AMLC Case No. 14-002-02 (“*Republic of the Philippines, represented by the Anti-Money Laundering Council v. Janet Lim Napoles, et al.*”) before the Regional Trial Court, Branch 18, Manila.



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<sup>1</sup> Entry of Appearance with Omnibus Motion At Gautelam, page 2.  
<sup>2</sup> *Id.*  
<sup>3</sup> *Id.* at 16.

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In its *Opposition*, the prosecution countered that the arraignment and pre-trial of Napoles should proceed. It averred that accused Napoles “moves for the production of the complete records of the preliminary investigation without specifically describing the documents she is particularly asking.”<sup>4</sup> The prosecution claimed that Napoles had been given copies of the Resolution issued in the proceedings before the Office of the Ombudsman. It also added that this Court had been furnished with the records of the preliminary investigation, and that these records are accessible and readily available upon request.

The prosecution additionally argued that Napoles’ motion to quash was baseless since she was charged as a conspirator of high-ranking public officials in the anomalous transactions involving public funds that were used to pay for non-existent projects, as well as in the malversation of public funds through falsification of public documents. It also claimed that the decision on whom to prosecute falls within the sound discretion of the Ombudsman.

Finally, the prosecution maintained that there was no prejudicial question that existed to warrant the suspension of the proceedings since the resolution of the forfeiture proceedings will not determine whether the criminal cases before the Anti-Graft Court may proceed.

**THE COURT’S RULING:**

After due consideration, we **deny** the present motion.

*Motion to Produce the Complete Records of the Preliminary Investigation Supporting the Allegations in the Information*

We agree with the prosecution that Napoles’ motion to produce the complete records of the preliminary investigation is without basis.

It bears stressing at the outset that an Information only needs to state the ultimate facts constituting the offense; the evidentiary and other details (*i.e.*, the facts supporting the ultimate facts) can be provided during the trial.<sup>5</sup>

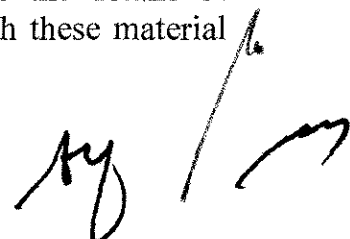
The difference between ultimate facts and evidentiary facts had been aptly discussed by the Honorable Supreme Court in *Enrile v. People*,<sup>6</sup> as follows:

**Ultimate facts** is defined as “those facts which the expected evidence will support. The term does not refer to the details of probative matter or particulars of evidence by which these material

<sup>4</sup> Opposition x x x, p. 3.

<sup>5</sup> *People v. Romualdez, et al.*, 581 Phil. 462, 479-480 (2008).

<sup>6</sup> G.R. No. 213455, August 11, 2015. [Emphasis in the original]



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elements are to be established.” *It refers to the facts that the evidence will prove at the trial.*

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**Evidentiary facts**, on the other hand, are the facts necessary to establish the ultimate facts; they are the premises that lead to the ultimate facts as conclusion. *They are facts supporting the existence of some other alleged and unproven fact.*

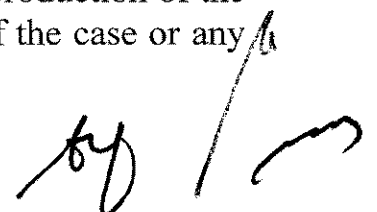
For accuracy, we herein reproduce the disputed part of the indictment (similarly worded in the five Informations) in these subject cases reads:

*x x x x Napoles organized and controlled AEPFFI for the purpose of diverting PDAF allocations since, as confirmed by the Commission on Audit (COA)-Special Audits Office (SAO), AEPFFI had no employees and no operations, the alleged incorporators had no knowledge of its existence and all proceeds from the NLDC releases were withdrawn using pre-signed withdrawal slips under the possession and control of Napoles;*

x x x x

In the present case, the allegation that accused Napoles “organized and controlled AEPFFI, whose very existence was for the purpose of diverting PDAF allocations” is a statement of ultimate facts considering that these are matters that the evidence will prove at the trial. We point out that Napoles has been charged with conspiring with public officials in anomalous transaction involving public funds that have been used to pay for ghost projects, as well as in malversation of public funds. It is thus necessary for the prosecution to state in the indictment Napoles’ purported participation in the elaborate scheme of diverting the PDAF via the NGO to non-existing projects. Accordingly, the allegation that Napoles ‘organized and controlled AEPFFI, whose very existence was for the purpose of diverting PDAF allocations’ are material facts that should be alleged in the Information so that she may be fully informed of the charges against her and be prepared to meet the issues at the trial.

To be sure, the record on preliminary investigation serves as the written account of the inquisitorial process when the fiscal determined the existence of *prima facie* evidence to indict a person for a particular crime. As a general rule, however, the record of the preliminary investigation does not even form part of the records of the case. As an exception, the court on its own initiative or on motion of any party, may order the production of the record or any of its part when necessary in the resolution of the case or any



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incident therein, or when it is to be introduced as an evidence in this case by the requesting party.

In the present case, Napoles calls for the production of the complete records of the preliminary investigation, claiming that that there was nothing in the records of the preliminary investigation attached to the Information that will support the allegations that she “organized and controlled AEPFFI, whose very existence was for the purpose of diverting PDAF allocations.” She, however, failed to conclusively show that the purpose was because the records were either: necessary in the resolution of the case or any incident therein; or is to be introduced as an evidence in the present cases.

At any rate, the matters raised by Napoles had already been threshed out by the Office of the Ombudsman who is given the discretion as regards the matters or facts to be alleged in the Information. Per the prosecution, Napoles had been given copies of the Resolutions of the proceedings before the Office of the Ombudsman. More importantly, the Sandiganbayan had been furnished with records of the preliminary investigation upon the filing of the Information.

Motion to Quash the Information

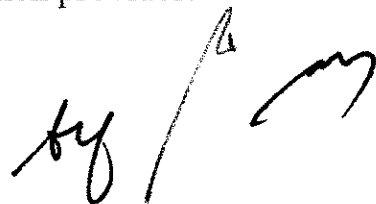
A motion to quash is the mode by which an accused assails, before entering his plea, the validity of the criminal complaint or the criminal information filed against him for insufficiency on its face in point of law, or for defect apparent on the face of the Information. The motion, as a rule, hypothetically admits the truth of the facts spelled out in the complaint or information.<sup>7</sup>

Napoles essentially claims that the Informations should be quashed for lack of jurisdiction over the offense charged and for lack of jurisdiction over the person of AEPFFI. She added that the elements of the offenses for which she had been charged all have a direct relation to the office of a public officer.

We disagree.

Private individuals, like herein Napoles, can be sued in cases before the Sandiganbayan if they are alleged to be in conspiracy with the public officer, pursuant to Republic Act No. 10660<sup>8</sup> which provides:

x x x x



<sup>7</sup> See *Los Baños v. Pedro*, G.R. No. 173588, April 22, 2009.

<sup>8</sup> AN ACT STRENGTHENING FURTHER THE FUNCTIONAL AND STRUCTURAL ORGANIZATION OF THE SANDIGANBAYAN, FURTHER AMENDING PRESIDENTIAL DECREE NO. 1606, AS AMENDED, AND APPROPRIATING FUNDS THEREFOR

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*In case private individuals are charged as co-principals, accomplices or accessories with the public officers or employees, including those employed in government-owned or controlled corporations, they shall be tried jointly with said public officers and employees in the proper courts which shall exercise exclusive jurisdiction over them.*

That Napoles is being charged of conspiring with her co-accused public officials for violation of Section 3(e) of R.A. No. 3019 and malversation, respectively, is clear from the very words of the subject Informations.

The Supreme Court's ruling in *Canlas v. People*<sup>9</sup> on this matter is instructive, thus:

The well-settled rule is that "private persons, when acting in conspiracy with public officers, may be indicted and, if found guilty, held liable for the pertinent offenses under Section 3 of RA 3019, in consonance with the avowed policy of the anti-graft law to repress certain acts of public officers and private persons alike constituting graft or corrupt practices act or which may lead thereto."

In *PCGG v. Office of the Ombudsman*, the Court reiterated the well-settled elements of Section 3(e) of RA 3019 as follows: (i) that the accused must be a public officer discharging administrative, judicial, or official functions, or a private individual acting in conspiracy with such public officers; (ii) that he acted with manifest partiality, evident bad faith, or inexcusable negligence; and (iii) that his action caused any undue injury to any party, including the government, or giving any private party unwarranted benefits, advantage, or preference in the discharge of his functions.

The Court, in various cases, had the occasion to affirm the indictment and/or conviction of a private individual, acting in conspiracy with public officers, for violation of Section 3 of RA 3019 particularly paragraph (e) thereof.

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Further, in *Uyboco vs. People*, the Court discussed the criminal liability of Edelbert C. Uyboco (Uyboco), a private individual who acted in conspiracy with his co-accused public officer in the procurement of overpriced dump trucks. The Court affirmed his conviction by the Sandiganbayan under Section 3(e) of RA 3019.<sup>10</sup>

In like manner, the Supreme Court held in *Barriaga v. Sandiganbayan*<sup>11</sup> that a private person conspiring with an accountable public officer in committing malversation is also guilty of malversation.

<sup>9</sup> G.R. No. 236308-09, February 17, 2020.

<sup>10</sup> Citations omitted.

<sup>11</sup> G.R. No. 161784-86, April 26, 2005.



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We additionally find misplaced Napoles' reliance in *Teresita Tanghal Okabe v. Hon. Pedro De Leon Gutierrez x x x and Cecilia Maruyama*<sup>12</sup> to dismiss the cases and quash the Information.

In *Okabe*, the Supreme Court ruled that that the respondent judge committed a grave abuse of his discretion amounting to excess or lack of jurisdiction in finding probable cause for the petitioner's arrest in the absence of copies of the affidavits of the witnesses of the private complainant and her reply affidavit, the counter-affidavit of the petitioner, and the evidence adduced during the preliminary investigation before the investigating prosecutor.

In stark contrast, the records of the present case consisting of voluminous documents have been furnished to this Court. Accordingly, we made a judicial determination of probable cause for purposes of issuing a warrant of arrest after being satisfied based on the submitted evidence that there is a necessity for placing the accused under custody.

*Motion to Suspend Arraignment/Proceedings*

We find unmeritorious Napoles' argument that the arraignment and the proceedings in SB-22-CRM-0138 to 0142 should be suspended on the ground of prejudicial question.

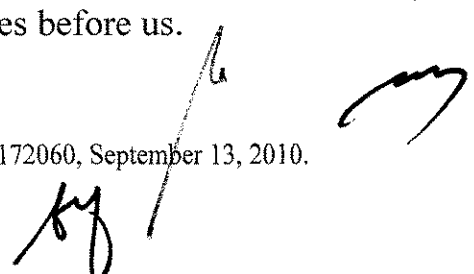
There is a prejudicial question when a civil action and a criminal action are both pending, and there exists in the civil action an issue which must be pre-emptively resolved before the criminal action may proceed because howsoever the issue raised in the civil action is resolved would be determinative of the guilt or innocence of the accused in the criminal case.<sup>13</sup>

We emphasize that AMLC No. 14-002-22 involved the issue of *whether the assets of Napoles and AEPFFI are to be forfeited in favor of the government*. Simply put, the primary issue before the court is whether or not the properties in question are unlawfully acquired, thus, warranting forfeiture in favor of the State.

Corollarily, the issue in the AMLC case is not similar or intimately related to the issue in the present consolidated cases before this Court, that is, whether accused's guilt for violation of Section 3(e) of R.A. No. 3019 and malversation, respectively, has been established beyond reasonable doubt. Significantly, the resolution of this issue in the civil forfeiture case is not determinative of whether the criminal cases may proceed. Verily, the resolution of the issue in the AMLC case would not in any way determine the judgment in the criminal cases before us.

<sup>12</sup> G.R. No. 150185, May 27, 2004.

<sup>13</sup> See *Pimentel v. Pimentel*, G.R. No. 172060, September 13, 2010.



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As held by the Supreme Court in *Ty De-Zuzuarregui v. Hon. Villarosa*:<sup>14</sup>

If the resolution of the issue in the civil action will not determine the criminal responsibility of the accused in the criminal action based on the same facts, or there is no necessity "that the civil case be determined first before taking up the criminal case," the civil case does not involve a prejudicial question. Neither is there a prejudicial question if the civil and the criminal action can, according to law, proceed independently of each other.

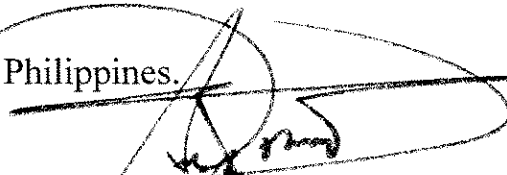
In any event, a forfeiture case under R.A. No. 1379 is considered to be an independent civil action, following Section 3 of Executive Order No. 14, s. 1986.<sup>15</sup> Independent civil actions are those which the law allows to be filed separately from the related criminal action and may proceed independently of the latter.

**WHEREFORE**, premises considered, the *Omnibus Motion Ad Cautelam* (1) *To Produce the Complete Records of the Preliminary Investigation Supporting the Allegations in the Informations*; (2) *To Quash the Informations*; and (3) *To Suspend Arraignment Proceedings* filed by accused Janet Lim Napoles through her counsels, is hereby **DENIED** for lack of merit.

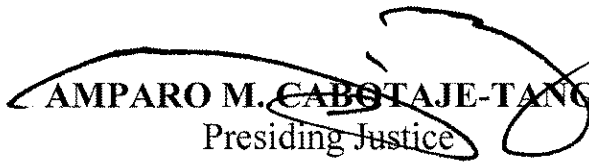
The Entry of Appearance filed by the Law Firm of Garay Usita Concha & Jimenea is **NOTED**.

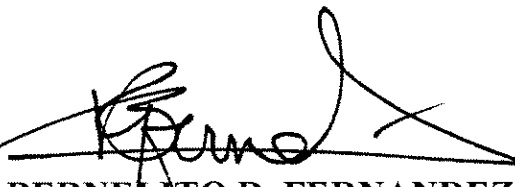
**SO ORDERED.**

Quezon City, Philippines.

  
**RONALD B. MORENO**  
Associate Justice

**WE CONCUR:**

  
**AMPARO M. CABOTAJE-TANG**  
Presiding Justice  
Chairperson

  
**BERNELITO R. FERNANDEZ**  
Associate Justice

<sup>14</sup> G.R. No. 183788, April 5, 2010.

<sup>15</sup> Defining the Jurisdiction Over Cases Involving the Ill-Gotten Wealth of Former President Ferdinand E. Marcos x x x.