



Republic of the Philippines
Sandiganbayan
Quezon City

THIRD DIVISION

REPUBLIC OF THE PHILIPPINES,
Petitioner,

-versus-

SB-14-CVL-0002

For: Forfeiture of Un-
lawfully Acquired
Properties under
R.A. No. 1379

HERNANDO B. PEREZ, ET
AL.,
Respondents.

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Present:

CABOTAJE-TANG, PJ.
FERNANDEZ, B. J.,
MORENO, R. J.

Promulgated on:

November 8, 2022

R E S O L U T I O N

CABOTAJE-TANG, PJ.:

For resolution are the following motions filed by
respondent Ernest De Leon Escaler:

(1) *Omnibus Motion [i] For Reconsideration of this Honorable
Court's 30 August 2022 Resolution, and [ii] To Disqualify the
Honorable Minister and Consul, Mr. Gerardo P. Abiog, from taking*

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the deposition of the Honorable Lilibeth V. Pono, dated October 5, 2022 (“Omnibus Motion”);¹ and

(2) *Opposition [To Petitioner’s Motion for Extension of Time for Lilibeth V. Pono to Complete her Deposition] and Motion to Defer [The Taking of Deposition of the Hon. Lilibeth V. Pono]*, dated October 17, 2022 (“Opposition and Motion”).²

RESPONDENT ESCALER’S MOTIONS

In his *Omnibus Motion*, Escaler seeks reconsideration of the Court’s *Resolution* dated August 30, 2022, which granted the prosecution’s *Ex-Parte Motion to Take Testimony of Ms. Lilibeth V. Pono by Deposition Upon Written Interrogatories with Attached Notice and Written Interrogatories*. According to him, “the testimony of Ms. Lilibeth V. Pono cannot be taken through deposition before the Minister and Consul, Mr. Gerardo P. Abiog, the latter being an employee of Petitioner in this case, and is therefore expressly disqualified under Section 13, Rule 23 of the 2019 Amendments to the Rules on Civil Procedure.”³

On the other hand, in his *Opposition and Motion*, Escaler claims that due to the pendency of his *Omnibus Motion*, and for the orderly administration of justice, there is a need for “. . . the deferment of the taking of deposition of the Honorable Lilibeth V. Pono until such time that this Honorable Court shall have resolved [his] *Omnibus Motion* and shall have appointed a new Officer who is not otherwise disqualified under Section 13, Rule 23 of the 2019 Amendments to the Rules on Civil Procedure...”⁴

THE COMMENT OF THE PROSECUTION

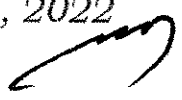
On October 24, 2022, the Court received a copy of the prosecution’s *Consolidated Comment/Opposition (To respondent Ernest De Leon Escaler’s Omnibus Motion dated October 5, 2022*

¹ The Court received a copy of the said *Omnibus Motion* on October 13, 2022 via registered mail.

² A copy of the said *Opposition and Motion* was received by the Sandiganbayan on October 19, 2022.

³ Par. 4, p. 2, *Omnibus Motion*

⁴ Par. 4, p. 2, *Opposition and Motion*



and Motion to Defer dated October 17, 2022). According to the prosecution, “Escaler’s argument that Mr. Abiog is disqualified to take the deposition of Ms. Pono based on the argument that [the latter] is an employee of herein petitioner, Republic of the Philippines, is totally absurd.”⁵

As to Escaler’s *Opposition and Motion*, the prosecution argues that the same should be denied outright since, allegedly, such “remedy was already available to him when he filed his *Omnibus Motion*, but failed to plead the same at that time. Consequently, respondent Escaler is deemed to have waived the same and cannot now ask for the deferment of the taking of *Deposition of Hon. Lilibeth Pono*.”⁶

THE RULING OF THE COURT

After a judicious assessment of the arguments raised by respondent Escaler in his subject motions, the consolidated comment/opposition thereto of the prosecution, the applicable laws and jurisprudence on the matter, the Court finds absolutely no basis to grant the same.

The full text of the Court’s *Resolution* dated August 30, 2022, sought to be reconsidered by respondent Escaler reads:

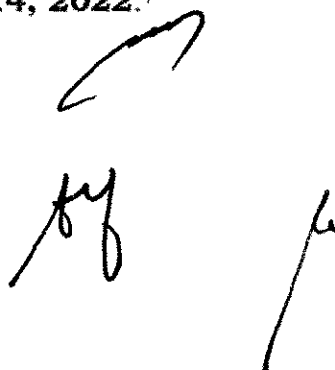
The “Ex-Parte Motion to Take Testimony of Ms. Lilibeth V. Pono by Deposition Upon Written Interrogatories with Attached Notice and Written Interrogatories” filed before the Court by petitioner-Republic, through the Office of the Special Prosecutor (OSP), which was received through electronic mail (email) on August 13, 2022, is **GRANTED**.

Accordingly, petitioner is **ALLOWED** to take the testimony of **Ms. Lilibeth V. Pono** by deposition upon written interrogatories at the **Philippine Embassy**, located at **Luisenstrasse 16, 10117 Berlin, Germany**, before the Minister and Consul, **Mr. Gerardo P. Abiog**, and to **CONCLUDE** the same on **October 14, 2022**.⁷

⁵ Par. 3, p. 2, *Comment/Opposition*

⁶ Par. 7, p. 2, *Comment/Opposition*

⁷ Emphasis in the original

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The aforesaid resolution of the Court is anchored on Sections 1 and 11, Rule 23 of the Rules of Court, as amended, thus:

Section 1. *Depositions pending action, when may be taken.* — Upon *ex parte* motion of a party, **the testimony of any person, whether a party or not, may be taken by** deposition upon oral examination or **written interrogatories.** The attendance of witnesses may be compelled by the use of a subpoena as provided in Rule 21. Depositions shall be taken only in accordance with these Rules. The deposition of a person confined in prison may be taken only by leave of court on such terms as the court prescribes.⁸

... ..

Section 11. *Persons before whom depositions may be taken in foreign countries.* — **In a foreign state or country, depositions may be taken** (a) **on notice before a** secretary of embassy or legation, consul general, **consul,** vice-consul, or **consular agent of the Republic of the Philippines;**⁹ (b) before such person or officer as may be appointed by commission or under letters rogatory; or (c) the person referred to in Section 14 hereof.¹⁰

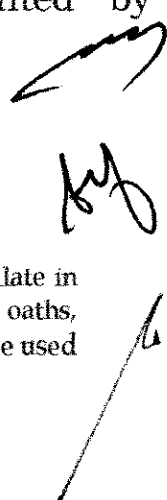
Plainly, the aforesaid provisions of the Rules of Court authorize the taking of the testimony of any person in a pending action, whether a party or not in the said case, through deposition upon oral examination or written interrogatories. Depositions may even be taken in a foreign country (1) before a secretary of embassy or legation, consul general, consul, vice-consul, or consular agent of the Republic of the Philippines, (2) before such person or officer as may be appointed by

⁸ Emphasis supplied

⁹ Emphasis supplied

¹⁰ Section 14, Rule 23 of the Rules of Court, as amended, provides:

Section 14. *Stipulations regarding taking of depositions.* — If the parties so stipulate in writing, depositions may be taken before any person authorized to administer oaths, at any time or place, in accordance with these Rules, and when so taken may be used like other depositions.



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commission or under letters rogatory; or (3) the person referred to in Section 14 of the said rule.

In *Dulay v. Dulay*,¹¹ the Supreme Court had the occasion to discuss the office of a deposition and the limitations on its utilization as a mode of discovery. Thus:

Deposition is chiefly a mode of discovery, the primary function of which is to supplement the pleadings for the purpose of disclosing the real points of dispute between the parties and affording an adequate factual basis during the preparation for trial. It may be taken with leave of court after jurisdiction has been obtained over any defendant or over property that is the subject of the action; or, without such leave, after an answer has been served. **A party's right to avail itself of this procedure is "well-nigh unrestricted" if the matters inquired into are otherwise relevant and not privileged, and the inquiry is made in good faith and within the bounds of the law. Nevertheless, the use of discovery procedures is directed to the sound discretion of the trial courts, which, in general, are given wide latitude in granting motions for discovery in order to enable the parties to prepare for trial or otherwise to settle the controversy prior thereto.**¹²

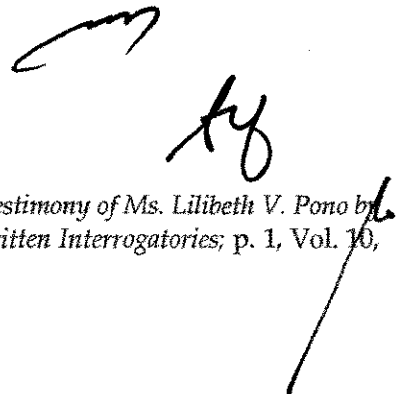
... ..

Here, the Court's assailed *Resolution* complied with the strictures provided for under Sections 1 and 11, Rule 23 of the Rules of Court, as amended, as it authorized the taking of the deposition of Ms. Lilibeth V. Pono through written interrogatories before Mr. Gerardo P. Abiog, Minister and Consul, at the Philippine Embassy, located at Luisenstrasse 16, 10117 Berlin, Germany. More importantly, based on the *Ex Parte Motion* of the petitioner, the testimony that will be given by Ms. Pono is relevant to the settlement of the issues raised in this case as she issued a *Certificate of Authentication* of certain documents material to this case when she was still the Consul at the Philippine Embassy in Berne, Switzerland.¹³

¹¹ 511 Phil. 297, 304 (2005)

¹² Emphasis supplied

¹³ Please refer to par. 1, p. 1, Petitioner's *Ex-Parte Motion to Take Testimony of Ms. Lilibeth V. Pono by Deposition Upon Written Interrogatories with Attached Notice and Written Interrogatories*; p. 1, Vol. 10, Records.

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In fact, the relevancy of Ms. Pono's testimony in this case is impliedly admitted by respondent Escaler after he failed to question the same in his subject motions. He (respondent Escaler) even wants the Court to appoint another person supposedly authorized to take depositions under Section 11, Rule 23 of the Rules of Court, as amended, should the Court grant his motion for reconsideration.

To be sure, respondent Escaler's only objection is the taking of the deposition of Ms. Pono before Mr. Abiog, who as the Minister and Consul at the Philippine Embassy in Berlin, Germany, is supposedly *disqualified* from taking the said deposition pursuant to Section 13, Rule 23 of the Rules of Court, as amended. This provision reads:

Section 13. Disqualification by interest. — **No deposition shall be taken before a person who is a** relative within the sixth degree of consanguinity or affinity, or **employee** or counsel **of any of the parties**; or who is a relative within the same degree, or employee of such counsel; or who is financially interested in the action.¹⁴

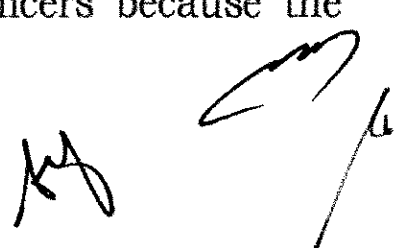
Respondent Escaler argues that Mr. Abiog is disqualified to take the deposition of Ms. Pono since he is, as Minister and Consul at the Philippine Embassy in Berlin, Germany, an employee of the herein petitioner, *i.e.*, the Republic of the Philippines.

The said argument of Escaler is devoid of merit.

First. As stated above, Section 11, Rule 23 of the Rules of Court, as amended, unequivocally authorizes consuls and consular agents of the Republic of the Philippines to conduct deposition taking in foreign countries. Since Mr. Abiog is the Minister and Consul at the Philippine Embassy in Berlin, Germany, he is fully-clothed with the authority to conduct the deposition taking of Ms. Pono.

Second. Section 13, Rule 23 of the Rules of Court, as amended, is entitled "***Disqualification by interest.***" This simply means that the persons enumerated therein are automatically disqualified as deposition officers because the

¹⁴ Emphasis supplied



Rules conclusively presume that they have some *interest*, pecuniary or otherwise, in the outcome of the action due to their **relations** to any of the parties therein. Thus, for the disqualification under the said Rule to attach, it must be firmly established that the deposition officer is a relative within the sixth degree of consanguinity or affinity, or employee or counsel of any of the parties, or who is a relative within the same degree, or employee of the counsel, or who is financially interested in the action.

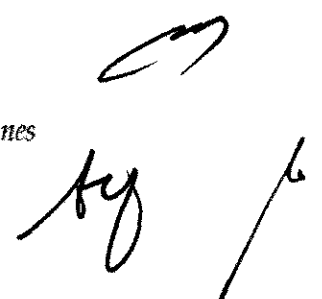
To be sure, before an “employee” may be disqualified to be a deposition officer, it must be positively established that she/he is really employed by one of the parties or by any of the counsels in the action. Indeed, an **employer-employee relations** must be shown to exist between the deposition officer and any of the parties or counsels to the action because it is only at this instance that it may be conclusively presumed that that the former is interested in the outcome of the action. In such instance, the Rule assumes that the deposition officer is not wholly free, disinterested, impartial and independent in conducting the deposition.

Here, it is admitted that the petitioner is the Republic of the Philippines. Respondent Escaler claims that Mr. Abiog, “*being a Minister and Consul of the Republic of the Philippines, is undoubtedly an **employee** of the latter.*”¹⁵ There is thus a need to establish whether Mr. Abiog is really an “employee” of the Republic of the Philippines within the contemplation of Section 13, Rule 23 of the Rules of Court, as amended.

The *Government of the Republic of the Philippines* refers to the corporate governmental entity through which the functions of government are exercised throughout the Philippines, including, save as the contrary appears from the context, the various arms through which political authority is made effective in the Philippines, whether pertaining to the autonomous regions, the provincial, city, municipal or barangay subdivisions or other forms of local government.¹⁶ On the other hand, *Agency of the Government* refers to any of the various units of the Government, including a department, bureau, office, instrumentality, or government-owned or controlled

¹⁵ Par. 3, p. 2, *Omnibus Motion*

¹⁶ Section 2 (1), Introductory Provisions of the *Administrative Code of the Philippines*

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corporation, or a local government or a distinct unit therein.¹⁷ *Employee* when used with reference to a person in the public service, includes any person in the service of the government or any of its agencies, divisions, subdivisions or instrumentalities.¹⁸

As stated above, Mr. Abiog is a "Minister and Consul" at the Philippine Embassy in Berlin, Germany. The consular offices of the Philippines abroad are among the units under the Department of Foreign Affairs (DFA) which is under the Executive Branch of Government.¹⁹ Among the functions of the DFA's consular establishments is to "[t]ransmit judicial and extra-judicial documents and execute letters rogatory or commissions to receive evidence abroad for Philippine courts."²⁰ The DFA is the "lead agency that shall advise and assist the President in planning, organizing, directing, coordinating and evaluating the total national effort in the field of foreign relations."²¹

On the other hand, this case for forfeiture of unlawfully acquired properties under Republic Act (R.A.) No. 1379²² was instituted by the Office of the Ombudsman (OMB) on behalf of the Republic of the Philippines. The OMB was created pursuant to Section 5, Article XI of the 1987 Constitution.²³ Section 11 of R.A. No. 6770, otherwise known as the "The Ombudsman Act of 1989," provides:

Section 11. Structural Organization. — The authority and responsibility for the exercise of the mandate of the Office of the Ombudsman and for the discharge of its powers and functions shall be vested in the Ombudsman, who shall have supervision and control of the said office.

¹⁷ Section 2 (4), *id*

¹⁸ Section 2 (15), *id*

¹⁹ Please refer to Section 4 (2), Chapter 1, Title I, Book IV, *Administrative Code of the Philippines*.

²⁰ Section 21 (5), Chapter 7, Title I, Book IV, *Administrative Code of the Philippines*

²¹ Section 2, Chapter 1, Title I, Book IV, *Administrative Code of the Philippines*

²² Entitled: "AN ACT DECLARING FORFEITURE IN FAVOR OF THE STATE ANY PROPERTY FOUND TO HAVE BEEN UNLAWFULLY ACQUIRED BY ANY PUBLIC OFFICER OR EMPLOYEE AND PROVIDING FOR THE PROCEEDINGS THEREFOR."

²³ Section 5, Article XI of the 1987 Constitution reads:

SECTION 5. There is hereby created the independent Office of the Ombudsman, composed of the Ombudsman to be known as Tanodbayan, one overall Deputy and at least one Deputy each for Luzon, Visayas, and Mindanao. A separate Deputy for the military establishment may likewise be appointed.

(1) The Office of the Ombudsman may organize such directorates for administration and allied services as may be necessary for the effective discharge of its functions. Those appointed as directors or heads shall have the rank and salary of line bureau directors.

... ..

(3) The Office of the Special Prosecutor shall be composed of the Special Prosecutor and his prosecution staff. The Office of the Special Prosecutor shall be an organic component of the Office of the Ombudsman and shall be under the supervision and control of the Ombudsman.

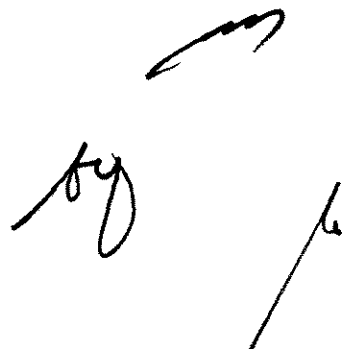
Plainly, Respondent Escaler is mistaken in concluding that Mr. Abiog is an employee of the Republic of the Philippines within the contemplation of Section 13, Rule 23 of the Rules of the Court, as amended. Mr. Abiog is an employee of the consular office of the Philippines which is a unit under the DFA. The DFA, being under the Executive Branch of Government, is definitely separate and distinct from the OMB, which is an independent constitutional body. Considering that the OMB which instituted the present action on behalf of the Republic of the Philippines, Mr. Abiog may be validly designated as the deposition officer since there is no employer-employee relationship existing between Mr. Abiog and the OMB.

As correctly argued by the prosecution, giving credence to respondent Escaler's contention that Mr. Abiog is disqualified to conduct the deposition because he is an "employee" of the Republic of the Philippines will only lead to absurdity.²⁴ Indeed, a literal and short-sighted interpretation of the word "employee" in Section 13, Rule 23 of the Rules of the Court, as amended, would even lead to the disqualification of the Members of this Court from hearing this case as they are also "employees" of the Republic of the Philippines.²⁵

It is worthy to note that in many instances, the Supreme Court "*has refused to apply the literal import of a particular provision of the law when to do so would lead to unjust, unfair and absurd results. After all, it is the function of courts to see to*

²⁴ Please refer to Par. 3, p. 2, *Comment/Opposition*.

²⁵ Please refer to Par. 4, p. 2, *id.*



it that justice is dispensed, fairness is observed and absurdity prevented.”²⁶

Third. As stated above, the persons enumerated under Section 13, Rule 23 of the Rules of Court, as amended, are automatically disqualified from taking the deposition of any person because of the interest they may have in the outcome of the action.

Here, as discussed above, Mr. Abiog is not an employee of the OMB which instituted the present case. He is a Minister and Consul at the Philippine Embassy in Berlin, Germany, which is under the DFA, and which agency is **not a party** to this case. Thus, the evil sought to be avoided by Section 13, Rule 23 of the Rules of Court, as amended, *i.e.*, interest of the deposition officer in the outcome of the action, will highly unlikely occur should Mr. Abiog be authorized to preside the deposition taking of Ms. Pono.

The teachings of the Supreme Court in **Dulay** is apropos in this case:

The ends of justice are reached not only through the speedy disposal of cases, but more importantly, through a meticulous and comprehensive evaluation of the merits of the case. The parties’ right to be given full opportunity to ventilate their cases should not be hindered by a strict adherence to technicalities. **After all, as this Court has so often enunciated, rules of procedure are not inflexible tools designed to hinder or delay, but to facilitate and promote the administration of justice. A strict and rigid application of rules, resulting in technicalities that tend to frustrate rather than promote substantial justice, must be avoided.**²⁷

WHEREFORE, respondent Ernest De Leon Escaler’s (1) *Omnibus Motion [i] For Reconsideration of this Honorable Court’s 30 August 2022 Resolution, and [ii] To Disqualify the Honorable Minister and Consul, Mr. Gerardo P. Abiog, from taking the deposition of the Honorable Lilibeth V. Pono, dated October 5, 2022, and (2) Opposition [To Petitioner’s Motion for Extension of Time for Lilibeth V. Pono to Complete her Deposition] and Motion*

²⁶ *Solid Homes, Inc. v. Spouses Ancheta and Corazon Tan*, 465 SCRA 137 (2005)

²⁷ *Supra* note 11, at 307-308

RESOLUTION

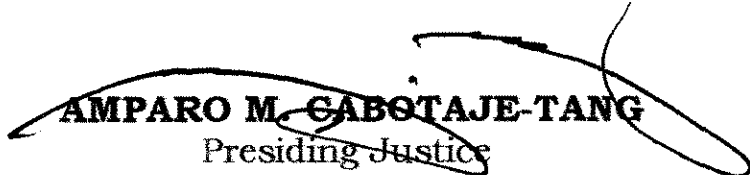
People vs. Perez, et al.
SB-14-CVL-0002

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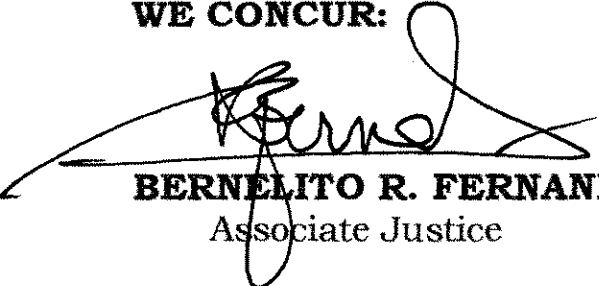
to Defer [The Taking of Deposition of the Hon. Lilibeth V. Pono], dated October 17, 2022, are hereby **DENIED** for utter lack of merit.

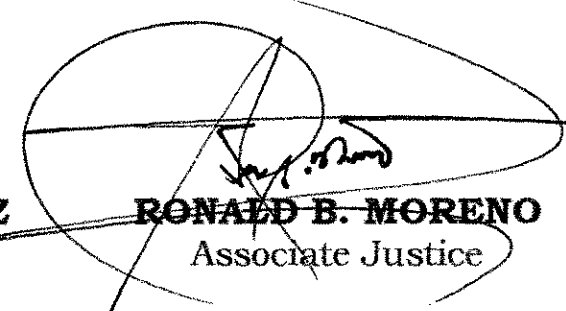
The taking of the deposition by written interrogatories of Ms. Lilibeth V. Pono before Mr. Gerardo P. Abiog, Minister and Consul at the Philippine Embassy, located at Luisenstrasse 16, 10117 Berlin, Germany. The petitioner is given a NON-EXTENDIBLE PERIOD OF FORTY-FIVE (45) DAYS from notice hereof within which to complete and terminate the said deposition.

SO ORDERED.


AMPARO M. GABOTAJE-TANG
Presiding Justice
Chairperson

WE CONCUR:


BERNELITO R. FERNANDEZ
Associate Justice


RONALD B. MORENO
Associate Justice

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