



REPUBLIC OF THE PHILIPPINES

*Sandiganbayan*

Quezon City

SIXTH DIVISION

PEOPLE OF THE PHILIPPINES,  
Plaintiff,

SB-19-CRM-0144

For: Violation of Section 8, in relation to  
Section 11 of R.A. No. 6713

*Present*

- versus -

ABUBACAR P. MAULANA,

Accused.

FERNANDEZ, SJ, J.,  
Chairperson  
MIRANDA, J. and  
VIVERO, J.

*Promulgated:*

*January 11, 2023*

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RESOLUTION

**FERNANDEZ, SJ, J.**

This resolves the following:

1. The prosecution's *Formal Offer of Rebuttal Evidence*;<sup>1</sup>
2. Accused Abubacar P. Maulana's *Motion to Strike Out Judicial Affidavit and Its Attachments With Comment/Opposition to the Formal Offer of Rebuttal Evidence*;<sup>2</sup> and,
3. The prosecution's *Comment/Opposition (Re: Motion to Strike Out Judicial Affidavit of Mr. Elmar S. Arellano)*.<sup>3</sup>

<sup>1</sup> Dated October 21, 2022 and filed on October 25, 2022

<sup>2</sup> Dated October 25, 2022

<sup>3</sup> Dated November 7, 2022 and filed by electronic mail on November 8, 2022.

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In its *Formal Offer of Rebuttal Evidence*, the prosecution offers the following as its rebuttal evidence:

Exhibit	Document
H and sub-markings	Certified True Copy (CTC) of <i>Deed of Sale</i> between Eldon Buenaventura and Mary Grace Cheng-Rosagas dated 24 May 2002
I	<i>Deed of Sale of Motor Vehicle</i> dated July 03, 2013
I-1 and sub-markings	Certified True Copy (CTC) of Community Tax Certificate dated 2013 ( <i>Cedula</i> )
I-2 and sub-markings	CTC of the Identification Cards of accused Maulana with his original signatures
I-3	CTC of the Identification card (ID) of Ms. Rosagas
J	<i>Affidavit of Change Color</i> dated July 03, 2013, executed by accused Maulana
K	<i>Original Certification</i> dated October 12, 2022

In his *Motion*, the accused prays that the Court strike out witness Elmar S. Arellano's *Judicial Affidavit* and its attachments and/or exclude the pertinent documentary exhibits as they were not properly authenticated, identified and verified. He avers:

1. Sec. 10(c) of the *Judicial Affidavit Rule*<sup>4</sup> provides:

(c) The court shall not admit as evidence judicial affidavits that do not conform to the content requirements of Section 3 and the attestation requirement of Section 4 above. xxx

2. Sections 3 and 4 of the *Judicial Affidavit Rule* require that questions and answers be conducted for the taking of the judicial affidavit, and that the lawyer must faithfully record the questions asked and the answers of the witness.
3. In the *Judicial Affidavit* dated October 12, 2022, witness Arellano stated that his *Judicial Affidavit* was taken on October 12, 2022 in the form of Question and Answer. On the other hand, the public prosecutor attested that the *Judicial Affidavit* was properly recorded on said date, and no one dictated or coached the witness.
4. During the hearing on October 20, 2022, however, witness Arellano testified that on October 12, 2022, he stayed at his office from 8:00 A.M. to 5:00 P.M, and did not go elsewhere.

<sup>4</sup> A.M. No. 12-8-8-SC

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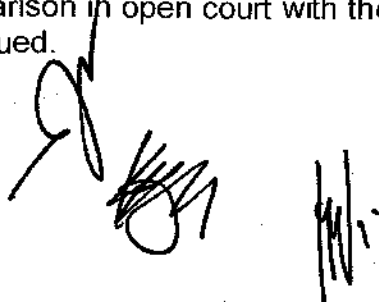
After realizing that there was something wrong with his declaration, witness Arellano testified that he allegedly left in between the said times.

5. During the presentation of witness Arellano, it was clearly established that he did not go to the Office of the Prosecutor for the conduct of the question and answer. According to him, he just went there and was asked to sign the document. This shows that witness Arellano was not merely coached but his entire testimony is supplied and prepared for him by the prosecutor.
6. Because the subject *Judicial Affidavit* does not conform to the requirements provided in the *Judicial Affidavit Rule*, the same, as well as the pertinent documentary exhibits, must be stricken out.

In his *Comment/Opposition* to the prosecution's *Formal Offer of Rebuttal Evidence*, which is incorporated in his *Motion*, the accused objects to the admission of Exhibits H, I, I-1, I-2, I-3 and K for being irrelevant, improper and self-serving, and to the admission of Exhibit J for being hearsay.

In its *Comment/Opposition* to the accused's *Motion*, the prosecution counters:

1. Under Sec. 6 of the *Judicial Affidavit Rule*, the objection must be raised when the judicial affidavit is offered.
2. The accused not only failed to object during the offer, but he likewise stipulated that the witness can identify his judicial affidavit, his signature appearing therein, and if asked, he will affirm and confirm the contents of his judicial affidavit.
3. Furthermore, the accused has five (5) days to seek reconsideration of the Court's order admitting Mr. Arellano's *Judicial Affidavit*. The accused's instant motion was filed beyond the reglementary period.
4. Even assuming that the instant *Motion* was filed on time, it should still fail because it does not have any legal or factual basis. Mr. Arellano is testifying as a records custodian only. During the additional direct examination, he brought the original Land Transportation Office (LTO) files or documents for comparison in open court with the Certified True Copies (CTC) he issued.



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5. Several stipulations and manifestations made during the hearing fully affirmed and confirmed the material aspects stated in Mr. Arellano's *Judicial Affidavit*. Thus, the alleged minor inconsistencies with Mr. Arellano's answers during the cross-examination do not negate the material fact established during his testimony in court and stated in his *Judicial Affidavit*.

Thereafter, without being required to file the same, the accused filed his *Reply to Comment/Opposition (Re: Accused's Motion to Strike Out Judicial Affidavit of Mr. Elmar S. Arellano)*.<sup>5</sup>

### THE COURT'S RULING

First, the accused's *Motion* must be denied. It is too late for him to move for the exclusion of witness Arellano's *Judicial Affidavit*. The accused should have moved for the same during the hearing on October 20, 2022, before witness Arellano completed his testimony.

The pertinent provisions on when to make offer and objection, under Rule 132 of the *2019 Amendments to the 1989 Revised Rules on Evidence*,<sup>6</sup> read:

**Sec. 35. When to make offer.** – All evidence must be offered orally.

The offer of the testimony of a witness in evidence must be made at the time the witness is called to testify.

The offer of documentary and object evidence shall be made after the presentation of a party's testimonial evidence.

**Sec. 36. Objection.** – Objection to offer of evidence must be made orally immediately after the offer is made.

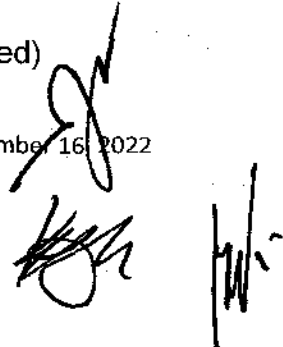
Objection to the testimony of a witness for lack of a formal offer must be made as soon as the witness begins to testify. Objection to a question propounded in the course of the oral examination of a witness must be made as soon as the grounds therefor become reasonably apparent.

The grounds for the objections must be specified.

(underscoring supplied)

<sup>5</sup> Dated November 15, 2022 and filed by electronic mail on November 16, 2022

<sup>6</sup> A.M. No. 19-08-15-SC dated October 8, 2019



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In *Magsino v. Magsino*,<sup>7</sup> the Supreme Court explained that to exclude evidence, objection to the admissibility thereof should be timely made, and the grounds specified. Grounds for objections not raised at the proper time shall be deemed waived, even if the evidence was objected to on some other ground. *Viz.:*

In order to exclude evidence, the objection to admissibility of evidence must be made at the proper time, and the grounds specified. Grounds for objections not raised at the proper time shall be considered waived, even if the evidence was objected to on some other ground. Thus, even on appeal, the appellate court may not consider any other ground of objection, except those that were raised at the proper time.

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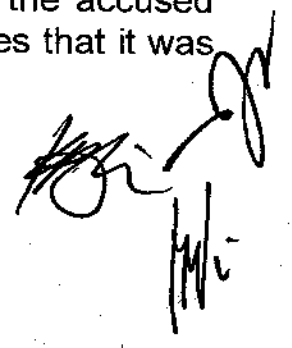
As correctly found by the CA, the objections interposed by petitioner – as to both oral and documentary evidence – were not timely made.

Petitioner should have objected during the course of Gates' direct testimony on her qualifications as an expert witness and explaining the mechanics of the psychological examination which she conducted on respondent. Petitioner should not have waited in ambush after the expert witness had already finished testifying. By so doing, petitioner did not save the time of the court in hearing the testimony of the witness that after all according to her was inadmissible. And thus, for her failure to make known her objection at the proper time, the procedural error or defect was waived. Indeed, the reason why offer must be made at the time the witness is called to testify and the objection thereto be made, so that the court could right away rule on whether the testimony is necessary on the ground of irrelevancy, immateriality or whatever grounds that are available at the onset. Here, petitioner allowed a substantial amount of time to be wasted by not forthrightly objecting to the inadmissibility of the respondent's testimonial evidence.

Similarly, herein accused should have raised his objection at the proper time, or immediately after the offer of witness Arellano's *Judicial Affidavit* in lieu of his direct testimony, or before he completed his testimony at the latest.

Indeed, during the hearing on October 20, 2022, the accused pointed out that witness Arellano's *Judicial Affidavit* states that it was

<sup>7</sup>G.R. No. 205333, February 18, 2019

Handwritten signature and initials in black ink, located in the bottom right corner of the page.

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taken on October 12, 2022, but he testified that on the said date, he was in his office from 8:00 A.M. to 5:00 P.M.<sup>8</sup> However, the accused only moved to strike out or exclude the subject *Judicial Affidavit* days after witness Arellano completed his testimony. Because the accused failed to move to strike out or exclude the subject *Judicial Affidavit* in a timely manner, he is deemed to have waived his objection.

At any rate, the accused's objections refer more to the credibility of witness Arellano and his testimony, rather than its admissibility, and witness Arellano was able to explain the discrepancy in the dates in the course of his testimony.

With respect to the prosecution's *Formal Offer of Rebuttal Evidence*, the prosecution's documentary exhibits are admitted for the purposes for which they are offered, over the accused's objection, considering that the accused's objections refer more to the probative value than their admissibility.

**WHEREFORE**, the Court rules as follows:

1. The accused's *Reply* is merely NOTED, considering that he was not required to file the same.<sup>9</sup>
2. The accused's *Motion* is hereby DENIED.
3. The Court resolves to ADMIT the following exhibits, including the sub-markings, offered by the prosecution on rebuttal: **Exhibits H, I, I-1, I-2, I-3, J and K**, for the purposes for which they are offered, considering that the accused's objections refer more to the probative value than their admissibility.

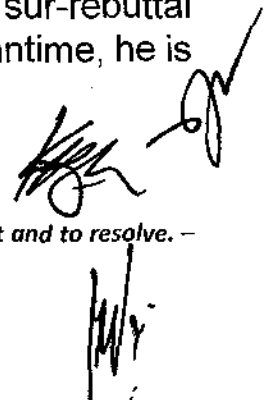
With the admission of its documentary exhibits, the prosecution is deemed to have rested its case on rebuttal.

The hearing for the presentation of the accused's sur-rebuttal evidence is tentatively set on January 19, 2023. In the meantime, he is

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<sup>8</sup> TSN, October 20, 2022, pp. 51-53

<sup>9</sup> 2018 Revised Internal Rules of the Sandiganbayan. Rule VII, Sec. 4. *Period to comment and to resolve.* – x x x Reply and memorandum shall not be allowed.



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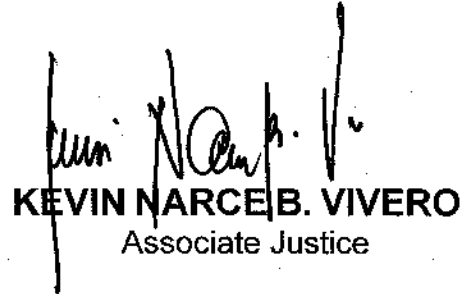
DIRECTED, within five (5) days from receipt of this Resolution, to manifest whether he will present his sur-rebuttal evidence.

SO ORDERED.

  
SARAH JANE T. FERNANDEZ  
Associate Justice  
Chairperson

**We Concur:**

  
KARL B. MIRANDA  
Associate Justice

  
KEVIN NARCEB. VIVERO  
Associate Justice