



REPUBLIC OF THE PHILIPPINES  
SANDIGANBAYAN  
Quezon City

Fifth Division

PEOPLE OF THE  
PHILIPPINES,

*Plaintiff,*

Crim Case No. SB-19-CRM-0050

For: Violation of Sec. 3(e) of R.A.  
3019, as amended

- versus -

*Present:*

LAGOS, J., Chairperson,  
MENDOZA-ARCEGA, and  
CORPUS-MAÑALAC, JJ.

ESTER B. OGENA,  
REBECCA C. NUEVA  
ESPAÑA, FLORENCE A.  
ALLEJOS, and JOSEPH G.  
LUCENO,

*Accused.*

*Promulgated:*

March 28, 2023  
*Genel J. L. Gera*

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RESOLUTION

**LAGOS, J.:**

For the Court's consideration are: (i) accused Ester Balating Ogena's (Ogena) **Motion for Reconsideration**<sup>1</sup> dated March 4, 2023, seeking a reconsideration of the Court's February 17, 2023 Resolution on her Demurrer to Evidence, and (ii.) the prosecution's **Opposition**<sup>2</sup> thereto dated March 15, 2023. In the subject resolution, the Court held, *inter alia*, that "xxx as to accused Ogena, her demurrer is **denied**, as the Court finds sufficient evidence

<sup>1</sup> Records, Vol. 9, Motion for Reconsideration, pp. 419-431, stamped received on March 6, 2023, and a copy received on March 10 at pp. 434-446.

<sup>2</sup> *Id.*, pp. 451-482.

*Handwritten marks:* A large handwritten 'M' and a signature-like scribble.

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against her. There is need for her to present her evidence to rebut the prosecution's evidence.<sup>3</sup> (Underscoring supplied.)

The accused moves for a reconsideration of the court's resolution specifically on the following grounds:<sup>4</sup>

- A. The *evidence of the prosecution* clearly shows good faith on the part of Accused Ogena; evident bad faith is an element of the crime for which Accused Ogena is charged in the case at bar.
- B. The *evidence of the prosecution* also failed to show manifest partiality committed by Accused Ogena, not to mention the fact that **Exhibit "G"** of the prosecution shows that the copyright to the advertorial is owned by UNL allowing procurement by direct contracting.
- C. The person who originated the complaint was the Vice-Chairman of the BAC during the period in question and failed to advise Accused Ogena of the process to be followed for the alternative mode of procurement; by subsequently ordering payment of the procurement, the Vice-Chairman of the BAC itself virtually allowed the alternative mode of procurement of direct contracting.
- D. The prosecution failed to prove the elements of the crime charged in the case at bar beyond reasonable doubt.

In its opposition, the prosecution maintains that “[n]one of the grounds provided by accused Ogena has any merit to warrant the reversal of the ruling in the Resolution dated 17 February 2023.”<sup>5</sup> The Court in this regard finds that the grounds “A” and “B”, involving the accused purported “good faith” and on “manifest partiality” or lack thereof, and particularly ground “D” which amounts to a summation of “A” and “B”, are mere repetitions of the discussion and arguments in accused's earlier Demurrer to Evidence. As to ground “C”, the accused cannot pass-the-buck or simply duck responsibility by passing the blame on the Vice-Chairman (or Vice-Chairperson) of the BAC, who was only following instructions to do his job to pay the financial obligation the accused herself had entered into. Strictly speaking, the BAC Vice-Chairperson did not “order” the payment of the subject procurement, but merely directed his subordinate officials to “process” the scheduled payments under the contract involved. It is also a stretch to construe based on the same act that he “virtually allowed the alternative mode of procurement of direct contracting.”

There are salient or important points, or arguments, raised by the prosecution in its opposition, viz.: “Accused Ogena ... argues that the

<sup>3</sup> Records, Vol. 9, Resolution dated February 17, 2023, pp. 341-390 at 389; emphasis in the original.

<sup>4</sup> Note 1, Motion for Reconsideration, p. 419; italics and underscoring in the original.

<sup>5</sup> Records, Vol. 9, Opposition, p. 452.

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procurement was not tainted with evident bad faith because the Board of Regents (BOR) of PNU subsequently approved the procurement.”<sup>6</sup> In response, the prosecution posits that “If she acted in good faith, she would have obtained the approval of the BOR prior to the procurement. There was nothing to show that she was prevented from requesting the said approval from the BOR before she entered into a contract with Universal News Ltd. (UNL). In fact, she had ample time to ask for the same. From the time of the letter of the Commission on Higher Education (CHED) Chairperson Patricia B. Licuanan (Exhibit “F”) on 25 April 2011 up to the intended month of publication in the July-August 2011 issue of the Foreign Policy magazine, accused Ogena had at least two (2) full months to seek approval of the BOR before entering into an advertising contract with UNL.”<sup>7</sup>

In this regard, the accused asks the Court to take **judicial notice** of certain BOR resolutions with respect to the procurement involved in this case. The accused recalls and argues that:

During the marking of documents and when the pre-trial order was issued, the attention of the prosecution was already called to the fact that the Special Trust Fund for the APP for 2011 was realigned precisely to, among others, supplement the budget to cover for the cost of the advertisement, as well as to the fact that the BOR subsequently approved said advertisement. The Pre-Trial Order shows that *marked* as **Exhibits “39” to “39-C”** accused Ogena are photocopies of excerpts from the Minutes of the 60<sup>th</sup> Regular (1<sup>st</sup> Quarter) Meeting of the PNU Board of Regents on March 7, 2014 approving Board Resolutions U-2070, s. 2014, U-2071, s. 2014, U-2072, and U-2075, s. 2014. Likewise marked as Accused Ogena’s **Exhibits “40” to “40-A”** are photocopies of excerpts from the Minutes of the Special Meeting of the Board of the PNU Board of Regents on August 7, 2015 approving Board Resolutions U-2346, s. 2015, U-20154 (sic) and U-2348, s. 2015.

Lest the Prosecution argues that these are evidences that must be presented by Accused Ogena, we respectfully invite attention to the Joint Resolution of the Office of the Ombudsman dated *August 18, 2017*, penned by GIPO III Joseph L. Licuanan and reviewed by Acting Director Anna Isabel G. Aurellano and recommended for approval by Assistant Ombudsman Marilou B. Ancheta-Mejica, and approved by Ombudsman Conchita Carpio-Morales. This Joint Resolution can be taken **judicial notice of** by the Honorable Court, it being the basis of the criminal information in this case.

Rule 129 9f of the Revised Rules on Evidence, on what need not be proved, is clear that judicial notice is mandatory for official acts of the legislative, executive and judicial departments of the National Government on the Philippines, or matters which are of public knowledge or are capable of unquestionable demonstration, or ought to be known to judges because of their official functions. Likewise, before judgment, the court, *motu*

<sup>6</sup> Records, Vol. 9, par. 14, p. 455.

<sup>7</sup> *Id.*, p. 455, par. 15, p. 455; italic supplied; emphasis in the original.

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*proprio xxx* may take judicial notice of any matter and shall hear the parties thereon if such matter is decisive of a material issue in the case. We respectfully submit that the Joint Resolution of the Office of the Ombudsman dated August 18, 2017, being the very basis of the criminal information in this case be taken judicial notice of in this instance.<sup>8</sup>

In its Opposition, the prosecution manifested that, “To be clear, lest it be mistaken for acquiescence, the Prosecution does not admit the existence, authenticity, and due execution, of this BOR resolution,”<sup>9</sup> when referring to a BOR resolution issued on August 7, 2015. The Court finds that there is no cogent reason not to apply the same manifestation on the whole gamut of BOR resolutions proffered by the accused. Additionally, “There is still no substitute for the presentation of witnesses to prove this document”<sup>10</sup> according to the prosecution.

The *Ombudsman’s Joint Resolution*<sup>11</sup> dated *August 18, 2017* only mentions the number and subject description of each resolution, photocopies of which accused Ogena had submitted as Annexes “7” through “7-C” and “8” to “8-A” of her Counter-Affidavit during preliminary investigation. They were briefly cited in “**Item II. Respondents’ Counter-Affidavits**”<sup>12</sup> of the Joint Resolution, but never formally presented, identified nor authenticated, much less formally offered and admitted, as evidence in the said proceeding.

As claimed by the accused Ogena, the same annexes have been “pre-marked” (not officially marked nor offered in evidence) as her Exhibits “39” to “39-C” and “40” to “40-A” during pre-trial conference. They were likewise the subject of requests for stipulation, as indicated in the Court’s Pre-Trial Order, but the same were turned down and “not stipulated” on by the prosecution.<sup>13</sup> If anything, it appears that these board resolutions, based on their dates and subject matters covered, were passed and approved by the BOR years after the advertorial contract in this case had been consummated.

Rule 129 of the Rules of Court declares under Sections 1 and 2 thereof when the taking of judicial notice is mandatory or discretionary on the courts, to wit:

SECTION 1. *Judicial notice, when mandatory.* – A court shall take judicial notice, without the introduction of evidence, of the existence and territorial extent of states, their political history, forms of government and symbols of nationality, the laws of nations, the admiralty and maritime

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<sup>8</sup> Records, Vol. 9, p. 428; italics in the original; underscoring supplied.

<sup>9</sup> Id., p. 456, citing Page 4, Pre-Trial Order dated 16 July 2021, which mentions accused’s alleged PNU Board Resolution U-2346; underscoring supplied.

<sup>10</sup> *Ibid.*

<sup>11</sup> Records, Vol. 1, p. 40.

<sup>12</sup> Id., pp. 39, 45-48.

<sup>13</sup> Id., Vol.3, pp. 111, 113-115, 117-118.

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courts of the world and their seals, the political constitution and history of the Philippines, the official acts of the legislative, executive and judicial departments of the Philippines, the laws of nature, the measure of time, and the geographical divisions.

SECTION 2. *Judicial notice, when discretionary.* – A court may take judicial notice of matters which are of public knowledge or are capable of unquestionable demonstration, or ought to be known to judges because of their judicial functions. (Underscoring supplied.)


In *Juan vs. Juan*, G.R. No. 221731 (August 23, 2017), the Supreme Court held that, “The doctrine of judicial notice rests on the wisdom and discretion of the courts.”<sup>14</sup> In this instance, the accused failed to show and the Court is not convinced that it may take judicial notice of the board resolutions of the BOR, as herein suggested or proposed by the accused, either under Sections 1 or 2 of Rule 129. Under Sec. 1, the subject BOR resolutions cannot be at best regarded as official acts of the executive department which the court “shall take judicial notice” of. Likewise, they may not be considered of public knowledge, of unquestionable demonstration or ought to be known to judges because of their judicial functions. *Republic v. Sandiganbayan, et al.*<sup>15</sup> states: “Down the trodden path in our judicial system, by common sense, tradition and the law, the judge in trying a case, sees only with judicial eyes as he [or she] ought to know nothing about the facts of the case, except those which have been. Thus, when the case is up for trial, the judicial head is empty as to facts involved and it is incumbent upon the litigants to the action to establish by evidence the facts upon which they rely.”

**WHEREFORE**, the accused’s Motion for Reconsideration is **DENIED** for lack of merit. Accordingly, the hearing for the presentation of accused’s evidence shall be held as previously scheduled on April 13, 2023 at 1:30 in the afternoon.

**SO ORDERED.**

  
**RAFAEL R. LAGOS**  
Associate Justice  
Chairperson

**WE CONCUR:**

  
**MARIA THERESA V. MEDOZA-ARCEGA**  
Associate Justice

  
**MARYANN E. CORPUS-MAÑALAC**  
Associate Justice

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<sup>14</sup> Citing *Spouses Latip v. Chua*, 619 Phil. 155, and *State Prosecutors v. Munro*, 236 SCRA 505..

<sup>15</sup> G.R. No. 152375, citing *Lopez v. Sandiganbayan*, 319 Phil. 387, 389 (1995).