



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

- versus -

Present

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

ABUBACAR P. MAULANA,
Accused.

Promulgated:

March 2, 2023 *[Signature]*

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RESOLUTION

FERNANDEZ, SJ, J.

This resolves accused Abubacar P. Maulana's *Motion for Reconsideration (Of the Resolution promulgated on January 11, 2023)*;¹ and the prosecution's *Comment/Opposition (In re: Motion for Reconsideration)*.²

In his *Motion for Reconsideration*, the accused prays that the Resolution dated January 11, 2023³ be reversed and set aside, and a new one be issued granting his *Motion to Strike Out Judicial Affidavit and Its Attachments*, to the effect of excluding the prosecution's rebuttal evidence. He avers:

1. The violation of the Judicial Affidavit Rule was discovered only after cross-examination. Thus, his objection could be timely made after the formal offer of such documentary exhibit.

¹ Dated January 13, 2023; Record, Vol. 2, pp. 348-354 (printout of copy received through electronic mail), and pp.358-366 (received by mail)

² Dated January 24, 2023; Record, Vol. 2, pp. 355-357

³ Record, Vol. 2, pp. 333-339

[Handwritten signatures]

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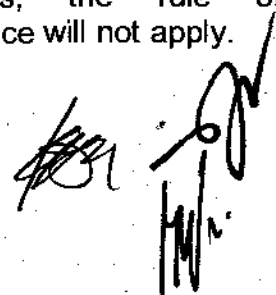
2. His motion to strike out or exclude the subject judicial affidavit and its attachments was timely made within the period to file his comment or opposition to the prosecution's formal offer of documentary evidence on rebuttal, considering it would be premature for him to object and move to strike out documentary evidence before the formal offer.
3. Sec. 10(c) of the Judicial Affidavit Rule mandates the Court to not admit judicial affidavits that do not conform to the content and attestation requirements. This shows that the accused's right to move for the exclusion of the subject judicial affidavit cannot be waived.
4. The ruling in *Lagon v. Velasco*⁴ shows not only the indispensability of the Judicial Affidavit Rule, but also its strict observance and application.
5. *Lim v. Lim*⁵ shows the clear mandate on the effect of non-compliance with the Judicial Affidavit Rule.
6. At any rate, his instant Motion does not refer to the qualification and oral testimony of rebuttal witness on direct examination that must be objected to right away upon being called to testify, but pertains to the inadmissibility of his Judicial Affidavit and its attached documentary exhibits as mandated by the said rule.
7. His objections refer to the admissibility of the Judicial Affidavit and its attachments, not the probative value, because the Court is mandated to not admit as evidence judicial affidavits that do not comply with the content and attestation requirements.

In its *Comment/Opposition*, the prosecution counters:

1. The accused's Motion was filed beyond the five (5)-day reglementary period under the *Revised Guidelines for Continuous Trial of Criminal Cases*.
2. Even assuming that his Motion was timely filed, it will still fail because the accused failed to raise substantial arguments to warrant the reversal of the Court's earlier ruling.
3. The subject Judicial Affidavit was never offered as documentary evidence, but as testimonial evidence in lieu of witness Arellano's direct testimony. Thus, the rule on comment/objection to documentary evidence will not apply.

⁴ G.R. No. 208424, February 14, 2018

⁵ G.R. No. 214163, July 1, 2019



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4. The accused could have objected to witness Arellano's Judicial Affidavit, first, when it was offered in lieu of his direct testimony, and second, by the timely filing of a Motion for Reconsideration. However, the accused did neither of the two (2) options allowed by law. Hence, he has waived his right to question the admissibility of the subject Judicial Affidavit.

THE COURT'S RULING

The Court resolves to deny the accused's *Motion for Reconsideration*.

The accused's *Motion for Reconsideration* was filed beyond the period allowed for filing the same. The pertinent provision⁶ of the *Revised Guidelines for Continuous Trial of Criminal Cases* reads:

The motion for reconsideration of the resolution of a meritorious motion shall be filed within a non-extendible period of five (5) calendar days from receipt of such resolution, and the adverse party shall be given an equal period of five (5) calendar days from receipt of the motion for reconsideration within which to submit its comment. Thereafter, the motion for reconsideration shall be resolved by the court within a non-extendible period of five (5) calendar days from the expiration of the five (5)-day period to submit the comment.

According to the accused, he received a copy of the assailed Resolution on January 13, 2023. Thus, he had until January 18, 2023 to file a motion for reconsideration. The accused, however, filed the instant *Motion for Reconsideration* only on January 20, 2023.⁷

Even on the merits, the accused's *Motion for Reconsideration* must be denied. As pointed out by the prosecution, witness Elmar S. Arellano's Judicial Affidavit⁸ was offered in lieu of his direct testimony,⁹ and not as a documentary exhibit. As this Court held in the assailed Resolution, the accused should have raised his objection immediately after the offer of the said Judicial Affidavit, or before he completed his testimony at the latest.¹⁰

⁶ III. Procedure, 2. Motions, (c) Meritorious Motions

⁷ Record, Vol. 2, pp. 347 and 365

⁸ Record, Vol. 2, pp. 275-290

⁹ TSN, October 20, 2022, p. 19

¹⁰ Resolution dated January 11, 2023, p. 5; Record, Vol. 2, p. 337

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Furthermore, the accused failed to show that witness Arellano's Judicial Affidavit did not comply with the requirements under the Judicial Affidavit Rule,¹¹ Sections 3 and 4 of which read:

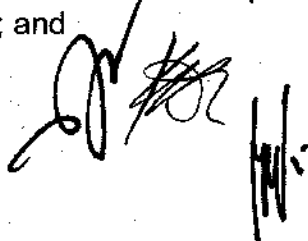
Sec. 3. Contents of Judicial Affidavit. – A judicial affidavit shall be prepared in the language known to the witness and, if not in English or Filipino, accompanied by a translation in English or Filipino, and shall contain the following:

- (a) The name, age, residence or business address, and occupation of the witness;
- (b) The name and address of the lawyer who conducts or supervises the examination of the witness and the place where the examination is being held;
- (c) A statement that the witness is answering the questions asked of him, fully conscious that he does so under oath, and that he may face criminal liability for false testimony or perjury;
- (d) Questions asked of the witness and his corresponding answers, consecutively numbered, that:
 - (1) Show the circumstances under which the witness acquired the facts upon which he testifies;
 - (2) Elicit from him those facts which are relevant to the issues that the case presents; and
 - (3) Identify the attached documentary and object evidence and establish their authenticity in accordance with the Rules of Court;
- (e) The signature of the witness over his printed name; and
- (f) A jurat with the signature of the notary public who administers the oath or an officer who is authorized by law to administer the same.

Sec. 4. Sworn attestation of the lawyer. – (a) The judicial affidavit shall contain a sworn attestation at the end, executed by the lawyer who conducted or supervised the examination of the witness, to the effect that:

- (1) He faithfully recorded or caused to be recorded the questions he asked and the corresponding answers that the witness gave; and

¹¹ A.M. No. 12-8-8-SC



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- (2) Neither he nor any other person then present or assisting him coached the witness regarding the latter's answers.
- (b) A false attestation shall subject the lawyer mentioned to disciplinary action, including disbarment.

Indeed, there was a discrepancy as to the date of the conduct of the question and answer, as indicated in the Judicial Affidavit, and the date of the preparation of the Judicial Affidavit, as testified by witness Arellano. But as this Court held in the assailed Resolution, witness Arellano was able to explain the discrepancy in the dates during the course of his testimony.¹²

It appears that witness Arellano's Judicial Affidavit was prepared on October 5, 2022, but was not completed until October 12, 2022, when he submitted the documents and signed the said Judicial Affidavit. According to him, he went to the Office of the Ombudsman and met Atty. Moreno on October 5, 2022 for the preparation of his Judicial Affidavit.¹³ Thereafter, Atty. Moreno asked him to prepare a certification that the Deed of Sale was not attached to the records.¹⁴ On October 12, 2022, he returned to the Office of the Ombudsman to submit documents,¹⁵ and he was asked to sign the Judicial Affidavit after checking the same.¹⁶

In fine, there is nothing in the accused's *Motion for Reconsideration* that would warrant the reversal of the assailed Resolution.

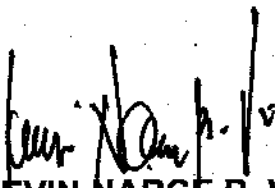
WHEREFORE, the accused's *Motion for Reconsideration* is hereby DENIED.

SO ORDERED.


SARAH JANE T. FERNANDEZ
Associate Justice
Chairperson

We Concur:


KARL B. MIRANDA
Associate Justice


KEVIN NARCE B. VIVERO
Associate Justice

¹² Resolution dated January 11, 2023, p. 6; Record, Vol. 2, p. 338

¹³ TSN, October 20, 2022, pp. 56-58

¹⁴ TSN, October 20, 2022, pp. 61-62

¹⁵ TSN, October 20, 2022, p. 52

¹⁶ TSN, October 20, 2022, pp. 54-55