



REPUBLIC OF THE PHILIPPINES

Sandiganbayan

QUEZON CITY

THIRD DIVISION

PEOPLE OF THE
PHILIPPINES,
Plaintiff,

- versus -

MARJORIE DE VEYRA, ET
AL.,
Accused.

PEOPLE OF THE
PHILIPPINES,
Plaintiff,

- versus -

JEJOMAR CABAUTAN
BINAY, SR., ET AL.,
Accused.

Criminal Case No. SB-16-
CRM-0077 to 0079 and
0081 to 0083, 0444 to
0453

*For: Falsification of Public
Document.*

Criminal Case No. SB-16-
CRM-0080 and 0084, 0439
to 0442

*For: Violation of Section 3 (e) of
Republic Act No. 3019, as
amended.*

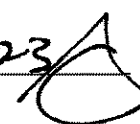
Criminal Case No. SB-16-
CRM-0443

*For: Malversation of Public
Funds.*

Present:

CABOTAJE-TANG, P.J.,
Chairperson,
FERNANDEZ, B. J. and
MORENO, J.

Promulgated:

APRIL 26, 2023 

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RESOLUTION

CABOTAJE-TANG, P.J.:

For resolution is accused Efren M. Canlas' "*Urgent Motion to Suspend Proceedings*" dated March 6, 2023.¹

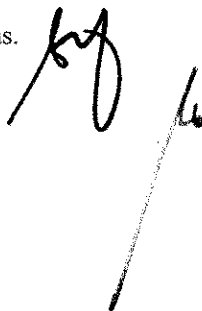
Accused-movant Canlas prays that the proceedings in the cases against him be suspended based on the following grounds, to wit:

- a. *The issue of constitutionality of the COA evidence which forms the bulk of the evidence in this case is currently pending before the Supreme Court;*
- b. *Mr. Canlas has yet to receive a copy of the Pre-Trial Order; and,*
- c. *Mr. Canlas has not had the opportunity to study the Pre-Trial order and move for corrections, if any are necessary.*²

The said accused-movant recounts that on November 11, 2020, he filed a "*Motion to Suppress Evidence*" with this Court, wherein he sought to suppress any and all evidence emanating from the Commission on Audit's (COA) special audit of the Makati City Hall Building II on the ground that the said audit is unconstitutional and inadmissible as evidence because it was obtained by COA without due process and in violation of the existing COA rules.


¹ Filed on March 7, 2023.

² p. 2, Urgent Motion filed by accused Canlas.



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According to the accused-movant, in its *Resolutions* promulgated on May 5, 2021, and July 29, 2021, the Court denied the said *motion* and his *motion for reconsideration*, respectively. Thus, he filed a *petition for certiorari* under Rule 65 of the Revised Rules of Court with the Supreme Court assailing the above-mentioned *resolutions*. Thereafter, or on November 23, 2022, the Supreme Court required the Office of the Special Prosecutor (OSP) to file its *comment* on his *petition* but the said *comment* has yet to be filed up to the present time.³

Accused-movant Canlas argues that the issue of “*constitutionality of evidence*,” which is pending with the Supreme Court, is vital to the cases against him. Therefore, he submits that the principle of *judicial courtesy* be applied by the Court in these cases and suspend the proceedings against him.⁴

Relying on the case of *Denila v. Republic*,⁵ accused Canlas avers that the principle of *judicial courtesy* is exercised by a lower court, suspending its proceedings although there is no injunction or an order from a higher court, as a matter of respect, and for practical considerations. He contends that even though the said principle remains the exception rather than the rule, it applies in these cases because there is a strong possibility that the issues before the Supreme Court would be rendered moot and moribund as a result of the continuation of the proceedings herein.⁶

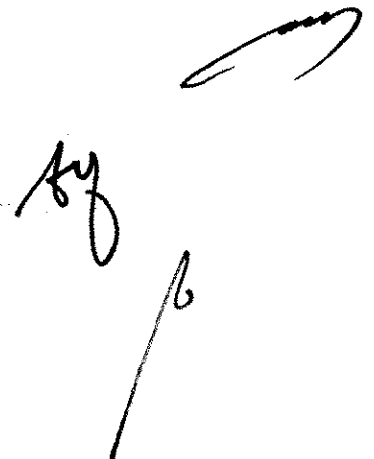
The same accused-movant further mentions that if the proceedings in these cases continue, the documentary evidence coming from the above-mentioned COA special audit report will likely be formally offered by the prosecution; hence, it will

³ *Id.*, at p.3

⁴ *Id.*, at p. 3

⁵ 943 SCRA 599 (2020)

⁶ *Id.*, at p. 3

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require this Court to rule on the same issues of constitutionality and admissibility of evidence which are already pending with the Supreme Court.⁷ Thereby, he submits that “*judicial economy*” entails the suspension of the said proceedings because it will allegedly avoid [1] duplicity of work, and [2] contradicting rulings between the Sandiganbayan and the Supreme Court.⁸

On another point, accused-movant Canlas submits that he has not received a copy of the Pre-Trial Order (PTO) and he has not had the opportunity to study the same and move for corrections, if there are any.⁹

According to the accused, he appeared before the Office of the Third Division Clerk of Court on January 19, 2023, and was informed that the parties will be furnished copies of the PTO only after all the accused and their respective counsels have signed the same. However, he avers that he has not received a copy of the said PTO despite having brought the said matter to the attention of the Court through his “*Manifestation (Re: Non-Receipt of Pre-Trial Order)*”¹⁰ dated February 22, 2023.¹¹

He adds that his counsel was not even allowed to take photographs of the said PTO and was advised to wait for the hard copy; he does not know the identity of the witnesses to be presented by the prosecution; and, he has he has not received copies of the Judicial Affidavits of the said witnesses; hence, he does not know the substance of their testimonies, and he is “*completely in the dark,*” and he has not been able to prepare for the cross-examination of the said witnesses.¹²

⁷ *Id.*, at pp. 3-4

⁸ *Id.*, at p. 4

⁹ *Id.*, at p. 5

¹⁰ pp. 288-290, Vol. XVI, Record

¹¹ p. 6, Urgent Motion filed by accused-movant Canlas.

¹² *Id.*, at p. 7

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In its “*Opposition (Re: Accused Efren M. Canlas’ Urgent Motion to Suspend Proceedings)*” dated March 13, 2023,¹³ the prosecution contends that the mere filing or pendency of a *petition for certiorari* before the Supreme Court should not result in the suspension of the proceedings of these cases because [1] accused-movant Canlas failed to secure any *temporary restraining order* or a *writ of preliminary injunction* from the Supreme Court; [2] Section 7, Rule 65 of the Revised Rules of Court provides that the “*the petition shall not interrupt the course of the principal case, unless a temporary restraining order or a writ of preliminary injunction has been issued, enjoining the public respondent from further proceeding with the case;*” [3] suspending the proceedings of these cases on the ground of *judicial courtesy* will amount to a violation of the said rule and may be a ground for an administrative charge against the Court for circumventing the said injunction requirements; and [4] the principle of *judicial courtesy* remains to be the exception than the rule.¹⁴

On the second and third issues raised by the accused-movant, the prosecution submits that the same has been resolved with the resetting of the scheduled hearing on these cases on April 12 and 13, 2023. Thus, accused-movant Canlas has more than a month to secure a copy of the Pre-Trial Order and study the same.¹⁵

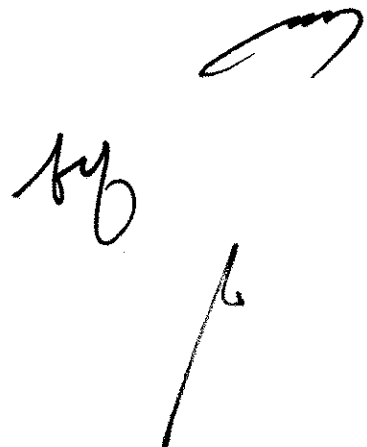
THE RULING OF THE COURT

The Court finds the subject *motion* unmeritorious.

¹³ pp. 311-318, Vol. XVI, Record

¹⁴ *Id.*, at pp. 312-313

¹⁵ *Id.*, at pp. 313-314

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To begin with, the records of these cases are bereft of any showing that accused-movant Canlas has secured a *temporary restraining order* or a *writ of preliminary injunction* from the Supreme Court ordering the suspension of the proceedings in these cases.

In ***Garcia v. Sandiganbayan***,¹⁶ the Supreme Court, reiterating its pronouncement in ***Republic v. Sandiganbayan, et al.***,¹⁷ held that in cases where the Sandiganbayan's interlocutory orders are challenged before the Supreme Court, the Sandiganbayan should continue, not suspend, the proceedings before it where no *temporary restraining order* or *writ of preliminary injunction* is issued by Supreme Court and there is an absence of a strong probability that the issues raised before it would be rendered moot by the continuation of the proceedings.

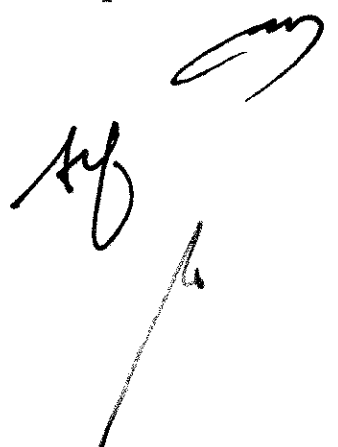
Here, accused-movant Canlas invokes the principle of *judicial courtesy* as a ground to suspend the proceedings in these cases considering the absence of a *temporary restraining order* or *writ of preliminary injunction* issued by Supreme Court. It must be stressed that in the above-mentioned case of ***Republic***,¹⁸ the Supreme Court rejected the idea of applying the principle of *judicial courtesy* in suspending the proceedings before the Sandiganbayan absent any showing of a strong probability that the issues before the higher court would be rendered moot and moribund because of the continuation of the proceedings in the lower court or court of origin.

Other than his bare assertions, accused-movant Canlas failed to adequately prove the existence of the supposed "*strong probability*" that the issues pending before the Supreme Court

¹⁶ 500 SCRA 631 (2006)

¹⁷ 492 SCRA 747 (2006)

¹⁸ *Id.*



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would be rendered moot by the continuation of the proceedings in these cases.

Notably, in its *Resolution* promulgated on May 5, 2021,¹⁹ the Court denied the “*Motion to Suppress Evidence*” dated November 11, 2020, filed by accused-movant Canlas on the ground that the said *motion* is premature. Therein, the Court held that the proceedings in these cases are still in its early stages, and there has yet been no evidence on record offered by any party for the Court’s consideration. Also, in its *Resolution* promulgated on July 29, 2021,²⁰ the Court likewise denied accused-movant Canlas’ *motion for reconsideration* of the above-mentioned *Resolution* and further held that it cannot, at this juncture, declare the assailed Special Audit Report of the COA as incompetent evidence, and that assuming *arguendo* that a violation of Section 15.3 of COA Circular No. 2009-006²¹ has been committed by the subject Special Audit Team, there are still appropriate procedures and remedial measures which the accused-movant may exhaust in order to ventilate his position.²²

To stress, no evidence has been formally offered in these cases for the consideration of the Court. In fact, the records show that the prosecution has not even started to present its evidence.²³ Under the Revised Rules on Evidence, documentary and object evidence shall be offered **after** the presentation of a party’s testimonial evidence,²⁴ and an objecting party is allowed

¹⁹ pp. 704-709, Vol. XII, Record

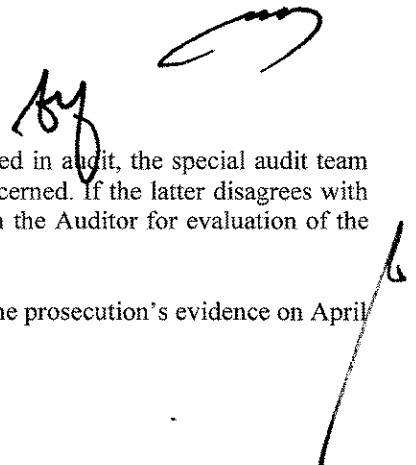
²⁰ *Id.*, at pp. 710-715

²¹ In case the transaction subject of the special audit has been earlier allowed in audit, the special audit team shall preliminarily discuss the disallowance or charge with the Auditor concerned. If the latter disagrees with the findings of the audit team, the written comment shall be requested from the Auditor for evaluation of the special audit team.

²² *Id.*, at p. 715; p. 6, Resolution

²³ In its Order dated March 8, 2023, the Court set the initial presentation of the prosecution’s evidence on April 12 and 13, 2023.

²⁴ Section 35, Rule 132

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to enter his/her objection thereto.²⁵ Plainly, it is only at this point that the Court shall weigh the arguments raised by the parties and rule on the admissibility/non-admissibility and/or constitutionality of the pieces of evidence offered by the prosecution taking into consideration applicable laws and settled jurisprudence.²⁶

In the recent case of ***Cojuangco, Jr., v. Sandiganbayan and the Presidential Commission on Good Government***,²⁷ the Supreme Court reminded anew the members of the Bench and the Bar that the principle of *judicial courtesy* remains to be the exception rather than the rule, to wit:

However, such principle remains to be the exception rather than the rule. Although practical and ethical considerations may justify the suspension of proceedings in unusual circumstances and in the absence of any injunctive writ from a superior court, ***the precept of judicial courtesy should not be applied indiscriminately and haphazardly if we are to maintain the relevance of Section 7, Rule 65 of the Rules of Court which provides for the general rule that the mere pendency of a special civil action for certiorari commenced in relation to a case pending before a lower court or court of origin does not dismiss the proceedings therein in the absence of a writ of preliminary injunction or TRO.***²⁸

Thus, until there is a *temporary restraining order* or a *writ of preliminary injunction* or the said resolutions²⁹ are reversed

²⁵ Section 36, Rule 132

²⁶ Section 38, Rule 132

²⁷ G.R. No. 247982, April 28, 2021

²⁸ Emphasis supplied.

²⁹ The Resolutions of this Court were promulgated on May 5, 2021, and July 29, 2021.



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and set aside by the Supreme Court, the findings of the Court in its above-mentioned *resolutions* remain valid and binding and the Court sees no cogent reason to suspend the proceedings in these cases.

On accused-movant Canlas' assertion that [1] he has yet to receive a copy of the PTO in these cases, and [2] he has not had the opportunity to study the same, Court records show that accused Canlas³⁰ and counsel for the said accused, Atty. Leo Aries Wynner Santos,³¹ received a copy of the said PTO on March 8, 2023. In the said PTO, the Court gave the parties a period of five (5) days from notice within which to inform the Court of any correction in the listing and description of their respective documentary evidence and witnesses; to inform the Court of any additional evidence that they may want to be included in the subject PTO; and, to file their comments, if any.³² Thereafter, or on March 13, 2023, accused Canlas filed a "*Manifestation and Motion for Correction and Amendment of Pre-Trial Order*" dated March 10, 2023.³³

Thus, the Court holds the above-mentioned assertions of accused-movant Canlas in his *Urgent Motion* have been rendered moot considering the recent developments in these cases.

WHEREFORE, accused Efren M. Canlas' "*Urgent Motion to Suspend Proceedings*" dated March 6, 2023,³⁴ is **DENIED** for lack of merit.



³⁰ p. 285, Vol. XVI, Record

³¹ *Id.*

³² *Id.* at pp. 278-279

³³ Vol. XVI, Record

³⁴ Filed on March 7, 2023.

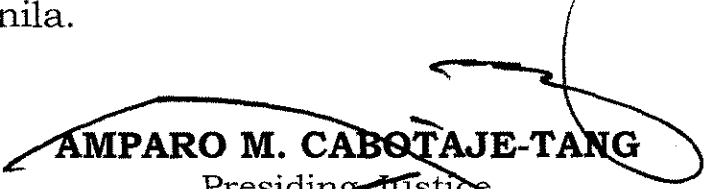
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SO ORDERED.

Quezon City, Metro Manila.



AMPARO M. CABOTAJE-TANG
Presiding Justice
Chairperson

WE CONCUR:



BERNELITO R. FERNANDEZ
Associate Justice



RONALD B. MORENO
Associate Justice