

Republic of the Philippines
SANDIGANBAYAN
Quezon City

FOURTH DIVISION

REPUBLIC OF THE PHILIPPINES, CIVIL CASE NO. 0178
Plaintiff, For: Reconveyance, Reversion,
Accounting, Restitution and Damages

-versus-

Present:
Musngi, J., Chairperson
Pahimna, J.
Hidalgo, J.*

ANDRES L. AFRICA, ET. AL.,

Defendants. Promulgated:

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JUN 13 2023

RESOLUTION

This Court resolves the following:

1. *Motion For Leave Of Court To Present Other Witness And Documents*¹ filed by the plaintiff Republic of the Philippines, through the Office of the Solicitor General, on April 25, 2023;
2. *Comment/Opposition (to Plaintiff's Motion for Leave of Court to Present Other Witness and Documents)*² filed by Defendants Rosario N. Arellano, Victoria N. Legarda, Angela N. Lobregat, Benito V. Nieto, Carlos V. Nieto, Manuel V. Nieto III, Ma. Rita N. Delos Reyes, Carmen N. Tuason, Ramon Nieto, Jr., the legal representative of the deceased Ramon V. Nieto, and Benigno Manuel Valdes, the legal representative of the deceased Rafael C. Valdes (collectively referred to as "defendants Nietos"), through counsel, on May 2, 2023; and
3. *Comment On/Objection To Plaintiff's "Motion For Leave Of Court To Present Other Witness And Documents"*³ filed by defendant Victor Africa, *pro se*, on May 10, 2023.

*Sitting as Special Member per Administrative Order No. 502-2018 dated October 3, 2018

¹ Record, Vol. 5, pp. 360-365

² Record, Vol. 5, pp. 376-382

³ Record, Vol. 5, pp. 383-385

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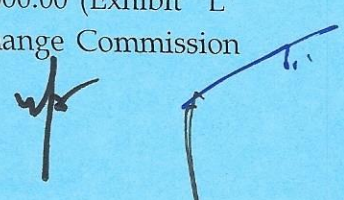
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In its *Motion*, the plaintiff alleges that upon investigation conducted by the Presidential Commission on Good Government ("PCGG"), it was found out that its proposed witnesses, Manuel Nieto, Jr. and Rolando Gapud, have already passed away. Moreover, no information was gathered as to the current addresses of Severino Buan, Jr., Maurice Bane, and Potenciano Roque despite assistance from other government agencies. With respect to Evelyn Singson and Apolinario Medina, the PCGG was able to obtain information as to their current residence. However, the investigating team of the PCGG was refused entry in the subdivision where Evelyn Singson resides, while Apolinario Medina appears not to be residing in his known address. With respect to Caesar Parlade, he declined to be a witness in the instant case as he had already testified in Civil Case No. 009, which pertains to the reconveyance of certain Eastern Telecommunications Philippines Incorporated ("ETPI") shares of Roberto Benedicto, Jose Africa and Manuel Nieto, among others. He is also out of the country and is uncertain when he will return.

Given the unavailability of the proposed witnesses, the plaintiff prays that it be allowed to present an officer of the Third Division of this Court, which heard Civil Case No. 009, to identify the Transcript of Stenographic Notes ("TSN") of the testimonies of Caesar Parlade, Potenciano Roque, Severino Buan, Jr., and Apolinario Medina in said case. According to the plaintiff, the TSNs reflecting the testimonies of the aforementioned individuals will augment in establishing the relevance of the marked exhibits on the ill-gotten nature of the ETPI shares subject of the instant case. The plaintiff summarized the testimonies of Caesar Parlade, Potenciano Roque, Severino Buan, Jr., and Apolinario Medina in Civil Case No. 009 as follows:

"5. Essentially, Parlade, a former PCGG Commissioner, testified that, upon investigation, he found out that the initial capitalization of the Filipino stockholders, namely, Benedicto, Africa, and Nieto, in ETPI in the amount of Php1,080,000.00 came from Trust Account No. 1 in the Traders Royal Bank ("TRB"), which account belonged to the late President Ferdinand E. Marcos. According to him, his bases therefore, among others, are the April 29, 1974 Receipt written on a Malacañang letterhead and signed by Benedicto (Exhibit "E" xxx); the Traders Commercial Bank ("TCB"), later renamed as TRB, Official Receipt No. 40378 dated April 30, 1974 acknowledging the deposit in said bank the amount of Php15,057,000.00 (Exhibit "F" xxx); the Investment Debit Memo dated April 30, 1974 of Trust Account No. 1 in the same amount (Exhibit "G" xxx); the TCB Credit Memo dated April 30, 1974 in the same amount (Exhibit "G-1" xxx); the TCB General Ledger (Exhibit "H" xxx); the TCB Savings Account Passbook No. 26183 in the name of Trust Account No. 1 (Exhibit "J" xxx); the TCB Treasurer's Check No. T-29570 dated May 13, 1974 in the amount of Php1,080,000.00 (Exhibit "L" xxx); the Certification by the TCB to the Securities and Exchange Commission



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("SEC") to the effect that there was a deposit of Php1,080,000.00 in the name of Bane, Treasurer-in-Trust for ETPI, which was then in the process of incorporation (Exhibit "M" xxx); and the SEC Examiner's and Appraiser's Report on the examination dated May 14, 1974 relative to the paid-in capital of ETPI in the amount of Php1,080,000.00 (Exhibit "N" xxx). He also testified that the dividends from ETPI were paid to Marcos.

6. On the other hand, Roque, the former Executive Secretary of the late Corazon C. Aquino, testified that on February 25, 1986, he and Joker Arroyo went to Malacañang, upon instruction of Aquino, to secure certain documents. He then found several documents on the desk inside a bedroom, which he believed belonged to Marcos, and inside the safe near the bed. Among those documents were two ETPI Stock Certificates, namely, ETPI Stock Certificate No. 108 for 24,000 shares registered in the name of Polygon Investors and Managers Inc. and ETPI Stock Certificate No. 111 for 24,000 shares registered in the name of Aerocom Investors and Managers Inc.

7. Meanwhile, Buan, a former Manager of the Traders Royal Bank Trust Department, testified that he was involved in the opening of Trust Account No. 1 and identified his signature on TCB Official Receipt No. 40378 dated April 30, 1974 wherein he acknowledged the deposit in said bank of the amount of Php15,057,000.00 (Exhibit "F" xxx).

8. Lastly, Medina, a retired employee of TRB, testified, among others, about the May 13, 1974 Certification that he issued to the SEC certifying that there was a deposit of Php1,080,000.00 in the name of Bane (Exhibit "M" xxx)."⁴

In their *Comment/Opposition*, defendants Nietos argue that "the plaintiff's explanation regarding the inability to locate its witnesses lacks merit as a justifiable reason for deviating from the established pre-trial procedures." Moreover, "the demise of certain proposed witnesses and the refusal of others to testify could have been discovered earlier had the plaintiff exercised due diligence in securing its witnesses prior to the commencement of the trial."

Defendants Nietos further argue that although the intended witness will only identify the TSNs, it is apparent that the plaintiff's main objective is to establish the facts testified on by the witnesses in Civil Case No. 009. Since they were not impleaded as defendants in the said case, they will be unduly deprived of the opportunity to cross-examine the witnesses whose testimonies are being sought for introduction.

On the other hand, defendant Africa avers that the procedure sought by the plaintiff not only violates the Rules of Court but also disregards the basic

⁴ Record, Vol. 5, pp. 361-363

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principles and rights guaranteed to a litigant. Defendant Africa adds that the TSNs sought to be introduced were from a case where defendants were not impleaded. As such, they had no opportunity to see nor hear the testimonies of the witnesses. They were not able to confront or cross-examine the witnesses, and were not afforded the right to present evidence vis-a-vis the testimonies and documents of the said witnesses.

THE COURT'S RULING

At the outset, this Court emphasizes that one of the objectives of pre-trial is to limit the number and identify the witnesses who will testify during the trial, as well as mark, examine, and make comparisons of the parties' respective evidence. In this regard, the parties are required to submit a pre-trial brief which must contain the names of the witnesses and the summary of their respective testimonies, and the documents or other object evidence to be marked, stating the purpose thereof, among others.

In the instant case, the plaintiff averred during the pre-trial conference that it would be presenting nine (9) witnesses, namely: (1) Manuel S. Nieto, Jr.; (2) Severino P. Buan, Jr; (3) Caesar Parlade; (4) Maurice Bane; (5) Rolando Gapud; (6) Lourdes O. Magno; (7) Evelyn Singson; (8) Potenciano Roque; and (9) Apolinario Medina, with reservation that in the event that these witnesses will not be able to testify, the plaintiff will present other witnesses.⁵

It bears to note that Section 2(g), Rule 18 of the 2019 Rules of Civil Procedure requires the parties to reserve evidence not available at the pre-trial only in the following manner, thus:

"Section 2. Nature and purpose. - xxx

(g) The requirement for the parties to:

xxx

4. Reserve evidence not available at the pre-trial, but only in the following manner.

i. For testimonial evidence, by giving the name or position and the nature of the testimony of the proposed witness;

⁵ Record, Vol. 5, pp. 60-69

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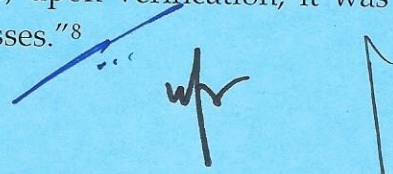
- ii. For documentary evidence and other object evidence, by giving a particular description of the evidence.

No reservation shall be allowed if not made in the manner described above."

Notwithstanding the foregoing, this Court issued a Pre-Trial Order which reminded the parties "that the reservation of the other documents and other witnesses, whenever they become necessary during the course of the trial, will only be allowed by the Court for good cause shown and with leave of Court."⁶ Therefore, this Court has the discretion to allow the introduction of unnamed witnesses and other pieces of evidence not listed in the Pre-Trial Order, but only for good cause shown. Although there is no hard and fast rule to determine what may constitute "good cause", the Supreme Court has defined it "as a substantial reason – one that affords a legal excuse."⁷

Here, the plaintiff attempts to satisfy this condition by citing "circumstances beyond its control", to wit:

"3. Unfortunately, upon investigation conducted by the PCGG, it was learned that Nieto and Gapud have already passed away. Meanwhile, no information was found as to the current addresses of Buan, Bane, and Roque despite assistance from other government agencies. The PCGG was able to gather information as to Parlade's residential and office addresses in Quezon City and Makati City, respectively. Thus, an invitation for a conference was sent to him regarding the possibility of him being a witness in this case. However, in his email to the PCGG on February 23, 2023, he declined to be a witness on grounds [sic] that he had already testified in Civil Case No. 009 pertaining to the ill-gotten nature of the shares of Roberto Benedicto, Jose Africa, and Manuel Nieto, Jr. in Eastern Telecommunications Philippines Incorporated (ETPI) and, on the practical aspect, he is out of the country and is uncertain when to return. As to Singson, the PCGG was able to obtain information as to her current residence. However, the investigating team of the PCGG was refused entry in the subdivision where she is residing. With regard to Medina, the PCGG was able to obtain two addresses of his possible residence in Manila and Muntinlupa. However, upon verification, it was found that he was not residing in said addresses."⁸



⁶ Record, Vol. 5, p. 345

⁷ Fortune Corporation vs. Court of Appeals, G.R. No. 108119, January 19, 1994

⁸ Record, Vol. 5, p. 361

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This Court finds these circumstances or justifications insufficient to support the plaintiff's Motion.


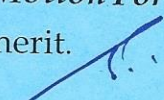

As correctly pointed out by the defendants, it is the plaintiff's duty to diligently pursue the case and to secure its witnesses. Its inability to locate its witnesses now, after a period of twenty-six (26) years, demonstrates its complacent attitude or lack of due diligence in pursuing the present case. In fact, even the plaintiff admitted in its Motion that the PCGG is still in the process of searching the whereabouts of the proposed witnesses as of March 20, 2023, or during the initial presentation of plaintiff's evidence.

Anent the alleged refusal of Caesar Parlade to testify in the instant case, the plaintiff is not without any remedy under the Rules as it could, if warranted, use the modes of discovery, upon motion and for good cause shown. It can also easily request for subpoena to compel the attendance of its other witnesses.

Moreover, although the presentation of the unnamed officer of the Third Division as witness in this case, as the plaintiff suggests, seeks only to establish that Caesar Parlade, Potenciano Roque, Severino Buan, Jr., and Apolinario Medina had testified in Civil Case No. 009, and to identify the TSNs of their testimonies, this Court cannot help but take the view that the plaintiff actually intends to adopt their testimonies and exhibits therein to form part of the records of this case. It is in this light that the defendants understandably take issue on the curtailment, if not denial, of their right to cross-examine the said witnesses.

Needless to state, the instant case and Civil Case No. 009 are closely related or interwoven, as they both seek to establish the ill-gotten nature of the ETPI shares of stock held by the defendants. Yet, the defendants herein were not impleaded nor involved in the proceedings in Civil Case No. 009, and as such, were not afforded the opportunity to confront or cross-examine the witnesses presented therein. To permit the plaintiff now to introduce the testimonies of Caesar Parlade, Potenciano Roque, Severino Buan, Jr., and Apolinario Medina in Civil Case No. 009 through mere identification of their TSNs by an officer of the Third Division would unduly deprive herein defendants their right to be confronted at the trial by, and to cross-examine, the witnesses against them.

WHEREFORE, this Court resolves to **DENY** plaintiff's *Motion For Leave Of Court To Present Other Witness And Documents* for lack of merit.



SO ORDERED.



LORIFEL LACAP PAHIMNA

Associate Justice

We concur:



MICHAEL FREDERICK L. MUSNGI

Chairperson
Associate Justice



GEORGINA D. HIDALGO*

Associate Justice

*Sitting as Special Member per Administrative Order No. 502-2018 dated October 3, 2018