



Republic of the Philippines
Sandiganbayan
Quezon City

THIRD DIVISION

REPUBLIC OF THE PHILIPPINES,
Petitioner,


-versus-

SB-14-CVL-0002
For: *Forfeiture of*
Unlawfully Acquired
Properties under R.A. No.
1379

HERNANDO B. PEREZ, ET AL.,
Respondents.

X-----X

Present:
CABOTAJE-TANG, P.J.
FERNANDEZ, B. J.,
MORENO, R. J.

Promulgated on:
JULY 20, 2023 

R E S O L U T I O N

CABOTAJE-TANG, P.J.:

For resolution are the following:

1. *Motion for Reconsideration (of this Honorable Court's 15 May 2023 Resolution) dated May 31, 2023 ("Motion"), filed by respondent Ernest De Leon Escaler; and,*
2. *Comment/Opposition (To Respondent Ernest De Leon Escaler's Motion for Reconsideration of the Honorable Court's May 15, 2023 Resolution) dated June 6, 2023 ("Comment/Opposition"), filed by petitioner Republic of the Philippines.*

I.

RESPONDENT ESCALER'S MOTION

In his *Motion's* preliminary statement, respondent Escaler expresses strong exception to the following statement in the assailed *Resolution*:

... Here, the resurrected claim of the counsels of the respondents that Consul Abiog is disqualified to administer the deposition despite its earlier repeated rejection by the Court already borders on contemptuous conduct ...¹

Respondent Escaler maintains that he “*never alleged that Consul Abiog is an employee of the Ombudsman. We maintained, and continue to maintain, that he is an employee of the Republic of the Philippines, the Petitioner in this Petition.*”² “*While pleadings, processes and decisions are served on the Petitioner through the Special Prosecutor of the Office of the Ombudsman, that fact obviously does not make the Ombudsman the Party-petitioner in this case.*”³ He thus argues that “*the ‘repeated’ reiteration of the legal arguments we submitted does not border on contemptuous conduct. In fact, even the Honorable Supreme Court has allowed second and SUBSEQUENT motions for reconsideration, which ordinarily are not allowed, when the assailed decision is LEGALLY ERRONEOUS and PATENTLY UNJUST.*”⁴ According to respondent Escaler, he reiterated that legal argument because of his honest belief that the contested ruling, which is not even a final decision but a mere interlocutory order, is legally erroneous and patently unjust.⁵

The following are the grounds/reasons relied upon by respondent Escaler in support of his *Motion*:

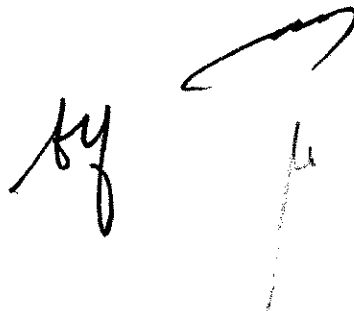
¹ p. 20, *Assailed Resolution*

² Par. 4, p. 2, Respondent Escaler's *Motion*

³ Par. 6, *id*

⁴ Par. 7, pp. 2-3, *id*

⁵ Par. 8, p. 3, *id*



1. He never questioned, as a procedure, the adoption of the deposition of Ambassador Pono as her testimony;⁶

2. The exceptional cases enumerated under Rule 23, Section 4 (C) that allows the use of deposition without the deponent being actually called to the witness stand do not apply in the instant case because it was the Republic of the Philippines, the party offering the deposition, that procured the deponent's absence in the first place;⁷

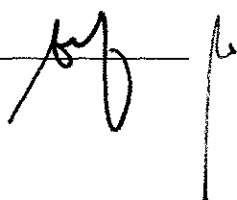
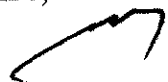
3. The limitations on the utilization of any information, documents, or objects obtained through the MLAT apply to all proceedings, not just to criminal proceedings;⁸

4. It was error to hold that the MLAT applies only to criminal proceedings;⁹

5. Petitioner has no authority to use the documents provided by the Swiss Confederation pursuant to the MLAT;¹⁰

6. Respondent Escaler promptly filed his Motion (To Expunge from the Records the Deposition Upon Written Interrogatories of Ambassador Lilibeth V. Pono) after ascertaining the errors and irregularities in the taking and manner of preparation of the deposition;¹¹

7. Section 20, Rule 2023 of *the 2019 Amendments to the 1997 Rules of Civil Procedure* promulgated by the Honorable Supreme Court imposes upon Consul Abiog the legal obligation to securely seal the deposition in an envelope indorsed with the Title of the Action and Marked "Deposition of (here insert the name of witness)"; while Section 26 imposes upon him to file or mail the "Deposition." Neither the Office of the Legal Affairs of the Department of Foreign Affairs (DFA) nor the Office of the Court Administrator (OCA) could override the Honorable Supreme Court;¹²



⁶ p. 5, *id*

⁷ p. 6, *id*

⁸ p. 8, *id*

⁹ *id*

¹⁰ p. 10, *id*

¹¹ p. 13, *id*

¹² p. 15, Respondent Escaler's *Motion*

8. The certification does not comply with the requirements of Section 20, Rule 23 of the *2019 Amendments to the 1997 Rules of Civil Procedure*;¹³

9. The failure of Consul Abiog to (i) certify that the deposition is a true record of the testimony given by the witness, as required by Sec. 20, Rule 23; that he recorded the witness' answers verbatim, as required by Sec. 17, Rule 23; and that he propounded the written interrogatories to the witness, as required by Sec. 17, Rule 23, and (ii) securely seal the deposition in an envelope indorsed with the title of the action and marked "Deposition of (here insert the name of witness), and file it with the Court, as required by Sec. 20, Rule 23, invalidates the "Deposition";¹⁴ and

10. The deposition does not enjoy the presumption of regularity of official acts.¹⁵

II.
PETITIONER'S
COMMENT/OPPOSITION

In its *Comment/Opposition*, petitioner prays for the denial of respondent Escaler's *Motion* based on the following arguments:

1. All the matters raised by respondent Escaler in his motion were already extensively discussed and settled by the Court. Indeed, the matters raised by respondent Escaler in his motion are mere rehash or reiteration of his previous arguments which do not merit reconsideration or reversal of the Court's assailed *Resolution*;¹⁶

2. The Court cannot be faulted if respondent Escaler would be held in contempt for his act of repeatedly questioning Consul Abiog's authority for the same is not only a waste of time, effort and resources of the Court but a mockery of the resolutions of the Honorable Court and the judicial proceedings;¹⁷

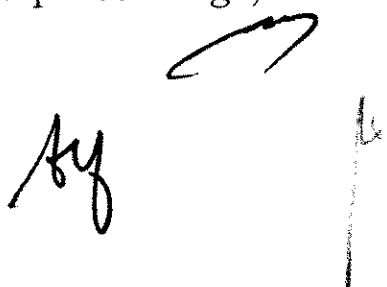
¹³ p. 17, *id*

¹⁴ p. 18, *id*

¹⁵ *id*

¹⁶ Par. 3, p. 2, Petitioner's *Comment/Opposition*

¹⁷ Par. 4, p. 2, Petitioner's *Comment/Opposition*



3. Section 4 (c) of Rule 23 of the Rules of Court, as amended, finds applicability in this case because “*the executive department, as one of the agencies of the Government of the Republic of the Philippines, is the one who appointed Ambassador Pono to the State of Qatar. The Office of the Ombudsman, as another Agency of the Government of the Philippines, is the one offering the deposition of Ambassador Pono. Thus, as aptly resolved by the Honorable Court, the Office of the Ombudsman has no control over assignments of the country’s diplomatic offices.*”¹⁸ Respondent Escaler failed to prove or establish that Consul Abiog has any kind of interest in the outcome of this case in connection with or due to his employment at the Department of Foreign Affairs, which is a different AGENCY of the Government from the Office of the Ombudsman;¹⁹

4. Respondent Escaler’s interpretation of Section 7.1 of the MLAT is bereft of merit for failure to comply with the basic doctrine in statutory construction;²⁰ and

5. Instead of questioning the alleged irregularities and errors when the *Deposition Upon Written Interrogatories of Lilibeth Pono* were furnished to him, respondent Escaler participated in the same proceedings by submitting his cross-interrogatories, and he still remained mum about the alleged errors and irregularities when he received the copy of the *Cross-Interrogatories Answers* of Lilibeth Pono. Thus, it is too late in the day to raise any question on the alleged irregularities or errors in the deposition proceedings.²¹

THE RULING OF THE COURT

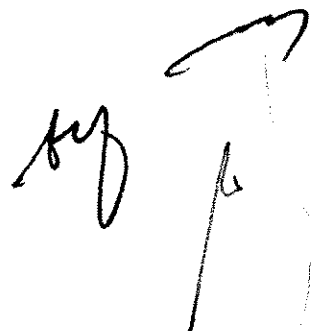
After a judicious evaluation of the arguments raised by respondent Escaler *vis a vis* the arguments raised by the petitioner in its *Comment/Opposition*, the Court **DENIES** the subject Motion for being *pro forma* and/or lack of merit.

¹⁸ Par. 8, p. 3, *id*

¹⁹ Par. 8, pp. 3-4, *id*

²⁰ p. 4-5, *id*

²¹ Par. 15, p. 5, *id*

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RESOLUTION

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Preliminarily, respondent Escaler takes strong exception to the following statements of the Court in its assailed *Resolution*:

The Court recognizes that counsels of the parties to a case are obliged to defend the causes of their respective clients to the best of their abilities. However, the actions of the counsels in defending the cause of their clients should not border on the contemptuous. Here, the resurrected claim of the counsels of the respondents that Consul Abiog is disqualified to administer the deposition despite its earlier repeated rejection by the Court already borders on contemptuous conduct. Thus, the Court shall no longer entertain any submission by the respondents' counsels pertaining thereon and a repetition of the same shall be dealt with accordingly.²²

According to respondent Escaler, “*the ‘repeated’ reiteration of the legal arguments we submitted does not border on contemptuous conduct.*” He even cited ***Laya vs. Philippines Veterans Bank***²³ to argue that even the Supreme Court has entertained second and subsequent motions for reconsideration, even if the same is ordinarily not allowed under its internal rules, when the assailed decision is legally erroneous and patently unjust. “*Although we continue to hold the view, we will no longer raise the issue here not because we believe our legal position is erroneous, but because raising it again is an exercise in futility. We sincerely believe that the correction we have earnestly sought can be best achieved, in due time, before our appellate courts.*”²⁴

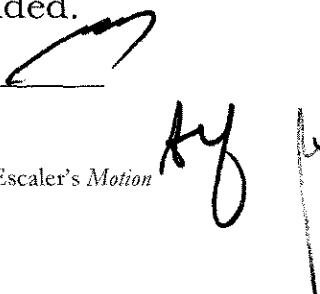
The Court gave the above “warning” because the issue as to the competence of Consul Abiog to administer the deposition was already thoroughly and sufficiently explained in the Court’s *Resolution* promulgated on November 8, 2022.²⁵ The Court’s conclusion that Consul Abiog is qualified to administer the deposition was not picked from thin air but was a product of a thorough evaluation of the factual circumstances of this case and the application of the appropriate provisions of the Rules of Court, as amended.

²² p. 20, Assailed *Resolution*

²³ 823 Phil. 302 (2018)

²⁴ Par. 9, p. 4, respondent Escaler’s *Motion*

²⁵ p. 597, Vol. 10, Records

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If the counsels for respondent Escaler firmly believe that the Court committed reversible error in ruling that Consul Abiog is qualified to administer the deposition, the best course of action for them is question it, using their own words, "*before our appellate courts.*" They will not achieve anything by repeatedly raising the said issue in their motions, except for taxing the Court's docket and patience.

Contempt of court has been defined as a willful disregard or disobedience of a public authority. In its broad sense, contempt is a disregard of, or disobedience to, the rules or orders of a legislative or judicial body or an interruption of its proceedings by disorderly behavior or insolent language in its presence or so near thereto as to disturb its proceedings or to impair the respect due to such a body. In its restricted and more usual sense, contempt comprehends a despising of the authority, justice, or dignity of a court. The phrase contempt of court is generic, embracing within its legal signification a variety of different acts.²⁶

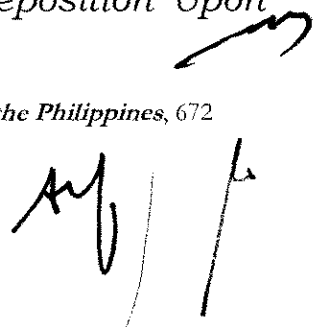
Considering that respondent Escaler has chosen not to further discuss the qualification of Consul Abiog in his *Motion*, the Court heeds the teachings of the Supreme Court that "*the power to punish for contempt of court is exercised on the preservative and not on the vindictive principle, and only occasionally should a court invoke its inherent power in order to retain that respect without which the administration of justice must falter or fail. As judges we ought to exercise our power to punish contempt judiciously and sparingly, with utmost restraint, and with the end in view of utilizing the power for the correction and preservation of the dignity of the Court, not for retaliation or vindictiveness.*"²⁷

We now go to the merits of the subject *Motion*.

A simple reading of the arguments/matters raised by respondent Escaler in his present *Motion* shows that these are basically mere rehash of the arguments/matters he previously raised in his *Opposition (To Motion to Adopt Deposition Upon*

²⁶ *Lorenzo Shipping Corporation vs. Distribution Management Association of the Philippines*, 672 Phil. 1 (2011)

²⁷ *Id.*; citations omitted

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RESOLUTION

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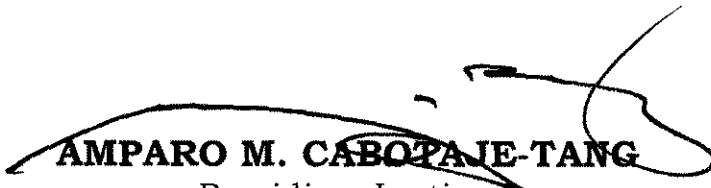
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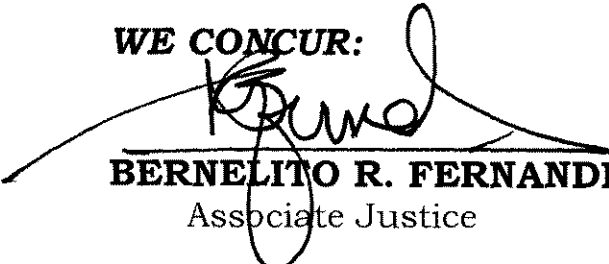
Written Interrogatories as Testimony of Ambassador Lilibeth V. Pono) with Motion (To Expunge from the Records the Deposition Upon Written Interrogatories of Ambassador Lilibeth. V. Pono) dated February 20, 2023,²⁸ and his Reply (To Petitioner's Opposition to Respondent Escaler's Motion to Expunge from The Records the Deposition Upon Written Interrogatories of Ambassador Lilibeth V. Pono) dated March 16, 2023.²⁹ To be sure, these arguments were already exhaustively and duly considered and resolved in the assailed Resolution.³⁰ The Court sees no cogent reason to reverse and set aside its ruling granting petitioner's Motion to Adopt Deposition Upon Written Interrogatories as Testimony of Ambassador Lilibeth V. Pono dated February 10, 2023, and accepting the Deposition Upon Written Interrogatories by Lilibeth Pono and the Cross Interrogatories Answers of Lilibeth V. Pono as Ambassador Pono's testimony in this case.

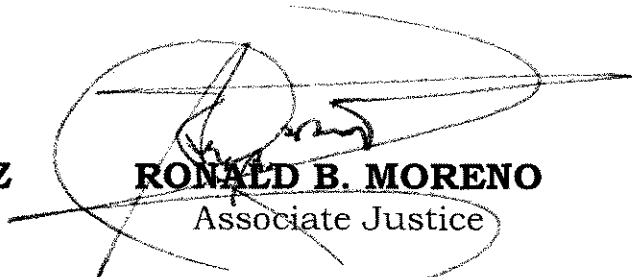
WHEREFORE, respondent Ernest De Leon Escaler's *Motion for Reconsideration (of this Honorable Court's 15 May 2023 Resolution) dated May 31, 2023*, is **DENIED** for being *pro forma* and/or for utter lack of merit.

The prosecution is thus **DIRECTED** to file its *Formal Offer of Evidence* within a **NON-EXTENDIBLE PERIOD** of thirty (30) days from notice hereof.

SO ORDERED.


AMPARO M. CABOTAJE-TANG
Presiding Justice
Chairperson

WE CONCUR:

BERNELITO R. FERNANDEZ
Associate Justice


RONALD B. MORENO
Associate Justice

²⁸ pp. 2-11, respondent Escaler's *Opposition with Motion*

²⁹ pp. 2-11, respondent Escaler's *Reply*

³⁰ pp. 11-34, Assailed *Resolution*