

FOURTH DIVISION

CIVIL CASE NO. SB-21-CVL-0001
For: Enforcement of Judgment

JUAN C. TUVERA (represented by
heirs: **Katrina Polotan Tuvera-
Quimbo, Patricia Enrica Tuvera
Abogado, Mariam Soraya Polotan
Tuvera, Rafael Polotan Tuvera, Ma.
Teresa Polotan Tuvera, Enrico
Polotan Tuvera, Patricia Polotan
Tuvera, Helen Polotan Tuvera,
Kerima Polotan Tuvera, Jr., Heirs of
Leticia Polotan Tuvera, and Victor
Tuvera**), **VICTOR P. TUVERA and
TWIN PEAKS REALTY
DEVELOPMENT CORPORATION,**
Defendants.

Present:
MUSNGI, J., Chairperson
PAHIMNA, J.
JACINTO, J.

DEC 04 2023
Promulgated

RESOLUTION

MUSNGI, J.:

The Court resolves the *Motion for Leave to Substitute Witness and Admit Judicial Affidavit of Atty. Rosaline O. Escobar* dated 28 July 2023¹ and the *Motion for Leave to Substitute Witness and Admit Amended Judicial Affidavit of Atty. Rosaline O. Escobar with Notice of Change of Address of Plaintiff PCGG* dated 12 September 2023,² filed by plaintiff Republic of the Philippines, represented by the Presidential Commission on Good Government (PCGG), through the Office of the Solicitor General (OSG) respectively on 02 August 2023 and 14 September 2023.

¹ Sandiganbayan Records, Vol. 2, pp. 214-391.

² Sandiganbayan Records, Vol. 2, pp. 407-411.

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In the said *Motion for Leave to Substitute Witness and Admit Judicial Affidavit of Atty. Rosaline O. Escobar* dated 28 July 2023, plaintiff prayed for the substitution of its intended witness, Atty. Mivez Ann Pawid ("Atty. Pawid"), as the latter already resigned as the Interim Head of the PCGG Legal Department on 26 May 2023. According to the plaintiff, Atty. Pawid is currently in the United States and cannot stand as witness for the Republic. The plaintiff thus moves that Atty. Rosaline O. Escobar, the current Interim Head of the PCGG Legal Department, be indicated as its witness and that her Judicial Affidavit dated 28 July 2023 be admitted by the Court.

Subsequently, the plaintiff filed its *Motion for Leave to Substitute Witness and Admit Amended Judicial Affidavit of Atty. Rosaline O. Escobar with Notice of Change of Address of Plaintiff PCGG* dated 12 September 2023, reiterating its plea for the substitution of its witness and for the admission of the Amended Judicial Affidavit of Atty. Rosaline O. Escobar ("Atty. Escobar"). The plaintiff alleges that the said Judicial Affidavit was amended due to several typographical errors and oversight discovered in the markings.

On 18 September 2023, the Court issued a *Resolution*³ directing the defendants to file their respective comment or opposition to the foregoing *Motions*. However, the defendants did not file any comment or opposition thereto.

RULING

After a careful consideration of the circumstances of this case, the Court resolves to grant the instant motions.

Section 7, Rule 18 of the Revised Rules of Civil Procedure provides that the contents of the Pre-trial Order shall control the subsequent proceedings, unless modified before trial to prevent manifest injustice.

Records of this case disclose that the Court has already issued its Pre-trial Order with respect to plaintiff and defendants Rafael P. Tuvera and Mariam Soraya Polotan Tuvera on 5 December 2022.⁴ On the other hand, the Pre-trial with respect to plaintiff and defendant Ma. Teresa Polotan Tuvera was terminated on 23 October 2023.⁵

³ Sandiganbayan Records, Vol. 2, p. 428.

⁴ Sandiganbayan Records, Vol. 1, pp. 538-553.

⁵ Sandiganbayan Records, Vol. 2, p. 466.

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A reading of the Pre-trial Order dated 5 December 2022 shows that the indicated witness for the plaintiff was indeed Atty. Pawid, who will identify the plaintiff's exhibits and documentary evidence. As contained in the same Pre-trial Order, the plaintiff likewise made a reservation to present additional witnesses and evidence as the trial proceeds.

Although the rules require that the contents of the Pre-trial Order shall control the subsequent proceedings, the circumstances of this case warrant the relaxation of procedural rules in the interest of substantial justice. Considering that Atty. Pawid has resigned only on 26 May 2023, or after the Pre-trial has been terminated, the plaintiff has no other recourse but to substitute her as witness. Moreover, since Atty. Pawid was only testifying in her capacity as the Interim Head to identify documents as evidence for the plaintiff, the Court finds that Atty. Escobar's substitution as witness in her stead as the current Interim Head is proper.

In fact, a scrutiny of the Judicial Affidavit of Atty. Pawid dated 17 November 2021⁶ shows that the contents of her testimony are substantially the same as the testimony of Atty. Escobar as contained in the latter's Amended Judicial Affidavit 12 September 2023,⁷ except for the latter's identification of additional documents. Thus, to enable the parties to properly present their case and to prevent manifest injustice, the substitution of witness is necessary.

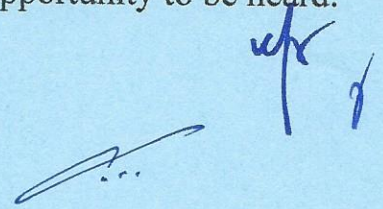
The Court likewise finds no prejudice caused to the defendants by substituting the plaintiff's witness. The fact that said defendants did not file any comment or opposition to the instant Motions despite being given the opportunity to do so only shows that the rights of the accused are not affected by such substitution.

The Court is fully aware that procedural rules are not to be belittled or simply disregarded for these prescribed procedures insure an orderly and speedy administration of justice. However, it is equally true that litigation is not merely a game of technicalities. Law and jurisprudence grant to courts the prerogative to relax compliance with procedural rules of even the most mandatory character, mindful of the duty to reconcile both the need to put an end to litigation speedily and the parties' right to an opportunity to be heard.⁸

⁶ Sandiganbayan Records, Vol. 2, pp. 162-167.

⁷ Sandiganbayan Records, Vol. 2, pp. 413-418.

⁸ *Pimentel v. Adiao, et al.*, G.R. No. 222678, 17 October 2018.

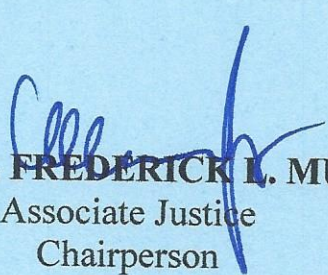


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WHEREFORE, in light of the foregoing, the *Motion for Leave to Substitute Witness and Admit Judicial Affidavit of Atty. Rosaline O. Escobar* dated 28 July 2023⁹ and the *Motion for Leave to Substitute Witness and Admit Amended Judicial Affidavit of Atty. Rosaline O. Escobar with Notice of Change of Address of Plaintiff PCGG* dated 12 September 2023,¹⁰ filed by plaintiff Republic of the Philippines, represented by the Presidential Commission on Good Government (PCGG), through the Office of the Solicitor General (OSG) are hereby **GRANTED**.

SO ORDERED.

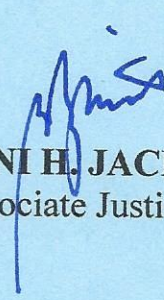
Quezon City, Philippines.


MICHAEL FREDERICK L. MUSNGI
Associate Justice
Chairperson

WE CONCUR:

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LORIFEL LAGAP PAHIMNA
Associate Justice


BAYANI H. JACINTO
Associate Justice

⁹ Sandiganbayan Records, Vol. 2, pp. 214-391.

¹⁰ Sandiganbayan Records, Vol. 2, pp. 407-411.