

Republic of the Philippines
Sandiganbayan
Quezon City

FOURTH DIVISION

REPUBLIC OF THE
PHILIPPINES,
Plaintiff,

CIVIL CASE NO. 0178

For: Reconveyance, Reversion,
Accounting and Restitution

-versus-

ANDRES L. AFRICA, ET AL.
Defendants.

Present:
MUSNGI, J., Chairperson
PAHIMNA, J. and
HIDALGO, J.*

Promulgated:

DEC 13 2023

X- - - - -X

RESOLUTION

PAHIMNA, J.:

For this Court's resolution are the following:

1. **Plaintiff's Tender of Excluded Evidence¹** filed on October 13, 2023, dated October 6, 2023;
2. **COMMENT (on Plaintiff's Tender of Excluded Evidence)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.

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

¹ Records, volume 6, pp. 162-166

² Ibid., pp. 185-191

Delos Reyes, Carmen N. Tuason, Ramon Nieto, Jr., and the legal representative of the deceased Ramon V. Nieto and Benigno Manuel Valdes, the legal representative of the deceased Rafael C. Valdes, through counsel dated October 31, 2023, and filed on November 3, 2023; and,

3. **Ex Parte Comment on Plaintiff's Tender of Excluded Evidence** dated October 31, 2023, filed on November 8, 2023.

In the Minutes of the proceeding held on September 25, 2023,³ this Court resolved to deny plaintiffs Exhibits "A to D" and "M to N" for failure of the plaintiff to comply with the original document rule as provided under Section 3 and 5, Rule 130 of the Revised Rule on Evidence.

The plaintiff now invokes Section 40, Rule 132 of the Rules of Court and respectfully implores this Court that the excluded exhibits be incorporated into the record of this case. This measure is taken with the aim of preserving a comprehensive record thereof, should the need for an appeal arise in the future.⁴

Comment

(on: Plaintiff's Tender of Excluded Evidence)

Defendants submitted that the documentary exhibits were rightly excluded by this Honorable Court due to their status as mere photocopies, in violation of the Original Document Rule. Since the subject of inquiry is the contents of the documentary exhibits sought to be tendered, applying the above rule, the original must be presented. However, the plaintiff's documentary exhibits here were mere photocopies. In fact, as emphasized by this Honorable Court, the Plaintiff's sole witness, Ms. Magno, even certified that these documents were mere photocopies from photocopied records in their file. Moreover, as also correctly ruled by this Honorable Court, the Plaintiff's documentary exhibits do not fall within the purview of the enumerated exceptions.

Defendants stressed that the nature of the pieces of documentary evidence offered by the plaintiff has been repeatedly and consistently declared inadmissible by the Supreme Court in a plethora of cases. Therefore, the filing of the Plaintiff of the tender of excluded evidence is an exercise in futility.

³ *Ibid.*, page 152

⁴ *Ibid.* 162

Ex Parte

Comments on Plaintiff's "Tender of Exclusive Evidence"

Defendant Victor Africa submitted that in resolving the issue at hand, the Court acting thereon, could also explain why evidence were excluded to afford the higher court the opportunity to readily appreciate the reasons for the exclusion.

OUR RULING

Evidence, to be admissible, must comply with two qualifications: (a) relevance and (b) competence. Evidence is relevant if it has a relation to the fact in issue as to induce a belief in its existence or nonexistence. On the other hand, evidence is competent if it is not excluded by the law or by the Rules of Court.⁵

One of the grounds under the Rules of Court that determines the competence of evidence is the best evidence rule. Section 3, Rule 130 of the Rules of Court provides that the original copy of the document must be presented whenever the content of the document is under inquiry.⁶

Since it is within the Court's discretion to deny exhibits which it judiciously believes irrelevant and impertinent to the instant proceeding, Exhibits "A to D" and "M to N" were not admitted due to failure of the plaintiff to comply with the best evidence rule. Thus, plaintiff resorted to Section 40, Rule 132 of the Rules of Court provides:

Sec. 40. Tender of excluded evidence. - If documents or things offered in evidence are excluded by the court, the offeror may have the same attached to or made part of the record. If the evidence excluded is oral, the offeror may state for the record the name and other personal circumstances of the witness and the substance of the proposed testimony.

The rule is that evidence formally offered by a party may be admitted or excluded by the court. If a party's offered documentary or object evidence is excluded, he may move or request that it be attached to form part of the records of the case. If the excluded evidence is oral, he may state for the record the name and other personal circumstances of the witness and the substance of the proposed testimony. These procedures are known as offer of proof or tender of excluded evidence and are made for purposes of

⁵ Anna Marie L. Gumabon v. Philippine National Bank, G.R. No. 202514, July 25, 2016 (citation omitted)

⁶ Ibid.

appeal. If an adverse judgment is eventually rendered against the offeror, he may in his appeal assign as error the rejection of the excluded evidence.⁷

It is thus apparent that before tender of excluded evidence is made, the evidence must have been formally offered before the court. And before formal offer of evidence is made, the evidence must have been identified and presented before the court.⁸

A second look at the records of the case disclosed that Exhibit "A", "B", "C", "D", "M", and "N" were identified by the witness Maria Lourdes O. Magno and presented before the Court thereby giving the Court the opportunity to rule on the inadmissibility of the exhibits. Moreso, the foregoing exhibits were included in the Plaintiff's Formal Offer of Evidence.⁹


IN VIEW OF THE FOREGOING, Plaintiff's Tender of Excluded Evidence is hereby Granted. As prayed for, let Exhibits "A", "B", "C", "D", "M", and "N" be incorporated and made integral part of the records of this case.

SO ORDERED.


LORIFEL LACAP PAHIMNA
Associate Justice

We concur:


MICHAEL FREDERICK L. MUSNGI
Chairperson
Associate Justice


GEORGINA D. HIDALGO
Associate Justice

⁷ Fortune Tobacco Corporation vs. Commissioner of Internal Revenue , G.R. No. 192024, July 01, 2015
⁸ Philip S. Yu vs. Hon. Court of Appeals and Viveca Lim Yu, G.R. No. 154115, November 29, 2005
⁹ Records, volume 6, pp. 13 to 118