



Republic of the Philippines
SANDIGANBAYAN
Quezon City

THIRD DIVISION

PEOPLE OF THE PHILIPPINES,
Plaintiff,

SB-17-CRM-1017-18

For: Violation of Section 3(e) of
R.A. No. 3019.

-versus-

SB-17-CRM-1020-21

For: Malversation through
Falsification.

NUR P. MISUARI, et al.,
Accused.

Present:

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

Promulgated:

JANUARY 29, 2024

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RESOLUTION

Moreno, J.:

For resolution are the following: (1) Accused Nader M. Macagaan's "Motion to Reopen Accused Nader M. Macagaan's Presentation of Evidence" filed on October 5, 2023; (2) Prosecution's "Opposition (Re: Motion to Reopen Accused Nader M. Macagaan's Presentation of Evidence)" filed on October 18, 2023; (3) Accused Nader M. Macagaan's "Motion to Admit" filed on November 3, 2023; and (4) Accused Nader M. Macagaan's "Reply" filed on November 3, 2023.

by /

**Accused Nader M. Macagaan’s “*Motion to Reopen
Accused Nader M. Macagaan’s Presentation of Evidence*”**

In his *Motion*, accused Nader M. Macagaan (“Macagaan”) prays for the reopening of these cases in the interest of substantial justice and further presentation of his new evidence, particularly, the expert testimony of former National Bureau of Investigation Supervising Document Examiner Efren B. Flores (“Mr. Flores”) to testify on his *Questioned Documents Report* dated May 29, 2023 (“Report”), wherein he allegedly observed five (5) significant differences in the handwriting characteristics and habits existing between the questioned signatures in the Abstract of Canvass and Certification, on one hand, and accused Macagaan’s genuine signatures, on the other.

In support of his motion, accused Macagaan further alleges the foregoing:

(1) Rule 119, Section 24 of the Rules of Court provides that the court may *motu proprio* or upon motion, reopen criminal proceedings at any time before the finality of a judgment for conviction, in order to avoid a miscarriage of justice.

(2) Pursuant to the Supreme Court’s ruling in *Cabarles v. Maceda*,¹ a court can allow the introduction of new evidence upon the original case, based on the paramount interest of justice, and even after the parties had formally offered and closed their evidence.

(3) In *Rivac v. People*,² the Supreme Court held that the trial court correctly allowed the reopening of the proceedings to receive a witness’ subsequent testimony, despite having testified already during the evidence-in-chief, in order to shed light on the true nature of the transaction and determine the accused’s criminal liability.

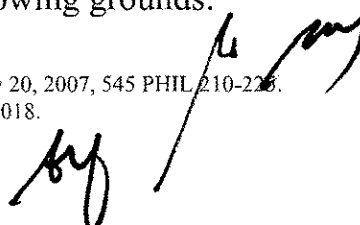
(4) Lastly, the prosecution failed to present any witness identifying the alleged signatures above the name of Mr. Macagaan on the Abstract of Canvass and the Certification, or any witness seeing him allegedly sign the same.

Prosecution’s “*Opposition (Re: Motion to Reopen Accused Nader M. Macagaan’s Presentation of Evidence)*” filed on October 18, 2023

In its *Opposition*, the prosecution strongly counters accused Macagaan’s motion based on the following grounds:

¹ *Cabarles v. Maceda*, G.R. No. 161330, February 20, 2007, 545 PHIL 210-226.

² *Rivac v. People*, G.R. No. 224673, January 22, 2018.



First, the Abstract of Canvass and Certification examined by Mr. Flores, are the very same documents that were previously examined by accused Macagaan's witness, Ms. Catherine Aquino ("Ms. Aquino"), who completed her testimony regarding the handwriting examination she conducted on the said documents. Moreover, the same documents were already admitted in evidence in favor of accused Macagaan. Thus, the presentation of Mr. Flores will just be a replication of the proceedings that were already concluded.

Second, accused Macagaan's appeal for substantial justice was not done in good faith considering his failure to disclose that he was already given the opportunity to present an expert witness in the person of Ms. Aquino. Thus, the present attempt to reopen the presentation of evidence is just a circumvention of the previous order of the Court disqualifying Ms. Aquino as an expert witness.

Third, citing *Republic of the Philippines v. The Hon. Sandiganbayan (Second Division), et al.*,³ none of the grounds for the presentation of additional evidence (*i.e.*, newly discovered evidence, evidence omitted through inadvertence or mistake, or where the purpose of the evidence is to correct evidence previously offered) is present in the cases.

Fourth, accused Macagaan had been accorded adequate time and opportunity to present his defense. In the course of the proceedings, he was able to present six (6) witnesses and the Court had admitted voluminous exhibits in support of his defense, which includes the Abstract of Canvass and Certification.

Lastly, in the case of *Philippine Trust Company (also known as Philtrust Bank) v. Gabinete, et al.*,⁴ the Supreme Court did not give credence to the expert testimony and findings of Mr. Flores and ruled that a finding of forgery does not depend entirely on the testimony of handwriting experts and that the judge still exercises independent judgment on the issue of authenticity of the signatures in question.

**Accused Nader M. Macagaan's
"Motion to Admit" and "Reply" filed on November 3, 2023**

In his *Reply*, accused Macagaan reiterates the following:

³ *Republic v. Sandiganbayan*, G.R. No. 159275, August 25, 2010, 643 PHIL 283-307. Citing Jose Y. Feria and Maria Concepcion S. Noche, CIVIL PROCEDURE ANNOTATED, 2001 Edition, Vol. I, p. 574, citing, *Lopez v. Liboro*, 81 Phil. 429, 434 (1948).

⁴ *Philippine Trust Co. v. Gabinete*, G.R. No. 216120, March 29, 2017, 808 PHIL 297-317.



(1) The instant *Motion to Reopen* is a remedy already sanctioned under Rule 119, Section 24 of the Rules of Court and existing jurisprudence, and the only consideration in granting such motion is the paramount interest of justice.

(2) Accused Macagaan filed his *Motion to Reopen* to avoid the miscarriage of justice, which is supported by the fact that the plaintiff insists on imputing criminal liability on accused Macagaan, on the sole basis of the unidentified signatures appearing above his name on the Abstract of Canvass and Certification.

(3) The expert testimony of Mr. Flores was not readily available to accused Macagaan because the latter only knew of the identity and expertise in handwriting examination of Mr. Flores during the hearing on April 27, 2023, when the latter was recognized and allowed to testify as an expert witness for accused Misuari.

(4) The fact that accused Macagaan previously presented Mr. Aquino, who confirmed the forgery of the signatures on the Abstract of Canvass and Certification, does not amount to a replication of the proceedings that were already concluded.


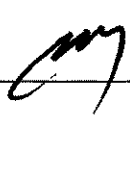
(5) It was only during the hearing on April 27, 2023, that plaintiff manifested that it would present rebuttal evidence against Mr. Macagaan, through the testimony of a representative from the Fact-Finding Investigation of the Office of the Ombudsman, who will supposedly identify the alleged *Counter-Affidavit* of accused Macagaan. Thus, accused Macagaan immediately prepared his sur-rebuttal evidence, in the form of Mr. Flores' expert testimony, that will prove that the signatures on the Abstract of Canvass and Certification are not his.

(6) The Supreme Court's purported appreciation of Mr. Flores' expert testimony in *Philippine Trust Company (also known as Philtrust Bank) v. Gabinete, et al.*,⁵ is irrelevant in the instant cases.

RULING OF THE COURT

After due consideration, the Court denies accused Macagaan's "*Motion to Reopen Accused Nader M. Macagaan's Presentation of Evidence*".

Section 24, Rule 119 of the Revised Rules on Criminal Procedure provides:

 *Supra.* 

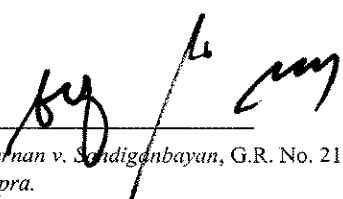
Sec. 24. Reopening. – At any time before finality of judgment of conviction, the judge may, *motu proprio* or upon motion, with hearing in either case, reopen the proceedings to avoid a miscarriage of justice. The proceedings shall be terminated within thirty (30) days from the order granting it.

Section 24, Rule 119, and existing jurisprudence provide for the following requirements for the reopening a case: (1) the reopening must be before the finality of a judgment of conviction; (2) the order is issued by the judge on his own initiative or upon motion; (3) the order is issued only after a hearing is conducted; (4) the order intends to prevent a miscarriage of justice; and (5) the presentation of additional and/or further evidence should be terminated within thirty days from the issuance of the order.⁶

It must be noted that in *Cabarles*,⁷ the Supreme Court held that a Motion to Reopen may properly be presented after either or both parties had formally offered and closed their evidence, but before judgment is rendered, and even after promulgation but before finality of judgment, and the only guiding parameter is to “avoid a miscarriage of justice.” Although the matter of reopening a case for the reception of further evidence is largely a matter of discretion on the part of the trial court judge, this judicial action must not be done whimsically, capriciously, and/or unreasonably. In the said case, the Supreme Court annulled and set aside the questioned order of the respondent judge which allowed the reopening of the case after it found that “the prosecution was given ample opportunity to present all its witnesses but it failed to do so”. According to the Court, “the failure of the prosecution therein to take full advantage of the opportunities given does not change the fact that it was accorded such opportunities.”⁸

Additionally, in *Republic of the Philippines v. The Hon. Sandiganbayan (Second Division), et al.*,⁹ the Supreme Court ruled that additional evidence is allowed when it is newly discovered, or where it has been omitted through inadvertence or mistake, or where the purpose of the evidence is to correct evidence previously offered.

Here, the Court finds that the fourth element, for the reopening of these cases, is lacking. Moreover, the intended testimony of Mr. Flores cannot be considered as “new evidence” under the present circumstances. The Court elucidates:


6 *Hernan v. Sandiganbayan*, G.R. No. 217874, December 5, 2017.

7 *Supra*.

8 *Id.*

9 *Supra*.

First, there is no showing that accused Macagaan was deprived of the opportunity to fully examine and/or rebut the documentary exhibits presented by the prosecution. Indeed, accused Macagaan had every reasonable opportunity to rebut the prosecution evidence, particularly his signature on the Abstract of Canvass and Certification. As observed by the Court, accused Macagaan was able to cross-examine all the witnesses of the prosecution, and objected to the evidence adduced by the People. Moreover, he was able to present his witnesses and formally offered numerous documentary exhibits for his defense, including the Abstract of Canvass and Certification.

A judicious review of the records particularly revealed that on September 28, 2022, accused Macagaan was already able to present Ms. Aquino to prove that the questioned signatures on the Abstract of Canvass and Certification are not his but a result of “simulated forgery”. However, during the said hearing, the Court ruled that Ms. Aquino was not an expert witness based on the documents attached to her *Judicial Affidavit*.¹⁰ Even with the treatment of Ms. Aquino as an ordinary witness, the Court nevertheless admitted *Exhibits “8-Macagaan”, “9-Macagaan”, “21-Macagaan” to “150-Macagaan”*, which are all part of the testimony of witness Aquino.¹¹

To note, after Ms. Aquino completed her testimony, counsel for accused Macagaan manifested that she was the last witness for the said accused.¹² This was again reiterated by accused Macagaan’s counsel upon further clarification made by the Court.¹³ Thus, the fourth requirement mentioned in *Cabarles* is not present in these cases considering that no miscarriage of justice will be occasioned to accused Macagaan by the disallowance of his bid to reopen the proceedings in the said criminal cases.

Second, in the present motion, accused Macagaan avers that the testimony of Mr. Flores is considered as “new evidence”, that “could shed light on the truth behind the signatures appearing in the Abstract of Canvass and Certification, which may potentially aid this Honorable Court to determine whether or not accused Macagaan is criminally liable.” However, after a comparison between the *Judicial Affidavits* of Ms. Aquino and Mr. Flores, the Court noted the following:

The image shows two handwritten signatures in black ink. The signature on the left is more stylized and cursive, while the signature on the right is more straightforward and legible. Both signatures appear to be written on a white background.

¹⁰ TSN dated September 28, 2022, p. 39.

¹¹ Record, Vol. XIV, pp. 330-336.

¹² *Id.*, p. 88.

¹³ *Id.*, p. 95.

1. Both witnesses examined the questioned signatures appearing on the same source documents, which are photocopies of the Abstract of Canvass and Certification.¹⁴

2. Both witnesses employed identical procedures in conducting the examination of signatures and in making a conclusion or finding.¹⁵

3. Both witnesses were provided by accused Macagaan with original documents containing the latter's alleged original or standard signatures. Ms. Aquino was provided with twenty-two (22) documents while Mr. Flores was provided with twenty-nine (29) documents. Eighteen (18) of the said documents were similarly provided to both witnesses.¹⁶

5. Ms. Aquino made a separate examination of the signatures appearing in the Abstract of Canvass and Certification *vis-à-vis* the signatures appearing on the documents provided by accused Macagaan, which were plotted in two separate comparison charts.¹⁷ On the other hand, Mr. Flores plotted both the questioned signatures on the Abstract of Canvass and Certification *vis-à-vis* the signatures appearing on the documents provided by accused Macagaan in one comparison chart.¹⁸

6. Ms. Aquino observed seven (7) differences between the questioned signature in the Abstract of Canvass and accused Macagaan's signature appearing in the provided documents,¹⁹ as well as seven (7) differences between the questioned signature in the Certification and accused Macagaan's signature appearing in the provided documents.²⁰ On the other hand, Mr. Flores found only five (5) differences between the questioned signatures in the Abstract of Canvass and Certification *vis-à-vis* accused Macagaan's signature appearing in the provided documents.²¹



¹⁴ *Judicial Affidavit* of witness Aquino dated September 13, 2022, p. 13, Record, Vol. XII, p. 523. *Judicial Affidavit* of witness Flores dated October 4, 2023, p. 10.

¹⁵ *Id.*, p. 522. *Judicial Affidavit* of witness Flores dated October 4, 2023, p. 8.

¹⁶ *Id.*, pp. 523-533. *Judicial Affidavit* of witness Flores dated October 4, 2023, pp. 11-12.

¹⁷ *Id.*, pp. 530-536; pp. 31-40, Record, Vol. XII, pp. 541-549.

¹⁸ *Judicial Affidavit* of witness Flores dated October 4, 2023, pp. 17-20.

¹⁹ *Judicial Affidavit* of witness Aquino dated September 13, 2022, pp. 27-28, Record, Vol. XII, pp. 537-538.

²⁰ *Id.*, pp. 41-42, Record, Vol. XII, pp. 550-551.

²¹ *Judicial Affidavit* of witness Flores dated October 4, 2023, pp. 21-22.

7. The findings made by Mr. Flores are similar and/or necessarily included in the findings made by Ms. Aquino.

8. Both witnesses arrived at a similar conclusion that the questioned signatures appearing on the Abstract of Canvass and Certification are not the signatures of accused Macagaan, and a result of a forgery.

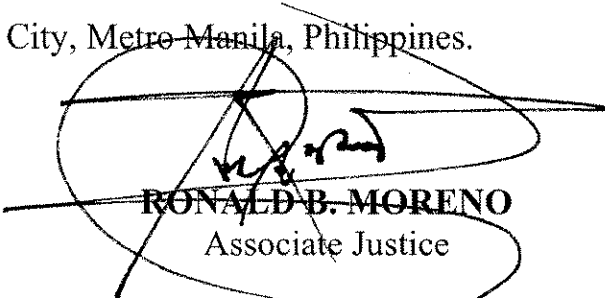
Based on the foregoing, the Court does not agree with accused Macagaan that the testimony of Mr. Flores qualifies as “new evidence” considering that his testimony is merely a reiteration of that of Ms. Aquino’s. Furthermore, the records reveal that the TVSI Report No. QD-52313 dated 31 August 2022 (*Exhibit “101-Macagaan”*) and TVSI Report No. QD-52314 dated 31 August 2022 (*Exhibit “150-Macagaan”*), which contains the findings and conclusion of Ms. Aquino, were already admitted by the Court as evidence for accused Macagaan.²²

In fine, accused Macagaan’s present bid to further present the testimony of Mr. Flores is a mere superfluity that is neither sanctioned by the rules nor jurisprudence.

WHEREFORE, accused Nader M. Macagaan’s “Motion to Reopen Accused Nader M. Macagaan’s Presentation of Evidence”) is hereby **DENIED** for lack of merit.


SO ORDERED.

Quezon City, Metro Manila, Philippines.



RONALD B. MORENO
Associate Justice

WE CONCUR:



AMPARO M. CABOTAJE- TANG
Presiding Justice
Chairperson



BERNELLITO R. FERNANDEZ
Associate Justice