



**REPUBLIC OF THE PHILIPPINES
SANDIGANBAYAN
QUEZON CITY**

THIRD DIVISION

**PEOPLE OF THE PHILIPPINES,
Plaintiff-Appellee,**

SB-18-CRM-0383

-versus-

**For: Violation of Section
3 (g) of R.A. No. 3019, as
amended**

**GILDA ELEPAÑO PICO, et al.
Accused.**

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Present:


CABOTAJE-TANG, P.J.,

Chairperson

FERNANDEZ, B., J and

MORENO, R.,J

PROMULGATED:

APRIL 3, 2024 

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RESOLUTION

CABOTAJE-TANG, P.J.:

On January 15, 2024, accused Gilda E. Pico and Carel D. Halog filed a *Motion to Dismiss dated January 15, 2024*,¹ praying for the dismissal of this case based on the following grounds:

1. The Supreme Court, in G.R. Nos. 237558, 238133 and 238138, promulgated a Decision on April 26, 2023,

¹ pp. 447-494, Record, Volume IV

Resolution

SB-18-CRM-0383

People v. Gilda E. Pico, et al.

X-----X

dismissing the complaint for violation of Section 3 (g) of R.A. No. 3019, as amended, against accused Pico and Halog for lack of probable cause. These cases stemmed from the petitions filed by accused Pico and Halog and their co-accused with the Supreme Court questioning the Office of the Ombudsman's (OMB's) Resolution dated October 21, 2015 and Omnibus Order dated February 24, 2017, finding probable cause for the indictment of accused Pico and Halog and their co-accused for violation of Section 3 (g) of R.A. No. 3019, as amended, the subject matter of this case;² and

2. The prejudicial question in Civil Case No. MC14-9177 entitled "*SMC Global Power Holdings, Corp. (formerly Global 500 Investment, Inc.) vs. Land Bank of the Philippines*" before the Regional Trial Court (RTC) of Mandaluyong City, has already been resolved allegedly because in G.R. No. 266540, the Supreme Court promulgated a Resolution on August 09, 2023, denying the petition, filed by the Land Bank of the Philippines (LBP) against the SMC Global Power Holdings, Corporation (SMC Global).³ The said petition assailed the Decision promulgated by the Court of Appeals on November 03, 2022 in CA-G.R. CV No. 11834 which affirmed the Decision dated March 21, 2021 of the RTC of Mandaluyong City in Civil Case No. MC14-9177. The same RTC decision declared that the "terms of the Share Purchase Agreement (SPA) are not manifestly and grossly disadvantageous to the government based on the prevailing circumstances at the time of the execution of the said SPA."⁴

The Prosecution filed its Opposition dated January 22, 2024, praying for the denial of the aforesaid *Motion to Dismiss* contending that the *Decision* of the Second Division of the

² pp. 4-13, Motion to Dismiss at pp. 480-489, Record, Volume IV

³ p. 495, Record, Volume IV

⁴ pp. 2-4, Motion to Dismiss at pp. 478-480, Record, Volume IV



Resolution

SB-18-CRM-0383

People v. Gilda E. Pico, et al.

X-----X

Supreme Court is not yet executory for failure of accused Pico and Halog to present evidence of "*Entry of Judgment*;" hence, it is premature for said accused to move for the dismissal of this case.⁵

Accused Pico and Halog filed their *Reply* dated February 01, 2024, insisting that the Decision of the Supreme Court in G.R. Nos. 237558, 238133 and 238138 had already attained finality because no legal remedy was taken by the prosecution within the prescribed period. Thus, the said decision is already final by operation of law.⁶

In its Resolution promulgated on January 23, 2024,⁷ the Court directed the following:

- (i) the Prosecution to inform the Court whether it had filed a motion for reconsideration or any other pleading regarding the Supreme Court Second Division's Decision promulgated on April 26, 2023, and to state the status, if any, within a non-extendible period of ten (10) days from notice; and
- (ii) accused Pico and Halog, through counsel, to inform the Court whether (1) *the Supreme Court Second Division's Decision promulgated on April 26, 2023 and (2) the Supreme Court's First Division's Resolution dated August 09, 2023, had both attained finality, particularly in G.R. No. 266540, and to show proof thereof.*

Accused Pico and Halog filed their *Compliance and Manifestation* dated February 15, 2024, alleging that:

1. *In G.R. No. 238138, per Information from the Supreme Court's Judicial Records Office, a*

⁵ pp. 573-575, Record, Volume IV

⁶ pp. 2-3, Reply at page pp. 587-588, Record, Volume IV

⁷ pp. 581-583, Record, Volume IV

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6

Resolution

SB-18-CRM-0383

People v. Gilda E. Pico, et al.

X-----X

copy of the Decision dated 26 April 2023 was served via registered mail to the Office of the Ombudsman on 12 December 2023 and was thereafter received by the Office of the Ombudsman on 21 December 2023. The Office of the Ombudsman had until 05 January 2024 to move for the reconsideration of the Decision. To date, however, no motion for reconsideration of the said Decision has been received by the Judicial Records Office. Thus, the said Decision dated 26 April 2023 had already lapsed into finality by operation of law;

- 2. While the accused requested for the issuance of a certificate of finality or entry of judgment in this case, the Supreme Court's Judicial Records Office informed the accused that its protocol is to await the registry return receipt and have the Certificate of Finality/Entry of Judgment routed first to the assigned Division's Justices. Hence, the requested Entry of Judgment cannot be issued within the period prescribed by the Honorable Court. Nevertheless, the accused undertake to continuously monitor the status of the case and submit to the Honorable Court the Entry of Judgment as soon as it is available; and*
- 3. In G.R. No. 266540, upon information from the Supreme Court's Judicial Records Office, the records of this case were remanded to the First Division. Upon further coordination with accused Gilda Pico's counsel of record in the said case, the accused was further informed that a Motion for Reconsideration dated 14 December 2023 was filed on her behalf and an*



Resolution

SB-18-CRM-0383

People v. Gilda E. Pico, et al.

X-----X

Omnibus Motion dated 27 December 2023 was filed by the Land Bank of the Philippines.⁸

Accused Pico and Halog argue that while the LBP and accused Pico herself filed their respective motions for reconsideration in G.R. No. 266540, the issues raised therein were limited to the (i) payment of docket fees; (ii) validity of the SPA; (iii) determination of the character of the SPA; and (iv) the liability of the parties for damages. Accordingly, the issue of whether the terms and conditions of the SPA at the time of its execution are manifestly and grossly disadvantageous to the government was not raised. Thus, the said issue is allegedly laid to rest in G.R. No. 266540.⁹

In the meantime, the Prosecution filed its *Compliance with Leave of Court* dated March 05, 2024,¹⁰ manifesting that:

4. *That by way of compliance to the subject Minute Resolution, the prosecution respectfully manifests that based on the Certification dated March 1, 2024 issued by the Office of the Legal Affairs ("OLA"), representing respondent Office of the Ombudsman in G.R. Nos. 237558, 238133 and 238138 assigned to the Supreme Court Second Division, the latest status on the subject cases is the Supreme Court's Decision promulgated on April 26, 2023, copy of which was received by OLA on December 21, 2023, and no motion for reconsideration has been subsequently filed nor received by the said OLA.*

Attached to the aforesaid *Compliance and Manifestation* of accused Pico and Halog are the (a) *Omnibus Motion* filed by the LBP with *Motion for Reconsideration, Motion for Leave to File a*

⁸ pp. 1-2, *Compliance and Manifestation* at pp.17-18, Record, Volume IV; citations omitted

⁹ p. 2, *ibid* at p. 18, *ibid*

¹⁰ pp. 142-146, Record, Volume V



Resolution

SB-18-CRM-0383

People v. Gilda E. Pico, et al.

X-----X

Motion to Refer the Case to the Honorable Supreme Court En Banc and the Motion to Refer the Case to the Honorable Supreme Court En Banc; and (b) Motion for Reconsideration filed accused Pico.

In the *Omnibus Motion* of the LBP, it argues that:

20. *The implementation of the SPA under the original terms and conditions, i.e., PhP90.00 per share, will violate the Anti-Graft and Corrupt Practices Act (RA 3019), which prohibits the act of entering into contracts that are grossly and manifestly disadvantageous to the government. The market price of the MERALCO shares was PhP266.00 per share as of 17 February 2020, which is way above the PhP90.00 per share stipulated in the SPA¹¹. There is, thus, a colossal difference of about PhP176.00 per share, which the Government will be deprived of if the SPA is implemented.*

21. *Relatedly, it was held in Lao v. Republic¹² that a contract is null and void ab initio for being contrary to the Anti-Graft and Corrupt Practices Act:*

The second contract was null and void ab initio for being in contravention of Section 3 (e) and (g) of RA 3019, otherwise known as the 'Anti-Graft and Corrupt Practices Act.' Both the trial and appellate courts found that the second contract gave petitioner

¹¹ citing the PSE website, as of February 17, 2020

¹² G.R. No. 160719, 23 January 2006, 479 SCRA 439, 446



Resolution

SB-18-CRM-0383

People v. Gilda E. Pico, et al.

X-----X

unwarranted benefits and was grossly disadvantageous to the government. Under Article 1409 (7) of the Civil Code, the contract was null and void from the beginning.¹³

Clearly, the issue of whether the terms and conditions of the SPA are manifestly and grossly disadvantageous to the government is still alive in G.R. No. 266540. Moreover, there is a pending motion therein to refer the matter to the Supreme Court *En Banc*.

WHEREFORE, the Court hereby **DENIES** accused Gilda E. Pico and Carel D. Halog's motion to dismiss for being premature.

SO ORDERED.

Quezon City, Metro Manila


AMPARO M. CABOTAJE-TANG

Presiding Justice
Chairperson

WE CONCUR:


BERNELITO R. FERNANDEZ

Associate Justice


RONALD B. MORENO

Associate Justice

¹³ pp. 11-12 Omnibus Motion at pp. 91-92, Record, Volume V

