

RE: REQUEST OF ACCUSED THROUGH COUNSEL FOR CREATION OF A SPECIAL DIVISION TO TRY THE PLUNDER CASE (SB CRIM. CASE NO. 26558 AND RELATED CASES)

A.M. No. 02-1-07-SC. January 21, 2002

Ponente: BELLOSILLO, J.

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BELLOSILLO, J.:

This Court through its Oversight Committee received on 11 January 2002 Resolution No. 01-2002 of the Sandiganbayan (En Banc) captioned Re: Request for the Creation of a Special Division to Try the Plunder Case (SB Crim. Case No. 26558 and related cases affecting the accused). The Resolution was promulgated on 8 and 11 January 2002 in response to the Request for Re-Raffle of the defense counsel and the Opposition to Request for Re-Raffle of the Special Prosecution Panel.

Resolution No. 01-2002 recommends that "the cases against former President Joseph Ejercito Estrada and those accused with him be referred to a special division created by constitutional authority of the Supreme Court composed of three justices with two alternates in case of temporary absence of any of the three to be chosen from among the present composition of this Court who will be able to participate therein until the termination of said cases."

In its Request for Re-Raffle, the Defense alleges that it is made "for (a) better administration of justice" in view of the "shifting and uncertain nature of (the) composition (of the Third Division)" to which the "Plunder Case" was originally assigned, citing as bases therefor the compulsory retirement of Associate Justice Ricardo M. Ilarde on 27 November 2001, and the indefinite leave of absence of Associate Justice Anacleto D. Badoy, Jr., pursuant to our Resolution of 11 December 2001, thereby leaving a void in the composition of the regular Third Division. Only Associate Justice Teresita J. Leonardo-De Castro remains as permanent member thereof. Associate Justices Narciso S. Nario, Sr., and Nicodemo T. Ferrer who were earlier designated to sit in the Third Division as special members or so-called "warm bodies" are by the nature of their designations temporary therein.

On 9 January 2002 the Special Prosecution Panel filed an Opposition to Request for Re-Raffle arguing that there was no assurance that the other divisions would have a complete set of members since "[c]hanges in membership in any one of the divisions will surely occur every now and then occasioned by death, resignation, optional or mandatory retirement, promotion or other causes x x x x"

This Court is informed that on the basis of the letter-request for re-raffle and the opposition thereto, the Acting Presiding Justice of the Sandiganbayan immediately called the parties through counsel to a conference on the same date to give their comment and/or suggestion on how to resolve the issue at hand.

On 10 January 2002 the Special Prosecution Panel filed its comment/suggestion maintaining that the Third Division should continue hearing the Plunder Case, and to achieve constancy in the membership of that division it recommended the creation of a Special Third Division to be composed of the remaining permanent member of the Third Division, Justice Teresita J. Leonardo-De Castro, and two (2) other justices who have heretofore at one time

or another taken part in hearing the Plunder Case, who are not retirable within the next three (3) years, and who are not appointees of the principal accused.

The Defense Panel on the other hand, in its letter of 11 January 2002, argues that the creation of an Ad Hoc Special Division "may create serious equal protection concerns and set a dangerous precedent that may come back to haunt us." The Defense also manifests its "deep reservations" against the participation of Justice Leonardo-De Castro "being an object of an unresolved petition to recuse as well as an administrative complaint." Consequently, it recommended the transfer of the "Estrada Cases" to the Fifth Division composed of Acting Presiding Justice Minita V. Chico-Nazario and Associate Justices Ma. Cristina G. Cortez-Estrada and Francisco H. Villaruz, Jr., "a tribunal with a predictable, stable, regular, permanent membership."

As a result of the 7 January 2002 meeting of the Oversight Committee with Acting Presiding Justice and the Chairmen of the various divisions of the Sandiganbayan, it was learned that Justices Nicodemo T. Ferrer, Catalino R. Castañeda, Jr., Anacleto D. Badoy, Jr., Narciso S. Nario, Sr. and Rodolfo G. Palattao are retiring on 3 August 2002, 20 September 2002, 19 October 2002, 29 October 2002 and 14 December 2003, respectively. Associate Justices Godofredo L. Legaspi, Gregory S. Ong and Raoul V. Victorino had expressed their preference not to be assigned to the Special Division to be created in view of their close relationship and association with the accused and their families, while Associate Justice Ma. Cristina G. Cortez-Estrada is an appointee of the principal accused. Associate Justice Francisco H. Villaruz Jr. is a very recent appointee, while Presiding Justice Francis E. Garchitorena is devoting himself exclusively to decision writing under authority of A. M. No. 00-8-05-SC.

Thus, we are left with hardly any choice but to designate Acting Presiding Justice Minita V. Chico-Nazario as Chairman, and Associate Justices Edilberto G. Sandoval and Teresita J. Leonardo-De Castro as Members of the Special Division to try and decide the Plunder Case (SB Crim. Case No. 26558 and related cases).

As regards Associate Justice Leonardo-De Castro, we do not find the objection of the Defense Panel sufficient to disqualify her from the case.

Under Sec. 5, par. [5], Art. VIII, of the 1987 Constitution, the Supreme Court has the power to promulgate rules concerning the protection and enforcement of constitutional rights and procedure in all courts, including the Sandiganbayan. Accordingly, given the nature of the Plunder Case and cases related thereto, the prominence of the principal accused and the importance of the immediate resolution of the cases to the Filipino people and the Philippine Government, this Court, in the interest of justice and the speedy disposition of cases, with due regard to the procedural and substantive rights of the accused, deems it best to create a Special Division of the Sandiganbayan to be composed of members mentioned in the immediately preceeding paragraph. This Special Division shall hear, try and decide with dispatch the Plunder Case and all related cases filed or which may hereafter be filed against former President Joseph Ejercito Estrada and those accused with him, until they are resolved, decided and terminated.

The designation of temporary alternate members may be properly addressed later. Meanwhile, until otherwise revoked, the Acting Presiding Justice is authorized to designate from time to time, an alternate member to be drawn from the remaining members of the Sandiganbayan as the exigencies of the service may require.

WHEREFORE, upon recommendation of the Oversight Committee of this Court, with due consideration to the facts and all attendant circumstances, and in the interest of a speedy administration of justice, this Court RESOLVES to CREATE, as it hereby creates, under its constitutional authority a Special Division of the Sandiganbayan to be composed of Acting Presiding Justice Minita V. Chico-Nazario as Chairman, and Associate Justices Edilberto G. Sandoval and Teresita J. Leonardo-De Castro as Members, to hear, try and decide with dispatch the Plunder Case and all related cases filed or may hereafter be filed against former President Joseph

Ejercito Estrada and those accused with him, until such cases are resolved, decided or otherwise finally terminated in the Sandiganbayan.

The Special Division may promulgate its own rules not otherwise inconsistent with or contrary to the Rules of Court or the Rules of the Sandiganbayan to govern the proceedings in these cases taking into consideration the constitutional rights of all the parties concerned.

The regular members of the Special Division shall hereafter be excluded from the regular raffle of cases in the Sandiganbayan except those related cases herein before mentioned, until such time as this Court or the Sandiganbayan may see fit to include them as existing conditions may warrant.

SO ORDERED.

Davide, Jr., C.J., Melo, Puno, Vitug, Kapunan, Mendoza, Panganiban, Quisumbing, Pardo, Buena, Ynares-Santiago, De Leon, Jr., and Sandoval-Gutierrez, JJ., concur.

Carpio, J., no part.

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