

## **VICTOR AFRICA, PETITIONER, VS. THE HONORABLE SANDIGANBAYAN (THIRD DIVISION); ROMAN MABANTA, JR.; AND EDUARDO DE LOS ANGELES, RESPONDENTS.**

*G.R. No. 124478. March 11, 1998*

Ponente: DAVIDE, JR., J.

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### **DAVIDE, JR., J.:**

This petition for certiorari under Rule 65 of the Rules of Court seeks to annul the resolutions of the Sandiganbayan dated 30 January 1996[1] and 29 March 1996[2] dismissing Civil Case No. 0146[3] and denying petitioner's motion for reconsideration, respectively.

A summary of the prior relevant events, as gathered from the voluminous records elevated to this Court by the Sandiganbayan[4] and from G.R. No. 83831 entitled *Africa v. PCGG*,[5] is appropriate for a better understanding of the case.

Pursuant to its powers under Executive Order No.1[6] promulgated by then President Corazon C. Aquino on 28 February 1986, the Presidential Commission on Good Government (PCGG) sequestered on 14 March 1986 the Eastern Telecommunications Philippines, Inc. (ETPI). Two months later, the sequestration pertaining to 40% of the capital stock (Class "B" shares) owned by Cable and Wireless, Ltd., a foreign corporation, was lifted. It, however, remained in force on the remaining 60% of the capital stock (Class "A" shares) consisting of the shares of Roberto S. Benedicto; Jose L. Africa; Polygon Investments & Managers, Inc.; and Universal Molasses Corporation and all shares wherein the late President Ferdinand E. Marcos was deemed the beneficial owner.[7]

On 22 July 1987, the PCGG filed with the Sandiganbayan Civil Case No. 0009 for the reconveyance, reversion, accounting, and restitution of the alleged ill-gotten ETPI shares, and for damages.

Then followed various incidents, which this Court narrated in G.R. No. 83831; thus:

Subsequently, during the annual stockholders meeting convened on January 29, 1988 pursuant to a PCGG Resolution dated January 28, 1988 which called for the resumption of the stockholders meeting originally scheduled on January 4, 1988, Eduardo M. Villanueva, as PCGG nominee, Roman Mabanta, Jr. and Eduardo de los Angeles as nominees of the foreign investors, Cable Wireless Ltd., and Jose L. Africa (who was absent) were elected as members of the board of directors.

An organizational meeting was later held where Eduardo Villanueva was elected as president and general manager, while Ramon Desuasido, Almario Velasco and Ranulfo Payos were elected as acting corporate secretary, acting treasurer, and acting assistant corporate secretary, respectively.

The nomination and election of PCGG nominees/designees to the ETPI Board of Directors, as well as the election of its new officers, triggered a chain of contentious proceedings before the Sandiganbayan and this Court between the members of the ETPI Board and its stockholders, on the one hand, and the PCGG's nominees/designees elected to the ETPI Board, on the other hand, in the cases hereinunder discussed.

Victor Africa, who claims to be an employee of ETPI holding the positions of vice-president, general counsel (on official leave without pay), corporate secretary and special assistant to the chairman (and president), filed directly with this Court on June 30, 1988 a petition for injunction docketed as G.R. No. 83831, seeking to enjoin the PCGG and its nominees/designees to the board of directors and the newly-installed officers of ETPI from implementing their alleged illegal, invalid and immoral act of ousting him from his offices and positions at the ETPI pending the determination of whether they have validly, legally and morally assumed their supposed positions and offices as "directors" and/or "officers" of ETPI.

He contends that the reasons advanced by the PCGG-sponsored board of directors for ousting him from his offices (redundancy, need to conserve company funds and loss of confidence) are flimsy, whimsical and arbitrary, evidencing not only the PCGG-sponsored board's discriminatory and oppressive attitude towards him but, more importantly, its clear intent to harass him into refraining from questioning before several tribunals all the invalid, illegal and immoral acts of said PCGG-sponsored board which have caused and are still causing ETPI damages because they constitute dissipation of assets.

Further claiming that the acts of respondents will work injustice, unfairness and inequity to him as they will invalidly, illegally and immorally deprive him of his principal means of livelihood to the detriment of his spouse and three children, petitioner sought the issuance of a writ of preliminary injunction or a temporary restraining order to enjoin the PCGG from ousting him from his positions and offices effective June 30, 1988.

On July 8, 1988, petitioner informed the Court that while a verbal agreement to maintain the status quo was reached between petitioner's lawyers, Attys. Juan de Ocampo and Antonio Africa, and Messrs. Orlando Romero and Serafin Rivera of the PCGG, respondent Eduardo M. Villanueva circulated on July 5, 1988 an inter-office memorandum easing out the legitimate members of the board from their rooms in the executive offices for the benefit of the newly-installed members of the questioned PCGG board; and that Ildefonso Reynoso, vice-president for administration, issued a memorandum to the Nival Security and Protective Agency informing them that they were being relieved of their duty to provide security services at the 7[th] Floor of Telecoms Plaza where the executive offices are located, which services would then be handled by the FCA Security Agency.

On July 15, 1988, petitioner was allegedly forcibly taken out of his office on the basis of a PCGG order which petitioner claimed was addressed not to then PCGG Commissioner Laureta but to three other PCGG officials, namely, Esteban B. Conejos, Jr., Serafin P. Rivera and Orlando Z. Romero. As a consequence, petitioner Africa sought to have then Commissioner Laureta declared in contempt of court for having committed "improper conduct tending directly or indirectly, to impede, obstruct or degrade the administration of justice." He likewise sought the issuance of a writ of preliminary mandatory injunction ordering respondents to open his office and allow him access to and use of the same.[8]

In the decision of 9 January 1992, we held that the issues raised in G.R. No. 83831, as well as in the motion for contempt filed by Eduardo Villanueva, were factual in nature and could be best ventilated before the Sandiganbayan – "the proper forum where both parties [could] substantiate their respective claims." We then referred the said case to the Sandiganbayan for appropriate proceedings and ordered its consolidation with Civil Case No. 0009. The said case was subsequently docketed as Civil Case No. 0146. Thereafter, the petitioner filed a motion for summary judgment, which the Sandiganbayan denied for lack of merit.

The private respondents then filed their answer with counterclaim in Civil Case No. 0146. They reiterated that the petitioner was not a legitimate stockholder, but merely a dummy for the late President Marcos; he was not, therefore, entitled to examine the corporate records.

In the interim, the petitioner filed separate motions, among which was for the production and inspection of documents.

In its resolution[9] of 10 January 1994, the Sandiganbayan granted petitioner's motion for the production and inspection of documents pertaining to the transfer of ETPI shares to the private respondents, including the certificates of shares of stock and the name, title, authority, and address of the person who entered the changes in the stock and transfer book.

Private respondents De los Angeles and Mabanta thereafter filed an omnibus motion for a reconsideration of the resolution and for the dismissal of Civil Case No. 0146. They contended that in G.R. No. 83831 (now Civil Case No. 0146), this Court did not grant petitioner's prayer for a temporary restraining order to enjoin the PCGG and the new board of directors and officers "from ousting the petitioner from his offices and positions at ETPI and even from his room during the pendency of the petition." They concluded that in the absence of a restraining order, the petitioner was validly stripped off of his positions, thereby rendering his petition moot and academic. They also cited *Africa v. PCGG*[10] where this Court pronounced that they were elected as nominees of the foreign investor Cable and Wireless, Ltd., owner of the Class "B" shares, which were outside the scope of sequestration. They then argued that in light of this Court's rulings in *PCGG v. Peña*[11] and *San Miguel Corporation v. Khan*,[12] the Sandiganbayan did not have jurisdiction over them because the shares pertaining to them were neither ill-gotten nor sequestered.

The petitioner opposed the omnibus motion because the validity of private respondents' election as members of the board remained the principal issue of his petition and their eventual replacement in the board did not absolve them from any responsibility for acts committed during their term.

In reply, the private respondents stressed that their vote as directors to oust the petitioner from his positions and their right to sit as board members were issues which were not in any way related to the sequestration or recovery of ill-gotten wealth of which the Sandiganbayan exercises exclusive original jurisdiction.

In its Resolution of 30 January 1996,[13] the Sandiganbayan granted private respondents' motion and dismissed Civil Case No. 0416. It ruled that the petition for injunction was moot and academic and could no longer prosper, since the act sought to be enjoined had already been consummated. Besides, the Sandiganbayan had no jurisdiction over respondents De los Angeles and Mabanta because their shares were no longer covered by a writ of sequestration. Moreover, they were eventually replaced by two British representatives.

His motion for a reconsideration of the resolution having been denied for lack of merit in the resolution[14] of the Sandiganbayan of 29 March 1996, the petitioner filed this special civil action for certiorari under Rule 65 of the Rules of Court contending that

- a. The Sandiganbayan acted in grave abuse of discretion when it dismissed the case (ordered by this Honorable Court to be consolidated with SB Case No. 0009) ... in lieu of taking the "appropriate proceedings" as directed by this Honorable Court.
- b. The Sandiganbayan acted in grave abuse of discretion when it dismissed the case (even while it was already conducting hearings in the other cases on the "substantially identical" reliefs) ... instead of including the case in the said hearings.
- c. The Sandiganbayan acted in grave abuse of discretion when it dismissed the case (not only against the respondents Mabanta and De los Angeles who were no longer ETPI directors, but also as against PCGG and the other non-PCGG respondents) ... rather than just dropping the non-involved respondents and continuing with the others.
- d. The Sandiganbayan acted in grave abuse of discretion when it "found" the shares involved (of Mabanta and De los Angeles) not to be sequestered ... notwithstanding the absence of any document excluding them from the sequestration previously imposed thereon by earlier documents.

On the other hand, the private respondents allege that the dismissal of Civil Case No. 0416 was based on the evidence and law. The original petition was in the nature of a preliminary prohibitory injunction, and not a preliminary mandatory injunction as claimed by the petitioner. Since no injunction was granted by this Court, petitioner's ouster in 1988 became *fait accompli*.

To refute petitioner's allegation that there was no evidence showing that their shares were outside the scope of sequestration, the private respondents cite the PCGG order of 14 May 1986, as well as the pronouncement of this Court in *Africa v. PCGG*; thus:

The sequestration of Eastern Telecommunications Philippines, Inc. is lifted. Henceforth, sequestration is limited to the shares of Roberto S. Benedicto, Jose L. Africa, Polygon Investments, Universal Molasses and all shares wherein Ferdinand E. Marcos is the beneficial owner.[15]

...

Shortly after the PCGG sequestered ETPI on March 14, 1986, the sequestration order was partially lifted in May 1986 when 40% of the shares of stock (Class "B") owned by the Cable and Wireless, Ltd. were freed from the effects of sequestration.[16]

Finally, the private respondents cite anew the case of *San Miguel Corporation v. Khan*,[17] where we held that the Sandiganbayan could not acquire jurisdiction over the suit involving the same respondent Eduardo de los Angeles because the San Miguel shares of stock pertaining to him were not sequestered.

For its part, the PCGG maintains that the Sandiganbayan properly dismissed Civil Case No. 0146 on the grounds that (1) the case had become moot and academic and (2) the Sandiganbayan had no jurisdiction over the subject matter of the petition insofar as private respondents Mabanta and De los Angeles were concerned.

As to the first, the PCGG points out that the petitioner had long been ousted from his position in ETPI and there was, therefore, nothing more to enjoin. His subsequent motion for preliminary mandatory injunction praying that his office be opened for his access and use was rendered nugatory by his ouster.

As to the second ground, the PCGG argues that in two resolutions,[18] the Sandiganbayan consistently ruled that the sequestration of ETPI was limited to Class "A" shares, representing the 60% Filipino-owned capital stock. The PCGG likewise confirms that in the controversial annual stockholders' meeting on 29 January 1988 the PCGG did not make any nomination pertaining to Class "B" shares because it recognized that said shares were not sequestered. Since then until the present, such fact has remained.

We dismiss the petition.

First, the petitioner pursued the wrong remedy. Under Section 7 of P.D. No. 1606, as further amended by Section 3 of R.A. No. 7975,[19] petitioner's remedy from the order dismissing Civil Case No. 0146 was a petition for review under Rule 45 of the Rules of Court. Said Section 7 pertinently provides as follows:

SEC. 7. Form, Finality and Enforcement of Decisions. –

...

Decisions and final orders of the Sandiganbayan shall be appealable to the Supreme Court by petition for review on certiorari raising pure questions of law in accordance with Rule 45 of the Rules of Court.

The Sandiganbayan's resolution of 30 January 1996 dismissing Civil Case No. 0146 was final in character in that it disposed of the action.[20] Accordingly, the aggrieved party could appeal therefrom by way of a petition for review under Rule 45 of the Rules of Court pursuant to Sec. 7 of P.D. No. 1606 as further amended by R.A. No.

7975.

It is, of course, settled that the special civil action for certiorari may be resorted to even if the remedy of appeal is available provided that it is shown that the appeal is inadequate, slow, insufficient, and will not promptly relieve a party from the injurious effects of the order complained of, or where the appeal is ineffective.[21] In this case, the petitioner has not convinced us at all that the regular appeal under Rule 45 of the Rules of Court, as provided for in Section 7 of P.D. No. 1606 as further amended by R.A. No. 7975, was inadequate, slow, insufficient, or ineffective. Other than his bare, stereotyped allegation in the petition that he had “no appeal, nor any plain, speedy, and adequate remedy in the ordinary course of law,” which is even untrue since the remedy of appeal was in fact allowed, the petitioner has nothing to offer to justify his resort to Rule 65 of the Rules of Court.

Even if it be conceded, *arguendo*, that the petitioner could properly avail of Rule 65, the instant petition would still fail. The assailed resolutions are not tainted with grave abuse of discretion.

We agree with the Sandiganbayan that the petition for injunction had become moot and academic. The remedy of injunction, specifically to prevent his ouster from his positions, could no longer be entertained because the act sought to be prevented had long been consummated.

Without doubt, the said petition was precipitated by the letter[22] dated 27 June 1988, which dismissed the petitioner from his positions effective 30 June 1988. The petition in G.R. No. 83831, which was filed before this Court on 30 June 1988, sought the issuance of a writ of preliminary injunction or temporary restraining order to enjoin the PCGG and the newly elected ETPI board members and officers from ousting the petitioner from his positions at ETPI. No temporary restraining order or writ of preliminary injunction was issued by this Court. Hence, he was effectively removed from his positions. Corollarily, his subsequent motion for a preliminary mandatory injunction praying that the respondents be ordered to open his office and allow him access to and use thereof had no leg to stand on.

Neither is there merit in petitioner’s argument that since this Court referred his original petition (G.R. No. 83831) to the Sandiganbayan for appropriate proceedings the Sandiganbayan should not have dismissed it. Such referral was made for the Sandiganbayan to exercise its original jurisdiction and to determine the merits of the issues raised by the parties, which were basically factual. Thus, the said tribunal allowed the parties to argue their positions, as indicated in the voluminous pleadings and motions filed by them. Hearings on certain motions, including those filed by the petitioner, were conducted. It cannot, therefore, be denied that the Sandiganbayan gave due consideration to the petition and dismissed the same only after the parties were given sufficient opportunity to ventilate their respective positions.

As to the issue of the propriety of impleading private respondents De los Angeles and Mabanta, the ruling of the Sandiganbayan must be sustained. It must be emphasized that the private respondents were elected to the board of directors upon the nomination of the foreign investor Cable and Wireless, Ltd. At the time of the election, the Class “B” shares, which were owned by the said foreign corporation, were no longer under sequestration. This was confirmed by the PCGG itself in its comment. Likewise, the Sandiganbayan itself ruled, in its Resolutions of 11 May and 1 August 1995 in Civil Case No. 0009,[23] that said Class “B” shares were no longer under sequestration. Conformably with our ruling in *PCGG v. Peña*[24] and *San Miguel Corporation v. Kahn*,[25] the Sandiganbayan had no jurisdiction over the said private respondents because the Class “B” shares pertaining to them were no longer covered by the writ of sequestration.

Petitioner’s submission that, if at all, the dismissal should have been limited only insofar as private respondents De los Angeles and Mabanta were concerned is not persuasive. Again, the nature of the petition was limited to the prevention of his ouster by the respondents as a collegial body. As earlier discussed, the petition itself had become

moot and academic, and its dismissal should benefit all the respondents.

WHEREFORE, premises considered, the petition is DISMISSED and the Resolutions of 30 January and 29 March 1996 of the Sandiganbayan, Third Division, are AFFIRMED in toto, with costs against the petitioner.

**SO ORDERED.**

Bellosillo, Vitug and Quisumbing, JJ., concur.

Panganiban, J., no part. Former counsel of an ETPI shareholder.

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[1] Annex “A” of Petition; Rollo, 43-47. Per De Leon, S., J., with Del Rosario, C., and Lagman, R., JJ., concurring.

[2] Annex “B” of Petition; Rollo, 48-51.

[3] Entitled “Victor Africa v. Presidential Commission on Good Government, Jose Laureta, Melquiades Gutierrez, Eduardo M. Villanueva, Eduardo de los Angeles, and Roman Mabanta.”

[4] A total of forty-six (46) volumes in Civil Case No. 0009 was received by the Court.

**[5] 205 SCRA 38 [1992].**

[6] Entitled “Creating the Presidential Commission on Good Government.”

[7] See Rollo, 112; See Africa v. PCGG, supra note 5.

[8] Supra note 5, at 42-44.

[9] Original Record (OR), Vol. III, 697-708.

[10] Supra note 5.

**[11] 159 SCRA 556 [1988].**

**[12] 176 SCRA 447 [1989].**

[13] Supra note 1.

[14] Supra note 2.

[15] Rollo, 112.

[16] Supra note 5 at 42.

[17] Supra note 12.

[18] Resolutions of 11 May and 1 August 1995 in Civil Case No. 0009.

[19] Entitled “An Act to Strengthen the Functional and Structural Organization of the Sandiganbayan, Amending for that Purpose Presidential Decree No. 1606, as Amended.”

[20] 1 Florenz D. Regalado, Remedial Law Compendium 398, 492 (1997).

[21] Hualam Construction and Development Corp. v. Court of Appeals, 214 SCRA 612, 628 [1992]; See also PCGG v. Sandiganbayan, 210 SCRA 136, 149 [1992].

[22] Rollo, 67.

[23] See Resolution of 29 March 1996, Annex “B” of Petition; Rollo, 50.

[24] Supra note 11.

[25] Supra note 12.

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