REPUBLIC OF THE PHILIPPINES, PETITIONER, VS SANDIGANBAYAN (FOURTH DIVISION), JOSE L. AFRICA (SUBSTITUTED BY HIS HEIRS), MANUEL H. NIETO, JR., FERDINAND E. MARCOS (SUBSTITUTED BY...

G.R. No. 152375. December 13, 2011

Ponente: BRION, J.

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BRION, J.:

Before us is the petition for certiorari[1] filed by the Republic of the Philippines (petitioner) to set aside the February 7, 2002 resolution (2002 resolution)[2] of the Sandiganbayan[3] denying the petitioner's Motion to Admit Supplemental Offer of Evidence (Re: Deposition of Maurice V. Bane) (3[rd] motion).

THE ANTECEDENTS

On July 22, 1987, the petitioner Republic of the Philippines, through the Presidential Commission on Good Government (PCGG), filed a complaint (docketed as Civil Case No. 0009) against Jose L. Africa, Manuel H. Nieto, Jr., Ferdinand E. Marcos, Imelda R. Marcos, Ferdinand R. Marcos, Jr., Juan Ponce Enrile, and Potenciano Ilusorio (collectively, the respondents) for reconveyance, reversion, accounting, restitution, and damages before the Sandiganbayan. The petitioner alleged, inter alia, that the respondents illegally manipulated the purchase of the major shareholdings of Cable and Wireless Limited in Eastern Telecommunications Philippines, Inc. (ETPI), which shareholdings respondents Jose Africa and Manuel Nieto, Jr. held for themselves and, through their holdings and the corporations they organized, beneficially for respondents Ferdinand E. Marcos and Imelda R. Marcos.[4]

Civil Case No. 0009 is the main case subject of the present petition. Victor Africa (Africa), son of the late Jose L. Africa, was not impleaded in and so is plainly not a party to Civil Case No. 0009.[5]

Civil Case No. 0009 spawned numerous incidental cases,[6] among them, Civil Case No. 0130.[7] The present respondents were not made parties either in Civil Case No. 0130.

I. Civil Case No. 0130

In the August 7, 1991 PCGG-conducted ETPI stockholders meeting, a PCGG-controlled board of directors was elected. Later, the registered ETPI stockholders convened a special stockholders meeting wherein another set of board of directors was elected. As a result, two sets of ETPI board and officers were elected.[8]

Thereafter, Africa, as an ETPI stockholder, filed a petition for certiorari, with prayer for a temporary restraining order/preliminary injunction with the Sandiganbayan (docketed as Civil Case No. 0130), seeking to nullify the August 5, 1991 and August 9, 1991 Orders of the PCGG. These Orders directed Africa:

> [T]o account for his sequestered shares in ETPI and to cease and desist from exercising voting rights on the sequestered shares in the special stockholders' meeting to be held on August 12, 1991, from representing himself as a director, officer, employee or agent of ETPI, and from participating, directly or indirectly[,] in the

> management of ETPI.[9]

During the pendency of Africa's petition, Civil Case No. 0130, Africa filed a motion with the Sandiganbayan, alleging that since January 29, 1988 the PCGG had been "illegally 'exercising' the rights of stockholders of ETPI,"[10] especially in the election of the members of the board of directors. Africa prayed for the issuance of an order for the "calling and holding of [ETPI] annual stockholders meeting for 1992 under the [c]ourt's control and supervision and prescribed guidelines."[11]

In its November 13, 1992 resolution, the Sandiganbayan favored Africa's motion in this wise:

> WHEREFORE, it is ordered that an annual stockholders meeting of the [ETPI], for 1992 be held on Friday, November 27, 1992, at 2:00 o'clock in the afternoon, at the ETPI Board Room, Telecoms Plaza, 7[th] Floor, 316 Gil J. Puyat Avenue, Makati, Metro Manila. x x x The stockholders meeting shall be conducted under the supervision and control of this Court, through Mr. Justice Sabino R. de Leon, Jr. [O]nly the registered owners, their duly authorized representatives or their proxies may vote their corresponding shares.
>
> The following minimum safeguards must be set in place and carefully maintained until final judicial resolution of the question of whether or not the sequestered shares of stock (or in a proper case the underlying assets of the corporation concerned) constitute ill-gotten wealth[.][12]

The PCGG assailed this resolution before this Court via a petition for certiorari docketed as G.R. No. 107789[13] (PCGG's petition), imputing grave abuse of discretion on the Sandiganbayan for holding, inter alia, that the registered stockholders of ETPI had the right to vote.[14] In our November 26, 1992 Resolution, we enjoined the Sandiganbayan from implementing its assailed resolution.

In the meantime, in an April 12, 1993 resolution, the Sandiganbayan ordered the consolidation of Civil Case No. 0130, among others, with Civil Case No. 0009, with the latter as the main case and the former merely an incident.[15]

During the pendency of PCGG's petition (G.R. No. 107789), the PCGG filed with this Court a "Very Urgent Petition for Authority to Hold Special Stockholders' Meeting for [the] Sole Purpose of Increasing [ETPI's] Authorized Capital Stock" (Urgent Petition). In our May 7, 1996 Resolution, we referred this Urgent Petition to the Sandiganbayan for reception of evidence and immediate resolution.[16] The Sandiganbayan included the Urgent Petition in Civil Case No. 0130.[17]

In the proceedings to resolve the Urgent Petition, the testimony of Mr. Maurice V. Bane (former director and treasurer-in-trust of ETPI) was taken– at the petitioner's instance and after serving notice of the deposition-taking on the respondents[18] – on October 23 and 24, 1996 by way of deposition upon oral examination (Bane deposition) before Consul General Ernesto Castro of the Philippine Embassy in London, England.

Invoking Section 1, Rule 24 (of the old Rules of Court), purportedly allowing the petitioner to depose Bane without leave of court, i.e., as a matter of right after the defendants have filed their answer, the notice stated that "[t]he purpose of the deposition is for [Bane] to identify and testify on the facts set forth in his affidavit[19] x x x so as to prove the ownership issue in favor of [the petitioner] and/or establish the prima facie factual foundation for sequestration of [ETPI's] Class A stock in support of the [Urgent Petition]."[20] The notice also states that the petitioner shall use the Bane deposition "in evidence... in the main case of Civil Case No. 0009."[21] On the scheduled deposition date, only Africa was present and he cross-examined Bane.

On December 13, 1996, the Sandiganbayan resolved the Urgent Petition by granting authority to the PCGG (i) "to cause the holding of a special stockholders' meeting of ETPI for the sole purpose of increasing ETPI's authorized capital stock" and (ii) "to vote therein the sequestered Class 'A' shares of stock."[22] Thus, a special

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stockholders meeting was held, as previously scheduled, on March 17, 1997 and the increase in ETPI's authorized capital stock was "unanimously approved."[23] From this ruling, Africa went to this Court via a petition for certiorari[24] docketed as G.R. No. 147214 (Africa's petition).

We jointly resolved the PCGG's and Africa's petitions, and ruled:

> This Court notes that, like in Africa's motion to hold a stockholders meeting (to elect a board of directors), the Sandiganbayan, in the PCGG's petition to hold a stockholders meeting (to amend the articles of incorporation to increase the authorized capital stock), again failed to apply the two-tiered test. On such determination hinges the validity of the votes cast by the PCGG in the stockholders meeting of March 17, 1997. This lapse by the Sandiganbayan leaves this Court with no other choice but to remand these questions to it for proper determination.
>
> x x x x
>
> WHEREFORE, this Court Resolved to REFER the petitions at bar to the Sandiganbayan for reception of evidence to determine whether there is a prima facie evidence showing that the sequestered shares in question are ill-gotten and there is an imminent danger of dissipation to entitle the PCGG to vote them in a stockholders meeting to elect the ETPI Board of Directors and to amend the ETPI Articles of Incorporation for the sole purpose of increasing the authorized capital stock of ETPI.

The Sandiganbayan shall render a decision thereon within sixty (60) days from receipt of this Resolution and in conformity herewith.

II. Civil Case No. 0009

Although Civil Case No. 0009 was filed on July 22, 1987, it was only on November 29, 1996 and March 17, 1997 that the first pre-trial conference was scheduled and concluded.[25]

In its Pre-Trial Brief[26] dated August 30, 1996, the petitioner offered to present the following witnesses:

> WITNESSES TO BE PRESENTED AND A BRIEF DESCRIPTION OF THEIR TESTIMONIES
>
> (1) Maurice V. Bane – representative of Cable and Wireless Limited (C & W) at the time ETPI was organized.
>
> x x x x
>
> (2) Mr. Manuel H. Nieto – x x x
>
> (3) Ms. Evelyn Singson – x x x
>
> (4) Mr. Severino P. Buan, Jr. – x x x
>
> (5) Mr. Apolinario K. Medina - x x x
>
> (6) Mr. Potenciano A. Roque – x x x
>
> (7) Caesar Parlade - x x x

IIa. Motion to Admit the Bane Deposition

At the trial of Civil Case No. 0009, the petitioner filed a Motion[27] (1[st] motion), stating that –

> - In the hearings of the incidents of [Civil Case No. 0009], i.e., Civil Case Nos. 0048, 0050, 0130, 0146[28] the following witnesses were presented therein:
>
> a. Cesar O.V. Parlade
> b. Maurice Bane

c. Evelyn Singson
d. Leonorio Martinez
e. Ricardo Castro; and
f. Rolando Gapud

- [The petitioner] wishes to adopt in [Civil Case No. 0009] their testimonies and the documentary exhibits presented and identified by them, since their testimonies and the said documentary exhibits are very relevant to prove the case of the [petitioner] in [Civil Case No. 0009].

- The adverse parties in the aforementioned incidents had the opportunity to cross-examine them.

The respondents filed their respective Oppositions to the 1st motion;[29] in turn, the petitioner filed a Common Reply[30] to these Oppositions.

On April 1, 1998, the Sandiganbayan[31] promulgated a resolution[32] (1998 resolution) denying the petitioner's 1st motion, as follows:

Wherefore, the [petitioner's] Motion x x x is –

- partly denied insofar as [the petitioner] prays therein to adopt the testimonies on oral deposition of Maurice V. Bane and Rolando Gapud as part of its evidence in Civil Case No. 0009 for the reason that said deponents according to the [petitioner] are not available for cross-examination in this Court by the [respondents]. (emphasis added)

- partly Granted, in the interest of speedy disposition of this long pending case, insofar as plaintiff prays therein to adopt certain/particular testimonies of Cesar O. Parlade, Evelyn Singson, Leoncio Martinez, and Ricardo Castro and documentary exhibits which said witnesses have identified in incident Civil Case Nos. xxx 0130 xxx, subject to the following conditions :

- xxx

- xxx

- That the said witnesses be presented in this Court so that they can be cross-examined on their particular testimonies in incident Civil Cases xxx [by the respondents].

IIb. Urgent Motion and/or Request for Judicial Notice

The petitioner did not in any way question the 1998 resolution, and instead made its Formal Offer of Evidence on December 14, 1999.[33] Significantly, the Bane deposition was not included as part of its offered exhibits. Rectifying the omission, the petitioner filed an Urgent Motion and/or Request for Judicial Notice[34] (2[nd] motion) dated February 21, 2000, with the alternative prayer that:

- An order forthwith be issued re-opening the plaintiff's case and setting the same for trial any day in April 2000 for the sole purpose of introducing additional evidence and limited only to the marking and offering of the [Bane deposition] which already forms part of the records and used in Civil Case No. 0130 x x x;

- In the alternative, x x x the [Sandiganbayan] to take judicial notice of the facts established by the [Bane deposition], together with the marked exhibits appended thereto. [emphasis ours]

On August 21, 2000, the Sandiganbayan promulgated a resolution[35] (2000 resolution) denying the petitioner's 2nd motion:

Judicial notice is found under Rule 129 which is titled "What Need Not Be Proved." Apparently, this provision refers to the Court's duty to consider admissions made by the parties in the pleadings, or in the course of the

> trial or other proceedings in resolving cases before it. The duty of the Court is mandatory and in those cases where it is discretionary, the initiative is upon the Court. Such being the case, the Court finds the Urgent Motion and/or Request for Judicial Notice as something which need not be acted upon as the same is considered redundant.
>
> On the matter of the [Bane deposition], [its] admission is done through the ordinary formal offer of exhibits wherein the defendant is given ample opportunity to raise objection on grounds provided by law. Definitely, it is not under Article (sic) 129 on judicial notice. [Emphasis ours]

On November 6, 2000 and on several dates thereafter, the respondents separately filed their respective demurrers to evidence.[36] On the other hand, the petitioner moved for the reconsideration of the 2000 resolution, but was rebuffed by the Sandiganbayan in its April 3, 2001 resolution[37] (2001 resolution).

IIc. Motion to Admit Supplemental Offer ofEvidence (Re: Deposition of Maurice Bane)

On November 16, 2001, the petitioner filed its 3[rd] Motion, seeking once more the admission of the Bane deposition.[38] On February 7, 2002 (pending resolution of the respondents' demurrers to evidence),[39] the Sandiganbayan promulgated the assailed 2002 resolution,[40] denying the petitioner's 3[rd]motion. The Sandiganbayan ruled:

> But in the court's view, it is not really a question of whether or not plaintiff has already rested its case as to obviate the further presentation of evidence. It is not even a question of whether the non-appearing defendants are deemed to have waived their right to cross-examine Bane as to qualify the admission of the deposition sans such cross-examination. Indeed, We do not see any need to dwell on these matters in view of this Court's Resolution rendered on April 1, 1998 which already denied the introduction in evidence of Bane's deposition and which has become final in view of plaintiff's failure to file any motion for reconsideration or appeal within the 15-day reglementary period. Rightly or wrongly, the resolution stands and for this court to grant plaintiff's motion at this point in time would in effect sanction plaintiff's disregard for the rules of procedure. Plaintiff has slept on its rights for almost two years and it was only in February of 2000 that it sought to rectify its ineptitude by filing a motion to reopen its case as to enable it to introduce and offer Bane's deposition as additional evidence, or in the alternative for the court to take judicial notice of the allegations of the deposition. But how can such a motion be granted when it has been resolved as early as 1998 that the deposition is inadmissible. Without plaintiff having moved for reconsideration within the reglementary period, the resolution has attained finality and its effect cannot be undone by the simple expedient of filing a motion, which though purporting to be a novel motion, is in reality a motion for reconsideration of this court's 1998 ruling. [emphases ours]

The resolution triggered the filing of the present petition.

> THE PETITION
>
> The petitioner filed the present petition claiming that the Sandiganbayan committed grave abuse of discretion:
>
> I.
>
> x x x IN HOLDING THAT ITS INTERLOCUTORY ORDER IN 1998 HAD BECOME FINAL.
>
> II.
>
> x x x IN x x x REFUSING TO ADMIT THE BANE DEPOSITION –WHICH WAS ALREADY ADMITTED AS EVIDENCE IN AN INCIDENT CASE (CIVIL CASE NO. 0130) – AS PART OF PETITIONER'S EVIDENCE IN THE MAIN x x x CASE (CIVIL CASE NO. 0009).
>
> III.

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x x x IN REFUSING TO ADMIT A HIGHLY RELEVANT AND IMPORTANT PIECE OF EVIDENCE FOR THE PETITIONER ON THE BASIS OF FLIMSY AND TENUOUS TECHNICAL GROUNDS.

The petitioner[41] argues that the 1998 resolution of the Sandiganbayan is merely an interlocutory order; thus, the petitioner's failure to question this 1998 resolution could not have given it a character of "finality" so long as the main case remains pending.[42] On this basis, the petitioner concludes that the Sandiganbayan's denial of its 3[rd] motion was plainly tainted with grave abuse of discretion.

On the issue of the Sandiganbayan's refusal (in its 2002 resolution) either to take judicial notice of or to admit the Bane deposition as part of its evidence, the petitioner asserts that Civil Case No. 0130 (where the Bane deposition was originally taken, introduced and admitted in evidence) is but a "child" of the "parent" case, Civil Case No. 0009; under this relationship, evidence offered and admitted in any of the "children" cases should be considered as evidence in the "parent" case.

Lastly, the petitioner claims that given the crucial importance of the Bane deposition, the Sandiganbayan should not have denied its admission on "flimsy grounds," considering that:

- It was also already stated in the notice (of the taking of the Bane deposition) that it would be used as evidence in Civil Case No. 0009. Notices having been duly served on all the parties concerned, they must accordingly be deemed to have waived their right to cross-examine the witness when they failed to show up.

- The Bane deposition was a very vital cog in the case of the petitioner relative to its allegation that the respondents' interest in ETPI and related firms properly belongs to the government.

- The non-inclusion of the Bane deposition in the petitioner's formal offer of evidence was obviously excusable considering the period that had lapsed from the time the case was filed and the voluminous records that the present case has generated.[43]

THE RESPONDENTS' COMMENTS
and THE PETITIONER'S REPLY

In the respondents' Comments[44] (filed in compliance with our Resolution of April 10, 2002[45]), they claim that the present petition was filed out of time - i.e., beyond the 60-day reglementary period prescribed under Section 4, Rule 65 of the Rules of Court.[46] This assertion proceeds from the view that the petitioner's 3[rd] motion, being a mere rehash of similar motions earlier filed by the petitioner, likewise simply assails the Sandiganbayan's 1998 resolution. Along the same line, they posit that the petitioner's 3[rd] motion actually partakes of a proscribed third motion for reconsideration of the Sandiganbayan's 1998 resolution.[47] They likewise assert, on the assumption that the 1998 resolution is interlocutory in character, that the petitioner's failure to contest the resolution by way of certiorari within the proper period gave the 1998 resolution a character of "finality."

The respondents further claim that after a party has rested its case, the admission of a supplemental offer of evidence requires the reopening of the case at the discretion of the trial court; the Sandiganbayan simply exercised its sound discretion in refusing to reopen the case since the evidence sought to be admitted was "within the knowledge of the [petitioner] and available to [it] before [it] rested its case."[48] The respondents also advert to the belated filing of the petitioner's 3[rd] motion – i.e., after the respondents had filed their respective demurrers to evidence.

On the petitioner's claim of waiver, the respondents assert that they have not waived their right to cross-examine the deponent; the Sandiganbayan recognized this right in its 1998 resolution and the petitioner never questioned this recognition. They also assert that the allegations in the Bane deposition cannot be a proper subject of judicial

notice under Rule 129 of the Rules of Court. The respondents lastly submit that the Bane deposition is inadmissible in evidence because the petitioner failed to comply with the requisites for admission under Section 47, Rule 130 of the Rules of Court.

In its Reply,[49] the petitioner defends the timeliness of the present petition by arguing that a party may opt to wait out and collect a pattern of questionable acts before resorting to the extraordinary remedy of certiorari. The petitioner stresses that it filed the 3[rd] motion precisely because of the Sandiganbayan's 2000 resolution, which held that the admission of the Bane deposition should be done through the ordinary formal offer of evidence. Thus, the Sandiganbayan seriously erred in considering the petitioner's 3rd motion as a proscribed motion for reconsideration. The petitioner generally submits that the dictates of substantial justice should have guided the Sandiganbayan to rule otherwise.

The petitioner also clarifies that it has not yet rested its case although it has filed a formal offer of evidence. A party normally rests his case only after the admission of the pieces of evidence he formally offered; before then, he still has the opportunity to present further evidence to substantiate his theory of the case should the court reject any piece of the offered evidence.[50]

The petitioner further maintains that the mere reasonable opportunity to cross-examine the deponent is sufficient for the admission of the Bane deposition considering that the deponent is not an ordinary witness who can be easily summoned by our courts in light of his foreign residence, his citizenship, and his advanced age. The petitioner asserts that Rule 24 (now Rule 23), and not Section 47, Rule 130, of the Rules of Court should apply to the present case, as explicitly stated in the notice of the deposition-taking.

To date, respondents Imelda Marcos and the heirs of Potenciano Ilusorio have yet to file their respective comments on the petition. Given the time that had lapsed since we required their comments, we resolve to dispense with the filing of these comments and to consider this petition submitted for decision.

THE ISSUES

On the basis of the pleadings, we summarize the pivotal issues for our resolution, as follows:

- Whether the petition was filed within the required period.

- Whether the Sandiganbayan committed grave abuse of discretion –

- In holding that the 1998 resolution has already attained finality;

- In holding that the petitioner's 3rd motion partakes of a prohibited motion for reconsideration;

- In refusing to re-open the case given the critical importance of the Bane deposition to the petitioner's cause; and

- In refusing to admit the Bane deposition notwithstanding the prior consolidation of Civil Case No. 0009 and Civil Case No. 0130.

- Whether the Bane deposition is admissible under -

- Rule 23, Section 4, par. (c) alone or in relation to Section 47, Rule 130 of the Rules of Court; and

- The principle of judicial notice.

THE COURT'S RULING

We deny the petition for lack of merit.

I. Preliminary Considerations

I (a). The interlocutory nature of
the Sandiganbayan's 1998 resolution.

In determining the appropriate remedy or remedies available, a party aggrieved by a court order, resolution or decision must first correctly identify the nature of the order, resolution or decision he intends to assail.[51] In this case, we must preliminarily determine whether the 1998 resolution is "final" or "interlocutory" in nature.

Case law has conveniently demarcated the line between a final judgment or order and an interlocutory one on the basis of the disposition made.[52] A judgment or order is considered final if the order disposes of the action or proceeding completely, or terminates a particular stage of the same action; in such case, the remedy available to an aggrieved party is appeal. If the order or resolution, however, merely resolves incidental matters and leaves something more to be done to resolve the merits of the case, the order is interlocutory[53] and the aggrieved party's remedy is a petition for certiorari under Rule 65. Jurisprudence pointedly holds that:

> As distinguished from a final order which disposes of the subject matter in its entirety or terminates a particular proceeding or action, leaving nothing else to be done but to enforce by execution what has been determined by the court, an interlocutory order does not dispose of a case completely, but leaves something more to be adjudicated upon. The term "final" judgment or order signifies a judgment or an order which disposes of the case as to all the parties, reserving no further questions or directions for future determination.
>
> On the other hand, a court order is merely interlocutory in character if it leaves substantial proceedings yet to be had in connection with the controversy. It does not end the task of the court in adjudicating the parties' contentions and determining their rights and liabilities as against each other. In this sense, it is basically provisional in its application.[54] (emphasis supplied)

Under these guidelines, we agree with the petitioner that the 1998 resolution is interlocutory. The Sandiganbayan's denial of the petitioner's 1st motion through the 1998 Resolution came at a time when the petitioner had not even concluded the presentation of its evidence. Plainly, the denial of the motion did not resolve the merits of the case, as something still had to be done to achieve this end.

We clarify, too, that an interlocutory order remains under the control of the court until the case is finally resolved on the merits. The court may therefore modify or rescind the order upon sufficient grounds shown at any time before final judgment.[55] In this light, the Sandiganbayan's 1998 resolution – which merely denied the adoption of the Bane deposition as part of the evidence in Civil Case No. 0009 – could not have attained finality (in the manner that a decision or final order resolving the case on the merits does) despite the petitioner's failure to move for its reconsideration or to appeal.[56]

I (b). The 3[rd] motion was not
prohibited by the Rules.

We also agree with the petitioner that its 3[rd] motion cannot be considered as a proscribed third (actually second) motion for reconsideration of the Sandiganbayan's 1998 resolution. As Section 5, Rule 37 of the Rules of Court clearly provides, the proscription against a second motion for reconsideration is directed against "a judgment or final order." Although a second motion for reconsideration of an interlocutory order can be denied on the ground that it is a mere "rehash" of the arguments already passed upon and resolved by the court, it cannot be rejected on the ground that it is forbidden by the law or by the rules as a prohibited motion.[57]

I (c). The 1998 resolution was not ripe
for a petition for certiorari.

Under Section 1, Rule 41 of the Rules of Court, an aggrieved party may appeal from a judgment or final order which completely disposes of a case or from an order that the Rules of Court declares to be appealable. While this provision prohibits an appeal from an interlocutory order, the aggrieved party is afforded the chance to question an interlocutory order through a special civil action of certiorari under Rule 65; the petition must be filed within sixty days from notice of the assailed judgment, order, resolution, or denial of a motion for reconsideration.

On the premise that the 1998 resolution is interlocutory in nature, the respondents insist that the 60-day period for filing a petition for certiorari should be reckoned from the petitioner's notice of the Sandiganbayan's 1998 resolution. They argue that since this ruling had long been rendered by the court, the petitioner's subsequent filing of similar motions was actually a devious attempt to resuscitate the long-denied admission of the Bane deposition.

We do not find the respondents' submission meritorious. While the 1998 resolution is an interlocutory order, as correctly argued by the petitioner and impliedly conceded by the respondents, the claim that the 1998 resolution should have been immediately questioned by the petitioner on certiorari is not totally correct as a petition for certiorari is not grounded solely on the issuance of a disputed interlocutory ruling.[58] For a petition for certiorari to prosper, Section 1, Rule 65 of the Rules of Court requires, among others, that neither an appeal nor any plain, speedy and adequate remedy in the ordinary course of law is available to the aggrieved party. As a matter of exception, the writ of certiorari may issue notwithstanding the existence of an available alternative remedy, if such remedy is inadequate or insufficient in relieving the aggrieved party of the injurious effects of the order complained of.[59]

We note that at the time of its 1st motion in Civil Case No. 0009, the petitioner had not yet concluded the presentation of its evidence, much less made any formal offer of evidence. At this stage of the case, the prematurity of using the extraordinary remedy of certiorari to question the admission of the Bane deposition is obvious. After the denial of the 1[st] motion, the plain remedy available to the petitioner was to move for a reconsideration to assert and even clarify its position on the admission of the Bane deposition. The petitioner could introduce[60] anew the Bane deposition and include this as evidence in its formal offer[61] – as the petitioner presumably did in Civil Case No. 0130.

Thus, at that point, the case was not yet ripe for the filing of a petition for certiorari, and the denial of the 1st motion could not have been the reckoning point for the period of filing such a petition.

II. The Sandiganbayan's ruling on the finality
of its 1998 resolution was legally erroneous but
did not constitute grave abuse of discretion

In light of the above discussions and conclusions, the Sandiganbayan undoubtedly erred on a question of law in its ruling, but this legal error did not necessarily amount to a grave abuse of discretion in the absence of a clear showing that its action was a capricious and whimsical exercise of judgment affecting its exercise of jurisdiction.[62] Without this showing, the Sandiganbayan's erroneous legal conclusion was only an error of judgment, or, at best, an abuse of discretion but not a grave one. For this reason alone, the petition should be dismissed.

Despite this conclusion, however, we opt not to immediately dismiss the petition in light of the unique circumstances of this case where the petitioner cannot entirely be faulted for not availing of the remedy at the

opportune time, and where the case, by its nature, is undoubtedly endowed with public interest and has become a matter of public concern.[63] In other words, we opt to resolve the petition on the merits to lay the issues raised to rest and to avoid their recurrence in the course of completely resolving the merits of Civil Case No. 0009.

Although the word "rested" nowhere appears in the Rules of Court, ordinary court procedure has inferred it from an overview of trial sequence under Section 5, Rule 30 (which capsulizes the order of presentation of a party's evidence during trial), read in relation to Rule 18 on Pre-Trial,[64] both of the Rules of Court. Under Section 5, Rule 30, after a party has adduced his direct evidence in the course of discharging the burden of proof,[65] he is considered to have rested his case, and is thereafter allowed to offer rebutting evidence only.[66] Whether a party has rested his case in some measure depends on his manifestation in court on whether he has concluded his presentation of evidence.[67]

In its second and third motions, respectively, the petitioner expressly admitted that "due to oversight, [the petitioner] closed and rested its case";[68] and that it "had terminated the presentation of its evidence in x x x Civil Case No. 0009."[69] In the face of these categorical judicial admissions,[70] the petitioner cannot suddenly make an about-face and insist on the introduction of evidence out of the usual order. Contrary to the petitioner's assertion, the resting of its case could not have been conditioned on the admission of the evidence it formally offered. To begin with, the Bane deposition, which is the lone piece of evidence subject of this present petition, was not among the pieces of evidence included in its formal offer of evidence and thus could not have been admitted or rejected by the trial court.

The Court observes with interest that it was only in this present petition for certiorari that the petitioner had firmly denied having rested its case.[71] Before then, the petitioner never found it appropriate to question on certiorari the Sandiganbayan's denial of its 2[nd] motion which prayed, inter alia, for the reopening of the case. This is a fatal defect in the petitioner's case.

Although the denial of the petitioner's first motion did not necessitate an immediate recourse to the corrective writ of certiorari, the denial of the 2[nd] motion dictated a different course of action. The petitioner's non-observance of the proper procedure for the admission of the Bane deposition, while seemingly innocuous, carried fatal implications for its case. Having been rebuffed on its first attempt to have the Bane deposition adopted in Civil Case No. 0009, and without seeking reconsideration of the denial, the petitioner presented its other pieces of evidence and eventually rested its case. This time, the petitioner forgot about the Bane deposition and so failed to include that piece of evidence in its formal offer of evidence.

More than two years later, the petitioner again tried to squeeze in the Bane deposition into its case. In resolving the petitioner's motion for reconsideration of the Sandiganbayan's 2000 resolution, the Sandiganbayan held that the Bane deposition has "become part and parcel" of Civil Case No. 0009. This pronouncement has obscured the real status of the Bane deposition as evidence (considering that, earlier, the Sandiganbayan already denied the petitioner's attempt to adopt the Bane deposition as evidence in Civil Case No. 0009 for the deponent cannot be cross-examined in court). Nevertheless, the Sandiganbayan ultimately denied the petitioner's motion to reopen the case. Having judicially admitted the resting of its case, the petitioner should have already questioned the denial of its 2nd motion by way of certiorari, since the denial of its attempt to reopen the case effectively foreclosed all avenues available to it for the consideration of the Bane deposition. Instead of doing so, however, the petitioner allowed the 60-day reglementary period, under Section 4, Rule 65 of the Rules of Court, to lapse, and proceeded to file its 3rd motion.

Significantly, the petitioner changed its legal position in its 3[rd] motion by denying having rested its case and insisting on the introduction of the Bane deposition. Rebuffed once more, the petitioner filed the present petition,

inviting our attention to the Sandiganbayan's resolutions,[72] which allegedly gave it "mixed signals."[73] By pointing to these resolutions, ironically, even the petitioner impliedly recognized that they were then already ripe for review on certiorari. What the petitioner should have realized was that its 2[nd] motion unequivocally aimed to reopen the case for the introduction of further evidence consisting of the Bane deposition. Having been ultimately denied by the court, the petitioner could not have been prevented from taking the proper remedy notwithstanding any perceived ambiguity in the resolutions.

On the other end, though, there was nothing intrinsically objectionable in the petitioner's motion to reopen its case before the court ruled on its formal offer of evidence. The Rules of Court does not prohibit a party from requesting the court to allow it to present additional evidence even after it has rested its case. Any such opportunity, however, for the ultimate purpose of the admission of additional evidence is already addressed to the sound discretion of the court. It is from the prism of the exercise of this discretion that the Sandiganbayan's refusal to reopen the case (for the purpose of introducing, "marking and offering" additional evidence) should be viewed. We can declare this Sandiganbayan action invalid if it had acted with grave abuse of discretion.

III. The Sandiganbayan gravely abused its discretion in ultimately refusing to reopen the case for the purpose of introducing and admitting in evidence the Bane deposition

The basis for a motion to reopen a case to introduce further evidence is Section 5, Rule 30 of the Rules of Court, which reads:

> Sec. 5. Order of trial. – Subject to the provisions of section 2 of Rule 31, and unless the court for special reasons otherwise directs, the trial shall be limited to the issues stated in the pre-trial order and shall proceed as follows:
>
> x x x x
>
> (f) The parties may then respectively adduce rebutting evidence only, unless the court, for good reasons and in the furtherance of justice, permits them to adduce evidence upon their original case[.] [emphases ours]

Under this rule, a party who has the burden of proof must introduce, at the first instance, all the evidence he relies upon[74] and such evidence cannot be given piecemeal.[75] The obvious rationale of the requirement is to avoid injurious surprises to the other party and the consequent delay in the administration of justice.[76]

A party's declaration of the completion of the presentation of his evidence prevents him from introducing further evidence;[77] but where the evidence is rebuttal in character, whose necessity, for instance, arose from the shifting of the burden of evidence from one party to the other;[78] or where the evidence sought to be presented is in the nature of newly discovered evidence,[79] the party's right to introduce further evidence must be recognized. Otherwise, the aggrieved party may avail of the remedy of certiorari.

Largely, the exercise of the court's discretion[80] under the exception of Section 5(f), Rule 30 of the Rules of Court depends on the attendant facts – i.e., on whether the evidence would qualify as a "good reason" and be in furtherance of "the interest of justice." For a reviewing court to properly interfere with the lower court's exercise of discretion, the petitioner must show that the lower court's action was attended by grave abuse of discretion. Settled jurisprudence has defined this term as the capricious and whimsical exercise of judgment, equivalent to lack of jurisdiction; or, the exercise of power in an arbitrary manner by reason of passion, prejudice, or personal hostility, so patent or so gross as to amount to an evasion of a positive duty, to a virtual refusal to perform the mandated duty, or to act at all in contemplation of the law.[81] Grave abuse of discretion goes beyond the bare

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and unsupported imputation of caprice, whimsicality or arbitrariness, and beyond allegations that merely constitute errors of judgment[82] or mere abuse of discretion.[83]

In Lopez v. Liboro,[84] we had occasion to make the following pronouncement:

> After the parties have produced their respective direct proofs, they are allowed to offer rebutting evidence only, but, it has been held, the court, for good reasons, in the furtherance of justice, may permit them to offer evidence upon their original case, and its ruling will not be disturbed in the appellate court where no abuse of discretion appears. So, generally, 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. The omission to present evidence on the testator's knowledge of Spanish had not been deliberate. It was due to a misapprehension or oversight. (citations omitted; emphases ours)

Likewise, in Director of Lands v. Roman Archbishop of Manila,[85] we ruled:

> The strict rule is that the plaintiff must try his case out when he commences. Nevertheless, a relaxation of the rule is permitted in the sound discretion of the court. “The proper rule for the exercise of this discretion,” it has been said by an eminent author, “is, that material testimony should not be excluded because offered by the plaintiff after the defendant has rested, although not in rebuttal, unless it has been kept back by a trick, and for the purpose of deceiving the defendant and affecting his case injuriously.”
>
> These principles find their echo in Philippine remedial law. While the general rule is rightly recognized, the Code of Civil Procedure authorizes the judge “for special reasons,” to change the order of the trial, and "for good reason, in the furtherance of justice," to permit the parties “to offer evidence upon their original case.” These exceptions are made stronger when one considers the character of registration proceedings and the fact that where so many parties are involved, and action is taken quickly and abruptly, conformity with precise legal rules should not always be expected. Even at the risk of violating legal formulæ, an opportunity should be given to parties to submit additional corroborative evidence in support of their claims of title, if the ends of justice so require. (emphases ours)

In his commentaries, Chief Justice Moran had this to say:

> However, the court for good reasons, may, in the furtherance of justice, permit the parties to offer evidence upon their original case, and its ruling will not be disturbed where no abuse of discretion appears, Generally, additional evidence is allowed when x x x; but it may be properly disallowed where it was withheld deliberately and without justification.[86]

The weight of the exception is also recognized in foreign jurisprudence.[87]

Under these guidelines, we hold that the Sandiganbayan gravely abused its discretion in refusing to reopen the case. Instead of squarely ruling on the petitioner’s 2[nd] motion to avoid any uncertainty on the evidentiary status of the Bane deposition, the Sandiganbayan’s action actually left the petitioner’s concern in limbo by considering the petitioner’s motion “redundant.” This is tantamount to a refusal to undertake a positive duty as mandated by the circumstances and is equivalent to an act outside the contemplation of law.

It has not escaped our notice that at the time the petitioner moved to re-open its case, the respondents had not yet even presented their evidence in chief. The respondents, therefore, would not have been prejudiced by allowing the petitioner’s introduction of the Bane deposition, which was concededly omitted “through oversight.”[88] The higher interest of substantial justice, of course, is another consideration that cannot be taken lightly.[89]

In light of these circumstances, the Sandiganbayan should not have perfunctorily applied Section 5, Rule 30 of the Rules of Court on the petitioner’s request to reopen the case for the submission of the Bane deposition.

On the basis of this conclusion, a remand of this case should follow as a matter of course. The state of the parties' submissions and the delay that has already attended this aspect of Civil Case No. 0009, however, dictate against this obvious course of action. At this point, the parties have more than extensively argued for or against the admission of the Bane deposition. Civil Case No. 0009 is a 25-year old sequestration case that is now crying out for complete resolution. Admissibility, too, is an issue that would have again been raised on remand and would surely stare us in the face after remand.[90] We are thus left with no choice but to resolve the issue of admissibility of the Bane deposition here and now.

IV. The admissibility of the Bane deposition

IV (a). The consolidation of Civil Case No. 0009 and Civil Case No. 0130 did not dispense with the usual requisites of admissibility

In support of its 3[rd] motion, the petitioner argues that the Bane deposition can be admitted in evidence without observing the provisions of Section 47, Rule 130 of the Rules of Court.[91] The petitioner claims that in light of the prior consolidation of Civil Case No. 0009 and Civil Case No. 0130, among others,[92] the "former case or proceeding" that Section 47, Rule 130 speaks of no longer exists.

Rule 31 of the old Rules of Court[93] – the rule in effect at the time Civil Case Nos. 0009 and 0130 were consolidated – provided that:

> Rule 31
> Consolidation or Severance
>
> Section 1. Consolidation. – When actions involving a common question of law or fact are pending before the court, it may order a joint hearing or trial of any or all the matters in issue in the actions; it may order all the actions consolidated; and it may make such orders concerning proceedings therein as may tend to avoid unnecessary costs or delay.[94] (emphases ours)

Consolidation is a procedural device granted to the court as an aid in deciding how cases in its docket are to be tried so that the business of the court may be dispatched expeditiously and with economy while providing justice to the parties. To promote this end, the rule permits the consolidation and a single trial of several cases in the court's docket, or the consolidation of issues within those cases.[95]

A reading of Rule 31 of the Rules of Court easily lends itself to two observations. First, Rule 31 is completely silent on the effect/s of consolidation on the cases consolidated; on the parties and the causes of action involved; and on the evidence presented in the consolidated cases. Second, while Rule 31 gives the court the discretion either to order a joint hearing or trial, or to order the actions consolidated, jurisprudence will show that the term "consolidation" is used generically and even synonymously with joint hearing or trial of several causes.[96] In fact, the title "consolidation" of Rule 31 covers all the different senses of consolidation, as discussed below.

These observations are not without practical reason. Considering that consolidation is basically a function given to the court, the latter is in the best position to determine for itself (given the nature of the cases, the complexity of the issues involved, the parties affected, and the court's capability and resources vis-à-vis all the official business pending before it, among other things) what "consolidation" will bring, bearing in mind the rights of the parties appearing before it.

To disregard the kind of consolidation effected by the Sandiganbayan on the simple and convenient premise that the deposition-taking took place after the Sandiganbayan ordered the consolidation is to beg the question. It is precisely the silence of our Rules of Procedure and the dearth of applicable case law on the effect of "consolidation" that strongly compel this Court to determine the kind of "consolidation" effected to directly

resolve the very issue of admissibility in this case.

In the context of legal procedure, the term “consolidation” is used in three different senses:[97]

(1)

Where all except one of several actions are stayed until one is tried, in which case the judgment in the one trial is conclusive as to the others. This is not actually consolidation but is referred to as such. (quasi-consolidation)[98]

(2)

Where several actions are combined into one, lose their separate identity, and become a single action in which a single judgment is rendered. This is illustrated by a situation where several actions are pending between the same parties stating claims which might have been set out originally in one complaint. (actual consolidation)[99]

(3)

Where several actions are ordered to be tried together but each retains its separate character and requires the entry of a separate judgment. This type of consolidation does not merge the suits into a single action, or cause the parties to one action to be parties to the other. (consolidation for trial)[100]

Considering that the Sandiganbayan’s order[101] to consolidate several incident cases does not at all provide a hint on the extent of the court’s exercise of its discretion as to the effects of the consolidation it ordered – in view of the function of this procedural device to principally aid the court itself in dealing with its official business – we are compelled to look deeper into the voluminous records of the proceedings conducted below. We note that there is nothing that would even suggest that the Sandiganbayan in fact intended a merger of causes of action, parties and evidence.[102] To be sure, there would have been no need for a motion to adopt (which did not remain unopposed) the testimonies in the incident cases had a merger actually resulted from the order of consolidation, for in that case, the Sandiganbayan can already take judicial notice of the same.

Significantly, even the petitioner itself viewed consolidation, at most, to be merely a consolidation for trial.[103] Accordingly, despite the consolidation in 1993, the petitioner acceded to the Sandiganbayan’s 1998 Resolution (which denied the petitioner’s 1[st] Motion on the ground that the witnesses, whose testimony in the incident cases is sought to be adopted, “are not available for cross-examination in” the Sandiganbayan) by presenting these other witnesses again in the main case, so that the respondents can cross-examine them.

These considerations run counter to the conclusion that the Sandiganbayan’s order of consolidation had actually resulted in the complete merger of the incident cases with the main case, in the sense of actual consolidation, and that the parties in these consolidated cases had (at least constructively) been aware of and had allowed actual consolidation without objection.[104]

Considering, too, that the consolidated actions were originally independent of one another and the fact that in the present case the party respondents to Civil Case No. 0009 (an action for reconveyance, accounting, restitution and damages) are not parties to Civil Case No. 0130 (a special civil action filed by an ETPI stockholder involving a corporate squabble within ETPI), the conclusion that the Sandiganbayan in fact intended an actual consolidation and, together with the parties affected,[105] acted towards that end - where the actions become fused and unidentifiable from one another and where the evidence appreciated in one action is also appreciated in another action – must find support in the proceedings held below. This is particularly true in a case with the magnitude and complexity of the present case. Otherwise, to impose upon the respondents the effects of an actual consolidation (which find no clear support in the provisions of the Rules of Court, jurisprudence,[106] and even in the proceedings before the Sandiganbayan itself and despite the aforementioned considerations) results in an

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outright deprivation of the petitioner's right to due process. We reach this conclusion especially where the evidence sought to be admitted is not simply a testimony taken in one of the several cases, but a deposition upon oral examination taken in another jurisdiction and whose admission is governed by specific provisions on our rules on evidence.

We stress on this point, too, that while the Sandiganbayan ordered the consolidation in 1993 (that is, before the deposition was taken), neither does the Pre-Trial Order[107] issued by the Sandiganbayan in 1997 in Civil Case No. 0009 contain any reference, formal or substantive, to Civil Case No. 0130.[108] Interestingly, in its Pre-Trial Brief dated August 30, 1996,[109] the petitioner even made a representation to present Bane as one of its witnesses.

IV (b). Use of deposition under Section 4,
Rule 23 and as a former testimony under
Section 47, Rule 130

Since the present consolidation did not affect Civil Case No. 0130 as an original, albeit incidental, case, the admissibility of the Bane deposition cannot avoid being measured against the requirements of Section 47, Rule 130 of the Rules of Court – the rule on the admissibility of testimonies or deposition taken in a different proceeding. In this regard, the petitioner argues that Section 4, Rule 23 of the Rules of Court (then Rule 24)[110] must, at any rate, prevail over Section 47, Rule 130[111] of the same Rules.

At the outset, we note that when the petitioner's motion to adopt the testimonies taken in the incident cases drew individual oppositions from the respondents, the petitioner represented to the Sandiganbayan its willingness to comply with the provisions of Section 47, Rule 130 of the Rules of Court,[112] and, in fact, again presented some of the witnesses. The petitioner's about-face two years thereafter even contributed to the Sandiganbayan's own inconsistency on how to treat the Bane deposition, in particular, as evidence.

Section 4, Rule 23 of the Rules of Court on "Deposition Pending Action" (deposition de bene esse) provides for the circumstances when depositions may be used in the trial, or at the hearing of a motion or an interlocutory proceeding.

> SEC. 4. Use of depositions. — At the trial or upon the hearing of a motion or an interlocutory proceeding, any part or all of a deposition, so far as admissible under the rules of evidence, may be used against any party who was present or represented at the taking of the deposition or who had due notice thereof, in accordance with any one of the following provisions:
>
> x x x x
>
> (c) The deposition of a witness, whether or not a party, may be used by any party for any purpose if the court finds: (1) that the witness is dead; or (2) that the witness resides at a distance more than one hundred (100) kilometers from the place of trial or hearing, or is out of the Philippines, unless it appears that his absence was procured by the party offering the deposition; or (3) that the witness is unable to attend or testify because of age, sickness, infirmity, or imprisonment; or (4) that the party offering the deposition has been unable to procure the attendance of the witness by subpoena; or (5) upon application and notice, that such exceptional circumstances exist as to make it desirable, in the interest of justice and with due regard to the importance of presenting the testimony of witnesses orally in open court, to allow the deposition to be used[.] [emphasis ours]

On the other hand, Section 47, Rule 130 of the Rules of Court provides:

> SEC. 47. Testimony or deposition at a former proceeding. – The testimony or deposition of a witness deceased or unable to testify, given in a former case or proceeding, judicial or administrative, involving the same parties and subject matter, may be given in evidence against the adverse party who had the opportunity to

> cross-examine him.

A plain reading of Rule 23 of the Rules of Court readily rejects the petitioner's position that the Bane deposition can be admitted into evidence without observing the requirements of Section 47, Rule 130 of the Rules of Court.

Before a party can make use of the deposition taken at the trial of a pending action, Section 4, Rule 23 of the Rules of Court does not only require due observance of its sub-paragraphs (a) to (d); it also requires, as a condition for admissibility, compliance with "the rules on evidence." Thus, even Section 4, Rule 23 of the Rules of Court makes an implied reference to Section 47, Rule 130 of the Rules of Court before the deposition may be used in evidence. By reading Rule 23 in isolation, the petitioner failed to recognize that the principle conceding admissibility to a deposition under Rule 23 should be consistent with the rules on evidence under Section 47, Rule 130.[113] In determining the admissibility of the Bane deposition, therefore, reliance cannot be given on one provision to the exclusion of the other; both provisions must be considered. This is particularly true in this case where the evidence in the prior proceeding does not simply refer to a witness' testimony in open court but to a deposition taken under another and farther jurisdiction.

A common thread that runs from Section 4, Rule 23 of the Rules of Court and Section 47, Rule 130 of the same Rules is their mutual reference to depositions.

A deposition is chiefly a mode of discovery whose primary function is to supplement the pleadings for the purpose of disclosing the real points of dispute between the parties and affording an adequate factual basis during the preparation for trial.[114] Since depositions are principally made available to the parties as a means of informing themselves of all the relevant facts, depositions are not meant as substitute for the actual testimony in open court of a party or witness. Generally, the deponent must be presented for oral examination in open court at the trial or hearing. This is a requirement of the rules on evidence under Section 1, Rule 132 of the Rules of Court.[115]

> Examination to be done in open court. — The examination of witnesses presented in a trial or hearing shall be done in open court, and under oath or affirmation. Unless the witness is incapacitated to speak, or the question calls for a different mode of answer, the answers of the witness shall be given orally.

Indeed, any deposition offered to prove the facts set forth therein, in lieu of the actual oral testimony of the deponent in open court, may be opposed by the adverse party and excluded under the hearsay rule – i.e., that the adverse party had or has no opportunity to cross-examine the deponent at the time that his testimony is offered. That opportunity for cross-examination was afforded during the taking of the deposition alone is no argument, as the opportunity for cross-examination must normally be accorded a party at the time that the testimonial evidence is actually presented against him during the trial or hearing of a case.[116] However, under certain conditions and for certain limited purposes laid down in Section 4, Rule 23 of the Rules of Court, the deposition may be used without the deponent being actually called to the witness stand.[117]

Section 47, Rule 130 of the Rules of Court is an entirely different provision. While a former testimony or deposition appears under the Exceptions to the Hearsay Rule, the classification of former testimony or deposition as an admissible hearsay is not universally conceded.[118] A fundamental characteristic of hearsay evidence is the adverse party's lack of opportunity to cross-examine the out-of-court declarant. However, Section 47, Rule 130 explicitly requires, inter alia, for the admissibility of a former testimony or deposition that the adverse party must have had an opportunity to cross-examine the witness or the deponent in the prior proceeding.

This opportunity to cross-examine though is not the ordinary cross-examination[119] afforded an adverse party in usual trials regarding "matters stated in the direct examination or connected therewith." Section 47, Rule 130 of the Rules of Court contemplates a different kind of cross-examination, whether actual or a mere opportunity,

whose adequacy depends on the requisite identity of issues in the former case or proceeding and in the present case where the former testimony or deposition is sought to be introduced.

Section 47, Rule 130 requires that the issues involved in both cases must, at least, be substantially the same; otherwise, there is no basis in saying that the former statement was - or would have been - sufficiently tested by cross-examination or by an opportunity to do so.[120] (The requirement of similarity though does not mean that all the issues in the two proceedings should be the same.[121] Although some issues may not be the same in the two actions, the admissibility of a former testimony on an issue which is similar in both actions cannot be questioned.[122])

These considerations, among others, make Section 47, Rule 130 a distinct rule on evidence and therefore should not be confused with the general provisions on deposition under Rule 23 of the Rules of Court. In other words, even if the petitioner complies with Rule 23 of the Rules of Court on the use of depositions, the observance of Section 47, Rule 130 of the Rules of Court cannot simply be avoided or disregarded.

Undisputably, the Sandiganbayan relied on the Bane deposition, taken in Civil Case No. 0130, for purposes of this very same case. Thus, what the petitioner established and what the Sandiganbayan found, for purposes of using the Bane deposition, refer only to the circumstances laid down under Section 4(c), Rule 23 of the Rules of Court, not necessarily to those of Section 47, Rule 130 of the Rules of Court, as a distinct rule on evidence that imposes further requirements in the use of depositions in a different case or proceeding. In other words, the prior use of the deposition under Section 4(c), Rule 23 cannot be taken as compliance with Section 47, Rule 130 which considers the same deposition as hearsay, unless the requisites for its admission under this rule are observed. The aching question is whether the petitioner complied with the latter rule.

Section 47, Rule 130 of the Rules of Court lays down the following requisites for the admission of a testimony or deposition given at a former case or proceeding.

1. The testimony or deposition of a witness deceased or otherwise unable to testify;
2. The testimony was given in a former case or proceeding, judicial or administrative;
3. Involving the same parties;
4. Relating to the same matter;
5. The adverse party having had the opportunity to cross-examine him.[123]

The reasons for the admissibility of testimony or deposition taken at a former trial or proceeding are the necessity for the testimony and its trustworthiness.[124] However, before the former testimony or deposition can be introduced in evidence, the proponent must first lay the proper predicate therefor,[125] i.e., the party must establish the basis for the admission of the Bane deposition in the realm of admissible evidence. This basis is the prior issue that we must now examine and resolve.

IV (c). Unavailability of witness

For the admission of a former testimony or deposition, Section 47, Rule 130 of the Rules of Court simply requires, inter alia, that the witness or deponent be “deceased or unable to testify.” On the other hand, in using a deposition that was taken during the pendency of an action, Section 4, Rule 23 of the Rules of Court provides several grounds that will justify dispensing with the actual testimony of the deponent in open court and specifies, inter alia, the circumstances of the deponent’s inability to attend or testify, as follows:

> (3) that the witness is unable to attend or testify because of age, sickness, infirmity, or imprisonment[.] [emphases ours][126]

The phrase “unable to testify” appearing in both Rule 23 and Rule 130 of the Rules of Court refers to a physical

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inability to appear at the witness stand and to give a testimony.[127] Hence notwithstanding the deletion of the phrase “out of the Philippines,” which previously appeared in Section 47, Rule 130 of the Rules of Court, absence from jurisdiction[128] - the petitioner’s excuse for the non-presentation of Bane in open court - may still constitute inability to testify under the same rule. This is not to say, however, that resort to deposition on this instance of unavailability will always be upheld. Where the deposition is taken not for discovery purposes, but to accommodate the deponent, then the deposition should be rejected in evidence.[129]

Although the testimony of a witness has been given in the course of a former proceeding between the parties to a case on trial, this testimony alone is not a ground for its admission in evidence. The witness himself, if available, must be produced in court as if he were testifying de novo since his testimony given at the former trial is mere hearsay.[130] The deposition of a witness, otherwise available, is also inadmissible for the same reason.

Indeed, the Sandiganbayan’s reliance on the Bane deposition in the other case (Civil Case No. 0130) is an argument in favor of the requisite unavailability of the witness. For purposes of the present case (Civil Case No. 0009), however, the Sandiganbayan would have no basis to presume, and neither can or should we, that the previous condition, which previously allowed the use of the deposition, remains and would thereby justify the use of the same deposition in another case or proceeding, even if the other case or proceeding is before the same court. Since the basis for the admission of the Bane deposition, in principle, being necessity,[131] the burden of establishing its existence rests on the party who seeks the admission of the evidence. This burden cannot be supplanted by assuming the continuity of the previous condition or conditions in light of the general rule against the non-presentation of the deponent in court.[132]

IV (d). The requirement of opportunity of
the adverse party to cross-examine; identity
of parties; and identity of subject matter

The function of cross-examination is to test the truthfulness of the statements of a witness made on direct examination.[133] The opportunity of cross-examination has been regarded as an essential safeguard of the accuracy and completeness of a testimony. In civil cases, the right of cross-examination is absolute, and is not a mere privilege of the party against whom a witness may be called.[134] This right is available, of course, at the taking of depositions, as well as on the examination of witnesses at the trial. The principal justification for the general exclusion of hearsay statements and for the admission, as an exception to the hearsay rule, of reported testimony taken at a former hearing where the present adversary was afforded the opportunity to cross-examine, is based on the premise that the opportunity of cross-examination is an essential safeguard[135] against falsehoods and frauds.

In resolving the question of whether the requirement of opportunity to cross-examine has been satisfied, we have to consider first the required identity of parties as the present opponent to the admission of the Bane deposition to whom the opportunity to cross-examine the deponent is imputed may not after all be the same “adverse party” who actually had such opportunity.

To render the testimony of a witness admissible at a later trial or action, the parties to the first proceeding must be the same as the parties to the later proceeding. Physical identity, however, is not required; substantial identity[136] or identity of interests[137] suffices, as where the subsequent proceeding is between persons who represent the parties to the prior proceeding by privity in law, in blood, or in estate. The term “privity” denotes mutual or successive relationships to the same rights of property.[138]

In the present case, the petitioner failed to impute, much less establish, the identity of interest or privity between the then opponent, Africa, and the present opponents, the respondents. While Africa is the son of the late

respondent Jose Africa, at most, the deposition should be admissible only against him as an ETPI stockholder who filed the certiorari petition docketed as Civil Case No. 0130 (and, unavoidably, as successor-in-interest of the late respondent Jose Africa). While Africa and the respondents are all ETPI stockholders, this commonality does not establish at all any privity between them for purposes of binding the latter to the acts or omissions of the former respecting the cross-examination of the deponent. The sequestration of their shares does not result in the integration of their rights and obligations as stockholders which remain distinct and personal to them, vis-a-vis other stockholders.[139]

IV (d1). The respondents' notice of taking of
Bane deposition is insufficient evidence of waiver

The petitioner staunchly asserts that the respondents have waived their right to cross-examine the deponent for their failure to appear at the deposition-taking despite individual notices previously sent to them.[140]

In its first Notice to Take Oral Deposition of Mr. Maurice V. Bane dated August 30, 1996,[141] the petitioner originally intended to depose Mr. Bane on September 25-26 1996. Because it failed to specify in the notice the purpose for taking Mr. Bane's deposition, the petitioner sent a Second Amended Notice to Take Deposition of Mr. Maurice V. Bane Upon Oral Examination where it likewise moved the scheduled deposition-taking to October 23-26, 1996.

The records show that Africa moved several times for protective orders against the intended deposition of Maurice Bane.[142] On the other hand, among the respondents, only respondent Enrile appears to have filed an Opposition[143] to the petitioner's first notice, where he squarely raised the issue of reasonability of the petitioner's nineteen-day first notice. While the Sandiganbayan denied Africa's motion for protective orders,[144] it strikes us that no ruling was ever handed down on respondent Enrile's Opposition.[145]

It must be emphasized that even under Rule 23, the admission of the deposition upon oral examination is not simply based on the fact of prior notice on the individual sought to be bound thereby. In Northwest Airlines v. Cruz, [146] we ruled that -

> The provision explicitly vesting in the court the power to order that the deposition shall not be taken connotes the authority to exercise discretion on the matter. However, the discretion conferred by law is not unlimited. It must be exercised, not arbitrarily or oppressively, but in a reasonable manner and in consonance with the spirit of he law. The courts should always see to it that the safeguards for the protection of the parties and deponents are firmly maintained. As aptly stated by Chief Justice Moran:
>
> . . . . (T)his provision affords the adverse party, as well as the deponent, sufficient protection against abuses that may be committed by a party in the exercise of his unlimited right to discovery. As a writer said: "Any discovery involves a prying into another person's affairs — prying that is quite justified if it is to be a legitimate aid to litigation, but not justified if it is not to be such an aid." For this reason, courts are given ample powers to forbid discovery which is intended not as an aid to litigation, but merely to annoy, embarrass or oppress either the deponent or the adverse party, or both. (emphasis ours)

In the present case, not only did the Sandiganbayan fail to rule on respondent Enrile's Opposition (which is equally applicable to his co-respondents), it also failed to provide even the bare minimum "safeguards for the protection of," (more so) non-parties,[147] and to ensure that these safeguards are firmly maintained. Instead, the Sandiganbayan simply bought the petitioner's assertion (that the taking of Bane deposition is a matter of right) and treated the lingering concerns – e.g., reasonability of the notice; and the non-party status of the respondents in Civil Case No. 0130 - at whose incident (docketed as G.R. No. 107789) the Bane deposition was taken - rather perfunctorily to the prejudice of the respondents.

In conjunction with the order of consolidation, the petitioner's reliance on the prior notice on the respondents, as adequate opportunity for cross-examination, cannot override the non-party status of the respondents in Civil Case No. 0130 – the effect of consolidation being merely for trial. As non-parties, they cannot be bound by proceedings in that case. Specifically, they cannot be bound by the taking of the Bane deposition without the consequent impairment of their right of cross-examination.[148] Opportunity for cross-examination, too, even assuming its presence, cannot be singled out as basis for the admissibility of a former testimony or deposition since such admissibility is also anchored on the requisite identity of parties. To reiterate, although the Sandiganbayan considered the Bane deposition in resolving Civil Case No. 0130, its action was premised on Africa's status as a party in that case where the Bane deposition was taken.

Corollarily, the idea of privity also permeates Rule 23 of the Rules of Court through its Section 5 which provides:

> Effect of substitution of parties. — Substitution of parties does not affect the right to use depositions previously taken; and, when an action has been dismissed and another action involving the same subject is afterward brought between the same parties or their representatives or successors in interest, all depositions lawfully taken and duly filed in the former action may be used in the latter as if originally taken therefor. [italics and underscoring ours]

In light of these considerations, we reject the petitioner's claim that the respondents waived their right to cross-examination when they failed to attend the taking of the Bane deposition. Incidentally, the respondents' vigorous insistence on their right to cross-examine the deponent speaks loudly that they never intended any waiver of this right.

Interestingly, the petitioner's notice of the deposition-taking relied on Rule 23 of the Rules of Court. Section 15 of this rule reads:

> Deposition upon oral examination; notice; time and place. — A party desiring to take the deposition of any person upon oral examination shall give reasonable notice in writing to every other party to the action. The notice shall state the time and place for taking the deposition and the name and address of each person to be examined, if known, and if the name is not known, a general description sufficient to identify him or the particular class or group to which he belongs. On motion of any party upon whom the notice is served, the court may for cause shown enlarge or shorten the time.

Under this provision, we do not believe that the petitioner could reasonably expect that the individual notices it sent to the respondents would be sufficient to bind them to the conduct of the then opponent's (Africa's) cross-examination since, to begin with, they were not even parties to the action. Additionally, we observe that in the notice of the deposition taking, conspicuously absent was any indication sufficient to forewarn the notified persons that their inexcusable failure to appear at the deposition taking would amount to a waiver of their right of cross-examination, without prejudice to the right of the respondents to raise their objections at the appropriate time.[149] We would be treading on dangerous grounds indeed were we to hold that one not a party to an action, and neither in privity nor in substantial identity of interest with any of the parties in the same action, can be bound by the action or omission of the latter, by the mere expedient of a notice. Thus, we cannot simply deduce a resultant waiver from the respondents' mere failure to attend the deposition-taking despite notice sent by the petitioner.

Lastly, we see no reason why the Bane deposition could not have been taken earlier in Civil Case No. 0009 – the principal action where it was sought to be introduced – while Bane was still here in the Philippines. We note in this regard that the Philippines was no longer under the Marcos administration and had returned to normal democratic processes when Civil Case No. 0009 was filed. In fact, the petitioner's notice itself states that the "purpose of the deposition is for Mr. Maurice Bane to identify and testify on the facts set forth in his Affidavit,"

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which Mr. Bane had long executed in 1991 in Makati, Metro Manila.[150] Clearly, a deposition could then have been taken - without compromising the respondents' right to cross-examine a witness against them - considering that the principal purpose of the deposition is chiefly a mode of discovery. These, to our mind, are avoidable omissions that, when added to the deficient handling of the present matter, add up to the gross deficiencies of the petitioner in the handling of Civil Case No. 0009.

After failing to take Bane's deposition in 1991 and in view of the peculiar circumstances of this case, the least that the petitioner could have done was to move for the taking of the Bane deposition and proceed with the deposition immediately upon securing a favorable ruling thereon. On that occasion, where the respondents would have a chance to be heard, the respondents cannot avoid a resultant waiver of their right of cross-examination if they still fail to appear at the deposition-taking. Fundamental fairness dictates this course of action. It must be stressed that not only were the respondents non-parties to Civil Case No. 0130, they likewise have no interest in Africa's certiorari petition asserting his right as an ETPI stockholder.

Setting aside the petitioner's flip-flopping on its own representations,[151] this Court can only express dismay on why the petitioner had to let Bane leave the Philippines before taking his deposition despite having knowledge already of the substance of what he would testify on. Considering that the testimony of Bane is allegedly a "vital cog" in the petitioner's case against the respondents, the Court is left to wonder why the petitioner had to take the deposition in an incident case (instead of the main case) at a time when it became the technical right of the petitioner to do so.

V. The petitioner cannot rely on principle of judicial notice

The petitioner also claims that since the Bane deposition had already been previously introduced and admitted in Civil Case No. 0130, then the Sandiganbayan should have taken judicial notice of the Bane deposition as part of its evidence.

Judicial notice is the cognizance of certain facts that judges may properly take and act on without proof because these facts are already known to them.[152] Put differently, it is the assumption by a court of a fact without need of further traditional evidentiary support. The principle is based on convenience and expediency in securing and introducing evidence on matters which are not ordinarily capable of dispute and are not bona fide disputed.[153]

The foundation for judicial notice may be traced to the civil and canon law maxim, manifesta (or notoria) non indigent probatione.[154] The taking of judicial notice means that the court will dispense with the traditional form of presentation of evidence. In so doing, the court assumes that the matter is so notorious that it would not be disputed.

The concept of judicial notice is embodied in Rule 129 of the Revised Rules on Evidence. Rule 129 either requires the court to take judicial notice, inter alia, of "the official acts of the x x x judicial departments of the Philippines,"[155] or gives the court the discretion to take judicial notice of matters "ought to be known to judges because of their judicial functions."[156] On the other hand, a party-litigant may ask the court to take judicial notice of any matter and the court may allow the parties to be heard on the propriety of taking judicial notice of the matter involved.[157] In the present case, after the petitioner filed its Urgent Motion and/or Request for Judicial Notice, the respondents were also heard through their corresponding oppositions.

In adjudicating a case on trial, generally, courts are not authorized to take judicial notice of the contents of the records of other cases, even when such cases have been tried or are pending in the same court, and notwithstanding that both cases may have been tried or are actually pending before the same judge.[158] This rule though admits of exceptions.

As a matter of convenience to all the parties, a court may properly treat all or any part of the original record of a case filed in its archives as read into the record of a case pending before it, when, with the knowledge of, and absent an objection from, the adverse party, reference is made to it for that purpose, by name and number or in some other manner by which it is sufficiently designated; or when the original record of the former case or any part of it, is actually withdrawn from the archives at the court's direction, at the request or with the consent of the parties, and admitted as a part of the record of the case then pending.[159]

Courts must also take judicial notice of the records of another case or cases, where sufficient basis exists in the records of the case before it, warranting the dismissal of the latter case.[160]

The issue before us does not involve the applicability of the rule on mandatory taking of judicial notice; neither is the applicability of the rule on discretionary taking of judicial notice seriously pursued. Rather, the petitioner approaches the concept of judicial notice from a genealogical perspective of treating whatever evidence offered in any of the "children" cases – Civil Case 0130 – as evidence in the "parent" case – Civil Case 0009 - or "of the whole family of cases."[161] To the petitioner, the supposed relationship of these cases warrants the taking of judicial notice.

We strongly disagree. First, the supporting cases[162] the petitioner cited are inapplicable either because these cases involve only a single proceeding or an exception to the rule, which proscribes the courts from taking judicial notice of the contents of the records of other cases.[163] Second, the petitioner's proposition is obviously obnoxious to a system of orderly procedure. The petitioner itself admits that the present case has generated a lot of cases, which, in all likelihood, involve issues of varying complexity. If we follow the logic of the petitioner's argument, we would be espousing judicial confusion by indiscriminately allowing the admission of evidence in one case, which was presumably found competent and relevant in another case, simply based on the supposed lineage of the cases. It is the duty of the petitioner, as a party-litigant, to properly lay before the court the evidence it relies upon in support of the relief it seeks, instead of imposing that same duty on the court. We invite the petitioner's attention to our prefatory pronouncement in Lopez v. Sandiganbayan:[164]

> Down the oft-trodden path in our judicial system, by common sense, tradition and the law, the Judge in trying a case sees only with judicial eyes as he ought to know nothing about the facts of the case, except those which have been adduced judicially in evidence. Thus, when the case is up for trial, the judicial head is empty as to facts involved and it is incumbent upon the litigants to the action to establish by evidence the facts upon which they rely. (emphasis ours)

We therefore refuse, in the strongest terms, to entertain the petitioner's argument that we should take judicial notice of the Bane deposition.

VI. Summation

To recapitulate, we hold that: (1) the Sandiganbayan's denial of the petitioner's 3[rd] motion – the Motion to Admit Supplemental Offer of Evidence (Re: Deposition of Maurice Bane) – was a legal error that did not amount to grave abuse of discretion; (2) the Sandiganbayan's refusal to reopen the case at the petitioner's instance was tainted with grave abuse of discretion; and (3) notwithstanding the grave abuse of discretion, the petition must ultimately fail as the Bane deposition is not admissible under the rules of evidence.[165]

VII. Refutation of Justice Carpio's
Last Minute Modified Dissent

At the last minute, Justice Carpio circulated a modified dissent, quoting the Bane deposition. His covering note states:

> I have revised my dissenting opinion to include the Bane deposition so that the Court and the public will understand what the Bane deposition is all about. (underlining added)

In light of this thrust, a discussion refuting the modified dissent is in order.

First: Contents of the Bane deposition not an Issue. The dissent perfectly identified what is at issue in this case – i.e., the admissibility of the Bane deposition. Admissibility is concerned with the competence and relevance[166] of the evidence, whose admission is sought. While the dissent quoted at length the Bane deposition, it may not be amiss to point out that the relevance of the Bane deposition (or, to adopt the dissent's characterization, whether "Maurice V. Bane is a vital witness") is not an issue here unless it can be established first that the Bane deposition is a competent evidence.

Second: Misrepresentation of Cited Authority. The dissent insists that "in Philippine Jurisprudence, the consolidation of cases merges the different actions into one and the rights of the parties are adjudicated in a single judgment," citing Vicente J. Francisco. In our discussion on consolidation, we footnoted the following in response to the dissent's position, which we will restate here for emphasis:

> In the 1966 edition of Vicente J. Francisco's Revised Rules of Court, Francisco wrote:
>
> The effect of consolidation of actions is to unite and merge all of the different actions consolidated into a single action, in the same manner as if the different causes of actions involved had originally been joined in a single action, and the order of consolidation, if made by a court of competent jurisdiction, is binding upon all the parties to the different actions until it is vacated or set aside. After the consolidation there can be no further proceedings in the separate actions, which are by virtue of the consolidation discontinued and superseded by a single action, which should be entitled in such manner as the court may direct, and all subsequent proceedings therein be conducted and the rights of the parties adjudicated in a single action (1 C.J.S., 113, pp. 1371-1372).
>
> At the very beginning of the discussion on consolidation of actions in the Corpus Juris Secundum, the following caveat appears:
>
> The term consolidation is used in three different senses. First, where several actions are combined into one and lose their separate identity and become a single action in which a single judgment is rendered; second, where all except one of several actions are stayed until one is tried, in which case the judgment in the one is conclusive as to the others; third, where several actions are ordered to be tried together but each retains its separate character and requires the entry of a separate judgment. The failure to distinguish between these methods of procedure, which are entirely distinct, the two latter, strictly speaking, not being consolidation, a fact which has not always been noted, has caused some confusion and conflict in the cases. (1 C.J.S., 107, pp. 1341-1342) (Emphasis added).
>
> In defining the term "consolidation of actions," Francisco provided a colatilla that the term "consolidation" is used in three different senses, citing 1 C.J.S. 1341 and 1 Am. Jur. 477 (Francisco, Revised Rules of Court, p. 348).

From the foregoing, it is clear that the dissent appears to have quoted Francisco's statement out of context. As it is, the issue of the effect of consolidation on evidence is at most an unsettled matter that requires the approach we did in the majority's discussion on consolidation.[167]

Third: Misappreciation of the Purpose of Consolidation. The dissent then turns to the purpose of consolidation – to "expeditiously settle the interwoven issues involved in the consolidated cases" and "the simplification of the proceedings." It argues that this can only be achieved if the repetition of the same evidence is dispensed with.

It is unfortunate that the dissent refuses to recognize the fact that since consolidation is primarily addressed to the court concerned to aid it in dispatching its official business, it would be in keeping with the orderly trial procedure

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if the court should have a say on what consolidation would actually bring[168] (especially where several cases are involved which have become relatively complex). In the present case, there is nothing in the proceedings below that would suggest that the Sandiganbayan or the parties themselves (the petitioner and the respondents) had in mind a consolidation beyond joint hearing or trial. Why should this Court – which is not a trial court – impose a purported effect that has no factual or legal grounds?

Fourth: The Due Process Consideration. The dissent argues that even if the consolidation only resulted in a joint hearing or trial, the "respondents are still bound by the Bane deposition considering that they were given notice of the deposition-taking." The issue here boils down to one of due process – the fundamental reason why a hearsay statement (not subjected to the rigor of cross-examination) is generally excluded in the realm of admissible evidence – especially when read in light of the general rule that depositions are not meant as substitute for the actual testimony, in open court, of a party or witness.

Respondent Enrile had a pending Opposition to the notice of deposition-taking (questioning the reasonableness thereof – an issue applicable to the rest of the respondents) which the Sandiganbayan failed to rule on. To make the Sandiganbayan's omission worse, the Sandiganbayan blindly relied on the petitioner's assertion that the deposition-taking was a matter of right and, thus, failed to address the consequences and/or issues that may arise from the apparently innocuous statement of the petitioner (that it intends to use the Bane deposition in Civil Case No. 0009, where only the respondents, and not Africa, are the parties).[169] There is simply the absence of "due" in due process.

Fifth: Misstatement of the Sandiganbayan's Action. The dissent repeatedly misstates that the Sandiganbayan "granted" the request for the deposition-taking. For emphasis, the Sandiganbayan did not "grant" the request since the petitioner staunchly asserted that the deposition-taking was a matter of right. No one can deny the complexity of the issues that these consolidated cases have reached. Considering the consolidation of cases of this nature, the most minimum of fairness demands upon the petitioner to move for the taking of the Bane deposition and for the Sandiganbayan to make a ruling thereon (including the opposition filed by respondent Enrile which equally applies to his co-respondents). The burgeoning omission and failures that have prevailed in this case cannot be cured by this Court without itself being guilty of violating the constitutional guarantee of due process.

Sixth: Issues Posed and Resolved Go Beyond Technicalities. The above conclusions, contrary to the petitioner's claim, are not only matters of technicality. Admittedly, rules of procedure involve technicality, to which we have applied the liberality that technical rules deserve. But the resolution of the issues raised goes beyond pure or mere technicalities as the preceding discussions show. They involve issues of due process and basic unfairness to the respondents, particularly to respondent Enrile, who is portrayed in the Bane deposition to be acting in behalf of the Marcoses so that these shares should be deemed to be those of the Marcoses. They involved, too, principles upon which our rules of procedure are founded and which we cannot disregard without flirting with the violation of guaranteed substantive rights and without risking the disorder that these rules have sought to avert in the course of their evolution.

In the Court En Banc deliberations of December 6, 2011, the Court failed to arrive at a conclusive decision because of a tie vote (7-7, with one Justice taking no part). The same vote resulted in the re-voting of December 13, 2011. In this light, the ponencia is deemed sustained.

WHEREFORE, premises considered, we DISMISS the petition for lack of merit. No costs.

SO ORDERED.

Corona, Peralta, Bersamin, Del Castillo, Perez, and Mendoza, JJ., concur.
Carpio, J., see dissenting opinion.
Velasco, Jr., J., join the opinion of J.A.T. Carpio with the qualification that the Bane desposition cannot be used against resp. Juan Ponce Enrile because of his opposition hereto.
Leonardo-De Castro, J., no part.
Abad, Villarama, Jr., Sereno, Reyes, and Perlas-Bernabe, JJ., joins the dissent of J. Carpio.

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[1] Under Rule 65 of the Rules of Court.

[2] Penned by Associate Justice Rodolfo G. Palattao, and concurred in by Associate Justices Narciso S. Nario and Nicodemo T. Ferrer; rollo, pp. 60-67.

[3] Fourth Division.

[4] Petitioner's Motion to Admit Supplemental Offer of Evidence and Comment/Opposition Ad Cautelam; rollo, pp. 370-371.

[5] See Republic v. Sandiganbayan, 334 Phil. 475 (1997).

[6] Petitioner's Reply; id. at 744-745.

[7] Entitled Victor Africa v. Presidential Commission on Good Government.

[8] See Republic of the Phils. v. Sandiganbayan, 450 Phil. 98, 104 (2003).

[9] Id. at 103.

[10] Id. at 104.

[11] Id. at 103.

[12] Id. at 104-105.

[13] Resolved by this Court on April 30, 2003.

[14] Republic of the Phils. v. Sandiganbayan, supra note 8.

[15] Rollo, p. 304. The other incident cases which were consolidated with the main case are as follows:

> 1. Civil Case No. 0043 (Polygon Investors and Managers, Inc. v. PCGG) – a complaint praying that judgment be rendered enjoining the PCGG, its commissioners, officers, employees, agents and/or representatives from enforcing and/or implementing a writ of sequestration.
>
> 2. Civil Case No. 0044 (Aerocom Investors and Managers, Inc. v. PCGG) – a complaint praying that the Writ of Sequestration dated June 15, 1988 and Mission Order No. MER-88-20 dated August 1, 1988 be declared null and void ab initio.
>
> 3. Civil Case No. 0045 (Africa v. PCGG) – an amended complaint praying that judgment be rendered restraining (a) defendant Eduardo M. Villanueva from representing himself and acting as Director, President and/or General Manager of ETPI and committing or continuing to exercise the power, authority and functions appertaining to such office; and (b) defendant PCGG from directly or indirectly interfering with the management of ETPI.

4. Civil Case No. 0047 (Africa v. Gutierrez, et al.) – a complaint praying that defendants be enjoined from acting as directors of ETPI.

5. Civil Case No. 0131 (Traders Royal Bank v. PCGG, Africa, et al.) – complaint praying that defendants be ordered to interplead and litigate their conflicting claims.

6. Civil Case No. 0139 (Far East Bank and Trust Company v. PCGG, Africa, et al.) – a complaint praying that defendants be directed to interplead and litigate their respective claims on the proceeds of the deposit accounts maintained with plaintiff and that judgment be accordingly rendered.

7. Civil Case No. 0143 (Standard Chartered Bank v. PCGG, Africa, Nieto, et al.) – a complaint praying that judgment be rendered requiring all the defendants to interplead among themselves and litigate to determine who are the legitimate signatories of OWNI in its accounts with the plaintiff.

8. Civil Case No. 0128 (Traders Royal Bank v. PCGG) – a complaint praying that defendants be directed to interplead and litigate their conflicting claims between them, and that judgment be rendered accordingly.

9. Civil Case No. 0106 (Domestic Satellite Philippines, Inc. v. PCGG and Asset Privatization Trust) – a petition praying that PCGG be ordered to withdraw its objection to the alleged settlement agreed upon between DOMSAT and APT.

10. Civil Case No. 0114 (PHILCOMSAT and POTC v. PCGG) – a complaint seeking to declare as null and void the writs of sequestration issued by PCGG over plaintiffs-corporations and to enjoin PCGG and its officers, agents, and nominees from interfering with the management and operations of the plaintiffs-corporations. (Records, Volume III, pp. 451-452; 841-843.)

[16] Resolution dated December 13, 1996; id. at 300.

[17] Ibid.

[18] Petitioner sent to the respondents a Notice to Take Oral Deposition of Mr. Maurice V. Bane dated August 30, 1996, pursuant to Section 1, Rule 24 of the Revised Rules of Court (Records, Volume XXXVI, pp. 11534-11535), which the Sandiganbayan "noted." Considering Victor Africa's manifestation, among others, that he was not available on the previously scheduled dates, on September 25, 1996, the petitioner filed and sent a Second Amended Notice to Take Deposition of Mr. Maurice V. Bane upon Oral Examination (Rollo, pp. 68-71). The Second Amended Notice reads:

The right to take deposition de bene esse is a precautionary privilege to prevent [the] loss of evidence in the event the attendance of the witness at the trial cannot be procured. Hence, Section 1, Rule 24 of the Revised Rules of Court, specifically grants the plaintiff the right to depose Mr. Maurice Bane without leave of court. x x x.

It should moreover be noted that Mr. Maurice Bane, who resides in England, has resigned from Cable and Wireless and is unable to travel to Manila to attend or testify before this Honorable Court. Section 4, Rule 24, allows Plaintiff to use Mr. Maurice V. Bane's proposed deposition in evidence insofar as the same may be admissible under the Rules of Evidence. (underscoring and boldfacing supplied)

[19] Rollo, pp. 292-297.

[20] Id. at 68-69. The records show that Maurice Bane executed the aforesaid affidavit dated January 1991 in Makati, Metro Manila, Philippines. Records, Volume III, pp. 683-688.

[21] Id. at 69.

[22] Id. at 299-321.

[23] Republic of the Phils. v. Sandiganbayan, supra note 8, at 109.

[24] Resolved by this Court on April 30, 2003.

[25] Sandiganbayan Third Division Pre-Trial Order dated March 17, 1997, p. 1; rollo, p. 576. Penned by Associate Justice Sabino R. de Leon, Jr., and concurred in by Associate Justices Cipriano A. del Rosario and Leonardo I. Cruz.

[26] Records, Volume XXXVI, p. 11405.

[27] Dated January 21, 1998; id. at 322-329. Originally, what the petitioner filed was a Manifestation that it was adopting the testimonies of specified witnesses, among others. However, on January 8, 1998, the Sandiganbayan required the petitioner "to file a corrected pleading in the form of a motion in lieu of the Manifestation." (Records, Volume XLIV, pp. 128-130, 175).

[28] Civil Case Nos. 0048, 0050 and 0146 were ordered consolidated with Civil Case No. 0009 by the Court in Africa v. PCGG, G.R. Nos. 83831, 85594, 85597, and 85621, January 9, 1992, 205 SCRA 38.

[29] Records, Volume XLIV, pp. 278-282 and 497-500; Volume XLV, pp. 3-6 and 22-26.

[30] Dated March 13, 1998; Rollo, pp. 593-597.

[31] Fourth Division.

[32] Penned by Associate Justice Sabino R. de Leon, Jr., and concurred in by Associate Justices Narciso S. Nario and Teresita J. Leonardo-de Castro (now a Member of this Court); rollo, pp. 331-338.

[33] Id. at 18.

[34] Id. at 339-346.

[35] Penned by Associate Justice Rodolfo G. Palattao, and concurred in by Associate Justices Narciso S. Nario and Nicodemo T. Ferrer; id. at 352-355.

[36] Id. at 777-778.

[37] Id. at 357-359.

[38] Id. at 360-368.

[39] The Sandiganbayan (Fourth Division) promulgated on April 1, 2003 a resolution denying the demurrers to evidence filed by the respondents; id. at 777-790.

[40] Supra note 2.

[41] Represented by the Office of the Solicitor General. While this case was pending, then Chief Presidential Legal Counsel Eduardo Antonio Nachura was appointed Solicitor General, formerly a Member of this Court.

[42] Rollo, p. 28, citing People v. MTC of Quezon City, 333 Phil. 500 (1996).

[43] Id. at 35-50.

[44] In his Manifestation, respondent Ferdinand R. Marcos, Jr. stated that he was adopting the Comment of respondent Nieto; id. at 856-857. On the other hand, respondent Juan Ponce Enrile and the substituted heirs of respondent Jose Africa merely reiterated the arguments advanced by respondent Nieto.

[45] Id. at 471.

[46] Section 4, Rule 65 of the Rules of Court reads:

When and where petition filed. – The petition shall be filed not later than sixty (60) days from notice of the judgment, order or resolution. In case a motion for reconsideration or new trial is timely filed, whether such motion is required or not, the sixty (60) day period shall be counted from notice of the denial of said motion.

[47] Respondent Nieto's Comment, citing GSIS v. CA, 334 Phil. 163 (1997); rollo, p. 490.

[48] Respondent Nieto's Comment, citing Vicente J. Francisco, The Revised Rules of Court in the Philippines, p. 338; id. at 489.

[49] Id. at 521-528.

[50] Petitioner's Reply (to Nieto's Comment), citing Regalado, Remedial Law Compendium, p. 582, 2001 ed.; id. at 522.

[51] Raymundo v. Isagon Vda. de Suarez, G.R. No. 149017, November 28, 2008, 572 SCRA 384.

[52] Investments, Inc. v. Court of Appeals, 231 Phil. 302 (1987), cited in Denso (Phils.), Inc. v. Intermediate Appellate Court, 232 Phil. 256 (1987).

[53] Rudecon Management Corp. v. Singson, 494 Phil. 581 (2005).

[54] Tomacruz-Lactao v. Espejo, 478 Phil. 755 (2004).

[55] Jose Y. Feria and Maria Concepcion Noche, 2 Civil Procedure Annotated, 2001 ed., pp. 151-152, citing Manila Electric Co. v. Artiaga and Green, 50 Phil. 144, 147 (1927). This proceeds from the court's inherent power to control its process and orders so as to make them conformable to law and justice. The only limitation is that the judge cannot act with grave abuse of discretion, or that no injustice results thereby (Bangko Silangan Development Bank v. Court of Appeals, 412 Phil. 755 [2001]).

[56] Rule 41, Section 1 of the Rules of Court reads:

> Subject of appeal. — An appeal may be taken from a judgment or final order that completely disposes of the case, or of a particular matter therein when declared by these Rules to be appealable. No appeal may be taken from:
>
> x x x x
>
> (c) An interlocutory order;
>
> x x x x

In all the above instances where the judgment or final order is not appealable, the aggrieved party may file an appropriate special civil action under Rule 65.

[57] Rollo, p. 31, citing Philgreen Trading Construction Corp. v. Court of Appeals, 338 Phil. 433 (1997).

[58] Indiana Aerospace University v. Commission on Higher Education, 408 Phil. 483 (2001).

[59] Africa v. Hon. Sandiganbayan, 350 Phil. 846 (1998).

[60] When a deposition is presented at trial and admitted by the court, it is competent evidence for the party in whose behalf it was taken, although it may not have been actually read when introduced in evidence. (Vicente J. Francisco, 2 The Revised Rules of Court in the Philippines, p. 127, 1966, citing Baron v. David, 51 Phil. 1 [1927].)

[61] Section 34, Rule 132 of the Rules of Court reads:

Offer of evidence. — The court shall consider no evidence which has not been formally offered. The purpose for which the evidence is offered must be specified.

[62] Leviste v. Court of Appeals, G.R. No. 189122, March 17, 2010, 615 SCRA 619, 633, citing Dueñas, Jr. v. House of Representatives Electoral Tribunal, G.R. No. 185401, July 21, 2009, 593 SCRA 316, 344.

[63] Republic of the Philippines v. Sandiganbayan, 453 Phil. 1059 (2003).

[64] Section 6, Rule 18 of the Rules of Court requires the parties to state in their respective Pre-Trial Briefs the following:

> (a) A statement of their willingness to enter into amicable settlement or alternative modes of dispute resolution, indicating the desired terms thereof;
> (b) A summary of admitted facts and proposed stipulation of facts;
> (c) The issues to be tried or resolved;
> (d) The documents or exhibits to be presented, stating the purpose thereof;
> (e) A manifestation of their having availed or their intention to avail themselves of discovery procedures or referral to commissioners; and
> (f) The number and names of the witnesses, and the substance of their respective testimonies.
>
> Failure to file the pre-trial brief shall have the same effect as failure to appear at the pre-trial. (emphases added)

[65] Section 1, Rule 131 of the Rules of Court reads:

> Burden of proof. — Burden of proof is the duty of a party to present evidence on the facts in issue necessary to establish his claim or defense by the amount of evidence required by law. (emphasis added)

[66] See Manuel V. Moran, 2 Comments on the Rules of Court, 1996 ed., p. 140.

[67] Section 1, Rule 33 of the Rules of Court reads:

> Demurrer to evidence. — After the plaintiff has completed the presentation of his evidence, the defendant may move for dismissal on the ground that upon the facts and the law the plaintiff has shown no right to relief. If his motion is denied, he shall have the right to present evidence. If the motion is granted but on appeal the order of dismissal is reversed he shall be deemed to have waived the right to present evidence. (emphasis added)

[68] Petitioner's Urgent Motion and/or Request for Judicial Notice, p. 3; rollo, p. 341.

[69] Petitioner's Motion to Admit Supplemental Offer of Evidence, p. 6; id. at 365.

[70] Section 4, Rule 129 of the Rules of Court reads:

> Judicial admissions. – An admission, verbal or written, made by the party in the course of the proceedings in the same case, does not require proof. The admission may be contradicted only by showing that it was made through palpable mistake or that no such admission was made.

[71] In page 6 of the petitioner's Motion to Admit Supplemental Offer of Evidence, the petitioner admitted the termination of the presentation of its evidence; yet, in page 4 of the petitioner's Reply (to respondent Nieto's opposition to petitioner's Motion to Admit Supplemental Offer of Evidence), the petitioner stated that it has not yet rested its case.

[72] Dated August 21, 2000 and April 3, 2001.

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[73] Rollo, pp. 31 and 34.

[74] James M. Henderson, 6 Commentaries on the Law of Evidence in Civil Cases Based Upon the Works of Burr W. Jones, § 2502, pp. 4950-4951.

[75] Director of Lands v. Roman Archbishop of Manila, 41 Phil. 121 (1920).

[76] Ibid.

[77] John Henry Wigmore, 6 A Treatise on the Anglo-American System of Evidence in Trials at Common Law, 1940, p. 519.

[78] Director of Lands v. Roman Archbishop of Manila, supra note 75.

[79] Seares v. Hernando, etc., et al., 196 Phil. 487 (1981).

[80] 88 C.J.S. § 104, p. 217; 5A C.J.S. § 1606, p. 102; and Lopez v. Liboro, 81 Phil. 431 (1948).

[81] Land Bank of the Philippines v. Court of Appeals, 456 Phil. 755 (2003).

[82] San Fernando Rural Bank, Inc. v. Pampanga Omnibus Development Corporation, G.R. No. 168088, April 4, 2007, 520 SCRA 564.

[83] Leviste v. Court of Appeals, supra note 62.

[84] Supra note 80, at 434.

[85] Supra note 75, at 124.

[86] Manuel V. Moran, supra note 66, at 141, citing 64 C.J. 160-163.

[87] In Hampson v. Taylor (8 A. 331, 23 A. 732, 15 R.I. 83, January 11, 1887) the Rhode Island Supreme Court ruled:

> We are of the opinion that it was entirely within the discretion of the court to open the case for further testimony. The counsel for the plaintiff says, in excuse for the omission, that it was conceded at the former trial, without contest, that the place of the accident was a part of the public highway, and he was thus put off his guard. It is quite common for the court to allow a party to submit further testimony, after he has rested, when his opponent attempts to take advantage of some formal point which has been inadvertently overlooked, since it is or ought to be the aim of the court, in ordering the course of proof, to further, not to defeat the ends of justice.

[88] Rollo, p. 18.

[89] Republic of the Philippines v. Sandiganbayan, 336 Phil. 304 (1997).

[90] In W. W. Dearing v. Fred Wilson & Co., Inc., 187 Phil. 488, 493-494 (1980), we held:

> Anent grave abuse of discretion, in Icutanim v. Hernandez, x x x it was held that appeal and not certiorari, is the proper remedy for the correction of any error as to the competency of a witness committed by an inferior court in the course of trial, since such a situation involves an error of law constituting a violation of the rules of evidence, apart from the fact that to allow any special civil action under the circumstances would lead to multiplicity of suits and lead to protracted if not endless trials. Similarly and for the same reasons, that rule would apply to the admission or rejection of a deposition being offered as evidence. Thus, the jurisprudential rule is that the admission or rejection of certain interrogatories in the course of discovery procedure could be an error of law but not an abuse of discretion, much less a grave one. Again, the reason for this rule [is that] the

> procedure for the taking of depositions whether oral or thru written interrogatories is outlined in the rules leaving no discretion to the Court to adopt any other not substantially equivalent thereto. Should the judge substantially deviate from what the rule prescribes, he commits a legal error, not an abuse of discretion. (citation omitted; emphases and underscoring ours)

[91] Petitioner's Reply to the Opposition (filed by the substituted heirs of respondent Jose Africa), p. 7; rollo, p. 462.

[92] Section 9 of Presidential Decree 1606, in effect at the time of the consolidation, provides:

Rule-making Power. The Sandiganbayan shall have the power to promulgate its own rules of procedure and, pending such promulgation, the Rules of Court shall govern its proceedings. [93] 1964 Rules of Court. This provision was copied verbatim under the present rules.

[94] This provision, in turn, is an exact reproduction of Rule 42(a) of the 1938 Federal Rules of Civil Procedure of the United States.

[95] Wright and Miller, Federal Practice and Procedure: Civil 2d § 2381, p. 427.

[96] See People v. Sandiganbayan, 456 Phil. 707 (2003); Cojuangco, Jr. v. Court of Appeals, G.R. No. 37404, November 18, 1991, 203 SCRA 619; Caños v. Hon. Peralta, etc., et al., 201 Phil. 422 (1982).

[97] Wright and Miller, supra note 95, at 429.

[98] 1 C.J.S. § 107, p. 1341; Wright and Miller, Federal Practice and Procedure: Civil 2d § 2382.

[99] 1 C.J.S. § 107, id.; Wright and Miller, id. at 429. See Yu, Sr. v. Basilio G. Magno Construction and Development Enterprises, Inc., G.R. Nos. 138701-02, October 17, 2006, 504 SCRA 618.

[100] 1 C.J.S. § 107, id.; 1 Am. Jur. 2d § 131, p. 804; Wright and Miller, id.

[101] The April 15, 1993 Resolution ordering consolidation reads:

> Submitted for resolution is the Motion for Consolidation, dated June 22, 1992, filed by the Republic of the Philippines (represented by the PCGG), counsel.
>
> The record shows that there is no opposition in the above-entitled cases to the said motion. It also appears that the subject matters of the above entitled cases are and/or may be treated as mere incidents in Civil Case No. 0009.
>
> WHEREFORE, the above-entitled cases are hereby ordered consolidated with Civil Case No. 0009, and shall henceforth be consolidated and treated as mere incidents of said Civil Case No. 0009. (Records, Volume III, pp. 843-844.)

[102] See Victor Africa's Motion (Records, Volume XVIII, pp. 6717-6722).

[103] In its Motion for Consolidation, the petitioner argued:

> 4. On various dates, several actions were filed which are intimately related with Civil Case No. 0009, involving as they are the same subject matter and substantially the same parties x x x.
>
> x x x x
>
> 10. Besides, the present Motion for Consolidation is not without a paradigm which was recently sketched by [the Sandiganbayan]. During the hearing on April 6, 1992 of Africa vs. PCGG, docketed as Civil Case No. 0127, [the Sandiganbayan] resolved to conduct a joint trial of the said case and of OWNI vs. Africa, docketed

> as Civil Case No. 0126, inasmuch as both cases are intimately related. The consolidation of the above-captioned cases would be merely a step in the same direction already taken by [the Sandiganbayan] in Africa and OWNI. (Records, Volume XV, pp. 5617-5622.)

[104] In the 1966 edition of Vicente J. Francisco's Revised Rules of Court, Francisco wrote:

> The effect of consolidation of actions is to unite and merge all of the different actions consolidated into a single action, in the same manner as if the different causes of actions involved had originally been joined in a single action, and the order of consolidation, if made by a court of competent jurisdiction, is binding upon all the parties to the different actions until it is vacated or set aside. After the consolidation there can be no further proceedings in the separate actions, which are by virtue of the consolidation discontinued and superseded by a single action, which should be entitled in such manner as the court may direct, and all subsequent proceedings therein be conducted and the rights of the parties adjudicated in a single action (1 C.J.S., 113, pp. 1371-1372).

At the very beginning of the discussion on consolidation of actions in the Corpus Juris Secundum, the following caveat appears:

> The term consolidation is used in three different senses. First, where several actions are combined into one and lose their separate identity and become a single action in which a single judgment is rendered; second, where all except one of several actions are stayed until one is tried, in which case the judgment in the one is conclusive as to the others; third, where several actions are ordered to be tried together but each retains its separate character and requires the entry of a separate judgment. The failure to distinguish between these methods of procedure, which are entirely distinct, the two latter, strictly speaking, not being consolidation, a fact which has not always been noted, has caused some confusion and conflict in the cases. (1 C.J.S., 107, pp. 1341-1342) (Emphasis added).

In defining the term "consolidation of actions," Francisco provided a colatilla that the term "consolidation" is used in three different senses, citing 1 C.J.S. 1341 and 1 Am. Jur. 477 (Francisco, Revised Rules of Court, p. 348).

[105] The respondents vigorously opposed the petitioner's motion to adopt the testimony of, among others, Maurice Bane, and the Sandiganbayan ruled in favor of the respondents, without the petitioner questioning this development until after two years later. This circumstance cannot be taken lightly in view of the petitioner's gross procedural deficiency in the handling of this main case.

[106] In those cases where the Court ordered or affirmed the order of consolidation, even without expressly providing for the admissibility of evidence in all of the consolidated cases, the parties are the same and/or the issues are relatively simple and/or the causes of action could have actually been stated in one complaint (see Domdom v. Third and Fifth Divisions of the Sandiganbayan, G.R. Nos. 182382-83, February 24, 2010, 613 SCRA 528; Active Wood Products Co., Inc. v. Court of Appeals, G.R. No. 86603, February 5, 1990, 181 SCRA 774; Delta Motor Sales Corporation v. Mangosing, No. L-41667, April 30, 1976, 70 SCRA 598; Sideco v. Paredes, et al., 74 Phil. 6 (1942).

[107] Dated March 17, 1997; rollo, pp. 576-587.

[108] Under Section 7, Rule 18 of the Rules of Court, a Pre-Trial Order controls the subsequent course of the action, unless modified before trial to prevent manifest injustice.

[109] Records, Volume XXXVI, p. 11405.

[110] 1964 Rules of Court, Rule 24, Depositions and Discovery.

[111] Petitioner's Reply with Manifestation to Respondent Enrile's Comment, pp. 12-13; rollo, pp. 679-680.

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[112] Records, Volume XLV, pp. 110-112. Petitioner's Common Reply reads:

> 1. While it is true that Section 47, Rule 130 of the Rules of Court provides:
>
> x x x x
>
> [petitioner] wishes to inform this Honorable Court that in order to substantially comply with the aforementioned requirements, it would be willing to present subject witnesses, except for Maurice Bane and Rolando Gapud whose availability are difficult to obtain being foreign residents, only to be cross-examined by the defendants who had no opportunity to cross-examine them in said previous proceeding.

[113] Dasmariñas Garments, Inc. v. Reyes, G.R. No. 108229, August 24, 1993, 225 SCRA 622.

[114] Jonathan Landoil International Co., Inc. v. Mangudadatu, G.R. No. 155010, August 16, 2004, 436 SCRA 559, 573, citing Fortune Corporation v. CA, G.R. No. 108119, January 19, 1994, 229 SCRA 355, 362.

[115] Dasmariñas Garments, Inc. v. Reyes, supra note 113.

[116] Ibid.

[117] Ibid.

[118] Jovito R. Salonga, Philippine Law of Evidence, p. 540, 2nd ed., 1958. John Henry Wigmore, supra note 77, at 51-53. But the generally accepted view, followed by our own rules on evidence, is that prior testimony or deposition is an exception to hearsay prohibition. (McCormick on Evidence by Edward Cleary, § 254, p. 759, 3rd ed., Hornbook Series, Lawyer's ed., 1984).

[119] Section 6, Rule 132 of the Rules of Court reads:

> Cross-examination; its purpose and extent. — Upon the termination of the direct examination, the witness may be cross-examined by the adverse party as to any matters stated in the direct examination, or connected therewith, with sufficient fullness and freedom to test his accuracy and truthfulness and freedom from interest or bias, or the reverse, and to elicit all important facts bearing upon the issue.

[120] John Henry Wigmore, supra note 77, at 83.

[121] Oscar M. Herrera, 5 Remedial Law, 1999, pp. 773, 774-775.

[122] Id. at 773, citing Gibson v. Gagnon, 82 Colo 108, 257, p. 348; 2 Jones, Sec. 9:25.

[123] Manuel V. Moran, 5 Comments on the Rules of Court, 1980 ed., p. 409.

[124] Vicente J. Francisco, Evidence, 1955, p. 646.

[125] Ricardo J. Francisco, 7 The Revised Rules of Court in the Philippines, Evidence, Part I, 1997 ed., pp. 628-629.

[126] Prior to the revision of the rules on evidence, the phrase "out of the Philippines" appeared in the context of the witness' unavailability (Section 41, Rule 130 of the 1964 Rules of Court). After the revision (the latest amendments to the rules on evidence became effective on July 1, 1989), this phrase was deleted from the present Section 47, Rule 130 of the Rules of Court. In contrast, the same phrase, which appeared in Rule 24 of the old Rules (Rule 24, Deposition and Discovery, 1964 Rules of Court), was retained in the present Rule 23 of the Rules of Court on depositions. The phrase "unable to testify," however, survived the amendment of the rules and was retained in both Section 47, Rule 130 of the Rules of Court and Section 4(c), Rule 23 of the same Rules.

[127] Vicente J. Francisco, Evidence, supra note 124, at 649.

[128] John Henry Wigmore, 5 A Treatise on the Anglo-American System of Evidence in Trials at Common Law, § 1404, p. 149.

[129] Northwest Airlines, Inc. v. Cruz, 376 Phil. 96 (1999).

[130] Ricardo J. Francisco, supra note 125, at 627, cited in the Comment filed by the substituted heirs of respondent Jose Africa, p. 3.

[131] John Henry Wigmore, supra note 128, at 148.

[132] To make matters worse, by not questioning the Sandiganbayan's denial of its 1st Motion (to Adopt), the petitioner has impliedly acceded to the Sandiganbayan's ruling that the non-presentation of the deponent in court for cross-examination is unjustified. Unfortunately, the petitioner "realized" its mistake only two precious years later.

[133] Ricardo J. Francisco, supra note 125, at 220.

[134] Id. at 219.

[135] Edward Cleary, supra note 118, at 48.

[136] Manuel V. Moran, supra note 123, at 410.

[137] Jovito R. Salonga, supra note 118, at 542.

[138] Oscar M. Herrera, supra note 121, at 772. Privies are distributed into several classes, according to the manner of the relationship. Thus, there are privies in estate, as donor and donee, lessor and lessee, and joint tenants; privies in blood, as heir and ancestor; privies in representation as executor and testator, administrator and intestate; privies in law for the law without privity of blood and estate casts the land upon another as by escheat. (Id. at 542.)

[139] Notably, Africa was not impleaded in Civil Case No. 0009 (Republic v. Sandiganbayan, G.R. No. 106244, January 22, 1997, 266 SCRA 515).

[140] Petitioner's Reply to Nieto's Comment, p. 4; and petitioner's Reply with Manifestation to Respondent Enrile's Comment, pp. 11-12. Rollo, pp. 678-679.

[141] Records, Volume XXXVI, p. 11534.

[142] Records, Volume XXXVI, pp. 11574-11578; Volume XXXVII, pp. 11649- 11654; 11704-11709.

[143] Records, Volume XXXVI, pp. 11610-11612.

[144] Records, Volume XXXVII, pp. 11719-11720.

[145] While the Sandiganbayan recognized that the petitioner intends to use the Bane deposition in Civil Case No. 0009 (as stated in the Second Amended Notice of the Taking of the Bane Deposition), the Sandiganbayan denied Africa's Motion as if Africa himself was impleaded in and is a party who can be bound by the proceedings and the judgment in Civil Case No. 0009 (except only as a substituted heir of the late respondent Jose Africa). In denying Victor Africa's motion (forgetting about the concern raised by respondent Enrile – which is equally applicable to the other respondents), the Sandiganbayan seemed oblivious of the fact that the respondents who were non-parties to Civil Case 0130 (where the deposition was taken) should be heard. Apparently, the Sandiganbayan relied blindly on the petitioner's assertion that the taking of deposition is a matter of right and failed to address the consequences and/or issues that may arise from the apparently innocuous statement that the

petitioner intends to use the Bane deposition in Civil Case No. 0009 (where only the respondents, and not Africa, are parties). The Sandiganbayan ruled:

> "More importantly, under Section 1 of Rule 24 the taking of such deposition, after the answer has been served, is a matter of right and can be resorted to without leave of court." (Records, XXXVII, pp. 11719-11720)

[146] 376 Phil. 111-112 (1999).

[147] In its Motion for Summary Judgment, dated January 28, 1997, the petitioner itself conceded that respondents are not parties to Civil Case No. 0130, where the deposition was taken:

> 7. In this connection, we are not unmindful of the observation of [the Sandiganbayan] that:
>
> The principal issue in the main case, Civil Case No. 0009 x x x which is an action for reversion, forfeiture, accounting and damages, is whether or not there is preponderance of evidence that the Class "A" shareholding in ETPI is ill-gotten wealth x x x. That point should not be pre-empted in the resolution of the subject incident in G.R. No. 107789 x x x
>
> 8. Nor are we unmindful that this Honorable Court made clear that the finding in its December 13, 1996 resolution "does not render moot and academic the principal issue in the main case, Civil Case No. 0009, which is: whether or not there is preponderance of evidence of alleged ill-gotten wealth of the defendants therein, especially Jose Africa, Roberto S. Benedicto and Manuel H. Nieto, Jr., none of whom is a party either in incident Civil Case No. 0130 or in the subject G.R. No. 107789. (Italics supplied) (Records, XL, pp. 12568-12569.)

[148] Mabayo Farms, Inc. v. Court of Appeals, G.R. No. 140058, August 1, 2002, 386 SCRA 110; and Development Bank of the Philippines v. Bautista, et al., 135 Phil. 201 (1968).

[149] Section 6, Rule 23 of the Rules of Court reads:

> Objections to admissibility. — Subject to the provisions of section 29 of this Rule, objection may be made at the trial or hearing to receiving in evidence any deposition or part thereof for any reason which would require the exclusion of the evidence if the witness were then present and testifying.
>
> Section 17, Rule 23 of the Rules of Court reads:
>
> Record of examination; oath; objections.— The officer before whom the deposition is to be taken shall put the witness on oath and shall personally, or by someone acting under his direction and in his presence, record the testimony of the witness. The testimony shall be taken stenographically unless the parties agree otherwise. All objections made at the time of the examination to the qualifications of the officer taking the deposition, or to the manner of taking it, or to the evidence presented, or to the conduct of any party, and any other objection to the proceedings, shall be noted by the officer upon the deposition. Evidence objected to shall be taken subject to the objections. In lieu of participating in the oral examination, parties served with notice of taking a deposition may transmit written interrogatories to the officers, who shall propound them to the witness and record the answers verbatim.

[150] Records, Volume XXXVII, pp. 11628-11623.

[151] See the petitioner's Pre-Trial Brief (Records, Volume XXXVI, p. 11405) where the petitioner made a representation to present Mr. Maurice Bane. See the petitioner's Common Reply (Records, Volume XLV, pp. 110-112) where the petitioner conceded the applicability of Section 47, Rule 130; see the petitioner's Motion for Summary Judgment (Records, Volume XL, pp. 12568-12569) where the petitioner admitted that the respondents were not parties to Civil Case No. 0130 (where the deposition was taken) and Victor Africa was neither a party to Civil Case No. 0009.

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[152] Ricardo J. Francisco, supra note 125, at 69.

[153] Oscar M. Herrera, supra note 121, at 72.

[154] Manifest things require no proof; what is known by the magistrate need not be proved; Jovito R. Salonga, supra note 118, at 45; and Eduardo B. Peralta, Jr., Perspectives of Evidence, 2005, p. 52, citing 1 Jones on Evidence, p. 209.

[155] Section 1, Rule 129 of the Revised Rules on Evidence.

[156] Id., Section 2.

[157] Id., Section 3.

[158] Manuel V. Moran, supra note 123, at 47-48, citing Municipal Council of San Pedro Laguna v. Colegio de San Jose, 65 Phil. 318 (1938); and Prieto v. Arroyo, 121 Phil. 1335 (1965).

[159] In Occidental Land Transportation Co., Inc. v. Court of Appeals, G.R. No. 96721, March 19, 1993, 220 SCRA 167, 176, citing Tabuena v. Court of Appeals, 196 SCRA 656 (1991), we stated:

> And unlike the factual situation in Tabuena v. CA, the decision in Civil Case No. 3156 formed part of the records of the instant case (Civil Case No. 2728) with the knowledge of the parties and in the absence of their objection. This fact was pointed out by the lower court, to wit:
>
> The x x x findings of the Oroquieta Court became as conclusive upon the company and its driver by their acquiescence and silence x x x. (Decision of lower court, p. 12; records, p. 239)
>
> x x x x
>
> Returning to Exhibit "O," supra (Decision, Civil Case No. 3156, CFI, Branch III, Oroquieta City), the Court hastens to add: Said exhibit has not been objected to nor commented upon by the defendants Company and Enerio, through their counsel, x x x.
>
> This being the case, petitioners were aware that Exhibit "O" (Decision in Civil Case No. 3156) had formed part of the records of the case and would thereby be considered by the trial court in its decision.

[160] Section 1, Rule 9 of the Rules of Court reads:

> Defenses and objections not pleaded. - Defenses and objections not pleaded either in a motion to dismiss or in the answer are deemed waived. However, when it appears from the pleadings or the evidence on record that the court has no jurisdiction over the subject matter, that there is another action pending between the same parties for the same cause, or that the action is barred by a prior judgment or by statute of limitations, the court shall dismiss the claim. (underscoring ours)
>
> In Lewin v. Galang, etc., 109 Phil. 1041, 1045 (1960), cited by the petitioner, the Court held:
>
> In view of this special defense [res judicata], the court below should have taken judicial notice of the habeas corpus proceedings instituted by petitioner before the same Court of First Instance of Manila and before the same judge, Case No. 28409, Ted Lewin v. Commissioner of Immigration and Commissioner of Customs, and we find that practically the same facts relied upon in petitioner's present petition for declaratory judgment are the very facts upon which petitioner based his request for the issuance of the writ of habeas corpus in the previous case.
>
> In Tiburcio, et al. v. People’s Homesite and Housing Corporation, et al., 106 Phil. 477, 483-484 (1959), likewise cited by the petitioner, we held:

> Appellants finally claim that the lower court erred in dismissing the complaint on the ground of res judicata by taking judicial notice of its own records in Land Registration Case No. L-3 invoking in support of their contention the principle that a court cannot take judicial notice of the contents of the records of other cases even when such cases had been tried by the same court and notwithstanding the [fact] that both cases may have been tried before the same judge. While the principle invoked is considered to be the general rule, the same is not absolute. There are exceptions to this rule. Thus, as noted by former Chief Justice Moran:
>
> In some instance[s], courts have taken judicial notice of proceedings in other causes, because of their close connection with the matter in controversy. x x x
>
> Moreover, appellants' objection to the action of the trial court on this matter is merely technical because they do not dispute the fact that appellant x x x, who instituted the present case, is the same person who filed the application in Land Registration Case No. L-3 for the registration of the same parcel of land which application was denied by the court x x x. It may therefore be said that in the two cases there is not only identity of subject matter but identity of parties and causes of action. Indeed, the trial court did not err in dismissing the complaint on the ground of res judicata.

[161] Petitioner's Reply with Manifestation (to respondent Enrile's Comment) enumerates the various "family member" cases which arose from the present and main case, Civil Case No. 0009.

[162] De los Angeles v. Hon. Cabahug, et al., 106 Phil. 839 (1959); Lewin v. Galang, etc., supra note 160; and Tiburcio, et al. v. People's Homesite and Housing Corporation, et al., supra note 160.

[163] Lewin v. Galang, etc., supra; and Tiburcio, et al. v. People's Homesite and Housing Corporation, et al., supra.

[164] 319 Phil. 387, 389 (1995).

[165] Rules of Court, Rule 130, Section 47.

[166] Revised Rules on Evidence, Rule 128, Section 3.

[167] The dissent then compares the proceedings in the Court when cases are consolidated to support its position that consolidation results in the merger of the different causes of action. However, it is not exactly appropriate to compare the consolidation of cases in the Supreme Court with the consolidation ordered by the Sandiganbayan because the Supreme Court is NOT a trier of facts. First, the scope of our review is limited generally to "questions of law." Hence, no issue of prejudice to other parties can arise should petitions in the Court be consolidated. Second, unlike consolidated cases in the Supreme Court, the Sandiganbayan itself had, in fact, separately adjudged an incident of Civil Case No. 0130 and the few other incident cases independent of Civil Case No. 0009.

[168] Correctible under Rule 65 of the Rules of Court.

[169] When it denied Africa's separate opposition.

DISSENTING OPINION

CARPIO, J.:

This is a special civil action for certiorari[1] filed by the Republic of the Philippines (petitioner), through the Presidential Commission on Good Government (PCGG), seeking to set aside the Resolution dated 7 February 2002 of the Sandiganbayan, which denied petitioner's Motion to Admit Supplemental Offer of Evidence (Re: Deposition of Maurice V. Bane).

The case pertains to the complaint filed before the Sandiganbayan by petitioner against private respondents for reconveyance, reversion, accounting, restitution, and damages. The complaint, which was filed on 22 July 1987, was docketed as Civil Case No. 0009. Civil Case No. 0009 involves, among others, the shares of private respondents in Eastern Telecommunications Philippines, Inc. (ETPI), which were allegedly ill-gotten and were eventually sequestered by the government.[2]

The issue in this certiorari proceeding concerns the admissibility of the deposition of Maurice V. Bane, taken primarily for testimony regarding the interlocutory issue in Civil Case No. 0130, which is one of the incident cases of Civil Case No. 0009.

Civil Case No. 0130 is a petition for certiorari filed with the Sandiganbayan by Victor Africa, son of Jose L. Africa,[3] who is one of the defendants in Civil Case No. 0009, against the PCGG. Victor Africa filed the petition, seeking to nullify the PCGG orders directing him, among others, to account for his sequestered shares in ETPI. In a Resolution dated 12 April 1993,[4] the Sandiganbayan ordered the consolidation of the main case, Civil Case No. 0009, with several incident cases including Civil Case No. 0130.[5]

On 25 September 1996, in Civil Case No. 0009 in connection with Incident Case No. 0130 and G.R. No. 107789, petitioner filed with the Sandiganbayan a Second Amended Notice to Take Deposition of Mr. Maurice V. Bane Upon Oral Examination.[6] On 23 and 24 October 1996, the deposition upon oral examination of Maurice V. Bane, former director and treasurer-in trust of ETPI, was taken before Consul General Ernesto Castro at the Philippine Embassy in London, England. Among the defendants in the main Civil Case No. 0009, only Victor Africa appeared during the taking of the deposition.

On 22 January 1998, petitioner filed a motion[7] praying that it be allowed to adopt the testimonies of several of its witnesses in incidental Civil Case Nos. 0048, 0050, 0130 and 0146, including the deposition of Maurice V. Bane, as its evidence in the main case, Civil Case No. 0009. On 1 April 1998, the Sandiganbayan issued a Resolution, denying in part the motion as regards the adoption of the testimony on oral deposition of Maurice V. Bane (and Rolando Gapud) as part of petitioner's evidence in Civil Case No. 0009, "for the reason that said deponents according to the plaintiff, are not available for cross examination in this Court by the defendants."[8]

On 14 December 1999, petitioner made its Formal Offer of Evidence consisting of Exhibits "A" to "XX-27." However, through oversight, petitioner failed to include among its exhibits the deposition of Maurice V. Bane. Thus, in its Urgent Motion And/Or Request for Judicial Notice dated 21 February 2000, petitioner prayed that it be allowed to introduce as additional evidence the deposition of Maurice V. Bane, or in the alternative, for the Sandiganbayan to take judicial notice of the facts established by the said deposition. On 21 August 2000, the Sandiganbayan issued a Resolution denying petitioner's motion. The Resolution stated:

> Allegedly the deposition of Maurice V. Bane was introduced as PCGG's evidence in Civil Case No. 0130 (in relation to G.R. No. 107789) which is an incident of and consolidated with the above-entitled case in connection with PCGG's "Very Urgent Petition for Authority to Hold Special Stockholders Meeting for the Purpose of Increasing ETPI's Authorized Capital Stock" and the said deposition of Maurice V. Bane is now a part and parcel of the record of this main case.
>
> Judicial notice is found under Rule 129 which is titled "What Need Not Be Proved." Apparently, this provision refers to the Court's duty to consider admissions made by the parties in the pleadings, or in the course of the trial or other proceedings in resolving cases before it. The duty of the Court is mandatory and in those cases where it is discretionary, the initiative is upon the Court. Such being the case, the Court finds the Urgent Motion and/or Request for judicial notice as something which need not be acted upon as the same is considered redundant.

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> On the matter of the deposition of Maurice V. Bane, the admission of the same is done through the ordinary formal offer of exhibits wherein the defendant is given ample opportunity to raise objection on grounds provided by law. Definitely, it is not under Article 129 on judicial notice.[9]

Petitioner moved for reconsideration, which the Sandiganbayan denied in a Resolution issued on 3 April 2001. The Resolution stated:

> In the subject Resolution [issued on 21 August 2000], this Court ruled that the Urgent Motion and/or Request for Judicial Notice was something that need not be acted upon as the same was already considered redundant, the deposition of Bane, having become part and parcel of the record of this main case since Civil Case No. 0130 is an incident to the same.
>
> This Court further held that the admission of same is done through ordinary formal offer of exhibits wherein defendant is given ample opportunity to raise objection on grounds provided by law, and not under Rule 129 on judicial notice.
>
> WHEREFORE, there being no other issue which merit consideration of this Court, the Motion for Reconsideration is hereby denied.[10](Emphasis supplied)

On 16 November 2001, petitioner filed a Motion to Admit Supplemental Offer of Evidence (Re: Deposition of Maurice V. Bane), seeking once again the admission of the deposition. On 7 February 2002, the Sandiganbayan promulgated the assailed Resolution, denying petitioner's motion. The Sandiganbayan ruled:

> The only issue that the court is actually called upon to address in the pending incident is whether or not We should allow plaintiff-movant's Supplemental Offer of Evidence consisting of the deposition of Maurice V. Bane.
>
> x x x
>
> Defendants' Opposition to the pending incident as well as plaintiff's Reply to the Opposition gave various reasons why the motion should or should not be granted. But in the court's view, it is not really a question of whether or not plaintiff has already rested its case as to obviate the further presentation of evidence. It is not even a question of whether the non-appearing defendants are deemed to have waived their right to cross-examine Bane as to qualify the admission of the deposition sans such cross-examination. Indeed, We do not see any need to dwell on these matters in view of this court's Resolution rendered in April 1, 1998 which already denied the introduction in evidence of Bane's deposition and which has become final in view of plaintiff's failure to file any motion for reconsideration or appeal within the 15-day reglementary period. Rightly or wrongly, the resolution stands and for this court to grant plaintiff's motion at this point in time would in effect sanction plaintiff's disregard for the rules of procedure. Plaintiff has slept on its rights for almost two years and it was only in February of 2000 that it sought to rectify its ineptitude by filing a motion to reopen its case as to enable it to introduce and offer Bane's deposition as additional evidence, or in the alternative for the court to take judicial notice of the allegations of the deposition. But how can such a motion be granted when it has been resolved as early as 1998 that the deposition is inadmissible. Without plaintiff having moved for reconsideration within the reglementary period, the resolution has attained finality and its effect cannot be undone by the simple expedient of filing a motion, which though purporting to be a novel motion, is in reality a motion for reconsideration of this court's 1998 ruling. Hence, the subsequent motions, including the present incident are deemed moot and academic.[11]

Hence, this petition for certiorari.

I vote to grant the petition.

It is important to note that the Second Amended Notice to Take Deposition of Mr. Maurice V. Bane Upon Oral Examination, filed on 25 September 1996, was after the consolidation of Civil Case No. 0130 with the main case,

Civil Case No. 0009, through the Sandiganbayan Resolution dated 12 April 1993. This is evident in the caption of the notice, thus:

> REPUBLIC OF THE PHILIPPINES
>
> SANDIGANBAYAN
> MANILA
>
> Third Division
>
> Republic of the Philippines,
>
> Plaintiff,
>
> CIVIL CASE NO. 0009
>
> -versus- (Incident Case No. 0130
>
> and G.R. No. 107789)
>
> JOSE L. AFRICA, ET AL.,
>
> Defendants.

It should be noted that the late Jose L. Africa, one of the defendants in Civil Case No. 0009, has been substituted by his heirs, including his son Victor Africa. Thus, Justice Brion's statement that Victor Africa is "plainly not a party to Civil Case No. 0009"[12] is misleading. Although Victor Africa was not originally impleaded in Civil Case No. 0009, Victor Africa became one of the substitute defendants in Civil Case No. 0009 upon the demise of Jose L. Africa. In fact, Victor Africa, as substitute defendant in Civil Case No. 0009, has filed with the Sandiganbayan several pleadings[13] and his Offer of Evidence.[14]

All the defendants of Civil Case No. 0009 were given notice of the scheduled testimony by oral deposition of Maurice V. Bane. Furthermore, the notice stated that "[t]he deposition of said witness shall be used in evidence in Incident Case No. 0130-G.R. No. 107789 as well as in the main case of Civil Case No. 0009."[15] Since notices have been duly served on all the defendants, those who failed to show up at the deposition-taking are deemed to have waived their right to appear and cross-examine the deponent. Indeed, under Section 4, Rule 23 of the Rules of Civil Procedure, the deposition "may be used against any party who was present or represented at the taking of the deposition or who had due notice thereof." Section 4, Rule 23 reads:

> Sec. 4. Use of depositions. – At the trial or upon the hearing of a motion or an interlocutory proceeding, any part or all of a deposition, so far as admissible under the rules of evidence, may be used against any party who was present or represented at the taking of the deposition or who had due notice thereof, in accordance with any one of the following provisions:
>
> (a) Any deposition may be used by any party for the purpose of contradicting or impeaching the testimony of deponent as witness;
>
> (b) The deposition of a party or of any one who at the time of the taking of the deposition was an officer, director, or managing agent of a public or private corporation, partnership, or association which is a party may be used by an adverse party for any purpose;
>
> (c) The deposition of a witness, whether or not a party, may be used by any party for any purpose if the court finds: (1) that the witness is dead; or (2) that the witness resides at a distance more than one hundred (100) kilometers from the place of trial or hearing, or is out of the Philippines, unless it appears that his absence was procured by the party offering the deposition; or (3) that the witness is unable to attend or testify because of

> age, sickness, infirmity, or imprisonment; or (4) that the party offering the deposition has been unable to procure the attendance of the witness by subpoena; or (5) upon application and notice, that such exceptional circumstances exist as to make it desirable, in the interest of justice and with due regard to the importance of presenting the testimony of witnesses orally in open court, to allow the deposition to be used; and
>
> (d) if only part of the deposition is offered in evidence by a party, the adverse party may require him to introduce all of it which is relevant to the part introduced, and any party may introduce any other parts. (Emphasis supplied)

Granting that among the defendants in the main Civil Case No. 0009, only Victor Africa is a party to the incident Civil Case No. 0130, still all the other defendants in Civil Case No. 0009 were given notice of the scheduled deposition-taking. The reason why all the defendants were given notice of the said deposition-taking was because at that time, Civil Case No. 0130 was already consolidated with Civil Case No. 0009 and as emphasized in the second amended notice, "[t]he deposition of said witness shall be used in evidence in Incident Case No. 0130-G.R. No. 107789 as well as in the main case of Civil Case No. 0009."[16]

The Sandiganbayan Resolution dated 12 April 1993 which consolidated the main case, Civil Case No. 0009, with several incident cases including Civil Case No. 0130, reads:

> Republic of the Philippines
> SANDIGANBAYAN
> Manila
>
> - - - -
>
> THIRD DIVISION
>
> REPUBLIC OF THE PHILIPPINES,
>
> Plaintiff,
>
> -versus- CIVIL CASE NO. 0009
>
> JOSE L. AFRICA, ET AL.,
>
> Defendants.
>
> X - x
>
> VICTOR AFRICA, ET AL.,
>
> Intervenors,
>
> X - x
>
> POLYGON INVESTORS AND MANAGERS,
> INC.,
>
> Plaintiff,
>
> -versus- CIVIL CASE NO. 0043
>
> PRESIDENTIAL COMMISSION ON
> GOOD GOVERNMENT, ET AL.,
>
> Defendants.

X - x

AEROCOM INVESTORS AND MANAGERS, INC.,

Plaintiff,

-versus- CIVIL CASE NO. 0044

PRESIDENTIAL COMMISSION ON GOOD GOVERNMENT, ET AL.,

Defendants.

X - x

JOSE L. AFRICA, ET AL.,

Plaintiffs,

-versus- CIVIL CASE NO. 0045

EDUARDO M. VILLANUEVA and PRESIDENTIAL COMMISSION ON GOOD GOVERNMENT,

Defendants.

X - x

JOSE L. AFRICA, ET AL.,

Plaintiffs,

-versus- CIVIL CASE NO. 0047

MELQUIADES GUTIERREZ, ET AL.,
Defendants.

X - x

VICTOR AFRICA, ET AL.,

Plaintiffs,

-versus- CIVIL CASE NO. 0130

PRESIDENTIAL COMMISSION ON GOOD GOVERNMENT, ET AL.,

Defendants.

X - x

TRADERS ROYAL BANK,

Plaintiff,

-versus- CIVIL CASE NO. 0131

PRESIDENTIAL COMMISSION ON
GOOD GOVERNMENT, ET AL.,

Defendants.

X - x

FAR EAST BANK & TRUST CO.,

Plaintiff,

-versus- CIVIL CASE NO. 0139

PRESIDENTIAL COMMISSION ON
GOOD GOVERNMENT, ET AL.,
Defendants.

X - x

STANDARD CHARTERED BANK,

Plaintiff,

-versus- CIVIL CASE NO. 0143

PRESIDENTIAL COMMISSION ON
GOOD GOVERNMENT, ET AL.,

Defendants.

X - x

TRADERS ROYAL BANK,

Plaintiff,

-versus- CIVIL CASE NO. 0128

PRESIDENTIAL COMMISSION ON
GOOD GOVERNMENT, ET AL.,

Defendants.

X - x

DOMESTIC SATELLITE
PHILIPPINES, INC.,

Petitioner,

-versus- CIVIL CASE NO. 0106

PRESIDENTIAL COMMISSION ON
GOOD GOVERNMENT AND THE
ASSET PRIVATIZATION TRUST,

Respondents.

X - x

PHILIPPINE COMMUNICATIONS
SATELLITE CORPORATION AND
PHILIPPINE OVERSEAS TELE-
COMMUNICATIONS CORPORATION,

Plaintiffs,

-versus- CIVIL CASE NO. 0114

PRESIDENTIAL COMMISSION Present:
ON GOOD GOVERNMENT, HERMOSISIMA, J., Chairman,
Defendant. DEL ROSARIO & DE LEON, JJ.

Promulgated: April 15, 1993

X -x

R E S O L U T I O N

DE LEON, J.

Submitted for resolution is the Motion for Consolidation, dated June 22, 1992, filed by the Republic of the Philippines (represented by the PCGG), through counsel.

The record shows that there is no opposition in the above-entitled cases to the said motion. It also appears that the subject matters of the above-entitled cases are and/or may be treated as mere incidents in Civil Case No. 0009.

WHEREFORE, the above-entitled cases are hereby ordered consolidated with Civil Case No. 0009, and shall henceforth be considered and treated as mere incidents of said Civil Case No. 0009.

SO ORDERED.

Manila, Philippines, April 12, 1993.[17]

Section 1, Rule 31 of the Rules of Court provides:

Section 1. Consolidation. – When actions involving a common question of law or fact are pending before the court, it may order a joint hearing or trial of any or all the matters in issue in the actions; it may order all the actions consolidated; and it may make such orders concerning proceedings therein as may tend to avoid unnecessary costs or delay. (Emphasis supplied)

The 12 April 1993 Resolution of the Sandiganbayan ordered a consolidation of all the cases, not merely a joint hearing or trial.

Justice Brion maintains that to resolve the issue of the admissibility of the Bane deposition, the effect of the consolidation of Civil Case No. 0130 with Civil Case No. 0009 should first be determined. Justice Brion emphasizes that despite the consolidation, the two cases remain distinct and separate from each other, such that a mere notice of deposition taking, even if under the expressed intent of using the testimony in evidence in the main case, cannot automatically bind the private respondents who were not previously heard thereon.

In his modified draft Decision, Justice Brion posits that the consolidation of Civil Case No. 0009 with several incident cases including Civil Case No. 0130 is merely a “consolidation for trial.” On page 31 of the modified Draft Decision, a “consolidation for trial,” as defined in American jurisprudence is:

Where several actions are ordered to be tried together but each retains its separate character and requires entry

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> of a separate judgment. This type of consolidation does not merge the suits into a single action, or cause the parties to one action to be parties to the other.

In this kind of consolidation, the cases are merely tried together but a decision is rendered separately in each case.

In Philippine jurisprudence, the consolidation of cases merges the different actions into one and the rights of the parties are adjudicated in a single judgment, thus:

> The effect of consolidation of actions is to unite and merge all of the different actions consolidated into a single action, in the same manner as if the different causes of action involved had originally been joined in a single action, and the order of consolidation, if made by a court of competent jurisdiction, is binding upon all the parties to the different actions until it is vacated or set aside. After the consolidation there can be no further proceedings in the separate actions, which are by virtue of the consolidation discontinued and superseded by a single action, which should be entitled in such manner as the court may direct, and all subsequent proceedings therein be conducted and the rights of the parties adjudicated in a single action.[18] (Emphasis supplied)

Indeed, when consolidated cases are appealed to the Supreme Court or when the Court orders consolidation of cases, the Justice to whom the consolidated cases are assigned renders a single decision, adjudicating all the rights of the parties in the consolidated cases.[19] The Chief Justice assigns the consolidated cases to the Member-in-Charge to whom the case having the lower or lowest docket number has been raffled.[20]

The 12 April 1993 Resolution of the Sandiganbayan ordered the consolidation of the incidental cases, including Civil Case No. 0130, with the main case, Civil Case No. 0009. Unlike a mere order of a joint hearing or trial of any or all the matters in issue in the actions, the consolidation of actions merges the different actions into one single action. This means that evidence, such as depositions, taken after the consolidation is admissible in all the actions consolidated whenever relevant or material. In this case, since the notice and the deposition-taking was after the consolidation of Civil Case No. 0130 with the main case, Civil Case No. 0009, the deposition could be admitted as evidence in the consolidated cases.[21]

The purpose of consolidation is to avoid multiplicity of suits, prevent delay, clear congested dockets, simplify the work of the trial court, and save unnecessary costs and expenses.[22] The consolidation of actions involving a common question of law or fact seeks to prevent a repetition of evidence, such that the testimony of witnesses may be used in all the consolidated cases whenever it is relevant or material.

In Bank of Commerce v. Perlas-Bernabe,[23] the Court ordered the consolidation of two cases which involve the same focal issue and require substantially the same evidence on the matter. Similarly, in Domdom v. Third and Fifth Division of the Sandiganbayan,[24] the Court ordered the consolidation of cases in the Sandiganbayan, where the core element of the cases is substantially the same and the main witness is also the same. The Court held:

> In Teston v. Development Bank of the Philippines, the Court laid down the requisites for the consolidation of cases, viz:
>
> "A court may order several actions pending before it to be tried together where they arise from the same act, event or transaction, involve the same or like issues, and depend largely or substantially on the same evidence, provided that the court has jurisdiction over the cases to be consolidated and that a joint trial will not give one party an undue advantage or prejudice the substantive rights of the parties."
>
> The rule allowing consolidation is designed to avoid multiplicity of suits, to guard against oppression or abuse, to prevent delays, to clear congested dockets, and to simplify the work of the trial court – in short, the attainment of justice with the least expense and vexation to the parties-litigants.

x x x

In the present case, it would be more in keeping with law and equity if all the cases filed against petitioner were consolidated with that having the lowest docket number pending with the Third Division of the Sandiganbayan. The only notable differences in these cases lie in the date of the transaction, the entity transacted with and the amount involved. The charge and core element are the same – estafa through falsification of documents based on alleged overstatements of claims for miscellaneous and extraordinary expenses. Notably, the main witness is also the same – Hilconeda P. Abril.

It need not be underscored that consolidation of cases, when proper, results in the simplification of proceedings which saves time, the resources of the parties and the courts and the abbreviation of trial. It contributes to the swift dispensation of justice, and is in accord with the aim of affording the parties a just, speedy and inexpensive determination of their cases before the courts. Above all, consolidation avoids the possibility of rendering conflicting decisions in two or more cases which would otherwise require a single judgment.[25] (Emphasis and underscoring in the original)

In this case, Maurice V. Bane is a vital witness in the main Civil Case No. 0009 and the incidental Civil Case No. 0130. In fact, as pointed out by Justice Brion, in petitioner's Pre-Trial Brief dated 30 August 1996, petitioner offered to present Maurice V. Bane as one of the witnesses in the main Civil Case No. 0009. Thus, when petitioner filed on 25 September 1996 its Second Amended Notice to Take Deposition of Mr. Maurice V. Bane Upon Oral Examination, in Civil Case No. 0009 in connection with Incident Case No. 0130 and G.R. No. 107789, petitioner emphasized that "[t]he deposition of said witness shall be used in evidence in Incident Case No. 0130-G.R. No. 10779 as well as in the main case of Civil Case No. 0009." In fact, all the respondents were given the chance to be heard considering that all the defendants of Civil Case No. 0009 were given notice of the scheduled testimony by oral deposition of Maurice V. Bane, which was taken on 23 and 24 October 1996. This is very clear from petitioner's Second Amended Notice to Take Deposition of Mr. Maurice V. Bane Upon Oral Examination, filed on 25 September 1996, in Civil Case No. 0009 in connection with Incident Case No. 0130 and G.R. No. 107789, thus:

REPUBLIC OF THE PHILIPPINES
SANDIGANBAYAN
MANILA

Third Division

Republic of the Philippines,Plaintiff,

CIVIL CASE NO. 0009

-versus- (Incident Case No. 0130

and G.R. No. 107789)

JOSE L. AFRICA, ET AL.,Defendants.

x---------- x

SECOND AMENDED NOTICE TO TAKE DEPOSITION OF MR. MAURICE V. BANE UPON ORAL EXAMINATION

Pursuant to Rule 24[26] of the Revised Rules of Court, notice is hereby given to defendants Jose L. Africa (deceased) thru his Estate represented by Victor Africa and Atty. Juan de Ocampo and Atty. Yolanda

> Javellana, Manuel H. Nieto, Jr., Ferdinand E. Marcos (deceased) thru his Estate represented by Special Administratrix BIR Commissioner Liwayway Vinzons-Chato, Imelda R. Marcos, Ferdinand R. Marcos, Jr., Juan Ponce Enrile, and Potenciano Ilusorio thru their counsels on records that Plaintiff thru the undersigned counsel will take the testimony by oral deposition of Mr. Maurice V. Bane c/o Cable & Wireless Plc., 124 Theobalds Road, London WC1X 8RX, England on October 23, 24 and 25, 1996 at 9:00 a.m. and 2:00 p.m., until finished before the Philippine Consul General in London, England, in his office or in a suitable place in London or in Wales, England, as may be advised to the parties.
>
> The purpose of the deposition is for Mr. Maurice Bane to identify and testify on the facts set forth in his Affidavit hereto attached as Annex "A" so as to prove the ownership issue in favor of plaintiff and/or establish prima facie factual foundation for sequestration of Eastern's Class A stock in support of the "Very Urgent Petition For Authority To Hold Special Stockholders' Meeting For the Sole Purpose of Increasing Eastern's Authorized Capital Stock" (Incident Case No. 0130 – G.R. No. 107789). The deposition of said witness shall be used in evidence in Incident Case No. 0130-G.R. No. 107789 as well as in the main case of Civil Case No. 0009. (Underscoring in the original; boldfacing supplied)

In his modified draft Decision, Justice Brion maintains that respondents' notice of the taking of the Bane deposition is insufficient waiver of their right to appear and cross-examine the deponent when they failed to show up at the deposition-taking. Justice Brion insists that respondents "cannot be bound by the taking of the Bane deposition without the consequent impairment of their right to cross-examine."[27]

I disagree. The 12 April 1993 Resolution of the Sandiganbayan, ordering the consolidation of the incidental cases, including Civil Case No. 0130, with the main case, Civil Case No. 0009, effectively merged the different actions into one single action. The consolidation of the cases was meant to expeditiously settle the interwoven issues involved in the consolidated cases. The simplification of the proceedings with the aim of affording the parties a just, speedy and inexpensive determination of their cases before the courts can be achieved when repetition of the same evidence or presentation of identical witnesses is dispensed with. This means that evidence, such as depositions, taken after the consolidation is admissible in all the actions consolidated whenever relevant or material. In this case, since the notice and the deposition-taking was after the consolidation of Civil Case No. 0130 with the main case, Civil Case No. 0009, the deposition could be admitted as evidence in the consolidated cases. This Court has even held in Yu, Sr. v. Basilio G. Magno Construction and Development Enterprises, Inc.[28] that in consolidated cases, "[t]he evidence in each case effectively became the evidence of both, and there ceased to exist any need for the deciding judge to take judicial notice of the evidence presented in each case." Besides, even assuming that the 12 April 1993 Resolution of the Sandiganbayan merely ordered a joint hearing or a "consolidation for trial," private respondents are still bound by the Bane deposition considering that they were given notice of the deposition-taking. The evidence adduced in a joint trial binds all the parties. Otherwise, what would be the point of holding a joint trial if common witnesses have to be presented again in each of the cases and the same evidence offered again and again? Precisely, a joint trial aims to prevent repetition of the same or common evidence and to spare the common witnesses from the unnecessary inconvenience of testifying on the same issues in separate proceedings if the cases were not jointly tried. To rule otherwise is to frustrate the purpose of a joint trial which is to prevent delay and save unnecessary costs and expense.[29]

In Tan v. Lim,[30] the Court even allowed evidence that has not been formally offered in a case which was jointly heard with another case because evidence offered during the joint hearing was deemed evidence for both cases which were jointly heard. The Court ruled:

> It may be true that Section 34, Rule 132 of the Rules directs the court to consider no evidence which has not been formally offered and that under Section 35, documentary evidence is offered after presentation of testimonial evidence. However, a liberal interpretation of these Rules would have convinced the trial court that

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> a separate formal offer of evidence in Civil Case No. 6518 was superfluous because not only was an offer of evidence made in Civil Case No. 6521 that was being jointly heard by the trial court, counsel for Jose Renato Lim had already declared he was adopting these evidences for Civil Case No. 6518. The trial court itself stated that it would freely utilize in one case evidence adduced in the other only to later abandon this posture. Jose Renato Lim testified in Civil Case No. 6518. The trial court should have at least considered his testimony since at the time it was made, the Rules provided that testimonial evidence is deemed offered at the time the witness is called to testify. Rules of procedure should not be applied in a very rigid, technical case as they are devised chiefly to secure and not defeat substantial justice.[31]

Furthermore, Justice Brion posits that in determining the admissibility of the Bane deposition, not only Section 4, Rule 23 must be considered but also Section 47, Rule 130. The said provisions read:

> Sec. 4. [Rule 23] Use of depositions. – At the trial or upon the hearing of a motion or an interlocutory proceeding, any part or all of a deposition, so far as admissible under the rules of evidence, may be used against any party who was present or represented at the taking of the deposition or who had due notice thereof, in accordance with any one of the following provisions:
>
> (a) Any deposition may be used by any party for the purpose of contradicting or impeaching the testimony of deponent as witness;
>
> (b) The deposition of a party or of any one who at the time of the taking of the deposition was an officer, director, or managing agent of a public or private corporation, partnership, or association which is a party may be used by an adverse party for any purpose;
>
> (c) The deposition of a witness, whether or not a party, may be used by any party for any purpose if the court finds: (1) that the witness is dead; or (2) that the witness resides at a distance more than one hundred (100) kilometers from the place of trial or hearing, or is out of the Philippines, unless it appears that his absence was procured by the party offering the deposition; or (3) that the witness is unable to attend or testify because of age, sickness, infirmity, or imprisonment; or (4) that the party offering the deposition has been unable to procure the attendance of the witness by subpoena; or (5) upon application and notice, that such exceptional circumstances exist as to make it desirable, in the interest of justice and with due regard to the importance of presenting the testimony of witnesses orally in open court, to allow the deposition to be used; and
>
> (d) if only part of the deposition is offered in evidence by a party, the adverse party may require him to introduce all of it which is relevant to the part introduced, and any party may introduce any other parts.
>
> Sec. 47. [Rule 130] Testimony or deposition at a former proceeding. – The testimony or deposition of a witness deceased or unable to testify, given in a former case or proceeding, judicial or administrative, involving the same parties and subject matter, may be given in evidence against the adverse party who had the opportunity to cross-examine him. (Emphasis supplied)

In my opinion, Section 47, Rule 130 does not apply in this case since the Bane deposition was not taken in a former case or proceeding. The records show that the Bane deposition was taken when the cases were already consolidated. Clearly, there is no "former proceeding" to speak of which would require the application of Section 47, Rule 130. The Bane deposition was taken in CIVIL CASE NO. 0009 (Incident Case No. 0130 and G.R. No. 107789). In fact, in the Second Amended Notice to Take Deposition of Mr. Maurice V. Bane Upon Oral Examination, filed on 25 September 1996, the title of the case was "REPUBLIC OF THE PHILIPPINES, Plaintiff, versus JOSE L. AFRICA, ET AL., Defendants" with case number "CIVIL CASE NO. 0009 (Incident Case No. 0130 and G.R. No. 107789)." Thus, Justice Brion's reliance on Section 47, Rule 130 is misplaced. Besides, even if Section 47 is applicable, the Bane deposition may still be given in evidence against the respondents since all of them were given notice of the deposition, and thus had the opportunity to cross-examine the deponent had they participated in the deposition-taking. Since notices have been duly served on all the

respondents, those who failed to show up at the deposition-taking are deemed to have waived their right to appear and cross-examine the deponent.

In this case, the Sandiganbayan granted the request for the taking of the deposition of Maurice V. Bane, who was Executive Vice-President and Treasurer of ETPI from 1974 until his retirement in 1987.32 In October 1996, during the deposition-taking, Maurice V. Bane was already 72 years old and residing at 1 Ecton Hall, Church Way, Ecton, Northants (England).33 Clearly, under Section 4(c)(2) of Rule 23,34 the deposition of Maurice V. Bane can be used as direct evidence. In fact, in its Resolutions issued on 21 August 2000 and 3 April 2001, the Sandiganbayan stated that the deposition of Maurice V. Bane has "become part and parcel of the record of this main case (Civil Case No. 0009) since Civil Case No. 0130 is an incident to the same."

A cursory reading of the Bane deposition, which took two days to complete and covers 211 pages of the transcript of record of the proceedings and the testimony, reveals that it is a critical and vital evidence in the case of petitioner against private respondents with regard to its allegation in Civil Case No. 0009 that private respondents' shareholdings in ETPI were illegally purchased and rightly belongs to the Government.

The testimony of the witness, Maurice V. Bane, was offered for the following purposes:

> [I]n general the testimony is offered to prove that the Class A stockholdings in Eastern Telecommunications Philippines Inc, or "Eastern" for short, otherwise referred to as the Filipino 60% equity, is ill gotten in nature; that the actual and/or beneficial owner of said shares was the late President Ferdinand Marcos; and that accordingly, said shares are subject to reversion and/or forfeiture in favor of the Plaintiff Republic of the Philippines in this case. Specifically, the testimony is offered to establish the environmental facts and attendant circumstances surrounding the formation and organization of Eastern in 1974; that there was duress and/or compulsion exerted upon Cable & Wireless and its wholly owned subsidiary, the Eastern Extension Australasia Telegraph Company, of which the witness was the then General Manager in the Philippines, such that Cable & Wireless and Eastern Extension Australasia were forced or compelled to give up their legitimate business activities in the Philippines which was 100% British owned in favor of Eastern, which was to be newly organized as a 60/40 Filipino company, with 40% being for the account of the company of the witness, Mr. Bane.
>
> In short, the witness will establish in these proceedings that President Marcos and/or his emissaries or parties acting on his behalf gave the witness only two possible options which was: (1) a 40% equity in the company to be newly organized, which is Eastern in exchange for surrendering all of the assets and franchise of Eastern Extension Australasia; or 100% of nothing, meaning that if the witness and his company refused to give up their legitimate business in the Philippines then Marcos made it clear that there will be no more Eastern Extension Australasia that would be operating in the Philippines.
>
> Lastly, the testimony is offered to prove the ownership issue that is involved in this case in favor of the Plaintiff, and also support the pending petition of Eastern Telecoms to increase its authorized capital stock from the present 250 million pesos to 4 billion pesos by allowing the PCGG to vote the sequestered Class A stock in the company. Hence, the testimony will establish the prima facie factual foundation for maintaining the sequestration of the Class A stock.[35]

In the deposition of Maurice V. Bane, he identified and affirmed his Affidavit36 dated 9 January 1999. Excerpts from Bane's testimony during the deposition-taking are as follow:

> MR. LIM:
>
> Mr. Bane, paragraph 2 of your affidavit refers to a company ETPI, the acronym in letter "ETPI." May I ask you, sir, what is ETPI?

A

That's Eastern Telecommunications Philippines, Incorporated.

Q

ETPI and Eastern refer to the same company, which is Eastern Telecoms or the full name thereof, Eastern Telecommunications Philippines, Inc?

A

That's correct, yes.

Q

Again, your Honor, for consistency in the proceedings, instead of ETPI, the questions and the answers will refer to "Eastern Telecommunications Philippines, Inc" as simply "Eastern." Paragraph 2 also of your affidavit refers to "EEATC." Please, sir, tell us, Mr. Bane, what position, what particular position you held in EEATC when it was operating in the Philippines?

A

I was the general manager.

Q

Was that the highest position in the Philippines? Was that the highest office in EEATC in the Philippine operation?

A

Yes, it was, yes, the British terminology for these things quite often is that we always used to refer to "managers" but the American terminology, of course, is usually "president" it was the equivalent of.

Q

Thank you, sir. Now, just for clarity can you elaborate on what was EEATC in relation to Cable and Wireless or C&W?

MR. AFRICA:

He has already answered, your Honor.

A

Yes, it was a wholly, 100% owned subsidiary of Cable and Wireless.[37]

x x x

Q

x x x Mr. Bane, I would refer you back to paragraph 3 of your affidavit, sir. I noted from your narration in paragraph 3 that the earth satellite stations contract which you had just explained was awarded after bidding by President Marcos to a company you mentioned here which is Philippines Overseas Telecommunications Corporation, or POTC. My question is: do you know this POTC, what was it?

A

Yes, it was the - - I think I'm correct in saying - - it was the management arm of Philcomsat. Philcomsat,

Philippines Telecommunications Satellite Corporation. POTC, well the managers of Philcomsat, and I understand that the shareholders were the same in each case.

Q

In this paragraph, sir, you stated in reference to Philippine Overseas Telecommunications Corporation or POTC that it was "relatively unknown in the international telecommunications industry." Could you explain that?[38]

x x x

A

Well, there were some, I should imagine, some ten or twelve companies were bidding or hoping to be awarded the earth station contract. Among those was my own company, Eastern - - EEATC. We had not heard of, any of us: RCA, ITT, the large number of other domestic companies such as Clavicili and others, were all bidding for this earth station and none of us had heard of POTC until it suddenly emerged that it was a company that had been formed and that very shortly after our bids all went in, we heard that it had been, that the contract had been awarded to Philippines Overseas Telecommunications Corporation.

Q

Thank you, sir. (Off the record) May I proceed, your Honor? Did you find out who were the people behind POTC?

A

Yes

Q

And who were they?

A

To the best of my recollection the incorporators were Potenciano Ilusorio, Honorio Poblador, Ambassador Nieto, Ambassador Benedicto, and I think there were two other gentlemen, one of them I think was the brother in law of Mr. Nieto and the other one I cannot recall - - no, I can't recall his name. He died fairly soon after, I think, that was formed.[39]

x x x

MR. LIM:

Mr. Bane, you mentioned personalities like Potenciano Ilusorio, Honorio Poblador, Manuel Nieto Jr., Roberto Benedicto. My question to you, sir, is: what was your personal impression of these gentlemen vis-a-vis, for instance, the Marcos administration?

A

Well, it was common knowledge among the expatriate, senior expatriate community that these gentlemen were close associates of President Marcos.

MR. AFRICA:

May I also object again, your Honor please, to the statement of the witness. Again, it's not a statement of fact but only a matter of discussion among his co-workers, but facts again are different from what his perception was.

MR. LIM:

That is noted, your Honor.

CONSUL GENERAL: That is noted, Mr. Africa.

MR. LIM:

Mr. Witness, was this group of people, these gentlemen or personalities that you have mentioned, do you know if they were later on identified with any particular business or industry sector in the Philippines?

A

Yes, they were identified with telecommunication interests.

Q

Was there an occasion when your own company, EEATC, forged a partnership or business with POTC?

A

Yes, there was.

Q

What was the business that the two companies forged or engaged in?

A

That business was to establish a tropospheric scatter system between the Philippines and Taiwan. In actual fact, it was three companies involved: it was POTC and also Western Union International in the United States, and Eastern Extension or EEATC.

x x x

Q

So that tropospheric scatter system became operational?

A

Oh yes, yes.

Q

Do you know if the system was inaugurated?

A

It was, yes.

Q

Who were the principal guests during the inauguration?

A

President and Mrs. Marcos.

Q

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Now what technical qualification did your company, EEATC, have to operate that tropospheric scatter system?

A

In addition to being a 20% stockholder, my company was appointed as managers. Eastern, with the backing of Cable & Wireless, was able to provide all the necessary technical expertise for the implementation and operation of the system. Cable & Wireless as such has done these systems, a large number of these systems worldwide, so we had all the experience necessary.

Q

At that time, meaning at the time this tropospheric scatter system was established, what was your company then, what was your company at that time?

A

Eastern Extension Australasia and China Telegraph.

Q

EEATC?

A

EEATC.

Q

If you don't mind, sir, kindly refer to that as EEATC instead of Eastern. What technical qualification did POTC have to be able to be EEATC's partner in this tropospheric system business?

A

To the best of my knowledge little or no technical qualification.[40]

x x x

Q

Now Mr. Bane, let me now take you to paragraph 5 of your affidavit and if I may read to you, sir. Paragraph 5: When President Marcos declared Martial Law in September 1972, it was clear that his grip on the country was virtually complete. C&W was fully aware of its uneasy tenure in the Philippines. In March 1973, then Secretary of National Defense Juan Ponce Enrile called us to a conference at Camp Crame. I attended said meeting together with the representatives of RCA and Globe Mackay. Secretary Enrile firmly told us that we had until July 1974 to organize ourselves into 60/40 corporations with Filipino majority ownership and, if we did not comply, the Government would take the necessary action. First of all, please explain and elucidate on your statement “C&W was aware of its uneasy tenure in the Philippines.”

A

Well, prior to Martial Law we were operating quite comfortably as a company, but with the implementation of Martial Law there was great deal of uncertainty as to what might happen in the country under Martial Law. In other countries it had been known that things were, shall we say, nationalized or taken over and, of course, there was a certain degree of unease among us when we discussed in the Cable & Wireless that something similar might happen in the Philippines.

Q

Now you made mention in this paragraph that I read of other companies, namely RCA and Globe Mackay. What were these companies?

A

They were similar to EEATC, operating in exactly the same fashion, doing the same type of business, all three of us were competing against each other for international business.

Q

Do you know the nationality of RCA and Globe Mackay?

A

They were both 100% American corporations.

Q

Whereas EEATC was, according to you, 100% British?

A

That is correct, yes.

Q

Except for that difference in the nationality the three of you, meaning EEATC, RCA and Globe Mackay, were engaged in the same kind of business which was telecommunications in the Philippines?

A

Correct.

x x x

Q

Now, can you remember where in Camp Crame this meeting took place?

A

Yes, it was in a fairly large boardroom. I would imagine the table was large enough to accommodate about 16 people. I had the impression that it was the board room perhaps attached to the Secretary of Defense's office in Camp Crame.

Q

Now, was it actually Secretary of National Defense Juan Ponce Enrile who met with you?

A

Yes, it was.

Q

In person?

A

In person.

Q

Now, in paragraph 6 of your affidavit which is a reference to what transpired in that meeting, you stated, and I would like to quote the short sentence in paragraph 6: “I pointed out that - - “ I withdraw the question. Mr. Witness, what transpired in this meeting with Secretary Enrile? In other words, why did he call you together with RCA and Globe Mackay people to a meeting?

A

Well, he said, as far as I can recall and after all it's a long time ago, he recalled that the meeting was to in effect spell out the rules in terms of telecommunications. He pointed out to RCA and ITT that under the Laurel-Langley Act, which was due I think in July 1974 to expire, that they would have to go 60% Philippine ownership. I think that I'm pretty sure that Mr. Voss or his lawyer did say that their franchise in actual fact was established in 1924 and therefore it fell without, beyond the Laurel-Langley Act, but I seem to recall that Attorney Enrile said that that's not germane, you will go 60/40. He also said to us, EEATC, that you will go 60/40.

x x x

MR. LIM:

x x x My question, sir, is: what exactly did Secretary Enrile tell you, and I refer to your person, and your lawyer who was with you, Attorney Luciano Salazar?

A

After he dealt with RCA and Globe Mackay, I said to him: well, the Laurel-Langley Act does not apply to EEATC; we are 100% British corporation, our franchise goes back to 1880 and we were the first company, actually, to connect the Philippines to the outside world in communications, granted by Queen Isabella of Spain, I think, and after the War, the Second World War, the franchise was renewed by President Quirino in 1952, I think it was.

x x x

Q

You mean to tell the court that Secretary Enrile also included your company EEATC to be made 60/40?

A

Oh yes.

Q

Now, your companion, Attorney Luciano Salazar, did he say anything to Mr. Enrile?

A

Yes, he did.

Q

What was his remark or explanation if any?

A

He said that the franchise was perfectly constitutional and that Mr. Bane was quite correct and that legally there was no reason for Eastern to go 60/40.

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Q

When you say now, just now Eastern you are referring to EEATC?

A

EEATC, yes.

x x x

MR. LIM:

Did Secretary Enrile respond favorably to the explanations of Attorney Salazar?

A

No, he did not. He said that if EEATC did not move to a 60/40 position then there would be no EEATC.

x x x

Q

What options did Secretary Enrile give you during this meeting?

MR. AFRICA:

Same objection, your Honor please, which is that Secretary Enrile is the best witness for this particular aspect.

MR. LIM:

Same request for - - subject to a court ruling later.

A

Two options really: to become 60/40 Filipino corporation or to, in effect, have 100% of nothing, because there would not be any EEATC.[41]

x x x

MR. LIM:

Thank you, your Honor. Mr. Bane, we ended your testimony with your confirmation that the events narrated in paragraph 7 up to paragraph 14 of your affidavit all transpired after that meeting in March 1973 with Secretary Enrile, so my question now is: in particular what followed after that meeting with Secretary Enrile, was the formation and organization of Eastern in 1974?

A

Mmm.

Q

Is that correct?

A

Well, yes, the events really were I had to advise Cable & Wireless Hong Kong, who were very closely connected with the Philippines, of the situation and I said we had no alternative but to go to a 60/40 corporation. It was decided that I should come back to London and discuss it with the directors of Cable & Wireless in London. Also, we were asked at the meeting, which perhaps I forgot earlier on, by Secretary Enrile

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for progress reports of moving to 60/40 corporation. So I wrote a letter to Secretary Enrile and said that we were now actively planning and that I had already spoken to one or two other telecommunication corporations but that I had to return to London to discuss it with my senior directors. It was difficult at that time because it was Martial Law. No people were allowed to leave the Philippines so, through that letter, I made an application to leave and I was granted leave to come back to the UK to discuss with Cable & Wireless the formation of a 60/40 corporation.

Q

Eventually, after clearing all those hurdles, after doing all the groundwork, I mean after passing through all the groundwork and the details, eventually what transpired was the organization of Eastern in 1974 as a 60/40 Filipino corporation?

A

That is correct, yes.

Q

And the 40% or minority equity was taken by your company, Cable & Wireless?

A

Correct, yes.

Q

Mr. Bane, would you, and I refer to your person, have agreed to divest of 100% British owned EEATC if pressure was not exerted on you by Secretary Enrile?

MR. AFRICA:

Objected to, your Honor please, no relevance.

MR. LIM:

I am asking the witness for his answer to the basic facts that now present themselves as a result of the previous testimony.

MR. AFRICA:

The same objection, your Honor. It calls for a personal opinion.

MR. LIM:

Subject to the court's ruling may I ask the witness to answer? May I repeat the question, sir? Would you, and I refer to you person, have acceded or agreed to divesting yourself of 100% British owned EEATC in favor of only 40% equity in a new corporation, if pressure was not exerted on you by Secretary Enrile?

A

No, I would not; I would have continued with EEATC as 100% British Corporation. You see, you have to appreciate that I had all the resources and all the backing and all the financial support of Cable & Wireless who were the largest telecommunications operator in the world. We could have quite easily – and I know that finance would have been available from them – we could have quite easily continued as 100% British corporation.

Q

Would Cable & Wireless, your own company, have agreed to the divestment of 100% British owned EEATC if pressure was not exerted by Secretary Enrile?

A

No, I don't think they would.

x x x

MR. LIM:

In other words, you are saying that had it not been for that fateful meeting with Secretary Enrile and the pressure was brought to bear on your person and your company you would not have agreed to organizing Eastern in 1974?

MR. AFRICA:

Same objection, your Honor, please, calling for an opinion and a conclusion.

A

No, I would not.

MR. LIM:

And the same thing is true with your company, C&W, there would have been no permission or approval from C&W?

MR. AFRICA:

Same objection, your Honor, please.

A

No, they would not.

MR. LIM:

And when you say no, you would not, you are saying that your person and C&W would not have agreed to divesting EEATC of 100% British control?

MR. AFRICA:

Same objection, your Honor, please.

A

Correct.

MR. LIM:

He said “That's correct.” Did you, and I refer to your person, or Attorney Salazar check or try to find out if Secretary Enrile was acting for President Marcos in reference to this March 1973 meeting?

A

No, no we didn't. It was under Martial Law and I mean when you spoke of President Marcos you spoke of Secretary Enrile, they were the two very close people. Martial Law, after all, was declared as a result of an apparent attempted assassination on Secretary Enrile. There was no point in us trying to appeal to President Marcos. We had to accept that what Secretary Enrile said was in effect President Marcos.[42]

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x x x

MR LIM.:

Now, subject to the same request for a later ruling from the court, do I understand it, Mr. Bane, that initially you were talking to Ilusorio and Poblador?

A

That's correct.

Q

But later in the negotiations the two were out and you were now just talking to Mr Nieto?

A

Not just to Mr. Nieto; we were also talking to Attorney Jose Africa.

Q

So let me clarify that. After the Enrile meeting and because of your decision to just go along with what Enrile wanted, there was this process set into motion to organize a new outfit and at the start you were talking to Ilusorio and Poblador, is that right?

A

Correct.

Q

Later on, and this was before Eastern was organized, you continued the negotiations, this time with Ambassador Manuel Nieto junior and Attorney Jose L. Africa, is that correct?

A

Correct.

Q

Now, there is a statement in paragraph 9: "We learned much later that this was upon the instructions of President Marcos." Who told you that President Marcos had issued the instruction to be dealing with Nieto?

MR. AFRICA:

Objected to, your Honor, asking for –

MR. LIM:

I am asking the source of the statement.

MR. AFRICA:

My objections, I am just putting it on record: objected to for asking for hearsay evidence.

MR. LIM:

Subject to a later ruling, your Honor.

A

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It was either Ambassador Nieto or Attorney Africa.

Q

Now, I show you paragraph 10 of your affidavit which is continued, I am sorry I show you paragraph 10, I draw your attention to paragraph 10 of your affidavit which is found on page 4. Do you confirm and ratify in particular what is stated in paragraph 10 of the affidavit?

MR. AFRICA:

Subject to question and answer later on, your Honor, please.

A

Yes.

MR. LIM:

Thank you, sir. May I request, your Honor, that the entire paragraph 10 be sub marked as Exhibit C-12-C-1 and that the last sentence therein reading: "Africa quickly spelt out the rules – that they were interested in the proposition and that we were to deal only with the BAN group (composed of Roberto Benedicto, Jose Africa and Manuel Nieto, Jr.,). We were informed that this was at the express wish of President Marcos who had appointed their group to control telecommunications interests;" that that particular sentence be now underscored but same would be part of C-12-C-1 which is the entire paragraph 10, but the last sentence I request that it be underlined or underscored for emphasis. (Marked)

Q

What participation did you have in the organization of Eastern?

A

I was very deeply involved, together with our director from London, Wilfred H. Davies and also our finance director, David West.

Q

Were you one of the incorporators of Eastern?

A

I was, yes.

Q

Did you sign the Articles of Incorporation of Eastern?

A

I did.

Q

Would you have agreed to be one of the incorporators of Eastern and signed its Articles if no pressure was exerted on you by Secretary Enrile?

MR. AFRICA:

Objected to, your Honor, please.

MR. LIM:

I request an answer for the same reason.

A

No, I don't think I would.

Q

What is that, Mr Bane?

A

No, I would not, no.

Q

You are telling the honorable court that your agreeing to incorporate Eastern and your having signed the Articles of Eastern was the result of that pressure during the Enrile meeting in March of 1973?

MR. AFRICA:

Same objection, your Honor.

A

Yes, that is correct, because we would have continued as 100% British corporation. So the pressure was brought to bear upon us to go to a 60/40 corporation.

MR. LIM:

I notice from the Articles of Incorporation of Eastern that you are the Treasurer in Trust, that you were the Treasurer in Trust, meaning the Treasurer upon the incorporation of Eastern?

A

Yes, that's true.[43]

x x x

MR. LIM:

That is the tenor of the affidavit. Just to satisfy that concern I will rephrase the question. Do you know what happened to the assets of EEATC when Eastern was incorporated on June 10, 1974?

A

Yes, Eastern purchased all the assets of EEATC.

Q

I would like to draw your attention to paragraph 12 of your affidavit which I read: “The figure eventually negotiated for the assets (net book value only and no good will) was ten million pesos (P10,000,000.00) on the basis of which the BAN group will put up six million pesos (P6,000,000.00). Further meetings took place to finalize the details but Africa later informed us that they could not raise the required amount. As a compromise, he suggested that the new corporation raise a bank loan from which ‘C&W’ could be paid. While we were not happy with this arrangement, we resigned ourselves to the fact that we would have to accede. It was agreed that stockholders' contribution would be five million pesos (P5,000,000.00) plus a bank

loan of seven million pesos (P7,000,000.00) to cover asset payment and working capital. Africa then advised that they could only raise one million pesos (P1,000,000.00) and 'C&W' could loan them two million pesos (P2,000,000.00). Again, we were unhappy but again we complied." My question is: do you confirm the correctness of this narration including the figures mentioned here?

MR. AFRICA:

Subject to question and answer, your Honor please, as there are statements which are of conclusion and/or hearsay.

A

Yes, I do confirm that that's precisely what happened.

MR. LIM:

What this one million pesos which was the amount that the Africa group said they could only raise, what was this one million?

A

Well, it was their contribution to the capital of the company.

Q

Aside from the one million pesos contribution to the capital of Eastern from the Filipino group of Benedicto, Africa, and Nieto, do you know if additional contributions in terms of money were made by them afterwards?

A

Well, in as much as that they repaid the loans that C&W granted them out of the dividends yes, there were in effect contributions, I suppose.

Q

How much was the amount of the loan?

A

Two million pesos.

Q

That two million pesos loan was repaid by the Filipino group out of stock dividends?

A

No, out of – yes, stock dividends, yes, cash dividends.

Q

Cash dividends?

A

Cash dividends as I recall.

Q

Now, aside from that were there any subsequent contributions to the capital of Eastern from the Filipino

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group?

A

Not as far as I can recall, no.

Q

So in terms of cold cash or money, what they contributed initially was only one million pesos?

A

Correct.

Q

The loan that they got from C&W of two million was repaid to the company, or to C&W in terms of the dividends?

MR. AFRICA:

Already answered, your Honor.

A

Yes, yes, correct.

MR. LIM:

Who granted the loan to the Filipino group?

A

The Hong Kong and Shanghai Bank. Well, they didn't grant it to the Filipino group; they granted it to Eastern.

Q

And was there a guarantee made for that loan?

MR. AFRICA:

Leading, your Honor please.

A

Yes, a guarantee was made by Cable & Wireless.

MR. LIM:

I request, your Honor, for emphasis that paragraph 12 of the affidavit which has been read into the record and which has been confirmed by the witness be bracketed and sub marked as Exhibit C-12-d-1, paragraph 12. (Marked)

Mr Bane, would you or your company Cable & Wireless have agreed to that kind of payment arrangement, which is to pay in dividends, if it were not for the pressure from Secretary Enrile?

MR. AFRICA:

Same objection, your Honor please.

A

No, we would not; it wasn't, it was not standard business practice in any way at all. We would not normally have agreed to a condition such as that.

x x x

Q

Mr Bane, what was the position of Manuel Nieto Jr. in Eastern after incorporation?

A

He was the President.

x x x

Q

Now, Mr Bane, paragraph 13 of your affidavit mentions that: "Attorney Luciano Salazar drafted the Presidential Decree for the transfer of EEATC's franchise to Eastern, that said draft decree was personally delivered to Manuel Nieto, Jr., who committed to secure President Marcos' approval and signature." Do I take it that this was in 1974 contemporaneously with the organization of Eastern?

A

Yes, it was.

Q

You said Manuel Nieto Jr., was the Eastern President?

A

That's correct.

Q

Was Mr. Nieto able to secure the approval of President Marcos to the transfer of EEATC's franchise to Eastern?

A

Yes, he was, it was issued under Presidential Decree.

Q

If I show you a copy of that Presidential Decree would you be able to recognize it in the sense that it refers to your company, the former EEATC, not former, the EEATC?

A

Yes. (Handed)

Q

At this point, your Honor, I make of record that this representation has handed to Mr. Maurice Bane Exhibit C Motion Increase in Capital.

A

Yes, that is indeed the Presidential Decree.

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Q

Your Honor, may I make a little correction in my manifestation. What I handed to the witness is a photocopy of Presidential Decree 48944 with the Exhibit marking being reproduced as part of the document, the document actually marked as Exhibit C is now part of the case records. Now, Mr. Witness, please tell the court whether you had any personal participation in the preparation of this particular decree PD 489?

A

Yes, I did. I consulted with Attorney Salazar. We went through the Eastern franchise and so to that extent, in putting this together, yes I did co-operate with Attorney Salazar, although of course Attorney Salazar was the prime person behind drafting the document.

Q

Your affidavit mentions that this was approved by President Marcos in the entirety of the draft decree as prepared by Attorney Salazar and you, meaning no correction was made by Malacañang. My question is: what did that convey to you, meaning the fact that Marcos approved the Presidential Decree drafted by Attorney Salazar and yourself without revision or amendment?

MR. AFRICA:

Objected to, your Honor please, asking for an opinion and a conclusion.

MR. LIM:

That is very relevant, your Honor, the witness having participated in preparing this.

MR. AFRICA:

Anyway, my objection is on the record.

A

Well, Mr. Nieto undertook and promised us that he would get the draft Presidential Decree signed into law by President Marcos.

MR. LIM:

And was he able to deliver on his promise?

A

He certainly was. You can see the signature on the bottom.

Q

Witness referring to –

A

I do recognize that signature, yes, as President Marcos' signature.

Q

Your Honor, at this point may I request that this draft – I'm sorry that this copy of PD 489 be again marked in this deposition proceedings as Exhibit D Deposition Bane and the signature of President Marcos at the bottom of page 2 pointed at by the witness be sub marked and bracketed as D-1 Deposition Bane. (Marked)

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Mr. Bane, did you also serve as director of Eastern, one of the directors, I mean, of Eastern?

A

Yes, I was for a time, a short period of time.

Q

Now, after Eastern's incorporation in 1974 did you carry on as an officer of Eastern?

A

Yes, I did.

Q

What positions?

A

Executive Vice President and Treasurer.

Q

And as you said this was up to 1987?

A

Yes.

x x x

Q

Would you have acceded to that kind of set up, meaning having Filipino partners in the persons of Mr. Nieto and later Attorney Africa if it were not for the pressure from Secretary Enrile during your March 1973 meeting?

MR. AFRICA:

Already answered, your Honor please.

A

I can only repeat what I said before, that no, of course I would not.

MR. LIM:

Now, during your stint with Eastern in association with Mr. Nieto and later with Attorney Jose Africa, do you know of instances when President Marcos intervened on behalf of Eastern, or showed personal interest for Eastern?

MR. AFRICA:

Question is vague and intervene is an all-encompassing word.

MR. LIM:

I reform, your Honor. Mr Bane, you said that from 1974 continuously up to 1987 you were associated with Eastern, you were one of its officers and you were working with Filipino directors or officers. During this time

the President of the Philippines of course was continuously Mr. Marcos. My question, sir, is: during your incumbency in Eastern do you know of instances when President Marcos helped your company obtain correspondenceships, or in its competition with PLDT?

A

Yes, I do, yes.

Q

In what way did Marcos help Eastern?

A

Well, once the company was formed and under the formation of the company Eastern or Cable & Wireless had a management contract to manage the company, we could see that telecommunications development was very badly needed in the Philippines. The satellite earth station had been constructed and the Tropo had gone in, but there was still a very large demand for circuits. We therefore devised a plan to put underseas cables, telephone cables, from the Philippines to Japan, from the Philippines to Hong Kong, Philippines to Singapore and then latterly Philippines to Taiwan. For that we obviously needed approvals right at the top, because we were, in effect, in competition with PLDT. PLDT were really dragging their heels in development, perhaps because of lack of financing or whatever. So we saw an opportunity to perhaps establish Eastern as a major player in the Philippines telecommunications. I therefore drafted a letter which was – what is the word I'm looking for perhaps – which was fine tuned perhaps is the best word, by Attorney Jose Africa. And this set out Eastern's plans for development of submarine cable systems and everything else, and we asked at the bottom of the letter for Presidential approval. And this letter was signed by Ambassador Nieto; it was taken to Malacañang and it was signed, written across the top of the page, I think the words were just “Approved, President Marcos” so we received approval, direct approval from President Marcos to proceed with the implementation of this very big cable project. It meant to say that we had bypassed the national telecommunications commission under whose authority this would normally have been submitted, but knowing as we did that with PLDT's opposition we probably wouldn't have got it through the NTC.

Q

So it was President Marcos himself who gave the approval for Eastern to undertake the construction of these submarine cables that you mentioned?

A

That's correct, yes.

Q

And can you tell us the significance of that designation, what happened to Eastern because it got this project?

A

Well, by putting in the submarine cable systems, since we were financing them, we had to have the approval of, of course, the distant administration – in this case Hong Kong, Singapore and Taiwan, so one of the benefits that accrued from this was that we became a telephone correspondent to these countries. After all, these cables were very high capacity. I think to Hong Kong they were 1380 telephone circuits, to Japan 960 telephone circuits, so that what it did it was for the great benefit of the Philippines. We used the phrase in the letter “to make the Philippines the hub of telecommunications in South East Asia,” which we hoped we were going to do and I think to a large extent we did do. The ultimate benefit to Eastern was quite considerable, it enormously increased cash flow and of course from that we financed the cables.[45]

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x x x

Q

Mr. Bane, you stated that you were with Eastern for 21 years?

A

That's correct, yes.

Q

21 continuous years.

A

With EEATC and with Eastern.

x x x

Q

Mr. Bane, were there other stockholders of Class A during this 21 year period?

A

The only changes that I was aware of that were made was that Attorney Jose Africa pointed out to me, after the incorporation, that they wanted to put some of the stock, or they would put some of the stock in the name of various companies. He also mentioned that of course they were going to put some small, a very small minority of shares in the names of family members. That's as far as I knew.

Q

These companies, what companies were these? Or rather, excuse me sir, rather what would be the nature of these companies?

A

I don't know, I don't know what the companies were. I do know the names. I think Ambassador Nieto's was Aerocom, was Ambassador Benedicto's Universal Molasses, I can't remember? And then Attorney Jose Africa, I think,was Polygon.

Q

Now having been associated with Manuel Nieto Jr. and Jose L. Africa and also Mr. Benedicto for many years, did you come to know at any time during that period of association with them whether President Marcos had any participation or control in their stockholdings in Eastern?

MR. AFRICA:

Please, objected to, your Honor, witness isn't competent. The best witnesses would be the persons themselves, not what this witness has been told.

MR. LIM:

If the witness knows, your Honor.

MR. AFRICA:

But what he was told, not what is true, or what is true and correct?

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A

> No, I was not told that President Marcos had a stockholding in Eastern. There was, of course, speculation among ourselves as to – in a vague sort of way we often wondered. The only time that I actually knew that President Marcos had a significant stockholding in Eastern was when, after sequestration, Ambassador Nieto went on to television and stated on television that I think first of all he stated something about Philcomsat POTC and he then stated on television that President Marcos owned 40% of the stock of Eastern. That's the only time that I was, I had any direct, shall we say, or had been directly informed – by television of course – that President Marcos was a stockholder.[46]

In the 2006 case of Yuchengco v. Sandiganbayan,[47] this Court overturned the ruling of the Sandiganbayan's Partial Decision and held that the testimonies through depositions of Campos, Gapud and de Guzman established the Marcoses' beneficial ownership of Prime Holding Incorporated (PHI). The Court ruled that "the testimonies of Campos, Gapud, and de Guzman, persons who actually participated in the formation and early years of operation of PHI, constitute evidence that directly addresses the critical issue."[48]

In this case, the deponent Maurice V. Bane was the Executive Vice-President and Treasurer of ETPI from 1974 until his retirement in 1987. Maurice V. Bane had personal knowledge of and involvement in the circumstances leading to the formation of ETPI in 1974, which is crucial to petitioner's allegation that private respondents' interest in ETPI rightfully belongs to the Government. To dismiss the Bane deposition as inadmissible based on the tenuous ground that there was no "actual consolidation" of cases is to disregard the obvious fact that the Bane deposition was taken in CIVIL CASE NO. 0009 (Incident Case No. 0130 and G.R. No. 107789) and that all the defendants (now private respondents) in Civil Case No. 0009 were duly notified of the scheduled deposition-taking.

Although petitioner, in its formal offer of evidence in Civil Case No. 0009, inadvertently omitted the deposition of Maurice V. Bane, petitioner thereafter filed an urgent motion praying that it be allowed to introduce as additional evidence the deposition of Maurice V. Bane. The Sandiganbayan should have granted this motion or the succeeding Motion to Admit Supplemental Offer of Evidence (Re: Deposition of Maurice V. Bane) filed on 16 November 2001. As held in the 1997 case of Republic v. Sandiganbayan (Third Division):[49]

> In all cases involving alleged ill-gotten wealth brought by or against the Presidential Commission on Good Government, it is the policy of this Court to set aside technicalities and formalities that serve merely to delay or impede their judicious resolution. This Court prefers to have such cases resolved on the merits before the Sandiganbayan. Substantial justice to all parties, not mere legalisms or perfection of form, should now be relentlessly pursued. Eleven years have passed since the government started its search for and reversion of such alleged ill-gotten wealth. The definitive resolution of such cases on the merits is thus long overdue. If there is adequate proof of illegal acquisition, accumulation, misappropriation, fraud or illicit conduct, let it be brought out now.[50]

Accordingly, the Sandiganbayan Resolution dated 7 February 2002 should be reversed and set aside. The deposition of Maurice V. Bane taken on 23 to 24 October 1996, together with the accompanying documentary exhibits, should be admitted as part of petitioner's evidence. I vote to GRANT the petition and REMAND this case to the Sandiganbayan for further proceedings.

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[1] Under Rule 65 of the 1997 Rules of Civil Procedure.

[2] See Petition for Certiorari, dated 14 March 2002, p. 12; rollo, p. 13.

[3] Upon his demise, Jose L. Africa was eventually substituted by his heirs as defendants in Civil Case No. 0009.

Victor Africa is one of the legal epresentatives/forced heirs of deceased respondent Jose L. Africa; Sandiganbayan Resolution issued on 1 April 1998, p. 6; rollo, p. 336.

[4] Promulgated on 15 April 1993.

[5] See Sandiganbayan Resolution issued on 1 April 1998, p. 5; rollo, p. 335; Records, pp. 6646-6649.

[6] Rollo, pp. 68-71.

[7] Id. at 322-329.

[8] See Sandiganbayan Resolution issued on 1 April 1998, p. 6; rollo, p. 336.

[9] Sandiganbayan Resolution issued on 21 August 2000, pp. 3-4; rollo, pp. 354-355.

[10] Sandiganbayan Resolution issued on 3 April 2001, p. 2; rollo, p. 358.

[11] Rollo, pp. 63, 65-67.

[12] Justice Brion's modified draft Decision, p. 2.

[13] Comment cum Opposition, filed on 18 July 2008, SB records (Civil Case No. 0009), Volume 66, pp. 126-136; Rejoinder, filed on 14 September 2009, SB records (Civil Case No. 0009), Volume 67, pp. 206-210; Comment cum Opposition, filed on 14 September 2009, SB records (Civil Case No. 0009), Volume 67, pp. 212-213; Memorandum, filed on 8 February 2010, SB records (Civil Case No. 0009), Volume 68, pp. 62-73.

[14] Offer of Evidence filed on 14 May 2008, SB records (Civil Case No. 0009), Volume 65, pp. 539-545; Supplemental Offer of Evidence filed on 4 September 2008, SB records (Civil Case No. 0009), Volume 66, pp. 242-243.

[15] Underscoring in the original.

[16] Underscoring in the original; boldfacing supplied.

[17] SB Records (Civil Case No. 0009), Volume 18, pp. 6646-6649. (Boldfacing supplied)

[18] 2 V. Francisco, The Revised Rules of Court in the Philippines 352-353 (1973).

[19] See Republic of the Philippines v. Sandiganbayan, G.R. Nos. 166859, 169203 & 180702, 12 April 2011; Raquel-Santos v. Court of Appeals, G.R. Nos. 174986, 175071 & 181415, 7 July 2009, 592 SCRA 169; Grefalde v. Sandiganbayan, 401 Phil. 553 (2000).

[20] Active Wood Products, Co. Inc. v. Court of Appeals, 260 Phil. 825 (1990). Section 5, Rule 9 of the Internal Rules of the Supreme Court reads:

SEC. 5. Consolidation of cases. – The Court may order the consolidation of cases involving common questions of law or fact. The Chief Justice shall assign the consolidated cases to the Member-in-Charge to whom the case having the lower or lowest docket number has been raffled, subject to equalization of cases load by raffle. The Judicial Records Office shall see to it that (a) the rollos of the consolidated cases are joined together to prevent the loss, misplacement or detachment of any of them; and (b) the cover of each rollo indicates the G.R. or UDK number of the case with which the former is consolidated.

The Member-in-Charge who finds after study that the cases do not involve common questions of law or of fact may request the Court to have the case or cases returned to the original Member-in-Charge.

The Sandiganbayan has a similar rule regarding the consolidation of cases. Section 2, Rule XII of the Revised

Internal Rules of Sandiganbayan (A.M. No. 02-6-07-SB dated 28 August 2002) provides:

SEC. 2. Consolidation of Cases.- Cases arising from the same incident or series of incidents, or involving common questions of fact and law, may be consolidated in the Division to which the case bearing the lowest docket number is raffled.

(a) Before Cases Are Raffled - Should the propriety of consolidation appear upon the filing of the cases concerned as determined by the Raffle Committee, all such cases shall be consolidated and considered as one case for purposes of the raffle and inventory of pending cases assigned to each of the Divisions.

(b) After Cases Are Raffled - Should the propriety of such consolidation become apparent only after the cases are raffled, consolidation may be effected upon written motion of a litigant concerned filed with the Division taking cognizance of the case to be consolidated. If the motion is granted, consolidation shall be made to the Division in which the case with the lowest docket number is assigned. The Division to which the cases are consolidated shall transfer to the Division from which the consolidated cases came, an equivalent number of cases of approximately the same age, nature and stage in the proceedings, with proper notice to the parties in said cases.

[21] It is even held in American jurisprudence that "[w]here two or more actions are consolidated, a deposition taken in one of them prior to the consolidation is admissible on the trial of the consolidated action." (1 C.J.S. 1375)

[22] Philippine National Bank v. Gotesco Tyan Ming Development, Inc., G.R. No. 183211, 5 June 2009, 588 SCRA 798; Republic of the Philippines v. Court of Appeals, 451 Phil. 497 (2003).

[23] G.R. No. 172393, 20 October 2010, 634 SCRA 107.

[24] G.R. Nos. 182382-83, 24 February 2010, 613 SCRA 528.

[25] Id. at 535-536.

[26] Now Rule 23 of the 1997 Rules of Civil Procedure.

[27] Justice Brion's modified draft Decision, p. 47.

[28] G.R. Nos. 138701-02, 17 October 2006, 504 SCRA 618, 634.

[29] Mendoza v. Court of Appeals, 240 Phil. 561 (1987).

[30] 357 Phil. 452 (1998).

[31] Id. at 478-479.

[32] Transcript of the notes on the Deposition of Maurice V. Bane, p. 10; rollo, p. 89.

[33] Transcript of the notes on the Deposition of Maurice V. Bane, p. 8; rollo, p. 87.

[34] Sec. 4. [Rule 23] Use of depositions. – At the trial or upon the hearing of a motion or an interlocutory proceeding, any part or all of a deposition, so far as admissible under the rules of evidence, may be used against any party who was present or represented at the taking of the deposition or who had due notice thereof, in accordance with any one of the following provisions:

x x x

(c) The deposition of a witness, whether or not a party, may be used by any party for any purpose if the court finds: (1) that the witness is dead; or (2) that the witness resides at a distance more than one hundred (100)

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kilometers from the place of trial or hearing, or is out of the Philippines, unless it appears that his absence was procured by the party offering the deposition; (Emphasis supplied)

[35]Transcript of the notes on the Deposition of Maurice V. Bane, pp. 8-9; rollo, pp. 87-88.

[36] A F F I D A V I T

I, MAURICE V. BANE, of legal age married, a British [words missing from photocopy], and with business address at Eastern Telecommunications [missing words] Inc., Telecoms Plaza, Sen. Gil Puyat Avenue, Makati, Manila, after being duly sworn, do hereby depose and say,

1. I am presently the Senior Adviser of Eastern Telecommunications Philippines, Inc. ("ETPI"), a Philippine corporation duly registered and authorized to engage in the business of telecommunications in the Philippines since 1974;

2. Until my retirement, I served as the representative of Cable and Wireless, Ltd., ("C&W") a British company that presently owns 40% of the outstanding capital stocks of "ETPI", "C&W", through its wholly owned subsidiary, Eastern Extension Australasia and China Telephone Co., ("EEATC"), was formerly the sole owner and operator of the franchise that is now owned and held by "ETPI". The company has been operating in the Philippines since 1880 initially under a royal decree from Spain. Following the Pacific War in 1945, the franchise was renewed in 1952 by the Philippine Government under then President Elpidio Quirino;

3. In the late 60's the possibility of establishing earth satellite stations in the Philippines arose as a result of heavy pressure from the U.S. Military who were to be its major users. Many companies and consortiums, including "EEATC" bidded for the contract. Then President Marcos finally awarded the contract together with the franchise to the Philippines Overseas Telecommunications Corp. ("POTC") which at that time was relatively unknown in the international communications industry. The prime movers of "POTC" were Messrs. Potenciano Ilusorio, Honorio Poblador, Manuel H. Nieto, Jr. and Roberto S. Benedicto, who were all known Marcos associates. This group became very much a part of the Philippines telecommunications scene.

4. "EEATC" forged a partnership with "POTC" for the establishment of a tropospheric

scatter system communications with Taiwan. A franchise, Oceanic Wireless Network, Inc. was purchased and all government approvals were obtained by Messrs. Nieto and Ilusorio. The system was installed and during its inauguration, the principal guests were President and Mrs. Marcos, showing perhaps the political influence of Nieto and Ilusorio.

5. When President Marcos declared Martial Law in September 1972, it was clear that his grip on the country was virtually complete. "C&W" was fully aware of its uneasy tenure in the Philippines. In March 1973, then Secretary of National Defense Juan Ponce Enrile called us to a conference at Camp Crame. I attended the said meeting together with the representatives of RCA and Globe Mackay. Secretary Enrile firmly told us that we had until July, 1974 to organize ourselves into 60/40 corporations with Filipino majority ownership and, if we did not comply, the Government would take the necessary action.

6. I pointed out that "EEATC" was not covered by the Laurel-Langley Act since we were a British corporation with a fully constitutional franchise. Secretary Enrile said that if we did not comply with his directive, there would be no more "EEATC";

7. While we might have legal and valid grounds to contest the directive, under the prevailing martial law restrictions we had little recourse but to comply. After considering all economic and political factors, it was felt that some form of partnership with the POTC group would be the most advantageous option;

8. Prior to the above, discussions had been held with Ilusorio and Poblador, who then appeared in charge of POTC – discussions were generally unsatisfactory since it was quite hard to pin Ilusorio down and we gained the impression that they wanted us to give them their participation in "EEATC" with minimal monetary consideration in return for political protection;

9. In approximately April/May 1973, rapid changes took place in POTC. Ilusorio and Poblador appeared to have lost their control in POTC and Nieto emerged as the controlling figure. We learned much later that this was upon the instructions of President Marcos. Thus, discussions concerning "EEATC" were continued with Nieto;

10. The time factor was important with July 1974 over the horizon and it was agreed to call a meeting with the accounting group of SyCip, Gorres and Velayo as intermediary. At the said meeting, we found that Atty. Jose Africa was the main representative of Nieto/POTC. He had previously not seemed a major figure in the group although he had attended several board meetings of Oceanic Wireless. Africa quickly spelt out the rules – that they were interested in the proposition and that we were to deal only with the DAN group (composed of Roberto Benedicto, Jose Africa and Manuel Nieto, Jr.). We were informed that this was at the express wish of President Marcos who had appointed their group to control the telecommunications interests;

11. Negotiations were thereafter commenced with Mr. Eduardo M. Villanueva of SGV as intermediary, David West and W. H. Davies were the major "C&W" participants. We also requested Atty. Luciano Salazar Law Office to represent us on legal matters;

12. The figure eventually negotiated for the assets (net book value only and no good will) was Ten Million Pesos (P10,000,000.00) on the basis of which the BAN group will put up Six Million Pesos (P6,000,000.00). Further meetings took place to finalize the details but Africa later informed us that they could not raise the required amount. As a compromise, he suggested that the new corporation raise a bank loan from which "C&W" could be paid. While we were not happy with this arrangement, we resigned ourselves to the fact that we would have to accede. It was agreed that stockholders' contribution would be Five Million Pesos (P5,000,000.00) plus a bank loan of Seven Million Pesos (P7,000,000.00) to cover asset payment and working capital. Africa then advised that they could only raise One Million Pesos (P1,000,000.00) and "C&W" could loan them Two Million Pesos (P2,000,000.00). Again, we were unhappy but again we complied;

13. All the necessary documents, articles, by-laws and stockholders agreements were drawn up by the Salazar Law Office. Of particular delicacy was the issue of franchise. It was decided that the old franchise should be retained in all detail but this was to be transferred to a new company to be called Eastern Telecommunications Philippines, Inc. Atty. Salazar drafted the Presidential Decree for the transfer of the franchise. The draft was personally delivered to Nieto who committed to secure President Marcos' approval and signature. True enough, Marcos signed the P.D. Drafted by Atty. Salazar in its entirety, without any revision or amendment. This was convincing evidence of the political power and influence of the BAN group;

14. After complying with all the registration requirements and other government regulations, "ETPI" commenced to fully operate as a telecommunications company under its new franchise in August 1974;

15. I am executing this affidavit to attest to the truth of the foregoing facts in order to elucidate on the events and circumstances that led to the transfer of the assets and franchise of "EEATC" in favor of "ETPI" and the emergence of BAN group thereat.

Affiant further sayeth naught.

09 January 1991, Makati, Metro Manila.

(signed)
MAURICE V. BANE
Affiant

[37] Transcript of the notes on the Deposition of Maurice V. Bane, pp. 16-17; rollo, pp. 95-96.

[38] Transcript of the notes on the Deposition of Maurice V. Bane, pp. 19-20; rollo, pp. 98-99.

[39] Transcript of the notes on the Deposition of Maurice V. Bane, pp. 20-21; rollo, pp. 99-100.

[40] Transcript of the notes on the Deposition of Maurice V. Bane, pp. 23-25; rollo, pp. 102-104.

[41] Transcript of the notes on the Deposition of Maurice V. Bane, pp. 26-31, 33, 35; rollo, pp. 105-110, 112, 114.

[42] Transcript of the notes on the Deposition of Maurice V. Bane, pp. 37-41; rollo, pp. 116-120.

[43] Transcript of the notes on the Deposition of Maurice V. Bane, pp. 47-50; rollo, pp. 126-129.

[44]AUTHORIZING "THE EASTERN EXTENSION AUSTRALASIA AND CHINA TELEGRAPH COMPANY, LIMITED" TO TRANSFER THE FRANCHISE GRANTED TO THAT COMPANY UNDER REPUBLIC ACT NO. 808, AS AMENDED BY REPUBLIC ACT NO. 5002, TO THE EASTERN TELECOMMUNICATIONS PHILIPPINES, INC.

[45] Transcript of the notes on the Deposition of Maurice V. Bane, pp. 56-65; rollo, pp. 135-144.

[46] Transcript of the notes on the Deposition of Maurice V. Bane, pp. 76-78; rollo, pp. 155-157.

[47] 515 Phil. 1 (2006).

[48] Id. at 46.

[49] G.R. No. 113420, 7 March 1997, 269 SCRA 316.

[50] Id. at 334.

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