

CLARITA DEPAKAKIBO GARCIA, PETITIONER, VS. SANDIGANBAYAN AND REPUBLIC OF THE PHILIPPINES, RESPONDENTS.*G.R. No. 170122. October 12, 2009*

Ponente: VELASCO JR., J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-170122/>**VELASCO JR., J.:****The Case**

Before us are these two (2) consolidated petitions under Rule 65, each interposed by petitioner Clarita D. Garcia, with application for injunctive relief. In the first petition for mandamus and/or certiorari, docketed as G.R. No. 170122, petitioner seeks to nullify and set aside the August 5, 2005 Order,[1] as reiterated in another Order dated August 26, 2005, both issued by the Sandiganbayan, Fourth Division, which effectively denied the petitioner's motion to dismiss and/or to quash Civil Case No. 0193, a suit for forfeiture commenced by the Republic of the Philippines against the petitioner and her immediate family. The second petition for certiorari, docketed as G.R. No. 171381, seeks to nullify and set aside the November 9, 2005 Resolution[2] of the Sandiganbayan, Fourth Division, insofar as it likewise denied the petitioner's motion to dismiss and/or quash Civil Case No. 0196, another forfeiture case involving the same parties but for different properties.

The Facts

To recover unlawfully acquired funds and properties in the aggregate amount of PhP 143,052,015.29 that retired Maj. Gen. Carlos F. Garcia, his wife, herein petitioner Clarita, children Ian Carl, Juan Paulo and Timothy Mark (collectively, the Garcias) had allegedly amassed and acquired, the Republic, through the Office of the Ombudsman (OMB), pursuant to Republic Act No. (RA) 1379,[3] filed with the Sandiganbayan (SB) on October 29, 2004 a petition for the forfeiture of those properties. This petition, docketed as Civil Case No. 0193, was eventually raffled to the Fourth Division of the anti-graft court.

Civil Case No. 0193 was followed by the filing on July 5, 2005 of another forfeiture case, docketed as Civil Case No. 0196, this time to recover funds and properties amounting to PhP 202,005,980.55. Civil Case No. 0196 would eventually be raffled also to the Fourth Division of the SB. For convenience and clarity, Civil Case No. 0193 shall hereinafter be also referred to as Forfeiture I and Civil Case No. 0196 as Forfeiture II.

Prior to the filing of Forfeiture II, but subsequent to the filing of Forfeiture I, the OMB charged the Garcias and three others with violation of RA 7080 (plunder) under an Information dated April 5, 2005 which placed the value of the property and funds plundered at PhP 303,272,005.99. Docketed as Crim. Case No. 28107, the Information was raffled off to the Second Division of the SB. The plunder charge, as the parties' pleadings seem to indicate, covered substantially the same properties identified in both forfeiture cases.

After the filing of Forfeiture I, the following events transpired in relation to the case:

- (1) The corresponding summons were issued and all served on Gen. Garcia at his place of detention. Per the Sheriff's Return[4] dated November 2, 2005, the summons were duly served on respondent Garcias. Earlier, or

on October 29, 2004, the SB issued a writ of attachment in favor of the Republic, an issuance which Gen. Garcia challenged before this Court, docketed as G.R. No. 165835.

Instead of an answer, the Garcias filed a motion to dismiss on the ground of the SB's lack of jurisdiction over separate civil actions for forfeiture. The OMB countered with a motion to expunge and to declare the Garcias in default. To the OMB's motion, the Garcias interposed an opposition in which they manifested that they have meanwhile repaired to the Court on certiorari, docketed as G.R. No. 165835 to nullify the writ of attachment SB issued in which case the SB should defer action on the forfeiture case as a matter of judicial courtesy.

(2) By Resolution[5] of January 20, 2005, the SB denied the motion to dismiss; declared the same motion as pro forma and hence without tolling effect on the period to answer. The same resolution declared the Garcias in default.

Another resolution[6] denied the Garcias' motion for reconsideration and/or to admit answer, and set a date for the ex-parte presentation of the Republic's evidence.

A second motion for reconsideration was also denied on February 23, 2005, pursuant to the prohibited pleading rule.

(3) Despite the standing default order, the Garcias moved for the transfer and consolidation of Forfeiture I with the plunder case which were respectively pending in different divisions of the SB, contending that such consolidation is mandatory under RA 8249.[7]

On May 20, 2005, the SB 4[th] Division denied the motion for the reason that the forfeiture case is not the corresponding civil action for the recovery of civil liability arising from the criminal case of plunder.

(4) On July 26, 2005, the Garcias filed another motion to dismiss and/or to quash Forfeiture I on, inter alia, the following grounds: (a) the filing of the plunder case ousted the SB 4[th] Division of jurisdiction over the forfeiture case; and (b) that the consolidation is imperative in order to avoid possible double jeopardy entanglements.

By Order[8] of August 5, 2005, the SB merely noted the motion in view of movants having been declared in default which has yet to be lifted.

It is upon the foregoing factual antecedents that petitioner Clarita has interposed her first special civil action for mandamus and/or certiorari docketed as G.R. No. 170122, raising the following issues:

I. Whether or not the [SB] 4[th] Division acted without or in excess of jurisdiction or with grave abuse of discretion x x x in issuing its challenged order of August 5, 2005 and August 26 2005 that merely "Noted without action," hence refused to resolve petitioner's motion to dismiss and/or to quash by virtue of petitioner's prior default in that:

A. For lack of proper and valid service of summons, the [SB] 4[th] Division could not have acquired jurisdiction over petitioner's, [and her children's] x x x persons, much less make them become the true "parties-litigants, contestants or legal adversaries" in forfeiture I. As the [SB] has not validly acquired jurisdiction over the petitioner's [and her children's] x x x persons, they could not possibly be declared in default, nor can a valid judgment by default be rendered against them.

B. Even then, mere declaration in default does not per se bar petitioner from challenging the [SB] 4[th] Division's lack of jurisdiction over the subject matter of forfeiture I as the same can be raised anytime, even after final judgment. In the absence of jurisdiction over the subject matter, any and all proceedings before the [SB] are null and void.

C. Contrary to its August 26, 2005 rejection of petitioner's motion for reconsideration of the first challenged order that the issue of jurisdiction raised therein had already been passed upon by [the SB 4[th] Division's]

resolution of May 20, 2005, the records clearly show that the grounds relied upon by petitioner in her motion to dismiss and/or to quash dated July 26, 2005 were entirely different, separate and distinct from the grounds set forth in petitioner's manifestation and motion [to consolidate] dated April 15, 2005 that was denied by it per its resolution of May 20, 2005.

D. In any event, the [SB] 4th Division has been ousted of jurisdiction over the subject matter of forfeiture I upon the filing of the main plunder case against petitioner that mandates the automatic forfeiture of the subject properties in forfeiture cases I & II as a function or adjunct of any conviction for plunder.

E. Being incompatible, the forfeiture law (RA No. 1379 [1955]) was impliedly repealed by the plunder law (RA No. 7080 [1991]) with automatic forfeiture mechanism.

F. Since the sought forfeiture includes properties purportedly located in the USA, any penal conviction for forfeiture in this case cannot be enforced outside of the Philippines x x x.

G. Based on orderly procedure and sound administration of justice, it is imperative that the matter of forfeiture be exclusively tried in the main plunder case to avoid possible double jeopardy entanglements, and to avoid possible conflicting decisions by 2 divisions of the [SB] on the matter of forfeiture as a penal sanction.[9] (Emphasis added.)

With respect to Forfeiture II, the following events and proceedings occurred or were taken after the petition for Forfeiture II was filed:

(1) On July 12, 2005, the SB sheriff served the corresponding summons. In his return of July 13, 2005, the sheriff stated giving the copies of the summons to the OIC/Custodian of the PNP Detention Center who in turn handed them to Gen. Garcia. The general signed his receipt of the summons, but as to those pertaining to the other respondents, Gen. Garcia acknowledged receiving the same, but with the following qualifying note: "I'm receiving the copies of Clarita, Ian Carl, Juan Paolo & Timothy - but these copies will not guarantee it being served to the above-named (sic)."

(2) On July 26, 2005, Clarita and her children, thru special appearance of counsel, filed a motion to dismiss and/or to quash Forfeiture II primarily for lack of jurisdiction over their persons and on the subject matter thereof which is now covered by the plunder case.

To the above motion, the Republic filed its opposition with a motion for alternative service of summons. The motion for alternative service would be repeated in another motion of August 25, 2005.

(3) By Joint Resolution of November 9, 2005, the SB denied both the petitioner's motion to dismiss and/or to quash and the Republic's motion for alternative service of summons.

On January 24, 2006, the SB denied petitioner's motion for partial reconsideration.[10]

From the last two issuances adverted to, Clarita has come to this Court via the instant petition for certiorari, docketed as GR No. 171381. As there submitted, the SB 4th Division acted without or in excess of jurisdiction or with grave abuse of discretion in issuing its Joint Resolution dated November 9, 2005 and its Resolution of January 24, 2006 denying petitioner's motion to dismiss and/or to quash in that:

A. Based on its own finding that summons was improperly served on petitioner, the [SB] ought to have dismissed forfeiture II for lack of jurisdiction over petitioner's person x x x.

B. By virtue of the plunder case filed with the [SB] Second Division that mandates the automatic forfeiture of unlawfully acquired properties upon conviction, the [SB] Fourth Division has no jurisdiction over the subject matter of forfeiture.

C. Being incompatible, the forfeiture law (RA No. 1379 [1955]) was impliedly repealed by the plunder law

(RA No. 7080 [1991]) with automatic forfeiture mechanism.

D. Based on orderly procedure and sound administration of justice, it is imperative that the matter of forfeiture be exclusively tried in the main plunder case to avoid possible double jeopardy entanglements and worse conflicting decisions by 2 divisions of the Sandiganbayan on the matter of forfeiture as a penal sanction.[11] (Emphasis added.)

Per Resolution of the Court dated March 13, 2006, G.R. No. 170122 and G.R. No. 171381 were consolidated.

The Court's Ruling

The petitions are partly meritorious.

The core issue tendered in these consolidated cases ultimately boils down to the question of jurisdiction and may thusly be couched into whether the Fourth Division of the SB has acquired jurisdiction over the person of petitioner--and her three sons for that matter--considering that, first, vis-à-vis Civil Case Nos. 0193 (Forfeiture I) and 0196 (Forfeiture II), summons against her have been ineffectively or improperly served and, second, that the plunder case--Crim. Case No. 28107--has already been filed and pending with another division of the SB, i.e., Second Division of the SB.

Plunder Case in Crim. Case No. 28107 Did Not Absorb
the Forfeiture Cases in Civil Case Nos. 0193 and 0196

Petitioner maintains that the SB 4[th] Division has no jurisdiction over the subject matter of Forfeitures I and II as both cases are now covered or included in the plunder case against the Garcias. Or as petitioner puts it a bit differently, the filing of the main plunder case (Crim. Case No. 28107), with its automatic forfeiture mechanism in the event of conviction, ousted the SB 4[th] Division of its jurisdiction over the subject matter of the forfeiture cases. The inclusion of the forfeiture cases with the plunder case is necessary, so petitioner claims, to obviate possible double jeopardy entanglements and colliding case dispositions. Prescinding from these premises, petitioner would ascribe grave abuse of discretion on the SB 4[th] Division for not granting its separate motions to dismiss the two forfeiture petitions and/or to consolidate them with the plunder case on the foregoing ground.

Petitioner's contention is untenable. And in response to what she suggests in some of her pleadings, let it be stated at the outset that the SB has jurisdiction over actions for forfeiture under RA 1379, albeit the proceeding thereunder is civil in nature. We said so in *Garcia v. Sandiganbayan*[12] involving no less than petitioner's husband questioning certain orders issued in Forfeiture I case.

Petitioner's posture respecting Forfeitures I and II being absorbed by the plunder case, thus depriving the 4[th] Division of the SB of jurisdiction over the civil cases, is flawed by the assumptions holding it together, the first assumption being that the forfeiture cases are the corresponding civil action for recovery of civil liability *ex delicto*. As correctly ruled by the SB 4[th] Division in its May 20, 2005 Resolution,[13] the civil liability for forfeiture cases does not arise from the commission of a criminal offense, thus:

Such liability is based on a statute that safeguards the right of the State to recover unlawfully acquired properties. The action of forfeiture arises when a "public officer or employee [acquires] during his incumbency an amount of property which is manifestly out of proportion of his salary x x x and to his other lawful income x x x." [14] Such amount of property is then presumed *prima facie* to have been unlawfully acquired.[15] Thus "if the respondent [public official] is unable to show to the satisfaction of the court that he has lawfully acquired the property in question, then the court shall declare such property forfeited in favor of the State, and by virtue of such judgment the property aforesaid shall become property of the State.[16] x x x (Citations in the original.)

Lest it be overlooked, Executive Order No. (EO) 14, Series of 1986, albeit defining only the jurisdiction over cases involving ill-gotten wealth of former President Marcos, his immediate family and business associates, authorizes under its Sec. 3[17] the filing of forfeiture suits under RA 1379 which will proceed independently of any criminal proceedings. The Court, in *Republic v. Sandiganbayan*,[18] interpreted this provision as empowering the Presidential Commission on Good Government to file independent civil actions separate from the criminal actions.

Forfeiture Cases and the Plunder Case Have Separate Causes of Action; the Former Is Civil in Nature while the Latter Is Criminal

It bears stressing, as a second point, that a forfeiture case under RA 1379 arises out of a cause of action separate and different from a plunder case, thus negating the notion that the crime of plunder charged in *Crim. Case No. 28107* absorbs the forfeiture cases. In a prosecution for plunder, what is sought to be established is the commission of the criminal acts in furtherance of the acquisition of ill-gotten wealth. In the language of Sec. 4 of RA 7080, for purposes of establishing the crime of plunder, it is "sufficient to establish beyond reasonable doubt a pattern of overt or criminal acts indicative of the overall unlawful scheme or conspiracy [to amass, accumulate or acquire ill-gotten wealth]." On the other hand, all that the court needs to determine, by preponderance of evidence, under RA 1379 is the disproportion of respondent's properties to his legitimate income, it being unnecessary to prove how he acquired said properties. As correctly formulated by the Solicitor General, the forfeitable nature of the properties under the provisions of RA 1379 does not proceed from a determination of a specific overt act committed by the respondent public officer leading to the acquisition of the illegal wealth.[19]

Given the foregoing considerations, petitioner's thesis on possible double jeopardy entanglements should a judgment of conviction ensue in *Crim. Case 28107* collapses entirely. Double jeopardy, as a criminal law concept, refers to jeopardy of punishment for the same offense,[20] suggesting that double jeopardy presupposes two separate criminal prosecutions. Proceedings under RA 1379 are, to repeat, civil in nature. As a necessary corollary, one who is sued under RA 1379 may be proceeded against for a criminal offense. Thus, the filing of a case under that law is not barred by the conviction or acquittal of the defendant in *Crim. Case 28107* for plunder.

Moreover, given the variance in the nature and subject matter of the proceedings between the plunder case and the subject forfeiture cases, petitioner's apprehension about the likelihood of conflicting decisions of two different divisions of the anti-graft court on the matter of forfeiture as a penal sanction is specious at best. What the SB said in this regard merits approving citation:

On the matter of forfeiture as a penal sanction, respondents argue that the division where the plunder case is pending may issue a decision that would collide or be in conflict with the decision by this division on the forfeiture case. They refer to a situation where this Court's Second Division may exonerate the respondents in the plunder case while the Fourth Division grant the petition for forfeiture for the same properties in favor of the state or vice versa.

Suffice it to say that the variance in the decisions of both divisions does not give rise to a conflict. After all, forfeiture in the plunder case requires the attendance of facts and circumstances separate and distinct from that in the forfeiture case. Between the two (2) cases, there is no causal connection in the facts sought to be established and the issues sought to be addressed. As a result, the decision of this Court in one does not have a bearing on the other.

There is also no conflict even if the decisions in both cases result in an order for the forfeiture of the subject properties. The forfeiture following a conviction in the plunder case will apply only to those ill-gotten wealth not recovered by the forfeiture case and vice (sic) versa. This is on the assumption that the information on plunder and the petition for forfeiture cover the same set of properties.[21]

RA 7080 Did Not Repeal RA 1379

Petitioner takes a different tack in her bid to prove that SB erred in not dismissing Forfeitures I and II with her assertion that RA 7080 impliedly repealed RA 1379. We are not convinced.

Nowhere in RA 7080 can we find any provision that would indicate a repeal, expressly or impliedly, of RA 1379. RA 7080 is a penal statute which, at its most basic, aims to penalize the act of any public officer who by himself or in connivance with members of his family amasses, accumulates or acquires ill-gotten wealth in the aggregate amount of at least PHP 50 million. On the other hand, RA 1379 is not penal in nature, in that it does not make a crime the act of a public official acquiring during his incumbency an amount of property manifestly out of proportion of his salary and other legitimate income. RA 1379 aims to enforce the right of the State to recover the properties which were not lawfully acquired by the officer.

It has often been said that all doubts must be resolved against any implied repeal and all efforts should be exerted to harmonize and give effect to all laws and provisions on the same subject. To be sure, both RA 1379 and RA 7080 can very well be harmonized. The Court perceives no irreconcilable conflict between them. One can be enforced without nullifying the other.

Sandiganbayan Did Not Acquire Jurisdiction over
the Persons of Petitioner and Her Children

On the issue of lack of jurisdiction, petitioner argues that the SB did not acquire jurisdiction over her person and that of her children due to a defective substituted service of summons. There is merit in petitioner's contention.

Sec. 7, Rule 14 of the 1997 Revised Rules of Civil Procedure clearly provides for the requirements of a valid substituted service of summons, thus:

SEC. 7. Substituted service.--If the defendant cannot be served within a reasonable time as provided in the preceding section [personal service on defendant], service may be effected (a) by leaving copies of the summons at the defendant's residence with some person of suitable age and discretion then residing therein, or (b) by leaving the copies at defendant's office or regular place of business with some competent person in charge thereof.

It is basic that a court must acquire jurisdiction over a party for the latter to be bound by its decision or orders. Valid service of summons, by whatever mode authorized by and proper under the Rules, is the means by which a court acquires jurisdiction over a person.[22]

In the instant case, it is undisputed that summons for Forfeitures I and II were served personally on Maj. Gen. Carlos Flores Garcia, who is detained at the PNP Detention Center, who acknowledged receipt thereof by affixing his signature. It is also undisputed that substituted service of summons for both Forfeitures I and II were made on petitioner and her children through Maj. Gen. Garcia at the PNP Detention Center. However, such substituted services of summons were invalid for being irregular and defective.

In *Manotoc v. Court of Appeals*,[23] we broke down the requirements to be:

(1) Impossibility of prompt personal service, i.e., the party relying on substituted service or the sheriff must show that defendant cannot be served promptly or there is impossibility of prompt service within a reasonable time. Reasonable time being "so much time as is necessary under the circumstances for a reasonably prudent and diligent man to do, conveniently, what the contract or duty requires that should be done, having a regard for the rights and possibility of loss, if any[,] to the other party." [24] Moreover, we indicated therein that the sheriff must show several attempts for personal service of at least three (3) times on at least two (2) different dates.

(2) Specific details in the return, i.e., the sheriff must describe in the Return of Summons the facts and circumstances surrounding the attempted personal service.

(3) Substituted service effected on a person of suitable age and discretion residing at defendant's house or residence; or on a competent person in charge of defendant's office or regular place of business.

From the foregoing requisites, it is apparent that no valid substituted service of summons was made on petitioner and her children, as the service made through Maj. Gen. Garcia did not comply with the first two (2) requirements mentioned above for a valid substituted service of summons. Moreover, the third requirement was also not strictly complied with as the substituted service was made not at petitioner's house or residence but in the PNP Detention Center where Maj. Gen. Garcia is detained, even if the latter is of suitable age and discretion. Hence, no valid substituted service of summons was made.

The stringent rules on valid service of summons for the court to acquire jurisdiction over the person of the defendants, however, admits of exceptions, as when the party voluntarily submits himself to the jurisdiction of the court by asking affirmative relief.^[25] In the instant case, the Republic asserts that petitioner is estopped from questioning improper service of summons since the improvident service of summons in both forfeiture cases had been cured by their (petitioner and her children) voluntary appearance in the forfeiture cases. The Republic points to the various pleadings filed by petitioner and her children during the subject forfeiture hearings. We cannot subscribe to the Republic's views.

Special Appearance to Question a Court's Jurisdiction Is Not Voluntary Appearance

The second sentence of Sec. 20, Rule 14 of the Revised Rules of Civil Procedure clearly provides:

Sec. 20. Voluntary appearance.--The defendant's voluntary appearance in the action shall be equivalent to service of summons. The inclusion in a motion to dismiss of other grounds aside from lack of jurisdiction over the person of the defendant shall not be deemed a voluntary appearance. (Emphasis ours.)

Thus, a defendant who files a motion to dismiss, assailing the jurisdiction of the court over his person, together with other grounds raised therein, is not deemed to have appeared voluntarily before the court. What the rule on voluntary appearance--the first sentence of the above-quoted rule--means is that the voluntary appearance of the defendant in court is without qualification, in which case he is deemed to have waived his defense of lack of jurisdiction over his person due to improper service of summons.

The pleadings filed by petitioner in the subject forfeiture cases, however, do not show that she voluntarily appeared without qualification. Petitioner filed the following pleadings in Forfeiture I: (a) motion to dismiss; (b) motion for reconsideration and/or to admit answer; (c) second motion for reconsideration; (d) motion to consolidate forfeiture case with plunder case; and (e) motion to dismiss and/or to quash Forfeiture I. And in Forfeiture II: (a) motion to dismiss and/or to quash Forfeiture II; and (b) motion for partial reconsideration.

The foregoing pleadings, particularly the motions to dismiss, were filed by petitioner solely for special appearance with the purpose of challenging the jurisdiction of the SB over her person and that of her three children. Petitioner asserts therein that SB did not acquire jurisdiction over her person and of her three children for lack of valid service of summons through improvident substituted service of summons in both Forfeiture I and Forfeiture II. This stance the petitioner never abandoned when she filed her motions for reconsideration, even with a prayer to admit their attached Answer Ex Abundante Ad Cautelam dated January 22, 2005 setting forth affirmative defenses with a claim for damages. And the other subsequent pleadings, likewise, did not abandon her stance and defense of lack of jurisdiction due to improper substituted services of summons in the forfeiture cases. Evidently,

from the foregoing Sec. 20, Rule 14 of the 1997 Revised Rules on Civil Procedure, petitioner and her sons did not voluntarily appear before the SB constitutive of or equivalent to service of summons.

Moreover, the leading *La Naval Drug Corp. v. Court of Appeals*[26] applies to the instant case. Said case elucidates the current view in our jurisdiction that a special appearance before the court--challenging its jurisdiction over the person through a motion to dismiss even if the movant invokes other grounds--is not tantamount to estoppel or a waiver by the movant of his objection to jurisdiction over his person; and such is not constitutive of a voluntary submission to the jurisdiction of the court.

Thus, it cannot be said that petitioner and her three children voluntarily appeared before the SB to cure the defective substituted services of summons. They are, therefore, not estopped from questioning the jurisdiction of the SB over their persons nor are they deemed to have waived such defense of lack of jurisdiction. Consequently, there being no valid substituted services of summons made, the SB did not acquire jurisdiction over the persons of petitioner and her children. And perforce, the proceedings in the subject forfeiture cases, insofar as petitioner and her three children are concerned, are null and void for lack of jurisdiction. Thus, the order declaring them in default must be set aside and voided insofar as petitioner and her three children are concerned. For the forfeiture case to proceed against them, it is, thus, imperative for the SB to serve anew summons or alias summons on the petitioner and her three children in order to acquire jurisdiction over their persons.

WHEREFORE, the petitions for certiorari and mandamus are **PARTIALLY GRANTED**. The Sandiganbayan, Fourth Division has not acquired jurisdiction over petitioner Clarita D. Garcia and her three children. The proceedings in Civil Case Nos. 0193 and 0196 before the Sandiganbayan, Fourth Division, insofar as they pertain to petitioner and her three children, are **VOID** for lack of jurisdiction over their persons. No costs.

SO ORDERED.

Chico-Nazario, Leonardo-De Castro[*], and Peralta, JJ., concur.
Carpio, (Chairperson), J., see concurring & dissenting opinion.

[*] Additional member as per October 7, 2009 raffle.

[1] Rollo (G.R. No. 170122), pp. 49-50.

[2] Rollo (G.R. No. 171381), pp. 48-69.

[3] An Act Declaring Forfeiture In Favor of the State Any Property Found to Have Been Unlawfully Acquired By Any Public Officer or Employee and Providing for the Proceedings Therefor.

[4] Rollo (G.R. No. 170122), p. 80.

[5] *Id.* at 106-122.

[6] *Id.* at 151-166, dated February 3, 2005.

[7] An Act Further Defining the Jurisdiction of the Sandiganbayan, Amending for the Purpose Presidential Decree No. 1606, as Amended, Providing Funds Therefor, and for Other Purposes.

[8] Rollo (G.R. No. 170122), p. 49.

[9] *Id.* at 15-17.

[10] Rollo (G.R. No. 171381), pp. 70-82.

[11] Id. at 71.

[12] 499 Phil. 589 (2005).

[13] Rollo (G.R. No. 170122), pp. 219-227.

[14] RA 1379, Sec. 2.

[15] Id.

[16] RA 1379, Sec. 6

[17] Sec. 3. Civil suits for restitution x x x or x x x forfeiture proceedings provided for under [RA] 1379 x x x may be filed separately from and proceed independently of any proceedings and may be proved by a preponderance of evidence.

[18] G.R. No. 84895, May 4, 1989, 173 SCRA 72.

[19] Rollo (G.R. No. 171381), p. 303. Comment on Petition.

[20] CONSTITUTION, Art. III, Sec. 21 provides that "[n]o person shall be twice put in jeopardy of punishment for the same offense."

[21] Rollo (G.R. No. 171381), p. 81. SB Resolution dated January 24, 2006.

[22] *Casimina v. Legaspi*, G.R. No. 147530, June 29, 2005, 462 SCRA 171.

[23] G.R. No. 130974, August 16, 2006, 499 SCRA 21.

[24] Id. at 34; citing *Far Eastern Realty Investment, Inc. v. CA*, No. L-36549, October 5, 1988, 166 SCRA 256, 262.

[25] *Oaminal v. Castillo*, 459 Phil. 542 (2003).

[26] G.R. No. 103200, August 31, 1994, 236 SCRA 78.

CONCURRING AND DISSENTING OPINION

CARPIO, J.:

These are consolidated petitions under Rule 65[1] seeking to nullify various orders[2] issued by the Sandiganbayan involving two forfeiture cases against petitioner Clarita Depakakibo Garcia (Clarita).

I concur with the ponente's views that (1) the Sandiganbayan has and retains jurisdiction over the forfeiture cases, despite the subsequent filing of the plunder case; and (2) there is no need to consolidate the plunder case with the forfeiture cases to avoid double jeopardy.

However, I cannot subscribe to the view that in both forfeiture cases, the Sandiganbayan lacked jurisdiction not only over the person of Clarita but also over Clarita's children due to defective service of summons.

I.

G.R. No. 171381

Twenty-two days after the filing of Forfeiture II case, subject of G.R. No. 171381, Clarita moved to dismiss the

complaint for lack of jurisdiction over her person as a defendant, among other grounds. In her Answer filed *ad cautelam*, Clarita maintained this defense of lack of jurisdiction over her person as a defendant. However, instead of dismissing Forfeiture II case for improper service of summons, the Sandiganbayan cited *Philamlife v. Bрева*[3] to justify its non-dismissal of the complaint.

The Sandiganbayan's reliance on *Philamlife*[4] is misplaced because an amended complaint was subsequently filed therein which prompted the trial court to issue alias summons which was effectively served. Therefore, as the ponencia correctly concludes, the Sandiganbayan erred in not dismissing Forfeiture II case for lack of jurisdiction over Clarita.

However, I disagree with the ponencia in extending the dismissal of Forfeiture II case, on the ground of lack of jurisdiction over the person of the defendant, to Clarita's non-petitioning children and co-defendants.

Clarita is the lone petitioner in the present cases. Clearly, here is no reason to apply by extension Clarita's arguments in favor of her children and co-defendants Ian Carl, Juan Paolo and Timothy Mark, who are all of legal age. In fact, the ponencia failed to state any basis for vicariously relating Clarita's grounds to her children and co-defendants. The ponencia inexplicably extended to Clarita's children the benefits arising from Clarita's invocation of lack of jurisdiction over the person of the defendant.

Lack of jurisdiction over the person, being subject to waiver, is a personal defense which can only be asserted by the party who can thereby waive it by silence.[5] By failing to come to this Court to raise the matter of a purely personal defense, non-petitioning Clarita's children and co-defendants have relinquished their right to avail of the present remedy.

Since a court acquires jurisdiction over the person of the plaintiff or petitioner by the filing of the complaint, petition or initiatory pleading,[6] the Court has no jurisdiction over Clarita's children who did not file any such pleading before this Court, and thus did not signify their submission to the Court's power and authority. Well-entrenched is the principle that a party who does not appeal, or file a petition for certiorari, like the present cases, is not entitled to any affirmative relief.[7]

In view of the foregoing, I agree with the conclusion in G.R. No. 171381 insofar as the Sandiganbayan has not acquired jurisdiction over the person of Clarita alone.

II.

G.R. No. 170122

In its 20 January 2005 Resolution, the Sandiganbayan denied Clarita, et al.'s Motion to Dismiss dated 16 November 2004 (first motion to dismiss) and subsequently declared defendants in default. In its 3 February 2005 and 23 February 2005 Resolutions, the Sandiganbayan denied two motions for reconsideration.

Despite notice of the default order, Clarita did not file any motion to set it aside. Instead of forthwith pursuing the proper remedy,[8] Clarita allowed a considerable length of time to lapse.

Clarita thereafter filed a Manifestation with Motion dated 15 April 2005 for the consolidation of Forfeiture I case with the plunder case, and another Motion to Dismiss dated 26 July 2005 (second motion to dismiss).

In its Order of 5 August 2005, the Sandiganbayan merely noted the second motion to dismiss in view of its standing default order. Notably, it was only in this second motion to dismiss that the ground of lack of jurisdiction over the person of the defendant was first raised. In its Order of 26 August 2005, the Sandiganbayan denied reconsideration of the 5 August 2005 Order after finding a mere repetition of the arguments raised.

Since Clarita had already been declared in default, the Sandiganbayan could not be compelled by mandamus to recognize her right to participate in the proceedings and resolve her motions, without lifting the default order first. As mentioned earlier, Clarita did not pursue the proper remedies available to a party declared in default. She did not file a motion under oath to set aside the order of default or a petition for certiorari after receipt of the 20 January 2005 Resolution of the Sandiganbayan denying the first motion to dismiss. The 60-day reglementary period provided by law to assail the Sandiganbayan Resolutions dated 20 January 2005 and 3 February 2005 via certiorari, aside from having lapsed, may no longer be pursued since these two Resolutions had already been upheld by this Court in its Decision dated 31 August 2006 in G.R. No. 167103, entitled *Garcia v. Sandiganbayan*.^[9]

Regardless, it is my view that Clarita voluntarily submitted herself to the jurisdiction of the Sandiganbayan in the Forfeiture I case.

Section 20, Rule 14 of the Rules of Court provides:

Sec. 20. Voluntary appearance. -- The defendant's voluntary appearance in the action shall be equivalent to service of summons. The inclusion in a motion to dismiss of other grounds aside from lack of jurisdiction over the person of the defendant shall not be deemed a voluntary appearance.

The Rule clearly provides that the defendant's voluntary appearance shall be equivalent to service of summons. I disagree with the ponencia's conclusion that Clarita's special appearance to question the Sandiganbayan's jurisdiction is not voluntary appearance. While the ponencia mentioned some of Clarita's pleadings which were filed by way of special appearance, it ignored certain material facts. The first motion to dismiss filed by all the defendants, including Clarita, raised the sole ground of "no jurisdiction over separate civil actions for forfeiture of unlawfully acquired properties."^[10] It was only after more than six months from the denial of the first motion to dismiss that Clarita raised, via the second motion to dismiss, the ground of lack of jurisdiction over her person as defendant.

In *Fernandez v. Court of Appeals*,^[11] this Court ruled that an appearance in whatever form, without expressly objecting to the jurisdiction of the court over the person, is a submission to the jurisdiction of the court over the person. A defendant may, e.g., appear by presenting a motion and unless by such appearance he specifically objects to the jurisdiction of the court, he thereby gives his assent to the jurisdiction of the court over his person.

Clarita failed to assert the defense of lack of jurisdiction over her person as a defendant in her Answer, even if filed *ex abundante ad cautelam*. Here, she interposed only the defense of "no cause of action" upon a claim of legitimate acquisition of the properties subject of the case. Likewise, the Manifestation with Motion dated 15 April 2005 exhibits voluntary appearance on the part of Clarita who moved not to dismiss but to transfer or consolidate the Forfeiture I case with the plunder case which was pending in a different division of the Sandiganbayan. Such filing of the motion to consolidate was not a conditional appearance entered to question the regularity of the service of summons. Clarita expressly waived her remedy against the default order when she filed such motion "without any intention of participating in the default proceedings."^[12]

Since Clarita invoked the transfer or consolidation of the cases as an affirmative relief, this clearly indicates a recognition of the Sandiganbayan's power and authority. This is inconsistent with a special appearance for the sole purpose of questioning the court's lack of jurisdiction. In *Hongkong & Shanghai Banking Corp., Ltd. v. Catalan*,^[13] this Court held:

It must be noted that HSBANK initially filed a Motion for Extension of Time to File Answer or Motion to Dismiss. HSBANK already invoked the RTC's jurisdiction over it by praying that its motion for extension of time to file answer or a motion to dismiss be granted. The Court has held that the filing of motions seeking

affirmative relief, such as, to admit answer, for additional time to file answer, for reconsideration of a default judgment, and to lift order of default with motion for reconsideration, are considered voluntary submission to the jurisdiction of the court. Consequently, HSBANK's expressed reservation in its Answer ad cautelam that it filed the same "as a mere precaution against being declared in default, and without prejudice to the Petition for Certiorari and/or Prohibition...now pending before the Court of Appeals" to assail the jurisdiction of the RTC over it is of no moment. Having earlier invoked the jurisdiction of the RTC to secure affirmative relief in its motion for additional time to file answer or motion to dismiss, HSBANK effectively submitted voluntarily to the jurisdiction of the RTC and is thereby estopped from asserting otherwise, even before this Court. (Italics in the original; emphasis supplied)

From the foregoing, I submit that the Sandiganbayan acquired jurisdiction over the person of Clarita in the Forfeiture I case.

In sum, Clarita failed to substantiate her allegations that the Sandiganbayan: (1) had not acquired jurisdiction over her person as a defendant in the Forfeiture I case; (2) gravely abused its discretion when it merely noted her second motion to dismiss in view of its standing default order; and (3) unlawfully neglected to perform its legal duty.

Accordingly, I vote to GRANT the petition for certiorari filed by Clarita Depakakibo Garcia alone in G.R. No. 171381 and to DISMISS the petition for certiorari and mandamus in G.R. No. 170122.

[1] G.R. No. 170122 is a petition for certiorari and mandamus while G.R. No. 171381 is a petition for certiorari.

[2] In G.R. No. 170122, Clarita assails the 5 August 2005 and 26 August 2005 Orders of the Sandiganbayan, Fourth Division.

In G.R. No. 171381, Clarita challenges the 9 November 2005 Resolution issued by the Sandiganbayan, Fourth Division.

[3] 484 Phil. 824 (2004).

[4] Id.

[5] Carandang v. Heirs of Quirino A. De Guzman, G.R. No. 160347, 29 November 2006, 508 SCRA 469, 480. See La Naval Drug Corp. v. Court of Appeals, G.R. No. 103200, 31 August 1994.

[6] De Joya v. Marquez, G.R. No. 162416, 31 January 2006, 481 SCRA 376. See Montaner v. Shari'a District Court, G.R. No. 174975, 20 January 2009.

[7] Aklan College, Inc. v. Enero, G.R. No. 178309, 27 January 2009; Corinthian Gardens Association, Inc. v. Tandangco, G.R. No. 160795, 27 June 2008, 556 SCRA 154; Tangalin v. Court of Appeals, G.R. No. 121703, 29 November 2001.

[8] In Cerezo v. Tuazon, 469 Phil. 1020 (2004), the Court provided the remedies available to a party declared in default. The remedies are as follows:

a) The defendant in default may, at any time after discovery thereof and before judgment, file a motion under oath to set aside the order of default on the ground that his failure to answer was due to fraud, accident, mistake or excusable negligence, and that he has a meritorious defense (Sec. 3, Rule 18 [now Sec. 3(b), Rule 9]);

b) If the judgment has already been rendered when defendant discovered the default, but before the same has become final and executory, he may file a motion for new trial under Section 1(a) of Rule 37;

c) If the defendant discovered the default after the judgment has become final and executory, he may file a petition for relief under Section 2 [now Section 1] of Rule 38; and

d) He may also appeal from the judgment rendered against him as contrary to the evidence or to the law, even if no petition to set aside the order of default has been presented by him (Sec. 2, Rule 41).

Moreover, a petition for certiorari to declare the nullity of a judgment by default is also available if the trial court improperly declared a party in default, or even if the trial court properly declared a party in default, if grave abuse of discretion attended such declaration. (*Italics in the original; emphasis supplied*)

[9] G.R. No. 167103, 31 August 2006, 500 SCRA 631.

[10] Rollo (G.R. No. 170122), p. 81.

[11] G.R. No. 131094, 16 May 2005, 458 SCRA 454.

[12] Rollo (G.R. No. 170122), p. 214.

[13] 483 Phil. 525, 542-543 (2004).

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at <https://batas.org>

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.