

REPUBLIC OF THE PHILIPPINES, PETITIONER, VS. HONORABLE SANDIGANBAYAN, 5TH DIVISION, DON FERRY, AND CESAR ZALAMEA, RESPONDENTS.*G.R. No. 195837. October 03, 2023*

Ponente: ZALAMEDA, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-195837/>**ZALAMEDA, J.:**

The recovery of ill-gotten wealth, with its laudable purpose initiated as it is "not only out of considerations of simple justice but also out of sheer necessity,"[1] places a heavy responsibility on the Republic and poses a demanding task for the Sandiganbayan and this Court. As the party seeking the recovery, the Republic has the burden of establishing its claim through admissible and relevant evidence. As vanguards of justice, the Sandiganbayan, and ultimately, this Court, have the obligation not only to meticulously analyze and weigh all the averments and pieces of evidence - separating the unsubstantiated from those proved, discarding the irrelevant and inadmissible - but also to ensure that issues already passed upon are not litigated anew.

It is in this light that We resolve these consolidated cases,[2] which originated from the complaint for recovery and reconveyance of ill-gotten wealth brought by the Presidential Commission on Good Government (PCGG) before the Sandiganbayan.

Antecedents

On 17 July 1987, petitioner Republic of the Philippines (the Republic), through the PCGG, filed before the Sandiganbayan a Complaint for reversion, reconveyance, restitution, accounting, and damages (Complaint), docketed as SB Civil Case No. 0005, against respondent Lucio Tan (Tan), former President Ferdinand E. Marcos (Marcos), former First Lady and later Congresswoman, respondent Imelda R. Marcos (Imelda), respondent Don Ferry (Ferry), and 22[3] other individuals (collectively, Tan, et al.).[4]

In its Complaint, the Republic sought to recover ill-gotten wealth allegedly acquired by Marcos respondent Imelda, and respondent Tan;[5] which was purportedly demonstrated in the following instances:

- the liquidation of General Bank and Trust Company (GenBank) and respondent Tan's acquisition of its assets through Allied Banking Corporation (Allied Bank) without sufficient collateral and consideration;[6]
- respondent Tan's delivery to Marcos and respondent Imelda of substantial beneficial interest in shares of stock in Asia Brewery Inc. (Asia Brewery) beginning July 1977 in exchange for concessions and privileges for his business ventures;[7]
- respondent Tan's delivery of improper gifts, bribes, concessions, and/or guaranteed "dividends" to Marcos and respondent Imelda, allegedly in consideration of their continued support for and/or their ownership of interests in his business ventures;[8]
- the establishment of Shareholdings, Inc. to prevent the disclosure and recovery of their allegedly illegally-obtained assets.[9] The Republic alleged that Shareholdings, Inc. beneficially held and/or controlled

substantial shares of stock in (1) Fortune Tobacco Corp. (Fortune Tobacco), (2) Asia Brewery, (3) Foremost Farms, Inc. (Foremost Farms), (4) Himmel Industries, Inc. (Himmel Industries), (5) Silangan Holdings, Inc. (Silangan Holdings), and (6) Allied Bank;

- the sale of the controlling interest of Development Bank of the Philippines (DBP) in Century Park Sheraton Hotel (Century Park), owned by Maranaw Hotels and Resorts Corp. (Maranaw Hotels) to Sipalay Trading Corporation (Sipalay Trading), a company controlled by respondent Tan (hereinafter, the Sipalay Deal). The Republic alleged that this sale caused losses to DBP amounting to millions of pesos because Sipalay Trading was grossly undercapitalized;^[10]

- the printing of Bureau of Internal Revenue strip stamps worth billions of pesos allegedly without legal authority, and affixing them on packs of cigarettes produced by Fortune Tobacco, in violation of Section 189 of the Internal Revenue Code of 1977, defrauding the Republic and the Filipino people of billions of pesos in tax receipts;^[11] and

- the establishment of Northern Redrying Co., Inc., a Virginia Tobacco Company, which on several instances, imported and purchased tobacco in excess of the ceilings allowed by law.^[12]

On 13 September 1991, the Republic filed a Motion for Leave to Amend and for Admission of Second Amended Complaint (Second Amended Complaint),^[13] which was granted on 02 April 1992.^[14]

The Second Amended Complaint impleaded as additional defendants the following corporations: (1) Shareholdings, Inc.; (2) Asia Brewery; (3) Allied Bank; (4) Fortune Tobacco; (5) Maranaw Hotels; (6) Virginia Tobacco Redrying Plant; (7) Northern Tobacco Redrying Plant; (8) Foremost Farms; (9) Sipalay Trading; (10) Himmel Industries; (11) Grandspan Development Corp. (Grandspan); (12) Basic Holdings Corp. (Basic); (13) Progressive Farms, Inc.; (14) Manufacturing Services and Trade Corp.; (15) Allied Leasing & Finance Corp.; (16) Jewel Holdings, Inc.; (17) Iris Holdings and Development Corp.; and (18) Virgo Holdings and Development Corp. (collectively, respondent-corporations).^[15]

The Republic also impleaded foreign corporations that were alleged to be respondent Tan's business ventures, and to which Marcos and respondent Imelda purportedly granted concessions to, or have interests or beneficial ownership.^[16] Later, however, the Republic withdrew its complaint against the foreign corporations.^[17]

The Republic also impleaded then Philippine National Bank (PNB) President Panfilo O. Domingo (Domingo), the heirs of former Central Bank Governor Gregorio Licaros (Licaros), and former DBP and Maranaw Hotels' Chairperson Cesar Zalamea (Zalamea), in connection with the alleged illegal liquidation of GenBank and sale of its assets to Allied Bank.^[18]

The properties that the Republic is seeking to recover includes two aircrafts and shares of stocks from the respondent-corporations and Century Park.^[19]

On 06 September 1995, respondent Imelda filed her Answer with Counterclaim.^[20] Respondent Tan, the other individual defendants, and respondent-corporations also filed their respective Answers.^[21]

After more than six years, or on 20 November 2001, respondent Imelda filed her Motion for Leave to File Amended Answer with Counterclaim and Compulsory Cross-Claim (Amended Answer).^[22] However, the Sandiganbayan denied the motion and not admit respondent Imelda's Amended Answer.^[23] This ruling was affirmed by the Supreme Court in its Resolution dated 17 March 2003.^[24]

It was only on 24 May 2006 when trial commenced with the Republic's presentation of its evidence.^[25]

On 23 to 24 September 2008, the Republic presented Joselito Yujuico (Joselito) to testify on the allegations in the

Second Amended Complaint pertaining to the liquidation of GenBank and the sale of its assets to Allied Bank.[26] The Sandiganbayan, however, subsequently disallowed the testimony of Joselito and ordered that the same be stricken off the records.[27] The Sandiganbayan explained that the liquidation and acquisition of GenBank had already been decided by the Supreme Court[28] in *General Bank & Trust Co. v. Central Bank of the Philippines (GenBank Liquidation Case)*. [29] The Republic filed a motion for reconsideration, which was denied by the Sandiganbayan in its Resolution dated 29 June 2009.[30]

The Sandiganbayan terminated the Republic's presentation of evidence on 23 April 2009.[31] The Republic sought reconsideration of the termination on the ground that it still had witnesses to present and it was still waiting for the turn-over of several documentary exhibits from the previous PCGG Special Counsel.[32] The Sandiganbayan denied the Republic's motion for reconsideration.[33]

Thereafter, it was the respondents' turn to present their evidence.

Respondents Tan, et al., the heirs of Domingo, and the heirs of Licaros opted not to present testimonial evidence and, instead, proceeded to file their respective Formal Offer of Evidence.[34] On the other hand, respondent Imelda was deemed to have waived her right to present evidence.[35]

On 23 August 2010, respondent Zalamea filed his Motion to Dismiss (Demurrer to Evidence).[36] Zalamea claimed that the Republic's evidence against him was irrelevant and did not sufficiently establish his participation in the alleged acquisition of ill-gotten wealth.[37] Thus, according to him, the Republic showed no right of relief against him.[38] He also argued that the case would be disposed quickly should the Sandiganbayan grant his motion to dismiss.[39]

Respondent Ferry also filed a Motion to Dismiss (on a Demurrer to Evidence).[40] He argued that the evidence against him only showed that his alleged wrongdoings were, in fact, committed in his official capacity as the Vice Chairperson of DBP.[41] Ferry further reasoned that these acts were made with the other officers also acting in their official capacities,[42] duly approved in accordance with established procedures, and, therefore, presumed to have been performed regularly.[43] He likewise asserted that the Republic neither presented the originals nor properly identified the documents against him.[44] He further maintained the validity of the transaction he participated in, as ruled by this Court in *Republic v. Desierto*[45] (*Desierto*).[46]

On 22 December 2010, the Sandiganbayan granted the motions to dismiss on demurrer to evidence of respondents Zalamea and Ferry.[47] The Sandiganbayan found no evidence that they participated in the acquisition of the subject assets and properties.[48] The graft court also took note of the testimonies which confirmed respondent Zalamea's claim that his name did not appear in any of the documents presented in the Sandiganbayan.[49] On 25 February 2011, the Sandiganbayan denied the motion for reconsideration of the dismissal.[50]

Thus, on 16 March 2011, the Republic filed before this Court a Petition under Rule 45 of the Rules of Court[51] to assail the Sandiganbayan's Resolutions dated 22 December 2010 and 25 February 2011. It was docketed as G.R. No. 195837 and entitled, *Republic of the Philippines v. Sandiganbayan, Don Ferry, and Cesar Zalamea*. [52]

Meanwhile, respondents Fortune Tobacco and Northern Tobacco Redrying Co. Inc. (Northern Tobacco) reportedly merged with Philip Morris. Philip Morris and Fortune Tobacco had agreed to transfer their respective assets and liabilities to a new company called PMFTC, Inc.[53] This report prompted the Republic to file, on 18 February 2011, a motion asking the Sandiganbayan to require respondents Tan, et al. to explain the merger and manifest whether the interests subject of this case have been conveyed. Further, the Republic sought the substitution of Fortune Tobacco with PMFTC, Inc. and suspension of the proceedings until substitution is implemented.[54]

In a Minute Resolution dated 03 March 2011,[55] the Sandiganbayan denied the motion, as well as the Republic's request to cancel the scheduled hearing for the presentation of its rebuttal evidence.[56] Consequently, the Republic filed a Motion for Voluntary Inhibition of the chairperson and the members of the Fifth Division of the Sandiganbayan.[57]

The Sandiganbayan denied the Republic's Motion for Voluntary Inhibition in its Resolution dated 3 May 2011.[58] The graft court denied acting with bias against the Republic, or that it was partial in favor of Atty. Estelito Mendoza, who was respondents Tan, et al.'s counsel.[59] It stressed that it granted the Republic's motions and requests for postponements, extensions, and cancellations.[60] It held that it did not rest the case for the Republic nor was the Republic coerced to terminate its presentation of evidence in chief upon solicitation of respondents Tan, et al.'s counsel.[61] Further, the Republic was not denied due process considering it was given years to prepare, present evidence and rebut respondents' defense.[62] The Sandiganbayan also noted that while delay in the proceedings could be attributed to all parties,[63] the Republic was the main culprit for the abeyance, and the court had been very tolerant to such length that it even allowed one of its witnesses to testify again even after the conclusion of the testimony.[64] It opined that four years of delay in the trial to accommodate the Republic was excessive.[65] The Sandiganbayan ruled that its objective was to resolve the case with dispatch and in consonance with A.M. No. 008-05-SC.[66] It also stated that on motion of the Republic, and as agreed by the parties, the Republic was allowed to present its evidence in chief with no further postponements.[67]

The Sandiganbayan also ruled that the Motion for Voluntary Inhibition was dilatory in nature, filed when the case was about to be submitted for decision.[68] Further, the Republic failed to impute any act of partiality that would compel the members of the division to inhibit.[69] The accusations of prejudgment was speculative and not among the valid grounds for the inhibition of a judge under Rule 137 of the Rules of Court.[70] Mere suspicion of bias was not enough;[71] and to allow this would open the floodgates to forum-shopping and result in further delay of the proceedings.[72]

Moreover, the Sandiganbayan noted that none of the instances under Rule 3.12 of the Code of Judicial Conduct was present to warrant inhibition.[73] Repeated rulings against a litigant are not basis for disqualification.[74] Besides, the Republic's remedy to question the Sandiganbayan's rulings, was to file a Petition for Certiorari.[75] The Sandiganbayan also pointed out that while it had granted reliefs to respondents, it ruled in favor of the Republic when it denied the separate motions to dismiss filed by respondents Zalamea, the heirs of Licaros, and respondents Tan, et al.[76] It emphasized that some of its resolutions have been affirmed by the Supreme Court, thus showing that these were issued with due and proper consideration of the parties' arguments and applicable law and Jurisprudence.[77]

The Sandiganbayan further noted that on 06 April 1994, the Republic had also filed a motion for voluntary inhibition of the chairperson of the Sandiganbayan division then hearing the case.[78] This was denied.[79] Likewise, its Orders dated 23 April 2009[80] and 20 July 2009[81] were supported by facts and law and were accepted by the Republic without complaints.[82]

The Republic moved for reconsideration of the ruling dated 03 May 2011. Through a Resolution[83] dated 04 July 2011, the Sandiganbayan denied the same, holding that the Republic was not able to prove its allegations of bias and prejudice with clear and convincing evidence.[84]

On 06 June 2011, the Republic filed a Motion with Leave of Court to Admit Attached Third Amended Complaint (Third Amended Complaint) seeking to formally implead PMFTC, Inc. and several other individuals,[85] alleging that substantial capital and assets of respondents Fortune Tobacco and Northern Tobacco have been fraudulently transferred to PMFTC, Inc. pending litigation, to effectively place it beyond the reach of the court.[86] The

Republic asserted that the additional defendants cooperated in the formation of PMFTC, Inc. despite being fully aware of the pendency of the ill-gotten wealth case.[87]

The Republic also filed a Motion with Memorandum of Authorities on 17 June 2011 in support of its move to recall Joselito to the witness stand for continuation of his testimony.[88] The Republic also moved for the presentation of Aderito Yujuico (Aderito), in lieu of Rolando Gapud (Gapud), who could not testify.[89] The Sandiganbayan, however, disallowed Aderito's presentation upon the Republic's own admission that his testimony would have the same substance as that of Joselito.[90] The Republic was also declared to have waived its right to present Gapud as a witness.[91]

In its Resolution dated 13 July 2011, the Sandiganbayan denied the Third Amended Complaint.[92] It found that PMFTC, Inc. and the additional defendants were not indispensable or necessary parties.[93] It ruled that assuming Fortune Tobacco, Northern Tobacco, and PMFTC, Inc. were organized with ill-gotten wealth, there was no need to implead PMFTC, Inc. and the additional defendants because there was no cause of action against them.[94] The Republic's motion for reconsideration was denied in a Resolution dated 23 August 2011.[95]

Thus, on 02 November 2011, the Republic filed a Petition for Certiorari under Rule 65 to nullify the Sandiganbayan's Resolutions denying the motion to admit the Third Amended Complaint and the motion for reconsideration. It was docketed as G.R. No. 198974 and entitled, Republic of the Philippines v. Sandiganbayan, Lucio Tan, Estate of Ferdinand E. Marcos, et. al.[96]

In a Resolution dated 18 July 2011, the Sandiganbayan denied the Republic's Motion with Memorandum of Authorities in support of its recall of Joselito on the witness stand for continuation of his testimony.[97] It held that it had already ruled on the propriety of offering Joselito's testimony in its Resolutions dated 22 December 2008 and 29 June 2009.[98] It also maintained that the GenBank Liquidation Case had already declared the validity of GenBank's liquidation and the transfer of its assets to Allied Bank.[99] Thus, the substance of Joselito's testimony had already been considered in the GenBank Liquidation Case.[100]

On 05 September 2011, the Republic filed another Petition for Certiorari under Rule 65, this time to nullify the following Sandiganbayan issuances: (1) Resolution dated 03 May 2011 denying the Republic's Motion for Voluntary Inhibition of the Chairman and Members of the 5th Division; (2) Resolution dated 04 July 2011 denying the motion for reconsideration; (3) Order dated 09 June 2011 denying the Republic's motion in open court to recall Joselito to the witness stand for continuation of his testimony; and (4) Resolution dated 02 August 2011 denying the Republic's Motion with Memorandum of Authorities for the recall of Joselito to the witness stand.[101] The case was docketed as G.R. No. 198221 entitled, Republic of the Philippines v. Sandiganbayan, Lucio Tan, Estate of Ferdinand E. Marcos, et. al.

More importantly, the Sandiganbayan, in its Decision dated 11 June 2012, dismissed the Republic's Complaint. The Sandiganbayan explained that the Republic failed to discharge its burden to prove that the subject assets and properties were ill-gotten wealth because it was not shown that the same originated from the government's resources.[102] It referred to the "whereas" clauses of Executive Order (EO) No. 1 and this Court's discussion of "ill-gotten wealth" in Chavez v. Presidential Commission on Good Government (Chavez).[103]

The Sandiganbayan also ruled that the Republic's reliance on respondent Imelda's Amended Answer was faulty because her statements controvert the Republic's position as to who owns the shares of stock.[104] It also noted that it had already disallowed respondent Imelda's Amended Answer because her cross-claims did not involve the same transactions or acts as that of the principal cause of action.[105]

Further, the Sandiganbayan found no proof that respondent Tan received concessions, or that his business

ventures benefitted, from Marcos.[106] It held that the Republic failed to demonstrate how Marcos' grant of favors and privileges to a corporation resulted in the government's ownership of its shares, assets, and properties that may be recovered as ill-gotten wealth.[107]

Likewise, the Sandiganbayan held that the testimonies of now President Ferdinand Marcos, Jr. (Marcos, Jr.) were merely hearsay and only confirmed that the shares of stock in various corporations were privately owned by respondent Tan, not by the government.[108]

The Sandiganbayan also ruled that the pieces of documentary evidence of the Republic, being mere photocopies, did not comply with the requirements for admissibility of secondary evidence under the Rules of Court.[109] The documents collected by the PCGG in the course of its investigations were not public records per se,[110] and the records officer and the other witnesses who produced and presented documents from their offices were not competent to testify on the contents of the documents.[111] They can only testify as to the documents' existence and how they acquired possession of the same.[112]

It was also held that the affidavit of Gapud, the self-confessed financial executor of Marcos and who affirmed the business alliance between Marcos and respondent Tan, cannot be conclusive because Gapud did not take the witness stand and could not be cross-examined.[113] While affidavits are public documents if acknowledged by a notary public, these are still hearsay unless the affiant took the witness stand to testify on it.[114]

The Republic filed a motion for reconsideration, which was denied in a Resolution dated 26 September 2012.[115] Thus, on 29 October 2012, the Republic filed this Petition for Review under Rule 45, seeking to set aside the Sandiganbayan's Decision dated 11 June 2012 dismissing the Complaint and Resolution dated 26 September 2012 denying the Republic's motion for reconsideration. It was docketed as G.R. No. 203592 and entitled, Republic of the Philippines v. Lucio Tan, Estate of Ferdinand E. Marcos, et. al.[116] The Court ordered the consolidation of the Republic's four (4) petitions in its Resolution dated 03 December 2012.[117]

Issues

G.R. No. 195837

In G.R. No. 195837, the Court is tasked to resolve the following issues:

- whether respondents Ferry and Zalamea impliedly admitted the allegations in the Complaint when they filed their demurrer to evidence;
- whether the Republic's claims against respondents Ferry and Zalamea are barred by res judicata;
- whether the case against respondents Ferry and Zalamea was properly dismissed considering their alleged involvement in the conspiracy to acquire ill-gotten wealth, the evidence submitted against them, and their alleged failure to specifically deny the allegations in the Complaint;
- whether the Sandiganbayan resolutions dismissing the case against respondents Ferry and Zalamea violated constitutional requirements and the Sandiganbayan rules on rendering final orders and decisions; and
- whether the Republic is guilty of forum shopping.

The Republic principally argues three matters. First, the complaint against respondents Ferry and Zalamea should not have been dismissed considering that they acted in conspiracy with Marcos and respondent Tan in the Sipalay Deal.[118] In particular, the Republic alleged that the shares were supposed to be sold to PCI Management Consultants, Inc. for P350 Million but were sold instead to Sipalay Trading for only P150 Million without public bidding.[119] Second, respondents Ferry and Zalamea already impliedly admitted the truth of the allegations in the Complaint when they decided not to dispute the allegations by filing a demurrer to evidence.[120] Third, the

Republic claims that the Sandiganbayan's grant of the demurrer through a minute resolution violated the Constitution and its own internal rules.[121]

In their defense, respondent Ferry primarily argues that in *Desierto*,[122] the Court had already ruled that the Sipalay Deal was legal and that the DBP officers acted in good faith and sound exercise of judgment.[123]

For his part, respondent Zalamea points out that in *Republic v. Sandiganbayan*,[124] the Court held that the allegations against him, as opposed to the other respondents, respondent Tan in particular, rest on entirely different facts, and made on entirely different occasions, which are separate and distinct from each other.[125] He maintains that there was no evidence of his participation in the acquisition of ill-gotten wealth.[126] Citing the Court's pronouncements in *Desierto*,[127] respondent Zalamea echoes respondent Ferry's defense of *res judicata*. [128] Finally, respondent Zalamea claims that the Republic is guilty of forum shopping because aside from the petition filed in G.R. No. 195837, the Republic impleaded him in other petitions that also involve the other respondents.[129]

G.R. No. 198221

In G.R. No. 198221, the Republic raises the following issues:

- whether the Sandiganbayan committed grave abuse of discretion in prohibiting the Republic from presenting Aderito Yujuico (Aderito) and Joselito Yujuico (collectively, the Yujuicos) on the ground of *res judicata*, and
- whether the Sandiganbayan committed grave abuse of discretion in denying the Republic's motion for voluntary inhibition.

The Republic claims that the Sandiganbayan's order to disallow the Yujuicos as witnesses amounts to grave abuse of discretion, and a denial of its right to due process.[130] According to the Republic, their testimonies are relevant and material to support the allegation that Marcos granted favors to respondent Tan, specifically with respect to the acquisition of GenBank.[131] The Republic likewise argues that the testimonies of the Yujuicos are not barred by *res judicata* in view of the Court's ruling in the GenBank Liquidation Case,[132] considering that said case was filed in 1977 and was a special proceeding.[133] Further, an ill-gotten wealth case is within the exclusive jurisdiction of the Sandiganbayan and could not have been entertained by the court hearing the said case.[134] The Republic also posits that there is no identity of parties and issues between the present petition and the GenBank Liquidation Case.[135] As to parties, the two (2) cases are different because the Marcoses, respondent Tan, and even the PCGG were not parties to the GenBank Liquidation Case.[136] The issues are also not the same since the validity of the liquidation in the GenBank Liquidation Case was premised on the meaning of insolvency,[137] while the issues in this case are whether Marcos had proprietary interests in respondent Tan's businesses and whether Marcos extended concessions and accommodations to respondent Tan and his businesses.[138]

The Republic also maintains that the members of the Fifth Division should have inhibited from hearing the case because they do not appear to have the neutrality of an impartial judge.[139] In particular, the division rushed the Republic to finish its presentation of evidence despite its plea to present other witnesses and documentary evidence.[140] The members of the division also, allegedly, made unwarranted statements that undermined the court's credibility and integrity.[141]

Respondents Tan, et al., on the other hand, agrees with disallowing the Yujuicos to testify, arguing that the Republic cannot present a witness who will testify on the facts and issues that have been established and resolved in the GenBank Liquidation Case since these issues are already barred by *res judicata*. [142]

As to motion for the justices of the Fifth Division to inhibit from the case, respondents Tan, et al. dispute the

Republic's allegation that the Sandiganbayan rushed it to rest its case. They emphasized that the Sandiganbayan had granted the Republic's requests for postponements, cancellations, and extensions, and to adduce additional evidence.[143]

G.R. No. 198974

In G.R. No. 198974, the petition raises the issue of whether PMFTC, Inc. is an indispensable party, such that the Sandiganbayan should have admitted the Third Amended Complaint to implead the PMFTC, Inc.

The crux of the Republic's arguments is that PMFTC, Inc. was fraudulently created to remove the substantial capital and assets of Fortune Tobacco and Northern Tobacco and to place it beyond the reach of the court's authority and jurisdiction.[144] Further, the Republic claims that PMFTC, Inc. does not have a separate and distinct personality from Fortune Tobacco;[145] and nothing can be recovered from the latter should its assets be found to be ill-gotten wealth because it had already dissolved its entire business.[146]

Respondents Tan, et al. counter that PMFTC, Inc. is not a party-in-interest because the judgment in the case will not benefit or injure PMFTC, Inc.,[147] and that impleading its directors and officers as defendants will only delay the resolution of the case.[148] They insist that even if the assets and properties of Fortune Tobacco are later found to be ill-gotten, judgment may be entered against Fortune Tobacco, and PMFTC, Inc. will still be obliged to surrender the assets to the government.[149]

G.R. No. 203592

Finally, the sole issue for resolution in G.R. No. 203592, is whether the Republic sufficiently proved that the subject assets and properties are ill-gotten wealth.

The Republic argues that ill-gotten wealth is not limited to assets and property originally owned by the government.[150] It contends that assets are also considered ill-gotten wealth when they were acquired by taking undue advantage of their office, authority, influence, connections, or relationship, resulting in the unjust enrichment of the usurper, thereby causing grave damage and prejudice to the Republic and the Filipino people.[151]

Further, the Republic insists that the subject properties were ill-gotten because they were obtained through the collaboration between Marcos and respondents Tan, et al. by taking undue advantage of official position, relationship, and influence, which was allegedly demonstrated by the "60-40 business arrangement" between Marcos and respondent Tan.[152] This 60-40 business arrangement was allegedly proved by the following pieces of evidence: (1) respondent Tan's Written Disclosure dated 10 May 1986 (Written Disclosure); (2) respondent Imelda's Amended Answer; (3) Gapud's affidavit; and (4) Marcos, Jr.'s, testimony.

According to the Republic, respondent Tan's Written Disclosure confirmed the 60-40 business arrangement, where corporations would allegedly be formed for Marcos and thereafter, respondent Tan and his associates would purportedly execute deeds of trust or deeds of assignment in favor of an unnamed beneficiary, and deliver the original copies of the deeds to Marcos.[153]

The Republic also contends that while respondent Tan's Written Disclosure also contains exculpatory statements, these lack factual basis and do not invalidate the 60-40 business arrangement.[154] Rather, said statements exhibit the voluntariness of the execution of the Written Disclosure.[155] The Republic likewise insists that the Written Disclosure is admissible in evidence because it was presented and identified by former Senator Jovito Salonga (Senator Salonga), who was the first PCGG Chairman.

As regards respondent Imelda's Amended Answer, the Republic argues that it should not have been disallowed by

the Sandiganbayan. It explains that respondent Imelda's claim that the Marcoses own at least 60% of respondent Tan's businesses validated the Republic's case. More importantly, these statements were made in a pleading and, therefore, should be considered as judicial admissions.[156] Respondent Imelda's statements should be treated as admissions made in the course of the proceeding, given voluntarily with the assistance of counsel.[157] The Amended Answer, according to the Republic, is also a public document, which forms part of its evidence and case record.[158] Finally, the Republic argues that Imelda's statements are a declaration against her interests under Section 38,[159] Rule 130 of the Rules of Court,[160] and are admissible against respondents Tan, et al. as admissions by a partner, privy, and conspirator.[161]

With respect to Marcos, Jr.'s testimony, the Republic disagrees with the Sandiganbayan that it is inadmissible for being hearsay. The Republic claims that Marcos, Jr.'s statements were based on his direct personal knowledge of the 60-40 business arrangement since he was present during the meetings attended by his father and the alleged collaborators, and he directly participated in their business as instructed by Marcos.[162] The Republic also notes that Marcos, Jr.'s testimony was straightforward, candid, categorical, positive, and, therefore, credible.[163]

The Republic also contends the Sandiganbayan should have taken judicial notice of Gapud's affidavit[164] since it was presented and identified in court by Senator Salonga.[165] However, the Sandiganbayan did not include the testimony of Senator Salonga in its narration of facts.[166] Further, the Republic claims that Gapud's affidavit is admissible for being a declaration of an agent against his principal.[167]

In sum, the Republic avers that respondent Imelda's Amended Answer, respondent Tan's Written Disclosure, and Gapud's affidavit constitute interlocking confessions because they are identical in such a manner that they corroborate each other on material points, and there was no collusion. As such, said confessions are admissible against those implicated in them.[168] These pieces of evidence may also be considered as circumstantial evidence to show the probability of the implicated person's actual participation in the commission of the crime, and as corroborative evidence if other circumstances show that other persons participated in the crime charged.[169]

The Republic also avers that it was able to prove by preponderance of evidence its case through the documents it presented.[170] It disputes the Sandiganbayan's findings that the documents offered did not comply with the best evidence rule.[171] It maintains that the documents were either certified true copies of public documents or public records of private documents, presented and identified by their official custodians.[172] Further, secondary testimonial evidence is available to prove the execution and existence of the documents.[173] The Republic likewise harks back to respondent Tan's failure to specifically deny several of the Republic's documentary evidence, thus, amounting to an implied admission.[174] Even if the documents cannot be considered as impliedly admitted, the same were confirmed in respondent Tan's Written Disclosure, and their existence were proven by public and official records.[175] The Republic claims that during hearings, it presented original documents, compared them with photocopies, and marked them as documentary exhibits.[176]

Finally, the Republic contends that the Sandiganbayan's Decision dated 11 June 2012 violated Section 14, Article VIII of the 1987 Constitution for failing to state distinctly the facts and laws upon which it is based.[177]

For their part, respondents argue that to be categorized as ill-gotten wealth, the property allegedly obtained illegally must have formed part of government resources.[178] Thus, the Republic's case should be limited to those properties over which the Republic claims ownership.[179] As such, properties of private individuals, such as respondent Tan's shares of stocks cannot be considered as ill-gotten wealth.[180]

Respondents also claim that contrary to the Republic's view, respondent Tan's Written Disclosure is inadmissible because the direct examination of its presenter, Senator Salonga, was not completed, and he was not

cross--examined. They also argue that the Republic, as the offeror of respondent Tan's Written Disclosure, should be bound by all the statements contained therein, whether inculpatory or exculpatory.[181]

As regards respondent Imelda's Amended Answer, the same contradicts the Republic's theory because the allegation that Marcos owns 60% of the subject business venture is not consistent with the allegation that the ill-gotten wealth amassed by Marcos were part of the vast resources of the government.[182] Respondent Imelda's allegations could also not qualify as a judicial admission because it was not admitted into the records of the Sandiganbayan.[183] Neither could it be considered as an extra-judicial admission because respondent Imelda was not presented as a witness and was not cross-examined. Her allegations are, therefore, hearsay and inadmissible.[184] The allegations, according to respondents, cannot be admitted as an admission of a co-conspirator because there is no evidence of conspiracy between and among respondents.[185]

Similarly, respondents claim that the testimony of Marcos, Jr. is inadmissible for being hearsay.[186] Further, by offering said testimony, the Republic should also be bound by the denials and exculpatory statements therein.[187] Marcos, Jr.'s testimony also belies Marcos' ownership of the shares because the former confirmed that the latter did not perform any specific act that shows the latter's stake in the corporations allegedly formed for his benefit.[188]

As to Gapud's affidavit, respondents argue that it is inadmissible for being hearsay and cannot be the subject of judicial notice because Gapud did not testify as a witness to identify or testify on the affidavit.[189]

Respondents also contend that the Republic failed to prove that the subject assets and properties were acquired in the manner described in its Complaint.[190] Among other things, respondents raise the following arguments:

- Some documents offered by the Republic, particularly those seized in Malacañang, are not public documents.[191] They remain private if not required by law to be entered into public records.[192] Thus, their contents are hearsay because no one testified on these documents.[193]
- The authenticity and due execution of the documents presented by the Republic as evidence were not established.[194] The documents were only certified true copies of photocopies on file with the PCGG. Furthermore, the documents collected by the PCGG by virtue of its investigations are not automatically public records.[195]
- The allegations pertaining to respondent Tan's acquisition of GenBank's assets were not proven by evidence.[196] More importantly, respondent Tan's acquisition of assets and assumption of liabilities as an incident to GenBank's liquidation by the Central Bank have been ruled as valid in the GenBank Liquidation Case.[197]
- The photocopy of respondent Tan's Written Disclosure presented by the Republic as evidence is inadmissible considering that no explanation was given as to why the original was not presented.[198]
- There is no proof that the alleged favors extended by Marcos, if they were true, were implemented or that the corporations benefitted from the favors. No evidence was introduced to prove that the government suffered damage or injury. The alleged favor did not translate to assets and properties, and it did not result in Marcos' or the government's ownership of the shares of stock.[199]
- The laws enacted by Marcos as supposed favors to respondents remain operative until amended, repealed, or revoked, pursuant to Section 3, Article XVIII of the 1987 Constitution.[200]
- The Republic failed to sufficiently describe or identify the property it seeks to recover from respondents when it merely prayed for the return of "all funds and property impressed with constructive trust." [201] This shows that the Republic is uncertain which of respondent Tan's properties are allegedly ill-gotten.[202]

- The Republic is raising factual issues that are not permissible in a petition for review on certiorari under Rule 45 of the Rules of Court.[203] Worse, the Republic failed to describe how the Sandiganbayan erred in its factual findings and in ruling against the evidence of the Republic.[204]
- The Sandiganbayan did not fail to distinctly state the facts and law on which its decision was based. It did not obscure the simple and straightforward reasons it gave for the dismissal of the Republic's Complaint.[205]

Ruling of the Court

I. G.R. No. 195837

The Sandiganbayan did not dismiss the case through a minute resolution

Section 14, Article VIII of the 1987 Constitution provides that "[n]o decision shall be rendered by any court without expressing therein clearly and distinctly the facts and the law on which it is based."

Consistent with this constitutional mandate, Section 1, Rule 36 of the Rules of Court reads:

Section 1. Rendition of judgments and final orders. – A judgment or final order determining the merits of the case shall be in writing personally and directly prepared by the judge, stating clearly and distinctly the facts and the law on which it is based, signed by him, and filed with the clerk or court.

The Court's disquisition in *Velarde v. Social Justice Society*[206] is likewise instructive:

In general, the essential parts of a good decision consist of the following: (1) statement of the case; (2) statement of facts; (3) issues or assignment of errors; (4) court ruling, in which each issue, is, as a rule, separately considered and resolved; and, finally, (5) dispositive portion. The ponente may also opt to include an introduction or a prologue as well as an epilogue, especially in cases in which controversial or novel issues are involved.

An introduction may consist of a concise but comprehensive statement of the principal factual or legal issue/s of the case. In some cases – particularly those concerning public interest; or involving complicated commercial, scientific, technical or otherwise rare subject matters – a longer introduction or prologue may serve to acquaint readers with the specific nature of the controversy and the issues involved. An epilogue may be a summation of the important principles applied to the resolution of the issues of paramount public interest or significance. It may also lay down an enduring philosophy of law or guiding principle.

x x x x

The foregoing parts need not always be discussed in sequence. But they should all be present and plainly identifiable in the decision. Depending on the writer's character, genre and style, the language should be fresh and free-flowing, not necessarily stereotyped or in a fixed form; much less highfalutin, hackneyed and pretentious. At all times, however, the decision must be clear, concise, complete and correct.[207]

Minute resolutions are issued for the prompt dispatch of the actions of the Court. While they are the results of the deliberations by the Justices of the Court, they are promulgated by the Clerk of Court or his assistants whose duty is to inform the parties of the action taken on their cases by quoting verbatim the resolutions adopted by the Court.[208] Unlike a decision, it does not require the certification of the Chief Justice and is not published in the Philippine Reports. Further, the proviso of Section 4(3), Article VIII[209] of the 1987 Constitution speaks of a decision. Indeed, as a rule, this Court lays down doctrines or principles of law, which constitute binding precedent in a decision duly signed by the members of the court concerned and certified by the Chief Justice.[210]

Be that as it may, a perusal of the records reveals that the Sandiganbayan did not dismiss the case through a

minute resolution, contrary to the Republic's claim. While the assailed resolution was not captioned as a decision or resolution, the same was signed by the Justices comprising the Fifth Division of the Sandiganbayan. It likewise contains the ultimate facts, issues and arguments of the parties, and the ruling of the court. From the foregoing, the Sandiganbayan's dismissal complies with the requirements for a judgment on the merits.

The filing of a demurrer to evidence is not an implied admission of allegations in the complaint

Respondents Ferry and Zalamea's respective demurrers to evidence did not amount to an implied admission of the allegations in the Complaint.

Section 1, Rule 33 of the Rules of Court provides:

Section 1. Demurrer to evidence. – After the plaintiff has completed the presentation of his evidence, the defendant may move for the 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.

A demurrer to evidence is "a motion to dismiss on the ground of insufficiency of evidence and is filed after the plaintiff rests his or her case. It is an objection by one of the parties in an action, to the effect that the evidence which his adversary produced, is insufficient in point of law, whether true or not, to make out a case or sustain the issue. The question in a demurrer to evidence is whether the plaintiff, by his evidence in chief, has been able to establish a prima facie case." [211]

The Court has held that "[a] motion to dismiss on the ground of failure to state a cause of action in the complaint hypothetically admits the truth of the facts alleged therein. However, the hypothetical admission is limited to the 'relevant and material facts well pleaded in the complaint and inference fairly deductible therefrom. The admission does not extend to conclusion or interpretations of law; nor does it cover all allegations of fact the falsity of which is subject to judicial notice.'" [212]

From the foregoing, it cannot be concluded that respondents Ferry and Zalamea impliedly admitted that they conspired with respondent Tan and Marcos to acquire the alleged ill-gotten wealth during their incumbency as members of the DBP Board Directors.

The complaint against respondents Ferry and Zalamea is barred by res judicata

The complaint against respondents Ferry and Zalamea is already barred by res judicata by conclusiveness of judgment.

Case law elucidated on the concept of res judicata in this wise:

Res judicata means "a matter adjudged; a thing judicially acted upon or decided; a thing or matter settled by judgment." It lays the rule that an existing final judgment or decree rendered on the merits, without fraud or collusion, by a court of competent jurisdiction, upon any matter within its jurisdiction, is conclusive of the rights of the parties or their privies, in all other actions or suits in the same or any other judicial tribunal or concurrent jurisdiction on the points and matters in issue in the first suit. [213]

The doctrine of res judicata is embodied in Section 47, Rule 39 of the Rules of Court, which reads:

Section 47. Effect of Judgments or Final Orders. – The effect of a judgment or final order rendered by a court of the Philippines, having jurisdiction to pronounce the judgment or final order, may be as follows

x x x x

(b) In other cases, the judgment or final order is, with respect to the matter directly adjudged or as to any other matter that could have been raised in relation thereto, conclusive between the parties and their successors in interest by title subsequent to the commencement of the action or special proceeding, litigating for the same thing and under the same title and in the same capacity; and

(c) In any other litigation between the parties or their successors in interest, that only is deemed to have been adjudged in a former judgment or final order which appears upon its face to have been so adjudged, or which was actually and necessarily included therein or necessary thereto.

The above-cited provision embraces two concepts of *res judicata*: (1) bar by prior judgment, as enunciated in Section 47 (b), Rule 39 of the Rules of Court; and (2) conclusiveness of judgment under Section 47 (c), Rule 39 of the same Rules.[214]

In *Yap v. Republic of the Philippines*,[215] this Court discussed the doctrine of conclusiveness of judgment, as a concept of *res judicata*:

The second concept conclusiveness of judgment – states that a fact or question which was in issue in a former suit and was there judicially passed upon and determined by a court of competent jurisdiction, is conclusively settled by the judgment therein as far as the parties to that action and persons in privity with them are concerned and cannot be again litigated in any future action between such parties or their privies, in the same court or any other court of concurrent jurisdiction on either the same or different cause of action, while the judgment remains unreversed by proper authority. It has been held that in order that a judgment in one action can be conclusive as to a particular matter in another action between the same parties or their privies, it is essential that the issue be identical. If a particular point or question is in issue in the second action, and the judgment will depend on the determination of that particular point or question, a former judgment between the same parties or their privies will be final and conclusive in the second if that same point or question was in issue and adjudicated in the first suit xxx. Identity of cause of action is not required but merely identity of issue.[216]

Respondents Ferry and Zalamea invoke the doctrine of *res judicata* by conclusiveness of judgment. They argue that *Desierto*[217] involves the same transaction, parties, and issues.[218] On the other hand, the Republic insists that *Desierto* is not applicable since, in that case, the Court only affirmed that there was no probable cause to hold respondents Tan, et al. liable under Section 3(e) of Republic Act (RA) No. 3019.[219]

In *Desierto*, the Republic, through the PCGG, filed a complaint for violation of Section 3(e) of RA No. 3019, otherwise known as the Anti-Graft and Corrupt Practices Act, against several individuals, including respondents Tan and Ferry. The PCGG alleged that respondents Tan, et al. conspired and acted fraudulently to accumulate ill-gotten wealth to the prejudice of the government. They also effected the Sipalay Deal, or the sale of the P340.7 Million equity holding of DBP in Maranaw Hotels to Sipalay Trading, a newly organized and undercapitalized firm, for only P150 Million, a price grossly disadvantageous to the government.

The Ombudsman dismissed the complaint and found that the acts of the DBP Board of Governors should "not be condemned as a crime but should be lauded for their boldness in trying their very best to save not only the Century Park Sheraton Hotel but DBP itself, and ultimately protected the interests of the government." [220] Furthermore, the Ombudsman found no evidence of conspiracy among the private respondents therein and that the negotiations between Sipalay Trading and the DBP were aboveboard. Thus, the Republic filed a petition for *certiorari* before this Court.

This Court ruled that the sale between the DBP and Sipalay Trading in relation to DBP's equity holding in Maranaw Hotel was legal, and that under the circumstances then prevailing, the DBP officers acted in good faith and sound exercise of judgment. There was nothing in the record to show that the DBP officials were spurred by any corrupt motive or that they received any material benefit from the Sipalay Deal.

In the present case, respondents Ferry and Zalamea are being held liable as the former Vice Chairperson of DBP and President of Maranaw Hotels and the former Chairperson of Board of Governors of the DBP and Maranaw Hotels, respectively. The Republic alleges they acted in bad faith and in conspiracy with respondents Tan, et al. to acquire ill-gotten wealth in the Sipalay Deal.

Notably, all the elements of *res judicata* by conclusiveness of judgment are present here: (1) the judgment sought to bar the new action must be final; (2) the decision must have been rendered by a court having jurisdiction over the subject matter and the parties; (3) the disposition of the case must be a judgment on the merits; and (4) there must be as between the first and second action, identity of the parties, but not identity of causes of action.[221]

First, *Desierto* attained finality in 2006. Second, the decision was rendered by a tribunal of competent jurisdiction, the Ombudsman, as affirmed by this Court. Third, the disposition of *Desierto* was a judgment on the merits. Finally, there is identity of parties or their privies and issues between *Desierto* and the present case. The parties in the *Desierto* case and the present case are the same, the Republic representing the PCGG and the DBP officials, including respondent Ferry, who participated in the Sipalay Deal. While respondent Zalamea was not impleaded in *Desierto*, he is being indicted in the present case as a former officer of DBP and Maranaw Hotels. As to the identity of the issue, "bad faith" was discussed in *Desierto* because it is an element of the offense of Section 3(e) of RA No. 3019. The same issue of bad faith was again raised by the Republic in the present case. Therefore, the existence of bad faith in the Sipalay Deal is barred by *res judicata* by conclusiveness of judgment.

The Republic failed to substantiate its claim that respondents Ferry and Zalamea participated in the acquisition of ill-gotten wealth

The Republic has the burden to prove the allegation in its Second Amended Complaint, i.e., whether the Sipalay Deal was executed for respondent Tan and Marcos to acquire ill-gotten wealth.

Under Section 1, Rule 131 of the Rules of Court, burden of proof is the duty of a party to present evidence on the facts in issue necessary to establish his or her claim by the amount of evidence required by law. In civil cases, the burden of proof rests upon the plaintiff, who is required to establish his or her case by a preponderance of evidence.[222]

Section 1, Rule 133 of the Rules of Court provides:

Section 1. Preponderance of evidence, how determined. – In civil cases, the party having the burden of proof must establish his case by preponderance of evidence. In determining where the preponderance or superior weight of evidence on the issues involved lies, the court may consider all the facts and circumstances of the case, the witnesses' manner of testifying, their intelligence, their means and opportunity of knowing the facts to which they are testifying, the nature of the facts to which they testify, the probability or improbability of their testimony, their interest or want of interest, and also their personal credibility so far as the same may legitimately appear upon the trial. The court may also consider the number of witnesses, though the preponderance is not necessarily with the greater number.

Preponderance of evidence is the weight, credit, and value of the aggregate evidence on either side and is usually

considered to be synonymous with the term 'greater weight of evidence' or 'greater weight of credible evidence.' Succinctly put, it only requires that evidence be greater or more convincing than the opposing evidence.[223]

In this case, the Court affirms the Sandiganbayan's finding that the Republic failed to substantiate its claim that respondents Ferry and Zalamea participated in the acquisition of ill-gotten wealth.[224]

The pieces of evidence presented by the Republic reveal that their complaint is still anchored on their allegation that respondents Ferry and Zalamea, as DBP officers, acted in bad faith and in conspiracy with respondents Tan, et al. in entering the Sipalay Deal.

The Republic is not guilty of forum shopping

There is forum shopping "when a party repetitively avails of several judicial remedies in courts, simultaneously or successively, all substantially founded on the same transactions and the same essential facts and circumstances, and all raising substantially the same issues either pending in or already resolved adversely by some other court." [225]

Forum shopping can be committed in three ways: (1) by filing multiple cases based on the same cause of action and with the same prayer, the previous case not having been resolved yet (where the ground for dismissal is *litis pendentia*); (2) by filing multiple cases based on the same cause of action and with the same prayer, the previous case having been finally resolved (where the ground for dismissal is *res judicata*); and (3) by filing multiple cases based on the same cause of action but with different prayers (splitting of causes of action, where the ground for dismissal is also either *litis pendentia* or *res judicata*). [226]

The elements of forum shopping are: (a) identity of the parties or at least such parties that represent the same interests in both actions; (b) identity of rights asserted and reliefs prayed for, the relief founded on the same facts; and (c) any judgment rendered in one action will amount to *res judicata* in the other action. [227]

Based on the above-mentioned elements, the Republic did not commit forum shopping. Clearly, the Republic did not institute two (2) suits in different courts, as all the petitions involved in this case emanated from the same case filed before the Sandiganbayan for the recovery of ill-gotten wealth. Moreover, these petitions involve different issues. Thus, there is no forum shopping.

II. G.R. No. 198221

The testimonies of the Yujuicos relating to the validity of respondent Tan's acquisition of GenBank are barred by *res judicata*

The Sandiganbayan did not act with grave abuse of discretion in prohibiting the Republic from presenting the testimonies of the Yujuicos on the ground of *res judicata*.

The Republic insisted to present the Yujuicos to testify on the specific averments of the Second Amended Complaint, particularly paragraph 14, subparagraphs (a)(1), (2), and (3), which read:

14. Defendant Lucio C. Tan, by himself and/or in unlawful concert with Defendants Ferdinand E. Marcos and Imelda R. Marcos, taking undue advantage of his relationship and influence with Defendant Spouses, and embarking upon devices, schemes and stratagems, including the use of Defendant Corporations, among others:

(a)

Without sufficient collateral and for nominal consideration, with the active collaboration, knowledge and willing participation of Defendant Willy Co, arbitrarily and fraudulently acquired control of [GenBank] which eventually became Allied Banking Corporation, through the manipulation of then Central Bank Governor [Licaros], and of then President [Domingo] of the [PNB], as shown by, but not limited to, the following circumstances:

(1) In 1976, the [GenBank] got into financial difficulties. The Central Bank then extended an emergency loan to GBTC reaching a total of P310-million. In extending this loan, the [Central Bank] however, took control of [GenBank] when the latter executed an irrevocable proxy of 2/3 of [GenBank]'s outstanding shares in favor of the [Central Bank] and when 7 of the 11-member Board of Directors were [Central Bank] nominees. Subsequently, on March 25, 1977, the Monetary Board of [Central Bank] issued a Resolution declaring [GenBank] insolvent, forbidding it to do business and placing it under receivership.

(2) In the meantime, a public bidding for the sale of [GenBank] assets and liabilities was scheduled at 7:00 P.M. on Ma[r]ch 28, 1977. Among the conditions of the bidding were: (a) submission by the bidder of Letter of Credit issued by a bank acceptable to [Central Bank] to guaranty payment or as collateral of the [Central Bank] emergency loan; and (b) a 2-year period to repay the said [Central Bank] emergency loan. On March 29, 1977, [Central Bank] thru a Monetary Board Resolution, approved the bid of the group of Lucio Tan and Willy Co. This bid, among other things, offered to pay only P500,000.00 for [GenBank] assets estimated at P688,201,301.45; Capital Accounts of P103,984,477.55; Cash of P25,698,473.00; and the takeover of the [GenBank] Head Office and branch offices. The required Letter of Credit was not also attached to the bid. What was attached to the bid was a letter of Defendant [Domingo] as PNB President promising to open an irrevocable letter of credit to secure the advances of the Central Bank in the amount of P310 Million. Without this letter of commitment, the Lucio Tan bid would not have been approved. But such letter of commitment was a fraud because it was not meant to be fulfilled. Defendants [Marcos], [Licaros] and [Domingo] conspired together in giving the Lucio Tan group undue favors such as doing away with the required irrevocable letter of credit, the extension of the term of payment from two years to five years, the approval of second mortgage as collateral for the Central Bank advances which was deficient by more than P90 Million, and many other concessions to the great prejudice of the government and of the [GenBank] stockholders.

(3) As already started, [GenBank] eventually became [Allied Bank] in April, 1977. The defendants Lucio Tan, Willy S. Co and Florencio T. Santos are not only incorporators and directors but they are also the major shareholders of this new bank.[228]

The Yujuicos cannot testify on, and the Republic cannot present evidence with respect to, the afore-quoted paragraphs, which mainly allege that respondent Tan "arbitrarily and fraudulently acquired control of [GenBank] which eventually became [Allied Bank], through the manipulation of then Central Bank Governor [Licaros], and of then President [Domingo] of the Philippine National Bank [PNB]." This matter has been settled in the GenBank Liquidation Case, and therefore barred by res judicata under the concept of conclusiveness of judgment.

Res judicata by conclusiveness of judgment applies "when there is identity of parties in the first and second cases, but no identity of causes of action, and a fact or question has been squarely put in issue, judicially passed upon, and adjudged in a former suit by a court of competent jurisdiction. The fact or question settled by final judgment or order binds the parties to that action, and continues to bind them while the judgment or order remains standing and unreversed by proper authority on a timely motion or petition; the conclusively-settled fact or question cannot again be litigated in any future or other action between the same parties or their privies and successors-in-interest, in the same or in any other court of concurrent jurisdiction, either for the same or for a different cause of action." [229] Thus, "a party is barred from presenting evidence on a fact or issue already judicially tried and decided." [230]

In applying *res judicata*, it is not required that there be absolute identity, as only substantial identity of the parties is necessary. "There is substantial identity of parties when there is community of interest or privity of interest between a party in the first and a party in the second case even if the first case did not implead the latter." [231]

In this case, the GenBank Liquidation Case was invoked as having settled the facts sought to be established by the Republic through the testimonies of the Yujuicos.

The GenBank Liquidation Case involved the special proceedings for liquidation of GenBank filed by the liquidator designated by the Central Bank (now, the Bangko Sentral ng Pilipinas). In that case, the Court of Appeals (CA) reversed and set aside the decision of the Court of First Instance (CFI) (now, Regional Trial Court), which annulled Monetary Board Resolution (MBR) Nos. 675 and 677 for being "plainly arbitrary and made in bad faith." MBR Nos. 675 and 677 ordered the closure of GenBank and approved the liquidation plan of GenBank, respectively. On petition for review before this Court, GenBank asserted that the Central Bank "maliciously and arbitrarily and in bad faith ordered its closure xxx and liquidation and bidding xxx." [232]

In resolving the petition, this Court found no reversible error in the CA's reversal of the CFI decision. This Court held that MBR Nos. 675 and 677 are valid and were issued in good faith. We ruled that in issuing said MBRs, the Central Bank neither acted with grave abuse of discretion nor violated any existing procedural or substantive law.

MBR No. 675 forbade GenBank to do business in the Philippines and designated a receiver in view of the report finding the bank insolvent and unable to comply with the directives of the Central Bank to address GenBank's financial difficulties. The Central Bank found that GenBank's continuance in business would involve losses to its depositors and creditors. In this regard, this Court held:

It must be stressed that petitioner Genbank's financial predicament did not crop up overnight, nor is it a product of a single financial indiscretion, so to speak. The root of its problem and eventual downfall is traceable to unsound banking practices employed by management. Mentioned in this regard may be made of the all-out financial support given to Filcapital Development Corporation (a related interest of the Yujuico Family Group and directors and officers of Genbank) and the standing practice of extending DOSRI loans which, at one point, reached a peak of P172.3 million or 26% of the total loan portfolio of P666.78 million. Of the final figure, 59.4% thereof was classified as doubtful and P0.505 million as uncollectible. And 91.7% of such DOSRI accounts were unsecured leaving only 8% thereof secured. All these unsound practices occurred way before their resulting crippling effects became manifest sometime in December 1976, further leading the bank to resort to other unsound banking practices, like incurring daily overdrafts. These problems, as earlier narrated in the assailed CA decision, were taken up by the then CB Governor with the Board of Directors of Genbank in a meeting held on December 27, 1976. Thus, when the crucial March 23, 1977 meeting was held, there can be no doubt that petitioner Genbank was totally aware of the predicament it has gotten itself into and the conditions which the CB had imposed to address the situation for the protection of the depositors and the banking public. It is not as if CB sprang a surprise on petitioner Genbank when Resolution 675 was issued on March 25, 1977 declaring Genbank insolvent. Petitioner Genbank's posture that it was given only two (2) days to remedy the situation is specious at best. [233]

MBR No. 677, on the other hand, confirmed that GenBank was insolvent and could not resume business with safety to its depositors, creditors, and the general public; ordered the liquidation of GenBank; and approved "a liquidation plan whereby all the assets of Genbank should be purchased by the Lucio Tan Group which should also assume all the liabilities under certain terms and conditions." [234] This Court noted that "Genbank, Now Allied Bank, was able to resume normal banking operations immediately on June 2, 1977, thereafter meeting all the demands for deposit withdrawals and paying off all CB emergency advances to Genbank xxx[,] a strong indication that the Central Bank performed its duty to maintain public confidence in the banking system." [235]

Thus, absent any "compelling proof to becloud the bona fides of the decision of the Central Bank to close and order the liquidation of Genbank pursuant to Monetary Board Resolution Nos. 675 and 677,"[236] this Court sustained the validity of said MRBs.

Consequently, in upholding the validity of MBR No. 677, this Court likewise upheld the validity of the approval of the liquidation plan, i.e., the purchase by the Tan Group of all the assets of GenBank.

In the present case, it is clear from the allegations in paragraph 14, subparagraphs (a)(1), (2), and (3) of the Second Amended Complaint and the purposes for which the testimonies of the Yujuicos were being offered, that the Republic seeks to relitigate an issue that was already settled in the GenBank Liquidation Case: the validity of the sale of GenBank's assets to the Tan Group.

However, as mentioned, the GenBank Liquidation Case ruled that MRB No. 677, which approved the liquidation plan involving the Tan Group purchase of all the assets of GenBank and the assumption of all the liabilities of the latter, was valid and issued in good faith. In doing so, this Court effectively upheld the sale of Gen Bank to the Tan Group.

Notably, while it appears that the parties in this case and in the GenBank Liquidation Case are different, the relevant parties herein are privies and/or successors-in-interest of the parties in the GenBank Liquidation Case.

The Marcoses, respondents Tan, Willy Co, Allied Bank, Licaros, and Domingo, while not parties in the GenBank Liquidation Case, were nonetheless privies and/or successors-in-interest of the parties therein. Domingo, as then PNB President, issued a letter of commitment for a letter of credit, which was submitted by the Tan Group to the Central Bank as part of their bid to purchase GenBank's assets. Licaros, as then Central Bank Governor, was likewise privy to the case as the Central Bank and its designated liquidator were the ones who facilitated the liquidation of GenBank. Respondents Tan, Willy Co, and Allied Bank were also privies and successors-in-interest of GenBank, the petitioner in the GenBank Liquidation Case. The Marcoses were also privies in view of their alleged involvement in the transfer of GenBank's assets to the Tan Group.

Thus, the Republic's attempt to relitigate the issue on the validity of the Tan Group's acquisition of GenBank is barred by res judicata by conclusiveness of judgment. The validity and legality of such sale is a conclusively settled fact or question in the GenBank Liquidation Case and cannot again be litigated in the present case, even if different causes of action are involved. The Republic, thus, cannot seek to present the testimonies of the Yujuicos to establish that the sale of all the assets of GenBank to the Tan Group was "arbitrarily and fraudulently" made or made in bad faith "through the manipulation of then Central Bank Governor [Licaros]."

Further, there appears to be nothing on record that the Yujuicos were supposed to be presented as witnesses to testify on matters other than paragraph 14, subparagraphs (a)(1), (2), and (3) of the Second Amended Complaint.

The substance of the testimonies of the Yujuicos relates only to the events that led to the sale of GenBank. Joselito's judicial affidavit narrated the events leading to the sale of GenBank. The same is true about the judicial affidavit of Aderito. They discussed Marcos' alleged undue favorable treatment of respondent Tan through then Central Bank Governor Licaros, and the alleged irregularities in the sale of GenBank's assets to the Tan Group.

There was no just or valid reason for the inhibition of the Members of the Sandiganbayan's Fifth Division

There is no grave abuse of discretion on the part of the Sandiganbayan when it denied the Republic's motion for voluntary inhibition.

Section 1, Rule 137 of the Rules of Court provides:

SECTION 1. Disqualification of judges. — No judge or judicial officer shall sit in any case in which he, or his wife or child, is pecuniarily interested as heir, legatee, creditor or otherwise, or in which he is related to either party within the sixth degree of consanguinity or affinity, or to counsel within the fourth degree, computed according to the rules of the civil law, or in which he has been executor, administrator, guardian, trustee or counsel, or in which he has presided in any inferior court when his ruling or decision is the subject of review, without the written consent of all parties in interest, signed by them and entered upon the record.

A judge may, in the exercise of his sound discretion, disqualify himself from sitting in a case, for just or valid reasons other than those mentioned above.

The inhibition of judges or justices may be mandatory or voluntary. The first paragraph pertains to mandatory inhibition. The second paragraph pertains to voluntary inhibition, which must be based on just or valid reasons.[237]

Mere allegation of bias or partiality does not constitute just or valid reason for voluntary inhibition of a judge or justice, thus:

Nonetheless, while the rule allows judges, in the exercise of sound discretion, to voluntarily inhibit themselves from hearing a case, it provides that the inhibition must be based on just or valid reasons. In prior cases interpreting this rule, the most recent of which is *Philippine Commercial International Bank v. Spouses Wilson Dy Hong Pi, etc., et al.*, the Court noted that the mere imputation of bias or partiality is not enough ground for inhibition, especially when the charge is without basis. Acts or conduct clearly indicative of arbitrariness or prejudice has to be shown. Extrinsic evidence must further be presented to establish bias, bad faith, malice, or corrupt purpose, in addition to palpable error which may be inferred from the decision or order itself. Stated differently, the bare allegations of the judge's partiality will not suffice in the absence of clear and convincing evidence to overcome the presumption that the judge will undertake his noble role of dispensing justice in accordance with law and evidence, and without fear or favor. Verily, for bias and prejudice to be considered valid reasons for the involuntary inhibition of judges, mere suspicion is not enough. Let it be further noted that the option given to a judge to choose whether or not to handle a particular case should be counterbalanced by the judge's sworn duty to administer justice without fear of repression.[238]

In this case, the Republic, in attributing bias and partiality on the part of the members of the Sandiganbayan's Fifth Division, citing various adverse rulings of the Sandiganbayan, such as denying the recall or presentation of the testimonies of the Yujuicos, coercing the Republic to rest its case, considering the Republic to have waived the presentation of witnesses who were not present during their scheduled date of presentation, and refusing to suspend proceedings due to pending incidents.

However, as discussed above, the Republic cannot present the testimonies of Yujuicos, which pertain to matters already settled in the GenBank Liquidation Case. Meanwhile, the pendency of certain incidents was not a valid ground for the suspension of the proceedings that began in 1987. While all the parties were at fault for the delay of the proceedings due to repeated postponements, the Sandiganbayan pointed out that the Republic only utilized twenty-four (24) out of the sixty-four (64) trial dates that it gave the Republic to present its evidence.[239] The Sandiganbayan also noted respondents' motions which it denied, and the rulings it made that were favorable to the Republic.

In any case, the Court has ruled that the disqualification of a judge or justice cannot be predicated on the adverse or erroneous nature of the rulings towards the movant, to wit:

To prove bias and prejudice on the part of respondent judge, petitioners harp on the alleged adverse and erroneous rulings of respondent judge on their various motions. By themselves, however, they do not

sufficiently prove bias and prejudice to disqualify respondent judge. To be disqualifying, the bias and prejudice must be shown to have stemmed from an extrajudicial source and result in an opinion on the merits on some basis other than what the judge learned from his participation in the case. Opinions formed in the course of judicial proceedings, although erroneous, as long as they are based on the evidence presented and conduct observed by the judge, do not prove personal bias or prejudice on the part of the judge. As a general rule, repeated rulings against a litigant, no matter how erroneous and vigorously and consistently expressed, are not a basis for disqualification of a judge on grounds of bias and prejudice. Extrinsic evidence is required to establish bias, bad faith, malice or corrupt purpose, in addition to the palpable error which may be inferred from the decision or order itself. Although the decision may seem so erroneous as to raise doubts concerning a judge's integrity, absent extrinsic evidence, the decision itself would be insufficient to establish a case against the judge. The only exception to the rule is when the error is so gross and patent as to produce an ineluctable inference of bad faith or malice.[240]

Thus, the adverse or erroneous rulings of the Sandiganbayan against the Republic, without more, do not prove bias or partiality warranting the inhibition of the members of the Sandiganbayan's Fifth Division from this case. The Republic failed to adduce extrinsic evidence or any extrajudicial source of the Sandiganbayan's alleged bias, partiality, malice, or bad faith in making the cited adverse or erroneous rulings.

At most, the Sandiganbayan's acts merely show that it intended to expedite the disposition of the case, which has been pending for decades, and that the same were made after giving the Republic more than enough opportunity to prove its case. Clearly, these do not amount to malice or bad faith. Consequently, there is no just or valid reason for the members of the Sandiganbayan's Fifth Division to inhibit from this case.

III. G.R. No. 198974

PMFTC, Inc. is not an indispensable party

PMFTC, Inc. is not an indispensable party and need not be impleaded in this case.

An indispensable party is a party in interest without whom no final determination can be had of an action, and must therefore be joined as plaintiff or defendant.[241]

In this case, PMFTC, Inc. is not an indispensable party. There can be a final determination of this case even if PMFTC, Inc. is not joined as a defendant. PMFTC, Inc. is being impleaded because it was allegedly fraudulently formed and organized to remove the substantial capital and assets of Fortune Tobacco and Northern Tobacco placing these said capital and assets beyond the court's authority and jurisdiction.

Section 19, Rule 3 of the Rules of Court provides for the rule on the transfer of interest:

Section 19. Transfer of interest. – In case of any transfer of interest, the action may be continued by or against the original party, unless the court upon motion directs the person to whom the interest is transferred to be substituted in the action or joined with the original party. (19)

A transferee pendente lite of the property in litigation "stands exactly in the shoes of his predecessor-in-interest, bound by the proceedings and judgment in the case before the rights were assigned to him. xxx Essentially, the law already considers the transferee joined or substituted in the pending action, commencing at the exact moment when the transfer of interest is perfected between the original party-transferor and the transferee pendente lite." [242]

Thus, in this case, assuming that PMFTC, Inc. is a transferee pendente lite of the properties sought to be

recovered by the Republic, it is bound by the proceedings already had in this case, even those concluded before the transfer of the assets from Fortune Tobacco and Northern Tobacco sometime in 2010.

Consequently, PMFTC, Inc. need not be impleaded as it would, in any event, be bound by the judgment in this case against its predecessors-in-interest, Fortune Tobacco and Northern Tobacco.[243]

IV. G.R. No. 203592

Ill-gotten wealth is not limited to assets that originated from the government

Indeed, the concept of ill-gotten wealth had long been expanded. EO No. 1 and Chavez[244] did not limit ill-gotten wealth to assets and properties that originated from the government itself.

EO Nos. 1 and 2,[245] the PCGG Rules and Regulations,[246] and jurisprudence[247] consistently recognized that assets and properties may fall under the broad rubric of ill-gotten wealth even if they did not originate from the government. Private properties may likewise be considered ill-gotten if they were acquired by taking undue advantage of official position, authority, relationship, or influence.

In several cases,[248] the Court affirmed that ill-gotten wealth may be acquired in the following manner: (1) through or as a result of the improper or illegal use of or conversion of funds or properties owned by the Government of the Philippines or any of its branches, instrumentalities, enterprises, banks or financial institutions (first mode); or (2) by taking undue advantage of office, authority, influence, connections or relationship (second mode).

In *Disini v. Republic (Disini)*,[249] the Court ruled that the source of the funds, i.e., private corporations, does not divest the commissions of their public character:

Evidently, the BNPP is a government project the construction of which was awarded to Westinghouse as the main contractor and B&R as the architect-engineer, allegedly through undue advantage of Disini's influence and close association with President Marcos. In exchange, Disini allegedly received substantial commissions based on 3% and 10% of the total contract price from Westinghouse and B&R, respectively. Obviously, the payment of the alleged commissions would be coming from Westinghouse and B&R, which are private corporations, and not directly from the government.

However, contrary to the contention of Disini, ill-gotten wealth also encompasses those that are derived indirectly from government funds or properties through the use of power, influence, or relationship resulting in unjust enrichment and causing grave damage and prejudice to the Filipino people and the Republic.[250]

Relatedly, in *Republic v. Sandiganbayan*,[251] the Court laid down the elements that must be established before assets or properties may be considered ill-gotten: (1) they must have "originated from the government itself," and (2) they must have been taken by illegal means. Notably, the issue in that case was whether coco levy funds were used to acquire shares of stock. Thus, the allegations pertained to the first mode of acquiring ill-gotten wealth, i.e., through or because of the improper or illegal use of or conversion of public funds. Our ruling in said case, therefore, should not be construed to diminish the concept of ill-gotten wealth. Rather, the doctrine in *Republic v. Sandiganbayan*[252] should be confined to ill-gotten wealth alleged to have been acquired through the first mode.

Review of the evidence offered to prove the elements of ill-gotten wealth

The elements of ill-gotten wealth based on EO Nos. 1 and 2, the PCGG Rules and Regulations, and relevant jurisprudence are the following:

- Assets and properties were acquired;
- It was acquired by Marcos, respondent Imelda, their close relatives, subordinates, business associates, agents or nominees;
- The manner of acquisition was either:
 - through or because of the improper or illegal use of funds or properties owned by the Government of the Philippines or any of its branches, instrumentalities, enterprises, banks, or financial institutions, or
 - by taking undue advantage of their office, authority, influence, connections, or relationship; and
- The acquisition resulted in their unjust enrichment and caused grave damage and prejudice to the Filipino people and the Republic of the Philippines.

To determine whether these elements are present in this case, the Court should focus not only on the admissibility, but also on the probative value, of the evidence adduced by the Republic. Indeed, even if the Republic's pieces of evidence were admissible, the Court must still determine whether each element of ill-gotten wealth has evidentiary mooring.

Here, even if we apply the comprehensive definition of ill-gotten wealth, the pieces of evidence relied upon by the Republic failed to establish all its elements. Notably, some of these pieces of evidence are even of doubtful admissibility.

To recap, the following are the relevant pieces of evidence presented by the Republic in support of its case: (a) respondent Imelda's Amended Answer; (b) respondent Tan's Written Disclosure; (c) Marcos, Jr.'s testimony; (d) Gapud's affidavit; and (e) voluminous documentary evidence found by the PCGG in their investigations.

It appears, however, that none of the pieces of evidence relied upon by the Republic was successful in establishing the manner by which respondents allegedly acquired ill-gotten wealth. It was not shown, through these pieces of evidence, if and how respondents took undue advantage of their office, authority, influence, connections, or relationship. As regards Gapud's affidavit and Tan's Written Disclosure, they are inadmissible to prove any of the elements of ill-gotten wealth. Summarized below are the pertinent points supported by each piece of evidence, as alleged by the Republic, together with the admissibility and probative weight of each.

a) Respondent Imelda's Amended Answer

The Republic points out that in respondent Imelda's Amended Answer, she appeared to have alleged that Marcos had 60% beneficial ownership in several of respondent Tan's companies.[253]

As mentioned, the Sandiganbayan did not admit the Amended Answer because respondent Imelda's cross-claim was premised on independent and distinct claims against respondents Tan, et al., which did not involve the same transactions or acts as that of the Republic's principal cause of action. According to the Sandiganbayan, respondent Imelda may pursue her claims against respondents Tan, et al. in a separate proceeding before the trial court, not the Sandiganbayan.

Nevertheless, the Republic marked and formally offered the Amended Answer as its Exhibit M,[254] which the Sandiganbayan admitted as evidence for the Republic.[255] According to the Republic, the statements in the Amended Answer support the Republic's theory that Marcos – in collaboration with respondent Tan – concealed

ill-gotten wealth by creating layers of corporations in which Marcos owned 60% beneficial ownership.

On the other hand, respondents contend that the Amended Answer contradicts the Republic's theory because the allegation that Marcos owned 60% of the subject business venture with respondent Tan is inconsistent with the allegation that ill-gotten wealth are properties amassed by Marcos that were part of the vast resources of the government.[256]

Considering that the Amended Answer was never admitted as a pleading, it cannot be considered as a judicial admission under Section 4, Rule 129 of the Rules of Court. In *Ching v. Court of Appeals*[257] (*Ching*), the Court held that a pleading which loses its status as such, either because it was superseded or amended, is no longer a judicial admission.

Further, the Amended Answer should not prejudice the other respondents under the *res inter alios acta* rule, which provides that "[a] party cannot be prejudiced by an act, declaration or omission of another...."[258] The allegations found in the Amended Answer is considered hearsay as against the other respondents.[259]

In *Salapuddin v. Court of Appeals*,[260] the Court explained the rationale behind the *res inter alios acta* rule:

On a principle of good faith and mutual convenience, a man's own acts are binding upon himself, and are evidence against him. So are his conduct and declarations. Yet it would not only be rightly inconvenient, but also manifestly unjust, that a man should be bound by the acts of mere unauthorized strangers; and if a party ought not to be bound by the acts of strangers, neither ought their acts or conduct be used as evidence against him.[261]

As exceptions to the *res inter alios acta* rule, the following admissions may be allowed under Sections 29, 30, and 31,[262] Rule 130 of the Rules of Court:

Section 29. Admission by co-partner or agent. — The act or declaration of a partner or agent of the party within the scope of his authority and during the existence of the partnership or agency, may be given in evidence against such party after the partnership or agency is shown by evidence other than such act or declaration. The same rule applies to the act or declaration of a joint owner, joint debtor, or other person jointly interested with the party.

Section 30. Admission by conspirator. — The act or declaration of a conspirator relating to the conspiracy and during its existence, may be given in evidence against the co-conspirator after the conspiracy is shown by evidence other than such act or declaration.

Section 31. Admission by privies. — Where one derives title to property from another, the act, declaration, or omission of the latter, while holding the title, in relation to the property, is evidence against the former.

None of these exceptions, however, apply to the Amended Answer.

First, Section 29, Rule 130 of the Rules of Court cannot apply because it has not been established that there is a partnership or agency between respondents Imelda and Tan, et al. The alleged business relationship at issue here is that between Marcos and respondents Tan, et al.

Second, Section 30, Rule 130 of the Rules of Court cannot apply because respondent Imelda did not make the declarations while engaged in carrying out the conspiracy – assuming such conspiracy even exists. In *Estrada v. Office of the Ombudsman*,[263] the Court laid down the requisites for a statement to be treated as an admission by a conspirator:

In order that the admission of a conspirator may be received as evidence against his co-conspirator, it is necessary that first, the conspiracy be first proved by evidence other than the admission itself; second, the

admission relates to the common object; and third, it has been made while the declarant was engaged in carrying out the conspiracy.[264]

Even if the Court assumes that the first and second requisites are present, the third requisite cannot be established in this case. Respondent Imelda made the statements in 2001 when her Amended Answer was filed, while the alleged schemes happened approximately within the years of 1975 to 1986. Therefore, her statements cannot be used against respondents Tan, et al. as admissions of a conspirator.

Third, Section 31, Rule 130 of the Rules of Court does not apply because it was not established that there is privity of estate, denoting a succession in rights,[265] between respondents Imelda and Tan, et al.

Moreover, the Amended Answer cannot be utilized as corroborative evidence against the other respondents because they were not able to cross-examine respondent Imelda on her statements in her Amended Answer. In *People v. Raquel*,[266] the Court held that:

The extrajudicial statements of an accused implicating a co-accused may not be utilized against the latter, unless these are repeated in open court. If the accused never had the opportunity to cross-examine his co-accused on the latter's extrajudicial statements, it is elementary that the same are hearsay as against said accused. That is exactly the situation, and the disadvantaged plight of appellants, in the case at bar.

Extreme caution should be exercised by the courts in dealing with the confession of an accused which implicates his co-accused. A distinction, obviously, should be made between extrajudicial and judicial confessions. The former deprives the other accused of the opportunity to cross-examine the confessor, while in the latter his confession is thrown wide open for cross-examination and rebuttal.[267]

Assuming the Amended Answer falls under any of the exceptions to the *res inter alios acta* rule and can be used against the other respondents without them having to cross-examine respondent Imelda, it still fails to prove the Republic's theory that the alleged 60% beneficial ownership of Marcos in respondent Tan's companies are ill-gotten wealth.

To be sure, respondent Imelda merely stated in her Amended Answer that "[Marcos] had sixty percent (60%) beneficial ownership in [Tan's] companies, which beneficial interests were held in trust by [Tan] personally and through his family members and business associates who appeared as the recorded stockholders of said companies." There is nothing, however, in said Amended Answer that would even suggest that undue advantage of office, authority, influence, connections, or relationship was employed to facilitate the acquisition by Marcos of his 60% beneficial ownership in respondent Tan's companies.

All told, respondent Imelda's Amended Answer cannot be used against the other respondents under the *res inter alios acta* rule, and her statements do not fall under any of the exceptions. Respondent Imelda should have been cross-examined by the other respondents before her Amended Answer can be used against them, otherwise, it is hearsay. In any case, said Amended Answer merely alleged that Marcos has 60% beneficial ownership in respondent Tan's companies without allegation, much less an admission, that undue advantage of office, authority, influence, connections, or relationship was employed.

b) Respondent Tan's Written Disclosure

The Republic relies on respondent Tan's Written Disclosure to prove the 60-40 business arrangement between Marcos and respondent Tan, including the supposed incorporation of holding companies for Marcos' benefit and the supposed delivery of deeds of trust or assignment signed in blank.[268] The Written Disclosure was allegedly executed and submitted by respondent Tan in 1986 to Senator Salonga, as Chairman of the PCGG, during the investigation on the alleged Marcos-Tan partnership.[269]

Before the Sandiganbayan, Senator Salonga testified and attested to the document's genuineness and due execution.[270] Both the original and certified true copy of the Written Disclosure were presented in court.[271] The Republic also presented in evidence excerpts from Senator Salonga's book, "Presidential Plunder," to narrate the circumstances surrounding the execution of the Written Disclosure.[272] The Republic claims that Senator Salonga's testimony suffices to admit into evidence the Written Disclosure.[273]

Respondents Tan, et al., argue that Senator Salonga's direct examination was not completed and he was not cross-examined by the defense. As such, his testimony is worthless and may be stricken off the record.[274] Also, the testimony of Senator Salonga, who relied on his book "Presidential Plunder" to prove the alleged favors, is unconvincing because Senator Salonga only testified on the execution of the written exhibits, and not on the facts stated therein.[275] They further claim that since the Republic is relying on the document, the latter is bound by the statements in the Written Disclosure, including the exculpatory statements therein.[276] Specifically, respondent Tan narrates in the Written Disclosure that he acceded to Marcos' demands because of undue pressure put on him. He mentions that the share transfers to Marcos were actually ineffective, and only fake stock certificates were sent to Marcos.[277]

Meanwhile, the Republic counters that respondent Tan's inculpatory statements evince his guilt, while the exculpatory statements merely show the document's voluntary execution. Thus, the exculpatory statements must have factual support before they may be admitted.[278] Also, the exculpatory statements do not invalidate the 60-40 business arrangement between Marcos and respondent Tan.[279]

Respondents Tan, et al.'s claims must be sustained. The Written Disclosure is inadmissible in evidence. Even assuming otherwise, the Written Disclosure is still insufficient to prove the Republic's claims.

As a rule, before a private document is admitted in evidence, it must be authenticated either by the person who executed it, the person before whom its execution was acknowledged, any person who was present and saw it executed, or who after its execution, saw it and recognized the signatures, or the person to whom the parties to the instruments had previously confessed execution thereof.[280]

Here, the Written Disclosure cannot be admitted as evidence of the truth of its contents. The Republic did not present respondent Tan, the one who executed the document, as a witness. As such, respondent Tan was not cross--examined on the statements he made in the Written Disclosure. The hearsay rule excludes evidence that cannot be tested by cross-examination.[281] Indeed absent cross-examination, both the court and the opposing counsel would not be able to test the credibility of the witness and his or her statements:

A witness can testify only to those facts which he knows of his personal knowledge, which means those facts which are derived from his perception. Consequently, a witness may not testify as to what he merely learned from others either because he was told or read or heard the same. Such testimony is considered hearsay and may not be received as proof of the truth of what he has learned. Such is the hearsay rule which applies not only to oral testimony or statements but also to written evidence as well.

The hearsay rule is based upon serious concerns about the trustworthiness and reliability of hearsay evidence inasmuch as such evidence are not given under oath or solemn affirmation and, more importantly, have not been subjected to cross-examination by opposing counsel to test the perception, memory, veracity and articulateness of the out-of-court declarant or actor upon whose reliability on which the worth of the out-of-court statement depends.

Thus, the Sworn Statements of Jose Lomocso and Ernesto Urbiztondo are inadmissible in evidence, for being hearsay, inasmuch as they did not take the witness stand and could not therefore be cross--examined.[282]

Since respondent Tan did not take the witness stand to testify on the contents of his Written Disclosure, the

statements therein are considered hearsay and inadmissible in evidence. To stress, only Senator Salonga identified the Written Disclosure in court. He claimed that the Written Disclosure was signed in his presence.[283]

On this point, another view was forwarded during the Court's deliberation that Tan and the other respondents did not deny that the Written Disclosure was properly presented as documentary evidence.[284] They also failed to deny its execution.[285] It was pointed out that these circumstances affirm the genuineness and authenticity of the Written Disclosure and except said evidence from the authentication requirement.[286] Also, Tan, in particular, should be estopped from discrediting his Written Disclosure or from excluding it as evidence.[287]

However, it is well-established that, when cross-examination is not and cannot be done or completed due to causes attributable to the party offering the witness, the uncompleted testimony is thereby rendered incompetent and inadmissible in evidence.[288] Thus, as correctly pointed out by respondents Tan, et al., the incomplete testimony of Senator Salonga renders the Written Disclosure inadmissible as evidence. Senator Salonga's failure to complete his cross-examination was attributable to the Republic, considering it was due to the witness' schedule conflicting with the hearing dates. The Republic failed to present Senator Salonga on any of the remaining hearing dates.

In effect, the Written Disclosure was not authenticated by any competent witness, Senator Salonga's testimony being inadmissible in evidence. Respondents need not deny the Written Disclosure's authenticity or due execution because the testimony for which it was offered, i.e., Senator Salonga's, is in itself inadmissible.

More importantly, as clarified during Senator Salonga's direct examination, his testimony only deals with the circumstances surrounding the execution of the document, and does not purport to prove the facts stated in the Written Disclosure.[289] Thus, even if the Court were to exempt the Written Disclosure from the authentication requirement, the testimony of Senator Salonga could not cure the hearsay character of the document. Such testimony does not prove the claims made in the Written Disclosure.

Even assuming that the Written Disclosure is admissible in evidence, the same has little probative weight. While the Written Disclosure involves extrajudicial admissions, the rule on judicial admissions may be applied by analogy. In this regard, the Court's ruling in *Bitong v. Court of Appeals (Fifth Division)*[290] on admissions is instructive:

Every alleged admission is taken as an entirety of the fact which makes for the one side with the qualifications which limit, modify or destroy its effect on the other side. The reason for this is, where part of a statement of a party is used against him as an admission, the court should weigh any other portion connected with the statement, which tends to neutralize or explain the portion which is against interest.

In other words, while the admission is admissible in evidence its probative value is to be determined from the whole statement and others intimately related or connected therewith as an integrated unit. Although acts or facts admitted do not require proof and cannot be contradicted, however, evidence aliunde can be presented to show that the admission was made through palpable mistake. The rule is always in favor of liberality in construction of pleadings so that the real matter in dispute may be submitted to the judgment of the court.[291]

Thus, where part of a statement of a party is used against him as an admission, the court must necessarily consider the other portions connected that may tend to explain the portion against that party's interest. Therefore, the Court may not limit its review to the inculpatory statements in the Written Disclosure.

Respondent Tan correctly claims that, in admitting the Written Disclosure in evidence, the exculpatory statements in the said document must also be duly considered. After all, the Court must strive to appreciate evidence in a holistic and impartial manner.

While portions of the Written Disclosure appear to support the Republic's theory, there are also various statements that may negate elements of ill-gotten wealth, particularly the acquisition of assets and properties by Marcos, respondent Imelda, their close relatives, and other associates. In the same document, respondent Tan asserts legitimate ownership over his business ventures, claiming that the share transfers to Marcos were ineffectual.[292] These statements evidently weaken the Republic's claim of ownership by the Marcoses.

Verily, the Written Disclosure is hearsay and lacks probative weight. It cannot sustain the Republic's allegations.

c) Marcos, Jr.'s Testimony

The Republic relies on the testimony of Marcos, Jr. on 21 August 2007 and 13 February 2018[293] to prove its allegations of ill-gotten wealth by Marcos in relation to respondent Tan. The salient portions of Marcos, Jr.'s testimony cited by the Republic relate to the supposed meetings with his father and respondent Tan regarding the alleged interest of the Marcoses in the businesses of respondent Tan. In addition, the Republic argues that Marcos, Jr.'s testimony elaborated on the complex formation of the respondent companies, and dovetailed with the affidavit of Gapud.[294]

The Republic thus concludes that the testimony of Marcos, Jr. is not hearsay because they were based on his direct personal knowledge of his meetings with his father, respondent Tan, and Gapud.[295]

On the other hand, respondents argue that since the Republic concedes that the testimony of Marcos, Jr. was derived from his meetings with his father, respondent Tan, and Gapud, then the testimony as to the facts subject of the meetings is hearsay.[296] Respondents also highlight that Marcos, Jr. denied that the subject assets were ill-gotten wealth.[297]

After due consideration of the foregoing, it is clear that Marcos, Jr. does not have personal knowledge of the alleged 60-40 business arrangement or the share transfers between and among the various corporations. It does not appear that he was privy to any of these transactions.

It is well entrenched that a witness may only testify on facts derived from his own perception and not on what he has merely learned or heard from others.[298] Hearsay evidence, or those derived outside of a witness' personal knowledge, are generally inadmissible due to serious concerns on their trustworthiness and reliability; such evidence, by their nature, are not given under oath or solemn affirmation and likewise have not undergone the benefit of cross-examination to test the reliability of the out-of-court declarant on which the relative weight of the out-of-court statement depends.[299]

The lack of personal knowledge of Marcos, Jr., insofar as the actual transactions which led to the alleged 60-40 business arrangement, is clear in this case. Marcos, Jr. has no personal knowledge of the details of the arrangement and the manner of the transfers of shares since he was not privy to said transactions.

Thus, the Court finds that Marcos, Jr.'s testimony is hearsay and may not be used to prove the truth of the facts asserted. Hearsay evidence, whether objected to or not, cannot be given credence for it has no probative value.[300] Notably, respondents' counsel has consistently objected to Marcos, Jr.'s testimony on this ground.

At best, Marcos, Jr. can only testify on the fact that he conferred with his father, respondent Tan, and Gapud regarding the Marcos family's interest in the respondent-corporations. This is without regard to the truth or falsity of the underlying basis of such claims. Thus, Marcos, Jr.'s testimony can be considered as independently relevant statements.

In *Buenaflor Car Services, Inc. v. David, Jr.*, [301] the Court explained the doctrine of independently relevant statements, thus:

Under the doctrine of independently relevant statements, regardless of their truth or falsity, the fact that such statements have been made is relevant. The hearsay rule does not apply, and the statements are admissible as evidence. Evidence as to the making of such statement is not secondary but primary, for the statement itself may constitute a fact in issue or be circumstantially relevant as to the existence of such a fact.[302]

However, without more, Marcos, Jr.'s testimony cannot be taken to prove the ill-gotten wealth since it can only be taken as an assertion without due regard to the truth or falsity of the subject transactions. This remains to be far removed from the burden of the prosecution to prove ill-gotten wealth.

Marcos Jr.'s testimony, in and of itself, does not show that his father and the respondents took undue advantage of their office, authority, influence, connections, or relationship to obtain ownership of these business interests.

d) Gapud's affidavit

The Republic relies on Gapud's affidavit because it purportedly narrates the detail of the dealings of Marcos and his associates.[303] In his statement, Gapud claimed to be the financial executor of Marcos and respondent Imelda, and that he was often carrying out instructions given by them.[304]

Before the Court, the Republic insists that Gapud's affidavit was presented and identified in court by Senator Salonga.[305] Senator Salonga testified that he personally typed Gapud's statement after interviewing him in Hong Kong.[306] He claimed that he signed it as a witness and thus identified his own signature thereon.[307] Moreover, the Republic points out that the Court has invariably utilized the testimony of Gapud in a plethora of cases.[308] On the other hand, respondents Tan, et al. maintain that Gapud's affidavit is not admissible for being hearsay.[309]

We agree with respondents Tan, et al.

It is settled that while notarized affidavits are considered as public documents, they may still be deemed as hearsay evidence.[310] Affidavits are generally prepared not by the affiant himself, but by another who uses his or her own language in transcribing or writing the statements.[311] If the affiant is not presented, the opposing party is deprived of the chance to cross-examine him or her.[312] In such situations, the opposing party cannot test the "perception, memory, veracity, and articulateness of the out-of-court declarant or actor upon whose reliability the worth of the out-of-court statement depends." [313] Thus, an affidavit should be rejected for being hearsay unless the affiant testifies and confirms his or her declarations thereon.[314] This proceeds from the basic rationale of fairness.[315]

Here, Gapud was not presented in court to identify his affidavit. Relative to this, in the case of Republic v. Sandiganbayan,[316] the Court dealt with a motion for leave filed by the Republic to take the deposition of Gapud, also for SB Civil Case No. 0005.[317] The Sandiganbayan denied the Republic's motion, due to, among others, the absence of special circumstances that would justify the taking of Gapud's deposition before the service of answers.[318] When it reached the Court, the denial of the motion was affirmed since it was not established that there existed a real threat to Gapud's life should he choose to return to the Philippines.[319] On this matter, the Court explained:

In the case at bar, petitioner alleges that the taking of Mr. Gapud's deposition in lieu of his testimony is necessary because the allegations in the complaint are based mainly on his disclosures regarding the business activities of President Marcos and Lucio Tan; that although Mr. Gapud was granted immunity by President Aquino from criminal, civil and administrative suits, he has been out of the country since 1987 and has no intention of returning, fearing for his safety; that this fear arose from his damaging disclosures on the illicit activities of the cronies and business associates of former President Marcos which therefore renders him unable to testify at the trial.

Petitioner has not cited any fact other than Mr. Gapud's cooperation with the Philippine government in the recovery of ill-gotten wealth that would support the deponent's claim of fear for his safety. No proof, much less any allegation, has been presented to show that there exists a real threat to Mr. Gapud's life once he returns to the Philippines and that adequate security cannot be provided by petitioner for such a vital witness.[320]

To stress, the denial of the Republic's motion for leave to take Gapud's deposition in Republic v. Sandiganbayan was not absolute.[321] The Court merely pronounced that the Republic failed to show the urgency and necessity to allow the taking of Gapud's deposition at that point in time, considering that there was no joinder of issues yet.[322] However, even after the issues were joined, the Republic still failed to present Gapud, or avail of any other means at its disposal to enable the Sandiganbayan to properly consider the contents of the affidavit. At the same time, the Republic failed to prove the existence of any of the exceptions to the hearsay rule under Rule 130(C)(6) of the Rules on Evidence.[323]

The Republic asserts that Senator Salonga's identification of Gapud's affidavit should be sufficient. Yet, during trial, it clarified that the purpose of the presentation of Senator Salonga's testimony is limited to elicit the facts and circumstances surrounding the execution of Gapud's affidavit:

Atty. Generillo:

Your Honor please, if I may, perhaps for the enlightenment of all parties. The purpose of the testimony of the witness is to shed light on the factual circumstances surrounding the execution of the Affidavit of Mr. Gapud. We are not making an offer of the Gapud Affidavit. What we are going to elicit from the witness is the facts and circumstances surrounding the execution of the Affidavit. We will make the necessary offer of the Gapud Affidavit in some other time, Your Honor and under proper laying the basis for the introduction of that Gapud Affidavit. But insofar as the testimony of this witness, what we are going to prove is, that he was the one that personally typed the Gapud Affidavit; and that he interviewed Mr. Gapud before he prepared the Gapud Affidavit, Your Honor.

CHAIRPERSON:

Well, anyway, your observation and comments are on record, Atty. Mendoza.

Okay, you go ahead with the direct-examination[,] Atty. Generillo.[324]

While the testimony of a witness regarding a statement made by another person to establish the truth thereof is clearly hearsay, it is otherwise if the objective is merely to establish the fact that the statement, or the tenor of such statement, was made.[325] To reiterate, this is known as the doctrine of independently relevant statements.[326] Under this doctrine, only the fact that the statements were made is relevant, and the truth or falsity thereof is immaterial.[327]

However, even if the doctrine of independently relevant statements is applicable, this merely establishes the execution of the document. Still Gapud was not able to appear before the Sandiganbayan to confirm the truthfulness of his declarations. Senator Salonga could not have testified on the truth of Gapud's statements, and he could not have been cross-examined by respondents on this matter. As mentioned, Senator Salonga's examination was not completed since he no longer appeared before the Sandiganbayan for cross-examination.[328]

As such, Gapud's affidavit remains devoid of probative value for purposes of establishing the truth of Gapud's claims on the alleged 60-40 business arrangement between Marcos and respondent Tan.

e) Other Documentary Evidence

Additionally, the Republic presented voluminous documentary evidence in support of its allegations. The

pertinent documents may be summarized as follows:

- Documents relating to Fortune Tobacco. There are documents that show numerous requests for import quotas were made to the Philippine Virginia Tobacco Administration or directly to Marcos, bearing the latter's signature with the word "approved." [329] There are also those showing that respondent Tan, as chairperson of Fortune Tobacco, wrote requests to Marcos, which were favorably acted upon by the latter. [330] Likewise, several documents issued by the Office of the President granting Fortune Tobacco's requests for import quotas were submitted, showing that Marcos approved the request for the import quota. [331]
- Documents relating to Allied Bank. The Republic presented documents that show respondent Tan wrote direct requests to Marcos on behalf of Allied Bank. These were likewise approved or granted by Marcos, as shown by notations or issuances by the Office of the President. [332]
- Documents pertaining to transfer of shares. Deeds of sale of shares of stock were presented to show that the stockholders of Himmel Industries, Grandspan, Asia Brewery, Silangan Holdings, and Foremost Farms sold their shares to Shareholdings, Inc. [333] There are also deeds of assignment issued by the stockholders of Shareholdings, Inc. transferring their shares to Basic, Falcon Holdings Corp. (Falcon), and Supreme Holdings, Inc. (Supreme), and uniform deeds of assignment signed in blank issued by the stockholders of Falcon, Supreme, and Shareholdings, Inc. [334]

Unfortunately, however, most of these documents are merely copies of private documents, thus, not meeting the requirement for the presentation of the original under Section 3, Rule 130 of the Rules on Evidence. Neither did the Republic establish the existence of any of the exceptions under Sections 5 to 8, Rule 130 of the Rules on Evidence, which would justify its resort to secondary evidence.

The Republic presented officers from the PCGG and other government offices who purportedly had custody of a number of the documents. [335] However, it failed to present witnesses who could testify not only on the genuineness and due execution of the documents, but also on the facts stated therein. That most of the documents were in the custody of the PCGG does not make them public in character. As clarified in *Republic v. Marcos-Manotoc, et al.*: [336]

The fact that these documents were collected by the PCGG in the course of its investigations does not make them per se public records referred to in the quoted rule.

Petitioner presented as witness its records officer, Maria Lourdes Magno, who testified that these public and private documents had been gathered by and taken into the custody of the PCGG in the course of the Commission's investigation of the alleged ill-gotten wealth of the Marcoses. However, given the purposes for which these documents were submitted, Magno was not a credible witness who could testify as to their contents. To reiterate, "[i]f the writings have subscribing witnesses to them, they must be proved by those witnesses." Witnesses can testify only to those facts which are of their personal knowledge; that is, those derived from their own perception. Thus, Magno could only testify as to how she obtained custody of these documents, but not as to the contents of the documents themselves. [337]

Thus, without the testimony of persons who have personal knowledge on the contents of these documents, the enumerated documents do not have any evidentiary value.

Application of the Evidence to the Elements of Ill-Gotten Wealth; Preponderance of Evidence

As provided in EO No. 14-A, allegations in civil cases filed to recover unlawfully acquired property or ill-gotten wealth must be proven through preponderance of evidence, viz:

SEC. 3. The civil suits to recover unlawfully acquired property under Republic Act No. 1379 or for restitution, reparation of damages, or indemnification for consequential and other damages or any other civil actions under the Civil Code or other existing laws filed with the Sandiganbayan against Ferdinand E. Marcos, Imelda R. Marcos, members of their immediate family, close relatives, subordinates, close and/or business associates, dummies, agents and nominees, may proceed independently of any criminal proceedings and may be proved by preponderance of evidence.

It is established that when preponderance of evidence is required, the courts must necessarily weigh the evidence presented by the parties and determine who was able to adduce evidence more conclusive and credible than that of the other.[338]

Accordingly, this procedure must be followed in this case, through a comparison of the evidence presented by the Republic as against those submitted by respondents Tan, et al. Below is a discussion of each element of ill-gotten wealth together with the evidence in support of the same.

The first and second elements should be jointly tackled because they are related. The first element requires the Republic to show that assets and properties were acquired, while the second element specifies the persons involved in the acquisition. Even without considering the documentary evidence adduced by the Republic, the other pieces of evidence on record, particularly respondent Imelda's Amended Answer and Marcos, Jr.'s testimony, seem to only suggest the acquisition of assets by Marcos.

Notably, the only evidence that may negate the element of acquisition is respondent Tan's Written Disclosure. However, as discussed, the Written Disclosure is inadmissible in evidence and has no probative weight.

As to the third element, it must be shown that the assets and properties were acquired: (a) through or as a result of the improper or illegal use of funds or properties owned by the Government of the Philippines or any of its branches, instrumentalities, enterprises, banks or financial institutions; or (b) by taking undue advantage of their office, authority, influence, connections or relationship. Since it does not appear that the shares of stock were acquired through public funds, the relevant mode of acquisition is the second one.

The phrase "undue advantage" is neither defined in the pertinent EOs nor in the PCGG Rules and Regulations. The ordinary meaning of the words should thus be observed. Undue means "to a level that is more than is necessary, acceptable, or reasonable." [339] To take advantage means "to use [one's] skills, resources, etc. or a particular situation in order to get an opportunity for [oneself]." [340] Thus, the element of taking undue advantage connotes abuse of public office, authority, influence, connections or relationship, in order to amass assets or properties for one's own benefit.

In this case, the third element was not proven by the Republic. Respondent Imelda's Amended Answer and Marcos, Jr.'s testimony, at most, merely provide unproven allegation of acquisition or ownership, while respondent Tan's Written Disclosure and Gapud's affidavit are inadmissible to prove any of the elements of ill-gotten wealth. With the dearth of evidence presented to prove "undue advantage," the existence of this element remains speculative at this point. Merely assuming its existence may lead to perpetuating an injustice where private property would now be transferred to the Republic.

As to the fourth element, i.e., unjust enrichment, grave damage, and prejudice, the same may be inferred from the third element. The acquisition of ill-gotten wealth necessarily results in pecuniary loss to the whole nation.[341] Considering that the third element was not proven, it follows that no unjust enrichment, damage, or prejudice suffered by the people or the government could be hypothesized from the acquisitions in question.

Considering the foregoing, the petition in G.R. No. 203592 should also be denied for the Republic's failure to

prove the third and fourth elements of ill-gotten wealth.

WHEREFORE, premises considered, the Court rules on the present consolidated petitions as follows:

(1) In G.R. No. 195837, the Petition for Review on Certiorari filed by the Republic is DENIED, and the Sandiganbayan's Resolutions dated 22 December 2010 and 25 February 2011 are AFFIRMED. The Sandiganbayan's dismissal of the complaint against respondents Don Ferry and Cesar Zalamea is declared valid.

(2) In G.R. No. 198221, the Petition for Certiorari filed by the Republic is DISMISSED, and the Sandiganbayan's Order dated 9 June 2011 and Resolution dated 2 August 2011 are AFFIRMED. The Court holds that the testimonies of Joselito Yujuico and Adelito Yujuico were correctly excluded from evidence by the Sandiganbayan.

The Sandiganbayan Resolutions dated 3 May 2011 and 4 July 2011 dismissing the Republic's Motion for Voluntary Inhibition are likewise AFFIRMED.

(3) In G.R. No. 198974, the Petition for Certiorari filed by the Republic is DISMISSED, and the Sandiganbayan Resolutions dated 18 July 2011 and 23 August 2011, which denied the Republic's Motion to Admit Third Amended Complaint, are AFFIRMED.

(4) In G.R. No. 203592, the Sandiganbayan Decision dated 11 June 2012 and Resolution dated 26 September 2012 dismissing the Republic's Second Amended Complaint for reversion, reconveyance, restitution, accounting and damages are AFFIRMED. Consequently, the Petition for Review on Certiorari of the Republic of the Philippines is DENIED for lack of merit.

SO ORDERED.

Hernando, Inting, M. Lopez, Gaerlan, Rosario, J. Lopez, and Marquez, JJ., concur.

Gesmundo,[*] C.J., no participation due to prior connection with OSG and PCGG.

Leonen, SAJ. and Caguioa, J., see separate concurring and dissenting opinion.

Lazaro-Javier,** J., no part and on official business leave.

Dimaampao,*** J., on official business leave.

Kho, Jr., J., see separate concurring opinion.

Singh, J., see separate opinion.

[*] No participation due to prior connection with OSG and PCGG.

[**] No participation due to prior connection with OSG and On Official Business Leave.

[***] On Official Business Leave.

[1] Republic v. Sandiganbayan First Division, 310 Phil. 402 (1995).

[2] In G.R. No. 195837 – Republic of the Philippines v. Sandiganbayan, Don Ferry, and Cesar Zalamea (filed 16 March 2011), the Republic filed a Rule 45 Petition (with Prayer for Issuance of a TRO and/or Writ of Preliminary Injunction) assailing the Sandiganbayan's Resolution dated 22 December 2010 granting Don Ferry and Cesar Zalamea's Motion to Dismiss (Demurrer to Evidence) and Resolution dated 25 February 2011 denying the motion for reconsideration.

In G.R. No. 198221 – Republic of the Philippines v. Sandiganbayan, Lucio Tan, Estate of Ferdinand E. Marcos, et. al. (filed 05 September 2011) – The Republic filed a Petition for Certiorari (with Reiteration of Prayer for the

Issuance of a TRO and/or Writ of Preliminary Injunction) under Rule 65 seeking to nullify the following Sandiganbayan issuances: (1) Resolution dated 03 May 2011 denying the Republic's Motion for Voluntary Inhibition of the Chairman and Members of the Sandiganbayan 5th Division; (2) Resolution dated 04 July 2011 denying the motion for reconsideration; (3) Order dated 09 June 2011 denying the Republic's motion in open court to recall Mr. Joselito Z. Yujuico to the witness stand for continuation of his testimony; and (4) Resolution dated 02 August 2011 denying the motion for reconsideration.

In G.R. No. 198974 – Republic of the Philippines v. Sandiganbayan, Lucio Tan, Estate of Ferdinand E. Marcos, et. al. (filed 02 November 2011) – The Republic filed a Petition for Certiorari (with Reiteration of prayer for the Issuance of a TRO and/or Writ of Preliminary Injunction) under Rule 65 seeking to nullify the Sandiganbayan's Resolution dated 18 July 2011 denying its Motion with Leave of Court to Admit Attached 3rd Amended Complaint, and Resolution dated 23 August 2011 denying the motion for reconsideration.

In G.R. No. 203592 - Republic of the Philippines v. Lucio Tan, Estate of Ferdinand E. Marcos, et. al. (filed 29 October 2012) – The Republic filed a Petition for Review under Rule 45 seeking to reverse, nullify, and set aside the Sandiganbayan's Decision dated 11 June 2012 dismissing the Complaint for reversion, reconveyance, restitution, accounting and damages, and Resolution dated 26 September 2012 denying petitioner's motion for reconsideration.

[3] The other impleaded individuals are Carmen Khao Tao, Florencio T. Santos, Natividad P. Santos, Domingo Chua, Tan Hui Nee, Mariano Tan Eng Lian, Estate of Benito Tan Kee Hiong represented by Tarciana C. Tan, Florencio N. Santos, Jr., Harry C. Tan, Tan Eng Chan, hung Poe Kee, Mariano Khoo, Manuel Khoo, Miguel Khoo, Jamie Khoo, Elizabeth Khoo, Celso C. Ranola, William T. Wong, Ernesto B. Lim, Benjamin T. Albacita, Willy Co, and Federico Moreno.

[4] Rollo (G.R. No. 203592), p. 15.

[5] Id. at 3670.

[6] Id. at 3671.

[7] Id. at 3671, 3676.

[8] Id. at 3674-3675.

[9] Id. at 3677.

[10] Id. at 3678.

[11] Id. at 3681.

[12] Id. at 3681-3682.

[13] Id. at 22.

[14] Id.

[15] Id. at 3657.

[16] Id. at 3660-3663.

[17] Id. at 34; The Republic withdrew its Complaint on 06 November 2001.

[18] Id. at 3658-3659.

- [19] Id. at 3400-3401.
- [20] Id. at 25.
- [21] Id. at 28.
- [22] Id. at 34.
- [23] Id.
- [24] Id. at 154.
- [25] Id. at 48; Rollo (G.R. No. 198221), p. 46.
- [26] Id. at 98; Found in paragraph 14(a) (1)-(3) of the Second Amended Complaint.
- [27] Id. at 103. Sandiganbayan Resolution dated December 22, 2008.
- [28] Rollo (G.R. No. 203592), pp. 151-52.
- [29] 524 Phil. 232 (2006).
- [30] Id. at 143; Rollo (G.R. No. 198221), p. 17.
- [31] Id. at 107; Id. at 121.
- [32] Id. at 108; Id. at 17-18.
- [33] Id. at 109.
- [34] Rollo (G.R. No. 198221), p. 18.
- [35] Id.
- [36] Rollo (G.R. No. 203592), p. 115.
- [37] Rollo (G.R. No. 195837), pp. 224-225.
- [38] Id.
- [39] Id. at 225.
- [40] Rollo (G.R. No. 203592), p. 116.
- [41] Rollo (G.R. No. 195837), p. 228.
- [42] Id. at 229.
- [43] Id.
- [44] Id.
- [45] 516 Phil. 509 (2006).
- [46] Rollo (G.R. No. 203592), p. 230.
- [47] Id. at 119.
- [48] Rollo (G.R. No. 195837), p. 21.
- [49] Id.

[50] Rollo (G.R. No. 195837), pp. 23-24. Penned by Justice Roland B. Jurado, with Justices Teresita V. Diaz-Baldos and Napoleon E. Inoturan concurring.

[51] The petition included a Prayer for Issuance of a TRO and/or Writ of Preliminary Injunction.

[52] Rollo (G.R. No. 195837), p. 27.

[53] According to the Philip Morris 2010 Annual Report.

[54] Rollo (G.R. No. 203592), p. 122.

[55] Id.

[56] Rollo (G.R. No. 198221), p. 25.

[57] Rollo (G.R. No. 203592), p. 123.

[58] Id. at 128.

[59] Rollo (G.R. No. 198221), p. 127.

[60] Id.

[61] Id. at 128, 131.

[62] Id. at 129-130.

[63] Id. at 134.

[64] Id. at 132.

[65] Id.

[66] Id. at 133.

[67] Id.

[68] Id. at 132.

[69] Id. at 131.

[70] Id. at 134.

[71] Id.

[72] Id.

[73] Id. at 135.

[74] Id. at 131.

[75] Id.

[76] Id. at 136.

[77] Id.

[78] Id. at 135.

[79] Id.

[80] Id. at 107-108 provides: "During the 23 April 2009 hearing, Solicitor Dinopol again failed to present any witness and presented to the Court the Plaintiff's two (2) 'Manifestation and Motions' and 'Motion for Production and Request for Admission' all dated 17 April 2009. Atty. Mendoza gave his verbal comments thereto on open court, to which Solicitor Dinopol replied also verbally. As regards plaintiff's Motion for Production and Request for Admission," the court denied the same considering the said motion is not accompanied by the copies of the documents which the plaintiff would like the defendants to produce and/or admit.

On the same date, the court terminated the plaintiff's presentation of evidence and was given a period of fifteen (15) days from said date within which to submit its formal offer of documentary exhibits and other pieces or evidence.

[81] Id. at 109 provides: "On 20 July 2009, this Court promulgated a Resolution dated 13 July 2009, denying plaintiff's 'Motion for Reconsideration' of the 23 April 2009 verbal Order of this Court."

[82] Rollo (G.R. No. 198221), p. 131.

[83] Id. at 141; Penned by Justice Roland B. Jurado, with Justices Teresita V. Diaz-Baldos and Napoleon E. Inoturan concurring.

[84] Id. at 140.

[85] Lucio K. Tan, Jr., Michael G. Tan, Christopher Nelson, Douglas Werth, Mitchell Gault, Raymond Miranda, Varinia Elero, Vincent Nguyen, Domingo Chua, Juanita Tan Lee, Peter Y. Ong, Shirley L. Santillan, Myra Vida G. Jamora, and Henry N. Silosta.

[86] Rollo (G.R. No. 198221), p. 130; Rollo (G.R. No. 198974), pp. 85-86.

[87] Rollo (G.R. No. 198974), p. 86.

[88] Rollo (G.R. No. 198221), p. 131.

[89] Id. at 32.

[90] Id. at 132.

[91] Id. at 33.

[92] Id. at 130.

[93] Rollo (G.R. No. 198974), p. 88.

[94] Id. at 89-90.

[95] Id. at 93. Penned by Justice Roland B. Jurado, with Justices Teresita V. Diaz-Baldos and Alex L. Quiroz concurring.

[96] Rollo (G.R. No. 198974), pp. 3-77.

[97] Rollo (G.R. No. 198221), p. 131.

[98] Id. at 146.

[99] Id.

[100] Rollo (G.R. No. 198221), p. 146.

[101] Rollo (G.R. No. 198221), p. 7.

[102] Id. at 149.

[103] Chavez v. Presidential Commission on Good Government, 360 Phil. 133 (1998).

[104] Rollo (G.R. No. 203592), p. 153.

[105] Id. at 154.

[106] Id. at 151.

[107] Id.

[108] Id. at 156-157.

[109] Id. at 163-164.

[110] Id. at 159.

[111] Id. at 159-161. As required under Sections 24 and 25, Rule 132 of the Rules of Court.

[112] Id. at 159, 161.

[113] Id. at 168.

[114] Id.

[115] Rollo (G.R. No. 203592), p. 169. Penned by Justice Roland B. Jurado, with Justices Teresita V. Diaz-Baldos and Alex L. Quiroz concurring.

[116] Id. at 261-540.

[117] Id. at 3130-3132.

[118] Id. at 4080-4087.

[119] Id. at 4111-4113.

[120] Id. at 4092.

[121] Id. at 4117.

[122] 516 Phil. 509 (2006).

[123] Rollo (G.R. No. 203592), p. 4222.

[124] 410 Phil. 536 (2001).

[125] Rollo (G.R. No. 203592), p. 4233.

[126] Id. at 4234.

[127] 516 Phil. 509 (2006).

[128] Rollo (G.R. No. 203592), pp. 4239-4241.

[129] Id. at 4237-4239.

[130] Id. at 4127, 4156.

[131] Rollo (G.R. No. 203592), p. 4155.

- [132] 524 Phil. 232 (2006).
- [133] Rollo (G.R. No. 203592), p. 4134.
- [134] Id. at 4131.
- [135] Id. at 4148, 4139.
- [136] Id. at 4139.
- [137] Id. at 4139.
- [138] Id. at 4148.
- [139] Rollo (G.R. No. 198221), p. 95.
- [140] Id. at 78.
- [141] Id. at 82.
- [142] Rollo (G.R. No. 203592), pp. 3243-3244.
- [143] Rollo (G.R. No. 203592), pp. 1099, 1100, 3246.
- [144] Id. at 4159-4160.
- [145] Id. at 4175.
- [146] Id.
- [147] Id. at 1117-1119.
- [148] Id. at 1117, 1119, 3320.
- [149] Id. at 1122.
- [150] Id. at 3891-3892.
- [151] Id. at 3892, 3895-3396, 3899-3900.
- [152] Id. at 3915.
- [153] Id. at 3950.
- [154] Id. at 3940-3941, 3957.
- [155] Id. at 3940-3941, 3969.
- [156] Id. at 3995-3996, 4000-4001.
- [157] Id. at 4000.
- [158] Id. at 3996.
- [159] Now, 2019 REVISED RULES ON EVIDENCE. Rule 130, Sec. 40.
- [160] Rollo (G.R. No. 203592), p. 4007.
- [161] Id. at 4000-4003.
- [162] Id. at 4012-4013.

- [163] Id. at 4017.
- [164] Id. at 4019.
- [165] Id.
- [166] Id.
- [167] Id. at 4022.
- [168] Id. at 4010-4011.
- [169] Id. at 4010.
- [170] Id. at 3979-3993.
- [171] Id. at 4027.
- [172] Id. at 4027, 4064.
- [173] Id. at 4065-4066.
- [174] Id. at 4066.
- [175] Id. at 4067-4074.
- [176] Id. at 4075.
- [177] Id. at 4077.
- [178] Id. at 3360, 3367, 3462-3463.
- [179] Id. at 3369.
- [180] Id. at 3462.
- [181] Id. at 3495.
- [182] Id. at 3518.
- [183] Id. at 3389.
- [184] Id. at 3519, 3521.
- [185] Id. at 3522.
- [186] Id. at 3524.
- [187] Id. at 3524-3526.
- [188] Id. at 3527-3528.
- [189] Id. at 3534.
- [190] Id. at 3441.
- [191] Id. at 3509.
- [192] Id. at 3510.
- [193] Id. at 3509-3510.

[194] Id. at 3260.

[195] Id. at 3252.

[196] Id. at 3443.

[197] Id. at 3362.

[198] Id. at 3264.

[199] Id. at 3442-3443.

[200] Id. at 3507.

[201] Id. at 3383.

[202] Id. at 3384.

[203] Id. at 3451.

[204] Id. at 3452-3456.

[205] Id. at 3475-3478.

[206] 472 Phil. 285, 321-322 (2004).

[207] Id. at 325-326; Italics in the original.

[208] Agoy v. Araneta Center, Inc., G.R. No. 196358 (Resolution), 685 PHIL 246-252 (2012) [Per J. Abad]

[209] Section 4. x x x x

(3) Cases or matters heard by a Division shall be decided or resolved with the concurrence of a majority of the members who actually took part in the deliberation on the issues in the case and voted thereon, and in no case, without the concurrence of at least three of such members. When the required number is not obtained, the case shall be decided En Banc: Provided, that no doctrine or principle of law laid down by the Court in a decision rendered En Banc or in Division may be modified or reversed except by the Court sitting En Banc. (Emphasis supplied.)

[210] Philippine Health Care Providers, Inc. v. Commissioner of Internal Revenue, 616 Phil. 387, 394 (2009).

[211] Republic v. Sandiganbayan, 830 Phil. 423, 450 (2018), citing Spouses Condes v. Court of Appeals, 555 Phil. 311, 323 (2007).

[212] Drilon v. Court of Appeals, 409 Phil. 14, 27-28 (2001); De Dios v. Bristol Laboratories Phils., Inc., 154 Phil. 311 (1974).

[213] Monterona v. Coca-Cola Bottlers Philippines, Inc., 845 Phil. 556, 563 (2019), citing Spouses Selga v. Brar, 673 Phil. 581, 591 (2011).

[214] Social Security Commission v. Rizal Poultry and Livestock Association Inc., 665 Phil. 198, 199 (2011).

[215] 807 Phil. 456 (2017).

[216] Id. at 466; Emphasis in the original.

- [217] 516 Phil. 509 (2006).
- [218] Rollo (G.R. No. 198974), pp. 790-793.
- [219] Id. at 105-108.
- [220] 516 Phil. 509, 513 (2006).
- [221] See *Spouses Rosario v. Alvar*, 817 Phil. 994, 995, 1005 (2017).
- [222] See *Heirs of Villanueva v. Heirs of Mendoza*, 810 Phil. 172, 182-183, 186 (2017).
- [223] See *Bank of the Philippine Islands v. Mendoza*, 807 Phil. 640, 641, 648 (2017).
- [224] Rollo (G.R. No. 198974), p. 21.
- [225] *Asia United Bank v. Goodland Co., Inc.*, 660 Phil. 504, 514 (2011).
- [226] See *Pentacapital Investment Corporation v. Mahinay*, 637 Phil. 283, 289, 309 (2010).
- [227] *Santos Ventura Hocorma Foundation, Inc. v. Mabalacat Institute, Inc.*, G.R. No. 211563, 29 September 2021.
- [228] Rollo (G.R. No. 198221), pp. 936-938.
- [229] *Gonzaga v. Commission on Audit*, G.R. No. 244816, 29 June 2021; Emphasis supplied.
- [230] See *Presidential Decree No. 1271 Committee v. De Guzman*, 801 Phil. 731, 733, 764 (2016); Emphasis supplied.
- [231] *FELS Energy, Inc. v. Province of Batangas*, 545 Phil. 92, 110 (2007); Emphasis in the original.
- [232] *General Bank & Trust Co. v. Central Bank of the Philippines*, 524 Phil. 232, 248-249 (2006).
- [233] Id. at 258-259; Emphasis supplied.
- [234] Id. at 245; Emphasis supplied.
- [235] Id. at 259.
- [236] Id.
- [237] *Barnes v. Reyes*, 614 Phil. 299 (2009).
- [238] Id. at 304-305; Emphasis supplied.
- [239] Rollo (G.R. No. 198221), p. 134.
- [240] *Republic v. Gingoyon*, 514 Phil. 657, 711-712 (2005); Emphasis supplied.
- [241] RULES OF COURT, Rule 3, Sec. 7.
- [242] *Vda. de Santiago v. Suing*, 772 Phil. 107 (2015), citing *Natalia Realty, Inc. v. Court of Appeals*, 440 Phil. 1 (2002); Emphasis supplied.
- [243] *Santiago Land Development Corp. v. Court of Appeals*, 334 Phil. 741 (1997).
- [244] 360 Phil. 133 (1998).
- [245] EO No. 1, s. 1986, Creating the Presidential Commission on Good Government, 28 February 1986; EO No.

2, s. 1986, Regarding the Funds, Moneys, Assets, and Properties Illegally Acquired or Misappropriated by Former President Ferdinand Marcos, Mrs. Imelda Romualdez Marcos, their Close Relatives, Subordinates, Business Associates, Dummies, Agents, or Nominees, 12 March 1986.

[246] Issued 11 April 1986.

[247] See *Bataan Shipyard & Engineering Co., Inc. (Baseco) v. Presidential Commission on Good Government*, 234 Phil. 180 (1987); *Chavez v. Presidential Commission on Good Government*, 360 Phil. 133 (1998); *Yuchengco v. Sandiganbayan*, 515 Phil. 1 (2006); *Republic v. Estate of Hans Menzi*, 512 Phil. 425 (2005); *Republic v. Sandiganbayan*, 663 Phil. 212 (2011).

[248] See e.g. *Chavez v. Presidential Commission on Good Government*, 360 Phil. 133 (1998) "Based on the aforementioned Executive Orders, "ill-gotten wealth" refers to assets and properties purportedly acquired, directly or indirectly, by former President Marcos, his immediate family, relatives and close associates through or as a result of their improper or illegal use of government funds or properties; or their having taken undue advantage of their public office; or their use of powers, influences or relationships, "resulting in their unjust enrichment and causing grave damage and prejudice to the Filipino people and the Republic of the Philippines;" *Bataan Shipyard & Engineering Co., Inc. (Baseco) v. Presidential Commission on Good Government*, 234 Phil. 180 (1987).

[249] G.R. No. 205172, 15 June 2021.

[250] *Id.* at 11.

[251] 663 Phil. 212 (2011).

[252] *Id.* at 300-301.

[253] *Himmel Industries, Fortune Tobacco, Foremost Farms, Asia Brewery, Grandspan, Silangan Holdings and Dominion Realty and Construction Corp.*

[254] *Rollo* (G.R. No. 203592), p. 4000.

[255] *Id.* at 141.

[256] *Id.* at 3517-3518.

[257] 387 Phil. 28 (2000).

[258] See RULES OF COURT, Rule 130, Sec. 28.

[259] See *People v. Enero*, 863 Phil. 680 (2019).

[260] 704 Phil. 577 (2013), citing *Tamargo v. Awingan*, 624 Phil. 312 (2010).

[261] *Id.* at 601.

[262] Now, 2019 REVISED RULES OF COURT, Rule 130, Secs. 30, 31, and 32.

[263] 837 Phil. 913 (2018).

[264] *Id.* at 1008-1009; Emphasis supplied.

[265] See *Republic v. Sandiganbayan*, 453 Phil. 1059 (2003).

[266] 333 Phil. 72 (1996), citing *People v. Ola*, 236 Phil. 1 (1987) and *People v. Flores*, 272-A Phil. 264 (1991); See also *People v. Janson*, 448 Phil. 726 (2003).

- [267] Id. at 79-80.
- [268] Rollo (G.R. No. 203592), pp. 3941-3951.
- [269] Id. at 3940.
- [270] Id. at 3950.
- [271] Id. at 3940.
- [272] Id. at 73.
- [273] Id. at 4058.
- [274] Id. at 3491.
- [275] Id. at 3505-3506.
- [276] Id. at 3495.
- [277] Id. at 3495.
- [278] Id. at 3969, 3940-3941.
- [279] Id. at 3957.
- [280] Cercado-Siga v. Cercado, Jr., 755 Phil. 583, 593 (2015).
- [281] People v. Gueron, 206 Phil. 93, 100 (1983).
- [282] Country Bankers Insurance Corp. v. Lianga Bay & Community Multi-Purpose Cooperative, Inc., 425 Phil. 511, 520 (2002).
- [283] TSN, 16 October 2007, p. 82 (Rollo [G.R. No. 203592], p. 1580).
- [284] Concurring and Dissenting Opinion of J. Caguioa, p. 25.
- [285] Id.
- [286] Id.
- [287] Id. at 26.
- [288] Arriola v. People, 871 Phil. 585 (2020).
- [289] TSN, 16 October 2007, pp. 85-87 (Rollo [G.R. No. 203592], pp. 1583-1585).
- [290] 354 Phil. 516 (1998).
- [291] Id.; Emphasis supplied.
- [292] Rollo (G.R. No. 203592), pp. 846-847.
- [293] Id. at 4013-4017.
- [294] Id. at 4017.
- [295] Id. at 4017-4018.
- [296] Id. at 3593-3594.

[297] Id. at 3594-3596.

[298] People v. XXX, 839 Phil. 252 (2018), citing Miro v. Vda. De Erederos, 721 Phil. 772, 790 (2013).

[299] Id. at 265, citing Country Bankers Insurance Corp. v. Lianga Bay & Community Multi-Purpose Cooperative, Inc., 425 Phil. 511, 520 (2002).

[300] People v. Parungao, 332 Phil. 917-927 (1996).

[301] 798 Phil. 195 (2016).

[302] Id. at 207, citing People v. Estibal y Calungsag, 748 Phil. 850 (2014).

[303] Rollo (G.R. No. 203592), pp. 1492-1498.

[304] Id. at 1493.

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[305] Id. at 484-491.

[306] Id. at 1606-1607.

[307] Id. at 485.

[308] Id. at 490.

[309] Id. at 3533-3537.

[310] Republic v. Marcos-Manotok, 681 Phil. 380 (2012).

[311] Id.

[312] Id.

[313] Patula v. People, 685 Phil. 176, 396 (2012).

[314] People's Bank and Trust Company (now Bank of the Philippine Islands) v. Leonidas, 283 Phil. 991 (1992).

[315] DST Movers Corp. v. People's General Insurance Corp., 778 Phil. 235 (2016).

[316] 410 Phil. 536 (2001).

[317] Id. at 547.

[318] Id.

[319] Id.

[320] Id.

[321] Id.

[322] Id.

[323] Fuentes, Jr. v. Court of Appeals, 323 Phil. 508 (1996).

[324] TSN, 16 October 2007, pp. 71-73.

[325] Espineli v. People, 735 Phil. 530 (2014).

[326] Id.

[327] XXX v. People, G.R. No. 241390, 13 January 2021.

[228] Rollo (G.R. No. 203592), pp. 1618-1619; TSN, 16 October 2007, pp. 120-121.

[229] Id. at 853-865.

[330] Id. at 882-884, 886-888, 893-910.

[331] Id. at 858, 860, 862-864.

[332] Id. at 1244-1247, 1249-1251, 1253-1265.

[333] Id. at 1313-1333.

[334] Id. at 1404-1406, 1411-1413, 1414-1416, 1421-1434.

[335] Id. at 159-161, 4074.

[336] 681 Phil. 380 (2012).

[337] Id. at 404. Emphasis supplied.

[338] Republic v. Estate of Hans Menzi, 512 Phil. 425 (2005) [Per J. Tinga].

[339] "Undue", Cambridge Dictionary, available at <https://dictionary.cambridge.org/us/dictionary/english/undue> (last accessed 2 November 2021).

[340] "Advantage", Cambridge Dictionary, available at <https://dictionary.cambridge.org/us/dictionary/english/advantage?q=take+advantage> (last accessed 2 November 2021).

[341] Supra note 250.

CONCURRING AND DISSENTING OPINION

LEONEN, SAJ.:

This Court resolves the consolidated Petitions for Review on Certiorari^[1] from a Complaint for Reversion, Reconveyance, Restitution, Accounting, and Damages filed by the Republic before the Sandiganbayan against 26 individuals, namely: (1) Lucio C. Tan (Tan); (2) Marcos, Sr.; (3) Imelda; (4) Carmen Khao Tan (Carmen); (5) Florencio T. Santos (Florencio); (6) Natividad P. Santos (Natividad); (7) Domingo Chua (Chua); (8) Tan Hui Nee; (9) Mariano Tan Eng Lian (Mariano); (10) Estate of Benito Tan Kee Hiong represented by Tarciana C. Tan (Estate of Benito); (11) Florencio N. Santos, Jr. (Florencio); (12) Harry C. Tan (Harry); (13) Tan Eng Chan, (14) Chung Poe Kee, (15) Mariano Khoo; (16) Manuel Khoo; (17) Miguel Khoo; (18) Jamie Khoo; (19) Elizabeth Khoo; (20) Celso C. Ranola (Celso); (21) William T. Wong (William); (22) Ernesto B. Lim (Lim); (23) Benjamin T. Albacita; (Albacita); (24) Don Ferry (Ferry); (25) Willy Co; and (26) Federico Moreno (Moreno; collectively, Tan et al.).^[2]

This case involves, among others, the interpretation of "ill-gotten wealth" in relation to Executive Order Nos. 1^[3] and 2^[4] and the Presidential Commission on Good Government Rules and Regulations.

The ponencia disposed of the Petitions as follows:

WHEREFORE, premises considered, this Court rules on the present consolidated petitions as follows:

(1)

G.R. No. 195837, the Petition for Review on Certiorari filed by the Republic is DENIED, and the Sandiganbayan's Resolutions dated 22 December 2010 and 25 February 2011 are AFFIRMED. The Sandiganbayan's dismissal of the complaint against respondents Don Ferry and Cesar Zalamea is declared valid.

(2)

In G.R. No. 198221, the Petition for Certiorari filed by the Republic is DISMISSED, and the Sandiganbayan's Order dated 9 June 2011 and Resolution dated 2 August 2011 are AFFIRMED. The Court holds that the testimonies of Joselito Yujuico and Aderito Yujuico were correctly excluded from evidence by the Sandiganbayan.

The Sandiganbayan Resolutions dated 3 May 2011 and 4 July 2011 dismissing the Republic's Motion for a Voluntary Inhibition is likewise AFFIRMED.

(3)

In G.R. No. 198974, the Petition for Certiorari filed by the Republic is DISMISSED, and the Sandiganbayan Resolutions dated 8 July 2011 and 23 August 2011, which denied the Republic's Motion to Admit Third Amended Complaint, are AFFIRMED.

(4)

In G.R. No. 203592, the Sandiganbayan Decision dated 11 June 2012 and Resolution dated 26 September 2012 dismissing the Republic's Second Amended Complaint for reversion, reconveyance, restitution, accounting and damages are AFFIRMED. Consequently, the Petition for Review on Certiorari of the Republic of the Philippines is DENIED for lack of merit.

I concur with the ponencia as to its resolution of the Petitions docketed as G.R. Nos. 195837 and 198974. However, I dissent from its disposition of the Petition in G.R. No. 198221. As for G.R. No. 203592, I concur with Associate Justice Alfredo Benjamin S. Caguioa's (Associate Justice Caguioa) assessment of some matters, but ultimately concur in the result reached by the ponencia.

I agree that ill-gotten wealth includes not only assets and properties that originated from the government but also those acquired by Ferdinand E. Marcos, Sr. (Marcos, Sr.), Imelda Marcos (Imelda), their close relatives, subordinates, business associates, dummies, agents or nominees by taking advantage of their office, authority, influence, connections, or relationships, regardless of the assets' or properties' origins.

However, the Republic of the Philippines, through the Presidential Commission on Good Governance (the Republic), must show by a preponderance of evidence that all these circumstances are present to classify property as ill-gotten wealth.

Once again, this Court observes that despite its vast resources during the past administrations, the Republic seems to have been unable to master the skill and resources to properly present relevant evidence to support its various allegations as provided in our rules.

While the truth may be what the Republic asserts it to be, as a court of law, this Court may only consider facts supported by admissible evidence. To dispense justice, this Court cannot disregard its own rules.

The facts are as follows:

On March 12, 1986, former President Corazon C. Aquino issued Executive Order No. 1 to create the Presidential

Commission on Good Government. The Commission was tasked to recover the assets and properties illegally acquired or misappropriated during the administration of former President Marcos, Sr.

The Republic's Complaint sought to recover ill-gotten wealth alleged to have been acquired through schemes and abuse of power of Marcos, Sr., Imelda, and Tan, resulting in their unjust enrichment.[5] This was allegedly shown in the following instances:

(i) The liquidation of General Bank and Trust Company (GenBank) and Tan's acquisition of its assets through Allied Banking Corp. (Allied Bank) without sufficient collateral and consideration;[6]

(ii) Tan's delivery to Marcos, Sr., and Imelda of substantial beneficial interest in shares of stock in Asia Brewery Inc. (Asia Brewery) beginning July 1977 in exchange for concessions and privileges for his business ventures. This was allegedly committed with the willing participation of the President, Treasurer, and Directors of Asia Brewery, namely: Florencio, Mariano, Chua, and Mariano Khoo. One of the favors granted to Tan allegedly included the grant by the Central Bank of a dollar allocation for Asia Brewery's benefit amounting to USD 6,934,500.00 in May 1979;[7]

(iii) Tan's delivery of improper gifts, bribes, concessions, and/or guaranteed "dividends" to Marcos, Sr., and Imelda in consideration of their continued support for and/or their ownership of interests in his business ventures. The amounts are as follows:[8]

Year

Amount in PHP

1975

11 million

1977

2 million

1979

44 million

1980

10 million

1981

10 million

1982

20 million

1983

40 million

1984

40 million

1985

50 million

1986

50 million

(iv) the establishment of Shareholdings, Inc. to allegedly prevent the disclosure and recovery of their illegally obtained assets.[9] The Republic alleged that Shareholdings, Inc. beneficially held and/or controlled substantial shares of stock in:

- 1) Fortune Tobacco Corp. (Fortune Tobacco);
- 2) Asia Brewery;
- 3) Foremost Farms, Inc. (Foremost Farms);
- 4) Himmel Industries (Himmel Industries);
- 5) Silangan Holdings, Inc. (Silangan Holdings); and
- 6) Allied Bank.

Harry and Manuel Khoo acted as directors of Shareholdings, Inc., while the following names allegedly acted as dummy shareholders: (1) Carmen; (2) Florencio; (3) Natividad; (4) Chua; (5) Tan Hui Nee; (6) Mariano (7) Estate of Benito; (8) Florencio (9) Tan Eng Chan, (10) Chung Poe Kee, (11) Mariano Khoo, (12) Miguel Khoo (13) Jamie Khoo, and (14) Elizabeth Khoo.[10] They allegedly transferred Shareholdings, Inc., their dummy shares to Fortune Tobacco, Asia Brewery, Foremost Farms, Himmel Industries, Granspan Development Corp. (Granspan Development), and Silangan Holdings;[11]

(v) The selling of the Development Bank of the Philippines' (Development Bank) controlling interest in Century Park Sheraton Hotel (Century Park), owned by Maranaw Hotel and Resorts, Corp. (Maranaw Hotel) to Sipalay Trading Corporation (Sipalay Trading), a company controlled by Tan. The Republic alleged that this sale caused losses in millions to Development Bank because Sipalay Trading was grossly undercapitalized.[12] The sale allegedly was with the facilitation of Ferry, then Vice Chairman of the Development Bank, and Harry, President of Maranaw Hotel;[13]

(vi) The printing of Bureau of Internal Revenue strip stamps worth billions of pesos without legal authority and its affixing on packs of cigarettes produced by Fortune Tobacco violates Section 189 of the Internal Revenue Code of 1977. This allegedly defrauded the Republic and the Filipino people of billions of pesos in tax receipts;[14] and

(vii) The establishment of Northern Redrying Co., Inc. (Northern Redrying), a Virginia Tobacco Company, which in several instances, imported and purchased tobacco in excess of the ceilings allowed by law. This was allegedly done with the active collaboration of Celso, William, Lim, and Albacita, all Northern Redrying directors and Tan employees. The Republic also asserted that Moreno, as the Chairman of the Philippine Virginia Tobacco Administration, supervised, approved, and/or permitted these importations and purchases.[15]

On July 17, 1991, the Sandiganbayan, acting on a motion for summary judgment, dismissed the case against Moreno.[16] This dismissal became final and executory on August 19, 1993.[17]

On September 13, 1991, the Republic filed a Motion for Leave to Amend and Admission of Second Amended Complaint.[18] The Sandiganbayan granted its motion on April 2, 1992 and admitted the Second Amended Complaint.[19]

In the Second Amended Complaint, the Republic impleaded the following domestic and foreign corporations as additional defendants: (1) Shareholdings Inc.; (2) Asia Brewery; (3) Allied Banking; (4) Fortune Tobacco; (5) Maranaw Hotels; (6) Virginia Tobacco; (7) Northern Tobacco; (8) Foremost Farms, Inc. (Foremost Farms); (9)

Sipalay Trading; (10) Himmel Industries; (11) Granspan Development Corp. (Granspan Development); (12) Basic Holdings Corp. (Basic Holdings); (13) Progressive Farms, Inc. (Progressive Farms); (14) Manufacturing Services and Trade Corp.; (15) Allied Leasing & Finance Corp. (Allied Leasing); (16) Jewel Holdings Inc. (Jewel Holding); (17) Iris Holdings and Development Corp. (Iris Holdings); (18) Virgo Holdings and Development Corp. (Virgo Holdings);[20] (19) Polo Nominees, Ltd.; (20) Limited Services, Ltd.; (21) Red Seal, Ltd.; (22) Commons Seal, Ltd.; (23) Splendid Nominees Ltd.; (24) Young Tai, Ltd.; (25) Young Jin, Ltd.; (26) Co Finance Nominees Ltd.; (27) Corporate Finances (D.C.T.), Ltd.; (28) Harries Secretaries, Allied Pacific Corp.; (29) B & McKay Nominees, Ltd.; (30) Zanith Establishment, (31) Arinsi S.A.; (32) Cotton Corp. (B.V.I.), Ltd.; (33) Baliondale, Ltd.; (34) Hong Kong, Oceanic Bank, San Francisco; (35) The Sterling Carpet Man, Ltd.; (36) The Sterling Carpet Sales, Ltd.; (37) The Sterling Carpet Distributions, Ltd.; (38) Mercury Drug Stores, Ltd., Calgary Alberta; and (39) Mercury Energy Resources, Ltd. (collectively, Tan's Group of Companies).[21]

These corporations are alleged to be Tan's Group of Companies business ventures in which Marcos, Sr., and Imelda granted concessions to and/or have interests or beneficial ownership.[22] Later, the Republic withdrew its complaint against the foreign corporations.[23]

The Republic also impleaded Panfilo O. Domingo (Domingo), the Heirs of Gregorio Licaros (Licaros heirs), and Cesar Zalamea (Zalamea).[24] The Republic alleged that the illegal liquidation of GenBank and the sale of its assets to Allied Bank was done with the manipulation of the then Central Bank Governor, Gregorio Licaros (Licaros), and Philippine National Bank President, Domingo.[25] It also alleged that Cesar Zalamea (Zalamea), as the Chairman of the Board of Development Bank and Maranaw Hotels,[26] participated in the sale of Century Park to Sipalay Trading.[27]

In the course of the proceedings, Domingo passed away and was substituted by his heirs (Domingo heirs).[28]

The subject assets and properties sought to be reconveyed to the Republic are as follows:

A. Aircraft

1)

RP-C298 BEECH KING AIR E 90

2)

RP-C 1082 HUGHIS 500D

B. Shares of Stocks of:

1)

Shareholdings Inc.

2)

Allied Banking Corporation (Allied Bank)

3)

Foremost Farms, Inc. (Foremost Farms)

4)

Fortune Tobacco Corporation (Fortune Tobacco)

5)

Maranaw Hotels & Resort Corp./Sipalay (Maranaw Hotels/Sipalay)

6)

Virginia Tobacco Redrying Plant

7)

Northern Tobacco Redrying Plant

8)

Asia Brewery, Inc. (Asia Brewery)

9)

Century Park Sheraton (Century Park)

10)

Sipalay Trading Corp. (Sipalay Trading)

11)

Himmel Industries (Himmel)

12)

Grandspan Development Corp. (Grandspan)

13)

Basic Holdings Corp. (Basic Holdings)

14)

Progressive Farms, Inc. (Progressive Farms)

15)

Manufacturing Services and Trade Corporation (Manufacturing Services)

16)

Allied Leasing & Finance Corp (Allied Leasing)

17)

Jewel Holdings, Inc. (Jewel Holdings)

18)

Iris Holdings and Development (iris Holdings)

19)

Virgo Holdings and Development Corp. (Virgo Holdings).[29]

Several incidents during the proceedings with the Sandiganbayan resulted in four separate Petitions in this case. I shall discuss only the particular facts that are relevant to the Petitions.

On September 6, 1995, Imelda filed her Answer with Counter-Claim.[30] On the other hand, Tan et al., other than Marcos, Sr., Imelda, Ferry, and Moreno, filed their respective Manifestations and Answers dated May 8, 2000.[31]

Years later, on November 20, 2001, Imelda filed her Motion for Leave to File Amended Answer with Counter-Claim and Compulsory Cross-Claim.[32]

In her Cross-claim, she explained in detail how Marcos, Sr. had 60% beneficial ownership in the following operating companies: (1) Himmel Industries; (2) Fortune Tobacco; (3) Foremost Fanns; (4) Asia Brewery; (5) Grandspan Development; (6) Silangan Holdings; and (7) Dominion Realty and Construction Corp. Tan allegedly held it in trust for them personally and through his family members and business associates, who appeared as the recorded stockholders. Imelda also stated that in 1980 Marcos, Sr., and Tan agreed to consolidate their ownership interests in one holding company organized under Shareholdings, Inc.[33]

In its September 10, 2002 Minute Resolution, the Sandiganbayan did not admit Imelda's Amended Answer with Counter-Claim and Compulsory Cross-Claim and disallowed her compulsory cross-claim, ratiocinating that Imelda can institute a complaint alleging the cause of action in the purported court, which is the Regional Trial Court.[34] Dissatisfied, Imelda appealed the Sandiganbayan's Resolution in this Court. However, on March 17, 2003 this Court dismissed her appeal for her failure to sufficiently show that the Sandiganbayan committed any grave abuse of discretion.[35]

After several delays, the Republic commenced the presentation of its evidence on May 24, 2006.[36]

On September 23 and 24, 2008, the Republic presented Joselito Yujuico (Joselito) to testify on specific averments of the Second Amended Complaint, particularly on the allegations of the liquidation of GenBank and the sale of its assets to Allied Bank.[37] Later, however, in its June 29, 2009 Resolution, the Sandiganbayan disallowed Joselito's testimony and ordered it stricken off the records.[38] The Sandiganbayan found that the liquidation and acquisition of GenBank had been decided by this Court in General Bank & Trust Co. v. Central Bank of the Philippines.[39] The Sandiganbayan held that the Central Bank is an instrumentality of the Republic, and the latter is privy to matters involving the former, and thus any case involving the former binds the latter.[40]

Later, the Republic heard of the planned merger between Philippine National Bank and Allied Bank. Thus, on December 19, 2008, the Republic filed an application for the issuance of temporary restraining order and/or writ of preliminary injunction to have it enjoined.[41] The Sandiganbayan denied this due to insufficiency in form and substance.[42]

In its April 23, 2009 Order,[43] the Sandiganbayan terminated the Republic's presentation of evidence despite its manifestation that it still had witnesses to present and urged that the Sandiganbayan enforce its order requiring the then Presidential Commission on Good Government Special Counsel, Atty. Catalino Generillo, to surrender a substantial number of vital documentary exhibits.[44] Consequently, the Republic filed its Manifestation and Formal Offer of Evidence Ex Abutande Ad Cautelam dated October 19, 2009.[45]

Thereafter, the defense presented its evidence.[46]

Tan et al., the Domingo heirs, and the Licaros heirs no longer presented testimonial evidence and filed their respective Formal Offer of Evidence.[47] Imelda was deemed to have waived her right to present evidence.[48]

On August 23, 2010, Zalamea filed his Motion to Dismiss (Demurrer to Evidence).[49] He stated that the Republic showed no right of relief against him, as its evidence was irrelevant and did not sufficiently establish his participation in amassing ill-gotten wealth by a preponderance of evidence.[50] He argued that granting his

motion to dismiss would result in a faster disposition of the case.[51]

Ferry also filed a Motion to Dismiss.[52] He argued that the evidence against him showed that the acts he allegedly committed stemmed from his official acts as vice chairman of the Development Bank.[53] He argued that these acts were not committed by him alone but by the other officers acting in their official capacities.[54] It was duly approved per established procedures and is presumed to have been performed regularly.[55] Ferry added that the Republic did not present the originals or properly identify the documents against him.[56] He further cited *Republic v. Desierto*,[57] where this Court ruled as valid the transaction he participated in and held that the Development Bank officers acted in good faith and sound exercise of judgment.[58]

On December 16, 2010, the Sandiganbayan resolved to grant the motions to dismiss on demurrer to evidence of Zalamea and Ferry.[59] It held that there was no evidence showing that they participated in acquiring the subject assets and properties.[60] It noted testimonies which affirmed that Zalamea's name did not appear in any of the documents presented in the Sandiganbayan.[61]

WHEREFORE, defendant Cesar Zalamea's Motion to Dismiss (Demurrer to Evidence), dated 13 August 2010 and Defendant Don Ferry's Motion to Dismiss (On a Demurrer to Evidence), dated 8 September 2010 are hereby GRANTED.

SO ORDERED.[62]

Dissatisfied, the Republic sought reconsideration, but it was denied in the Sandiganbayan's February 24, 2011 Resolution.[63]

On March 16, 2011, the Republic filed a Rule 45 Petition[64] docketed as G.R. No. 195837 and entitled *Republic of the Philippines v. Sandiganbayan, Don Ferry and Cesar Zalamea* to assail the Sandiganbayan's December 22, 2010 and February 24, 2011 Minute Resolutions.

In the meantime, Mariano had a public falling out with Tan.[65] Mariano expressed his willingness to testify for the Republic in exchange for his immunity from prosecution.[66] He attempted several times to have the proceedings deferred while he was negotiating with the Republic and finalizing his immunity agreement.[67] However, his requests were denied, and he was also deemed to have waived his right to present evidence.[68]

In its December 14, 2010 Order, the Sandiganbayan, during the February 3, 2011 hearing, explained that even if Mariano was granted immunity, he could no longer testify for the Republic because the latter had already rested its case. The prosecution is no longer allowed to reopen the case.[69]

Tan et al. then insisted that the trial dates for the Republic's presentation of its rebuttal evidence be set.[70] The Republic objected because it had a pending motion which may require other defendants to present their evidence.[71]

Meanwhile, reports of a merger between Fortune Tobacco Corp. (Fortune Tobacco) and Northern Tobacco Redrying Co. Inc. (Northern Tobacco) with Philip Morris Philippines Manufacturing Inc. (Philip Morris) surfaced. Philip Morris and Fortune Tobacco had agreed to transfer their respective assets and liabilities to a new company called Philip Morris Fortune Tobacco Corp.[72]

On February 18, 2011, the Republic filed a motion to have Tan et al. explain the merger, manifest whether the interests subject of this case have been conveyed, cause the substitution of Fortune Tobacco with Philip Morris Fortune Tobacco Corp., and suspend proceedings until the substitution is effected.[73] The Sandiganbayan denied this in its Minute Resolution dated March 3, 2011.[74] During the March 10, 2011 hearing, the Republic received a copy of the Sandiganbayan's Resolution denying its Motion for Substitution and Motion to Suspend

Proceedings.[75] The Republic manifested in open court that it would file a motion for reconsideration, and it prayed that the setting of its presentation of rebuttal evidence be cancelled until the final disposition of the issue.[76]

However, on the suggestion of the counsel of Tan et al., the Republic was still ordered to submit a list of witnesses to be presented during rebuttal and to present a witness on the next hearing date.[77] The Sandiganbayan stated that the Republic would be deemed to have waived the right to present rebuttal evidence if it failed to do so.[78]

When the Sandiganbayan again denied the Republic's prayer to cancel the settings pending final disposition of the issue of whether Philip Morris Fortune Tobacco Corp. should be impleaded, the Republic then filed a Motion for Voluntary Inhibition dated March 14, 2011 against the chairman and the members of the Sandiganbayan Fifth Division.[79]

Nonetheless, the Sandiganbayan continued the hearings.[80] On March 24, 2011 the Republic moved to adduce additional evidence and submit a manifestation indicating the names of their proposed additional witnesses and the tentative dates for presentation, as the proceeding would require. The Republic filed its compliance on May 5, 2011.[81]

In its May 3, 2011 Resolution, the Sandiganbayan denied the Republic's Motion for Voluntary Inhibition.[82] The Republic alleged that the Sandiganbayan denied their motion and acted with bias against the Republic or partiality in favor of the powerful interest impleaded in the case. It further accused the Sandiganbayan of allowing Tan et al.'s counsel, Atty. Estelito Mendoza (Atty. Mendoza) to control and dominate the proceeding to the prejudice of the Republic and, more importantly, public policy.[83]

The Sandiganbayan held that they had never been biased and partial in favor of Atty. Mendoza and as against the Republic. The Sandiganbayan "almost always ... granted [the Republic's] repeated requests for postponement, extensions[,] and cancellation in order that [the Republic] could readily prepare its evidence." [84] It did not rest the case for the Republic, nor was the Republic coerced to terminate its presentation of evidence in chief at the instance of Tan et al.'s counsel.[85] The Sandiganbayan found that the Republic was afforded due process considering it was given years to prepare and present evidence and rebut Tan et al.'s defense.[86] It also noted that 64 trial dates were given to the Republic but used only 24.[87] It found that while all parties caused delays in the proceedings,[88] from 2006 until April 23, 2009, the Republic primarily caused the delays, and the Sandiganbayan had been very lenient, to the extent that it even allowed one of their witnesses to testify again even after the conclusion of the testimony.[89] It noted that four years of delay in trial for the Republic is too much.[90] The Sandiganbayan ruled that its objective was to resolve the case with dispatch[91] and in accordance with A.M. No. 008-05-SC.[92] Further, on motion of the Republic, and as agreed by the parties, the Republic was allowed to present its evidence-in-chief, and the Sandiganbayan will no longer allow any more postponements.[93]

It ruled that the motion for voluntary inhibition is dilatory in nature, and must be filed when the case is about to be submitted for decision.[94] It found that the Republic failed to ascribe any act of partiality that should cause the members of the Division to inhibit.[95] The allegations of prejudgment is a mere conjecture and not one of the just and valid reasons for the inhibition of a judge under Rule 137 of the Rules of Court.[96] Mere suspicion or perception is not enough.[97] Allowing this would open the floodgates to forum shopping and further delay the proceedings.[98] It held that none of the instances under Rule 3.12 of the Code of Judicial Conduct[99] is present in this case to warrant their inhibition.[100] Repeated rulings against a litigant are not a basis for disqualification.[101] To question its rulings, the Republic's remedy is a Petition for Certiorari.[102]

It also maintained its disallowance of the testimony of Mariano for the Republic.[103] It found that Mariano had his turn to present his evidence and had repeatedly requested its postponement since 2009.[104] Assuming Mariano will be granted immunity by the Republic, it is unprocedural for him to testify for the Republic, considering he is one of the defendants and would only testify for his defense.[105]

Furthermore, while it had granted reliefs to defendants, it also ruled in favor of the Republic when it denied the separate motions to dismiss Zalamea, the Licaros heirs, and Tan et al.[106] It further held that this Court had affirmed some of its resolutions, and this shows that these were issued with due and proper consideration of the parties' arguments and applicable law and jurisprudence.[107]

It found that this was not the first time it was asked to inhibit. On April 6, 1994, the Republic had already filed a Motion for Voluntary Inhibition of the Chairman of the Sandiganbayan Division, then hearing the case.[108] This was denied.[109] Likewise, its Orders dated April 23, 2009[110] and July 20, 2009[111] were supported by facts and law and were accepted by the Republic without complaints.[112]

WHEREFORE, premises considered, plaintiff's "Motion for Voluntary Inhibition of the Chairman and Members of the 5[th] Division" dated 14 March 2011 is hereby DENIED for lack of merit.

SO ORDERED.[113]

In its July 4, 2011 Resolution,[114] the Sandiganbayan denied the Republic's motion for reconsideration. It held that allegations of bias and prejudice must be proved with clear and convincing evidence.[115]

On June 6, 2011, the Republic filed a Motion with Leave of Court to Admit Attached Third Amended Complaint seeking to formally implead Philip Morris Fortune Tobacco Corp. and several other individuals[116] alleging that substantial capital and assets of Fortune Tobacco have been fraudulently transferred to Philip Morris to form a new corporation, which is the Philip Morris Fortune Tobacco Corp. pending litigation of the instant case.[117] The Republic asserts that the additional Fortune Tobacco and Northern Tobacco cooperated in forming Philip Morris Fortune Tobacco Corp. despite being fully aware of the pendency of the ill-gotten wealth case.[118]

On June 9, 2011 hearing, the Republic sought to present Joselito again as its next witness.[119] Tan et al. opposed it,[120] arguing that the testimony is barred by res judicata and the December 22, 2008 and June 29, 2009 Resolutions of the Sandiganbayan.[121] The presentation of Joselito was disallowed in an Order dated June 9, 2011:[122]

This morning, the plaintiff sought to present Mr. Joselito Yujuico as its next witness. Considering that this Court has issued a Resolution dated January 5, 2009, which disallowed and ordered to be stricken off the record, the testimony of Mr. Joselito Yujuico, and considering the vehement objection of the defendants, the said witness is not allowed to testify[.][123]

On June 17, 2011, the Republic also filed a Motion with Memorandum of Authorities to support its recall of Joselito on the witness stand to continue his testimony.[124] It also filed a Manifestation and Motion to advance the testimony of one of its witnesses, Aderito Yujuico (Aderito), for the hearing on June 21, 2011 because the scheduled witness for that hearing, Rolando Gapud (Gapud), was not available on that date.[125] The Republic then appended Aderito's judicial affidavit.[126]

During the June 21, 2011 hearing, the Republic again manifested that the scheduled witness, Gapud, was unavailable and prayed that Aderito be allowed to testify instead.[127] The Sandiganbayan disallowed the presentation of Aderito as a witness when the Republic admitted that his testimony would be of the same nature as Joselito.[128] It also deemed the Republic to have waived its right to present Gapud.[129]

In its July 18, 2011 Resolution, the Sandiganbayan denied the Republic's Motion with Leave of Court to Admit Attached Third Amended Complaint.[130] It found that Philip Morris Fortune Tobacco Corp. and the additional defendants sought to be included[131] are neither indispensable nor necessary parties.[132] It ruled that assuming Fortune Tobacco, Northern Tobacco, and Philip Morris Fortune Tobacco Corp. are organized with ill-gotten wealth, there is no need to implead Philip Morris Fortune Tobacco Corp. and the additional defendants because there is no cause of action against them.[133] The dispositive portion of the July 18, 2011 Resolution reads:

WHEREFORE, premises considered, this Court finds that plaintiff Republic of the Philippines' Motion with Leave of Court to Admit Attached 3[rd] Amended Complaint dated 1 June 2011 is hereby DENIED for lack of merit.

SO ORDERED.[134]

On November 2, 2011, the Republic filed a Rule 65 Petition for Certiorari[135] docketed as G.R. No. 198974, and entitled Republic of the Philippines v. Sandiganbayan, Lucio Tan, Estate of Ferdinand E. Marcos, et. al. to nullify the Sandiganbayan's (1) July 18, 2011 Resolution denying the Republic's Motion with Leave of Court to Admit Attached Third Amended Complaint; and (2) August 23, 2011 Resolution denying the motion for reconsideration.

In its August 2, 2011 Resolution,[136] the Sandiganbayan likewise denied the Republic's Motion with Memorandum of Authorities in support of its recall of Joselito on the witness stand for the continuation of his testimony.[137] It held that it had already resolved the propriety of offering Joselito's testimony in its Resolutions dated December 22, 2008 and June 29, 2009.[138] In General Bank & Trust Co., this Court has adopted the exhaustive narration of facts surrounding GenBank's insolvency and the transfer of its assets to Allied Bank, and the finding that the Monetary Board did not act in bad faith or with grave abuse of discretion in approving the liquidation plan of the Tan's Group of Companies.[139] It was likewise ruled that the offer of testimony by the Republic regarding the matters which Joselito[140] will be testifying on has already been considered by this Court in General Bank & Trust Co. when it resolved the legality of the liquidation of the GenBank. Hence, it no longer needs to be considered in this case.[141]

WHEREFORE, premises considered, plaintiff Republic of the Philippines' Motion with Memorandum of Authorities [In Support of Plaintiff's Recall of Joselito Yujuico on the Witness Stand for the Continuation of His Testimony] dated 15 June 2011 is hereby DENIED for lack of merit.

SO ORDERED.[142]

On September 5, 2011, the Republic filed a Rule 65 Petition for Certiorari,[143] which was docketed as G.R. No. 198221 and entitled Republic of the Philippines v. Sandiganbayan, Lucio Tan, Estate of Ferdinand E. Marcos, et. al., to nullify the Sandiganbayan's (1) May 3, 2011 Resolution denying the Republic's Motion for Voluntary Inhibition of the chairman and members of the Fifth Division, (2) July 4, 2011 Resolution denying the Republic's motion for reconsideration, (3) June 9, 2011 Order denying the Republic's Motion in open court to recall Joselito to the witness stand for the continuation of his testimony, and (4) August 2, 2011 Resolution denying the Republic's Motion with Memorandum of Authorities in support of its recall of Joselito on the witness stand.[144]

In its November 10, 2011 Resolution, the Sandiganbayan denied the Republic's request for the issuance of subpoenas to Joselito and Aderito,[145] reiterating its earlier Resolutions disallowing Joselito's testimony a reconsideration thereof of the testimony of Aderito.[146]

On January 3, 2012 the Republic filed Manifestation and Motion praying to admit the Amended Answer with Counter-Claim and Compulsory Cross-Claim of Imelda be offered as part of the formal offer of exhibits by the Republic. After admitting all its formal offers of evidence of the Republic, the Sandiganbayan considered that the

Republic rested its case on January 12, 2012.[147]

On January 27, 2012 Tan et al. also filed their Manifestation stating that taking into account the evidence they have already offered and would not present any further evidence and rested its case.[148]

After the presentation and the formal offer of evidence of the parties, the Sandiganbayan directed them to file their respective memoranda.[149]

In its June 11, 2012 Decision, the Sandiganbayan dismissed the Republic's Complaint. It also denied the Republic's motion for reconsideration in its September 26, 2012 Resolution.[150]

It found that the Republic failed to prove that the subject assets and properties were ill-gotten wealth because it did not show that they originated from the government's resources.[151] It referred to the "whereas" clauses of Executive Order No. 1 and this court's discussion of "ill-gotten wealth" in *Chavez v. Presidential Commission on Good Government*. [152] It then concluded that two concurring elements must be present and proved before assets or properties are considered ill-gotten wealth: (1) they must have "originated from the government itself," and (2) they must have been taken by former President Marcos Sr., his immediate family, relatives, and close associates by illegal means.[153] It ruled that the Republic failed to prove these elements.

It found that GenBank's properties did not originate from the government and affirmed that this issue has been settled[154] in *General Bank & Trust Co.*

The Sandiganbayan did not lend credence to the evidence presented by the Republic.[155] The Sandiganbayan ruled that the Republic's reliance on Imelda's Amended Answer with Cross-Claim is faulty because her statements contradict the Republic's position regarding the ownership of the shares of stocks.[156] The Sandiganbayan also noted that it had disallowed Imelda's Amended Answer because her cross-claims did not involve the same transactions or acts as that of the principal cause of action.[157]

The Sandiganbayan held that the Republic had not proven that Tan's request was implemented or that the Tan Group of Companies benefitted from Marcos, Sr.[158] It also found that there are no laws of corporate principle that would ever suggest that by granting favors to the corporations the shares of stocks would be of government ownership of its shares, assets, and properties that may be recovered as ill-gotten wealth.[159]

It likewise found that the testimonies of Ferdinand R. Marcos, Jr. (Marcos, Jr.) were merely hearsay and only confirmed that Tan privately owned the shares of stock in various corporations, not by the government.[160]

The Sandiganbayan ruled that the Republic's documentary evidence were mere photocopies, and that the Republic did not comply with the requirements under the Rules of Court to make secondary evidence admissible.[161] It held that the documents collected by the Republic in the course of its investigations are not public records per se.[162]

It ruled that witness Maria Lourdes Magno (Magno), a records officer who testified that she kept the documents gathered and taken into custody by the Republic, and who produced and presented documents from their offices, is not competent to testify on their contents.[163] She can only testify on the documents' existence and on how she obtained possession over them.[164]

The Sandiganbayan held that the same rules apply to the testimony of the Republic's other witnesses, who are incompetent and not qualified to testify on the documents they brought, produced, and presented before the Sandiganbayan, considering that they have no direct participation on its execution. It found that they could not even identify and verify the signatures of the persons appearing on the documents they presented. Thus, they

merely testified as to the existence of the documents but not the veracity of their contents.[165] The witnesses are as follows:

- (1) Atty. Edith C. Napalan (Atty. Napalan), a counsel of the Securities and Exchange Commission, who presented to prove the existence of the documents, the articles of incorporation of Allied Bank and Fortune Tobacco, and other documents previously marked as exhibits;[166]
- (2) Cresencio Cababat Orias, Jr. (Orias), a bank officer in the Bangko Sentral ng Pilipinas, who supervises and controls the records handled in his department was presented to prove the existence of the documents with Tan et al.'s acquisition of GenBank;[167]
- (3) Ma. Yvette Victoria S. Buban (Buban), presidential staff officer and officer-in-charge of the Malacañang Library, who presented documents that are found and kept in the files of the former Presidential Library and turned over to the Malacañang Library;[168]
- (4) Way Caban Castillo (Castillo), a record officer of the Philippine Commission on Good Government, who testified that he obtained documents from the Malacañang Presidential Library on Marcos, Sr., and Tan et al. and turned them over to Philippine Commission on Good Government. He signed an acknowledgment receipt stating that he received the original documents from Tan found in the Presidential Library;[169]
- (5) Ronnie Arenas Inacay (Inacay), a record officer of the Court of Appeals, who attested to several exhibits as duplicate originals in his custody of the Special Proceedings No. 107812 of Branch 37, Regional Trial Court, Manila, which was docketed in the Court of Appeals as CA-G.R. CV No. 39939, entitled Central Bank of the Philippines vs. Banker's Worldwide insurance and Surety Company, et al.[170]
- (6) Feliza U. Arrojado (Arrojado), of the Bureau of Internal Revenue, who testified that their office does not have in its custody income tax returns mentioned the subpoena sent to the Bureau;[171]
- (7) Generosa Nakpil (Nakpil) of the Supervision and Examination Department of Bangko Sentral ng Pilipinas, who brought duplicate memorandum, carbon copies, and duplicate original of documents in the custody of Bangko Sentral ng Pilipinas;[172]
- (8) Rowena Santillan Martinez (Martinez) and Nora Sarmiento (Sarmiento), who brought to the Sandiganbayan the documents in the custody of Bangko Sentral ng Pilipinas;[173]
- (9) Aurora Trias (Trias) of the Bangko Sentral ng Pilipinas, who presented a fact book based on the reports of the banks submitted to the Supervision and Examination Department of Bangko Sentral ng Pilipinas;[174]
- (10) Jeremy Robert Morales Barns, Director IV of the Malacañang Museum, who presented to the Sandiganbayan the two documents in the custody of the museum;[175] and
- (11) Edgar Fatalla Camacho (Camacho) of the National Archives of the Philippines, who confirmed the signatures of the Officer-in-Charge of the Archives Division of the National Archives, appearing at the back pages of several exhibits.[176]

The Sandiganbayan did not lend credence to the testimony of Document Examiner Caroline Moldez-Pitoy of the National Bureau of Investigation, who stated that the handwriting she examined belonged to one and the same person.[177]

It further found that the excerpt of the minutes of the proceedings before the Monetary Board may be considered a public document since it was taken during the Monetary Board's exercise of its mandate. Thus, it was not attested to by the legal custodian to be a correct copy of the original.[178] Atty. Martinez, the witness who testified on it, admitted that she was not a member of the Monetary Board in 1977, the date of the minutes, and only joined the Monetary Board in 2000.[179] Thus, she did not intervene or participate in the preparation, execution, delivery,

and signing of the documents mentioned in the subpoena.[180]

The same rules apply to the testimony of Remedios Amor A. Abagon (Abagon), who testified on the records in the custody of the Senate Blue Ribbon Committee, which includes a transcript of Imelda's interview by Christine Herrera, a former Philippine Daily Inquirer reporter, it noted that Abagon admitted to not knowing who listened to the tape and prepared the transcript, whether the transcript was accurately transcribed, or who struck the portions which were crossed out.[181] She also admitted to not seeing the tape.[182] She said she tried her best to locate the tape but to no avail.[183] Thus, the statements' veracity and statements in the transcript and authenticity of the tape and its recording were not clearly established.[184]

It held that the affidavit of Gapud, the self-confessed financial executor of Marcos, Sr., who affirmed the business alliance between Marcos, Sr., and Tan inconclusive because he did not take the witness stand and could not be cross-examined.[185] While affidavits are deemed public documents if they are acknowledged by a notary public, they are still considered hearsay unless the affiant takes the witness stand to testify.[186] Also, in *Republic v. Sandiganbayan*,[187] it was held that it could not take judicial notice of the depositions of Maurice V. Bane.[188] Thus, it was held:

Thus, absent any convincing evidence to hold otherwise, it follows that [the Republic] failed to prove that the Marcoses accumulated ill-gotten wealth and that defendants collaborated with them.

In conclusion, it is plaintiff's burden to prove the allegations in its Second Amended Complaint. For relief to be granted, the operative act on how and in what manner the Marcoses and their alleged associates participated in and/or benefitted from the acts of Pres. Marcos must be clearly shown through a preponderance of evidence. This burden, plaintiff failed to discharge, hence, this Court is left with no choice but to dismiss the instant case against the defendants.

WHEREFORE, in view of the foregoing, the instant case is hereby DISMISSED.

SO ORDERED.[189]

Thus, on October 29, 2012, the Republic filed a Petition for Review under Rule 45, which was docketed as G.R. No. 203592, and entitled *Republic of the Philippines v. Lucio Tan, Estate of Ferdinand E. Marcos, et al.* The Republic sought to set aside the June 11, 2012 *Sandiganbayan* Decision dismissing the complaint and the September 26, 2012 *Sandiganbayan* Resolution denying the Republic's motion for reconsideration.

In its December 3, 2012 Resolution, this Court ordered the consolidation of the Republic's four Petitions for Review.[190]

Tan et al.,[191] Zalamea,[192] Ferry,[193] the Domingo heirs,[194] and the Licaros heirs[195] filed their respective Comments.

The Estate of Marcos, Sr., through Marcos Jr., manifested that he opposes the Petition insofar as it claims that the subject assets and properties are ill-gotten wealth.[196] He likewise manifested that the Estate of Marcos, Sr. would adopt the Comment of respondent Imelda should she file one in the proceedings.[197] Imelda, however, did not file a Comment. Mariano manifested that he is adopting the Comment of Tan et al. as his Comment.[198]

On March 12, 2013, the Republic filed a Manifestation with Urgent Motion alleging that on March 8, 2012, Allied Bank had merged with the Philippine National Bank, with the latter as the surviving entity.[199] It thus moved that the Court (a) place in custodia legis Allied Bank and its assets subject of this case; (b) require Tan et al. to report and explain and render accounting; and (c) specify the effective date of the merger and effect a substitution of the party (Motion for Substitution).[200]

The Republic further alleged that the Amended Plan of Merger and the Amended Articles of Merger of the Allied Bank had been submitted to and approved by the Securities and Exchange Commission, Bangko Sentral ng Pilipinas, and the Philippine Deposit Insurance Corporation.[201] However, the Bangko Sentral ng Pilipinas and the Philippine Deposit Insurance Corporation's approval was subject to the condition that the Allied Bank shares claimed by the Republic be identified and recorded in the Philippine National Bank's stock and transfer book upon effectivity of the merger.[202] The Republic stressed that Allied Bank and all its assets are alleged to be ill-gotten wealth and subject to litigation, but the Allied Bank shares are being diluted in the merger, thus defeating the Republic's claim.[203] It thus prayed for the above measures to prevent the dilution of the Allied Bank shares.[204] It also sought clarification on when Philippine National Bank will substitute itself as a party.[205] It likens the substitution of the merged corporation to the substitution needed in case of a death of a party as provided under Rule 3, Section 16 of the Rules of Court.[206]

Tan et al. filed a Comment to the Republic's Motion to Substitute.[207] They argued that the Republic had already opposed the merger before the Securities and Exchange Commission, Bangko Sentral ng Pilipinas, and the Philippine Deposit Insurance Corporation (regulatory agencies). However, all three have found it legal, valid, and appropriate.[208] They further stress that the Securities and Exchange Commission even conducted formal proceedings before it denied the Republic's opposition.[209] They also allege that the Republic did not file an ordinary appeal or a petition for certiorari to the Securities and Exchange Commission En Banc, or a petition for review with the Court of Appeals under Rule 43. Thus, the denial of its opposition is final and executory.[210]

Tan et al. argue that the Republic is "engaging in blatant forum shopping." [211] It argues that it failed to obtain the same reliefs in the Securities and Exchange Commission proceedings.[212] They further argue that the regulatory agencies are more competent to decide on this matter, and their findings approving the merger may no longer be disturbed.[213]

They maintain that property may be declared in custodia legis "when it is shown that it has been and is subjected to the official custody of a judicial executive officer in pursuance of his execution of a legal writ." [214] However, the Republic's motions for such legal writs to the properties of Allied Bank have all been denied.[215]

They also argue that the impediments to the merger have been cleared considering that this Court had nullified the Republic's sequestration order over the shares of stock of Allied Bank [216] and had found valid Allied Bank's acquisition of GenBank's assets.[217] They allege that the Sandiganbayan has also denied the Republic's application for a temporary restraining order and/or preliminary injunction writ to enjoin the merger.[218]

Tan et al. further stress that only Tan's shares of stock in Allied Bank are the subject matter of this case, not Allied Bank itself or all its assets.[219] The subject assets and properties identified in the Complaint do not include the acquired GenBank assets.[220] Furthermore, these assets did not originate from the government but from its stockholders, Joselito, and Aderito.[221] It would not be reverted to the government if it were subject to reconveyance.[222] Further, the Office of the Solicitor General was counsel for the Central Bank, arguing for the validity of Tan's acquisition of the GenBank assets.[223]

They argue the assets also cannot be declared in custodia legis solely because Allied Bank is a defendant in this case.[224]

They stated that Allied Bank and Philippine National Bank's Board of Directors and stockholders had resolved the purported dilution and devaluation of the shares of stock. And since it has been found that Allied Bank and Philippine National Bank have complied with regulatory requirements, this Court is allegedly without jurisdiction to deal with the matter of dilution of the assets.[225]

They likewise argue that Rule 3, Section 16 of the Rules of Court does not apply in this case as it provides for substitution in case of a death of a natural person.[226] What may be likened to a death of a corporation is dissolution, not a merger, where the merged corporation assumes the liabilities of the constituent corporation.[227] Further, the subject matter of this case is Tan's shares of stocks in Allied Bank, and Tan is still alive.[228] There is likewise no violation of the Republic's due process rights, considering that it has been made aware of the merger and that it has availed of its opportunities to oppose it before the Sandiganbayan, the Bangko Sentral ng Pilipinas, the Securities and Exchange Commission, and the Philippine Deposit Insurance Corporation.[229]

Zalamea,[230] the Domingo heirs,[231] the Licaros Heirs,[232] the Estate of Marcos, Sr.,[233] and Mariano[234] filed their respective Comments to the Republic's Motion for Substitution.

The Republic filed a Reply to Tan et al.'s Comment on its Motion for Substitution.[235] Tan et al. filed a Motion to Expunge the Republic's Reply.[236] Later, they filed a Rejoinder.[237]

The Republic filed its Replies to the Comments of the Licaros Heirs[238] and Tan et al.[239]

In its September 23, 2014 Resolution, this Court required the parties to file their respective Memoranda.[240]

The Republic,[241] the Licaros heirs,[242] Tan et al.,[243] Zalamea,[244] and the Domingo heirs[245] filed their respective Memoranda.

In a Manifestation and Motion dated December 29, 2014, Mariano manifested that he would adopt the Memorandum filed by Tan et al.[246]

On February 18, 2015, Ferry manifested that he would no longer submit a memorandum and adopt the arguments in his Comment.[247]

On January 8, 2015, the Estate of Marcos, Sr. manifested it would no longer file a memorandum but adopt the Comment, if any, to be filed by Imelda, who is the defendant in Sandiganabayan Civil Case No. 0005, and the other executor in solidum of the Estate.[248]

However, Imelda and the other executor in solidum of the Estate did not file a Comment to the Memorandum required of the parties.[249]

In its November 15, 2016 Resolution, this Court required Imelda and Irene Marcos-Araneta (Irene) to show cause why they shouldn't be held in contempt or disciplinary dealt with for failing to file their Comment and Memorandum.[250]

On December 7, 2017, Imelda filed an Entry of Appearance with Manifestation and Motion for Extension of Time to File Memorandum.[251] Imelda's counsel entered his appearance and manifested that he was recently retained to represent Imelda in this case.[252] He thus requested 15 days to file Imelda's Memorandum and Comment.[253]

In its February 20, 2018 Resolution, this Court noted and granted the Entry of Appearance, Manifestation, and Motion for Extension filed by Imelda's counsel and requested this Court's Process Servicing Unit to send all the court processes to his address.[254]

Imelda still did not file her Comment or Memorandum.[255]

In its April 24, 2018, Resolution, this Court again required Imelda's counsel to show cause why he should not be disciplinary dealt with and to file the Memorandum and Comment within ten (10) days.[256]

In its October 9, 2018, Resolution, this Court again noted Imelda's failure to file her Comment and Memorandum within the time period given. Thus, it imposed a fine of PHP 1,000.00 on her counsel and required the filing of the comment and memorandum within 10 days.[257]

In G.R. No. 195837, the Republic argues that the Sandiganbayan acted with grave abuse of discretion in dismissing the case against Zalamea and Ferry on demurrer to evidence.[258] It stressed that since they were being charged as officers of the Development Bank for conspiring with Tan and Marcos, Sr. to acquire ill-gotten wealth, it is immaterial that they were not business associates of the Tan Group of Companies or that they did not acquire the ill-gotten wealth for themselves.[259] Considering that conspiracy extensively covers all acts relating to or arising from the charge against Tan et al., Ferry and Zalamea may be held liable if it is proven.[260]

The Republic likewise argues that there is undisputed, clear, and convincing evidence that Ferry and Zalamea conspired with Tan and Marcos, Sr. when the Development Bank's shares in Maranaw Hotels were sold to Sipalay Trading.[261] The Republic argues that in one of its documentary exhibits,[262] it is revealed that the sale was supposed to have been granted to PCI Management Consultants, Inc. (PCI).[263] Nonetheless, the Development Bank's shares in the Maranaw Hotels, worth PHP 350 million, were not sold to PCI, but to Sipalay Trading, for only PHP 150 million.[264] They also allegedly gave no reason for pushing through with the sale without public bidding and did not explain choosing Sipalay Trading.[265] The Republic insists that, at the very least, Ferry and Zalamea are liable for accounting, reversion, and damages.[266]

Furthermore, the Republic asserts that by filing a demurrer to evidence, Ferry and Zalamea impliedly admitted the truth of the allegations in the complaint because they decided not to disprove its allegations.[267] Their Answers to the Republic's Complaint are also allegedly full of admissions of culpability.[268] Ferry and Zalamea did not especially deny each material allegation or set forth the matter and substance they relied upon to support their denial.[269] They did not deny their public positions during Marcos, Sr.'s administration, their active participation in approving the sale to Sipalay Trading, or that they caused millions of losses to the Development Bank by facilitating it.[270]

Ferry and Zalamea also allegedly admitted material facts and documentary exhibits proving their liability.[271] The Republic argues that it did not file a response to its proposed stipulation of facts.[272] Ferry did not respond to the Republic's request for genuineness and due execution of documents.[273] The Republic insists that Ferry and Zalamea's silence as to these pleadings is an admission of the truthfulness of the facts in the proposed stipulation and the genuineness and due execution of the documents.[274]

Furthermore, the Republic argues that since Ferry and Zalamea actively participated in the sale to Sipalay Trading, they are guilty of bad faith and gross negligence, warranting the piercing of the corporate veil.[275] They cannot hide behind "official acts and duties" and are liable as the controlling personalities in the Development Bank.[276]

It also argues that Zalamea and Ferry's claim that they acted in good faith should be passed upon in a full-blown trial and subjected to cross-examination.[277] It also asserts that they cannot rely on the business judgment rule without proving their acts fall under the doctrine.[278] Moreover, the performance of regularity of official duties is a presumption that may be overturned by evidence to the contrary.[279]

The Republic argues, citing *Republic v. Desierto*,[280] does not apply in this case as it only affirmed that there was no probable cause to hold Tan et al. liable under Section 3(e) of Republic Act No. 3019[281] for entering into the Deal with Sipalay Trading.[282] The Republic alleges that factual conclusions in preliminary investigations are findings not tested on the merits during trial.[283] Moreover, the case did not rule on the nature of Sipalay Trading as an ill-gotten wealth corporation of Tan and Marcos.[284] Civil cases only required a preponderance of

evidence.[285] Likewise, in this case, the issue centers on the culpability of Zalamea and Ferry being the most responsible officers who approved the sale of the Development Bank shares to Sipalay Trading to the disadvantage and prejudice of the government.[286]

The Republic also argues that the Sandiganbayan's resolutions granting the demurrer to evidence failed to comply with constitutional requirements and its internal rules of procedure in rendering final orders and decisions.[287] The Republic insists that the Sandiganbayan should have rendered a decision, not a minute resolution,[288] especially because a dismissal based on demurrer to evidence is a final order that calls for a review of the evidence presented.[289]

Further, the Republic claims that the resolutions recited the allegations in the Complaint and the names of the witnesses presented. It allegedly omitted the facts, the issues deliberated, the evidence analyzed, and the ruling on the incident under the opinions and conclusions formed on the issue.[290] Likewise, the case was dismissed without the incident being assigned to one of the associate justices to write the opinion.[291] There was also no certification that the decision was reached in consultation with division members.[292] The Sandiganbayan Justices also allegedly did not personally and directly prepare the resolutions, as these were merely adopted and approved during the December 22, 2010 and February 25, 2011 proceedings.[293]

On the other hand, Ferry insists that the Republic failed to prove its cause of action against him by a preponderance of evidence.[294] He asserts that the documentary evidence presented against him was not original or identified to prove its authenticity and due execution.[295] He was acting officially as the vice chairman of the Development Bank.[296] He argued that the nine-member Board collectively approved the sale of Governors in their official capacity, whose performance is presumed regular.[297] He likewise argues it was done in accordance with the established procedure of the Development Bank and the requisites and formalities prescribed by law.[298] He further claims that in *Desierto*, this Court had determined that the sale to Sipalay Trading was legal and that the Development Bank officers acted in good faith and sound exercise of judgment.[299]

Zalamea similarly argues that the Republic failed to discharge its burden to prove the allegations against him.[300] He cites *Republic v. Sandiganbayan*, where it was held that the allegations against him, as opposed to Tan et al., rest on entirely different facts, made on entirely different occasions, that are separate and distinct from each other.[301] The allegations against him are not because he acted as a dummy or alter-ego but as a government official facilitating Tan's acquisition of private corporations.[302]

He maintains there was no evidence of his participation in acquiring ill-gotten wealth.[303] He claims that it was established that his name or participation in any of the transactions does not appear in any of the documentary evidence.[304] He argues that the Republic could not prove the alleged losses in millions he caused to the government.[305] Further, the sale was a board decision, and there is no proof of bad faith, gross negligence, or fraud on his part.[306]

Zalamea denies that he impliedly admitted the allegations in the Second Amended Complaint by filing a demurrer to evidence.[307] He also denied the allegations against him, implicating him in any ill-gotten wealth.[308]

He asserts that the December 16 and 22, 2010 Resolutions of the Sandiganbayan are not minute resolutions. It consisted of 14 pages and exhaustively identified and discussed the facts, the parties' contentions and evidence, and the legal basis for its ruling.[309] He differentiates the minute resolution and minutes of the proceedings, where the latter refers to the documentation of the discussion, showing that the resolution was subject to deliberation and careful thought.[310] He argues that a document is determined by its nature and content, not by its appellation.[311] Further, the Sandiganbayan resolved the matter in compliance with its internal rules as it was in consultation with all the members of the Division, and was signed and initialed by them on every page.[312]

He likewise argues that the Republic's contentions are barred by res judicata by conclusiveness of judgment, considering this Court has already ruled that the sale of Century Park was made in good faith and the sound exercise of judgment in Desierto.[313] He asserts this case involves the same transaction, parties, and issues.[314]

Zalamea further maintains the Republic is guilty of forum shopping.[315] He argues that the dismissal of the case against him was elevated to this Court docketed as G.R. No. 195837.[316] Nonetheless, he was impleaded in the other Petitions involving the other respondents.[317] Further, when the Republic sought to file its Third Amended Complaint, it impleaded him again.[318] There is thus a double filing of petitions for review against him based on the same allegations and grounds.[319] He also argues that the Republic's disclosure of the pending Petitions in its certification of forum shopping does not change the nature of its acts as forum shopping.[320] Consolidating the cases is also not an excuse and only served to delay the proceedings in G.R. No. 195837.[321]

In G.R. No. 198221, the Republic argues that the Sandiganbayan committed grave abuse of discretion and denied it due process of law when it disallowed the presentation of Joselito and Aderito as witnesses.[322]

It asserts that it should be given the opportunity to fully present its evidence.[323] It points out that the testimony of Joselito and Aderito are relevant and material to support its ill-gotten wealth case.[324] They were meant to prove the concessions Marcos, Sr. granted to Tan and their unlawful collaboration with the officials of the Central Bank and the Philippine National Bank to acquire GenBank.[325]

The Republic maintains that their testimonies are not barred by res judicata. The Republic posits that the final decision in the General Bank and Trust Co. v. Central Bank of the Philippines[326] (GenBank liquidation case) does not preclude the prosecution of this case.[327] It discusses that the GenBank liquidation case was a special proceeding filed in 1977 in the Court of First Instance for the liquidation of GenBank.[328] The Republic argues thus that an ill-gotten wealth case could not have been entertained in the same action because the Sandiganbayan has exclusive jurisdiction over ill-gotten wealth cases.[329]

It likewise asserts that there is no identity of parties in the two cases.[330] It points that the Presidential Commission on Good Government, the Marcoses, Licaros, Tan, and the Republic were not impleaded in the GenBank liquidation case.[331] Furthermore, when it was filed in 1977, Marcos, Sr. was immune from suit.[332] The Republic points out that the Central Bank and the Solicitor General's participation in the GenBank liquidation case cannot bind the Republic or deprive it of its right to prosecute the ill-gotten wealth case at the Sandiganbayan.[333] While the Central Bank was the petitioner in the GenBank liquidation case, it acted in a specified limited authority, and did not have the power to represent the Republic.[334] Similarly, the Office of the Solicitor General then acted as advisor of the Central Bank on how to proceed with the liquidation.[335] It thus did not participate as the usual court litigator protecting the interests of the government.[336]

It further points that the issues are different. The validity of the liquidation in the GenBank liquidation case was premised on the meaning of insolvency,[337] and insolvency and liquidation proceedings are specific and limited.[338] On the other hand, the issue in this case is whether Marcos had proprietary interests in Tan's businesses, including Allied Bank, considering the schemes they used in the Central Bank, and the concessions and accommodations extended to Tan and his businesses.[339] The Republic further asserts that the Sandiganbayan's conclusion relied only on obiter dictum. The GenBank liquidation case[340] did not explicitly state that Allied Bank is not part of Marcos, Sr.'s ill-gotten wealth.[341]

It further stresses that the Sandiganbayan's Resolutions disallowing the testimony of Joselito and Aderito are interlocutory orders which may be modified or set aside before a judgment on the merits of the case.[342] It also points that the Sandiganbayan allowed the testimonies of former Central Bank Governor Jaime Laya (Laya) and former Monetary Board Secretary Fe Barin (Barin) on the same issue.[343]

Tan et al., the Licaros heirs, and the Domingo heirs, however, maintain that the Sandiganbayan rightfully disallowed the presentation of Joselito as a witness.[344]

They point out that the Sandiganbayan had ruled on the disallowance several times.[345] Tan et al. stress that even before the Sandiganbayan's June 9, 2011 Order and August 2, 2011 Resolution, Joselito's testimony had already been disallowed by the Sandiganbayan in its January 5, 2009 and July 3, 2009 Resolutions.[346] They further point out that these earlier Resolutions were not questioned through a Rule 65 petition for certiorari.[347] Thus, these have established the "law of the case" and are binding on the parties.[348] Similarly, the Licaros heirs claim that the Sandiganbayan's December 22, 2008 Resolution which had barred the testimony of Joselito was not elevated in due time and has thus become final and binding.[349] The Domingo heirs argue that under Rule 137, Section 9 of the Rules of Court, recalling a witness is discretionary on the part of the Sandiganbayan.[350]

Tan et al. and the Domingo heirs argue that the Republic cannot present a witness that will testify on the facts and issues that have been established and resolved in the GenBank liquidation case.[351] Thus, they point out that the disallowance was in consideration of the finding that GenBank's liquidation and acquisition of assets was legal and done by the Monetary Board in good faith.[352] They claim that the issues raised are barred by *res judicata* by conclusiveness of judgment and *stare decisis*. [353]

Tan et al. assert that the testimony will contradict what has already been decided by the Supreme Court and will seek to restore GenBank's assets to the Yujuicos and the other shareholders of GenBank.[354] They further point out that the latter had already moved to intervene in this case, which has been denied by the Sandiganbayan.[355]

According to the Domingo heirs, the legal rights, relations, facts, applicable laws, issues, and evidence relevant to paragraph 14(a) of the Second Amended Complaint are substantially the same as in the GenBank liquidation case.[356] There is an identity of parties because in the GenBank liquidation case, the Central Bank represented the interest of the Republic when it filed for the liquidation of GenBank. It was also represented by the Office of the Solicitor General. GenBank was also one of the intervenors, and it has privity of interests with Allied Bank, which is one of the respondents in this case.[357] Even if Domingo was not a party to the GenBank liquidation case, the law does not require that there is absolute identity of parties, but only a substantial identity.[358]

As to the allegations against Domingo, the Domingo heirs point out that it has been found that the Central Bank dispensed with the requirement of an irrevocable letter of credit.[359] Thus, the issue of whether Domingo gave Tan undue favor by doing away with the required irrevocable letter of credit has been resolved with finality.[360] Domingo's heirs further argue that Domingo's March 28, 1977 and June 20, 1977 Letters presented in evidence were mere photocopies.[361] The requirements for the presentation of secondary evidence were not complied with.[362] There was also no witness who testified that Domingo issued these letters without any intention to comply with the promise to open an irrevocable letter of credit.[363] Neither is there evidence showing that without his letters, Tan's bid would not have been approved or that the condition was not meant to be fulfilled.[364] In fact, the Republic's witness, Reynaldo Sarmiento, testified that even if a borrower obtains a loan that goes over the single borrower's limit, the borrower will still own the asset paid for by the borrowed funds. He also testified that there is no irregularity if the subject letter of credit was never actually issued.[365]

As to the specific allegations against Licaros, the Licaros heirs point out that the allegations against him are limited to his participation as Central Bank governor and Monetary Board chairperson in the liquidation of GenBank and its acquisition by Tan.[366] They emphasize that there was no allegation that Licaros was a business associate of Marcos, Sr. or Tan, or that he was an officer, director, stockholder, dummy, or alter ego of any of the corporations mentioned in the Republic's Complaint.[367] They likewise argue that any evidence presented against Licaros did not point to any accumulation of ill-gotten wealth[368] or any violation of any law

or regulation when the Monetary Board approved GenBank's liquidation and Tan's acquisition of its assets.[369]

They also claim that Licaros's acts were done in relation to his official capacity and were guided by or duly authorized by the Monetary Board.[370] His acts are presumed to have been done in good faith and regularly performed.[371] They add that it was also justified because he acted in obedience to an order issued by a superior for a lawful purpose.[372]

They further contend that Marcos, Sr.'s favors and concessions have no relation to the allegations in the Complaint.[373] There is no law or corporate principle that provides that favors to a corporation will result to ownership of shares of stock or assets and properties.[374]

Meanwhile, the Republic argues that Sandiganbayan Fifth Division did not appear to have the cold neutrality of an impartial judge.[375]

It claims that the Sandiganbayan rushed it to rest its case despite its manifestations that it intends to present more witnesses and documentary evidence.[376] It adds that on the insistence of Tan et al.'s counsel, Atty. Mendoza, the Sandiganbayan justices set the case for the reception of its rebuttal evidence despite the Republic manifesting that its motion for reconsideration of the dismissal of the case on demurrer to evidence against Ferry and Zalamea was yet to be resolved.[377] It asserts that the Sandiganbayan kept pushing through with hearings despite the Republic's pending motions and incidents which needed to be resolved before proceeding to trial and which were crucial to its cause.[378]

The Republic claims that the Sandiganbayan justices made unwarranted statements which undermined its credibility and integrity.[379] It alludes to the Sandiganbayan's refusal to let Tan Eng Lian testify for the Republic and its statement that it repeatedly denies motions to reopen proceedings.[380] The Republic explains that this revealed that the Sandiganbayan already prejudged an issue which the Republic had not yet raised formally in a proper motion.[381]

The Republic likewise argues that even if it was given the opportunity to present additional evidence, this was not genuine, fair, or free from unreasonable restrictions.[382] It states that the Sandiganbayan deemed it to have waived its right to present witnesses on the sole ground that they were presented on a different hearing date.[383]

The Republic likewise contends that the Sandiganbayan allowed Atty. Mendoza to control and dominate the proceedings.[384] It posits that Justice Roland Jurado (Justice Jurado) suggested that the Republic conduct its presentation of its witness the same way Atty. Mendoza did.[385] The Sandiganbayan would allegedly mouth Atty. Mendoza's arguments in dispensing with issues, without verifying of the records of the case.[386] It also points out that when it brought up Atty. Mendoza's violation of the sub judice rule, Justice Jurado dismissed the matter nonchalantly.[387]

It argues that Justice Jurado repeatedly joined Atty. Mendoza in berating the Republic for the delay of the prosecution in the case when an examination of the records would reveal that defendants caused substantial delays in the proceedings.[388] Defendants allegedly took every opportunity to file pleadings and motions to escape prosecution, such that even before it could present its evidence, private respondents filed at least 22 incidents or motions.[389] It argues that its reasons for postponements were valid such as sickness of counsel or the witness, or the failure of the court's process server to serve the necessary subpoena on its intended witnesses.[390] It thus insists that it was not remiss in its duty to prosecute the case.[391] It asserts that the Sandiganbayan was so inflexible on the technical rules of procedure at the expense of due process and justice.[392] It argues that considering the importance of the case and the Republic's efforts to present more witnesses, the Sandiganbayan should not rush the case despite the years it has been pending.[393]

Meanwhile, Tan et al., the Domingo heirs, and the Licaros heirs opposed the inhibition of the members of the Sandiganbayan Fifth Division.

Tan et al. and the Domingo heirs allege that the Sandiganbayan did not rush the Republic to rest its case.[394] The Domingo heirs claim that the Sandiganbayan gave 64 opportunities to the Republic for it to substantiate its claims, granted the Republic's repeated requests for postponements, cancellations, and extensions, and allowed it to present its rebuttal evidence on four hearing dates, which the Republic opted to cancel.[395]

Tan et al. and the Domingo heirs assert that the Sandiganbayan also allowed the Republic to adduce additional evidence upon the original case.[396] The Domingo heirs claim that the Republic was instructed to give a list of its witnesses with their dates of testimony, but the Republic did not follow the schedule and presented different witnesses.[397] Thereafter, the Sandiganbayan denied the Republic's further motions to cancel the hearings, which were in accordance with law, and in the sound discretion of the court.[398]

The Domingo heirs argue that the Sandiganbayan did not act with partiality or bias when it disallowed Tan Eng Lian from testifying for the Republic.[399] They claim that it is also unfounded that the Sandiganbayan allowed Tan's counsel to control and dominate the proceedings.[400] Unsubstantiated allegations are not valid reasons for a judge or justice to inhibit under Rule 137 of the Rules of Court.[401] There is no clear and convincing evidence showing that their conduct was arbitrary and tainted with bias and prejudice.[402]

Finally, Tan et al. assert that the Republic's motion for inhibition is directed at a different set of Sandiganbayan justices. They point that the Republic moved for the inhibition of the Fifth Division of the Sandiganbayan because it terminated the Republic's presentation of evidence in its April 23, 2009 Order.[403] Reconsideration of the April 23, 2009 Order was denied in the Sandiganbayan's July 20, 2009 Resolution.[404] Tan et al. point that these directives were issued by Justice Ma. Cristina G. Cortez-Estrada, and Justice Jurado and Justice Alex L. Quiroz.[405] However, the motion for inhibition was directed towards Justice Jurado, Justice Teresita V. Diaz-Baldos, and Justice Napoleon E. Inoturan.[406] They likewise point out that the Republic did not challenge the July 20, 2009 Resolution in a Rule 65 petition for certiorari or in its appeal of the Sandiganbayan's Decision on the merits.[407]

The Licaros heirs adopted the findings of the Sandiganbayan in its May 3, 2011 Order.[408] They argue that allowing the motion for inhibition will further delay the resolution of this case which has been pending for more than 20 years.[409]

In G.R. No. 198974, the Republic argues that the Sandiganbayan gravely abused its discretion when it denied its Motion with Leave of Court to Admit Third Amended Complaint.[410] It maintains that Philip Morris / Fortune Tobacco Corp. should be impleaded as a party to the case.

It explains that Philip Morris Philippines Manufacturing Inc. (Philip Morris), and Fortune Tobacco had transferred selected assets and liabilities to a new company called Philip Morris Fortune Tobacco Corp. It thus alleges that Philip Morris Fortune Tobacco Corp. was fraudulently formed and organized to remove the substantial capital and assets of Fortune Tobacco and Northern Tobacco and place it beyond the Court's authority and jurisdiction.[411] The Republic asserts that the creation of Philip Morris Fortune Tobacco Corp. was actually a merger in circumvention of the Corporation Code.[412]

It contends that Fortune Tobacco transferred not only its shares of stocks, but its entire business and contributing assets and liabilities beyond its legal and authorized capital.[413] The Republic further maintains that Fortune Tobacco is no longer operating its core business as an entity separate from Philip Morris Fortune Tobacco Corp.[414] It claims that Philip Morris International, another stockholder of Philip Morris Fortune Tobacco Corp.,

already manages the latter's day-to-day operations and has the majority of the board of directors.[415]

The Republic thus asserts that Fortune Tobacco does not have a separate and distinct personality from Philip Morris Fortune Tobacco Corp.[416] Since it had dissipated its entire business, nothing can be recovered from it should its assets be found to be ill-gotten wealth.[417] Philip Morris, on the other hand, actively participated in and profited from this scheme despite knowledge of the ill-gotten wealth suit. It benefited from the assets without being held accountable for business risks, losses, possibility of concealment, removal, or disposal.[418]

Thus, the Republic argues that the Complaint should have been amended to include Philip Morris Fortune Tobacco Corp. and the individual defendants.[419] It alleges that Philip Morris Fortune Tobacco Corp. is an indispensable and necessary party and its inclusion in the case is a condition sine qua non for the exercise of judicial power[420] under Rule 3, Sections 2, 7, and 8 of the Rules of Court, Executive Order No. 2, and jurisprudence.[421]

The Republic claims that Philip Morris Fortune Tobacco Corp. is now accountable for all the liabilities and obligations of Fortune Tobacco.[422] Any pending claim, action, or proceeding against or by Fortune Tobacco and Philip Morris may now be prosecuted against or by Philip Morris Fortune Tobacco Corp.[423] It will be affected by any court action or litigation and no final determination of the case can be had without it.[424] Since it now holds the ill-gotten assets and capital of Fortune Tobacco and Northern Tobacco, its interest in this case is inextricably intertwined with the interest of other parties.[425] Its presence in the proceeding is an absolute necessity.[426] Without it, the dispute between the parties cannot be resolved effectively, completely, and equitably.[427]

The Republic further argues that it has a cause of action against Philip Morris Fortune Tobacco Corp. because the transfer of capital assets of Fortune Tobacco and Northern Tobacco pending litigation is prohibited under Executive Order No. 2, which prohibits the transfer, conveyance, or dissipation of assets and properties which are subject of an ill-gotten wealth case.[428]

Moreover, the inclusion of Philip Morris Fortune Tobacco Corp. as a party is consistent with due process, equity, fair play, and justice.[429] Where the subject property is transferred pending litigation, the interest of the transferee pendente lite is not independent of the interest of the transferors.[430] Considering there is a transfer of interest, Philip Morris Fortune Tobacco Corp. and its directors and officers should be impleaded for this Court to have continuous jurisdiction over the asset and capital of Fortune Tobacco.[431]

It argues that the 1995 case of Republic v. Sandiganbayan First Division[432] does not apply because the parties it is seeking to implead are not simply corporations organized with ill-gotten wealth.[433] It argues that Philip Morris Fortune Tobacco Corp., its directors, and officers acted in concert in fraudulently and illicitly transferring and depleting the assets and property, taking the res out of litigation and beyond the court's authority and jurisdiction.[434]

The Republic also cites Sections 1 and 3 of Rule 10 of the Rules of Court[435] and this Court's liberal stance on the admissions of amendments to the complaint to serve the ends of justice and to avoid multiplicity of suits.[436] It asserts that its motion is not made to delay the action.[437] Furthermore, the administration of justice takes precedence over speed in trial.[438] It points out that this case is one of the most important cases filed by the Republic against Marcos, Sr. and his close associates.[439] Thus, it must be allowed to prosecute the case against all parties in the wrong.[440] It further claims that the substantial delay in this case was caused by respondents who filed all pleadings and motions to escape prosecution.[441]

It argues that the Sandiganbayan's ruling is a failure to protect and guard against the dissipation of assets and

capital of Fortune Tobacco and Northern Tobacco pending final disposition of this case.[442]

It contests the Sandiganbayan's assertion that the inclusion of Philip Morris Fortune Tobacco, Corp. and its directors and officers as parties is to prematurely pronounce their guilt of misappropriation, fraud, and illicit conduct.[443] It points out that the Republic will suffer the consequences in case of any mistake in impleading parties, and thus it has the right to choose who it will implead and drop in the Complaint as respondents.[444]

The Republic likewise maintains that Fortune Tobacco and Northern Tobacco are not only respondents in this case but their assets also form part of the res in this case, which must be protected and guarded against dissipation, transfer, or concealment.[445]

Tan et al., the Licaros heirs, and the Domingo heirs, however, contest the impleading of Philip Morris Fortune Tobacco Corp. and its directors and officers as defendants. Tan et al. and the Licaros heirs claim that they have no bearing on the Republic's cause of action, and it will only delay the resolution of this case.[446] They argue that the Republic has other remedies to obtain the relief it seeks, like the filing of a separate action.[447]

Tan et al. further contend that Philip Morris Fortune Tobacco Corp. is not a party-in-interest that must be impleaded.[448] The judgment in the case will not benefit or injure Philip Morris Fortune Tobacco Corp.[449] They assert that even if it is later found that the assets and properties of Fortune Tobacco are ill-gotten, judgment may be entered against Fortune Tobacco, and Philip Morris Fortune Tobacco Corp. will still be obliged to surrender the assets to the government.[450] In any case, they assert that Fortune Tobacco, Northern Tobacco, and Philip Morris Fortune Tobacco Corp. are not guilty of fraud, misrepresentation, or any illicit act.[451] They also point out that the motion to file the Third Amended Complaint was filed when the case had been pending for 22 years and trial has already been concluded.[452] To allow it will cause the retrial of the case, prejudice all the parties, and violate their right to a speedy disposition of the case.[453] Further, they add that the Republic did not even seek to nullify the incorporation of Philip Morris Fortune Tobacco Corp. on the ground of fraud.[454]

The Domingo heirs, meanwhile, assert that Philip Morris Fortune Tobacco Corp. and its officers and directors are not indispensable or necessary parties.[455] The Domingo heirs and Tan et al. contend that the subject matter of this case are Tan's shares of stock in Fortune Tobacco assets, not the assets of Fortune Tobacco or Northern Tobacco.[456] Thus, Tan and Fortune Tobacco can be divested of their ownership of their shares in Fortune Tobacco and Philip Morris Fortune Tobacco Corp. without impleading the latter and its directors and officers.[457] Thus, even if the assets and properties of Fortune Tobacco are transferred to Philip Morris Fortune Tobacco Corp., the Republic has no cause of action against the latter.[458] They point out that the transfer of Fortune Tobacco's assets for the shares of stock in Philip Morris Fortune Tobacco Corp. in fact increases the value of the Fortune Tobacco's shares of stock.[459]

Tan et al. likewise contend that the causes of action in the Third Amended Complaint are hypothetical and are entirely different and unrelated to the acts complained of in the ill-gotten wealth case.[460]

Finally, Tan et al. argue that the interlocutory orders that the Petitions in G.R. Nos. 198221 and 198974 seek to question have already become moot since the Sandiganbayan already decided the case on the merits and no temporary restraining order was issued to interrupt the course of the principal case.[461] They argue that the Republic should have raised these as issues in its appeal of the decision on the merits.[462]

In G.R. No. 203592, the Republic asserts that ill-gotten wealth is not restricted to assets and property originally owned by the government taken by Marcos, Sr. or his close associates.[463] The Republic contends that under Executive Orders No. 1 and 2, and the Presidential Commission on Good Government Rules and Regulations, ill-gotten wealth can be divided into two kinds: assets and properties acquired (i) through the improper or illegal

use of funds or properties owned by the government, or (ii) by taking undue advantage of their office, authority, influence, connections, or relationship, resulting in their unjust enrichment and causing grave damage and prejudice to the Republic and the Filipino people.[464] The property or assets in the second kind need not solely originate from the government to be deemed ill-gotten.[465]

The Republic states that the clear language and overriding principle of the laws and regulations should be considered.[466] Furthermore, current legislation[467] allegedly show that "ill-gotten wealth," "unlawfully, acquired property," and "unexplained wealth," pertain to money or property acquired through unlawful activity.[468] The Republic argues that the interpretation of laws must be sensible, reasonable, practical and must "promote the ends for which they are enacted." [469] It should not be interpreted to allow an act prohibited by law or to defeat compliance with the law, create inconsistencies, or contravene its plain meaning.[470]

It asserts that in Executive Orders No. 1 and 2, the use of the word "or" between "the improper or illegal use of funds or properties owned by the government," and "by taking undue advantage..."[471] means that the two are alternative, disassociated, and independent from one another.[472]

It argues that the Presidential Commission on Good Government Rules and Regulations has the force and effect of law and has been cited in several cases using its definition of ill-gotten wealth,[473] including Republic v. Estate of Hans Menzi.[474] The Republic further insists that this Court has declared properties as ill-gotten without needing to prove that it originated from the government, including Yuchengco v. Sandiganbayan.[475]

The Republic also argues that the definition of ill-gotten wealth in the 2006 Republic v. Sandiganbayan (Cojuangco case),[476] which involves the use of coco levy funds, does not apply to this case because of its different factual circumstances in accumulating ill-gotten wealth.[477] Furthermore, the Cojuangco case recognized that ill-gotten wealth may be acquired from taking undue advantage of official position, authority, relationship, or connection.[478]

The Republic maintains that the subject assets and properties were acquired through conspiracy and unlawful collaboration between Marcos, Sr. and Tan et al. by taking undue advantage of official position, authority, relationship, and influence for personal gain and benefit.

This was allegedly shown in Marcos, Sr. and Tan's close personal relations[479] and the latter's delivery of amounts of money to the former. They also allegedly had an arrangement in which Marcos, Sr. will own 60% of the shares of stocks, equity, and other forms and interest and participation in Tan's businesses (60-40 business arrangement).[480] Tan created layers of corporations to conceal the ill-gotten wealth and to create a semblance of legitimacy and rightful ownership.[481] Marcos, Sr. likewise allegedly established a tobacco monopoly in favor of Tan through presidential intervention, numerous concessions, favorable tax applications, and import quota exemptions. The Republic also alleges that Marcos, Sr. facilitated the fraudulent conveyance or disposition of assets belonging to the government to Tan through the sales of: (i) Century Park Sheraton Hotel (Century Park) to one of Tan's business ventures, Sipalay Trading Corporation (Sipalay Trading); and the (ii) liquidation of GenBank and the sale of its assets to Tan.[482] Tan likewise allegedly organized Asia Brewery in order for Marcos, Sr. to acquire control over San Miguel Corporation.[483]

The Republic insists that the privileges Marcos, Sr. granted violated existing laws, rules, and regulations and were only granted because of their close association and business arrangements.[484]

The Republic points out that civil actions to recover ill-gotten wealth may be proven by a preponderance of evidence and does not require proof beyond reasonable doubt.[485] Furthermore, in resolving ill-gotten wealth cases, this Court has consistently set aside technicalities to serve the broader interest of justice.[486] Nonetheless,

it asserts that it presented compelling and irrefutable evidence conclusively proving the assets in this case are ill-gotten wealth.[487]

It maintains that the Sandiganbayan would have concluded that the subject properties and assets are ill-gotten wealth had it considered its evidence vis-à-vis its General Averments in the Second Amended Complaint instead of its specific averments, which demonstrated the factual basis for the suit.[488]

The Republic asserts that Marcos, Sr. and Tan's close personal relations is evidenced by Marcos, Sr.'s favors to Tan, which was initially seen in Tan Eng Chan's naturalization proceedings.[489] Tan Eng Chan did not meet the minimum residency requirement, yet Marcos, Sr. instructed the secretary of foreign affairs to grant his application.[490] Tan's other sibling, Tan Eng Lian, was also naturalized through Marcos, Sr.'s Presidential Decree No. 836.[491] Marcos, Sr.'s closeness to Tan was also seen in the appointment of the retired Philippine Constabulary Metropolitan Command chief, General Mariano G. Ordoñez (General Ordoñez), as the president of Fortune Tobacco.[492] General Ordoñez also stood as a character witness for the naturalization of Harry.[493]

The Republic alleges that the 60-40 business arrangement between Tan and Marcos, Sr. in which the latter will own 60% of the shares of stocks, equity, and other forms, interests, and participation in Tan's businesses was proved by the following: (i) Tan's May 10, 1986 Written Disclosure;[494] (ii) Imelda's Amended Answer with Cross-claim; (iii) Gapud's Sworn Statement; and (iv) Marcos, Jr.'s testimony.

The Republic adds that Tan's May 10, 1986 Written Disclosure which was presented and identified in the Sandiganbayan by Senator Jovito Salonga (Senator Salonga) to attest to its genuineness and due execution, confirmed Marcos, Sr.'s scheme in which a corporation is organized for and on behalf of Marcos, Sr., and his cronies and their business associates would execute and duly sign a Deed of Trust or Assignment in favor of an unnamed beneficiary, then deliver the original copy to Marcos, Sr.[495] This was confirmed by Gapud,[496] and was allegedly recognized by this Court in Republic v. Sandiganbayan,[497] and Yuchengco v. Sandiganbayan.[498]

The Republic contends that Marcos, Sr.'s beneficial interest in Tan's various businesses is considered ill-gotten wealth as it is income expressly and absolutely prohibited in the 1973 Constitution, which was applicable at that time.[499]

The Republic also points out that Tan's inculpatory statements in his Written Disclosure are admissible in evidence to prove his guilt while the exculpatory statements only show its voluntary execution, and thus must have factual support before it may be admitted.[500] However, the claim that the stock certificates he issued to Marcos, Sr. were fake or that the blank deeds of assignments were based on borrowed amounts from Shareholdings, Inc., were unsubstantiated and without factual or legal basis.[501] It also does not invalidate the 60-40 business arrangement which still allowed Marcos, Sr. to obtain substantial interest in the corporations.[502]

The Republic contests Tan's claim that he was a victim of the Marcos, Sr. regime, and insists that all signs indicate that Tan is a Marcos crony.[503] He earned tremendous profits and received approvals and favorable actions on his requests for preferential and exclusive benefits, which allowed his businesses to grow. That he was coerced by Marcos is belied by: (1) his requests for intervention, concessions, financing, and assistance; and (2) his updates and reports to Marcos, Sr. on his business ventures and the holding companies.[504]

The Republic argues that Tan's Written Disclosure and the circumstances of its execution (i.e., his offer of compromise) show that the factual statements are competent evidence to prove its truth.[505] It was not accompanied by any express or implied denial of his liability or the government's claim, and it contains his willingness to settle.[506] These allegedly constitute an acknowledgment and confession that the subject assets

and properties form part of the Marcos ill-gotten wealth.[507] Even if the compromise is not an admission of guilt, his admissions of independent facts is admissible and competent as evidence against him.[508] A written statement with an offer of compromise may be competent as evidence for other purposes.[509]

The Republic asserts that Tan's Written Disclosure is admissible since it was presented and identified by Senator Salonga.[510]

The Republic likewise argues that Imelda's statements in her Amended Answer with Compulsory Counter-claim and Cross-claim should not have been rejected by the Sandiganbayan. It argues that it did not contradict its position when it did not oppose its admission.[511]

It asserts that Imelda's claims that the Marcos family owns at least 60% of Tan's businesses validated the Republic's case. Further, it argues that Imelda's narration of the 60-40 business arrangement were made in a pleading and are thus judicial admissions which the Court must take cognizance of, and which judicially binds, Imelda.[512] Even if it was not admitted as a pleading, it is still conclusive and credible admissions made in the course of the proceeding, given voluntarily with the assistance of counsel.[513] Furthermore, the Republic points out that it is a public document which forms part of its evidence and case record.[514] It was offered in evidence by the Republic and was duly admitted by the Sandiganbayan.[515] It could thus be availed of by any party.[516]

The Republic likewise argues that Imelda's admissions are also binding and admissible against Tan et al. as admissions by a partner, privy, and conspirator.[517] She also allegedly made public declarations against her interests that fall under Rule 130, Section 38 of the Rules of Court.[518] The Republic asserts that these declarations were not contradicted by the other respondents.[519]

The Republic contends that Marcos, Jr.'s testimony also confirmed the Marcos family's partnership with Tan and their beneficial interests and ownership in the subject assets and properties.[520]

The Republic disagrees that Marcos, Jr.'s testimony is hearsay, and asserts that his statements were based on his direct personal knowledge of the 60-40 business arrangement, and the layers of corporations created to conceal the collaboration.[521] Marcos, Jr. was present during the meetings. He had knowledge and direct participation in their businesses as instructed by his father.[522] He explained in detail how the dummy corporations were structured.[523] The Republic argues that Marcos, Jr.'s testimony was straightforward, candid, categorical, positive, and thus, worthy of full faith and credence.[524]

The Republic further claims that Marcos, Jr.'s testimony fits well with Gapud's Sworn Statement.[525]

The Republic asserts that the Gapud's Sworn Statement should have been subject of judicial notice.[526] In 1980, Gapud was the president and chief executive officer at Security Bank and Trust Company, and was the financial executor of Marcos, Sr. and Imelda.[527] Gapud's Sworn Statement was presented and identified in court by Senator Salonga.[528] However, the Sandiganbayan did not include the testimony of Senator Salonga in its narration of facts.[529]

The Republic posits that Gapud's Sworn Statement falls within the declaration of an agent admissible against his principal.[530] It is also supported by overwhelming documentary evidence.[531] The Republic adds that in *Republic v. Estate of Hans Menzi*[532] and *Yuchengco v. Sandiganbayan*,[533] this Court relied on Gapud's statements to declare shares in favor of the Republic.[534]

The Republic also argues that Imelda's Amended Answer, Tan's Written Disclosure, and Gapud's Sworn Statement constitute interlocking confessions.[535] It asserts that because their extrajudicial statements are identical such that they corroborate each other on material points,[536] and there was no collusion, their

confessions are admissible against those implicated in it.[537] They are also admissible as circumstantial evidence to show the probability of the implicated person's actual participation in the commission of the crime, and as corroborative evidence if other circumstances show that other persons participated in the crime charged.[538] The Republic further points out that confessions constitute evidence of a high order because the law presumes that no person would deliberately confess to a crime unless prompted by truth and conscience.[539]

The Republic likewise maintains that it was able to prove its other claims through documentary evidence.

As to its allegations in relation to Fortune Tobacco, the Republic maintains that Tan, using his close association with Marcos, manipulated the Philippine tobacco market at the expense of the farmers and the Filipino people.[540] It stresses that Tan's requests to import foreign tobacco were expediently granted, regardless of the import quota imposed by the law. The resulting over importations saturated the market and caused lower prices, and consequently affected the farmers' profits.[541] Tan, then through the financial concessions, used public funds to buy the locally-grown tobacco at the lowest prices.[542] It alleges that Marcos, Sr. also extended to Tan and Fortune Tobacco preferential tax applications and exemptions which deprived the Republic of much needed revenue.[543] Tan also allegedly used Marcos, Sr. to set cigarette prices to favor Fortune Tobacco.[544] It further claims that per Tan's suggestion, specific taxes were decreased while retail prices increased.[545] The Republic maintains that the favors and concessions in favor of Tan were not available to other business people.[546] It adds that Tan et al. failed to controvert this active collaboration.[547]

The Republic points out that the following exclusive favors were extended to Tan in relation to Fortune Tobacco: (1) special rediscounting facility in the amount of PHP 500 million;[548] (2) 180-day dollar account arrangement to enable Fortune Tobacco to import raw materials;[549] (3) special rediscounting facility amounting of PHP 300 million;[550] (4) exemption from Central Bank Circular No. 984 to enable Fortune Tobacco to import on a no-dollar basis raw materials and equipment;[551] (5) short-term loan in the amount of PHP 50 million for the purchase of Virginia tobacco from local farmers.[552] The Republic maintains that these loans were not accompanied by any offer of security or encumbrance, and the banks that granted these loans were then government-owned and controlled financial institutions placed under the whim of Marcos, Sr.[553]

To prove these, the Republic presented notices to the banks and letter requests from Tan addressed to Marcos, Sr., with the latter's handwritten note approving the request. The Republic also presented letter updates and communications from Tan seeking Marcos, Sr.'s business advice and approval.[554]

To illustrate the growth of Fortune Tobacco during Marcos, Sr.'s administration, the Republic relies on the Securities and Exchange Commission's corporate records.[555] It explains that Fortune Tobacco's corporate documents have been the subject of subpoena, but the Commission confirmed that the companies do not regularly submit corporate documents as required under law.[556]

The Republic also presented the following documents to show that Tan delivered money to Marcos, Sr.: (1) October 3, 1979 Allied Bank Check No. 202523 in the amount of USD 500,000.00 received from Lucio Tan; (2) eight postdated Allied Bank checks in the amount of PHP 40 million; (3) two Allied Bank checks for PHP 10 million and PHP 15 million; (4) Steno notebook with cover Bandera stenographic notes showing that Fe Roa Jimenez made a list of all receipts of money from Tan and respondents; (5) Steno notebook with cover Phoenix Brand documenting Marcos, Sr.'s United States and Rome trips, proving that Tan gave substantial amounts of money to the Marcoses.[557]

The Republic's other documentary evidence include "notarized deeds of assignments, [M]onetary [B]oard resolutions, corporate documents of respondent corporations, naturalization documents, letter requests from Tan as collated by the Malacañang Presidential Library and authenticated by its official custodian, [Jeremy

Barns], pleadings and court orders and resolution pertaining to the liquidation of [GenBank], list of disbursements from Tan in favor of the Marcoses recovered from Malacañang, various laws and presidential decrees, escrow documents, document reports, and records in the custody of [Presidential Commission on Good Government], collated pursuant to the its investigatory powers." [558]

The Republic contests the Sandiganbayan's finding that their documentary evidence did not comply with the best evidence rule. [559] It points out that the Sandiganbayan admitted all of them in evidence over the respondents' objections. [560] It maintains that all the 520 documents are all certified true copies of public documents, or public records of private documents, presented and identified by their official custodians as required under Rule 132, Sections 24 and 27 of the Rules of Court. [561] The Republic adds that the public officers and official custodians of these documents are competent witnesses to prove the veracity of the contents of the documents. [562] They are accountable for its loss and can be held liable for infidelity in the custody of public documents under Article 226 of the Revised Penal Code. [563]

Furthermore, the Republic posits that testimonial evidence is admissible to prove the execution, existence, and circumstances relevant to or surrounding the execution of a document. [564] Thus, the presentation of secondary evidence was justified since the existence, execution, loss, and contents were proven because of Marcos, Jr.'s testimony. [565]

The Republic argues that the use and admissibility of secondary evidence is justified because Marcos, Jr. authenticated the deeds of assignments signed in blank and confirmed their existence when he testified that he saw the documents. [566] The Republic asserts that Marcos, Jr. is competent to testify on the due execution of the deeds because he saw it after its execution, and Marcos, Sr. and Tan had informed him of its execution. [567] He also stated that deeds of assignments were part of the documents brought to Hawaii and seized by the United States Customs officials. [568] Marcos, Jr. likewise explained the steps he took to acquire the originals in the custody of the United States Customs Service, [569] but he was told that there will be delays. [570] It points out that it also presented the public records of the notarial deeds of assignment from the National Archives. [571]

It further points that Tan did not specifically deny, and thus impliedly admitted, several of the Republic's documentary exhibits. [572] It posits that Tan could not possibly feign being unable to remember his numerous requests to Marcos, Sr. which were approved relating to the operation, management, capital foundation, and structure of his businesses. [573] Assuming he did not impliedly admit these exhibits, these were confirmed in his Written Disclosure, and its existence, genuineness and due execution were still proven by public and official records in the Malacañang Museum, the Malacañang Library, the National Archives, the Bangko Sentral ng Pilipinas, the Presidential Commission on Good Government, and the Securities and Exchange Commission. [574]

The Republic claims that during the hearings, it presented originals, compared it with photocopies, and marked them as documentary exhibits. It also appended originals of several exhibits for the Sandiganbayan to appreciate that it was Tan's signature and writing in the documents. [575] Tan's Written Disclosure is one of the original documents marked and offered. [576]

It likewise argues that Tan et al.'s documentary evidence are not sufficient to controvert the evidence against them as to the origin of the corporations, the initial capitalization, the investments infused, the concessions and benefits extended to them, and their rise in status. [577] Tan et al. allegedly only proved the charter of their corporations. [578] It did not disprove its ill-gotten character or Marcos, Sr.'s beneficial interest in the subject assets and properties. [579] Their failure to rebut and even deny Marcos, Sr.'s intervention in their favor should be taken against them. [580]

Finally, the Republic argues that the Sandiganbayan Decision did not state distinctly the facts and laws upon

which it is based, as required under Article VIII, Section 14 of the 1987 Constitution.[581] It allegedly did not have a complete statement of facts, issues, and ruling where the relevant issues are separately considered and resolved.[582] It did not completely summarize the Republic's witness testimonies, documentary exhibits and public records.[583] The Sandiganbayan Decision did not inform the Republic on why it insists on its restrictive definition of ill-gotten wealth or why it failed to give probative weight and value to the Republic's evidence.[584]

On the other hand, Tan et al. state that the Republic failed to discharge its burden to prove by preponderance of evidence that the subject assets and properties are ill-gotten wealth.[585]

They assert that ill-gotten wealth is property that must have formed part of government resources that were amassed by Marcos, Sr., his family, relatives, and close associates by illegal means.[586] They argue that the concept of ill-gotten wealth as expressed in the Whereas Clause of Executive Order No. 1 is sui generis.[587] They claim that the pillage of government resources is one of the principal reasons that gave rise to the 1986 EDSA Revolution,[588] adding that Executive Order No. 1 established that the corpus is the vast resources of the government, while Executive Order No. 2 provided the manner by which it was amassed.[589] They further claim that the Presidential Commission on Good Government Rules and Regulations does not define ill-gotten wealth, but refers only to Executive Orders No. 1 and 2.[590] They also invoke the principle of stare decisis and Article 8 of the Civil Code in arguing that the Sandiganbayan is mandated to apply the definition of ill-gotten wealth under Executive Orders No. 1 and 2 in *Republic v. Sandiganbayan*. [591]

They assert that while the nature of the Complaint is for the recovery of ill-gotten wealth, the Republic's Statement of Facts only alleged unestablished and irrelevant facts.[592] Some of the allegations and causes of action in the complaint refer to the forfeiture of property of public officials under Republic Act No. 1379.[593] However, forfeiture cannot be done collaterally and this is not a complaint for forfeiture under Republic Act No. 1379.[594] None of the procedural requirements under Republic Act No. 1379 were complied with.[595] Furthermore, Tan et al. were never public officials and thus, their properties cannot be forfeited.[596] Treating it as a forfeiture case will violate their due process rights and procedural laws.[597]

They insist that a civil action against Marcos, Sr., his family, and close associates should only include those they "amassed" which the Republic claims ownership over.[598] They add that most of the subject assets and properties are Tan's shares of stocks in various corporations, which were acquired by subscription of original issues of shares or purchase of issued shares.[599] They maintain that Tan established and grew these various companies with his business acumen and hard work, that these have already been successfully established in the country and abroad, and that they were just victims, not aggressors, under the Marcos, Sr. regime.[600] They also claim that entrepreneurship, acquisition of property, and enrichment are not considered crimes or a corrupt practice, and are in fact encouraged and supported by the government.[601]

However, they insist that ill-gotten wealth does not include properties of private individuals acquired by "taking undue advantage of office, authority, influence, connections or relationship." [602]

They contend that the Republic admits that the subject assets and properties belong to Tan.[603] The Republic implicitly concedes that the subject assets and properties were owned by the shareholders from inception.[604] They argue that the Republic has conceded that the subject assets and properties do not form part of the "vast resources of the government." [605] They assert that the Republic simply forwards another definition of ill-gotten wealth, arguing that it is not limited to property that formed part of the vast resources of the government.[606] They add that the Republic is insisting on this definition because it failed to prove that the subject assets and properties originated from the government.[607] They also point out that the Republic also failed to identify who originally owned the subject assets and properties.[608] If the wealth was at all ill-gotten, it is such in a generic

sense, but not under Executive Orders No. 1 and 2 over which the Sandiganbayan has jurisdiction.[609]

They posit that based on the Republic's allegations in its Second Amended Complaint, it considered the subject assets and properties as having originated from the government itself, acquired using public funds.[610] In resorting to a different definition of ill-gotten wealth, it disregarded its claims which describes the manner by which Tan et al. acquired the subject assets and properties that would characterize it as ill-gotten wealth.[611] However, it is bound by the allegations in its Complaint and it cannot abandon the theory of its case or take a position contrary to, or inconsistent, with its pleadings.[612]

They assert that since this is a complaint for the reversion, reconveyance, and restitution of the subject assets and properties, it is an action to recover ownership or an accion reivindicatoria rendering Articles 427, 428, 433, and 434 of the Civil Code applicable.[613] They thus argue that it is absurd for the Republic to seek reconveyance of properties when it admitted that it is not the owner.[614]

They point out that the Republic failed to identify who initially owned the subject assets and properties.[615] They simply insist that the properties were acquired through unlawful means, and thus belong to the people.[616] However, they point that the Republic provided no legal basis for this assertion.[617]

They maintain that property acquired through criminal acts is restored to the original owner, and it is only forfeited in favor of the government on select grounds.[618] It also cannot be done collaterally. There must first be a conviction and it must be ordered by the court as an incident to a judgment of conviction.[619]

They assert that the Republic relies on: (1) Imelda's Cross-claim; (2) Marcos, Jr.'s testimony; (3) Marcos, Sr.'s claim of ownership over 60% of shares of stock in Shareholdings, Inc.; (4) Tan's Written Disclosure; (5) Gapud's Sworn Statement; (4) Joselito's Complaint-in-Intervention; and (6) other documentary evidence to bolster its claims.[620] However, if the properties belong to the Marcoses, or to the Yujuicos, then the Republic does not have standing as plaintiff.[621]

They point out that Tan's Written Disclosure does not affirm any of the Republic's claims.[622] Firstly, they assert that Tan's Written Disclosure was presented by Senator Salonga whose direct examination on the matter was not completed, and who was not cross-examined by the defense.[623] Thus, his testimony is worthless and may be stricken off the record.[624]

They add that since the Written Disclosure was presented as evidence, the Republic is bound by statements contained in the Written Disclosure.[625] These include the allegations that Tan complied with Marcos, Sr.'s inappropriate demands because of the undue pressure on him, and that Marcos, Sr.'s acquisition of the 60% shareholding was never implemented, and thus there is no share in Marcos, Sr.'s name, nor has he exercised any right of a shareholder.[626] Furthermore, they argue that the Written Disclosure shows that if there was any plunder committed, it was unsuccessful, and he was a victim, not a co-conspirator.[627] Also, the subject assets and properties were not originally owned by the government, but were acquired through his hard work and business acumen.[628]

Tan et al. assert that the Republic's reliance on Imelda's Cross-claim contradicts its cause of action considering the Republic and Imelda are separately claiming ownership over the shares.[629] Tan et al. claim that when the Republic alleged in its Petition that Imelda's claim validates its case, this is an admission that Tan and the stockholders were the owners of the subject assets and properties that became subject of a partnership between Tan and Marcos, Sr.[630] Imelda acknowledged Tan's ownership of the shares, and while Marcos, Sr. acquired interest in Tan's shares, she did not state the means by which he acquired it and for what consideration.[631]

This is a change in the Republic's theory of its case because the allegation that Marcos, Sr. owns 60% of

Shareholdings, Inc. is not consistent with its allegation that ill-gotten wealth are properties amassed by Marcos which were part of the vast resources of the government.[632]

They further argue that Imelda's statements in her Cross-claim do not qualify as judicial admission because it was not admitted into the records by the Sandiganbayan. They point that it was belatedly filed—more than 14 years after the filing of the Complaint, and six years after filing her first Answer.[633] The Sandiganbayan's ruling was affirmed by this Court, thus barring the issue by res judicata by conclusiveness of judgment.[634] Assuming it is a judicial admission, it does not bind Tan et al.[635]

They claim that Imelda's statements also does not qualify as an extrajudicial admission because Imelda was not presented as a witness, and she was not subjected to cross-examination.[636] Thus, it is hearsay—inadmissible and without probative value.[637]

They argue that it also cannot be admitted as an admission of a co-conspirator. They assert that other than her act or declaration, there is no evidence of conspiracy. The statement was also not made during the conspiracy's existence, but because the conspiracy's existence was denied and is sought to be reinforced.[638]

Tan et al. also claim that the Republic subverted its own cause of action by relying on Marcos, Jr.'s testimony and on the documents seized by the United States Customs Service.[639]

They maintain that Marcos Jr.'s testimony is hearsay.[640] They further point out that the Republic's reliance on Marcos, Jr.'s testimonies binds the former to the latter's allegations, including: (1) the denial of respondents' misappropriation of public funds and abuse of power; and (2) the claim that Marcos, Sr. purchased the shares from the stockholders of the corporations, knowing they were the legitimate owners of the shares.[641] They add that Marcos, Jr.'s testimony disproves Marcos, Sr.'s ownership of the shares because he confirmed that Marcos, Sr. did not specifically perform any act which reflects shareholding interest in the subject corporations.[642]

They emphasize that the documents showing Marcos, Sr.'s ownership of the shares in the corporations have little probative value, because the originals were never presented and identified.[643] Likewise, the Deeds of Assignment allegedly only state the name of the corporation and the assignor.[644] They claim that there was no evidence that these assignors are living individuals, and Marcos, Jr. testified that he did not know any of them.[645]

Marcos, Jr.'s testimony on the loss of the originals of the Deeds of Assignment are also irrelevant.[646] Marcos, Jr. was presented to prove that the originals of the documents were lost or destroyed, and to confirm the copies of the Deeds of Assignment.[647] However, Marcos, Jr. testified that he never saw the originals or witnessed their execution, and he had no personal knowledge of their loss in the United States.[648] They likewise assert that Marcos, Jr. produced a letter from the United States authorities stating that certified true copies of various documents were given to the Presidential Commission on Good Government, but the Commission did not produce these documents.[649]

Furthermore, they argue that the Marcoses' claim over 60% of the subject shares is not within the jurisdiction of the Sandiganbayan, but within the Regional Trial Court.[650]

In addition, they assert that Gapud's Sworn Statement cannot be subject of judicial notice because Gapud did not testify as a witness to identify or testify on the Sworn Statement.[651] It is thus hearsay, inadmissible in evidence, and without probative value.[652]

They assert that the Republic did not present any evidence which would show that the subject assets and properties were acquired in the manner described in the Complaint.[653]

They point out that the documents seized in Malacañang in the wake of the EDSA Revolution are not public documents.[654] They argue that private documents kept in a government agency are not automatically public records, but are required by law to be entered in public records.[655] They remain private documents, and without anyone testifying on them, they are considered hearsay.[656] They claim that no witness testified that Tan delivered money to Marcos.[657]

They add that the allegations pertaining to Tan's acquisition of GenBank's assets were not proven by evidence.[658] Furthermore, they argue that the facts pertaining to Allied Bank are irrelevant, inadmissible, and incompetent because the subject of this case are the shares of stock of Tan in Allied Bank, and not Allied Bank itself.[659] They assert that Tan's acquisition of assets and assumption of liabilities as an incident of GenBank's liquidation by the Central Bank have been ruled as valid in the GenBank liquidation case.[660]

They argue that the alleged favors Marcos, Sr. granted have no relation to the Republic's allegation in paragraphs 10, 11, and 12 of the Complaint.[661] They further contend that there was no proof that Marcos, Sr.'s favors were implemented or that the corporations benefitted from the favors.[662] There is no proof of its effect on Tan's ownership of the shares, or the damage or injury to the government.[663] The alleged favors and privileges granted to Tan do not translate to assets and properties.[664] It does not result in Marcos, Sr.'s or the government's ownership of the shares of stock.[665]

They argue that the testimony of Senator Salonga who, in turn, relies on his book, "Presidential Plunder" to prove the favors is unconvincing because Senator Salonga's testimony was presented as evidence of the execution of the written exhibits, but not as evidence of the facts stated in it.[666]

They add that the laws enacted by Marcos, Sr. that were allegedly favors still fall under Article XVIII, Section 3, which provides that all issuances not inconsistent with the Constitution shall remain operative until amended, repealed, or revoked, and cannot be assailed collaterally.[667]

They assert that several of the Republic's allegations are not relevant to this case, including the naturalization of Ten Eng Chan and Tan Eng Lian, and the appointment of retired General Ordoñez, as a witness to it.[668] In any case, they point that the Solicitor General chaired the committee, recommended the naturalization under Letters of Instruction No. 270, and the naturalization was granted through a presidential decree.[669]

They contest that the success of Fortune Tobacco during Marcos, Sr.'s regime is not solely attributable to grants of financial assistance. Furthermore, financial assistance is not necessarily damaging to the grantor.[670] They assert that it was unproven that the concessions cornered the tobacco market, that it was to the detriment of the farmers and the Republic, and that Tan actively lobbied for tax measures and exemptions that only benefitted Fortune Tobacco and deprived the Republic of revenue.[671] They allege that this is a common practice in democracy and does not result in injury to the government.[672] They claim that the Republic's reference to other businesses is not relevant and is an unwarranted pretense of expertise in economics and business.[673]

They point out that during martial law, Marcos, Sr. exercised both legislative and executive power, and thus it is understandable that the citizenry, including businesspeople, would go to Marcos, Sr. seeking remedial legislation or executive action for their problems.[674] That many citizens go to Malacañang for Marcos, Sr.'s favor was affirmed by Marcos, Jr. in his testimony.[675]

They also argue that the Republic did not adequately describe or identify the property sought to be reverted or reconveyed to it.[676] It only prays for the return and reconveyance of "all funds and other property impressed with constructive trust." [677] They claim that this shows that the Republic still does not know what properties of Tan et al. may be regarded as ill-gotten wealth.[678] A judgment on those terms allegedly cannot be

executed.[679]

Tan, et al., argue that the Republic, in filing a Rule 45 Petition, is improperly calling for a review of factual issues.[680] They further claim that the Petition ignores the findings of fact of the Sandiganbayan, and suggests other bases upon which the Decision can be reversed.[681] It does not attempt to describe in detail the evidence it presented to show that the Sandiganbayan erred in ruling against it.[682] Neither does it assert that the Sandiganbayan erred in reaching the findings of fact.[683] They point that the Republic thus conceded that the Sandiganbayan correctly ruled on the matter by keeping silent as to paragraphs 10, 11, and 12.[684]

They also contest the argument that the Decision does not state distinctly the facts and law on which it is based.[685] The Sandiganbayan may have exhaustively recalled the procedural antecedents, however it did not obscure the reasons for its dismissal of the complaint.[686] The reasons are simple and straightforward.[687]

They further posit that the causes of action in paragraphs 16 to 20 do not state ultimate facts, but are in conclusory language, which is contrary to procedural requirements[688] The ultimate facts are found in paragraphs 10, 11, 12, 13, and 14.[689] The acts allegedly committed by Tan et al. which resulted in the acquisition of ill-gotten wealth are those described in paragraphs 10 and 11.[690] They point out that while paragraphs 10, 11, and 12 are under the General Averments of illegal acts and paragraphs 14 and 15 are under the Specific Averments, the allegations in paragraphs 14 and 15 may not stand alone and are distinct from paragraphs 10 to 12.[691] The former are supportive of the allegations in the latter. Thus, it was in this context the Sandiganbayan understood and resolved paragraph 14 of the Complaint.[692] Since the Republic did not present evidence to substantiate their claims under paragraphs 10 and 11, it started alleging that the subject assets and properties were acquired by the acts alleged in paragraph 14.[693] Nonetheless, the Sandiganbayan also ruled that the Republic failed to prove the commission of the acts in paragraph 14 or that the commission of the acts resulted in the acquisition of the subject assets and properties.[694]

The Domingo heirs likewise argue that the ill-gotten wealth must have originated from the vast resources of government and the Republic failed to prove this as regards the subject assets and properties.[695] They claim that the assets of GenBank were owned by private individuals and did not originate from the government.[696]

They also argue that there was no evidence of the Republic's allegations against Domingo or that the subject assets and properties were ill-gotten.[697] All the evidence are allegedly hearsay, and the documents' authenticity and due execution were not established.[698] The documents were only certified true copies of photocopies on file with the Presidential Commission on Good Government. They argue that the documents collected by the Presidential Commission on Good Government during their investigations are not public records per se.[699]

The Domingo heirs likewise claim that Tan's written disclosure is inadmissible for being a mere photocopy, with no explanation as to why the original was not presented.[700] Assuming that the written disclosure is admissible, there is nothing in it that will prove the Republic's case against Domingo.[701] The Domingo heirs argue that Imelda's admissions in her Amended Answer with Counter-claim and Compulsory Cross-claim do not support the Republic's cause of action.[702] They also stress that Marcos, Jr.'s testimony is hearsay as it reveals that he never met the persons who signed the deeds of assignment. He obtained his information from Gapud and assumed the existence of the deeds from the documents he saw.[703]

They assert that the Sandiganbayan's Decision is compliant with the formal requirements of a valid decision.[704] A complete statement of each and every detail testified to by the witness is not required.[705] What is needed is a clear statement of facts which forms the basis of the decision.[706] The facts and the law on which the Sandiganbayan based its conclusion were stated in the Decision and Resolution denying reconsideration.[707]

The issues in G.R. No. 195837 for resolution are:

First, whether Ferry and Zalamea impliedly admitted the allegations in the complaint when they filed their demurrer to evidence.[708]

Second, whether the Republic's claims against Zalamea and Ferry are barred by res judicata considering this Court's ruling in Republic v. Desierto.

Third, whether the case against Ferry and Zalamea was properly dismissed considering the allegations of conspiracy with Tan and Marcos to acquire ill-gotten wealth, the evidence submitted against them, and their alleged failure to specifically deny the allegations in the complaint.

Fourth, whether the Sandiganbayan resolutions dismissing the case against Zalamea and Ferry violated constitutional requirements and the Sandiganbayan rules on rendering final orders and decisions;

Fifth, whether the Republic is guilty of forum shopping.

The issues in G.R. No. 198221 for resolution are:

First, whether Sandiganbayan committed grave abuse of discretion in prohibiting the Republic from presenting Joselito on the ground of res judicata. Subsumed in this issue is whether the 2006 case, General Bank and Trust Co. v. Central Bank of the Philippines, bars the presentation of Joselito as a witness.

Second, whether the Sandiganbayan committed grave abuse of discretion in denying the Republic's motion for voluntary inhibition.

The issue for resolution in G.R. No. 198974 is whether Philip Morris Fortune Tobacco Corp. is an indispensable party such that the Sandiganbayan should have admitted the Republic's Third Amended Complaint to implead the former.

The issues in G.R. No. 203592 for resolution are:

First, whether the Sandiganbayan unduly restricted the concept of "ill-gotten wealth" in ruling that the assets and properties must have come from the resources of the government;

Second, whether the Republic sufficiently proved that the subject assets and properties are ill-gotten wealth.

I

Ferry and Zalamea did not impliedly admit the allegations in the complaint.

Firstly, Ferry and Zalamea made no implied admissions of conspiracy to acquire ill-gotten wealth with Tan and Marcos, Sr. when they filed their separate Motions to Dismiss on Demurrer to Evidence.

The filing of a demurrer to evidence is an assertion that based on the facts proven and the applicable law, the plaintiff is not entitled to any relief. Rule 33, Section 1 of the Rules of Court provides:

SECTION 1. 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.

The grant of a motion to dismiss on demurrer to evidence means the complainant failed to discharge the burden to prove his or her allegations against the defendant.[709] It means that based on everything that was proven by the complainant, the latter was still unable to show his or her entitlement to what was prayed for. In Republic v.

Spouses Gimenez,[710]

This court has laid down the guidelines in resolving a demurrer to evidence:

A demurrer to evidence may be issued when, upon the facts and the law, the plaintiff has shown no right to relief. Where the plaintiffs evidence together with such inferences and conclusions as may reasonably be drawn therefrom does not warrant recovery against the defendant, a demurrer to evidence should be sustained. A demurrer to evidence is likewise sustainable when, admitting every proven fact favorable to the plaintiff and indulging in his favor all conclusions fairly and reasonably inferable therefrom, the plaintiff has failed to make out one or more of the material elements of his case, or when there is no evidence to support an allegation necessary to his claim. It should be sustained where the plaintiffs evidence is prima facie insufficient for a recovery.

Furthermore, this court already clarified what the trial court determines when acting on a motion to dismiss based on demurrer to evidence:

What should be resolved in a motion to dismiss based on a demurrer to evidence is whether the plaintiff is entitled to the relief based on the facts and the law. The evidence contemplated by the rule on demurrer is that which pertains to the merits of the case, excluding technical aspects such as capacity to sue.[711] (Emphasis supplied, citation omitted)

Given the nature of a demurrer to evidence, it cannot be reasonably concluded that Ferry or Zalamea impliedly admitted their liability. While they may have admitted some facts, their admissions cannot automatically give rise to liability. In this case, Zalamea is being held liable as the former Chair of the Board of Development Bank and Maranaw Hotels.[712] Ferry, in turn, was the Vice Chair of Development Bank and President of Maranaw Hotels.[713] Ferry and Zalamea admit to holding these positions. But while Ferry and Zalamea did not deny being Development Bank officers, this cannot be taken to mean they admitted conspiring with Tan and Marcos, Sr. to accumulate ill-gotten wealth.

I(A)

Secondly, the complaint against Ferry and Zalamea is barred by res judicata by conclusiveness of judgment.

When a matter is barred by res judicata, it means that the matter has already been judicially acted upon and settled by a judgment, and as such, parties are precluded from presenting evidence on the same issue.[714] The rationale behind this doctrine is that judgments need to become both final and conclusive.[715] There will be no end to litigation if parties can persist in questioning issues that are already resolved:[716]

Res judicata is premised on the principle that a party is barred from presenting evidence on a fact or issue already judicially tried and decided. In *Philippine National Bank v. Barreto*:

It is considered that a judgment presents evidence of the facts of so high a nature that nothing which could be proved by evidence aliunde would be sufficient to overcome it; and therefore it would be useless for a party against whom it can be properly applied to adduce any such evidence, and accordingly he is estopped or precluded by law from doing so.

At some point, judgments need to become both final and conclusive. Beyond that point, parties cannot be allowed to continue raising issues already resolved. Otherwise, there will be no end to litigation.[717] (Emphasis supplied, citations omitted)

Res judicata has two concepts: by bar by prior judgment and by conclusiveness of judgment. Res judicata by bar by prior judgment is provided under Rule 39, Section 47(a) and (b), while res judicata by conclusiveness of judgment is found in Rule 39, Section 47(c):

Rule 39, Section 47 of the Rules of Court provides:

SECTION 47. Effect of Judgments or Final Orders. — The effect of a judgment or final order rendered by a court or of the Philippines, having jurisdiction to pronounce the judgment or final order, may be as follows:

(a) In case of a judgment or final order against a specific thing, or in respect to the probate of a will, or the administration of the estate of a deceased person, or in respect to the personal, political, or legal condition or status of a particular person or his relationship to another, the judgment or final order is conclusive upon the title to the thing, the will or administration, or the condition, status or relationship of the person; however, the probate of a will or granting of letters of administration shall only be prima facie evidence of the death of the testator or intestate;

(b) In other cases, the judgment or final order is, with respect to the matter directly adjudged or as to any other matter that could have been raised in relation thereto, conclusive between the parties and their successors in interest, by title subsequent to the commencement of the action or special proceeding, litigating for the same thing and under the same title and in the same capacity; and

(c) In any other litigation between the same parties or their successors in interest, that only is deemed to have been adjudged in a former judgment or final order which appears upon its face to have been so adjudged, or which was actually and necessarily included therein or necessary thereto.[718]

Res judicata by bar by prior judgment means that a new case can no longer be filed if there is already a decided case that tackled the same subject and cause of action involving the same parties who prayed for the same relief.[719] Res judicata by conclusiveness of judgment, on the other hand, means that when an issue has been resolved or a fact has been established in a previous case between the same parties, the fact or issue can no longer be questioned in a subsequent case.[720]

Res judicata by bar by prior judgment, has the following elements: (1) there is a judgment that has become final; (2) the judgment was rendered by a court that has jurisdiction over the subject and the parties; (3) the judgment was on the merits; and (4) the parties, subject, and cause of action in the judgment are identical to that of the subsequent case.[721]

Res judicata by conclusiveness of judgment has the same first three requisites. However, there is a fourth requisite where only the parties and the issues in the subsequent case need to be identical to that in the first case. The subsequent case need not involve the same cause of action. Res judicata by conclusiveness of judgment was discussed in Presidential Decree No. 1271 Committee v. De Guzman:[722]

On the other hand, res judicata by conclusiveness of judgment precludes the questioning of a fact or issue in a second case if the fact or issue has already been judicially determined in the first case between the same parties:

There is "bar by prior judgment" when, as between the first case where the judgment was rendered and the second case that is sought to be barred, there is identity of parties, subject matter, and causes of action. In this instance, the judgment in the first case constitutes an absolute bar to the second action. Otherwise put, the judgment or decree of the court of competent jurisdiction on the merits concludes the litigation between the parties, as well as their privies, and constitutes a bar to a new action or suit involving the same cause of action before the same or any other tribunal.

But where there is identity of parties in the first and second cases, but no identity of causes of action, the first judgment is conclusive only as to those matters actually and directly controverted and determined and not as to matters merely involved therein. This is the concept of res judicata known as "conclusiveness of judgment." Stated differently, any right, fact, or matter in issue directly adjudicated or necessarily involved in the determination of an action before a competent court in which judgment is rendered on the merits is conclusively settled by the judgment therein and cannot again be litigated between the parties and their privies whether or not the claim, demand, purpose, or subject matter of the two actions is the same.

....

Nabus v. Court of Appeals discusses res judicata by conclusiveness of judgment:

The doctrine states that a fact or question which was in issue in a former suit, and was there judicially passed on and determined by a court of competent jurisdiction, is conclusively settled by the judgment therein, as far as concerns the parties to that action and persons in privity with them, and cannot be again litigated in any future action between such parties or their privies, in the same court or any other court of concurrent jurisdiction on either the same or a different cause of action, while the judgment remains unreversed or unvacated by proper authority. The only identities thus required for the operation of the judgment as an estoppel, in contrast to the judgment as a bar, are identity of parties and identity of issues.

It has been held that in order that a judgment in one action can be conclusive as to a particular matter in another action between the same parties or their privies, it is essential that the issues be identical. If a particular point or question is in issue in the second action, and the judgment will depend on the determination of that particular point or question, a former judgment between the same parties will be final and conclusive in the second if that same point or question was in issue and adjudicated in the first suit; but the adjudication of an issue in the first case is not conclusive of an entirely different and distinct issue arising in the second. In order that this rule may be applied, it must clearly and positively appear, either from the record itself or by the aid of competent extrinsic evidence that the precise point or question in issue in the second suit was involved and decided in the first. And in determining whether a given question was an issue in the prior action, it is proper to look behind the judgment to ascertain whether the evidence necessary to sustain a judgment in the second action would have authorized a judgment for the same party in the first action[...]

Therefore, the parties and issues in the two cases must be the same for res judicata by conclusiveness of judgment to apply.

The parties in the two cases are considered the same even when they are not identical if they share substantially the same interest. It is enough that there is privity between the party in the first case and in the second case, as when a successor-in-interest or an heir participates in the second case.

There is identity of issues when a competent court has adjudicated the fact, matter, or right, or when the fact, matter, or right was "necessarily involved in the determination of the action[.]" To determine whether an issue has been resolved in the first case, it must be ascertained that the evidence needed to resolve the second case "would have authorized a judgment for the same party in the first action." Thus, if the fact or matter litigated in the first case is re-litigated in the second case, it is barred by res judicata by conclusiveness of judgment.[723] (Emphasis supplied, citations omitted)

Ferry and Zalamea invoke Desierto in arguing that the complaint against them is barred by res judicata by conclusiveness of judgment.

Desierto involves the Republic's criminal complaint for violation of Section 3(e) of Republic Act No. 3019 against Aniano Desierto, Imelda, Tan, Harry, Benjamin S. Jimenez, Leoncio M. Giron, Fermin O. Hebron, and Joel C. Ibay (members of the Board of Directors of Sipalay Trading), Ferry (former member of the Board of Governors of Development Bank) and Estela M. Ladrado (then Acting Executive Officer of Development Bank) in connection with the sale of Development Bank's shares in Maranaw Hotels to Sipalay Trading. In this case, this Court affirmed the ombudsman's dismissal of the complaint for lack of probable cause. The ombudsman held:

In 1984, the Development Bank of the Philippines (DBP), a government-owned and controlled financial institution, found itself in dire financial straits. In order to address its liquidity problems, DBP decided to sell some of its assets. One of these was its equity holdings in the Maranao Hotel Resort Corporation (MHRC), which then owned the Century Park Sheraton Hotel in Manila. Accordingly, pursuant to its Resolution No.

1937 dated August 22, 1984, the DBP Board of Governors offered to sell the said shares for US\$8.33 million (or P150 million at the exchange rate then prevailing) either on a cash basis or upon a down payment of thirty percent (30%) of the selling price, the balance payable for a term not longer than five (5) years, with an interest rate of five percent (5%) per annum.

Upon the recommendation of private respondent Maria Estela M. Ladrido, then Acting Executive Officer of the DBP, the Board of Governors approved the sale of the said equity holdings to PCI Management Consultants, Inc. (PCI), acting for an undisclosed foreign buyer, for US\$8.4 million. However, the sale did not push through.

Meanwhile, Lucio Tan, one of the herein private respondents, wrote then President Ferdinand E. Marcos that he was interested in purchasing the equity holdings of DBP in the MHRC. Tan's written offer was supposedly found by the PCGG among the documents left behind by the Marcoses in Malacañang Palace when they fled during the EDSA revolution.

Lucio Tan set up the Sipalay Trading Corporation (STC) for the purpose of acquiring the DBP equity in the MHRC. At the time of its formation, STC had an authorized capital stock of P5 million. The stockholders were Leoncio M. Giron, Fred V. Fontanilla, Benjamin S. Jimenez, Fermin O. Hebron and Joel C. Ibay, also private respondents herein.

On January 30, 1985, STC offered to buy the DBP shareholdings in the MHRC for US\$8.5 million. By that time, PCI, the former purchaser, had abandoned its negotiations with DBP.

On March 1, 1985, DBP accepted STC's offer to buy. STC then made a deposit of US\$1.7 million to be held in an escrow account. It was agreed that the balance would be payable within five (5) years. Eventually, STC paid the purchase price in full.

....

There is no question that private respondents here are either officers of [Development Bank], a government-owned and controlled financial institution, or private persons. But did the [Development Bank] cause injury to the Government or give a private party unwarranted benefits or preference in the discharge of its functions?

In addressing this question, we consider the prevailing conditions at the time of the sale in 1984, as found by the Ombudsman.

Following the assassination of former Senator Benigno Aquino in August 1983, a deepening socio-economic crisis casts its shadow over this country. The stability of the Marcos regime was in doubt and the economy was in doldrums. Government financial institutions, such as the DBP, found themselves mired in liquidity problems. To remain solvent, DBP had to take the drastic step of unloading its shareholdings in seven (7) five-star hotels in Metro Manila, including the Century Park Sheraton Hotel. The shares of DBP in MHRC, which owned the Century Park Sheraton Hotel, carried a book value at P340.7 million. However, these shares were saddled with uncollected interests, penalties and surcharges, which made it difficult to offer them for sale. After the study and evaluation conducted by the DBP staff, they recommended that those shares should be sold for at least P150 million. The DBP Board of Governors adopted the recommendation. There were no offers, aside from that of PCI, until [Sipalay Trading] came along. The DBP Board of Governors then accepted the offer of [Sipalay Trading] to buy the shares. These findings of the Ombudsman are not disputed by petitioner.

Under the circumstances then prevailing, the private respondent DBP officers, in selling's shares to [Sipalay Trading], acted in good faith and sound exercise of judgment. Significantly, the selling price agreed upon by DBP and [Sipalay Trading] was virtually the same figure approved by the DBP Board of Governors.

We agree with the Ombudsman that in approving the sale of the shareholdings, private respondent DBP

officials did not give "unwarranted benefits, advantage, or preference" to [Sipalay Trading]. It should be recalled that at the time of the sale, PCI had already abandoned its negotiations with DBP. [Sipalay Trading] was the only entity which expressed an interest in acquiring the shares of DBP. There is thus no showing that private respondent DBP officials favored [Sipalay Trading] over other bidders or prospective buyers. Indeed, there can be no manifest partiality to speak of when DBP accepted the offer of STC.[724] (Emphasis supplied)

In *Desierto* this Court determined the existence of Development Bank's liquidity problems, its need to sell the Maranaw Hotels' shares the abandonment of PCI of its negotiations with Development Bank, and the good faith of Development Bank's officers in entering the sale with Sipalay Trading.

In this case, Zalamea is being held liable as the former Chair of the Board of Development Bank and Maranaw Hotels.[725] Ferry, in turn, is being charged as the Vice Chair of Development Bank[726] and as President of Maranaw Hotels.[727] The Republic alleges that Ferry and Zalamea acted in bad faith by selling Development Bank's Maranaw Hotels shares to Sipalay Trading. The allegations against the two in the Second Amended Complaint read:

5c. Former Board Chairman Cesar Zalamea of [Development Bank] and the [Maranaw Hotels] recommended the approval and facilitated the acquisition of the same Marcos-Lucio Tan group of the Century Park Sheraton Hotel owned by [Maranaw Hotels] 78.32 percent of the exposure of over P340 Million but allowed to be disposed off [sic] for only P150-Million. He supported the acts of Defendant Don Ferry in giving undue favors to the Lucio Tan group, hence the need to name him also as a party defendant.

xxx xxx xxx

7. Defendant DON FERRY was appointed Vice Chairman of [Development Bank] on August 31, 1981 and remained as such, until June 1, 1986. In 1984, said Defendant was the President of the [Maranaw Hotels].

....

14. Defendant Lucio C. Tan, by himself and/or in unlawful concert with Defendants Ferdinand E. Marcos and Imelda R. Marcos, taking undue advantage of his relationship and influence with Defendant spouses, and embarking upon devices, schemes and stratagems, including the use of Defendant Corporations, among others:

xxx xxx xxx

(f) caused losses in millions of pesos to the [Development Bank], a government lending institution, by unlawfully selling [Development Bank]'s controlling interest in Century Park Sheraton Hotel (Manila), owned by [Maranaw Hotels], to [Sipalay Trading], a grossly undercapitalized company beneficially held and controlled by Lucio C. Tan, said transaction having been facilitated with the active collaboration, knowledge and willing participation of Defendant Harry Tan, Cesar Zalamea and Don Ferry while the latter was then serving as Vice Chairman of [Development Bank], and President of [Maranaw Hotels], as shown by, but not limited to, the following facts and circumstances:

(1) Sometime in 1984, Lucio C. Tan wrote defendant Ferdinand E. Marcos informing him among other things that "new business prospect to buy out from [Development Bank] Holding" includes the Century Park Sheraton Hotel (Sheraton, for short). Apparently receiving favorable reaction from Marcos, Lucio Tan organized and established on October 5, 1984 the [Sipalay Trading], with a capitalization of only P900,000.00 to serve as front organization of the Marcos-Lucio Tan partnership. Defendant Harry C. Tan became Chairman and President of the corporation, whose incorporators appear to be fictitious or mere dummies of Lucio Tan and his relatives.

(2) [Sipalay Trading] in a letter dated January 29, 1985 wrote defendant Don Ferry, as then Vice Chairman of the DBP, offering to buy for U.S. \$8.7 million 79% of the voting shares of the [Maranaw Hotels], owned by [Development Bank]. On January 30, 1985, the [Development Bank] Board headed by Defendant Zalamea and Ferry approved the above proposal to buy. Defendants Ferry, Lucio Tan and Harry Tan were present when the

purchase agreement was signed in Hong Kong;

(3) On February 26, 1985, [Sipalay Trading] requested [Development Bank] to waive its requirement "to provide a comptroller pending full payment of the purchase price." Defendant Ferry agreed to this waiver.

(4) On March 1, 1985, [Development Bank] represented by defendant Ferry and [Sipalay Trading] represented by defendant Harry C. Tan, executed an Agreement to buy and sell – [Development Bank] to sell 78.3% of its controlling interest in [Maranaw Hotels] to [Sipalay Trading] for a consideration of U.S. \$8.5 million with 28% of the purchase price as downpayment. At the same time, [Development Bank] and [Sipalay Trading] also executed an escrow agreement which stipulated that the interest earned by the escrow account would be for the benefit of [Sipalay Trading] (rather than [Development Bank]). Defendants Ferry and Harry Tan again signed for their respective agency and corporation;

(5) On April 22, 1985, the corresponding Deed of Sale was executed by the parties, defendant Ferry again signing for [Development Bank], and defendant Harry Co Tan for [Sipalay Trading]. A Pledge Agreement was likewise signed on the same date, the subject shares being pledged by [Sipalay Trading] to [Development Bank], and the pledge to remain in full force until the full payment of the purchase price or until [Sipalay Trading] may have substituted as collateral a stand-by letter of credit to secure the unpaid balance. [Sipalay Trading] however did not turn over the subject shares to [Development Bank]. Defendant Cesar Zalamea, being the Chairman of both [Development Bank] and [Maranaw Hotels], gave his full support to all the foregoing moves undertaken by [Development Bank] Vice--chairman and [Maranaw Hotels] President Don Ferry which favored the Tan brothers to prejudice of the government.[728]

In the present case, Ferry and Zalamea are being charged with conspiracy to acquire ill-gotten wealth because they approved and facilitated the sale of Development Bank's Maranaw Hotels shares to Sipalay Trading for an extremely low price. The Republic also alleges that the following special concessions were given to Sipalay Trading: (1) the waiver of the requirement to provide a comptroller pending full payment of the purchase price, (2) a stipulation that the interest earned by the escrow account would be for the benefit of Sipalay Trading, instead of Development Bank; and (3) a pledge that will remain in force until Sipalay Trading's full payment of the purchase price or its substitution as collateral of a standby letter of credit to secure the unpaid balance; and (4) the non-turnover of the shares to Development Bank by Sipalay Trading. The Republic thus argues that Ferry and Zalamea gave undue favor to Tan when they granted and accepted the sale and they allegedly caused losses in millions of pesos to Development Bank, to the prejudice of the government.[729]

Several facts and issues raised in this case are like the facts already determined in *Desierto*, the most relevant of which is the good faith of Development Bank's officers in entering into the sale with Sipalay Trading. Considering the present case and *Desierto* involve the same parties, the issue of good faith can no longer be raised.

All the elements for the application of *res judicata* by conclusiveness of judgment are present: (1) a ruling was rendered by a court which had jurisdiction over the subject matter and the parties; (2) the ruling has become final; and (3) while the causes of action are different, the parties and the issues are the same.

For the doctrine to apply, the parties need not be identical. It is sufficient that they share substantially the same interest or there is a privity between the party in the first case and in the second case. The parties involved in *Desierto* are the Republic, representing Presidential Commission on Good Government, and the Development Bank officials who participated in the Sipalay Deal. Ferry was one of them. While Zalamea was not impleaded in *Desierto*, in this case, he is still being charged as a Development Bank officer, and thus he shares the same interests as other Development Bank officers.

In *Desierto*, the issue of bad faith was tackled because it is an element of the offense of Section 3(e) of Republic

Act No. 3019.[730] Thus, it was necessary to determine the bad faith of the officers and the validity of the sale to Sipalay Trading in Desierto. The same issues are again being raised in this case, and the evidence needed to resolve it would have authorized a judgment for Ferry and Zalamea in Desierto. Thus, these issues are barred by the ruling in Desierto. The ruling that there is no bad faith is final, conclusive, and can no longer be raised as an issue in this case. Necessarily, this means that Ferry and Zalamea acted in good faith as Development Bank officers.

Nonetheless, the Second Amended Complaint raises a new issue not ruled on in Desierto: whether the sale to Sipalay Trading was done for Tan and Marcos to accumulate ill-gotten wealth.

It is the Republic's burden to prove these allegations. Rule 131, Section 1 of the Rules of Court states that the burden of proof is "the duty of a party to present evidence on the facts in issue necessary to establish his or her claim or defense by the amount of evidence required by law." The one who alleges must prove. In *Republic v. Estate of Hans Menzi*:[731]

It is procedurally required for each party in a case to prove his own affirmative allegations by the degree of evidence required by law. In civil cases such as this one, the degree of evidence required of a party in order to support his claim is preponderance of evidence, or that evidence adduced by one party which is more conclusive and credible than that of the other party. It is therefore incumbent upon the plaintiff who is claiming a right to prove his case. Corollarily, the defendant must likewise prove its own allegations to buttress its claim that it is not liable.

The party who alleges a fact has the burden of proving it. The burden of proof may be on the plaintiff or the defendant. It is on the defendant if he alleges an affirmative defense which is not a denial of an essential ingredient in the plaintiff's cause of action, but is one which, if established, will be a good defense — i.e., an "avoidance" of the claim.[732] (Citations omitted).

I(B)

As to Ferry and Zalamea, I agree with the ponencia's finding that the Republic failed to substantiate its claim that they participated in the acquisition of ill-gotten wealth.[733] To support its allegations, the Republic relied on the following evidence:[734]

Exhibits

Documents

Purpose

K

Articles of Incorporation SEC Reg. 123098 of Sipalay Trading Corp. dated Oct[ober] 17, 1984
to prove the corporate existence, stockholders of record and purposes of Sipalay as of 1980.

L

Certificate of Filing of By-Laws SEC Reg. 123098 of Sipalay Trading Corp. dated March 12, 1985
to prove that the by-laws of Sipalay were duly filed with the SEC on March 12, 1985

M

Development Bank Office Correspondence dated November 7, 1984 to the Chairman, Vice Chairman and

Acting Executive Officer, SPD I Re: Maranaw Hotels & Resorts Corp. — Sale of DBP Shares of Stocks from Ma. Estela M. Larido, DBP Acting Exec. Officer

to prove that on August 22, 1984, the DBP Board, under Resolution No. 1937 fixed, among others, the selling price of the DBP's equity holdings in MHRC at P150 M or US\$8.33 M(net) and that in its letter of Nov. 2, 1984, PCI Management Consultants, Inc. offered in behalf of their foreign clients to purchase.

N

Pledge dated April 22, 1985 by and between Sipalay Trading and Development Bank of the Phil.

to prove that Sipalay Trading Corporation entered into a contract of pledge with Development Bank of the Philippines on April 22, 1985.

O

Deed of Sale dated April 22, 1985 by and between Development Bank of the Philippines and Sipalay Trading Corp.

To prove that [Development Bank of the Philippines] through VP Don Ferry sold its shares of stock of Maranaw Hotels to Sipalay Trading Corporation thru Chairman Harry C. Tan

P

Letter dated May 8, 1985 Attn: Mr. Harry C. Tan from Ma. Estela M. Ladrado

to prove that Sipalay Trading was sent a check representing interest on its escrow deposit.

Q

Letter dated Jan. 7, 1986 to Sipalay Trading Corp. Attn: Mr. Harry C. Tan from Ma. Estela M. Ladrado

to prove that Sipalay [Trading] bought in accordance with the Deed of Sale signed on April 22, 1985, the 360, 875, 511 shares of stocks of Maranaw Hotels and Resorts Corporations Sipalay purchased from [Development Bank of the Philippines].

R

[Development Bank of the Philippines] Resolution No. 2639 dated November 14, 1984

to prove that [Development Bank of the Philippines] approved the sale of Maranaw Hotels and Resorts Corporation to the Lucio Tan Group.

S

Escrow Agreement between Sipalay Trading Corp. and [Development Bank of the Philippines] dated March 1, 1985

To prove the sale of Maranaw Hotels and Resorts Corp. to the Lucio Tan Group.

The evidence that they rely on is still anchored in their allegation that Ferry and Zalamea as Development Bank

officers acted in bad faith in entering the deal with Sipalay. As discussed, this has been ruled in *Desierto* and can no longer be relitigated.

Assuming that *Desierto* does not apply, the evidence does not clearly show any act of bad faith on the part of Ferry and Zalamea. Bad faith must be proven. It cannot be assumed on the ground that Ferry and Zalamea signed the sale of the shares in favor of Sipalay Trading. Based on the evidence the Republic relied on, there is no showing that proved that Development Bank was not experiencing liquidity problems, that PCI was sidelined in the negotiations, or that PCI was still negotiating with Development Bank. They did not prove that the sale of the shares to Sipalay Trading was because of any instruction from Marcos, Sr., or any act that would indicate their conspiracy with Tan.

While it is correct that Ferry and Zalamea did not deny being the responsible officers behind the sale to Sipalay Trading, it was incumbent upon the Republic to prove that they participated in the sale to conspire with Tan and Marcos to accumulate ill-gotten wealth. The Republic failed in this respect.

I(C)

I further agree that the Sandiganbayan did not issue minute resolutions when they dismissed the complaint against Ferry and Zalamea on demurrer to evidence.[735]

Courts are not duty bound to render signed decisions for all cases.[736] Depending on its evaluation, courts have ample discretion as to how it will dispense with a case, so long as it provides the legal basis for its ruling.[737]

Minute resolutions are those promulgated by courts through the Clerk of Court for the prompt dispatch of actions. A minute resolution is differentiated from a decision in that the former is promulgated through the Clerk of Court, is generally unsigned by the justices, and does not require certification of the Chief Justice.

Many minute resolutions are issued to deny patently unmeritorious petitions for review that raise factual issues already ruled on in a lower court which evaluated the evidence. This Court has ruled that these minute resolutions are outside the scope of Article VIII, Section 14 of the 1987 Constitution, which states:

SECTION 14. No decision shall be rendered by any court without expressing therein clearly and distinctly the facts and the law on which it is based.

The 2002 Revised Internal Rules of the Sandiganbayan[738] allows the Sandiganbayan to issue minute resolutions. Under Rule II, Section 6(b)(2), the Clerk of Court of each division releases the minute resolutions, notices of decisions, resolutions, and supervises the stenographers in the recording of the proceedings and preparation of its minutes.

Nevertheless, the Sandiganbayan cannot issue a minute resolution to rule on a motion to dismiss on demurrer to evidence. A motion to dismiss on demurrer to evidence is a case submitted for decision. An order granting demurrer to evidence is a judgment on the merits. In *Spouses Gimenez*:

In case of doubt, courts should proceed with caution in granting a motion to dismiss based on demurrer to evidence. An order granting demurrer to evidence is a judgment on the merits. This is because while a demurrer "is an aid or instrument for the expeditious termination of an action," it specifically "pertains to the merits of the case."

In *Cabreza, Jr., et al. v. Cabreza*, this court defined a judgment rendered on the merits:

A judgment may be considered as one rendered on the merits "when it determines the rights and liabilities of the parties based on the disclosed facts, irrespective of formal, technical or dilatory objections"; or when the judgment is rendered "after a determination of which party is right, as distinguished from a judgment rendered upon some preliminary or formal or merely technical point."

....

To reiterate, "[d]emurrer to evidence authorizes a judgment on the merits of the case without the defendant having to submit evidence on his [or her] part, as he [or she] would ordinarily have to do, if plaintiff's evidence shows that he [or she] is not entitled to the relief sought." The order of dismissal must be clearly supported by facts and law since an order granting demurrer is a judgment on the merits:

As it is settled that an order dismissing a case for insufficient evidence is a judgment on the merits, it is imperative that it be a reasoned decision clearly and distinctly stating therein the facts and the law on which it is based.[739] (Citation omitted)

A judgment on the merits must comply with Rule 36, Section 1 of the Rules of Court, which states:

SECTION 1. Rendition of Judgments and Final Orders. — A judgment or final order determining the merits of the case shall be in writing personally and directly prepared by the judge, stating clearly and distinctly the facts and the law on which it is based, signed by him, and filed with the clerk of the court.

Considering that a judgment on the merits must be prepared by the judge, it cannot be dispensed with through a minute resolution.

The Sandiganbayan did not dismiss the case through a minute resolution.[740] The Sandiganbayan's resolutions were in the form of minutes of the proceedings. While it is not entitled as a resolution or decision, the minutes were not signed through the Clerk of Court and were instead signed and approved by the Fifth Division Sandiganbayan justices, Associate Justice Roland B. Jurado, and concurred in by Associate Justices Teresita V. Diaz--Baldos and Napoleon E. Inoturan.[741] The document likewise contains the statement of the parties, allegations, its consideration of the evidence presented by the parties, and its conclusion, and a dispositive portion. It is 14 pages in length. The dismissal thus complies with the requirements of a judgment on the merits.[742]

I(D)

I also agree that the Republic is not guilty of forum shopping.[743]

A party commits forum shopping when he or she files two or more suits in different courts raising the same issue and praying for the same relief, to increase its chances of getting a favorable ruling on the matter. It is prohibited under Rule 7, Section 5 of the Rules of Court, which states:

SECTION 5. Certification Against Forum Shopping. — The plaintiff or principal party shall certify under oath in the complaint or other initiatory pleading asserting a claim for relief, or in a sworn certification annexed thereto and simultaneously filed therewith: (a) that he has not theretofore commenced any action or filed any claim involving the same issues in any court, tribunal or quasi-judicial agency and, to the best of his knowledge, no such other action or claim is pending therein; (b) if there is such other pending action or claim, a complete statement of the present status thereof; and (c) if he should thereafter learn that the same or similar action or claim has been filed or is pending, he shall report that fact within five (5) days therefrom to the court wherein his aforesaid complaint or initiatory pleading has been filed.

Failure to comply with the foregoing requirements shall not be curable by mere amendment of the complaint or other initiatory pleading but shall be cause for the dismissal of the case without prejudice, unless otherwise provided, upon motion and after hearing. The submission of a false certification or non-compliance with any of the undertakings therein shall constitute indirect contempt of court, without prejudice to the corresponding administrative and criminal actions. If the acts of the party or his counsel clearly constitute willful and deliberate forum shopping, the same shall be ground for summary dismissal with prejudice and shall constitute direct contempt, as well as a cause for administrative sanctions.

The parties must certify that they did not file any other case involving the same issues in any other court. Any

party that commits forum shopping runs the risk of having their case summarily dismissed. They also may be held liable for contempt or sanctioned administratively or criminally. In *City of Taguig v. City of Makati*:^[744]

Top Rate Construction & General Services, Inc. v. Paxton Development Corporation explained that:
Forum shopping is committed by a party who institutes two or more suits in different courts, either simultaneously or successively, in order to ask the courts to rule on the same or related causes or to grant the same or substantially the same reliefs, on the supposition that one or the other court would make a favorable disposition or increase a party's chances of obtaining a favorable decision or action.

....

Top Rate Construction discussed the rationale for the rule against forum shopping as follows:

It is an act of malpractice for it trifles with the courts, abuses their processes, degrades the administration of justice and adds to the already congested court dockets. What is critical is the vexation brought upon the courts and the litigants by a party who asks different courts to rule on the same or related causes and grant the same or substantially the same reliefs and in the process creates the possibility of conflicting decisions being rendered by the different fora upon the same issues, regardless of whether the court in which one of the suits was brought has no jurisdiction over the action.

Jurisprudence has recognized that forum shopping can be committed in several ways:

(1) filing multiple cases based on the same cause of action and with the same prayer, the previous case not having been resolved yet (where the ground for dismissal is *litis pendentia*); (2) filing multiple cases based on the same cause of action and the same prayer, the previous case having been finally resolved (where the ground for dismissal is *res judicata*); and (3) filing multiple cases based on the same cause of action but with different prayers (splitting of causes of action, where the ground for dismissal is also either *litis pendentia* or *res judicata*).

....

The test for determining forum shopping is settled. In *Yap v. Chua, et al.*:

To determine whether a party violated the rule against forum shopping, the most important factor to ask is whether the elements of *litis pendentia* are present, or whether a final judgment in one case will amount to *res judicata* in another; otherwise stated, the test for determining forum shopping is whether in the two (or more) cases pending, there is identity of parties, rights or causes of action, and reliefs sought.

....

These settled tests notwithstanding:

Ultimately, what is truly important to consider in determining whether forum-shopping exists or not is the vexation caused the courts and parties-litigant by a party who asks different courts and/or administrative agencies to rule on the same or related causes and/or to grant the same or substantially the same reliefs, in the process creating the possibility of conflicting decisions being rendered by the different fora upon the same issue.^[745]

The Republic did not institute two suits in different courts. All the petitions involved in this case originated from the same case for the recovery of ill-gotten wealth filed in the Sandiganbayan. The different petitions involve different issues. It thus cannot be said that the Republic committed forum shopping.

II

The ponencia ruled that Joselito and Aderito's testimonies are barred by *res judicata*.^[746]

I disagree.

I opine that the GenBank liquidation case does not bar by res judicata Joselito or Aderito's testimony.

As discussed, the elements of res judicata are: "(1) the first judgment must be final; (2) the first judgment was rendered by a court that has jurisdiction over the subject and the parties; (3) the disposition must be a judgment on the merits; and (4) the parties, subject, and cause of action in the first judgment are identical to that of the second case. If, in the first judgment and in the second case, the causes of action are different such that only the parties and the issues are the same, there is res judicata by conclusiveness of judgment." [747]

In the GenBank liquidation case, this Court ruled on the validity of Central Bank Monetary Board Resolution Nos. 675 and 677.

Monetary Board Resolution No. 675 was issued on March 25, 1977. It disallowed GenBank from doing business and designated Arnulfo B. Aurellano as its receiver. This resolution was prompted by GenBank's insolvency and its failure to comply with Central Bank Monetary Board requirements. It found that GenBank's continuance in business would cause losses to its depositors and creditors.

Thereafter, the Central Bank required the submission of sealed bids for the acquisition of GenBank's assets and assumption of its liabilities by March 28, 1977 at 7:00 p.m. Tan, acting with Willy Co, Ramon Lee, Florencio Santos, and Sixto L. Orosa, represented by Ramon S. Orosa (Tan's group), were the only ones able to comply. [748]

The day after the deadline, Monetary Board Resolution No. 677 [749] was issued ordering GenBank's liquidation, with Arnulfo B. Aurellano as liquidator and approving a liquidation plan in which Tan's group will acquire all the assets of GenBank and assume all its liabilities.

In confirming the validity of the Monetary Board Resolutions, this Court affirmed that GenBank was insolvent and that there was no factual infirmity in the findings and recommendation that gave rise to the issuance of Monetary Board Resolution No. 675. [750] This Court noted that prior to the resolutions, the Central Bank extended assistance to help restore GenBank. It also held that GenBank failed to prove the Monetary Board's bad faith or arbitrariness in its closure. This Court held that the Central Bank performed its duty to maintain public confidence in the banking system when it approved the liquidation plan and the acquisition of assets by Tan's group through Allied Bank. This was allegedly shown by Allied Bank's ability to resume normal banking operations, meet the demands for deposit withdrawals, and pay off all emergency advances extended by the Central Bank to GenBank.

Finally, as to petitioner Genbank's lament about the Monetary Board acting, under the premises, in bad faith or committing grave abuse of discretion in approving the liquidation plan of the Lucio Tan Group, suffice it to restate what the CA wrote in this regard:

Indeed, that the Genbank, Now Allied Bank, was able to resume normal banking operations immediately on June 2, 1977, thereafter meeting all the demands for deposit withdrawals and paying off all CB emergency advances to Genbank (Exh. K, L, and P), is a strong indication that the Central Bank performed its duty to maintain public confidence in the banking system. [751] (Citations omitted)

It further held that the Court hesitates to interfere with the Central Bank's exercise of its mandate as administrator of the banking system absent any evidence of bad faith:

Absent, in sum, of compelling proof to becloud the bona fides of the decision of the Central Bank to close and order the liquidation of Genbank pursuant to Monetary Board Resolution Nos. 675 and 677, the Court, as the CA before it, loathes to interfere with what basically is the exercise by the Central Bank of its mandate as

administrator of the banking system.[752]

The Gen Bank liquidation case thus determined that Monetary Board Resolution Nos. 675 and 677 were valid and issued in good faith. It held that the Central Bank did not act with grave abuse of discretion or violate any existing procedural or substantive law when the Monetary Board issued the resolutions.

Given these findings, the Republic is barred from raising as an issue the validity of the Monetary Board Resolutions and the bad faith of the Monetary Board and the Central Bank in issuing them.

However, in this case, Joselito and Aderito were presented by the Republic as witnesses to testify on Paragraph 14, subparagraphs (a) (1) (2) (3), (b), and (c), which reads:

14. Defendant Lucio C. Tan, by himself and/or in unlawful concert with Defendants Ferdinand E. Marcos and Imelda R. Marcos, taking undue advantage of his relationship and influence with Defendant Spouses, and embarking upon devices, schemes and stratagems, including the use of Defendant Corporations, among others:

(a) without sufficient collateral and for nominal consideration, with the active collaboration, knowledge and willing participation of Defendant Willy Co, arbitrarily and fraudulently acquired control of [GenBank] which eventually became [Allied Bank], through the manipulation of then Central Bank Governor [Licaros], and of then President [Domingo] of the Philippine National Bank [PNB], as shown by, but not limited to, the following circumstances:

(1) In 1976, [GenBank] got into financial difficulties. The Central Bank then extended an emergency loan to [GenBank] reaching a total of P310 million. In extending this loan, the CB however, took control of [GenBank] when the latter executed an irrevocable proxy of 2/3 of [GenBank]'s outstanding shares in favor of the [Central Bank] and when 7 of the 11-member Board of Directors were [Central Bank] nominees. Subsequently, on March 25, 1977, the Monetary Board of [Central Bank] issued a Resolution declaring [GenBank] insolvent, forbidding it to do business and placing it under receivership.

(2) In the meantime, a public bidding for the sale of [GenBank] assets and liabilities was scheduled at 7:00 P.M. on Ma[r]ch 28, 1977. Among the conditions of the bidding were: (a) submission by the bidder of Letter of Credit issued by a bank acceptable to [Central Bank] to guaranty payment or as collateral of the [Central Bank] emergency loan; and (b) a 2-year period to repay the said CB emergency loan. On March 29, 1977, [Central Bank] thru a Monetary Board Resolution, approved the bid of the group of Lucio Tan and Willy Co. This bid, among other things, offered to pay only P500,000.00 for [GenBank] assets estimated at P688,201,301.45; Capital Accounts of P103,984,477.55; Cash of P25,698,473.00; and the takeover of the [GenBank] Head Office and branch offices. The required Letter of Credit was not also attached to the bid. What was attached to the bid was a letter of Defendant [Domingo] as PNB President promising to open an irrevocable letter of credit to secure the advances of the Central Bank in the amount of P310 Million. Without this letter of commitment, the Lucio Tan bid would not have been approved. But such letter of commitment was a fraud because it was not meant to be fulfilled. Defendants [Marcos], [Licaros] and [Domingo] conspired together in giving the Lucio Tan group undue favors such as doing away with the required irrevocable letter of credit, the extension of the term of payment from two years to five years, the approval of second mortgage as collateral for the Central Bank advances which was deficient by more than P90 Million, and many other concessions to the great prejudice of the government and of the [GenBank] stockholders.

(3) As already stated, [GenBank] eventually became [Allied Bank] in April, 1977. The defendants Lucio Tan, Willy S. Co and Florencio T. Santos are not only incorporators and directors but they are also the major shareholders of this new bank.

(b) delivered to Defendant spouses Ferdinand and Imelda Marcos, sometime in July, 1977 or thereafter, substantial beneficial interests in shares of stock worth millions of pesos in the [Asia Brewery] through dummies, nominees or agents, with the active collaboration, knowledge and willing participation of Defendants Florencio T.

Santos, as then President [Tan Eng Lian], as then Treasurer, and Domingo Chua Mariano Khoo, as then Directors of [Asia Brewery] in consideration of substantial concessions which their varied business ventures were unduly privileged to enjoy, such as but not limited, the grant of dollar allocation amounting to about U.S.\$6,934,500.00.

(c) gave improper payments such as gifts, bribes and commissions, and/or guaranteed "dividends" to said Defendant spouses in various sums, such as P10M in 1980, P10M in 1981, P20M in 1982, P40M in 1983, P40M in 1984, P50M in 1985, P50M in 1986, in consideration of Defendant Spouses' continued support of Defendant Lucio tan's diversified business ventures and/or Defendant Spouses' ownership or interest in said diversified business ventures, such as [Allied Bank], and its subsidiaries here and abroad, including [the respondent corporations and the foreign corporations]. Even earlier, Tan gave the amounts of P11 million in 1975, about P2 million in 1977, and P44 million in 1979, among other amounts.[753]

Considering these allegations in the Second Amended Complaint, not all elements of *res judicata* are present in this case.

Certainly, the GenBank liquidation case precludes delving into the validity of the Monetary Board Resolutions. Thus, Joselito's testimony, which puts into issue the validity of the insolvency and liquidation of GenBank, is barred by *res judicata*.

However, there is no identity of issues in these two cases. In this case, the testimonies of Joselito and Aderito were also presented to prove the conspiracy among Marcos, Sr., Licaros, and Domingo to give Tan undue favors at the expense of the government and GenBank shareholders. These allegations thus raise new issues that were not tackled in the GenBank liquidation case. Furthermore, the present complaint does not seek to invalidate the Monetary Board Resolutions, but simply to show that it is part of the undue favors granted by Marcos, Sr. to Tan.

There is likewise no identity of parties. This ill-gotten wealth case involves other parties who were not involved in the GenBank liquidation case. In the GenBank liquidation case, GenBank was the petitioner, and the Central Bank and Arnulfo B. Aurellano, in his capacity as liquidator of GenBank, were the respondents. Marcos, Sr. and Imelda were not parties to the GenBank liquidation case. On the other hand, this ill-gotten wealth case involves Marcos, Sr., Imelda, Tan, Willy Co, Allied Bank, Central Bank Governor Licaros, PNB President Domingo, GenBank, Central Bank Monetary Board Member Florencio T. Santos, Asia Brewery, Tan Eng Lian, Domingo Chua, and Mariano Khoo.

The ponencia found that the relevant parties in this case are privies and/or successors-in-interest of the parties in the GenBank liquidation case.[754] While this may be correct as to Tan, Willy Co, Allied Bank, and any member of the Central Bank, the same cannot be said with regard to the Marcoses.

In *Republic v. Grijaldo*: [755]

In defining the word "privy" this Court, in a case, said:

"The word 'privy' denotes the idea of succession ... hence, an assignee of a credit, and one subrogated to it, etc. will be privies; in short, he who, by succession is placed in the position of one of those who contracted the juridical relation and executed the private document and appears to be substituting him in his personal rights and obligation is a privy"

The Marcoses' connection or privy to Tan is being established in this case. It is what the Republic itself is trying to prove with the testimony of Joselito and Aderito—that the Marcoses gave undue favors and concessions to Tan resulting in the accumulation of ill-gotten wealth. This matter was not established in the GenBank liquidation case. Thus, the two cases cannot be said to have involved the same parties or the same issues.

Considering that not all elements of *res judicata* are present, the Sandiganbayan erred in disallowing the testimony of Joselito and Aderito. Their testimonies should have been heard to prove the Republic's other claims of conspiracy among Marcos, Sr., Licaros, and Domingo, especially as to the undue favors and concessions granted to Tan. Since, Marcos, Sr., Imelda, and Domingo were not impleaded as parties in the GenBank liquidation case, and the issue in this case pertains to their undue favors to Tan, it involves different matters and different parties, which do not render the doctrine of *res judicata* applicable.

II(A)

Nonetheless, I agree that the Republic failed to prove malice and bad faith on the part of the Sandiganbayan for the members to inhibit in the case.[756]

Rule 137, Section 1 of the Rules of Court states:

Section 1. Disqualification of judges. — No judge or judicial officers shall sit in any case in which he, or his wife or child, is pecuniarily interested as heir, legatee, creditor or otherwise, or in which he is related to either party within the sixth degree of consanguinity or affinity, or to counsel within the fourth degree, computed according to the rules of the civil law, or in which he has been executor, administrator, guardian, trustee or counsel, or in which he has presided in any inferior court when his ruling or decision is the subject of review, without the written consent of all parties in interest, signed by them and entered upon the record.

A judge may, in the exercise of his sound discretion, disqualify himself from sitting in a case, for just or valid reasons other than those mentioned above.

In the then applicable Revised Internal Rules of the Sandiganbayan,[757] the same grounds for inhibition are provided:

SECTION 5. Grounds for inhibition of Division Members. — A Division member may inhibit himself from a case on the following grounds:

(a) When he was the Ponente of the appealed decision of the lower court; (b) When he was counsel or member of a law firm which was counsel in a case before the Division; or he, his wife or child is pecuniarily interested in said case as heir, legatee, creditor or otherwise; or he is related to either party in the case within the sixth degree of consanguinity or affinity or to counsel within the fourth degree, computed according to the rules of the civil law; or he has been executor, administrator, guardian or trustee in the case.

A Division member may inhibit himself for any compelling reason other than those mentioned above.

Jurisprudence thus distinguished two types of inhibition: mandatory and voluntary.[758] In mandatory inhibition, justices and judges are unquestionably disqualified from hearing cases should any of the following grounds be present: (1) the case is one in which the judge, or his or her spouse or child is pecuniarily interested as an heir, legatee, creditor or otherwise, (2) the judge is related to either party within the sixth degree of consanguinity or affinity, or to counsel within the fourth degree, computed according to the rules of the civil law, (3) it is a case in which the judge has been executor, administrator, guardian, trustee or counsel, or (4) it is a case in which the judge has presided in any inferior court when his or her ruling or decision is the subject of review, without the written consent of all parties in interest, signed by them and entered upon the record.[759]

Voluntary inhibition on the other hand, involves the judge or justice's exercise of discretion, in consideration of a just or valid reason, and keeping in mind justice, fairness, and the duty to keep the people's faith in the courts. In *Barnes v. Reyes*: [760]

The first paragraph of the section relates to the mandatory inhibition of judges; the second, to their voluntary inhibition.

The discretion referred to in the second paragraph is a matter of conscience and is addressed primarily to the judges' sense of fairness and justice. Indeed, as this Court has held in *Pimentel v. Salanga*, judges may not be legally prohibited from sitting in a litigation. However, when suggestion is made of record that they might be induced to act with bias or prejudice against a litigant arising out of circumstances reasonably capable of inciting such a state of mind, they should conduct a careful self-examination. Magistrates should exercise their discretion in a way that the people's faith in the courts of justice is not impaired. They should, therefore, exercise great care and caution before making up their minds to act or withdraw from a suit. If, after reflection, they resolve to voluntarily desist from sitting in a case in which their motives or fairness might be seriously impugned, their action is to be interpreted as giving meaning and substance to the second paragraph of Section 1, Rule 137 of the Rules of Court.[761]

This Court has held that an allegation of bias or partiality is not a just and valid reason for a judge or justice to inhibit. The movant must indicate the judge or justice's arbitrary and prejudicial acts or conduct, and must present clear, convincing, and extrinsic evidence to establish bad faith and malice.

Nonetheless, while the rule allows judges, in the exercise of sound discretion, to voluntarily inhibit themselves from hearing a case, it provides that the inhibition must be based on just or valid reasons. In prior cases interpreting this rule, the most recent of which is *Philippine Commercial International Bank v. Spouses Wilson Dy Hong Pi, etc., et al.*, the Court noted that the mere imputation of bias or partiality is not enough ground for inhibition, especially when the charge is without basis. Acts or conduct clearly indicative of arbitrariness or prejudice has to be shown. Extrinsic evidence must further be presented to establish bias, bad faith, malice, or corrupt purpose, in addition to palpable error which may be inferred from the decision or order itself. Stated differently, the bare allegations of the judge's partiality will not suffice in the absence of clear and convincing evidence to overcome the presumption that the judge will undertake his noble role of dispensing justice in accordance with law and evidence, and without fear or favor. Verily, for bias and prejudice to be considered valid reasons for the involuntary inhibition of judges, mere suspicion is not enough. Let it be further noted that the option given to a judge to choose whether or not to handle a particular case should be counterbalanced by the judge's sworn duty to administer justice without fear of repression.[762] (Citations omitted)

In this case, the Republic indicated the acts that it deemed prejudicial to it. However, it failed to prove the malice, bad faith, and ill motive on the part of the members of the Sandiganbayan. It was unable to overturn the presumption that the Sandiganbayan justices were dispensing with justice in accordance with law and evidence. Given this presumption, the acts of the Sandiganbayan justices simply showed that they wanted to expedite the disposition of the case considering it has been pending for several years.

Nonetheless, I opine that the Sandiganbayan should have granted the Republic more leeway in the presentation of its evidence considering the nature of the case, the voluminous documents involved, and the assets, properties, and amounts in question.

In *Republic v. Sandiganbayan (Second Division)*,[763] this Court found the Sandiganbayan to have gravely abused its discretion when it disallowed the reopening of the case for the Republic to present additional evidence. It noted that the Sandiganbayan should have taken into consideration the voluminous documents and papers involved in ill-gotten wealth cases, and its act of disallowance deprived the Republic of its chance to fully prove its case and recover what could be "illegally-gotten" wealth, thus causing serious miscarriage of justice:

Considering that petitioner, in requesting to reopen the presentation of additional evidence after it has rested its case, sought to present documentary exhibits consisting of certified copies which had earlier been denied admission for being photocopies, additional documents previously mentioned in its pre-trial brief and new additional evidence material in establishing the main issue of ill-gotten wealth allegedly amassed by the private respondents, singly or collectively, public respondent should have, in the exercise of sound discretion, properly allowed such presentation of additional evidence. Bearing in mind that even if the originals of the documentary

exhibits offered as additional evidence have been in the custody of the PCGG since the filing of the complaint or at least at the time of the preparation of its original pre-trial brief in September 1990, public respondent should have duly considered the explanation given by PCGG Commissioner Ruben C. Carranza and PCGG Librarian Ma. Lourdes O. Magno in their respective affidavits attached to the motion, as to the belated discovery of the original documentary evidence which had long been in the possession of PCGG. Given the voluminous documents and papers involved in ill-gotten wealth cases, it was indeed unavoidable that in the course of trial certain documentary exhibits were omitted or unavailable by inadvertence, as what had happened in this case where the subject original documentary evidence were found misfiled in a different case folder.

....

However, perusal of the records plainly reveals that petitioner was not responsible for the delay in the prosecution of this case. The protracted litigation was due to the numerous pleadings, postponements and various motions filed by respondents Marcoses. Clearly, public respondent's rigid application of the rule on order of trial was arbitrary, improper and in utter disregard of the demands of substantial justice.

Executive Order No. 14, series of 1986, issued by former President Corazon C. Aquino, provided that technical rules of procedure and evidence shall not be strictly applied to cases involving ill-gotten wealth. Apropos is our pronouncement in *Republic v. Sandiganbayan* (Third Division):

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. Let the titles over these properties be finally determined and quieted down with all reasonable speed, free of delaying technicalities and annoying procedural sidetracks.

....

It was incumbent upon the public respondent to adopt a liberal stance in the matter of procedural technicalities. More so in the instant case where the showing of a prima facie case of ill-gotten wealth was sustained by this Court in *Silverio v. Presidential Commission on Good Government* in No. L-77645 under the Resolution dated October 26, 1987. Petitioner should be given the opportunity to fully present its evidence and prove that the various business interests of respondent Silverio "have enjoyed considerable privileges obtained from [respondent] former President Marcos during [the latter's] tenure as Chief Executive in violation of existing laws; privileges which could not have been so obtained were it not for the close association of [Silverio] with the former President." [764] (Emphasis supplied, citations omitted)

Thus, the Sandiganbayan should have been more liberal in the application of procedural rules and should have granted the Republic the opportunities to fully present its evidence.

III

I agree that Philip Morris Fortune Tobacco Corp. need not be impleaded. It is not an indispensable party. [765]

An indispensable party is one who must be joined in an action, otherwise, the case cannot be determined with finality. Rule 3, Sections 2 and 7 of the Rules of Court states:

SECTION 2. Parties in Interest. — A real party in interest is the party who stands to be benefited or injured by the judgment in the suit, or the party entitled to the avails of the suit. Unless otherwise authorized by law or

these Rules, every action must be prosecuted or defended in the name of the real party in interest.

....

SECTION 7. Compulsory Joinder of Indispensable Parties. — Parties in interest without whom no final determination can be had of an action shall be joined either as plaintiffs or defendants.

In *Florete, Jr. v. Florete*,^[766] this Court discussed that the failure to join an indispensable party renders any judgment null and void for want of jurisdiction:

There are two consequences of a finding on appeal that indispensable parties have not been joined. First, all subsequent actions of the lower courts are null and void for lack of jurisdiction. Second, the case should be remanded to the trial court for the inclusion of indispensable parties. It is only upon the plaintiff's refusal to comply with an order to join indispensable parties that the case may be dismissed.

All subsequent actions of lower courts are void as to both the absent and present parties. To reiterate, the inclusion of an indispensable party is a jurisdictional requirement:

While the failure to implead an indispensable party is not per se a ground for the dismissal of an action, considering that said party may still be added by order of the court, on motion of the party or on its own initiative at any stage of the action and/or such times as are just, it remains essential — as it is jurisdictional — that any indispensable party be impleaded in the proceedings before the court renders judgment. This is because the absence of such indispensable party renders all subsequent actions of the court null and void for want of authority to act, not only as to the absent parties but even as to those present.

....

In *Metropolitan Bank and Trust Co. v. Alejo and Arcelona* v. Court of Appeals, this court clarified that the courts must first acquire jurisdiction over the person of an indispensable party. Any decision rendered by a court without first obtaining the required jurisdiction over indispensable parties is null and void for want of jurisdiction: "the presence of indispensable parties is necessary to vest the court with jurisdiction, which is 'the authority to hear and determine a cause, the right to act in a case.'"

In *Divinagracia v. Parilla*, *Macawadib v. Philippine National Police Directorate for Personnel and Records Management* *People v. Go*, and *Valdez-Tallorin v. Heirs of Taron*a, among others, this court annulled judgments rendered by lower courts in the absence of indispensable parties.^[767]

The Rules of Court allows the plaintiff to join defendants in the alternative if it is uncertain for whom it is entitled to relief:

SECTION 13. Alternative Defendants. — Where the plaintiff is uncertain against who of several persons he is entitled to relief, he may join any or all of them as defendants in the alternative, although a right to relief against one may be inconsistent with a right of relief against the other. (13a)

In ill-gotten wealth cases, this Court has ruled that it is not necessary to implead as defendants the corporations which have served as tools or instruments for acquisition or were the depositaries or fruits of ill-gotten wealth. In *Republic v. Sandiganbayan First Division*,^[768]

It is postulated, however, that the judicial actions instituted by the PCGG in relation to or in connection with its orders of sequestration or seizure against corporations or shares of stock held by supposed dummies, suffered from a grave procedural defect. The sequestered corporations—which, in the above mentioned view of the PCGG had served as tools or instruments for acquisition of ill-gotten wealth, or were the depositaries or fruits thereof—or the natural persons ostensibly owning stock as "dummies," had not been impleaded as defendants in the various complaints.

....

As regards actions in which the complaints seek recovery of defendants' shares of stock in existing corporations (e.g., San Miguel Corporation, Benguet Corporation, Meralco, etc.) because allegedly purchased with misappropriated public funds, in breach of fiduciary duty, or otherwise under illicit or anomalous conditions, the impleading of said firms would clearly appear to be unnecessary. If warranted by the evidence, judgments may be handed down against the corresponding defendants divesting them of ownership of their stock, the acquisition thereof being illegal and consequently burdened with a constructive trust, and imposing on them the obligation of surrendering them to the Government.

Quite the same thing may be said of illegally obtained funds deposited in banks. The impleading of the banks would also appear unnecessary. Indeed, there would exist no cause of action against them. Judgment may properly be rendered on the basis of competent evidence, that said funds are ill-gotten wealth over which the defendants have no right, and should consequently be surrendered to their rightful owner, the Government. The judgment would constitute sufficient warrant for the bank to make the corresponding transfer of the funds.

....

And as to corporations organized with ill-gotten wealth, but are not themselves guilty of misappropriation, fraud or other illicit conduct — in other words, the companies themselves are the object or thing involved in the action, the res thereof — there is no need to implead them either. Indeed, their impleading is not proper on the strength alone of their having been formed with ill-gotten funds, absent any other particular wrongdoing on their part. The judgment may simply be directed against the shares of stock shown to have been issued in consideration of ill-gotten wealth.[769]

The rationale for this rule is that corporations who received or were formed with ill-gotten wealth are not the same as the persons who formed or used them to acquire or conceal ill-gotten wealth. It was acknowledged that these corporations are not the parties who committed the unlawful act which the Republic bases its cause of action on:

Such showing of having been formed with, or having received ill-gotten funds, however strong or convincing, does not, without more, warrant identifying the corporations in question with the persons who formed or made use of them to give the color or appearance of lawful, innocent acquisition to illegally amassed wealth — at the least, not so as place on the Government the onus of impleading the former together with the latter in actions to recover such wealth. Distinguished, in terms of juridical personality and legal culpability from their erring members or stockholders, said corporations are not themselves guilty of the sins of the latter, of the embezzlement, asportation, etc., that gave rise to the Government's cause of action for recovery; their creation or organization was merely the result of their members' (or stockholders') manipulations and maneuvers to conceal the illegal origins of the assets or monies invested therein. In this light, they are simply the res in the actions for the recovery of illegally acquired wealth, and there is, in principle, no cause of action against them and no ground to implead them as defendants in said actions.

The Government is, thus, not to be faulted for not making such corporations defendants in the actions referred to. It is even conceivable that had this been attempted, motions to dismiss would have lain to frustrate such attempts.[770]

Even if there is an allegation that the corporation cooperated in any illicit or fraudulent act, the defect is not fatal. Rule 3, Section 11 of the Rules of Court states:

SECTION 11. Misjoinder and Non-joinder of Parties. — Neither misjoinder nor non-joinder of parties is ground for dismissal of an action. Parties may be dropped or added by order of the court on motion of any party or on its own initiative at any stage of the action and on such terms as are just. Any claim against a misjoined party may be severed and proceeded with separately.

In *Republic v. Sandiganbayan First Division*, it was explained that the failure to implead these parties is a mere technical defect that may be addressed at any stage of the proceedings, even after judgment:

Even in those cases where it might reasonably be argued that the failure of the Government to implead the sequestered corporations as defendants is indeed a procedural aberration, as where said firms were allegedly used, and actively cooperated with the defendants, as instruments or conduits for conversion of public funds or property or illicit or fraudulent obtention of favored Government contracts, etc., slight reflection would nevertheless lead to the conclusion that the defect is not fatal, but one correctible under applicable adjective rules—e.g., Section 10, Rule 5 of the Rules of Court [specifying the remedy of amendment during trial to authorize or to conform to the evidence]; Section 1, Rule 20 [governing amendments before trial], in relation to the rule respecting the omission of so-called necessary or indispensable parties, set out in Section 11, Rule 3 of the Rules of Court. It is relevant in this context to advert to the old familiar doctrines that the omission to implead such parties "is a mere technical defect which can be cured at any stage of the proceedings even after judgment"; and that, particularly in the case of indispensable parties, since their presence and participation is essential to the very life of the action, for without them no judgment may be rendered, amendments of the complaint in order to implead them should be freely allowed, even on appeal, in fact even after rendition of judgment by this Court, where it appears that the complaint otherwise indicates their identity and character as such indispensable parties.

....

Furthermore, if actions are not to be dismissed for lack of an indispensable party, where the latter may be subsequently joined by amendment of the pleadings, no reason appears why provisional remedies in those actions, such as sequestrations, should be affected by the initial non-inclusion of an indispensable party, the obvious remedy being to allow amendment of the complaint to effect the impleading.[771]

In this case, Philip Morris Fortune Tobacco Corp. is being impleaded because the Republic argues that Philip Morris Fortune Tobacco Corp. was fraudulently formed and organized to remove the substantial capital and assets of Fortune Tobacco and Northern Tobacco, take the rest out of litigation, and place it beyond this Court's authority and jurisdiction.[772] The Republic claims that this was committed with Philip Morris Fortune Tobacco Corp., its directors and officers acting in concert fraudulently and illicitly. Thus, the parties it is seeking to implead are not simply corporations organized with ill-gotten wealth.[773]

The Republic further argues that it has a cause of action against Philip Morris Fortune Tobacco Corp. because the transfer of capital assets of Fortune Tobacco and Northern Tobacco pending litigation is prohibited under Executive Order No. 2.[774] However, Philip Morris Fortune Tobacco Corp. is not an indispensable party. This action for the recovery of ill-gotten wealth may be determined with finality without impleading Philip Morris Fortune Tobacco Corp., and without injuring or affecting its interests. None of the causes of action reveal that Philip Morris Fortune Tobacco Corp. participated with Tan and Marcos, Sr. to accumulate ill-gotten wealth. Philip Morris Fortune Tobacco Corp. was only incorporated some time in 2010. Thus, it could not have participated in the alleged schemes of Marcos, Sr. with Tan during the former's administration. Philip Morris Fortune Tobacco Corp. is only being impleaded because it now allegedly transferred to itself assets and properties that are subject of this case.

However, an action may still be pursued against the original party even if its interests have been transferred to another. Rule 3, Section 19 of the Rules of Court provides:

SECTION 19. Transfer of Interest. — In case of any transfer of interest, the action may be continued by or against the original party, unless the court upon motion directs the person to whom the interest is transferred to be substituted in the action or joined with the original party. (20)

As discussed in *Republic v. Sandiganbayan First Division*, corporations created under illicit or anomalous conditions with ill-gotten wealth are burdened with a constructive trust. Judgment may be handed against these corporations, divesting them of ownership of their stock, if the Republic successfully proves its right to recover the assets, properties, or shares of stock.

Moreover, the allegations against Philip Morris Fortune Tobacco Corp. are premised on a separate cause of action, which is the violation of Executive Order No. 2,[775] which states:

NOW, THEREFORE, I, CORAZON C. AQUINO, President of the Philippines, hereby;

(1) Freeze all assets and properties in the Philippines in which former President Marcos and/or his wife, Mrs. Imelda Romualdez Marcos, their close relatives, subordinates, business associates, dummies, agents, or nominees have any interest or participation.

(2) Prohibit any person from transferring, conveying, encumbering or otherwise depleting or concealing such assets and properties or from assisting or taking part in their transfer, encumbrance, concealment, or dissipation under pain of such penalties as are prescribed by law.

(3) Require all persons in the Philippines holding such assets or properties, whether located in the Philippines or abroad, in their names as nominees, agents or trustees, to make full disclosure of the same to the Commission on Good Government within (30) days from publication of this Executive Order, or the substance thereof, in at least two (2) newspapers of general circulation in the Philippines.

(4) Prohibit former President Ferdinand Marcos and/or his wife, Imelda Romualdez Marcos, their close relatives, subordinates, business associates, dummies, agents, or nominees from transferring, conveying, encumbering, concealing or dissipating said assets or properties in the Philippines and abroad, pending the outcome of appropriate proceedings in the Philippines to determine whether any such assets or properties were acquired by them through or as a result of improper or illegal use of or the conversion of funds belonging to the Government of the Philippines or any of its branches, instrumentalities, enterprises, banks or financial institutions, or by taking undue advantage of their official position, authority, relationship, connection or influence to unjustly enrich themselves at the expense and to the grave damage and prejudice of the Filipino people and the Republic of the Philippines[.] (Emphasis supplied)

Philip Morris Fortune Tobacco Corp., its directors, and officers are thus not being impleaded for acquiring ill-gotten wealth, but for transferring or conveying assets and properties alleged to be ill-gotten wealth. Their interests are thus separable from the interests of other parties. While impleading Philip Morris Fortune Tobacco Corp. will avoid multiple litigation, the Republic may pursue its claims against Philip Morris Fortune Tobacco Corp. in a separate case.

The same principle applies to the transfer of assets, shares, and properties of Allied Bank.

IV

I find that the Sandiganbayan unduly restricted the concept of ill-gotten wealth.

The concept of ill-gotten wealth amassed by the Marcoses is a class of its own. Unlike other cases involving public officers acquiring ill-gotten wealth, it is already of judicial notice that the Marcoses accumulated unconscionable amounts of wealth at the expense of the Filipino people through numerous schemes and ploys.[776] This has become part of our political history such that no evidence need to be introduced to prove this.[777] Section 1 of Rule 128 of the Rules of Court provides:

SECTION 1. Judicial notice, when mandatory. — A court shall take judicial notice, without the introduction of evidence, of the existence and territorial extent of states, their political history, forms of government and symbols of nationality, the law of nations, the admiralty and maritime courts of the world and their seals, the

political constitution and history of the Philippines, the official acts of the legislative, executive and judicial departments of the Philippines, the laws of nature, the measure of time, and the geographical divisions.

These established facts were acknowledged in Executive Order Nos. 1 and 2.

Executive Order No. 1[778] created and tasked the Presidential Commission on Good Government to recover all ill-gotten wealth accumulated by Marcos, Sr., his immediate family, relatives, subordinates, and close associates. The Presidential Commission on Good Government was also empowered to take over or sequester all business enterprises and entities owned or controlled by the Marcoses through taking undue advantage of public office and/or using their powers, authority, influence, connections, or relationship during the Marcos administration. Sections 1 and 2 of Executive Order No. 1 states:

SECTION 1. There is hereby created a Commission, to be known as the Presidential Commission on Good Government, composed of Minister Jovito R. Salonga, as Chairman, Mr. Ramon Diaz, Mr. Pedro L. Yap, Mr. Raul Daza and Ms. Mary Concepcion Bautista as Commissioners.

SECTION 2. The Commission shall be charged with the task of assisting the President in regard to the following matters:

(a) The recovery of all ill-gotten wealth accumulated by further President Ferdinand E. Marcos, his immediate family, relatives, subordinates and close associates. whether located in the Philippines or abroad, including the takeover or sequestration of all business enterprises and entities owned or controlled by them, during his administration, directly or through nominees, by taking undue advantage of their public office and/or using their powers, authority, influence, connections or relationship.

(b) The investigation of such cases of graft and corruption as the President may assign to the Commission from time to time.

(c) The adoption of safeguards to ensure that the above practices shall not be repeated in any manner under the new government, and the institution of adequate measures to prevent the occurrence of corruption. (Emphasis supplied)

In Executive Order No. 1, the wealth recognized as that amassed by the Marcoses came from the vast resources of the Government. The whereas clauses of Executive Order No. 1 read:

WHEREAS, vast resources of the government have been amassed by former President Ferdinand E. Marcos, his immediate family, relatives, and close associates both here and abroad;

WHEREAS, there is an urgent need to recover all ill-gotten wealth;

Shortly thereafter, Executive Order No. 2[779] was issued to prevent the disposition, concealment, or dissipation of the assets and properties which the Presidential Commission on Good Government was tasked to recover.[780] Executive Order No. 2, however, expanded the nature of properties acknowledged to have been illegally amassed by the Marcoses. The assets include those "acquired by through or as a result of the improper or illegal use of funds or properties owned by the Government of the Philippines or any of its branches, instrumentalities, enterprises, banks or financial institutions, or by taking undue advantage of their office, authority, influence, connections or relationship, resulting in their unjust enrichment and causing grave damage and prejudice to the Filipino people and the Republic of the Philippines." The whereas clauses of Executive Order No. 2 read:

WHEREAS, the Government of the Philippines is in possession of evidence showing that there are assets and properties purportedly pertaining to former President Ferdinand E. Marcos, and/or his wife, Mrs. Imelda Romualdez Marcos, their close relatives, subordinates, business associates, dummies, agents or nominees which had been or were acquired by them directly or indirectly, through or as a result of the improper or illegal

use of funds or properties owned by the Government of the Philippines or any of its branches, instrumentalities, enterprises, banks or financial institutions, or by taking undue advantage of their office, authority, influence, connections or relationship, resulting in their unjust enrichment and causing grave damage and prejudice to the Filipino people and the Republic of the Philippines;

WHEREAS, said assets and properties are in the form of bank accounts, deposits, trust accounts, shares of stocks, buildings, shopping centers, condominium, mansions, residences, estates, and other kinds of real and personal properties in the Philippines and in various countries of the world;

WHEREAS, a Presidential Commission on Good Government has been established primarily charged with the responsibility of recovering the aforesaid assets and properties for the Philippine Government;

WHEREAS, any transfer, disposition, concealment or dissipation of said assets and properties would frustrate, obstruct or hamper the efforts of the Government of the Philippines to recover such assets and properties;

WHEREAS, the Presidential Commission on Good Government is further charged with the duty of investigating any claims with respect to these assets and properties;

WHEREAS, in accordance with the requirements of justice and due process, it is the position of the new democratic government that former President Marcos and his wife, Imelda Romualdez Marcos, their close relatives, subordinates, business associates, dummies, agents or nominees be afforded fair opportunity to contest these claims before appropriate Philippine authorities; ... (Emphasis supplied)

On April 11, 1986, the Presidential Commission on Good Government Rules and Regulations[781] were enacted, providing a formal definition of "ill-gotten wealth." Section 1 reads:

SECTION 1. Definition. — (A) "Ill-gotten wealth" is hereby defined as any asset, property business enterprise or material possession of persons within the purview of Executive Orders Nos. 1 and 2, acquired by them directly, or indirectly thru dummies, nominees, agents, subordinates and/or business associates by any of the following means or similar schemes:

(1) Through misappropriation conversion, misuse or malversation of public funds or raids on the public treasury;

(2) Through the receipt, directly or indirectly, of any commission, gift, share, percentage, kickbacks or any other form of pecuniary benefit from any person and/or entity in connection with any government contract or project or by reason of the office or position of the official concerned;

(3) By the illegal or fraudulent conveyance or disposition of assets belonging to the government or any of its subdivisions, agencies or instrumentalities or government-owned or controlled corporations;

(4) By obtaining, receiving or accepting directly or indirectly any shares of stock, equity or any other/arm of interest or participation in any business enterprise or undertaking;

(5) Through the establishment of agricultural, industrial or commercial monopolies or other combination and/or by the issuance, promulgation and/or implementation of decrees and orders intended to benefit particular persons or special interests; and

(6) By taking undue advantage of official position, authority, relationship or influence for personal gain or benefit. (Emphasis supplied)

Later, the constitutionality of Executive Orders Nos. 1 and 2 were challenged in *Bataan Shipyard and Engineering Co., Inc. v. Presidential Commission on Good Government (Bataan Shipyard)*.^[782] In that case, this Court determined that Bataan Shipyard and Engineering Co., Inc.'s (BASECO) shares of stock constituted ill-gotten wealth. It held that there was *prima facie* showing that Marcos, Sr. owned the shares through nominee directors

and stockholders who executed and delivered to him deeds of assignment signed in blank. This Court held that he acquired the shares by taking undue advantage of his public office and/or using his powers, authority, or influence, and used the same means to take over businesses and assets of government-owned or controlled entities. In upholding the Executive Orders, this Court discussed the governing principles on, and the scope and extent of, ill-gotten wealth:

The impugned executive orders are avowedly meant to carry out the explicit command of the Provisional Constitution, ordained by Proclamation No. 3, that the President — in the exercise of legislative power which she was authorized to continue to wield "(u)ntil a legislature is elected and convened under a new Constitution" — "shall give priority to measures to achieve the mandate of the people," among others to (r)ecover ill-gotten properties amassed by the leaders and supporters of the previous regime and protect the interest of the people through orders of sequestration or freezing of assets or accounts.

b. Executive Order No. 1

Executive Order No. 1 stresses the "urgent need to recover all ill-gotten wealth," and postulates that "vast resources of the government have been amassed by former President Ferdinand E. Marcos, his immediate family, relatives, and close associates both here and abroad." Upon these premises, the Presidential Commission on Good Government was created, "charged with the task of assisting the President in regard to ... (certain specified) matters," among which was precisely —

"... The recovery of all ill-gotten wealth accumulated by former President Ferdinand E. Marcos, his immediate family, relatives, subordinates and close associates, whether located in the Philippines or abroad, including the takeover or sequestration of all business enterprises and entities owned or controlled by them, during his administration, directly or through nominees, by taking undue advantage of their public office and/or using their powers, authority, influence, connections or relationship."

...

c. Executive Order No. 2

Executive Order No. 2 gives additional and more specific data and directions respecting "the recovery of ill-gotten properties amassed by the leaders and supporters of the previous regime." It declares that:

1) "... the Government of the Philippines is in possession of evidence showing that there are assets and properties purportedly pertaining to former Ferdinand E. Marcos, and/or his wife Mrs. Imelda Romualdez Marcos, their close relatives, subordinates, business associates, dummies, agents or nominees which had been or were acquired by them directly or indirectly, through or as a result of the improper or illegal use of funds or properties owned by the government of the Philippines or any of its branches, instrumentalities, enterprises, banks or financial institutions, or by taking undue advantage of their office, authority, influence, connections or relationship, resulting in their unjust enrichment and causing grave damage and prejudice to the Filipino people and the Republic of the Philippines;" and

2) "... said assets and properties are in the form of bank accounts, deposits, trust accounts, shares of stocks, buildings, shopping centers, condominiums, mansions, residences, estates, and other kinds of real and personal properties in the Philippines and in various countries of the world."

Upon these premises, the President —

1) froze "all assets and properties in the Philippines in which former President Marcos and/or his wife, Mrs. Imelda Romualdez Marcos, their close relatives, subordinates, business associates, dummies, agents, or nominees have any interest or participation;"

2) prohibited former President Ferdinand Marcos and/or his wife ..., their close relatives, subordinates,

business associates, dummies, agents, or nominees from transferring, conveying, encumbering, concealing or dissipating said assets or properties in the Philippines and abroad, pending the outcome of appropriate proceedings in the Philippines to determine whether any such assets or properties were acquired by them through or as a result of improper or illegal use of or the conversion of funds belonging to the Government of the Philippines or any of its branches, instrumentalities, enterprises, banks or financial institutions, or by taking undue advantage of their official position, authority, relationship, connection or influence to unjustly enrich themselves at the expense and to the grave damage and prejudice of the Filipino people and the Republic of the Philippines;"

3) prohibited "any person from transferring, conveying, encumbering or otherwise depleting or concealing such assets and properties or from assisting or taking part in their transfer, encumbrance, concealment or dissipation under pain or such penalties as are prescribed by law;" and

4) required "all persons in the Philippines holding such assets or properties, whether located in the Philippines or abroad, in their names as nominees, agents or trustees, to make full disclosure of the same to the Commission on Good Government within thirty (30) days from publication of * (the) Executive Order, ..."

d. Executive Order No. 14

A third executive order is relevant: Executive Order No. 14, by which the PCGG is empowered, "with the assistance of the Office of the Solicitor General and other government agencies, ... to file and prosecute all cases investigated by it ... as may be warranted by its findings." All such cases, whether civil or criminal, are to be filed "with the Sandiganbayan, which shall have exclusive and original jurisdiction thereof." Executive Order No. 14 also pertinently provides that "(c)ivil suits for restitution, reparation of damages, or indemnification for consequential damages, forfeiture proceedings provided for under Republic Act No. 1379, or any other civil actions under the Civil Code or other existing laws, in connection with ... (said Executive Orders Numbered 1 and 2) may be filed separately from and proceed independently of any criminal proceedings and may be proved by a preponderance of evidence;" and that, moreover, the "technical rules of procedure and evidence shall not be strictly applied to ... (said) civil cases."

5. Contemplated Situations

The situations envisaged and sought to be governed are self-evident, these being:

1) that "(i)ll-gotten properties (were) amassed by the leaders and supporters of the previous regime";

a) more particularly, that "(i)ll-gotten wealth (was) accumulated by former President Ferdinand E. Marcos, his immediate family, relatives, subordinates and close associates, ... located in the Philippines or abroad, ... (and) business enterprises and entities (came to be) owned or controlled by them, during ... (the Marcos) administration, directly or through nominees, by taking undue advantage of their public office and/or using their powers, authority, influence, connections or relationship;"

b) otherwise stated, that "there are assets and properties purportedly pertaining to former President Ferdinand E. Marcos, and/or his wife Mrs. Imelda Romualdez Marcos, their close relatives, subordinates, business associates, dummies, agents or nominees which had been or were acquired by them directly or indirectly, through or as a result of the improper or illegal use of funds or properties owned by the Government of the Philippines or any of its branches, instrumentalities, enterprises, banks or financial institutions, or by taking undue advantage of their office, authority, influence, connections or relationship, resulting in their unjust enrichment and causing grave damage and prejudice to the Filipino people and the Republic of the Philippines";

c) that "said assets and properties are in the form of bank accounts, deposits, trust accounts, shares of stocks, buildings, shopping centers, condominiums, mansions, residences, estates, and other kinds of real and personal

properties in the Philippines and in various countries of the world;" and

2) that certain "business enterprises and properties (were) taken over by the government of the Marcos Administration or by entities or persons close to former President Marcos." [783]

Based on the above-discussed provisions, ill-gotten wealth is defined as "assets acquired through or as a result of the improper or illegal use of funds or properties owned by the Government of the Philippines or any of its branches, instrumentalities, enterprises, banks or financial institutions, or by taking undue advantage of their office, authority, influence, connections or relationship, resulting in their unjust enrichment and causing grave damage and prejudice to the Filipino people and the Republic of the Philippines."

Breaking down this definition, the following elements are apparent:

(1)

Assets and properties were acquired;

(2)

They were acquired by Marcos, Sr., Imelda, their close relatives, subordinates, business associates, dummies, agents, or nominees;

(3)

The manner of acquisition was either:

(a)

through or as a result of the improper or illegal use of funds or properties owned by the Government of the Philippines or any of its branches, instrumentalities, enterprises, banks or financial institutions, or

(b)

by taking undue advantage of their office, authority, influence, connections, or relationship;

(4)

The acquisition (a) resulted in the Marcoses' unjust enrichment and (b) caused grave damage and prejudice to the Filipino people and the Republic of the Philippines.

Thus, the subject is the assets and properties. The act is the acquisition of these assets and properties. The persons who acquired may either be Marcos, Sr., Imelda, their close relatives, subordinates, business associates, dummies, agents, or nominees. The manner by which the assets and properties were acquired is either (1) through the improper or illegal use of government funds; or (2) through taking undue advantage of office or authority. The result is (1) the unjust enrichment of those who acquired the properties; and (2) grave damage and prejudice to the Filipino people and the Republic of the Philippines.

It is important to note that in the manner of acquiring the property, the disjunctive word "or" is used in between the phrases "through or as a result of the improper or illegal use of funds or properties owned by the Government of the Philippines or any of its branches, instrumentalities, enterprises, banks or financial institutions" and "by taking undue advantage of their office, authority, influence, connections, or relationship."

The rule is too well-settled to require any citation of authorities that the word "or" is a disjunctive term signifying dissociation and independence of one thing from each of the other things enumerated unless the context requires a different interpretation. While in, the interpretation of statutes, 'or' may read 'and' and vice versa, it is so only when the context so requires. [784]

Thus, there are two ways by which ill-gotten wealth is acquired and one is not associated with the other. The acquisition "by or as a result of the improper or illegal use of government funds or properties" is independent from the acquisition "by taking undue advantage of office, authority, or relationship."

In the second manner of acquiring ill-gotten wealth, it does not state that any Government property is involved. What is necessary is that Marcos, Sr., Imelda, their close relatives, subordinates, business associates, dummies, agents, or nominees acquired assets and properties by taking undue advantage of their office, authority, influence, connections, or relationship, and that this acquisition resulted in their unjust enrichment and caused grave damage and prejudice to the Filipino people and the Republic of the Philippines.

Thus, this Court has determined as ill-gotten wealth several assets and properties that did not originate from the Government.

In *Republic v. Estate of Hans Menzi*,^[785] this Court affirmed the Sandiganbayan's finding that several shares held by Eduardo M. Cojuangco, Jr., Jose Yao Campos, and Cesar Zalamea in Bulletin Publishing Corporation were ill-gotten wealth. This Court found that they acted as dummies of the Marcos spouses in acquiring the shares and transferring them to Hans Menzi Holdings and Management, Inc. to prevent disclosure and recovery of the illegally obtained assets. Even if the Government did not previously own these shares, this Court relied on the definition of ill-gotten wealth under the Presidential Commission on Good Government Rules and Regulations to rule on the matter:

In contrast to Cojuangco's consistent, albeit unsupported, disclaimer, the Sandiganbayan found the Republic's evidence to be preponderant. These pieces of evidence consist of: the affidavit of Quimson detailing how Campos, Cojuangco and Zalamea became Marcos' nominees in Bulletin; the affidavit Teodoro relative to the circumstances surrounding the sale of Menzi's substantial shares in Bulletin to Marcos' nominees and Menzi's retention of only 20% of the corporation; the sworn statement of Gapud describing the business interests and associates of Marcos and stating that Bulletin checks were periodically issued to Campos, Cojuangco and Zalamea but were deposited after indorsement to Security Bank numbered accounts owned by the Marcoses; dividend checks issued to Campos, Cojuangco and Zalamea even after their shares have been transferred to HMMHI; the Certificate of Incorporation, Articles of Incorporation and Amended Articles of Incorporation of HMMHI showing that Bulletin shares held by Campos, Cojuangco and Zalamea were used to set up HMMHI; Deed of Transfer and Conveyance showing that Campos, Cojuangco, Zalamea and Menzi transferred several shares, including Bulletin shares, to HMMHI in exchange for shares of stock in the latter which shares were not issued; the Inventory of Menzi's assets as of May 15, 1985 which does not include Bulletin shares; notes written by Marcos regarding Menzi's resignation as aide-de-camp to devote his time to run Bulletin's operations and the reduction of his shares in the corporation to 12%; and letters and correspondence between Marcos and Menzi regarding the affairs of Bulletin.

These pieces of uncontradicted evidence suffice to establish that the 198 and 214 blocks are indeed ill-gotten wealth as defined under the Rules and Regulations of the PCGG, viz:

Sec. 1. Definition. — (A) "Ill-gotten wealth" is hereby defined as any asset, property, business enterprise or material possession of persons within the purview of Executive Orders Nos. 1 and 2, acquired by them directly, or indirectly through dummies, nominees, agents, subordinates and/or business associates by any of the following means or similar schemes:

- (1) Through misappropriation, conversion, misuse or malversation of public funds or raids on the public treasury;
- (2) Through the receipt, directly or indirectly, of any commission, gift, share, percentage, kickbacks or any other form of pecuniary benefit from any person and/or entity in connection with any government contract or project or by reason of the office or position of the official concerned;

- (3) By the illegal or fraudulent conveyance or disposition of assets belonging to the government or any of its subdivisions, agencies or instrumentalities or government-owned or controlled corporations;
- (4) By obtaining, receiving or accepting directly or indirectly any shares of stock, equity or any other form of interest or participation in any business enterprise or undertaking;
- (5) Through the establishment of agricultural, industrial or commercial monopolies or other combination and/or by the issuance, promulgation and/or implementation of decrees and orders intended to benefit particular persons or special interests; and
- (6) By taking undue advantage of official position, authority, relationship or influence for personal gain or benefit.

Cojuangco's disavowal of any proprietary interest in the Bulletin shares is conclusive upon him. His prayer that he be declared the owner of the said shares, together with all the cash and stock dividends which have accrued thereto since October 15, 1987, and that the PCGG be ordered to return the cash deposit of P8,174,470.32 to Bulletin, therefore, has no legal basis and should perforce be denied.[786]

Likewise, in *Yuchengco v. Sandiganbayan*,^[787] this Court ruled that a block of Philippine Telecommunications Investment Corporation shares registered in the name of Prime Holdings Incorporated was ill-gotten wealth. It found that Prime Holdings Incorporated was a dummy of the Marcoses, as it was completely organized by associates of Jose Yao Campos, who had categorically testified to having organized it for the benefit of Marcos, Sr.

On the basis of the evidence, therefore, President Marcos owned PHI and all the incorporators thereof acted under his direction. Once this is acknowledged, the following conclusions inevitably follow:

1. Cojuangco was elected President and took over the management of PHI in 1981 with the cooperation of the Marcos nominees who, it must be emphasized, still held the majority stockholding as of that date;
2. As the remaining incorporators on the Board divested their shares only in 1983, Cojuangco managed a Marcos-controlled corporation for at least two years;
3. The simultaneous divestment of shares by the three remaining incorporators on the Board to Cojuangco's close relatives in 1983 were with the knowledge and authorization of their principal — President Marcos.

Clearly, all these circumstances mark out Cojuangco either as a nominee of Marcos as was Gapud whom he replaced as President of PHI or, at the very least, a close associate of Marcos. As such, the PCGG which is charged, under E.O. No. 1 issued by President Aquino pursuant to her legislative powers under the Provisional Constitution, with assisting the President in regard to, *inter alia*,

The recovery of all ill-gotten wealth accumulated by former President Ferdinand E. Marcos, his immediate family, relatives, subordinates and close associates, whether located in the Philippines or abroad, including the takeover or sequestration of all business enterprises and entities owned or controlled by them, during his administration, directly or through nominees, by taking undue advantage of their public office and/or using their powers, authority, influence, connections or relationship.

can and must recover for the Republic the 111,415 PTIC shares being held by PHI, they bearing the character of ill-gotten wealth whether they be in the hands of Marcos or those of Cojuangco.[788] (Emphasis in the original)

This Court is aware of its ruling in *Republic v. Sandiganbayan (Cojuangco Case)*,^[789] which sought to recover San Miguel Corporation shares owned by Eduardo M. Cojuangco, Jr. (Cojuangco) for being ill-gotten wealth. The Republic alleged that Cojuangco illegally acquired the shares using coconut levy funds because it borrowed from the United Coconut Planters Bank (UCPB) and obtained advances from the Coconut Industry Investment Fund

Oil Mills. This Court ruled that the Republic failed to establish by preponderance of evidence that the shares were illegally acquired because the Republic did not adduce evidence, and merely relied on claims that the UCPB and the Coconut Industry Investment Fund Oil Mills were public corporations. The Cojuangco Case discussed that ill-gotten wealth assumes a public character and thus must originate first from the Government. It states:

The first official issuance of President Aguino, which was made on February 28, 1986, or just two days after the EDSA Revolution, was Executive Order (E.O.) No. 1, which created the Presidential Commission on Good Government (PCGG). Ostensibly, E.O. No. 1 was the first issuance in light of the EDSA Revolution having come about mainly to address the pillage of the nation's wealth by President Marcos, his family, and cronies.

E.O. No. 1 contained only two WHEREAS Clauses, to wit:

WHEREAS, vast resources of the government have been amassed by former President Ferdinand E. Marcos, his immediate family, relatives, and close associates both here and abroad;

WHEREAS, there is an urgent need to recover all ill-gotten wealth;

Paragraph (4) of E.O. No. 2 further required that the wealth, to be ill-gotten, must be "acquired by them through or as a result of improper or illegal use of or the conversion of funds belonging to the Government of the Philippines or any of its branches, instrumentalities, enterprises, banks or financial institutions, or by taking undue advantage of their official position, authority, relationship, connection or influence to unjustly enrich themselves at the expense and to the grave damage and prejudice of the Filipino people and the Republic of the Philippines."

Although E.O. No. 1 and the other issuances dealing with ill-gotten wealth (i.e., E.O. No. 2, E.O. No. 14, and E.O. No. 14-A) only identified the subject matter of ill-gotten wealth and the persons who could amass ill-gotten wealth and did not include an explicit definition of ill-gotten wealth, we can still discern the meaning and concept of ill-gotten wealth from the WHEREAS Clauses themselves of E.O. No. 1, in that ill-gotten wealth consisted of the "vast resources of the government" amassed by "former President Ferdinand E. Marcos, his immediate family, relatives and close associates both here and abroad." It is clear, therefore, that ill-gotten wealth would not include all the properties of President Marcos, his immediate family, relatives, and close associates but only the part that originated from the "vast resources of the government."

In time and unavoidably, the Supreme Court elaborated on the meaning and concept of ill-gotten wealth. In *Bataan Shipyard & Engineering Co., Inc. v. Presidential Commission on Good Government, or BASECO*, for the sake of brevity, the Court held that:

... until it can be determined, through appropriate judicial proceedings, whether the property was in truth "ill-gotten," i.e., acquired through or as a result of improper or illegal use of or the conversion of funds belonging to the Government or any of its branches, instrumentalities, enterprises, banks or financial institutions, or by taking undue advantage of official position, authority, relationship, connection or influence, resulting in unjust enrichment of the ostensible owner and grave damage and prejudice to the State. And this, too, is the sense in which the term is commonly understood in other jurisdictions.

The BASECO definition of ill-gotten wealth was reiterated in *Presidential Commission on Good Government v. Lucio C. Tan*, where the Court said:

On this point, we find it relevant to define "ill-gotten wealth." In *Bataan Shipyard and Engineering Co., Inc.*, this Court described "ill-gotten wealth" as follows:

"Ill-gotten wealth is that acquired through or as a result of improper or illegal use of or the conversion of funds belonging to the Government or any of its branches, instrumentalities, enterprises, banks or financial institutions, or by taking undue advantage of official position, authority, relationship, connection or influence, resulting in unjust enrichment of the ostensible owner and grave damage and prejudice to the State. And this, too, is the sense in which the term is commonly understood in other jurisdiction."

Concerning respondents' shares of stock here, there is no evidence presented by petitioner that they belong to the Government of the Philippines or any of its branches, instrumentalities, enterprises, banks or financial institutions. Nor is there evidence that respondents, taking undue advantage of their connections or relationship with former President Marcos or his family, relatives and close associates, were able to acquire those shares of stock.

Incidentally, in its 1998 ruling in *Chavez v. Presidential Commission on Good Government*, the Court rendered an identical definition of ill-gotten wealth, viz.:

.... We may also add that 'ill-gotten wealth', by its very nature, assumes a public character. Based on the aforementioned Executive Orders, 'ill-gotten wealth' refers to assets and properties purportedly acquired, directly or indirectly, by former President Marcos, his immediate family, relatives and close associates through or as a result of their improper or illegal use of government funds or properties; or their having taken undue advantage of their public office; or their use of powers, influence or relationships, "resulting in their unjust enrichment and causing grave damage and prejudice to the Filipino people and the Republic of the Philippines." Clearly, the assets and properties referred to supposedly originated from the government itself. To all intents and purposes, therefore, they belong to the people. As such, upon reconveyance they will be returned to the public treasury, subject only to the satisfaction of positive claims of certain persons as may be adjudged by competent courts. Another declared overriding consideration for the expeditious recovery of ill-gotten wealth is that it may be used for national economic recovery.

All these judicial pronouncements demand two concurring elements to be present before assets or properties were considered as ill-gotten wealth, namely: (a) they must have "originated from the government itself," and (b) they must have been taken by former President Marcos, his immediate family, relatives, and close associates by illegal means.[790] (Emphasis in the original)

However, this discussion and the cited cases of *Chavez v. Presidential Commission on Good Government*[791] and *Presidential Commission on Good Government v. Lucio C. Tan*[792] reveal the use of the same definition of ill-gotten wealth: It is "property acquired through or as a result of improper or illegal use of or the conversion of funds belonging to the Government or any of its branches, instrumentalities, enterprises, banks or financial institutions, or by taking undue advantage of official position, authority, relationship, connection or influence, resulting in unjust enrichment of the ostensible owner and grave damage and prejudice to the State."

It still includes the second manner of acquiring ill-gotten wealth of taking undue advantage of official position, authority, relationship, connection, or influence.

The *Cojuangco Case* simply emphasized the first manner of acquiring ill-gotten wealth because the Republic's allegation was that the shares were acquired through or as a result of improper or illegal use of or the conversion of funds belonging to the Government, i.e., coco levy funds.

The dissents in the *Cojuangco Case* likewise use the same definition of ill-gotten wealth. Though Justice Conchita Carpio-Morales's discussion was also limited to the first manner of accumulating ill-gotten wealth, she noted that further legislation and jurisprudence have expanded the definition of ill-gotten wealth:

E.O. No. 2 describes ill-gotten assets as, inter alia, shares of stock acquired through or as a result of the improper or illegal use of or the conversion of funds or properties owned by the Government or its branches, instrumentalities, enterprises, banks or financial institutions.

The scope of inquiry on ill-gotten shares of stock is not restricted to those that were personally "acquired through" public funds in the form of a simple direct purchase which, crude and unsophisticated it may seem, is illegal per se. Having conceivably taken into account the ingenious and "organized pillage" perpetrated by the Marcos regime, E.O. No. 2 saw it fit to include those that were "acquired as a result of the improper or illegal use of" use of public funds. Notably, E.O. No. 2 covers acquisitions resulting not only from illegal use but also

from improper use of public funds or properties, not to mention conversion thereof.

That the law includes funds from government banks and financial institutions bolsters this conclusion and readily negates respondents' vivid illustrations of bank loan transactions.

Respondents' position only attempts to explain that the subject SMC shares were not directly acquired through public funds, but it does not negate the other modes of acquisition (i.e., acquired as a result of the improper or illegal use or conversion of public funds) which could take on several forms.

"Ill-gotten wealth" is hereby defined as any asset, property, business enterprise or material possession of persons within the purview of Executive Orders Nos. 1 and 2, acquired by them directly, or indirectly through dummies, nominees, agents, subordinates and/or business associates by any of the following means or similar schemes:

(1) Through misappropriation, conversion, misuse or malversation of public funds or raids on the public treasury;

(2) Through the receipt, directly or indirectly, of any commission, gift, share, percentage, kickbacks or any other form of pecuniary benefit from any person and/or entity in connection with any government contract or project or by reason of the office or position of the official concerned.

(3) By the illegal or fraudulent conveyance or disposition of assets belonging to the government or any of its subdivisions, agencies or instrumentalities or government-owned or controlled corporations;

(4) By obtaining, receiving or accepting directly or indirectly any shares of stock, equity or any other form of interest or participation in any business enterprise or undertaking;

(5) Through the establishment of agricultural, industrial or commercial monopolies or other combination and/or by the issuance, promulgation and/or implementation of decrees and orders intended to benefit particular persons or special interests; and

(6) By taking undue advantage of official position, authority, relationship or influence for personal gain or benefit.

The act of respondents in employing the instrumentality of a loan transaction and exploiting the legal import thereof does not thus save the day for them, so to speak. The defense's thesis shatters in the context of ill-gotten wealth cases.

The majority holds that ill-gotten wealth must be acquired or taken through "illegal means" only. This limited restatement of the elements and modes of acquiring ill-gotten wealth goes against the expanded and developed nature and dynamics of ill-gotten wealth as legally defined above and which was quoted and applied in the *Hans Menzi* case.

Interestingly, the majority cites the same basic document of Executive Order No. 2 (March 12, 1986) which, in fact, expressly recognizes that acquisitions of ill-gotten wealth may result from either an illegal or improper use or conversion of public funds.

The Court, nonetheless, discusses in no uncertain terms, the series of legal provisions and rules vis-à-vis the acts and omissions of *Cojuangco, et al.* in concluding the presence of illegal means of acquisition, in the succeeding portions.[793] (Emphasis in the original)

The dissent of Associate Justice Arturo Brion in the *Cojuangco* Case also broke down the provision, as follows:

EO No. 1, in relation with EO Nos. 2, 14 and 14-A, is another law that authorizes the government to recover ill-gotten wealth. A recovery action under EO No. 1 requires:

(1) a subject defendant, which refers to the former President Ferdinand E. Marcos, his immediate family,

relatives, subordinates and close associates.

(2) an object or the ill-gotten wealth, which refers to assets and properties (in the form of bank accounts, deposits, trust accounts, shares of stocks, buildings, shopping centers, condominium, mansions, residences, estates, and other kinds of real and personal properties in the Philippines and in various countries) belonging to the defendants. This can include business enterprises and associations owned or controlled by the defendants, during the Marcos administration, directly or through nominees;

(3) the mode of acquisition, through which the ill-gotten wealth was acquired, directly or indirectly,
(a) through or as a result of the improper or illegal use of or conversion of funds or properties owned by the Government of the Philippines or any of its branches, instrumentalities, enterprises, banks or financial institutions, or

(b) by taking undue advantage of their office, authority, influence, connections or relationship.

(4) prejudice to the government, as the act/s of the defendant/s result in their unjust enrichment and causing grave damage to the Filipino people and the Republic of the Philippines.

RA No. 1379 and EO No. 1 differ in two respects: (1) in the subjects or the persons covered, and (2) in the object sought to be forfeited or recovered. While RA No. 1379 broadly covers all public officers, EO No. 1 is confined to President Marcos, his immediate family, relatives, subordinates and close associates. Unlike EO No. 1, RA No. 1379 is not concerned with the manner of acquisition of the unlawfully acquired property. Despite these differences, both laws provide basis for the recovery or forfeiture of properties that rightfully belong to the State.

A reading of the complaint shows that the Republic's action for recovery under EO No. 1 of the Cojuangco block of SMC shares was premised on Cojuangco's act of supposedly taking undue advantage of official position or authority, resulting in his unjust enrichment and grave damage and prejudice to the State. Thus, it was crucial for the Republic to prove that, at the time the subject shares were acquired, Cojuangco occupied an official position.[794] (Emphasis in the original)

The conclusion that ill-gotten wealth must originate from the Government is based only on the whereas clause of Executive Order No. 1. However, as earlier stated, Executive Order No. 2, the Presidential Commission on Good Government Rules and Regulations, and several cases have expanded the definition such that it also includes other means by which ill-gotten wealth is acquired. Furthermore, whereas clauses of laws cannot "be used as basis for giving it a meaning not apparent on its face. A preamble or explanatory note is resorted to only for clarification in cases of doubt." [795] In this case, the provisions of Executive Order Nos. 1 and 2, the Presidential Commission on Good Government Rules and Regulations, and several cases are clear: Ill-gotten wealth may be acquired by taking undue advantage of their office, authority, influence, connections, or relationship.

As it is, if the assets and properties were found to be ill-gotten, it is the government who will recover the property and it will be returned to the public treasury. Tan et al. argue that it is absurd for the government to seek reconveyance of a property that it did not originally own.[796]

However, this ignores the nature of the subject assets and properties accumulated by Marcos, Sr. through the abuse of his power. It ignores the circumstance that had Marcos, Sr. not been President at that time, he and his cronies would not have been able to acquire these assets and properties. Marcos, Sr. was able to acquire the wealth because of his public office. Thus, while some of the properties did not originally come from government coffers, it came about because of the power Marcos, Sr. held and abused as Chief Executive of the Republic.

The argument that only government property may be recovered in ill-gotten wealth cases ignores the circumstance that Marcos, Sr. used complex schemes to acquire wealth, and it was not limited to simply taking money from the

coffers of the Government.[797]

E.O. 1, 2, 14 and 14-A, it bears to stress, were issued precisely to effect the recovery of ill-gotten assets amassed by the Marcoses, their associates, subordinates and cronies, or through their nominees. Be that as it may, it stands to reason that persons listed as associated with the Marcoses refer to those in possession of such ill-gotten wealth but holding the same in behalf of the actual, albeit undisclosed owner, to prevent discovery and consequently recovery. Certainly, it is well-nigh inconceivable that ill-gotten assets would be distributed to and left in the hands of individuals or entities with obvious traceable connections to Mr. Marcos and his cronies. The Court can take, as it has in fact taken, judicial notice of schemes and machinations that have been put in place to keep ill-gotten assets under wraps. These would include the setting up of layers after layers of shell or dummy, but controlled, corporations or manipulated instruments calculated to confuse if not altogether mislead would-be investigators from recovering wealth deceitfully amassed at the expense of the people or simply the fruits thereof. Transferring the illegal assets to third parties not readily perceived as Marcos cronies would be another. So it was that in *PCGG v. Pena*, the Court, describing the rule of Marcos as a "well entrenched plundering regime of twenty years," noted the magnitude of the past regime's organized pillage and the ingenuity of the plunderers and pillagers with the assistance of experts and the best legal minds in the market.[798]

The argument likewise refuses to recognize that recovery of ill-gotten wealth by the Government is beneficial to the public. As stated in *Chavez v. Presidential Commission on Good Government*, the recovered funds may be used for national economic recovery. Thus, in Republic Act No. 10368,[799] amounts adjudged in Republic vs. Sandiganbayan[800] as Marcos ill-gotten wealth and forfeited in favor of the Republic were used as the principal source of funds for the reparation of human rights victims during the Marcos regime:

SECTION 7. Source of Reparation. — The amount of Ten billion pesos (P10,000,000,000.00) plus accrued interest which form part of the funds transferred to the government of the Republic of the Philippines by virtue of the December 10, 1997 Order of the Swiss Federal Supreme Court. adjudged by the Supreme Court of the Philippines as final and executory in Republic vs. Sandiganbayan on July 15, 2003 (G.R. No. 152154) as Marcos ill-gotten wealth and forfeited in favor of the Republic of the Philippines, shall be the principal source of funds for the implementation of this Act.

Furthermore, it is not unusual for the Government to forfeit assets and properties that are proceeds or are used as means of committing illegal acts, whether or not the property previously belonged to the Government. Thus, in Article 45 of the Revised Penal Code, the proceeds of the crime and the instruments or tools with which it was committed are forfeited in favor of the Government if they are not properties of a third person:

ARTICLE 45. Confiscation and Forfeiture of the Proceeds or Instruments of the Crime. — Every penalty imposed for the commission of a felony shall carry with it the forfeiture of the proceeds of the crime and the instruments or tools with which it was committed.

Such proceeds and instruments or tools shall be confiscated and forfeited in favor of the Government, unless they be the property of a third person not liable for the offense, but those articles which are not subject of lawful commerce shall be destroyed.

In Republic Act No. 1379,[801] property acquired by a public officer or employee that is manifestly out of proportion to his or her salary as a public officer or employee, to other lawful income, and to the income from legitimately acquired property may be forfeited in favor of the State, regardless of whether the property originated from the Government.

SECTION 2. Filing of petition. — Whenever any public officer or employee has acquired during his incumbency an amount of property which is manifestly out of proportion to his salary as such public officer or employee and to his other lawful income and the income from legitimately acquired property, said property

shall be presumed *prima facie* to have been unlawfully acquired.

SECTION 6. Judgment. — If the respondent 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: Provided, That no judgment shall be rendered within six months before any general election or within three months before any special election. The Court may, in addition, refer this case to the corresponding Executive Department for administrative or criminal action, or both.

A similar provision is found in Republic Act No. 3019,[802] in case of a violation of its provisions:

SECTION 9. Penalties for violations. — (a) Any public officer or private person committing any of the unlawful acts or omissions enumerated in Sections 3, 4, 5 and 6 of this Act shall be punished with imprisonment for not less than one year nor more than ten years, perpetual disqualification from public office, and confiscation or forfeiture in favor of the Government of any prohibited interest and unexplained wealth manifestly out of proportion to his salary and other lawful income.

Any complaining party at whose complaint the criminal prosecution was initiated shall, in case of conviction of the accused, be entitled to recover in the criminal action with priority over the forfeiture in favor of the Government, the amount of money or the thing he may have given to the accused, or the value of such thing...

It is thus absurd to not allow the Republic to forfeit in its favor ill-gotten wealth accumulated by Marcos, Sr., especially when as stated, it is in our political history that Marcos, Sr., with his family, relatives, and other associates, resorted to various schemes to illegally acquire or misappropriate this wealth. Thus, this Court holds that ill-gotten wealth need not originate from the vast resources of the Government.

To summarize, ill-gotten wealth includes not only assets and properties that originated from the Government. It also includes those acquired by Marcos, Sr., Imelda, their close relatives, subordinates, business associates, dummies, agents, or nominees by taking advantage of their office, authority, influence, connections, or relationships, regardless of the assets' or properties' origins. The four elements to determine whether a piece of property is ill-gotten wealth are:

First, assets and properties were acquired;

Second, they were acquired by Marcos, Sr., Imelda, their close relatives, subordinates, business associates, dummies, agents, or nominees;

Third, the manner of acquisition was either:

(a) through or as a result of the improper or illegal use of funds or properties owned by the Government of the Philippines or any of its branches, instrumentalities, enterprises, banks or financial institutions, or

(b) by taking undue advantage of their office, authority, influence, connections or relationship; and,

Fourth, the acquisition (a) resulted in their unjust enrichment and (b) caused grave damage and prejudice to the Filipino people and the Republic of the Philippines.

IV(A)

To sufficiently prove that a particular asset or property is ill-gotten wealth, there must be a showing that it is so by a preponderance of evidence. Executive Order No. 14-A[803] provides:

SECTION 3. The civil suits to recover unlawfully acquired property under Republic Act No. 1379 or for restitution, reparation of damages, or indemnification for consequential and other damages or any other civil actions under the Civil Code or other existing laws filed with the Sandiganbayan against Ferdinand E. Marcos,

Imelda R. Marcos, members of their immediate family, close relatives, subordinates, close and/or business associates, dummies, agents and nominees, may proceed independently of any criminal proceedings and may be proved by a preponderance of evidence. (Emphasis supplied)

Preponderance of evidence means that parties must show that, as opposed to the evidence of the other party, their evidence has more weight or is more credible. In *Republic v. Estate of Hans Menzi*:^[804]

It is procedurally required for each party in a case to prove his own affirmative allegations by the degree of evidence required by law. In civil cases such as this one, the degree of evidence required of a party in order to support his claim is preponderance of evidence, or that evidence adduced by one party which is more conclusive and credible than that of the other party. It is therefore incumbent upon the plaintiff who is claiming a right to prove his case. Corollarily, the defendant must likewise prove its own allegations to buttress its claim that it is not liable.

The party who alleges a fact has the burden of proving it. The burden of proof may be on the plaintiff or the defendant. It is on the defendant if he alleges an affirmative defense which is not a denial of an essential ingredient in the plaintiff's cause of action, but is one which, if established, will be a good defense — i.e., an "avoidance" of the claim.^[805] (Citations omitted)

The rationale for the requirement of proving the allegations by preponderance of evidence is to protect and accord respect to the fundamental rights of property and free enterprise. In *Bataan Shipyard*:^[806]

There can be no debate about the validity and eminent propriety of the Government's plan "to recover all ill-gotten wealth."

Neither can there be any debate about the proposition that assuming the above described factual premises of the Executive Orders and Proclamation No. 3 to be true, to be amassed demonstrable by competent evidence, the recovery from Marcos, his family and his minions of the assets and properties involved, is not only a right but a duty on the part of Government.

But however plain and valid that right and duty may be, still a balance must be sought with the equally compelling necessity that a proper respect be accorded and adequate protection assured, the fundamental rights of private property and free enterprise which are deemed pillars of a free society such as ours, and to which all members of that society may without exception lay claim.

"... Democracy, as a way of life enshrined in the Constitution, embraces as its necessary components freedom of conscience, freedom of expression, and freedom in the pursuit of happiness. Along with these freedoms are included economic freedom and freedom of enterprise within reasonable bounds and under proper control. ... Evincing much concern for the protection of property, the Constitution distinctly recognizes the preferred position which real estate has occupied in law for ages. Property is bound up with every aspect of social life in a democracy as democracy is conceived in the Constitution. The Constitution realizes the indispensable role which property, owned in reasonable quantities and used legitimately, plays in the stimulation to economic effort and the formation and growth of a solid social middle class that is said to be the bulwark of democracy and the backbone of every progressive and happy country."^[807] (Emphasis in the original)

Thus, proof beyond reasonable doubt is not needed to show that the properties are ill-gotten wealth. It is sufficient that the Sandiganbayan weigh the evidence of the parties and determine using common human experience which of their theories is more credible.^[808]

In weighing the evidence presented by the parties, the Presidential Commission on Good Government Rules and Regulations^[809] provide that there is prima facie evidence that wealth is ill-gotten if there is an accumulation of assets and properties—the value of which is disproportionate to their known lawful income:

SECTION 9. Prima facie evidence. — Any accumulation of assets, properties, and other material possessions of

those persons covered by Executive Orders Nos. 1 and 2, whose value is out of proportion to their known lawful income is prima facie deemed ill-gotten wealth.

"The term prima facie evidence denotes evidence which, if unexplained or uncontradicted, is sufficient to sustain the proposition it supports or to establish the facts. Prima facie means it is 'sufficient to establish a fact or raise a presumption unless disproved or rebutted.'"[810]

In this case, the Sandiganbayan found that the Republic failed to prove that the subject assets and properties were ill-gotten because there was no showing that the wealth acquired by Tan originated from the vast resources of the Government.

Generally, this Court accords respect and finality to the factual findings of lower courts, and thus, in Rule 45 petitions, it does not entertain questions of fact or issues which call for the examination of evidence. However, in *Medina v. Mayor Asistio, Jr.*,^[811] this Court enumerated the exceptions to the rule:

It is a well-settled rule in this jurisdiction that only questions of law may be raised in a petition for certiorari under Rule 45 of the Rules of Court, this Court being bound by the findings of fact made by the Court of Appeals. The rule, however, is not without exception. Thus, findings of fact by the Court of Appeals may be passed upon and reviewed by this Court in the following instances, none of which obtain in the instant petition:

(1) When the conclusion is a finding grounded entirely on speculation, surmises or conjectures; (2) When the inference made is manifestly mistaken, absurd or impossible; (3) Where there is a grave abuse of discretion; (4) When the judgment is based on a misapprehension of facts; (5) When the findings of fact are conflicting; (6) When the Court of Appeals, in making its findings, went beyond the issues of the case and the same is contrary to the admissions of both appellant and appellee; (7) The findings of the Court of Appeals are contrary to those of the trial court; (8) When the findings of fact are conclusions without citation of specific evidence on which they are based; (9) When the facts set forth in the petition as well as in the petitioners' main and reply briefs are not disputed by the respondents; and (10) The finding of fact of the Court of Appeals is premised on the supposed absence of evidence and is contradicted by the evidence on record.^[812] (Citations omitted)

Considering that the Sandiganbayan's ruling is based on its conclusion that the properties acquired must always originate from the Government to be deemed ill-gotten wealth, it no longer looked into whether the evidence presented by the Republic was sufficient to show that the subject assets and properties were acquired by Tan et al. by taking undue advantage of their office, authority, influence, connections, or relationship.

It is thus necessary to determine whether there was sufficient evidence to support the Republic's claim that the subject assets and properties were ill-gotten wealth based on the second manner of acquisition.

After a review of the submissions of the parties, I agree that the Republic failed to prove that most of the assets and properties sought to be reverted were ill-gotten. A bulk of the evidence presented by the Republic were either inadmissible or lacking in probative value; hence, they are insufficient to prove that the assets and properties subject of this case were acquired by Tan et al. by taking advantage of their connections with the Marcos family.

However, I join Associate Justice Caguioa in finding that the Republic sufficiently established that Tan was able to secure a brewery license for Asia Brewery by taking undue advantage of his connections with the Marcoses.^[813]

A piece of evidence is considered admissible when it is relevant to the issue and is not excluded by the Constitution, the law, or the Rules of Court.^[814] Relevance is such relation to the fact in issue as to induce belief in its existence or nonexistence^[815] and, therefore, is a matter of logic and common sense.^[816] If the evidence presented has no relation whatsoever to the fact sought to be established, it is inadmissible and cannot be considered by the court in deciding the case.

Apart from relevance, admissibility requires competence. Competent evidence are those not excluded by the law and the Rules.

The rules on admissibility depend on the type of evidence presented. In general, object[817] and documentary[818] evidence must be authenticated and vouched for by a witness as proof of the fact claimed to be true. Object evidence is authenticated by a witness who testifies on it being the very object involved in the case.

For documentary evidence, or those the contents of which are the subject of the inquiry, their original must be presented in evidence so as not to be excluded. Formerly called the best evidence rule, the original document rule[819] is required to prevent any mistransmissions or inaccuracies that may be reflected by a mere copy or reproduction of the evidence sought to be entered.[820] The rule ensures that the exact contents of the document are brought before the court.[821]

In addition, for private documents, those who may have seen the document executed or written must be presented in court.[822] Without this authentication, the written statement remains hearsay,[823] hence, inadmissible.

As for testimonial evidence, or those offered to prove the truth of a statement, the witness must have personal knowledge of the matters he or she testifies on.[824] Lack of personal knowledge renders the testimony hearsay and, again, inadmissible in evidence.

Hearsay evidence is excluded because it is neither given under oath or solemn affirmation nor it is subjected to cross-examination by the opposing counsel:

The personal knowledge of a witness is a substantive prerequisite for accepting testimonial evidence that establishes the truth of a disputed fact. A witness bereft of personal knowledge of the disputed fact cannot be called upon for that purpose because her testimony derives its value not from the credit accorded to her as a witness presently testifying but from the veracity and competency of the extrajudicial source of her information.

In case a witness is permitted to testify based on what she has heard another person say about the facts in dispute, the person from whom the witness derived the information on the facts in dispute is not in court and under oath to be examined and cross-examined. The weight of such testimony then depends not upon the veracity of the witness but upon the veracity of the other person giving the information to the witness without oath. The information cannot be tested because the declarant is not standing in court as a witness and cannot, therefore, be cross-examined.

It is apparent, too, that a person who relates a hearsay is not obliged to enter into any particular, to answer any question, to solve any difficulties, to reconcile any contradictions, to explain any obscurities, to remove any ambiguities; and that she entrenches herself in the simple assertion that she was told so, and leaves the burden entirely upon the dead or absent author. Thus, the rule against hearsay testimony rests mainly on the ground that there was no opportunity to cross-examine the declarant. The testimony may have been given under oath and before a court of justice, but if it is offered against a party who is afforded no opportunity to cross-examine the witness, it is hearsay just the same.

Moreover, the theory of the hearsay rule is that when a human utterance is offered as evidence of the truth of the fact asserted, the credit of the assertor becomes the basis of inference, and, therefore, the assertion can be received as evidence only when made on the witness stand, subject to the test of cross-examination....

Section 36, Rule 130 of the Rules of Court is understandably not the only rule that explains why testimony that is hearsay should be excluded from consideration. Excluding hearsay also aims to preserve the right of the opposing party to cross-examine the original declarant claiming to have a direct knowledge of the transaction or occurrence. If hearsay is allowed, the right stands to be denied because the declarant is not in court. It is then to be stressed that the right to cross-examine the adverse party's witness, being the only means of testing the

credibility of witnesses and their testimonies, is essential to the administration of justice.

....

We thus stress that the rule excluding hearsay as evidence is based upon serious concerns about the trustworthiness and reliability of hearsay evidence due to its not being given under oath or solemn affirmation and due to its not being subjected to cross-examination by the opposing counsel to test the perception, memory, veracity and articulateness of the out-of-court declarant or actor upon whose reliability the worth of the out-of-court statement depends.[825]

Nevertheless, the rules on admissibility have exceptions. Instead of the original document, secondary evidence may be introduced so long as the basis for their production are laid.[826] Hearsay testimony may likewise be admitted if they fall within any of the exceptions enumerated in Rule 130, Sections 38 to 50[827] of the Rules of Court, as amended.

That a piece of evidence is admissible does not automatically mean it has probative value. Admissibility refers to whether a piece of evidence may be considered by the courts in the first place.[828] Probative value, meanwhile, deals with whether a piece of evidence already admitted proves an issue.[829]

Taking the foregoing principles in mind, we begin to examine each of the parties' respective evidence.

The Republic's theory is that Marcos, Sr., Imelda, and Tan used the following schemes to unjustly enrich themselves:[830]

(1) the liquidation of GenBank and the acquisition of its assets by Tan through Allied Bank without sufficient collateral and consideration;[831]

(2) Tan's delivery to Marcos, Sr. and Imelda of substantial beneficial interest in shares of stock in Asia Brewery beginning July 1977 in exchange for concessions and privileges for his business ventures;[832]

(3) Tan's delivery of improper gifts, bribes, concessions, and/or guaranteed "dividends" to Marcos, Sr. and Imelda in various sums in consideration of their continued support for and/or their ownership of interests in his business ventures. The amounts are as follows:[833]

Year

Amount in PHP

1975

11 million

1977

2 million

1979

44 million

1980

10 million

1981

10 million

1982

20 million

1983

40 million

1984

40 million

1985

50 million

1986

50 million

(4) the establishment of Shareholdings, Inc. to allegedly prevent the disclosure and recovery of their illegally obtained assets.[834] The Republic alleged that Shareholdings, Inc. beneficially held and/or controlled substantial shares of stock in Fortune Tobacco, Asia Brewery, Foremost Farms, Himmel Industries, Silangan, Holdings, and Allied Bank.[835] Tan et al. allegedly transferred to Shareholdings, Inc. their dummy shares to these corporations and to Grandspan Development Corp. and Silangan Holdings;[836]

(5) the selling of Development Bank's controlling interest in Century Park, owned by Maranaw Hotels, to Sipalay Trading. The Republic alleged that this sale caused losses in millions to Development Bank because Sipalay Trading was a grossly undercapitalized company controlled by Tan;[837]

(6) the printing of Bureau of Internal Revenue strips stamps worth billions of pesos without legal authority, and its affixing on packs of cigarettes produced by Fortune Tobacco, in violation of Section 189 of the Internal Revenue Code of 1977. This allegedly defrauded the Republic and the Filipino of billions of pesos in tax receipts;[838] and

(7) the establishment of Northern Redrying, a Virginia tobacco company, which, on several instances, imported and purchased tobacco beyond the ceilings allowed by law.[839]

The Republic primarily relies on the following evidence to substantiate these claims: (1) Imelda's Amended Answer; (2) Tan's Written Disclosure; (3) Marcos, Jr.'s testimony; (4) Gapud's Sworn Statement; and (5) voluminous documentary evidence found by the Presidential Commission on Good Government in its investigations.

IV(A)(1)

When the Republic filed its Second Amended Complaint on September 13, 1991, Imelda filed her Answer with Counterclaim on September 6, 1995.[840] On November 20, 2001, Imelda filed a Motion for Leave to File Amended Answer with Counterclaim and Compulsory Cross-claim.[841] In addition to her previous defenses in her Answer with Counterclaim, she alleged in her Compulsory Cross-claim that Marcos, Sr. had 60% beneficial ownership in several of Tan's companies.[842] She stated:

42. Way before and continuing through 1985, former President Ferdinand E. Marcos (FM) had beneficial ownership, together with defendant Lucio C. Tan ("LT"), his family and associates, in the following operating companies, as well as the subsidiaries and companies which these operating companies have acquired or in turn invested in, to wit:

1. Himmel Industries, Inc.

2. Fortune Tobacco Corp.
3. Foremost Farms, Inc.
4. Asia Brewery, Inc.
5. Grandspan Development Corp.
6. Silangan Holdings, Inc.
7. Dominion Realty and Construction Corp.

43. FM had a sixty percent (60%) beneficial ownership in said companies, which beneficial interests were held in trust by LT personally and through his family members and business associates who appeared as the recorded stockholders of said companies.[843]

She likewise alleged that Marcos, Sr. and Tan consolidated their interests in the companies in Shareholdings, Inc.:

44. Sometime in late 1980, FM and LT agreed to consolidate their ownership interests in the various businesses in one holding company organized under the name Shareholdings, Inc.

44.1 To implement such consolidation, the record (or nominee) stock holders of the above-named seven (7) operating companies transferred their stockholdings in said companies to defendant Shareholdings, Inc. through separate Deeds of Sale of Shares of Stock.

44.2 In consideration, and in exchange, for such transfer of shares of the operating companies, Shareholdings, Inc. in turn, issued its shares of stock to the record (nominee) stockholders of the above-named operating companies.

44.3 In fine, the transferring record (nominee) stockholders of the operating companies became likewise the record (nominee) stockholders of the holding company, Shareholdings, Inc.[844]

Imelda also narrated that Marcos, Sr. and Tan divided their ownership, with Marcos, Sr. holding 60% and Tan holding 40%:

45. Having achieved the consolidation of their beneficial ownership interests, through the organization of the holding company, Shareholdings, Inc., FM and LT then agreed to structure the segregation of their beneficial ownership interests in the proportion of sixty (60%) for FM and forty percent (40%) for LT.

45.1 For this purpose, three ultimate holding companies were organized, in the middle of 1984: Basic Holdings Corp. ("Basic"), Supreme Holdings, Inc. ("Supreme") and Falcon Holdings Corp. ("Falcon"), with the intention of having Basic as the record owner of the beneficial interests of LT and his group (40%) and Supreme and Falcon, as the record owners of the aggregate beneficial interests of FM (60%).

45.2 In express acknowledgment of the fact that they merely held their recorded interest in Shareholdings, Inc. in trust for FM and LT, in the ratio of 60% - 40% respectively, the record (nominee) stockholders of Shareholdings, Inc. then assigned their stockholdings in Shareholdings, Inc. to the newly organized ultimate holding companies as follows:

Stockholders

No. of Shares

% of Holdings

Basic Holdings, Corp.

61,617,500

49%

Supreme Holdings, Inc.

31,437,500

25%

Falcon Holdings, Corp.

31,437,500

25%

Lucio C. Tan

628,750

0.5%

Mariano [Tan Eng Lian]

628,750

0.5%

TOTAL

125,750,000

100%

45.4 To make the shareholdings of Basic conform to the agreed 60%-40% ratio, Basic executed a Deed of Sale of Shares of Stock in favor of Supreme, transferring 9% of Shareholdings, Inc. shares held by the former in favor of the latter.

45.5 After Basic transferred 9% of its 49% stock ownership in Shareholdings Inc., the stock ownership in Shareholdings, Inc. became as follows:[845]

Stockholders

No. of Shares

% of Holdings

Basic Holdings, Corp.

50,300,000

40%

Supreme Holdings, Inc.

42,755,500

34%

Falcon Holdings, Corp.

31,437,500

25%

Lucio C. Tan

628,750

0.5%

Mariano [Tan Eng Lian]

628,750

0.5%

TOTAL

125,750,000

100%

Imelda explained that the incorporators who held the shares of Marcos, Sr. executed and delivered to him blank deeds of assignment:

46. In express recognition of the beneficial ownership of FM, the incorporators of both Falcon and Supreme executed and delivered to FM blank Deeds of Assignment.

47. The assignment by the defendants-record stockholders of Shareholdings, Inc. of sixty percent (60%) of that company's then outstanding capital stock to Falcon and Supreme which are, in turn, beneficially owned entirely by FM, is an express acknowledgment by such defendants, including defendant LT, that they held such interests in trust for, and for the benefit of FM.

48. Defendant Imelda R. Marcos as surviving spouse and heir of FM and the Estate of Ferdinand E. Marcos the latter being the Legal successor-in-interest of FM, repeatedly demanded from defendant LT and the other defendants-record stockholders of Shareholdings, Inc. that they perform or enforce the trust by delivering and recording the ownership of sixty percent (60%) of Shareholdings, Inc.'s outstanding capital stock to defendant Estate of Ferdinand E. Marcos thru Falcon and Supreme, in accordance with the Deeds of Assignment.

49. Despite and notwithstanding such repeated demands, defendants LT and record (nominee) stockholders of Shareholdings, Inc. failed and refused to comply with said demands.[846]

The Sandiganbayan, in its Resolution dated June 20, 2002, denied Imelda's Motion to Admit Amended Answer with Cross-claim.[847] It found that Imelda's Cross-claim was premised on an independent and distinct claim against Tan et al. and that she may pursue these claims in a separate proceeding in the Regional Trial Court.[848] It found that she failed to allege that her Cross-claim arises out of the transaction that is the subject matter of the Complaint.[849] Furthermore, the Sandiganbayan has no jurisdiction over her Cross-claim because the case is limited to the forfeiture and recovery of ill-gotten wealth.[850] It was also filed more than 14 years after the Complaint. The denial by Sandiganbayan was affirmed by this Court through a March 17, 2003 Minute Resolution in *Imelda R. Marcos v. Lucio C Tan, et al.*[851]

Considering that it was not admitted, the Amended Answer with Cross-claim is deemed to not have been filed. It cannot be considered a judicial admission[852] that dispenses with proof, but as an extrajudicial admission[853] that had to be formally offered to be admitted in evidence. In *Ching v. Court of Appeals*: [854]

In an order dated 19 November 1993, the RTC-Manila, Branch 53, admitted the amended complaint. Accordingly, with the lower court's admission of the amended complaint, the judicial admission made in the original complaint was, in effect, superseded.

Under the Rules, pleadings superseded or amended disappear from the record, lose their status as pleadings and cease to be judicial admissions. While they may nonetheless be utilized against the pleader as extrajudicial admissions, they must, in order to have such effect, be formally offered in evidence. If not offered in evidence, the admission contained therein will not be considered.

Consequently, the original complaint, having been amended, lost its character as a judicial admission, which would have required no proof, and became merely an extrajudicial admission, the admissibility of which, as evidence, required its formal offer.[855]

The Republic formally offered in evidence the Amended Answer with Cross-claim.[856] Imelda's statements thus may be deemed admissions against her interest.[857] However, it can only bind Imelda. It cannot be used against Tan et al. under the *res inter alios acta* rule. Under Rule 130, Section 28 of the Rules of Court:

SECTION 28. Admission by third party. — The rights of a party cannot be prejudiced by an act, declaration, or omission of another, except as hereinafter provided.

In *People v. Vda. de Ramos*: [858]

The *res inter [alios] acta* rule provides that the rights of a party cannot be prejudiced by an act, declaration, or omission of another. Consequently, an extrajudicial confession is binding only upon the confessant and is not admissible against his co-accused. The reason for the rule is that, on a principle of good faith and mutual convenience, a man's own acts are binding upon himself, and are evidence against him. So are his conduct and declarations. Yet it would not only be rightly inconvenient, but also manifestly unjust, that a man should be bound by the acts of mere unauthorized strangers; and if a party ought not to be bound by the acts of strangers, neither ought their acts or conduct be used as evidence against him.[859]

The relevant exceptions to the *res inter alios acta* rule are provided in Sections 29 (admission by copartner or agent), [860] 30 (admission by conspirator), [861] and 31 (admission by privies) [862] of Rule 130 of the Rules of Court, [863] none of which apply in this case. There is no independent proof of conspiracy or partnership or agency between Imelda and Tan et al. Lastly, there was no privity of estate, denoting a succession in rights, between Imelda and Tan et al. As such, her extrajudicial statements in the Amended Answer with Cross-claim cannot be used against Tan et al.

As the statements relevant herein involve those made by Imelda, Section 29 of Rule 130 of the Rules of Court cannot apply as there was no partnership or agency between her and Tan, et al. The alleged business relationship at issue in this case is that between Marcos and Tan, et al. Neither does Section 31 of Rule 130 of the Rules of Court apply, as there is no privity of estate, denoting a succession in rights, 40 between Imelda and Tan, et al.

On the other hand, for the statements to be treated as admissions by conspirator under Section 30 of Rule 130 of the Rules of Court, the requisites laid down by this Court in the case of *Estrada v. Office of the Ombudsman* can give guidance:

In order that the admission of a conspirator may be received as evidence against his co-conspirator, it is necessary that first, the conspiracy be first proved by evidence other than the admission itself; second, the admission relates to the common object; and third, it has been made while the declarant was engaged in carrying out the conspiracy.

Following the pronouncement in the *Estrada* case, even if we assume that the first and second requisites are present, the third requisite cannot be established in this case. Imelda made the statements in 2001 when the Amended Answer was filed, while the alleged schemes happened approximately within the period of years 1975 to 1986. Imelda did not make the declarations while engaged in carrying out the conspiracy. Therefore, her statements cannot be used against Tan, et al. as admissions of a conspirator.[864]

For these reasons, the statement of Imelda in the Amended Answer with Cross-claim cannot be evidence of Tan et al.'s use of their connections with Marcos, Sr. to amass ill-gotten wealth.

IV(A)(2)

The Republic thus relies on Tan's Written Disclosure and Offer of Compromise, which was executed and submitted by Tan in 1986 to Senator Salonga, the first chairperson of the Presidential Commission on Good Government.[865] It was given during the Presidential Commission on Good Government's investigations of the partnership between Tan and Marcos, Sr. for the filing of criminal and civil charges against them.[866] Both the original and certified copy of Tan's Written Disclosure was presented and identified in court by Senator Salonga.[867] The Republic likewise offered in evidence excerpts from Senator Salonga's book titled Presidential Plunder to provide a background on Tan's Written Disclosure.[868] It states:

"On April 29, Lucio Tan came to the house to give me a partial and preliminary draft of the fair and full disclosure of his relations with the Marcoses, which I had required him to submit, plus the restitution of the money he should now give back to the Government. I remember telling him, in the presence of his lawyer, I would not tolerate any attempt to influence in any manner, any member of our Commission. I promised to study his draft and verify its contents."

"Another written disclosure was made by Lucio Tan in the early morning of May 10. Because of my impending trip, I asked my fellow commissioners to go over his disclosure to find out whether they may be considered fair and full." [869]

Tan et al., however, argue that Senator Salonga's direct examination on the matter was not completed, and he was not cross-examined by the defense.[870] Thus, his testimony is worthless and may be stricken off the record.[871] They however admit that the Written Disclosure was presented as evidence.[872] They do not deny its execution.

Tan's Written Disclosure states in full:[873]

Prior to his establishment of Himmel Industries, Inc., [Himmel Industries] in 1959, Lucio C. Tan [Tan] worked as a chemist with Bataan Cigar and Cigarette Factory. [Himmel Industries] is primarily engaged in the manufacturing, trading and importing of industrial chemicals. It is at present likewise participating in a joint venture for the local manufacture and sale of essences and fragrances using indigenous raw materials. As a pioneer venture and considering the volume of Philippine imports of similar products, it is assured not only of a local market but a considerable export potential as well.

Earnings plowed back into business, [Tan] with some close associates established [Fortune Tobacco] in 1965 and thereafter organized [Foremost Farms] in 1970. At the time [Marcos, Sr.] declared martial law in 1972, [Tan] and his various enterprises have already been successfully established in the domestic as well as the foreign scene. He had proven the time honored adage in perseverance and the sweat of one's brow coupled with a natural business acumen provides a self-rewarding exercise. That same motivation and industry catapulted [Tan] from his austere and humble beginnings to his present stature as an established businessman revered by his peers here and abroad.

For the duration of martial law which had effectively negated any opposition to [Marcos, Sr.], [Tan] and his enterprises were not spared by the various forms of intimidation and harassment that had plagued other successful businessmen. Details of the [Marcos, Sr.] exercise are further described. Perhaps owing to sheer perseverance, the [Tan] enterprises have managed to survived the pressure and in the Martial Law era two major [Tan] companies were organized namely: a) [Allied Bank] which was granted by the Central Bank a new commercial banking license in May 1977; and, b) [Asia Brewery], which had succeeded in proving the misnomer in Brewery Industry being classified as an overcrowded industry for the last two decades [in spite] of the monopoly's continued expansion

II

ALLIED BANK

On March 25, 1977, the [Central Bank] under Monetary Board Resolution No. 675 prohibited [GenBank] from further doing business and consequently placed it under receivership. On March 29, 1977, thru Monetary Board Resolution No. 677, the [Central Bank] ordered the liquidation of [GenBank] and at the same time cancelled [GenBank's] banking authorities and licenses. Prior to adoption by the Central Bank of its liquidation plan for [GenBank], a public bidding was scheduled for the sale of [GenBank's] assets and assumption of its liabilities. There were several interested groups among which were two groups headed by Willy Co and [Tan]. None of the interested groups was able to comply with the bid requirements of the Central Bank which among others required a letter of credit issued by an acceptable bank in favor of [Central Bank] to guaranty payment of the emergency advances availed by [GenBank] in the aggregate amount of P320 million. Combining resources, [Tan] and Willy Co formed one group. The resulting group was able to meet the bid requirement thereby becoming the sole qualified bidder. Consequently, the [Tan]-Willy Co group organized a corporation on the first week of April 1977 then and now known as [Allied Bank]. In May 1977, the [Central Bank] granted to [Allied Bank] a new commercial banking license.

The [total] paid up shares of [Allied Bank] stands at 492,295 shares of which 8.9% or 44,089 shares is owned by Mr. Ignacio Jimenez, the husband of Fe Jimenez who is the personal secretary of Imelda Marcos. The said 8.9% shares in [Allied Bank] has a par value of P44.089 million (at P1,000 per share) and a book value of around P72 million (as of December 31, 1985).

The stock certificates evidencing ownership of the said shares were issued to and received by Mr. Jimenez. No lien, pledge or encumbrance has been registered in the stock and transfer book in respect of said shares. As a sign of good faith and willingness to cooperate with the new government, arrangements may be made in respect of a possible sequestration of the same. The corporate stock and transfer book as well as the corresponding stubs of the stock certificates may likewise be made available for examination. A list of all accounts with [Allied Bank] frozen by virtue of the order of the commission relayed thru the [Central Bank] shall likewise be submitted as soon as collated. Aside from the aforementioned shares of Mr. Jimenez, all other shares in the capital stock of [Allied Bank] properly belong to and are legally owned by the respective stockholders in whose names said shares are registered.

III

ASIA BREWERY

By hindsight, we can now conclude that [Marcos, Sr.], from the very beginning wanted to acquire the San Miguel Corporation (SMC). However, it was impossible to acquire SMC because it was tightly controlled by the Soriano and Ayala families. The only way is to give SMC a competitor, [to bring] down the market price of SMC shares and to create conflicts within and among the SMC stockholders.

[Marcos, Sr.] then started to say publicly that SMC was a monopoly, that there should be free enterprise. Meanwhile, the GSIS and SSS were ordered to buy SMC shares to a point that Roman Cruz, Jr. became a director of SMC.

The ambition of John Gokongwei in becoming a director of SMC resulted in a proxy fight and court battle, which in turn resulted in a lot of revelations on the very high profitability of a brewery. Before that, every year, SMC would make it of record with the BOI that the market demand will always be met and that therefore, no new brewery should be approved for establishment. It was also on record that SMC had continually been increasing its brewery and bottling facilities.

Preparations went underway for the establishment of the second brewery. Discussions with the BOI were steadfastly maintained and supported SMC's stand on the industry being overcrowded [in spite] of its continued approval of SMC's expansion projects reached a stalemate.

The issue of [Asia Brewery's] petition of being the secondary brewery was broached to [Marcos, Sr.] and nothing seemed to please him more than to provide SMC with competition to realize his obsession of gaining control of SMC. Upon his instruction, BOI approved the application of Asia Brewery to establish the second brewery and immediately, the market value of SMC's shares declined from P48 to P25 per share. At this point, Danding Cojuangco started to buy SMC shares. Eventually he was able to buy Gokongwei's and Enrique Zobel's block of shares which gave him a substantial holding. Finally, Andres Soriano sold out to Cojuangco. Thus full control went to Cojuangco.

[Marcos, Sr.] however also took special interest in [Asia Brewery]. As a condition to the grant of a brewery license, [Marcos, Sr.] demanded that 25% of the Company be given to him.

IV

In compliance with the said condition, Silangan Holdings, Inc. (Silangan) was incorporated on October 9, 1979. Twenty five percent (25%) of [Asia Brewery's] shares of stock of fifty million shares was then transferred to Silangan. Upon [Marcos, Sr.]'s insistence, a fake certificate of stocks purportedly representing 100% of the total shares of Silangan were delivered to him, endorsed in blank. In truth however, the genuine book of certificates of stock of Silangan remained intact and remains so to date. Not a single certificate of stock of Silangan has as yet been issued as none of the subscriptions to the capital stock have been fully paid.

V

As insurance versus a possible claim by [Marcos, Sr.] or any assignee upon the shares of Silangan purportedly evidenced by the fake certificate of stocks issued and delivered to him in blank, all stockholders of Silangan sold 100% of their shares to [Shareholdings, Inc.] on December 19, 1980. Moreover, on December 22, 1980, Silangan sold 49.5 million shares of [Asia Brewery] to [Shareholdings, Inc.] (retaining only 500,000 shares).

VI

[Shareholdings, Inc.] was incorporated on November 11, 1979. The original intention for setting up this company was for it to purchase and hold at least 99% of the shares of stock from existing stockholders of the following companies:

1. [Fortune Tobacco]
2. [Asia Brewery]
3. [Foremost Farms]
4. [Himmel Industries]
5. [Grandspan Development]
6. Dominion Realty and Construction Corp.

This set up is necessary in order to systematize the stock ownership in the various corporations. Also, since the group of companies was getting quite big, [Tan] felt and wanted to insure that the various companies would stay under one umbrella in the event that anything should happen to him – [Tan] wanted to ensure continuity of the companies which he had worked so hard to build up.

By the end of 1980, it became imperative for [Shareholdings, Inc.] to close the purchase of the aforementioned shares in order to avail of the minimal transfer tax of $\frac{1}{4}$ of 1% which became unavailable starting 1981. On October 19, 1981, [Shareholdings, Inc.] also acquired all the shares of stock of DRCC, a realty firm which owns vast tracts of land in Cabuyao, Laguna upon which [Asia Brewery's] plant stands.

VII

After the collapse of the mega business of his closest cronies (DISINI, SILVERIO AND CUENCA), upon the rapid deterioration of his health, and perhaps also on account of the inability of [Asia Brewery] to generate satisfactory income, [Marcos, Sr.] began to press that he be given a share of [Shareholdings, Inc.]. [Tan] attempted to evade the unconscionable demand of [Marcos, Sr.] by spending most of his time outside the

Philippines. From 1983 to the start of 1986, [Tan] spent most of his time abroad. Despite [Tan's] absence, [Marcos, Sr.] kept up the pressure threatening the issuance of various tax decrees designed at crippling [Fortune Tobacco]. In fact an ad valorem tax was slapped increasing the specific tax on cigarettes. The said tax immediately caused [Fortune Tobacco's] sales to drop by 35% while increasing the sales of La Suerte by 50%. [Tan] was compelled to choose from the following options:

1. liquidate and/or siphon his assets and run abroad (like cronies who really did not build up their businesses with their own capital and hardwork), or,
2. delay the takeover by trying to get around the persistent demands for issuance of certificates of stock in blank and hope for the best, but with a resolve to stay in the country in any eventuality.

[Tan] decided to stay in the country and took the second option.

VIII

On July 20, 1983, three holding companies were incorporated as follows:

1. Basic Holdings Corp. (BASIC)
2. Falcon Holdings Corp. (FALCON)
3. Supreme Holdings, Inc. (SUPREME)

On the same day, the incorporators of FALCON and SUPREME after paying their subscription in full, sold and transferred 100% of their shares to a new group led by [Tan]. In the meantime, [Marcos, Sr.] thru [Gapud], persisted in his demand for a 50[%], then 51%, then 60% share in [Shareholdings, Inc.]

On July 16, 1984, the three holding companies purchased 99% of the shares of the stockholders of [Shareholdings, Inc.], with the exception of [Tan] and [Mariano] who retained 0.5% each. On the same day the said three holding companies borrowed from the stockholders-vendors of [Shareholdings, Inc.] amounts equivalent to the respective purchase prices of the aforementioned shares on a 30-day term. Unable to pay the loan at maturity, the three companies sold back (on August 22, 1984) the said shares to the original vendors-stockholders in the same proportion as when purchased.

When the pressure became too heavy to bear and with [Marcos, Sr.] already displaying fangs of anger, deeds of assignment signed in blank (without issuing much less surrendering the corresponding stock certificates) by the original incorporators of FALCON AND SUPREME as well as by [Tan] and [Mariano] for their respective shares which all together were supposed to have accounted for 51% of Shareholdings, Inc.'s shares were delivered to Gapud without revealing that:

1. The original incorporators had already much earlier transferred and assigned their share to the new group led by [Tan] who were then the genuine and registered owners of the shares with the sole and exclusive authority to transfer the same;
2. FALCON and SUPREME had already previously divested themselves of [Shareholdings, Inc.'s] shares having resold the same to the original owners;
3. There could be no valid transfer of [Tan] and [Mariano] shares in [Shareholdings, Inc.] as their respective subscriptions had not been fully paid and to date remains unpaid.

IX

Thereafter, Marcos demanded for an additional 9% to give himself supposedly a 60% control over Shareholdings, Inc. To give the semblance of compliance with said demand, it was made to appear that on Feb. 28, 1985, BASIC transferred the equivalent of 9% of [Shareholdings, Inc.'s] total shares to SUPREME without revealing that:

1. BASIC had in fact already divested itself of all its [Shareholdings, Inc.'s] shares (as of August 22, 1984) in favor of its original owners;
2. At any rate, no transfer could legally be effected since the subscriptions thereon have to date not yet been fully paid; and
3. Moreover, the transfer document itself was ineffective because:
 - a. What was transferred were 11,317,500 shares of BASIC (not [Shareholdings, Inc.'s]) when BASIC only had a total of 1,000,000 paid up shares from a total authorized capital stock of 5,000,000 shares;
 - b. The document was executed by some persons who are not stockholders of BASIC.

CONCLUSION

[Marcos, Sr.]'s greed compelled [Tan] to take the aforescribed defensive stance. What [Marcos, Sr.] wanted to do was to simply takeover, without any basis, much less consideration, control and substantial ownership of a business which took a lifetime to build.

[Tan] undoubtedly had to deal with the past regime of [Marcos, Sr.]. [Tan] however cannot be termed a crony of [Marcos, Sr.] in the sense that he did not take undue advantage of any of his dealings with the past government.

Perusal of the records of all the government owned or controlled banks will show that [Tan] or any of his companies either does not have any outstanding loan or credit accommodations or if there is such, the same is fully secured and is up-to-date in its payments. [Tan] has never been involved in the handling, much less in the misuse of public funds.

On the contrary, the [Tan] group of companies presently employs directly and/or indirectly a total workforce of more or less 20,000 people. The group subsidizes as well the members of the families of its employees, the 400,000 tobacco farmers, not to mention the countless cigarette vendors and sari-sari owners. The BIR records will show that the group's contribution annually in terms of taxes amount to more or less P2 billion. [Tan] has also set up companies which are not well known but nevertheless provide job opportunities for numerous persons notwithstanding the fact that they are operating on a loss and/or on a marginal and negligible return on investment. When the country suffered a scarcity of foreign currency, several companies of the group were re-oriented and geared towards exportation to help bring in the much needed foreign exchange. [Fortune Tobacco] is in fact now exporting cigarettes to China and the Middle East. [Allied Bank] has historically pioneered and led the way in supporting small, medium scale and agriculture based companies. While [Tan] has through the years supported and continues to support various charitable projects, this is neither the venue nor does he has the inclination to enumerate them herein.

[Tan] is a legitimate businessman who has been doing and will continue to do more than his share in the country's development effort. He was plainly a victim not an aggressor under the former dispensation. The February Revolution liberated the [Tan] group of companies just as it did the Filipino people. [Tan] had come home to the Philippines with a clean conscience and a fresh hope that the period of oppression has finally ended. Unfortunately, the initial joy has somehow diminished with the realization that further hardships may lie ahead. His hope however remains as undiminished and just as strong as his resolve to stay in the Philippines and to help the country as not only the fulfilment of a duty but as an exercise of his basic right.[874]

I agree with Associate Justice Caguioa that Tan's Written Disclosure can be admitted as evidence of the truth of its contents. Tan did not deny its execution. He also did not deny that it was properly presented as documentary evidence. This document was presented in its original. Furthermore, Tan relied on this Written Disclosure in his own Memorandum in arguing that he was under duress.[875] This can be taken as an admission of its authenticity

as a private document.

Considering Tan's Written Disclosure is admissible in evidence, it may be considered in determining the existence of the undue advantage granted to him by Marcos, Sr.

As astutely assessed by Associate Justice Caguioa, while the Written Disclosure does not sufficiently prove the 60-40 Business Arrangement between Tan and Marcos, Sr., it still reveals that Tan was able to secure a brewery license in favor of Asia Brewery because of his close business relationship with Marcos, Sr.[876] As to this fact, thus, f agree that this is sufficient to prove the element of taking undue advantage of his business relationship.

IV(A)(3)

The Republic likewise relies on Marcos, Jr.'s testimonies on August 21, 2007 and February 13, 2008.[877]

On August 21, 2007, Marcos, Jr. testified on his meetings with Marcos, Sr. and Tan, and how he came to know about Marcos, Sr.'s business interests in Tan's companies, including the 60% interest in Shareholdings, Inc. as owned by Falcon Holdings Corp. (Falcon Holdings) and Supreme Holdings, Inc. (Supreme Holdings), which were turned over to Marcos, Sr. through deeds of assignment of stocks indorsed in blank, thus:

Q: When was the first time that you saw defendant Lucio Tan?

[Marcos, Jr.]: I could not give you the specific date but I know it was in the early '70s. As I said, the first time I saw him was in the area of the Palace that we call the "Study Room", which is the area next to my father's office.

Q: Did you have opportunity to talk to defendant Lucio Tan?

A: Yes, several times after we have been introduced. We would say "hello" to each other when we cross each other's paths. And on a couple of occasions, we actually had an opportunity to have substantive conversations aside from meetings.

Q: What do you mean "substantive meetings" or discussions?

A: Well, I remember that at one point, I was summoned by my father to his office and so I went. And he was there with Mr. Lucio Tan in the discussion.

And he at that point told me that he would like me to familiarize myself with the operations of some of the enterprises that we have interests in and that Mr. Lucio Tan was going to help me to be more familiar with the said operations.

Q: Why did your father summon you to his office to familiarize yourself with the business interest of the Marcoses?

A: It was part of a larger effort on the part of the family to really clarify and to conduct an inventory and legal audit of all those business interest that we have.

My sister Imee, who has legal trammg, was given the job of conducting the legal audit, and I was given the job to go to as many of these enterprises as I could and as I said, learn the operations and meet the people who were running them so that when the time comes that we would take over, we would know how to manage these different interests.

Q: And what was the condition of your father when he summoned you to his office?

A: At that time, he was still quite strong. But then, he was starting to feel the effect of his kidney disease. So perhaps, even that has a factor in his wanting us to know the family's interests.

Q: What happened after that meeting with your father and defendant Lucio Tan?

A: Well, at the end of the meeting, Lucio Tan and I talked and discussed the possibility of having a meeting, just the two of us.

And if I am not mistaken, he was leaving for abroad and so he said that he will contact me as to when we will have that meeting.

Q: Was there any occasion for your father to show proof of the family's interests in Lucio Tan?

A: Well, when we first began this whole effort, he had me and my sister, we met and we sat down and showed us some documents which are essentially Deeds of Assignment, Shares of Stock, Titles to properties, and all these kinds of things. And he tried to give us a sketch of exactly how the structures were.

And then his instructions to us were – we go out and make sure that first, all documentations were in place because maybe the documents or something were in some persons, the documents or something were in another person, to really reorganize them and collate everything. So, that was the gist of --- We had several of those meetings, and that was then I saw these documents.

xxx xxx xxx

Q: Now, let us go back to the instance where you had substantial discussion with defendant Lucio Tan.

Where did it take place?

A: Well, as I have mentioned, the first time that we actually sat down and talked of anything substantive was in my father's office.

Subsequently, I received a message from Lucio Tan's office that he would ask me to meet him at his office in Allied Bank. That is about I think a week or fortnight after I was summoned by my father.

Q: And you met him at his office?

A: Yes, at his office in Allied Bank.

Q: And what did you discuss with him in that meeting?

A: He laid out the ownership structure of the different corporations that we had an interest in.

Q: Did he tell you what those corporations are?

A: Yes, he actually drew out a diagram, a piece of paper, explaining that there was a company, Shareholdings, Inc., which was a holding corporation for several other corporations.

I will try to remember them all—Foremost Farms, Fortune Tobacco, Asia Brewery, Himmel Industries, Grandspan, Dominion—I might be missing some but basically, Shareholdings, Inc. was the holding corporation for all those corporations.

Q: Aside from that meeting in Allied Bank, where else did you meet defendant Lucio Tan?

A: I think a couple of months after that, I flew to the bottling plant of Asia Brewery in Laguna, by helicopter.

I remember clearly the visit because there was a difficulty landing in the Asia Brewery Compound itself. We nearly had an accident and so we had to land on the next compound, then took a car to Asia Brewery.

Q: What happened in that plant visit?

A: At the plant visit, Mr. Lucio Tan took me around and basically explained to me what they did in the bottling plant, how the bottles were made, the different sizes that they made, the different kinds of beer, how they fill out the bottles, how they package them, the general operations of the plant.

xxx xxx xxx

Q: You mentioned Shareholdings, Inc.

What is the relationship of the Shareholdings Inc. with the other corporations that you mentioned earlier?

ATTY. MENDOZA

The best evidence are the corporate documents, Your Honors.

J. ESTRADA

Witness may answer!

A: Shareholdings, Inc. was the holding company for the other companies that I mentioned. And the ownership of the Shareholdings, Inc. was divided at least initially, between three other companies.

This [is] explanation that Mr. Tan gave me while we were at his office in Allied Bank.

Q: Could you name the three other companies holding shares in the Shareholdings, Inc.?

A: Yes. The three companies that own Shareholdings, Inc. [are] Basic, Supreme and Falcon.

Initially, Basic own[s] 50% of Shareholdings, Inc.; Falcon had 25% and Supreme had 25%.

This changed I think in early 1985 when some shares of Basic were sold to Supreme, the net effect of which, Supreme owned 34% of Shareholdings, Inc.

xxx xxx xxx

Q: Mr. Witness, do you have proof that Supreme Holdings, Inc. and Falcon Holdings, Inc. have interests in Shareholdings, Inc.?

A: Well, there are documents that show Deeds of Sale of Shareholdings, Inc. to the three companies – Basic, Falcon and Supreme. There are also Deeds of Sale of certain percentage of Basic to Supreme.

This was relevant to us because we held the shares of stock in Falcon and in Supreme which were with us, endorsed in blank.[878] (Emphasis supplied)

On February 13, 2008, Marcos, Jr. also testified about Gapud's statements of the 60-40 Business Arrangement between Tan and Marcos, Sr.:

Q: Now Mr. Witness in your last testimony you testified that a certain Rolando [Gapud] was the financial manager of your father, do you remember that?

A: Yes, I do.

Q: How do you know that this Rolando [Gapud] was the financial manager of your father?

A: For one thing my father told me sir; and secondly, he would regularly come to the Palace to discuss certain aspects of the cases that he was handling with my father and subsequently with my mother, my sister Imee and with myself.

Q: When you say subsequently 'with myself', are you trying to say that Rolando [Gapud] also reported to you?

A: Well, he would not come to report if I don't know if I had mentioned it. I held office in Security Bank and which Rolando [Gapud] was the President, so we would see each other quite regularly and discuss some of these things. He did going [sic] to see Imee specifically to discuss whatever issues were current at that time. As I said when my father asked Imee and I to look into the family interest, we would then [be] included in their meetings, when he would come to the Palace to see my father.

Q: How often if you know did this Rolando [Gapud] report or talk to your father in Malacañang?

....

Witness: He did not have regularly schedule [sic] meeting, he would come in, I would suppose on average he would come in once a month or every two months. Sometimes, I supposed when they were in the midst as I said that they need to be dealt with, it would be more often. As I said, not regular; But I would say once a month on the average.

Atty. Generillo:

Q: How about with respect to your meeting with this Rolando [Gapud], how often did you meet him when you were holding office in Security Bank?

A: Well, I see him practically every time I went to the Security Bank Building.

Q: Now in connection with Lucio C. Tan, what did Rolando [Gapud] tell you?

....

A: In case of Lucio Tan Corporations, I remember one thing that he told me that he was finalizing the 60/40 sharing between Lucio Tan and my father.

....

Q: Apart from the statement of Rolando [Gapud] that he was finalizing the arrangement between your father and Lucio Tan on a 60/40 sharing arrangement. What else did Rolando [Gapud] tell you with respect to defendant Lucio Tan?

A: Well, he was commenting on the discussions that were being made between Lucio Tan and my father; That Lucio Tan made the counter proposal that the sharing will be 50/50 rather than 60/40.

Q: What did Rolando [Gapud] tell you with respect to this counter proposal of Lucio Tan to have a 50/50 arrangement?

A: I remembered verbatim said that Ilocano prevail. [sic]

Q: What do you mean?

A: My father's proposal for a 60/40 sharing was in the end and what was followed.[879] (Emphasis supplied)

Marcos, Jr.'s testimony is hearsay. He only heard from Marcos, Sr. their interests in Tan's various corporations and Tan thereafter informed him of the ownership structure of these corporations. He was not privy to the transfer of shares and lacks personal knowledge of the transactions between and among the various corporations. Marcos, Jr. likewise testified that it was only Gapud who told him of the 60-40 business arrangement between Tan and Marcos, Sr. Thus, counsel for the respondents objected to the offer of Marcos, Jr.'s testimony as being hearsay, since the best evidence should be the documents themselves for the transfer of shares.[880] The counsel for the respondents likewise posed a continuing objection for his testimony as to what Gapud told him, for being hearsay and immaterial.[881]

Marcos, Jr.'s testimony, however, is admissible as an independently relevant statement, or that which is relevant independently of whether they are true or not:

Moreover, the ban on hearsay evidence does not cover independently relevant statements. These are statements which are relevant independently of whether they are true or not. They belong to two (2) classes: (1) those statements which are the very facts in issue, and (2) those statements which are circumstantial evidence of the facts in issue. The second class includes the following:

- a. Statements of a person showing his state of mind, that is, his mental condition, knowledge, belief, intention, ill will and other emotions;
- b. Statements of a person which show his physical condition, as illness and the like;
- c. Statements of a person from which an inference may be made as to the state of mind of another, that is, the knowledge, belief, motive, good or bad faith, etc. of the latter;
- d. Statements which may identify the date, place and person in question; and
- e. Statements showing the lack of credibility of a witness.

Again, Jones tells us why these independently relevant statements are not covered by the prohibition against

hearsay evidence:

"§1088. Mental State or Condition — Proof of Knowledge. — There are a number of common issues, forming a general class, in proof of which hearsay is so obviously necessary that it is not customary to refer to its admissibility as by virtue of any exception to the general exclusionary rule. Admissibility, in such cases, is as of course. For example, where any mental state or condition is in issue, such as motive, malice, knowledge, intent, assent or dissent, unless direct testimony of the particular person is to be taken as conclusive of his state of mind, the only method of proof available is testimony of others to the acts or statements of such person. Where his acts or statements are against his interest, they are plainly admissible within the rules hereinabove announced as to admissions against interest. And even where not against interest, if they are so closely connected with the event or transaction in issue as to constitute once of the very facts in controversy, they become admissible of necessity." [882] (Emphasis in the original)

In its Memorandum, the Republic states that "Marcos, Jr.'s testimony ... [was] based on his direct personal knowledge, derived from his meetings with [Marcos, Sr.], [Tan] and [Gapud]." [883] Thus, his testimony, if admissible, may only be admitted as an independent relevant statement as to the fact that he had conversations with Marcos, Sr., Tan, and Gapud, but it would be hearsay as to the truthfulness of the contents or the facts subject of the meeting.

I agree that Marcos Jr.'s testimony is hearsay and may not be used to prove the truth of the facts asserted in the statement, which is that Marcos, Sr. owned part of Tan's properties. Being hearsay evidence and clearly objected to as such by the defendant's counsel, Marcos Jr.'s testimony has no probative value. The Republic further failed to show that the evidence falls within any of the exceptions to the hearsay rule, as provided in the Rules of Court.

Assuming however that Marcos Jr.'s testimony is admissible in evidence, Marcos, Jr.'s testimony may only be admitted to prove ownership similar to Imelda's declarations in her Amended Answer, but not that Tan et al. took undue advantage of their office, authority, influence, connections, or relationship to obtain ownership of these business interests.

IV(A)(4)

In 1980, Gapud was the President and Chief Executive Officer of Security Bank and Trust Company, and the financial executor of Marcos, Sr. and Imelda. [884] On January 14, 1987, Gapud executed a Sworn Statement where he detailed Marcos, Sr.'s dealings with his cronies, including how Marcos, Sr. had beneficial interest in Tan's businesses. He confirmed Marcos, Sr. and Tan's 60-40 Business Arrangement and the concessions extended by the former to the latter. [885] The Sworn Statement was personally typed by Senator Salonga after the latter interviewed Gapud in Hong Kong. Senator Salonga signed it as a witness. [886]

Gapud's Sworn Statement reads in part:

SWORN STATEMENT

1, ROLANDO C. GAPUD, a Filipino citizen of legal age, hereby depose and state under oath:

xxx xxx xxx

6. I recall that I submitted to PCGG, through Commissioner Raul Daza, a brief description of the businesses of business associates and relatives of Mr. Marcos – including the following: (Annex "A")

G. Araneta

Campos

Cojuangco

R.M. Cuenca

Benedicto

Lucio Tan

Floirendo
Sabido
Luis Yulo
Raymundo Feliciano
G. Tanseco
Enriquez/Panlilio
Nieto
Tantoco
Roman
Disini
Alfonso Lim
Menzi/Yap
R. Nubla
Romualdez
M. Elizalde, Jr.
H. Poblador / E. Razon
Ilusorio
E. Balao
A. Fonacier
F.R. Cuevas
Anthony Lee
Ismael Mathay, Jr.
J. Marcelo, Jr.

I was the one who prepared and typed Annex "A". I submitted it to Commissioner Daza, before I left the Philippines through the back-door in or around June 1986, because of what I perceived to be some great danger to my life. I remember that shortly after the creation of PCGG, I met Minister Jovito R. Salonga and described to him the corporate devices resorted to by the Bernstein brothers (Joseph and Ralph) and by Mrs. Cliceria Tantoco in connection with the 4 buildings in Manhattan, New York — Crown Building, 40 Wall Street, Herald Center, and 200 Madison Avenue. I also had meetings with Commissioner Ramon Daza, before my departure for abroad.

7. [I] was the Financial Executor of Mr. and Mrs. Ferdinand Marcos. It is quite not accurate to say that I was the financial advisor of Mr. and Mrs. Marcos and in that sense acted as financial advisor, in truth I was often carrying out the instructions of Mr. and Mrs. Marcos. These instructions came to me, either through Ms. Fe R. Gimenez who used to call me up to convey them, or given to me directly by [Marcos, Sr.] or Mrs. Imelda R. Marcos, after being asked by Mrs. Gimenez to go to [Malacañang].

8. With particular reference, for example to MR. LUCIO TAN, I know that Mr. [Marcos, Sr.] and Mr. [Tan] had understanding that Mr. [Marcos, Sr.] owns 60% of Shareholding, Inc. which owns shares of Fortune Tobacco, [Asia Brewery] Allied Bank, and Foremost Farms. I was asked sometime in 1985 to formalize this arrangement. I went to Mr. [Tan] for that purpose. He tried to bargain by reducing the equity of Mr. [Marcos, Sr.] to 50%. I told him that I was merely carrying out the instructions of Mr. [Marcos, Sr.] and that if he wanted to bargain, he should take up the matter directly with Mr. [Marcos, Sr.]. As a matter of fact, Mr. [Tan], apart from the 60% equity of Mr. [Marcos, Sr.] had been regularly paying, through Security Bank, Sixty Million Pesos ([PHP] 60 [m]illion) to One Hundred Million Pesos ([PHP] 100 million) to Mr. [Marcos, Sr.], in exchange for privileges and concessions Mr. [Marcos, Sr.] had been giving him in relation to the businesses managed by Mr. Lucio Tan. As I said Mr. [Tan] gained substantial concessions in specific taxes and stamp duties for his cigarette (Fortune Tobacco) and beer (Asia Brewery) operations. He belongs to the group that could get presidential decrees and letters on instruction from Mr. [Marcos, Sr.] for their joint benefit. I understand that Mr. Tan asserted that he was

the victim of extortion, and that he outwitted Mr. [Marcos, Sr.] by issuing to Mr. [Marcos, Sr.] his 60% equity in fake certificate of stock. This is not accurate. Mr. [Marcos, Sr.] and Mr. Tan were in partnership, and they derived great material benefits from the relationship. As far as I know, Mr. Tan was not in a position to outwit and outmaneuver Mr. [Marcos, Sr.]. I do not know that there is a crony or business associate of Mr. [Marcos, Sr.] who could have done that.[887] (Citations omitted)

A part of Gapud's Sworn Statement reads:

L. Tan

1. The main companies under this party are: [Allied Bank], Fortune Tobacco, Asia Brewery, Foremost Farms, and [Himmel Industries]. A holding company called [Shareholdings, Inc.] has also been organized to consolidate their joint holdings.
2. It is also believed that this person had gained substantial concession in specific taxes and stamp duties for his cigarette (Fortune Tobacco) and beer (Asia Brewery) operation.[888]

Gapud's Sworn Statement is inadmissible in evidence.

An evidence being offered in court, unless a self-authenticating document, must be authenticated, as a preliminary step in showing admissibility of evidence.[889] The requirement of authentication proceeds from the presumption that: "objects and documents presented in evidence are, as a rule, counterfeit." [890] Thus, the nature of documents, whether public or private, determines how it may be offered and admitted as evidence in court.

The nature of documents as either public or private determines how the documents may be presented as evidence in court. A public document, by virtue of its official or sovereign character, or because it has been acknowledged before a notary public (except a notarial will) or a competent public official with the formalities required by law, or because it is a public record of a private writing authorized by law, is self-authenticating and requires no further authentication in order to be presented as evidence in court. In contrast, a private document is any other writing, deed, or instrument executed by a private person without the intervention of a notary or other person legally authorized by which some disposition or agreement is proved or set forth. Lacking the official or sovereign character of a public document, or the solemnities prescribed by law, a private document requires authentication in the manner allowed by law or the Rules of Court before its acceptance as evidence in court. The requirement of authentication of a private document is excused only in four instances, specifically: (a) when the document is an ancient one within the context of Section 21, Rule 132 of the Rules of Court; (b) when the genuineness and authenticity of an actionable document have not been specifically denied under oath by the adverse party; (c) when the genuineness and authenticity of the document have been admitted; or (d) when the document is not being offered as genuine.[891] (Citations omitted)

Although considered as public documents if acknowledged before a notary public, affidavits are still inadmissible in evidence for being hearsay and excluded from the judicial proceeding, unless the affiants take the witness stand and affirm the averments in their affidavits.[892] The reason for this has been explained in *Republic v. Marcos-Manotoc*: [893]

Neither did petitioner present as witnesses the affiants of these Affidavits or Memoranda submitted to the court. Basic is the rule that, while affidavits may be considered as public documents if they are acknowledged before a notary public, these Affidavits are still classified as hearsay evidence. The reason for this rule is that they are not generally prepared by the affiant, but by another one who uses his or her own language in writing the affiant's statements, parts of which may thus be either omitted or misunderstood by the one writing them. Moreover, the adverse party is deprived of the opportunity to cross-examine the affiants. For this reason, affidavits are generally rejected for being hearsay, unless the affiants themselves are placed on the witness stand to testify thereon.[894]

In *Dantis v. Maghinang, Jr.*,^[895] an affidavit, which was not identified and where its averments were not affirmed by affiant, was excluded from the judicial proceedings being an inadmissible hearsay evidence, thus:

To begin with, Exhibit "3," the affidavit of Ignacio, is hearsay evidence and, thus, cannot be accorded any evidentiary weight. Evidence is hearsay when its probative force depends on the competency and credibility of some persons other than the witness by whom it is sought to be produced. The exclusion of hearsay evidence is anchored on three reasons: 1) absence of cross-examination; 2) absence of demeanor evidence; and 3) absence of oath.

Jurisprudence dictates that an affidavit is merely hearsay evidence where its affiant/maker did not take the witness stand. The sworn statement of Ignacio is of this kind. The affidavit was not identified and its averments were not affirmed by affiant Ignacio. Accordingly, Exhibit "3" must be excluded from the judicial proceedings being an inadmissible hearsay evidence.^[896] (Citations omitted)

In *Tating v. Marcella*,^[897] the Court equated the sworn statement to an affidavit, and found that it should not be given probative weight considering that the affiant failed to take the witness stand:

There is no issue in the admissibility of the subject sworn statement. However, the admissibility of evidence should not be equated with weight of evidence. The admissibility of evidence depends on its relevance and competence while the weight of evidence pertains to evidence already admitted and its tendency to convince and persuade. Thus, a particular item of evidence may be admissible, but its evidentiary weight depends on judicial evaluation within the guidelines provided by the rules of evidence. It is settled that affidavits are classified as hearsay evidence since they are not generally prepared by the affiant but by another who uses his own language in writing the affiant's statements, which may thus be either omitted or misunderstood by the one writing them. Moreover, the adverse party is deprived of the opportunity to cross-examine the affiant. For this reason, affidavits are generally rejected for being hearsay, unless the affiants themselves are placed on the witness stand to testify thereon. The Court finds that both the trial court and the CA committed error in giving the sworn statement probative weight. Since Daniela is no longer available to take the witness stand as she is already dead, the RTC and the CA should not have given probative value on Daniela's sworn statement for purposes of proving that the contract of sale between her and petitioner was simulated and that, as a consequence, a trust relationship was created between them.^[898]

Here, Gapud's Sworn Statement is an affidavit, which must be identified, and its averments must be affirmed by Gapud, the affiant. However, Gapud never testified before the Sandiganbayan; he did not authenticate his Sworn Statement, and thus, he was not cross-examined on his statement.

In *Republic v. Sandiganbayan*,^[899] where the taking of Gapud's deposition was denied until after the individual's filed their Answers, the Court considered that Gapud had no intention of returning to the Philippines for fear of his safety:

In the case at bar, petitioner alleges that the taking of Mr. Gapud's deposition in lieu of his testimony is necessary because the allegations in the complaint are based mainly on his disclosures regarding the business activities of President [Marcos, Sr.] and Lucio Tan; that although Mr. Gapud was granted immunity by President Aquino from criminal, civil and administrative suits, he has been out of the country since 1987 and has no intention of returning, fearing for his safety; that this fear arose from his damaging disclosures on the illicit activities of the cronies and business associates of former President [Marcos, Sr.] which therefore renders him unable to testify at the trial.

Petitioner has not cited any fact other than Mr. Gapud's cooperation with the Philippine government in the recovery of ill-gotten wealth that would support the deponent's claim of fear for his safety. No proof, much less any allegation, has been presented to show that there exists a real threat to Mr. Gapud's life once he returns to the Philippines and that adequate security cannot be provided by petitioner for such a vital witness.

There is no question that the trial court has the power to direct, in its discretion, that a deposition shall not be taken, if there are valid reasons for so ruling. Petitioner's reasons do not amount to an "exceptional" or "unusual" case for us to grant leave and reverse respondent court. Petitioner has not sufficiently shown the necessity for taking Mr. Gapud's deposition at this point in time before the other defendants, particularly the individual defendants, have served their answers. Petitioner has not alleged that Mr. Gapud is old, sick or infirm as to necessitate the taking of his deposition. Indeed, no urgency has been cited and no ground given that would make it prejudicial for petitioner to await joinder of issues.

Finally, the Court notes that petitioner waited all these years for a ruling on this case instead of working for the rest of the defendants to be summoned and their answers be filed. Petitioner can, as a matter of course, take Mr. Gapud's deposition after the individual defendants have at least filed their answers.[900] (Emphasis in the original)

However, during the hearing on October 16, 2007, the Sandiganbayan already allowed the taking of Gapud's deposition since the answers are completed:

Atty. Generillo:

Your Honor please, if I may. Contrary to the contention of the counsel, Your Honor. The plaintiff has attempted to take the deposition of Mr. Gapud, but this Honorable Court did not allow the plaintiff to take the deposition of Mr. Gapud. Why? According to this Court, the defendants have not yet completed their Answer; and because the defendants have not yet filed the complete Answer, the deposition of Rolando Gapud may not be taken. In fact, the PCGG appealed from the ruling of this Honorable Court to the Supreme Court questioning the denial of the action of the plaintiff to take the deposition of Rolando Gapud. But then, the Supreme Court sustained the ruling of this Honorable Court denying the taken [sic] of the deposition of Rolando Gapud, on the ground that Answers have not yet been completed.

CHAIRPERSON:

But this time, Answers are already completed.

Atty. Generillo:

Yes, Your Honor.

CHAIRPERSON:

You can take now the deposition of Mr. Gapud.

Atty. Generillo:

Yes, Your Honor.

But then, as I said in my offer of evidence, the distinguished witness personally typed the Affidavit of Mr. Gapud.

CHAIRPERSON:

Okay, you go ahead. Let the witness testify. Whatever the testimony of Senator Salonga, the Court will find out.

....

Atty. Generillo:

Your Honor please, if I may, perhaps for the enlightenment of the parties. The purpose of the testimony of the witness is to shed light on the factual circumstances surrounding the execution of the Affidavit of Mr. Gapud.

We are not making an offer of the Gapud Affidavit. What we are going to elicit from the witness is the facts and circumstances surrounding the execution of the Affidavit. We will make the necessary offer of the Gapud Affidavit in some other time, Your Honor and under proper laying the basis for the introduction of that Gapud Affidavit. But insofar as the testimony of this witness, what we are going to prove is, that he was the one that personally typed the Gapud Affidavit; and that he interviewed Mr. Gapud before he prepared the Gapud Affidavit, Your Honor.

CHAIRPERSON:

Well, anyway your observation and comments are on record, Atty. Mendoza.

Okay you go ahead with the direct-examination[,] Atty. Generillo.

Atty. Generillo:

Thank You, Your Honor.

CHAIRPERSON:

We note that an Affidavit is hearsay. If the affiant will not testify or swear, that he is not presented to say that the statements therein are his statements we considered the Affidavit as hearsay. That is the jurisprudence.

Atty. Generillo:

We are aware of that, Your Honor, but only for purposes of establishing the existence, due execution and genuineness of the Gapud Affidavit, Your Honor.[901] (Emphasis supplied)

Despite Tan et al.'s counsel's objection to the testimony for being hearsay,[902] the Republic offered Senator Salonga's testimony and conceded that the purpose would be to establish the circumstances surrounding the execution of Gapud's Sworn Statement.[903] Accordingly, Senator Salonga testified that he personally typed Gapud's Statement in Hong Kong after Gapud narrated to him his role on Marcos, Sr.'s various holdings, and thereafter he signed it as a witness.[904] However, Senator Salonga's testimony was not completed and he was not cross-examined on Gapud's Sworn Statement. The Republic's counsel stated that they will offer the Gapud Sworn Statement some other time[905] and was made aware by the court that it would be treated as hearsay if the affiant, Gapud, will not testify on his statements.[906]

Despite the Sandiganbayan's allowance of the taking of Gapud's deposition and despite clear warning that his affidavit will be treated as hearsay if Gapud failed to take the witness stand, the Republic still failed to acquire Gapud's deposition or put him on the witness stand to attest to his statement or authenticate his Sworn Statement. Despite the subpoenas, Gapud never came to the court to testify.[907]

Accordingly, the Gapud Sworn Statement is hearsay, inadmissible as evidence and has no probative value. Like in Republic v. Marcos-Manotoc, this Court again expressed its dismay to the prosecution for failure to provide any reason whatsoever in their nonpresentation of witnesses to support the government's claims despite having the expansive resources of government.[908]

However, even assuming that it is admissible, Gapud's Sworn Statement may only be admitted as an independently relevant statement, and admissible to show that the document exists but not to prove the truth of its contents.

IV(A)(5)

The following are the documents appended by the Republic to prove its ill-gotten wealth allegations against Tan et al.:

Title

Date

Contents

Purpose of Presentation

Nature of Document
(Original or Copy)

Original Document
Rule exception

Sandiganbayan Decision[909]

June 11, 2012

Dismissed the Republic's Complaint for Reversion, Reconveyance, Reconstitution, Accounting, and Damages

Compliance with jurisdictional requirement

Original

N/A

Sandiganbayan Resolution[910]

September 26, 2012

Denied the Republic's Motion for Reconsideration

Compliance with jurisdictional requirement

Original

N/A

Notice of Hearing[911]

October 12, 1957

Served as public notice of Tan's petition for naturalization

Contains details of Tan's Chinese origins and first involvement in the tobacco industry

Establishes Tan's Filipino citizenship

Copy

Public Record

Bureau of Immigration Identification Certificate[912]

September 16, 1960

Identification of Tan as a naturalized citizen

Copy

None

Bureau of Immigration Letter[913]

September 15, 1960

Canceled the alien registry entries of Tan and his wife Carmen Khao

Copy

None

Certificate of Naturalization[914]

September 3, 1960

Official certification of Tan's status as a naturalized citizen

Issued by the Court of First Instance of Rizal, Branch IV, Quezon City

Copy

None

Case Decision[915]

August 15, 1958

Discussed compliance of Tan with the requirements for naturalization under Commonwealth Act No. 473

Certified True Copy

Public Record

Certificate of Naturalization[916]

January 16, 1976

Official certification of Mariano's status as a naturalized citizen

Issued by the Special Committee on Naturalization

Establishes Mariano's Filipino citizenship

Certified True Copy

Public Record

Applicant's Bio Data[917]

N/A

Contains applicant's name, age, citizenship, civil status, residence, occupation, years of residence in the Philippines, and special qualifications. Also contains names of witnesses.

Certified True Copy

Public Record

Naturalization Case Evaluation Sheet[918]

May 6, 1975

Checklist of naturalization requirements under Letter of Instruction No. 270. Shows Mariano's compliance

with the requirements.

Contains the Special Committee's recommendation of Mariano's naturalization by Presidential Decree.

Certified True Copy

Public Record

Certificate of Naturalization[919]

January 15, 1976

Official certification of Harry's status as a naturalized citizen

Issued by the Special Committee on Naturalization

Establishes Harry's Filipino citizenship

Certified True Copy

Public Record

Naturalization Case Evaluation Sheet[920]

April 30, 1976

Checklist of naturalization requirements under Letter of Instruction No. 270. Shows compliance requirements.

Harry's with the Contains the Special Committee's recommendation of Harry's naturalization by Presidential Decree.

Certified True Copy

Public Record

Petition for Naturalization[921]

N/A

Filed by Tan Eng Chan before the Special Committee on Naturalization

Establishes Tan Eng Chan's Filipino citizenship

Certified True Copy

Public Record

Oath of Allegiance[922]

December 7, 1976

Tan Eng Chan's sworn renunciation of allegiance to China and oath of allegiance to the Philippines

Also contains Tan Eng Chan's educational background, years of residency in the Philippines, special qualification, and language proficiencies, and the names of the character witnesses

Certified True Copy

Public Record

Certificate of Naturalization[923]

December 20, 1976

Official certification of Tan Eng Chan's status as a naturalized citizen

Issued by the Special Committee on Naturalization

Certified True Copy

Public Record

Naturalization Case Evaluation Sheet[924]

July 10, 1976

Checklist of naturalization requirements under Letter of Instruction No. 270. Shows Tan Eng Chan's compliance with the requirements.

Contains the Special Committee's recommendation of Tan Eng Chan's naturalization by Presidential Decree.

Certified True Copy

Public Record

Applicant's Bio Data[925]

N/A

Contains applicant's name, age, citizenship, civil status, residence, occupation, years of residence in the Philippines, and special qualifications. Also contains names of witnesses.

Certified True Copy

Public Record

Affidavit of Character Witness[926]

May 19, 1975

Michael Sebuguero's attestation of Tan Eng Chan's good moral character and qualifications for naturalization.

Also contains Sebuguero's bio data and circumstance of acquaintanceship with Tan Eng Chan.

Certified True Copy

Public Record

Patent Application[927]

May 30, 1975

Supporting document for Tan Eng Chan's special qualification for naturalization; provides introduction of a useful invention

Certified True Copy

Public Record

Alien Certificate of Registration[928]

Issued November 12, 1973

Supporting document for petition for naturalization

Issued by the Bureau of Immigration

Certified True Copy

Public Record

Social Security System ID[929]

September 10, 1974

Supporting document for petition for naturalization

Certified True Copy

Public Record

Income Tax Return[930]

March 8, 1973

Harry's Income Tax Return for the Calendar Year 1972

Indicates annual income of PHP 11,600.00 from Fortune Tobacco.

Certified True Copy

Public Record

Income Tax Return[931]

February 16, 1974

Harry's Income Tax Return for the Calendar Year 1973

Indicates annual income of PHP 27,000.00 from Fortune Tobacco and PHP 315.00 from Lepanto Consolidated Mining Company

Certified True Copy

Public Record

Withholding Statement and Official Receipt of Tax Payment[932]

February 24, 1975

Statement of Income Tax Withheld from Harry by Fortune Tobacco for the Calendar Year 1974 and payment of Income Tax to the Bureau of Internal Revenue

Indicates annual income of PHP 31,525.00 from Fortune Tobacco.

Certified True Copy

Public Record

Income Tax Return[933]

February 24, 1975

Harry's Income Tax Return for the Calendar Year 1974

Indicates annual income of PHP 31,525.00 from Fortune Tobacco, PHP 85.31 from Lepanto Consolidated Mining, and PHP 5,422.63 from China Banking Corp.

Certified True Copy

Public Record

Income Tax Return[934]

March 15, 1974

Tan Eng Chan's Income Tax Return for the Calendar Year 1973

Indicates annual income of PHP 10,000.00 from Fortune Tobacco.

Certified True Copy

Public Record

Income Tax Return[935]

March 3, 1975

Tan Eng Chan's Income Tax Return for the Calendar Year 1974

Indicates annual income of PHP 12,700.00 from Fortune Tobacco.

Certified True Copy

Public Record

Affidavit of Character Witness[936]

April 28, 1975

General Ordoñez's attestation of Harry's good moral character and qualifications for naturalization

Also contains General Ordoñez's bio data and circumstance of acquaintanceship with Harry

Certified True Copy

Public Record

(No title)[937]

May 10, 1986

Narration of the institution of Allied Bank and Asia Brewery

Shows Marcos, Sr.'s financial stake and involvement in these corporations

Evidence of the ill-gotten nature of Tan's wealth

Certified True Copy

Public Record

Immigrant Certificate of Residence[938]

November 12, 1973

Certification of Tan Eng Chan's status as immigrant. Indicates his residential address in the Philippines

Certified True Copy

Public Record

Withholding Statement and Official Receipt of Tax Payment[939]

March 3, 1975

Statement of Income Tax Withheld from Tan Eng Chan by Fortune Tobacco for the Calendar Year 1974 and payment of Income Tax to the Bureau of Internal Revenue

Indicates annual income of PHP 12,700.00 from Fortune Tobacco.

Certified True Copy

Public Record

Tax Payment Acceptance Order[940]

March 15, 1974

Receipt of Tan Eng Chan 's Income Tax Payment for Calendar Year 1973

Cerified True Copy

Public Record

Fortune Tobacco Letter[941] February 5, 1974

Requested authority from the Philippine Virginia Tobacco Administration to import 1 million kilograms of blending tobacco

Includes a handwritten note by Marcos, Sr. referring the matter to Moreno, the Chairman of the Philippine Virginia Tobacco Administration

Shows Marcos, Sr.'s grant of exclusive concessions to Fortune Tobacco

Copy None

Fortune Tobacco Letter[942] October 1, 1979

Requested authority from the Philippine Virginia Tobacco Administration to import 4 million kilograms of foreign leaf tobacco

Includes a handwritten note by Marcos, Sr. approving the request

Copy None

Philippine Virginia Tobacco Administration Letter[943] July 9, 1980

Informed Marcos, Sr. of Fortune Tobacco's request for an import quota of 4 million kilograms of foreign leaf tobacco

Includes a handwritten note by Marcos, Sr. approving the request

Copy None

Philippine Virginia Tobacco Administration Letter[944] March 31, 1981

Informed Marcos, Sr. of Fortune Tobacco's request for an import quota of 4 million kilograms of foreign leaf

tobacco

Includes a handwritten note by Marcos, Sr. approving the request

Certified True Copy Public Record

Letter from Philippine Virginia Tobacco Administration Chairman Federico Moreno[945] September 7, 1981

Informed Marcos, Sr. of Fortune Tobacco's request for an import quota of 4 million kilograms of foreign leaf tobacco

Includes a handwritten note by Marcos, Sr. approving the request

Certified True Copy Public Record

Letter from the Office of the President[946] April 22, 1983

Granted Fortune Tobacco's request for an import quota of 4 million kilograms of foreign leaf tobacco

Copy None

Philippine Virginia Tobacco Administration Letter[947] April 14, 1983

Informed Marcos, Sr. of Fortune Tobacco's request for an import quota of 4 million kilograms of foreign leaf tobacco

Includes note by a handwritten Marcos, Sr. approving the request

Copy None

Office of the President Letter[948] April 28, 1981

Granted Fortune Tobacco's request for an import quota of 4 million kilograms of foreign leaf tobacco

Copy None

Office of the President Letter[949] December 14, 1983

Addressed to Central Bank Governor Jaime C. Laya to "extend [Allied Bank and Fortune Tobacco] help."

This is in response to Allied Bank's request for a special rediscounting facility worth PHP 300 million to finance tobacco production for Fortune Tobacco

Copy None

Office of the President Letter[950] April 14, 1984

Granted Fortune Tobacco's request for an import quota of 5 million kilograms of foreign leaf tobacco

Certified True Copy None

Fortune Tobacco Letter[951] October 30, 1985

Requested authority from the Philippine Virginia Tobacco Administration to import 2 million kilograms of flue-cured tobacco

Copy None

Memorandum[952]

January 2, 1987

Prepared by Carlitos Encarnacion for Presidential Commission on Good Government Deputy Minister Ramon A. Diaz

Discussed Fortune Tobacco's illegal overimportation of tobacco and irregularities in the approval process

Certified True Copy

Public Record

National Tobacco Importation Records[953]

(No date)

Philippine Virginia Tobacco Administration's record of the total annual tobacco imports from 1978 to 1984

Shows the Philippine Virginia Tobacco Administration's violations of the 6 million kilogram-limit provided by law for annual tobacco imports

Certified Photocopy

Public Record

Fortune Tobacco Export and Import Records[954]

(No date)

Indicates Fortune Tobacco's annual exports for 1974 and 1976 to 1986

Also indicates Fortune Tobacco's annual imports for 1981 to 1986

Shows the Fortune Tobacco's violations of the 6 million kilogram-limit provided by law for tobacco imports in 1981 and 1983

Certified Photocopy

Public Record

Check Payments[955]

July 31, 1986; August 31, 1986; August 16, 1986; September 13, 1986; September 30, 1986; October 18, 1986; and October 31, 1986

Drawer: Fortune Tobacco

Drawee: Allied Bank

Payee: Republic of the Philippines

Amount Paid: PHP 5 million per check

Certified Photocopy

Public Record

Fortune Tobacco Letter[956]

April 5, 1983

Requested from Marcos, Sr. for a special rediscounting facility worth PHP 500 million

Includes a handwritten note by Marcos, Sr. referring the letter to Central Bank Governor Jaime C. Laya for "favorable action"

Shows exclusive favors granted to Fortune Tobacco

Certified Photocopy

Public Record

Fortune Tobacco Letter[957]

December 9, 1983

Requested from Marcos, Sr. for a 180-day credit arrangement for the importation of raw materials

Includes a handwritten note by Marcos, Sr. referring the letter to Central Bank Governor Jaime C. Laya to "give [Fortune Tobacco] the support they may need."

Shows exclusive favors granted to Fortune Tobacco

Copy

None

Allied Bank Letter[958]

December 10, 1983

Requested from Marcos, Sr. a special rediscounting facility worth PHP 300 million "in behalf of the various tobacco dealers," from whom Fortune Tobacco was committed to buy tobacco harvest

Includes a handwritten note by Marcos, Sr. referring the letter to Central Bank Governor Jaime C. Laya to "extend them help"

Shows exclusive favors granted to Fortune Tobacco

Copy

None

Office of the President Letter[959]

December 29, 1983

Instructs Central Bank Governor Jaime C. Laya to accommodate the request of Asia Brewery to allow it to import raw materials and equipment on a no-dollar basis

Shows exclusive favors granted to Asia Brewery

Copy

None

Fortune Tobacco Letter[960]

April 5, 1983

Requested from Marcos, Sr. a rediscounting facility worth PHP 500 million

Shows exclusive favors granted to Fortune Tobacco

Certified Photocopy

Public Record

Fortune Tobacco Letter[961]

December 9, 1983

Requested from Marcos, Sr. for a 180-day credit arrangement for the importation of raw materials

Includes a handwritten note by Marcos, Sr. referring the letter to Central Bank Governor Jaime C. Laya to "give [Fortune Tobacco] the support they may need."

Shows exclusive favors granted to Fortune Tobacco

Copy

None

Fortune Tobacco Letter[962]

April 28, 1976

Requested a short-term loan of PHP 50 million from the Philippine National Bank for the purchase of tobacco from local farmers

Copy

None

Fortune Tobacco Letter[963]

April 28, 1976

Requested a short-term loan of PHP 50 million from the Philippine Veterans Bank for the purchase of tobacco from local farmers

Certified Copy

Public Record

Letter from Tan[964]

June 25, 1978

Requested from Marcos, Sr. for the increase in specific taxes on cigarettes be delayed for one year

Reason for request: for Fortune Tobacco to have more time to settle its loans and liabilities

Copy

None

Fortune Tobacco Letter[965]

October 22, 1982

Requested from Marcos, Sr. an exemption in customs duties and compensating taxes on machineries and equipment for Fortune Tobacco's modernization program

Includes a handwritten note by Marcos, Sr. approving the request

Shows exclusive favors granted to Fortune Tobacco

Copy

None

Fortune Tobacco Letter[966]

December 21, 1983

Requested from Marcos, Sr. for an exception from Central Bank Circular No. 984's provisions. This allows Fortune Tobacco to import raw materials and equipment on a no-dollar basis. It also requested for an exemption from all pre-importation clearances and requirements of other government agencies.

Includes a handwritten note by Marcos, Sr. referring the letter to Central Bank Governor Jaime C. Laya to "accommodate [Fortune Tobacco]."

Shows exclusive favors granted to Fortune Tobacco

Copy

None

Letter from Tan[967]

July 18, 1978

Requested from Marcos, Sr. an upward adjustment of the retail price of cigarettes by PHP 0.30 per pack

Batas Pambansa Blg. 23 was later enacted, which incorporated Tan's request. This shows the grant of exclusive favors to him and Fortune Tobacco

Copy

None

Letter from Mariano[968]

January 8, 1985

Sent a Draft Executive Order to Marcos, Sr. for his approval

Copy

None

Draft Executive Order[969]

January 8, 1985

Provides for a new intermediate specific tax bracket which will encourage the use of locally-grown tobacco. Also provides for a higher ad valorem tax rate on high-priced cigarettes

The proposed executive order was adopted in Presidential Decree No. 1994, which shows the grant of exclusive favors to Fortune Tobacco

Copy

None

Fortune Tobacco Letter[970]

February 14, 1977

Addressed to Chairman Placido L. Mapa, Jr. of the Development Bank of the Philippines, concerning the approval of the Lease Purchase Agreement with Sylvanna Tobacco Corp. for PHP 45 million.

Includes a handwritten note by Marcos, Sr. referring the matter to Chairman Placido L. Mapa, Jr. for favorable action

Shows exclusive favors granted to Fortune Tobacco

Copy

None

Fortune Tobacco Letter[971]

April 2, 1979

Sought the approval of the Insurance Commission for the formation and operation of a new insurance company by Fortune Tobacco's principal stockholders

Copy

None

Fortune Tobacco Letter[972]

January 16, 1975

Recommended to the Central Bank the phasing out of commercial cigarette importation

Includes a handwritten note by Marcos, Sr. referring the recommendation to the Bureau of Internal Revenue, the National Economic and Development Authority, and the Secretary of Trade for their comments.

Copy

None

Foremost Farms Letter[973]

June 21, 1976

Requested from the Secretary of Public Highways the diversion of part of the Infanta Highway crossing the property of Foremost Farms

Includes a handwritten note by Marcos, Sr. approving the request

Shows exclusive favors granted to Foremost Farms

Certified True Copy

Public Record

Tender of Excluded Evidence by the Republic, through the Presidential Commission on Good Government[974]

April 3, 2012

Indicated the procedural antecedents of the exclusion of Joselito Yujuico's and Aderito Yujuico's testimonies as evidence

Prayed that the affidavits of the said witnesses be allowed to form part of the records of the case

Original

N/A

Judicial Affidavit of Joselito Yujuico[975]

November 10, 2011

Narrated the events that led to the sale of GenBank

Shows undue favorable treatment by Central Bank Governor Gregorio Licaros in favor of Tan's group

Evidence of the irregularities in the sale of GenBank to Tan's group

Original

N/A

Central Bank Memorandum[976]

March 29, 1977

Summary of the Central Bank's meeting with prospective buyers of GenBank. In the meeting, the conditions for the sale were relayed.

It was also noted that after the meeting, Governor Gregorio Licaros imposed the additional requirement of a firm commitment from a bank for the issuance of a stand-by letter of credit. Only Tan's group was able to comply with this as of March 28, 1977.

Copy

None

Regional Trial Court Decision[977]

December 2, 1992

A petition for assistance in the liquidation of GenBank

Annulled and set aside the closure of GenBank and the adoption of the bid of Tan's group for being plainly arbitrary and made in bad faith"[978]

Ordered the Central Bank to restore the license of GenBank to operate and conduct business as a commercial bank and trust corporation

Directed the Central Bank to pay Gen Bank its capital account (excess of its assets over its liabilities prior to the sale) and damages

Copy

Public Record

Resolution No. 677 of the Monetary Board of the Central Bank[979]

March 29, 1977

Adopted the bid of Tan 's group for the sale of GenBank

Copy

None

Resolution No. 1245 of the Monetary Board of the Central Bank[980]

July 1, 1977

Dispensation from the requirement that Tan's group submit a standby irrevocable credit to secure the emergency advances assumed by Allied Bank

The Resolution also extends the period of payment of the balance of the emergency advances assumed by Allied Bank from two to five years

Shows special and extraordinary concessions or benefits given to defendants Allied Bank and Tan.

Copy

Public Record

Judicial Affidavit of Aderito Yujuico[981]

June 16, 2011

Narrated the events that led to the sale of GenBank

Shows that Paramount Finance Corp. should have been the buyer, but Tan's group unexpectedly received Central Bank approval as the buyer

Original

N/A

Minutes of GenBank Board Meeting[982]

January 10, 1977

Seven new directors, representing various government entities and instrumentalities, were elected to the Board of GenBank

Copy

None

GenBank Letter[983]

December 19, 1976

Discussed the equity participation of Land Bank of the Philippines in GenBank

Copy

None

Deed of Assignment with Undertaking[984]

December 23, 1976

Served as security for the advances and credit accommodations made by the Central Bank to GenBank

Notarized Copy

Public Record

Central Bank Letter[985]

December 27, 1976

Addressed to the Board of GenBank instructing it to take certain steps in relation to the loans and credit accommodations from the Central Bank

Copy

None

Schedule of Loans by GenBank[986]

As of December 20, 1976

Total Loans:

PHP 117, 144,542.87

Total Credit Accommodations:

PHP 167, 282,776.51

Copy

None

Undertaking by GenBank[987]

N/A

Pro forma undertaking for a borrower of GenBank to collateralize the borrower's loan/s

Copy

None

Schedule of Sureties[988]

N/A

Total Credit Accommodations:

PHP 167,282,776.51

Copy

None

Surety Agreement[989]

N/A

Pro forma surety agreement

Copy

None

Philippine Bank of Communications Letter[990]

February 10, 1977

Offer to buy GenBank

Copy

None

Paramount Finance Corp. Letter[991]

February 8, 1977

Offer to buy GenBank

Copy

None

Letter from Tan, Willy Co, Ramon Lee, Florencio Santos, and Sixto L. Orosa, Jr., represented by Ramon S. Orosa[992]

February 10, 1977

Offer to buy GenBank

Copy

None

Family Savings Bank Letter[993]

February 4, 1977

Clarification of the offer to buy GenBank

Copy

None

Family Savings Bank Letter[994]

February 3, 1977

Offer to buy GenBank

Copy

None

Legaspi Towers Development Corporation Letter[995]

February 7, 1977

Offer to buy GenBank

Copy

None

GenBank Letter[996]

February 10, 1977

Updated the Central Bank of the offers it received

Copy

None

Resolution No. 449 of the Monetary Board of the Central Bank[997]

February 25, 1977

Recommended to GenBank the offer of Tan's group as the most favorable offer

Also prescribed minimum conditions for the approval of the sale

Copy

None

Central Bank Letter[998]

February 28, 1977

Recommended to GenBank the offer of Tan's group as the most favorable offer

Copy

None

Letter from Joselito Yujuico and Rodolfo B. Santiago[999]

March 7, 1977

Narration of the negotiations of GenBank with Tan's group

Copy

None

Central Bank Letter[1000]

March 8, 1977

Instructed GenBank to negotiate with Paramount Finance Corp., it having offered the best price among the interested buyers, subject to certain conditions

Copy

None

Letter from Central Bank Governor Gregorio Licaros[1001]

March 10, 1977

Instructed GenBank to collateralize its previous loans and credit accommodations from Central Bank

Copy

None

GenBank Letter[1002]

March 14, 1977

Submitted to the Central Bank for its approval the Agreement to Buy and Sell with Paramount Finance Corp.

Copy

None

Agreement to Buy and Sell[1003]

March 14, 1977

GenBank will sell 700,000 shares of stock, representing at least 67% of the outstanding voting shares, to Paramount Finance Corp.

Copy

None

Philippine National Bank Consolidated Statement of Condition[1004]

As of December 31, 1977

Shows the values of the assets, liabilities, capital accounts, and contingent accounts of Philippine National Bank

Copy

None

Central Bank (Department of Commercial and Savings Banks) Memorandum[1005]

March 29, 1977

Determined that GenBank cannot resume its business and recommended that Tan's group be allowed to purchase it

Copy

None

Letter from Tan's group, represented by Ramon S. Orosa, to Central Bank[1006]

March 28, 1977

Signified the group's intention to purchase GenBank and contained the terms and conditions of the purchase

Copy

None

Philippine National Bank Letter[1007]

March 28, 1977

Sent to the Central Bank. Contained the Philippine National Bank's grant of a letter of credit in favor of the Tan's group for its purchase of GenBank

Copy

None

Fortune Tobacco Letter/Letter from Tan[1008]

March 26, 1977

Requested from Marcos, Sr. assistance in persuading the Philippine National Bank to issue a letter of credit for the purchase of GenBank

Copy

None

Transcript of Stenographic Notes[1009]

January 31, 2011

Deposition of witness Jaime C. Laya

Evidence of the irregularities in the sale of GenBank to the Tan's group

Original

N/A

Resolution No. 1245 of the Monetary Board of the Central Bank of the Philippines[1010]

July 1, 1977

Dispensation from the requirement that Tan's group submit a standby irrevocable credit to secure the emergency advances assumed by Allied Bank

The Resolution also extends the period of payment of the balance of the emergency advances assumed by Allied Bank from two to five years

Shows special and extraordinary concessions or benefits given to defendants Allied Bank and Tan.

Copy

Public Record

Allied Bank Letter[1011]

May 17, 1979

Tan as Chairman of Allied Bank requested to incorporate and organize Allied Bank as a non-life insurance and surety company.

Copy

None

Office of the President Memorandum to National Food Authority[1012]

April 14, 1984

Marcos, Sr. approved the request of Tan, as Chairman of Allied Bank, that the National Food Authority be authorized to bank with the Allied Bank as an exception to existing regulations.

Allied Bank offered to provide a credit line from PHP 300 million to PHP 500 million to the National Food Authority.

Shows exclusive concessions granted to Allied Bank

Certified Copy

Public Record

Allied Bank Letter[1013]

April 12, 1984

Allied Bank offered to provide a credit line from PHP 300 million to PHP 500 million to the National Food Authority through the Office of the President. The Credit Line was claimed to be in line with the Food and Sariling Sikap Programs.

Copy

None

Allied Bank Letter[1014]

April 12, 1984

Allied Bank requested that it be issued all the necessary permits to purchase, import, possess, install, maintain, and operate the network and that the required radio frequencies be directly assigned to Allied Bank. It claimed in the letter that the request is due to the untenability of PLDT's Subscriber's Financing Agreement.

Copy

None

Office of the President Memorandum to the National Telecommunications Commission[1015]

June 11, 1984

Marcos, Sr. approved the request of Allied Bank: (1) to own, operate, manage, and maintain a communications network for its exclusive use and its affiliate companies; (2) to be directly issued and assigned frequencies required for the operation of the communications network; and (3) to be authorized to enter into an "Interconnect Agreement" with PLDT to facilitate the operations of the communications network.

Shows special and extraordinary concessions or benefits given to Allied Bank

Copy

None

Allied Bank Letter[1016]

June 4, 1984

Allied Bank sent a letter request to Marcos, Sr.: (1) to own, operate, manage, and maintain a communications network for its exclusive use and its affiliate companies; (2) to be directly issued and assigned frequencies required for the operation of the communications network; and (3) to be authorized to enter into an "Interconnect Agreement" with PLDT to facilitate the operations of the communications network.

Copy

None

Office of the President Letter[1017]

April 15, 1985

The Office of the President furnished Tan a copy of his letter to Marcos, Sr. concerning the terms of agreement between Allied Bank and PLDT in the establishment of a communications system. The letter bears the handwritten instructions of Marcos, Sr.

Copy

None

Office of the President Memorandum to the Central Bank of the Philippines[1018]

June 5, 1984

Marcos, Sr. instructed the Central Bank of the Philippines to sell to Allied Bank for USD 25 million so that they can settle their obligations in Bahrain and the guarantee given by the Philippines can be withdrawn.

Shows exclusive favors granted to Allied Bank

Certified Copy

Public Record

Allied Bank Letter[1019]

April 19, 1985

Allied Banking Corp wrote a letter to Marcos, Sr. requesting that the Central Bank of the Philippines place with it a deposit of USD 50 million to be able to satisfy its dollar loans.

Certified Copy

Public Record

Office of the President Memorandum to the Central Bank of the Philippines[1020]

December 14, 1983

Marcos, Sr. instructed the Central Bank to "help" Allied Bank in their request for a Special Rediscounting Facility in the amount of PHP 300 million to finance the production and deliveries of tobacco crops which Fortune Tobacco is committed to buy from dealers.

Shows exclusive favors granted to Allied Bank

Copy

None

Allied Bank Letter[1021]

October 20, 1983

Letter of Tan to the Ministry of Transportation and Communication seeking a favorable endorsement for the approval of their applications for the microwave frequencies.

Certified True Copy

Public Record

Allied Bank Letter[1022]

February 17, 1983

Letter of Tan to the National Telecommunications Commission relaying their requests for the requirements needed for them to set up an integrated communications network.

Copy

None

Office of the President Memorandum to the National Food Authority[1023]

April 14, 1984

Marcos, Sr. approved the request of Tan, as Chairman of Allied Bank, that the National Food Authority be authorized to bank with the Allied Bank as an exception to existing regulations.

Allied Bank offered to provide a credit line from PHP 300 million to PHP 500 million to the National Food Authority.

Shows exclusive concessions granted to Allied Bank

Certified Copy

Public Record

Office of the President Memorandum to the Central Bank of the Philippines[1024]

May 10, 1984

The Office of the President furnished the Central Bank a copy of the Allied Bank's letter which bears the comment of Marcos, Sr. on the proposed financial exposure of the Central Bank with the Allied Bank

Copy

None

(No heading)[1025]

N/A

A letter detailing the benefits of going into a brewery business in the Philippines.

Copy

None

Statement of Assets and Net Worth[1026]

June 21, 1983

A certificate from the Securities and Exchange Commission stating that Basic Holdings has PHP 1 million in assets and a PHPH 1 million net worth as of June 21, 1983.

Articles of Incorporation of Basic Holdings Corp.[1027]

June 15, 1983

Provides the Articles of Incorporation of Basic Holdings

Copy

None

Pan-Philippines Industries Inc. Letter[1028]

May 17, 1979

Tan as president of Pan-Philippines requested for a free dollar allocation amounting to USD 6,934,500.00 to enable it to open the letters of credit for the importation of the machinery set up of the proposed brewery plants.

Copy

None

Letter from Tan[1029]

July 6, 1979

The letter states Pan-Philippines's scheduled dates for start of manufacturing and their projected market share.

Copy

None

Purchase Agreement[1030]

March 1, 1985

Sipalay Trading, represented by Tan as its Chairman, purchased Development Bank's shareholdings in Maranaw Hotels

Copy

None

Pledge[1031]

April 22, 1985

As stated in the Purchase Agreement, the shares under purchase were released to Sipalay Trading upon completion of the 20% down-payment of the total purchase price. As security for the payment of the balance of the purchase price for the shares in Maranaw Hotels, Sipalay Trading transferred and assigned to Development Bank the subject shares of stock as stated in the Purchase Agreement.

Copy

None

Amended Answer with Counterclaim and Compulsory Cross-claim in relation to Civil Case No. 0005[1032]

November 19, 2001

Prayer to dismiss the Complaint and claim of damages from the Plaintiff. It also included a prayer for Tan and defendant record stockholders to deliver to the defendant Marcoses 60% of Shareholdings, Inc.'s outstanding capital stock.

Copy

N/A

Deed of Sale of Shares of Stock[1033]

December 19, 1980

Stockholders of Hummel Industries, including Tan, sold their shares of stock to Shareholdings, Inc., for PHP 15 million.

Copy

None

Deed of Sale of Shares of Stock[1034]

December 19, 1980

Stockholders of Grandspan Development Corp., including Tan, sold their shares of stock to Shareholdings, Inc., for PHP 5 million.

Copy

None

Deed of Sale of Shares of Stock[1035]

December 24, 1980

Stockholders of Asia Brewery, including Tan, sold their shares of stock to Shareholdings, Inc. for PHP 250.5 million

Copy

None

Deed of Sale[1036]

December 22, 1980

Silangan Holdings sold its shares of stock in Asia Brewery to Shareholdings, Inc. for PHP 49.5 million

Copy

None

Deed of Sale of Shares of Stock[1037]

December 19, 1980

Stockholders of Silangan Holdings sold their shares of stock to Shareholdings, Inc. for PHP 1 million

Copy

None

Deed of Sale of Shares of Stock[1038]

December 19, 1980

Stockholders of Fortune Tobacco sold their shares of stock to Shareholdings, Inc.

Copy

None

Deed of Sale of Shares of Stock[1039]

December 19, 1980

Stockholders of Foremost Farms, including Tan, sold their shares of stock to Shareholdings, Inc. for PHP 120 million.

Copy

None

Shareholdings, Inc. Capital Stock Transfer Transactions[1040]

N/A

Shows records of the capital stock transfer transactions of Shareholdings, Inc.

Copy

None

RE: Shareholdings Inc./Lucio Tan Group[1041]

N/A

Summary of information from library files and other available records on Shareholdings, Inc. prepared by the Presidential Commission on Good Government.

Evidence of anomalous transactions of Shareholdings, Inc.

Copy

N/A

A Brief History of Shareholdings, Inc.[1042]

N/A

History of Shareholdings, Inc. specifically its initial incorporators and its eventual purchase or shares of stock of other existing corporations.

Copy

N/A

Handwriting of Marcos[1043]

1984

Notes on shares of stock of Shareholdings, Inc.

Evidence of Marcos, Sr.'s interest and involvement in Shareholdings, Inc.

Copy

None

SEC Registration No. 114418[1044]

July 20, 1983

Certification that the Articles of Incorporation of Supreme Holdings is in accordance with the law.

Copy

Public Record

SEC Registration No. 114419[1045]

July 20, 1983

Certification that the Articles of Incorporation of Falcon Holdings is in accordance with the law.

Copy

Public Record

SEC Registration No. 114420[1046]

July 20, 1983

Certification that the Articles of Incorporation of Basic Holdings is in accordance with the law.

Copy

Public Record

Deed of Assignment[1047]

July 16, 1984

Stockholders of Shareholdings, Inc., including Tan, transferred their shares of stock to Basic Holdings for PHP 61,617,500.00

Copy

None

Deed of Assignment[1048]

July 16, 1984

Stockholders of Shareholdings, Inc., including Lucio Tan, transferred their shares of stock to Falcon Holdings for PHP 31,437,500.00

Copy

None

Deed of Assignment[1049]

July 16, 1984

Stockholders of Shareholdings, Inc., including Lucio Tan, transferred their shares of stock to Supreme Holdings for PHP 31,437,500.00

Copy

None

Shareholdings, Inc. Capital Stock Transfer Transactions[1050]

N/A

Shows records of the capital stock transfer transactions of Shareholdings, Inc.

Copy

None

Deed of Sale of Shares of Stock[1051]

February 28, 1985

Stockholders of Basic Holdings, including Lucio Tan, sold their shares to Supreme Holdings

Copy

None

Shareholdings, Inc. Capital Stock Transfer Transactions[1052]

N/A

Shows records of the capital stock transfer transactions of Shareholdings, Inc.

Copy

None

Deed of Assignment[1053]

No date indicated

Signed but undated Deed of Assignment of Soolim Co of shares of stock in Falcon Holdings without an Acknowledgement

Copy

None

Deed of Assignment[1054]

No date indicated

Signed but undated Deed of Assignment of William C. Lee of shares of stock in Falcon Holdings without an Acknowledgement

Copy

None

Deed of Assignment[1055]

No date indicated

Signed but undated Deed of Assignment of Andy Y. Li of shares of stock in Falcon Holdings without an Acknowledgement

Copy

None

Deed of Assignment[1056]

No date indicated

Signed but undated Deed of Assignment of Jimmy C. Chua of shares of stock in Falcon Holdings without an Acknowledgement

Copy

None

Deed of Assignment[1057]

No date indicated

Signed but undated Deed of Assignment of Antonio Choa of shares of stock in Falcon Holdings without an Acknowledgement

Copy

None

Deed of Assignment[1058]

No date indicated

Signed but undated Deed of Assignment of Florentina Tan of shares of stock in Supreme Holdings without an Acknowledgement

Copy

None

Deed of Assignment[1059]

No date indicated

Signed but undated Deed of Assignment of Eduardo C. Chua of shares of stock in Supreme Holdings without an Acknowledgement

Copy

None

Deed of Assignment[1060]

No date indicated

Signed but undated Deed of Assignment of William T. Wong of shares of stock in Supreme Holdings without an Acknowledgement

Copy

None

Deed of Assignment[1061]

No date indicated

Signed but undated Deed of Assignment of Nelson C. Tan of shares of stock in Supreme Holdings without an Acknowledgement

Copy

None

Deed of Assignment[1062]

No date indicated

Signed but undated Deed of Assignment of Peter Soo of shares of stock in Supreme Holdings without an Acknowledgement

Copy

None

Deed of Sale of Shares of Stock[1063]

No date indicated

Signed but undated Deed of Sale of Tan of his shares of stock in Shareholdings, Inc. without an Acknowledgement

Copy

None

Deed of Sale of Shares of Stock[1064]

No date indicated

Signed but undated Deed of Sale of Mariano of shares of stock in Shareholdings, Inc. without an Acknowledgement

Copy

None

Stenographic Notes[1065]

No date indicated

Handwritten notes of cash receipts

Copy

None

Security Bank and Trust Company Handwritten Note[1066]

December 17, 1983

List of post-dated checks received from Allied Bank

Copy

None

Security Bank and Trust Company Handwritten Note[1067]

May 10, 1984

List of checks received from Allied Bank, DCIB, Consolidated Bank, and Family Bank

Copy

None

Sworn Statement[1068]

January 14, 1987

Sworn Statement of Gapud who claimed to have been consulted by the Marcoses regarding financial matters. He stated that Marcos, Sr. and Tan had an understanding that Marcos, Sr. owns 60% of Shareholdings, Inc., Fortune Tobacco, Asia Brewery, Allied Bank, and Foremost Farms. Tan was identified as one of the sources of funds that went into the accounts of Marcos, Sr. in Security Bank.

Evidence of Marcos, Sr.'s interest and involvement in the Tan Group of Companies

Copy

None

Transcript of Stenographic Notes[1069]

October 16, 2007

Deposition of witnesses Senator Salonga and Magno (Records Custodian of the Library and Records Section of the Presidential Commission on Good Government)

Evidence showing Marcos, Sr.'s interest in the Tan Group of Companies and the special favors and concessions granted by Marcos, Sr. in relation thereto.

Original

N/A

Transcript of Stenographic Notes[1070]

February 13, 2008

Deposition of witness Marcos, Jr.

Evidence showing Marcos, Sr.'s interest in Shareholdings, Inc.

Original

N/A

Securities and Exchange Commission Document[1071]

December 29, 1978

Certification of registration of the Articles of Incorporation of Allied Leasing and Finance Corp.

Certified Machine Copy

Public Record

Fortune Tobacco Letter[1072]

September 17, 1979

Requested authority from the Philippine Virginia Tobacco Administration to import 3.7 million kilograms of leaf tobacco

Copy

None

Fortune Tobacco Letter[1073]

March 30, 1981

Requested authority from the Philippine Virginia Tobacco Administration to import 4 million kilograms of flue-cured tobacco

Certified True Copy

Public Record

Office of the President Letter[1074]

April 28, 1981

Granted Fortune Tobacco's request for an import quota of 4 million kilograms of foreign leaf tobacco

Certified True Copy

Public Record

Fortune Tobacco Letter[1075]

September 5, 1981

Requested authority from the Philippine Virginia Tobacco Administration to import 4 million kilograms of flue-cured tobacco

Certified True Copy

Public Record

Fortune Tobacco Letter[1076]

April 9, 1983

Requested authority from the Philippine Virginia Tobacco Administration to import 4 million kilograms of flue-cured tobacco

Copy

None

Office of the President Letter[1077]

April 5, 1984

Granted Fortune Tobacco's request for an import quota of 3 million kilograms of foreign leaf tobacco

Certified True Copy

Public Record

Fortune Tobacco Letter[1078]

April 11, 1984

Requested authority from the Philippine Virginia Tobacco Administration to import 5 million kilograms of flue-cured tobacco

Certified True Copy

Public Record

Office of the President Letter[1079]

November 5, 1985

Granted Fortune Tobacco's request for an import quota of 2 million kilos of foreign leaf tobacco

Copy

None

Fortune Tobacco Letter[1080]

August 1, 1984

Letter to Marcos, Sr. where Fortune Tobacco (1) clarified the issue raised in a newspaper article, which concerned farmers protesting low tobacco prices, and (2) explained why it stopped buying tobacco from Yigan.

Copy

None

Office of the President Memorandum[1081]

December 29, 1983

Addressed to Central Bank Governor Jaime C. Laya

Marcos, Sr. instructed Laya to "try and accommodate [Fortune Tobacco]" on its request to be exempted from Central Bank Circular No. 984, which would allow it to import on a no-dollar basis raw materials and equipment other than those listed in the circular's attachment.

Office of the President Memorandum[1082]

December 14, 1983

Addressed to Central Bank Governor Jaime C. Laya

Marcos, Sr. instructed Laya to "give them [Fortune Tobacco] the support they may need" on its request to have authority to import raw materials to be utilized for its operation in 1984.

Evidence of favors and special concessions granted by Marcos, Sr. to Tan as Chairman of Fortune Tobacco

Copy

None

Draft Executive Order[1083]

January 8, 1985

Draft Executive Order submitted by Mariano

The Draft Executive Order provided the following:

a)

a new intermediate specific tax bracket between the tax brackets for highest-priced native tobacco cigarettes and the lowest-priced virginia tobacco cigaretes;
and

b)

a higher ad valorem tax rate on high-priced cigarettes.

Copy

None

Executive Order No. 977[1084]

August 22, 1984

Amended Executive Order No. 960. The Executive Order provides that the Minister of Finance shall promulgate the necessary rules and regulations to effectively implement the provisions of the Executive Order subject to the approval of the President.

Certified Photocopy

Public Record

Executive Order No. 973[1085]

Imposed ad valorem tax and revised the specific tax rates and maximum retail prices of cigarettes.

Certified Photocopy

Public Record

Fortune Tobacco Letter[1086]

January 16, 1975

Addressed to the Central Bank Governor

Recommendation of Fortune Tobacco to phase out commercial cigarette importations into the Philippines.

Copy

None

Handwritten Notes[1087]

October 1979

List of cash receipts and a note stating that such is inclusive of a check from Tan with number ABC #202523 dated 10/03/1979. The note states that it was received 10/09/1979.

Certified True Copy

Public Record

Handwritten Notes[1088]

1984

Handwritten notes stating expenses and check payments from February to March 1984.

Copy

None

Handwritten Notes[1089]

List of cash receipts. The first item in the list indicates "Exchange of P500,000 by Lucio Tan, remitted"

Certified True Copy

Public Record

Office of the President Acknowledgement of Receipt of Original Documents[1090]

November 11, 1992

Acknowledging receipt of original documents on Tan from the Presidential Library. The list includes letters of Tan to Marcos, Sr. and the corresponding memoranda issued by Marcos, Sr. to grant the requests of Tan and his corporations.

Proof of authenticity of some documents presented by the Republic as evidence

Copy

On the other hand, respondents appended the following documents:

Title

Date

Contents

Nature of Document
(Original or Copy)

Best Evidence
Rule exception

Minutes of the Sandiganbayan Proceedings[1091]

December 22, 2010

Granted the motions to dismiss (demurrer to evidence) of Zalamea and Ferry

Certified Photocopy

Public Record

Minutes of the Sandiganbayan Proceedings[1092]

February 25, 2011

Denied the Republic's Motion for Reconsideration assailing the dismissal of the cases against Zalamea and Ferry

Certified Photocopy

Public Record

Sandiganbayan Decision (Civil Case Nos. 0096-0099)[1093]

March 2, 2006

The Sandiganbayan declared null and void the writs of sequestration issued by the Presidential Commission on Good Government on the shares of stock of Tan et al. in Allied Bank, Foremost Farms, Fortune Tobacco, and Shareholdings, Inc.

Certified Photocopy

Public Record

Motion for Leave to file Amended Answer with Counter[-]claim and Compulsory Cross-claim[1094]

November 19, 2001

Procedural matter before the Sandiganbayan (Civil Case No. 0005)

Copy

None

Amended Answer with Counter[-]claim and Compulsory Cross-claim[1095]

November 19, 2001

Contains the defenses of defendant Imelda

Copy

None

Minutes of the Sandiganbayan Proceedings[1096]

June 20, 2002

The Sandiganbayan denied the Motion for Leave to File Amended Answer with Counter[-]claim and Compulsory Cross-claim of Imelda

Certified Photocopy

Public Record

Supreme Court Resolution[1097]

March 17, 2003

The Supreme Court denied Imelda's petition for certiorari assailing the Sandiganbayan's denial of her Motion for Leave to File Amended Answer with Counter[-]claim and Compulsory Cross-claim

Copy

Public Record

Second Amended Complaint[1098]

September 5, 1991

Contains general and specific averments of defendants' illegal acts

Certified Photocopy

Public Record

Answer of Tan[1099]

May 8, 2000

Contains the denials, affirmative defenses, and counter-claims of the defendants

Copy

None

Answer of defendant corporations[1100]

May 8, 2000

Copy

None

Answer of other individual defendants[1101]

May 8, 2000

Copy

None

Answer with Counter[-]claims of Imelda R. Marcos[1102]

August 28, 1995

Copy

None

Table of Contents of Sandiganbayan Decision[1103]

June 11, 2012

Copy

Public Record

Offer of Exhibits by defendants[1104]

August 24, 2010

Contains a table of the titles and descriptions of the exhibits offered by the defendants

Copy

None

Indicated in the rightmost columns is whether the documents are originals or copies, and whether they might fall within the exceptions to the "original document rule."

While several of the documents presented by the Republic tend to support its allegations against Marcos, Sr. and Tan, et al., this Court is constrained not to consider those inadmissible in evidence, especially those not compliant with the original document rule.

As discussed, the original document rule states that if what is sought to be proven is the contents of a document, the original of the document must be presented during trial.[1105] The rule allows for but a few exceptions, enumerated under Rule 130, Section 3 of the Rules of Court:

SECTION 3. Original Document Must be Produced; Exceptions. — When the subject of inquiry is the contents of a document, writing, recording, photograph or other record, no evidence is admissible other than the original document itself, except in the following cases:

(a) When the original is lost or destroyed, or cannot be produced in court, without bad faith on the part of the offeror;

(b) When the original is in the custody or under the control of the party against whom the evidence is offered, and the latter fails to produce it after reasonable notice, or the original cannot be obtained by local judicial processes or procedures;

(c) When the original consists of numerous accounts or other documents which cannot be examined in court without great loss of time and the fact sought to be established from them is only the general result of the whole;

(d) When the original is a public record in the custody of a public officer or is recorded in a public office; and

(e) When the original is not closely-related to a controlling issue.

Thus, the original document need not be presented in case if it has been lost or destroyed, or cannot be produced in court, so long as the party offering, proves its existence or execution and the cause of unavailability. A copy of the document may also be considered if the original is in the custody or under the control of the party against whom the evidence is offered, and the latter fails to produce it after reasonable notice. Likewise, the same rule applies if the original consists of numerous accounts or other documents which cannot be examined in court without great loss of time and the fact sought to be established from them is only the general result of the whole. Secondary evidence may also be presented if the original is a public record in the custody of a public officer or is recorded in a public office.[1106]

The party presenting the secondary evidence has the burden to show that the documents fall under the exceptions to the original document rule. To do so, they must lay the basis for presenting secondary evidence.

If the document is lost or unavailable, the party must prove: first, that the document exists; second, that it was duly executed; and third, that there are circumstances that excuse the presentation of the original document.[1107]

... [B]efore a party is allowed to adduce secondary evidence to prove the contents of the original sales invoices, the offeror must prove the following: (1) the existence or due execution of the original; (2) the loss and destruction of the original or the reason for its nonproduction in court; and (3) on the part of the offeror, the absence of bad faith to which the unavailability of the original can be attributed. The correct order of proof is as follows: existence, execution, loss, and contents. At the sound discretion of the court, this order may be changed if necessary.[1108]

Establishing the execution and authenticity of documents is particularly important for private documents. As earlier discussed, a private document's due execution and authenticity must be proved by anyone who saw the document executed or written, or by evidence of the genuineness of the signature or handwriting of the person who made the document.[1109] This Court further discussed how a document's execution may be established in

Ong Ching Pov. Court of Appeals,[1110]

The due execution of the document may be established by the person or persons who executed it; by the person before whom its execution was acknowledged; or by any person who was present and saw it executed or who after its execution, saw it and recognized the signatures; or by a person to whom the parties to the instrument had previously confessed the execution thereof.[1111] (Emphasis supplied, citations omitted)

The proof needed to establish the authenticity of public documents is different. Documents that are entries in public records made in the performance of a duty by a public officer are prima facie evidence of the facts stated in the document. All other public documents are evidence, even against a third person, of the fact which gave rise to their execution and of the date of its execution.[1112] Particular attestations are needed to present copies of public documents as evidence.[1113]

In Spouses Gimenez:[1114]

The distinction as to the kind of public document under Rule 132, Section 19 of the Rules of Court is material with regard to the fact the evidence proves. In *Philippine Trust Company v. Hon. Court of Appeals, et al.*, this court ruled that:

... not all types of public documents are deemed prima facie evidence of the facts therein stated:

....

"Public records made in the performance of a duty by a public officer" include those specified as public documents under Section 19(a), Rule 132 of the Rules of Court and the acknowledgement, affirmation or oath, or jurat portion of public documents under Section 19(c). Hence, under Section 23, notarized documents are merely proof of the fact which gave rise to their execution (e.g., the notarized Answer to Interrogatories ... is proof that Philtrust had been served with Written Interrogatories), and of the date of the latter (e.g., the notarized Answer to Interrogatories is proof that the same was executed on October 12, 1992, the date stated thereon), but is not prima facie evidence of the facts therein stated. Additionally, under Section 30 of the same Rule, the acknowledgement in notarized documents is prima facie evidence of the execution of the instrument or document involved (e.g., the notarized Answer to Interrogatories is prima facie proof that petitioner executed the same).

The reason for the distinction lies with the respective official duties offending the execution of the different kinds of public instruments. Official duties are disputably presumed to have been regularly performed. As regards affidavits, including Answers to Interrogatories which are required to be sworn to by the person making them, the only portion thereof executed by the person authorized to take oaths is the jurat. The presumption that official duty has been regularly performed therefore applies only to the latter portion, wherein the notary public merely attests that the affidavit was subscribed and sworn to before him or her, on the date mentioned thereon. Thus, even though affidavits are notarized documents, we have ruled that affidavits, being self-serving, must be received with caution...

In *Salas v. Sta. Mesa Market Corporation*, this court discussed the difference between mere copies of audited financial statements submitted to the Bureau of Internal Revenue (BIR) and Securities and Exchange Commission (SEC), and certified true copies of audited financial statements obtained or secured from the BIR or the SEC which are public documents under Rule 132, Section 19(c) of the Revised Rules of Evidence:

The documents in question were supposedly copies of the audited financial statements of SMMC. Financial statements (which include the balance sheet, income statement and statement of cash flow) show the fiscal condition of a particular entity within a specified period. The financial statements prepared by external auditors who are certified public accountants (like those presented by petitioner) are audited financial statements. Financial statements, whether audited or not, are, as [a] general rule, private documents. However, once

financial statements are filed with a government office pursuant to a provision of law, they become public documents.

Whether a document is public or private is relevant in determining its admissibility as evidence. Public documents are admissible in evidence even without further proof of their due execution and genuineness. On the other hand, private documents are inadmissible in evidence unless they are properly authenticated. Section 20, Rule 132 of the Rules of Court provides:

....

Petitioner and respondents agree that the documents presented as evidence were mere copies of the audited financial statements submitted to the BIR and SEC. Neither party claimed that copies presented were certified true copies of audited financial statements obtained or secured from the BIR or the SEC which under Section 19(c), Rule 132 would have been public documents. Thus, the statements presented were private documents. Consequently, authentication was a precondition to their admissibility in evidence.

During authentication in court, a witness positively testifies that a document presented as evidence is genuine and has been duly executed or that the document is neither spurious nor counterfeit nor executed by mistake or under duress. In this case, petitioner merely presented a memorandum attesting to the increase in the corporation's monthly market revenue, prepared by a member of his management team. While there is no fixed criterion as to what constitutes competent evidence to establish the authenticity of a private document, the best proof available must be presented. The best proof available, in this instance, would have been the testimony of a representative of SMMC's external auditor who prepared the audited financial statements. Inasmuch as there was none, the audited financial statements were never authenticated.[1115] (Emphasis in the original, citations omitted)

In this case, the following are the relevant documents that tend to prove the close association between Tan and Marcos, Sr., and the taking of undue advantage of office thus resulting in unjust enrichment and damage and prejudice to the Filipino people and Republic:

(1) The documents showing that Fortune Tobacco[1116] made numerous requests for import quotas to the Philippine Virginia Tobacco Administration or directly to Marcos, Sr. These documents bear what appears to be Marcos, Sr.'s signature with the words "approved." [1117] There are also documents showing that Tan himself, as Chairman of Fortune Tobacco, wrote several requests to Marcos, Sr., and these bear Marcos, Sr.'s notes favorably acting on the requests.[1118] There are also several documents issued by the Office of the President granting Fortune Tobacco's requests for import quotas. The issuances state that Marcos, Sr. has approved the particular request of Fortune Tobacco for the import quota;[1119]

(2) Documents showing that Tan wrote several direct requests to Marcos, Sr. on behalf of Allied Bank. There are again handwritten notations or issuances by the Office of the President that reveal Marcos, Sr.'s approval or grant of Tan's requests[1120] and

(3) Deeds of Sale of Shares of Stock showing that the stockholders of Himmel Industries, Grandspan Development, Asia Brewery, Silangan Holdings, and Foremost Farms sold their shares of stock to Shareholdings, Inc.[1121] There are also Deeds of Assignment issued by the stockholders of Shareholdings, Inc. transferring their shares of stock to Basic Holdings,[1122] Falcon Holdings,[1123] and Supreme Holdings.[1124] There were likewise uniform Deeds of Assignment signed in blank,[1125] issued by the stockholders of Falcon Holdings,[1126] Supreme Holdings,[1127] and Shareholdings, Inc.[1128] A sample reads:

KNOW ALL MEN BY THESE PRESENTS:

I, JIMMY CHUA, of legal age, Filipino, with residence at _____, for value received, do hereby assign, convey and transfer to _____, of legal age, Filipino, with residence at _____, his heirs and assigns, my fully paid

subscription for _____ shares to the capital stock of FALCON HOLDINGS CORPORATION, a corporation organized and existing under the laws of the Philippines, with a par value of P1.00 per share for a total part value of P_____.

I herewith irrevocable constitute and appoint the corporate secretary to transfer the said shares of stock unto the name and for the account of _____ - on the proper books of the corporation.[1129]

The Sandiganbayan correctly ruled that these documents are inadmissible.

While the contents of the documents tend to establish the close association between Marcos, Sr. and Tan, most of the presented documents are copies of private documents. There was thus a necessity to establish their due execution, and to prove their loss and unavailability. This, the Republic failed to do.

This Court notes several documentary evidence in the custody of the Library and Records Division of the Presidential Commission on Good Government, and the Presidential Library, stamped as certified true copies or photocopies:

Title

Date

Contents

Purpose of Presentation

Nature of Document
(Original or Copy)

Original Document
Rule exception

Philippine Virginia Tobacco Administration Letter[1130]

March 31, 1981

Informed Marcos, Sr. of Fortune Tobacco's request for an import quota of 4 million kilos of tobacco

Includes a handwritten note by Marcos, Sr. approving the request

Certified True Copy

Public Record

Letter from Philippine Virginia Tobacco Administration Chairman Federico Moreno[1131]

September 7, 1981

Informed Marcos, Sr. of Fortune Tobacco's request for an import quota of 4 million kilos of tobacco

Includes a handwritten note by Marcos, Sr. approving the request

Certified True Copy

Public Record

Office of the President Letter[1132]

April 14, 1984

Granted Fortune Tobacco's request for an import quota of 5 million kilos of tobacco

Certified True Copy

None

Memorandum[1133]

January 2, 1987

Prepared by Carlitos Encarnacion for Presidential Commission on Good Government Deputy Minister Ramon A. Diaz

Discussed Fortune Tobacco's illegal over-importation of tobacco and irregularities in the approval process

Certified True Copy

Note: from the Library and Records Division of the Presidential Commission on Good Government

Public Record

National Tobacco Importation Records[1134]

N/A

Philippine Virginia Tobacco Administration's record of the total annual tobacco imports from 1978 to 1984

Shows the Philippine Virginia Tobacco Administration's violations of the 6 million kilo-limit provided by law for annual tobacco imports

Certified Photocopy

Note: from the Library and Records Division of the Presidential Commission on Good Government

Public Record

Fortune Tobacco Export and Import Records[1135]

N/A

Indicates Fortune Tobacco's annual exports for 1974 and 1976 to 1986

Also indicates Fortune Tobacco's annual imports for 1981 to 1986

Shows the Fortune Tobacco's violations of the 6 million kilo-limit provided by law for tobacco imports in 1981 and 1983.

Certified Photocopy

Note: from the Library and Records Division of the Presidential Commission on Good Government

Public Record

Check Payments[1136]

July 31, 1986; August 31, 1986; August 16, 1986; September 13, 1986; September 30, 1986; October 18, 1986; and October 31, 1986

Drawer: Fortune Tobacco

Drawee: Allied Bank

Payee: Republic of the Philippines
Amount Paid: PHP 5 million per check

Certified Photocopy

Note: from the Library and Records Division of the Presidential Commission on Good Government

Public Record

Fortune Tobacco Letter[1137]

April 5, 1983

Requested from Philippine Virginia Tobacco Administration for a special rediscounting facility worth PHP 500 million

Includes a handwritten note by Marcos, Sr. referring the letter to Central Bank Governor Jaime C. Laya for "favorable action"

Shows exclusive favors granted to Fortune Tobacco

Certified Photocopy

Note: from the Library and Records Division on the Presidential Commission on Good Government

Public Record

Fortune Tobacco Letter[1138]

April 5, 1983

Requested from Marcos, Sr. a rediscounting facility worth PHP 500 million

Shows exclusive favors granted to Fortune Tobacco

Certified Photocopy

Note: from the Library and Records Division of the Presidential Commission on Good Government

Public Record

Fortune Tobacco Letter[1139]

April 28, 1976

Requested a short-term loan of PHP 50 million from the Philippine Veterans Bank for the purchase of tobacco from local farmers

Certified Copy

Public Record

Foremost Farms Letter[1140]

June 21, 1976

Requested from the Secretary of Public Highways the diversion of part of the Infanta Highway crossing the property of Foremost Farms

Includes a handwritten note by Marcos, Sr. approving the request

Shows exclusive favors granted to Foremost Farms

Certified True Copy

Public Record

Fortune Tobacco Letter[1141]

March 30, 1981

Requested authority from Philippine Virginia Tobacco Administration to import 4 million kilos of tobacco

Certified True Copy

Public Record

Office of the President Letter[1142]

April 28, 1981

General Fortune Tobacco's request for an import quota of 4 million kilos of tobacco

Certified True Copy

Public Record

Fortune Tobacco Letter[1143]

September 5, 1981

Requested authority from Philippine Virginia Tobacco Administration to import 4 million kilos of tobacco

Certified True Copy

Public Record

Office of the President Letter[1144]

April 5, 1984

Granted Fortune Tobacco's request for an import quota of 3 million kilos of tobacco

Certified True Copy

Public Record

Fortune Tobacco Letter[1145]

April 11, 1984

Requested authority from Philippine Virginia Tobacco Administration to import 5 million kilos of tobacco

Certified True Copy

Public Record

Executive Order No. 977[1146]

August 22, 1984

Amended Executive Order No. 960. The Executive Order provides that the Minister of Finance shall promulgate the necessary rules and regulations to effectively implement the provisions of the Executive Order

subject to the approval of the President.

Certified Photocopy
(Official Gazette)

Public Record

Executive Order No. 978[1147]

August 22, 1984

Imposed ad valorem tax and revised the specific tax rates and maximum retail prices of cigarettes.

Certified Photocopy
(Official Gazette)

Public Record

Handwritten Notes[1148]

October 1979

List of cash receipts and a note stating that such is inclusive of a check from Tan with number ABC #202523 dated 10/03/1979. The note states that it was received 10/09/1979.

Certified True Copy of Original from Presidential Commission on Good Government Library

Public Record

Handwritten Notes[1149]

List of cash receipts. The first item in the list indicates "Exchange of [PHP] 500,000 by Tan, remitted"

Certified True Copy of Original from Presidential Commission on Good Government Library

Public Record

Tender of Excluded Evidence by the Republic to the Sandiganbayan[1150]

April 3, 2012

Indicated the procedural antecedents of the exclusion of Joselito and Aderito's testimonies as evidence

Prayed that the affidavits of the said witnesses be allowed to form part of the records of the case

Original

N/A

Judicial Affidavit of Joselito[1151]

November 10, 2011

Narrated the events that led to the sale of GenBank

Shows undue favorable treatment by Central Bank Governor Licaros in favor of Tan's group

Evidence of the irregularities in the sale of GenBank to the Tan's group

Original

N/A

Regional Trial Court Decision[1152]

December 2, 1992

A petition for assistance in the liquidation of GenBank

Annulled and set aside the closure of GenBank and the adoption of the bid of Tan's group for "being plainly arbitrary and made in bad faith." [1153]

Ordered the Central Bank to restore the license of GenBank to operate and conduct business as a commercial bank and trust corporation.

Directed the Central Bank to pay GenBank capital account (excess of its assets over its liabilities prior to the sale) and damages.

Copy

Public Record

Judicial Affidavit of Aderito[1154]

June 16, 2011

Narrated the events that led to the sale of GenBank

Shows that Paramount Finance should have been the buyer, but Tan's group unexpectedly received Central Bank approval as the buyer.

Original

N/A

Deed of Assignment with undertaking[1155]

December 23, 1976

Served as security for the advances and credit accommodations made by the Central Bank to GenBank

Notarized Copy

Public Record

Transcript of Stenographic Notes[1156]

January 31, 2011

Deposition of witness Jaime C. Laya

Evidence of the irregularities in the sale of GenBank to Tan's group

Original

N/A

Resolution No. 1245 of the Monetary Board of the Central Bank[1157]

July 1, 1977

Dispensation from the requirement that Tan's group submit a standby irrevocable credit to secure the

emergency advances assumed by Allied Bank

The Resolution also extends from two to five years the period of payment of the balance of the emergency advances assumed by Allied Bank

Shows special and extraordinary concessions or benefits given to defendants Allied Bank and Tan.

Copy

Note: from the Library and Records Division of the Presidential Commission on Good Government

Public Record

Office of the President Memorandum to National Food Authority[1158]

April 14, 1984

Marcos, Sr. approved the request of Tan as Chairman of Allied Bank that the National Food Authority be authorized to bank with the Allied Bank as an exception to existing regulations.

Allied Bank offered to provide a credit line from PHP 300 million to PHP 500 million to the National Food Authority.

Shows exclusive concessions granted to Allied Bank

Certified Copy from the Presidential Library

Public Record

Office of the President Memorandum to the Central Bank[1159]

June 5, 1984

Marcos, Sr. instructed the Central Bank of the Philippines to sell to Allied Bank USD 25 million so that they can settle their obligations in Bahrain and the guarantee given by the Philippines can be withdrawn.

Shows exclusive favors granted to Allied Bank

Certified Copy from Presidential Library

Public Record

Allied Bank Letter[1160]

April 19, 1985

Allied Bank wrote a letter to Marcos, Sr. requesting that the Central Bank place with it a deposit of USD 50 million to be able to satisfy its dollar loans.

Certified Copy from Presidential Library

Public Record

Allied Bank Letter[1161]

October 20, 1983

Letter of Tan to the Ministry of Transportation and Communication seeking a favorable endorsement for the approval of their applications for the microwave frequencies.

Certified True Copy from the Presidential Library

Public Record

SEC Registration No. 114418[1162]

July 20, 1983

Certification that the Articles of Incorporation of Supreme Holdings is in accordance with the law.

Copy

Public Record

SEC Registration No. 114419[1163]

July 20, 1983

Certification that the Articles of Incorporation of Falcon Holdings is in accordance with the law.

Copy

Public Record

SEC Registration No. 114420[1164]

July 20, 1983

Certification that the Articles of Incorporation of Basic Holdings is in accordance with the law.

Copy

Public Record

Transcript of Stenographic Notes[1165]

October 16, 2007

Deposition of witnesses former Senator Salonga and Magno (Records Custodian of the Library and Records Section of the Presidential Commission on Good Government)

Evidence showing Marcos, Sr.'s interest in the Tan Group of Companies and the special favors and concessions granted by Marcos, Sr. in relation thereto.

Original

N/A

Transcript of Stenographic Notes[1166]

February 13, 2008

Deposition of witness Marcos, Jr.

Evidence showing Marcos, Sr.'s interest in Shareholdings, Inc.

Original

N/A

Securities and Exchange Commission Document[1167]

December 29, 1978

Certification of registration or the Articles of Incorporation of Allied Leasing and Finance Corp.

Certified Machine Copy

Public Record

This Court notes that several officers testified on these documents:[1168]

(1) Magno is the records custodian of the Presidential Commission on Good Government, and it is her principal duty and function to supervise the Library and Records Division, safekeep the documents turned over to the library, and issue and certify as authentic the documents needed in Court. She testified to prove that the Presidential Commission on Good Government has custody and possession of the documents she presented and identified in court;

(2) Atty. Napalan is the counsel of the Securities and Exchange Commission tasked to process the Articles of Incorporation, By-Laws, and corporation reviews. She monitors compliance with reportorial, requirements and appears in court regarding the filing of cases. She submitted the Articles of Incorporation, By-laws, General Information Sheets, and other documents submitted by Tan Group of Companies. She was presented to prove the existence of Sabales Corp.'s documents, the articles of incorporation of Allied Bank and Fortune Tobacco, and other documents previously marked as exhibits;

(3) Orias is a bank officer in the Bangko Sentral ng Pilipinas and he supervises and controls the records handled in his department. He was presented to prove the existence of the documents in relation to Tan et al.'s acquisition of GenBank;

(4) Buban is the presidential staff officer and officer-in-charge of the Malacañang Library, in charge of technical services in processing books and safekeeping of materials like presidential issuances in the Malacañang Compound. The Malacañang Library has custody of the files and documents that were previously kept in the Presidential Library. She was presented to establish the documents which were kept in the Presidential Library. These documents showed the participation of and relationship between Tan and Marcos, Sr.;

(5) Castillo is a records officer of the Presidential Commission on Good Government. He was presented to testify that he obtained from the Malacañang Presidential Library documents pertaining to Marcos, Sr. and his friends and turned it over to the Presidential Commission on Good Government. He signed an acknowledgement receipt which states he received the original of documents from Tan found in the Presidential Library;

(6) Inacay is a record officer in the Court of Appeals. He was presented to identify certified true copies of Court of Appeals documents in relation to Special Proceedings No. 107812, docketed in the Court of Appeals as CA-G.R. No. CV No. 39939, entitled Central Bank of the Philippines vs. Banker's Worldwide Insurance and Surety Company, et al. He attested several Exhibits as duplicate originals;

(7) Arrojado is from the Bureau of Internal Revenue who testified that the Bureau does not have in its custody the subpoenaed income tax returns;

(8) Nakpil is from the Supervision and Examination Department of Bangko Sentral ng Pilipinas who brought duplicate memorandum, carbon copies and duplicate original of documents in the custody of Bangko Sentral ng Pilipinas;

(9) Martinez and Sarmiento who testified and brought the documents in the custody of Bangko Sentral ng

Pilipinas before the Sandiganbayan;

(10) Trias from the Bangko Sentral ng Pilipinas who presented a fact book based on the reports of the banks submitted to the Supervision and Examination Department of Bangko Sentral ng Pilipinas;

(11) Barns is a director of the Malacañang Museum who presented to the Sandiganbayan two documents in the custody of the museum; and

(12) Camacho of the National Archives of the Philippines who confirmed the signatures of the officer-in-charge of the Archives Division of the National Archives, appearing at the back pages of several exhibits.

Under the original document rule, "when the original of a document is in the custody of a public officer or is recorded in a public office, its contents may be proved by a certified copy issued by the public officer in custody thereof." [1169]

However, the relevant documents that tend to prove the close association of Marcos, Sr. and Tan (i.e., Tan's letters to Marcos, Sr. on behalf of Fortline Tobacco and Allied Bank), are still private documents, even if certified as true copies by the Library and Records Division of the Presidential Commission on Good Government and the Presidential Library. They are not public records in the custody of a public officer or those recorded in a public office.

To reiterate, the documents collected by the Presidential Commission on Good Government are not public documents per se. The private documents in its custody still need to be authenticated in accordance with the rules of evidence. The persons who executed it, the person before whom its execution was acknowledged, or a person who was present and saw it executed or who after its execution, saw it and recognized the signatures, or a person to whom the parties to the instrument had previously confessed the execution thereof, must still authenticate these documents. A Presidential Commission on Good Government records officer does not fall under any of these categories. A Presidential Commission on Good Government records officer is competent to testify only as to how the Presidential Commission on Good Government obtained custody over these documents, but not on the contents of the documents. [1170]

The Republic asserts that in hearings, it presented originals, compared it with photocopies, and marked them as documentary exhibits. It also appended the originals of the following documents for the Sandiganbayan to appreciate that it was Marcos, Sr. or Tan's signature and writing in the documents. [1171] Tan's Written Disclosure is one of the original documents marked and offered. The Republic also appended originals of the following Exhibits: [1172]

B6

Letter to Ferdinand Marcos from Lucio Tan dated December 26[,] 1978 re: request for the government to grant the balance in the allocation for importation of 250,000 cases of sardines in favor of Himmel Industries Inc.

E5

Letter dated May 17, 1979 to the Hon. Governor Gregorio Licaros of Central Bank of the Philippines from Lucio Tan

J

Memo dated March 26, 1977 for His Excellency from Lucio Tan Re: General Bank and Trust Company

S20 & series

Letter dated May 17, 1979 from Lucio Tan to Ferdinand Marcos

T20 & series

Letter dated April 5, 1983 from Lucio Tan to Ferdinand Marcos

U20

Letter dated December 9, 1983 from Lucio Tan to Ferdinand Marcos

W20

Letter dated December 21, 1983 from Lucio Tan to Ferdinand Marcos

X20

Letter dated April 10, 1985 from Lucio Tan to Ferdinand Marcos

Y20 to Y20-l

[originals of U8 and series (see: TSN, Sept. 15, 2011, page 55)]

First page of memorandum executed by Lucio Tan addressed to President Corazon Aquino

Z20

Undated letter on Allied Bank Letterhead signed by Lucio Tan addressed to "Sir"

However, as discussed, these letters are required to be authenticated to be admissible in evidence. There is no showing that these documents' authenticity were sufficiently established. Tan, the person who wrote the letters, did not testify in Court.

The Republic relies on Marcos, Jr.'s testimony to confirm the existence and due execution of several of the documentary evidence because he saw it after its execution, and Marcos, Sr. and Tan had informed him of their execution.[1173] Marcos, Jr. also testified on their unavailability. He stated that the originals are in the custody of the United States Customs Service because it was part of the documents brought to Hawaii and seized by the United States Customs officials[1174] Marcos, Jr. likewise explained the steps he took to acquire the originals in the custody of the United States Customs Service.[1175] The Republic thus argues that his testimony is admissible to prove the execution, existence, and unavailability of the documents.[1176]

However, this Court finds that Marcos, Jr.'s testimony is not sufficient to prove the execution, existence, and unavailability of these documents. Marcos, Jr. did not have personal knowledge of the contents of the documents. Furthermore, his testimony is not sufficient to adequately prove the unavailability of the original documents. The Republic could have shown the diplomatic route. In any case, the Deeds of Assignment are again private documents that need to be authenticated by the persons who executed it, by the person before whom its execution was acknowledged, by any person who was present and saw it executed or who after its execution, saw it and recognized the signatures, or by a person to whom the parties to the instrument had previously confessed the execution thereof.[1177] Marcos, Jr. still does not fall under any of these categories considering the Deeds of Assignment were not executed by Marcos, Sr. and Tan themselves.

As to the testimonies of Joselito and Aderito, the Republic filed a Tender of Excluded Evidence praying that their judicial affidavits[1178] be allowed to form part of the records of the case. Their affidavits elaborate on the undue favorable treatment extended by Marcos, Sr. to Tan through then Central Bank Governor Licaros. They narrate the irregularities in the sale of Gen Bank to the Tan's group. As discussed, their testimonies are not barred by *res judicata*.

However, considering the inadmissibility of the other supporting documents and other evidence in this case, this Court finds that even if allowed to form part of the records, allowing Joselito's and Aderito's testimonies would be moot and academic. They are not sufficient to show that there was an improper use of illegal funds or taking undue advantage of office that resulted in unjust enrichment and damage and prejudice to the Filipino people and the Republic.

As it is, Tan's Written Disclosure may be the sole proof of the undue advantage granted by the Marcos, Sr., to Tan, et al.

IV(B)

The foregoing show that the third element for determining ill-gotten wealth was not satisfactorily established. Most of the evidence presented by the Republic do not sufficiently prove that the assets and properties of Tan et al. were acquired by their taking advantage of Marcos, Sr.'s power and influence.

Consequently, we cannot infer the fourth element, i.e., damage and prejudice to the Filipino people and the Republic. If at all, the evidence shows that Tan enriched himself at the expense of the Marcos family.

There is truth that we want to believe, and there is truth proven in a court of law. The truth could very well be what the Republic paints it to be—that respondents amassed ill-gotten wealth by taking advantage of their close connections with the Marcoses. However, in a judicial proceeding, truth is that which is supported by admissible evidence, evidence that the Republic failed to adduce in this case. As a court of law and the last bulwark of facts, this Court must follow the Rules of Evidence as process to make proof. This Court cannot disregard its own rules of procedure, lest it undermine public confidence in its ability to dispense justice.

ACCORDINGLY, I vote that this Court:

In G.R. No. 195837, AFFIRM the December 22, 2010 and February 25, 2011 Resolutions of the Sandiganbayan in Civil Case No. 0005, and hold as valid the dismissal of the Complaint against Don Ferry and Cesar Zalamea.

In G.R. No. 198221, AFFIRM the May 3, 2011 and July 4, 2011 Resolutions of the Sandiganbayan in Civil Case No. 0005, dismissing the Republic's Motion for Voluntary Inhibition, but REVERSE the June 9, 2011 Order and August 2, 2011 Resolution of the Sandiganbayan in Civil Case No. 0005, and hold that the testimony of Joselito and Aderito Yujuico should have been admitted in evidence.

In G.R. No. 198974, AFFIRM the July 8, 2011 and August 23, 2011 Resolutions of the Sandiganbayan in Civil Case No. 0005, which denied the Republic's Motion to Admit Third Amended Complaint.

In G.R. No. 203592, AFFIRM the June 11, 2012 Decision and September 26, 2012 Resolution of the Sandiganbayan in Civil Case No. 0005, dismissing the Republic's Second Amended Complaint for Reversion, Reconveyance, Restitution, Accounting and Damages.

[1] Rollo (G.R. No. 195837), pp. 31-121; Rollo (G.R. No. 198221), pp. 3-119; Rollo (G.R. No. 198974), pp. 3-84; Rollo (G.R. No. 203592), pp. 261-546.

[2] Rollo (G.R. No. 203592), p. 15.

[3] Executive Order No. 1 (1986), Creating the Presidential Commission on Good Government.

[4] Executive Order No. 2 (1986), Regarding the Funds, Moneys, Assets, and Properties Illegally Acquired or Misappropriated by Former President Ferdinand Marcos, Mrs. Imelda Romualdez Marcos, their Close Relatives, Subordinates, Business Associates, Dummies, Agents, or Nominees.

[5] Rollo (G.R. No. 203592), pp. 16, 3670.

[6] Id. at 3671.

[7] Id. at 3674.

[8] Id. at 3675-3676

[9] Id. at 3677.

[10] Id.

[11] Id. at 3677.

[12] Id. at 3678.

[13] Id.

[14] Id. at 3681.

[15] Id. at 3681-3682.

[16] Id. at 22.

[17] Id.

[18] Id.

[19] Id.

[20] Id. at 3657.

[21] Id.

[22] Id. at 3660-3663.

[23] Id. at 34.

[24] Id. at 3658-3659.

[25] Id. at 3671.

[26] Id. at 4092.

[27] Id. at 3678.

[28] Id. at 95.

[29] Id. at 3400-3401.

[30] Id. at 25.

[31] Id. at 28.

[32] Id. at 34.

[33] Id. at 1289-1311.

[34] Id. at 34.

[35] Id. at 154.

[36] Rollo (G.R. No. 198221), p. 46.

[37] Rollo (G.R. No. 203592), p. 98

[38] Id. at 103.

[39] 524 Phil. 232 (2006) [Per J. Garcia, Second Division].

[40] Rollo (G.R. No. 203592), p. 4139.

[41] Id. at 102-103.

[42] Id. at 103.

[43] Rollo (G.R. No. 198221), p. 121.

[44] Id. at 17-18.

[45] Id. at 18.

[46] Id.

[47] Id.

[48] Id.

[49] Rollo (G.R. No. 203592), p. 115.

[50] Rollo (G.R. No. 195837), pp. 224-225.

[51] Id. at 225.

[52] Rollo (G.R. No. 203592), p. 116.

[53] Id. at 228.

[54] Id. at 229.

[55] Id.

[56] Id.

[57] 516 Phil. 509 (2006) [Per J. Sandoval-Gutierrez, Second Division].

[58] Rollo (G.R. No. 203592), p. 230.

[59] Id. at 119.

[60] Rollo (G.R. No. 195837), p. 21.

[61] Id.

[62] Id. at 9-22. The December 16, 2010 Minute Resolution in Civil Case No. 0005 was penned by Associate Justice Roland B. Jurado, and concurred in by Associate Justices Teresita V. Diaz-Baldos and Napoleon E. Inoturan of the Fifth Division, Sandiganbayan, Quezon City.

[63] Id. at 23-24. The February 24, 2011 Minute Resolution in Civil Case No. 0005 was penned by Associate Justice Roland B. Jurado, and concurred in by Associate Justices Teresita V. Diaz-Baldos and Napoleon E. Inoturan of the Fifth Division, Sandiganbayan, Quezon City.

[64] Rollo (G.R. No. 195837), pp. 3-122.

[65] Rollo (G.R. No. 198221), p. 17.

[66] Id. at 19.

[67] Id.

[68] Id.

[69] Id. at 20.

[70] Id. at 21.

[71] Id.

[72] Id. at 22-23.

[73] Rollo (G.R. No. 203592), p. 121.

[74] Id. at 122.

[75] Rollo (G.R. No. 198221), p.24.

[76] Id. at 24.

[77] Id. at 25.

[78] Id.

[79] Rollo (G.R. No. 203592), p. 123.

[80] Rollo (G.R. No. 198221), p. 28.

[81] Id.

[82] Rollo (G.R. No. 203592), p. 128.

[83] Rollo (G.R. No. 198221), p. 127.

[84] Id.

[85] Id. at 128, 131.

[86] Id. at 129-130.

[87] Id. at 134.

[88] Id.

[89] Id. at 132.

[90] Id.

[91] Id. at 132-133.

[92] Re: Problem of Delays in Cases Before the Sandiganbayan, 422 Phil. 246 (2001) [Per J. Pardo, En Banc].

[93] Rollo (G.R. No. 198221), p. 133.

[94] Id. at 132.

[95] Id. at 131.

[96] Id. at 134.

[97] Id.

[98] Id.

[99] CODE OF JUD. CONDUCT, Canon 3, Rule 3.12 provides:

RULE 3.12 – A judge should take no part in a proceeding where the judge's impartiality might reasonably be questioned. These cases include among others, proceedings where:

(a) the judge has personal knowledge of disputed evidentiary facts concerning the proceeding;

(b) the judge served as executor, administrator, guardian, trustee or lawyer in the case or matter in controversy, or a former associate of the judge served as counsel during their association, or the judge or lawyer was a material witness therein;

(c) the judge's ruling in a lower court is the subject of review;

(d) the judge is related by consanguinity or affinity to a party litigant within the sixth degree or to counsel within the fourth degree;

(e) the judge knows the judge's spouse or child has a financial interest, as heir, legatee, creditor, fiduciary, or otherwise, in the subject matter in controversy or in a party to the proceeding, or any other interest that could be substantially affected by the outcome of the proceeding.

In every instance, the judge shall indicate the legal reason for inhibition.

[100] Rollo (G.R. No. 198221), p. 135.

[101] Id. at 131.

[102] Id.

[103] Id. at 132.

[104] Id.

[105] Id.

[106] Id. at 136.

[107] Id.

[108] Id. at 135.

[109] Id.

[110] Id. at 107-108.

[111] Id. at 109.

[112] Id. at 131.

[113] Id. at 120-136. The April 19, 2011 Resolution in Civil Case No. 0005 was penned by Associate Justice

Roland B. Jurado, and concurred in by Associate Justices Teresita V. Diaz-Baldos and Napoleon E. Inoturan of the Fifth Division of the Sandiganbayan, Quezon City.

[114] Id. at 138-141. The July 4, 2011 Resolution in Civil Case No. 0005 was penned by Associate Justice Roland B. Jurado, and concurred in by Associate Justices Teresita V. Diaz-Baldos and Napoleon E. Inoturan of the Fifth Division of the Sandiganbayan, Quezon City.

[115] Id. at 142.

[116] Id.

[117] Rollo (G.R. No. 198974), pp. 85-86.

[118] Id. at 86.

[119] Id. at 131.

[120] Id.

[121] Rollo, (G.R. No. 198221). p. 29.

[122] Id. at 131.

[123] Id. at 142.

[124] Rollo (G.R. No. 203592), p. 131.

[125] Id. at 132.

[126] Id. at 133.

[127] Id. at 132.

[128] Id.

[129] Id. at 133.

[130] Rollo (G.R. No. 198974), pp. 85-90.

[131] Id. at 86. The additional defendants in G.R. No. 198974, who though fully aware of the pendency of ill-gotten wealth case allegedly cooperated in forming the Philip Morris Fortune Tobacco Corp. are: (1) Lucio K. Tan, Jr., (2) Michael G. Tan, (3) Christopher Nelson, (4) Douglas Werth, (5) Mitchell Gault, (6) Raymond Miranda, (7) Varinia Elero, (8) Vincent Nguyen, (9) Domingo Chua, (10) Juanita Tan Lee, (11) Peter Y. Ong, (12) Shirley L. Santillan, (13) Myra Vida G. Jamora, and (14) Henry N. Sitosta.

[132] Id. at 88.

[133] Id. at 89-90.

[134] Id. at 90.

[135] Id. at 3-84.

[136] Rollo (G.R. No. 198221), pp. 143-147. The August 2, 2011 Resolution in Civil Case No. 0005 was penned by Associate Justice Roland B. Jurado and concurred in by Associate Justices Teresita B. Diaz--Baldos and Alex L. Quiroz of the Fifth Division of the Sandiganbayan, Quezon City.

[137] Id. at 131.

[138] Id. at 146.

[139] Id., citing *General Bank & Trust Co. v. Central Bank of the Philippines*, 524 Phil. 232 (2006) [Per J. Garcia, Second Division].

[140] Id.

[141] Id.

[142] Id. at 146.

[143] Id. at 3-119.

[144] Rollo (G.R. No. 203592), p. 7.

[145] Id. at 138.

[146] Id. at 139.

[147] Id. at 142-143.

[148] Id. at 143.

[149] Id.

[150] Id. at 171-240. The September 26, 2012 Resolution in Civil Case No. 0005 was penned by Associate Justice Roland B. Jurado, and concurred in by Associate Justices Teresita V. Diaz-Baldos and Alex L. Quiroz of the Fifth Division, Sandiganbayan, Quezon City.

[151] Id. at 149.

[152] 360 Phil. 133 (1998) [Per J. Panganiban, First Division].

[153] Rollo (G.R. No. 203592), pp. 146, 231-232, 236.

[154] Id. at 151-152, citing *General Bank & Trust Co. v. Central Bank of the Philippines*, 524 Phil. 232 (2006) [Per J. Garcia, Second Division].

[155] Id. at 156-168.

[156] Id. at 153.

[157] Id. at 154.

[158] Id. at 151.

[159] Id.

[160] Id. at 156-157.

[161] Id. at 163-164.

[162] Id. at 159.

[163] Id. at 159-161.

[164] Id. at 159, 161.

[165] Id. at 161.

[166] Id. at 160.

[167] Id.

[168] Id.

[169] Id.

[170] Id.

[171] Id.

[172] Id.

[173] Id.

[174] Id.

[175] Id. at 161.

[176] Id.

[177] Id.

[178] Id.

[179] Id. at 161-162.

[180] Id. at 162.

[181] Id.

[182] Id.

[183] Id.

[184] Id.

[185] Id. at 168.

[186] Id.

[187] 678 Phil. 358 (2011) [Per J. Brion, En Banc].

[188] Rollo (G.R. No. 203592), pp. 166-167.

[189] Id. at 168-169.

[190] Id. at 3130-3132.

[191] Id. at 2111-2236.

[192] Id. at 2673-2683.

[193] Id. at 4220-4223.

[194] Id. at 2586-2625.

[195] Id. at 2718-2724.

[196] Id. at 2105.

[197] Id.

[198] Id. at 2735.

[199] Id. at 2046-2047.

[200] Id. at 2046-2062.

[201] Id. at 2048.

[202] Id. at 2047.

[203] Id. at 2048, 2052, 2054.

[204] Id. at 2059.

[205] Id. at 2058-2060.

[206] Id. at 2272.

[207] Id. at 2241-2276.

[208] Id. at 2245.

[209] Id. at 2246-2247.

[210] Id. at 2249.

[211] Id.

[212] Id. at 2250.

[213] Id. at 2251.

[214] Id. at 2266-2267.

[215] Id. at 2267, 2269.

[216] Id. at 2252, citing *Presidential Commission on Good Government v. Tan*, 564 Phil. 426 (2007) [Per J. Sandoval-Gutierrez, First Division].

[217] Id. at 2251. See also *General Bank & Trust Co. v. Central Bank of the Philippines*, 524 Phil. 232 (2006) [Per J. Garcia, Second Division].

[218] Id. at 2252.

[219] Id. at 2256.

[220] Id. at 2263.

[221] Id. at 2265.

[222] Id.

[223] Id. at 2266.

[224] Id. at 2270.

[225] Id.

[226] Id. at 2272.

[227] Id.

[228] Id.

[229] Id. at 2273.

[230] Id.

[231] Id. at 4271.

[232] Id. at 4280-4281.

[233] Id. at 4264.

[234] Id. at 4290-4291.

[235] Id. at 2758-2789.

[236] Id. at 2821-2826.

[237] Id. at 3135-3162.

[238] Id. at 2801-2815.

[239] Id. at 2828-2864.

[240] Rollo (G.R. No. 195837), pp. 988-989.

[241] Rollo (G.R. No. 203592), pp. 3802-4211.

[242] Id. at 3300-3322.

[243] Id. at 4230-4246.

[244] Id. at 3342-3553.

[245] Id. at 3223-3293.

[246] Id. at 3342.

[247] Id. at 4218.

[248] Id. at 3209.

[249] Id.

[250] Id. at 4260-4261.

[251] Id. at 4311-4318.

[252] Id. at 4311.

[253] Id. at 4312.

[254] Id. at 4330-4332.

[255] Id. at 4338-A-4338-B.

[256] Id.

[257] Id. at 4363-4365.

[258] Id. at 4080.

[259] Id. at 4085-4086, 4091.

[260] Id. at 4085-4086.

[261] Id. at 4087, 4090.

[262] Id. at 4111.

[263] Id. at 4111-4112.

[264] Id. at 4112.

[265] Id. at 4113.

[266] Id.

[267] Id. at 4092, 4082.

[268] Id. at 4100.

[269] Id. at 4102.

[270] Id. at 4100.

[271] Id. at 4106.

[272] Id. at 4106, 4108.

[273] Id. at 4108.

[274] Id. at 4109.

[275] Id. at 4114.

[276] Id. at 4113.

[277] Id. at 4115.

[278] Id. at 4082.

[279] Id. at 4106.

[280] 516 Phil. 509 (2006) [Per J. Sandoval-Gutierrez, Second Division].

[281] Republic Act No. 3019 (1960), sec. 3(e) provides:

SECTION 3. Corrupt Practices of Public Officers. In addition to acts or omissions of public officers already penalized by existing law, the following shall constitute corrupt practices of any public officer and are hereby declared to be unlawful:

....

(e) Causing any undue injury to any party, including the Government, or giving any private party any unwarranted benefits, advantage or preference in the discharge of his official administrative or judicial functions through manifest partiality, evident bad faith or gross inexcusable negligence. This provision shall apply to officers and

employees of offices or government corporations charged with the grant of licenses or permits or other concessions.

[282] Rollo (G.R. No. 203592), pp. 4114-4115.

[283] Id. at 4115.

[284] Id.

[285] Id.

[286] Id. at 4116.

[287] Id. at 4117.

[288] Id. at 4121.

[289] Id. at 4117,4121.

[290] Id. at 4121-4122, 4213.

[291] Id. at 4125.

[292] Id.

[293] Id. at 4118-4119.

[294] Id. at 4220, 4222.

[295] Id. at 4221.

[296] Id. at 4220.

[297] Id. at 4221.

[298] Id. at 4222.

[299] Id.

[300] Id. at 4233.

[301] Id.

[303] Id. at 4234.

[304] Id.

[305] Id. at 4241.

[306] Id. at 4242.

[307] Id. at 4237.

[308] Id. at 4239.

[309] Id. at 4238.

[310] Id.

[311] Id.

[312] Id.

[313] Id. at 4233, 4239-4240.

[314] Id. at 4240-4241.

[315] Id. at 4242-4243.

[316] Id. at 4243.

[317] Id.

[318] Id. at 4244.

[319] Id. at 4245.

[320] Id.

[321] Id.

[322] Id. at 4127, 4155.

[323] Id. at 4149.

[324] Id.

[325] Id. at 4155.

[326] 524 Phil. 232 (2006) [Per J. Garcia, Second Division].

[327] Rollo (G.R. No. 203592), p. 4134.

[328] Id. at 4131.

[329] Id. at 4128, 4134, 4136.

[330] Id. at 4148.

[331] Id. at 151-152, 4139. General Bank and Trust Co. v. Central Bank of the Philippines, 524 Phil. 232 (2006) [Per J. Garcia, Second Division].

[332] Rollo (G.R. No. 203592), p. 4139.

[333] Id. at 4136.

[334] Id. at 4148.

[335] Id. at 4142.

[336] Id.

[337] Id. at 4139. See also id. at 4141, where it cites Presidential Commission on Good Government v. Sandiganbayan, 495 Phil. 485 (2005) [Per J. Puno, En Banc], which ruled that the liquidation of GenBank pertains to a different issue from the sequestration cases.

[338] Id. at 4148.

[339] Id. at 4140.

[340] Id. at 151-152, 4139. General Bank and Trust Co. v. Central Bank of the Philippines, 524 Phil. 232 (2006)

[Per J. Garcia, Second Division].

[341] Id. at 4140.

[342] Id.

[343] Id. at 4151.

[344] Id. at 3240, 3306; Rollo (G.R. 198221), p. 1102.

[345] Rollo (G.R. No. 203592) 3240-3241, 3306. General Bank and Trust Co. v. Central Bank of the Philippines, 524 Phil. 232 (2006) [Per J. Garcia, Second Division]. See also Rollo (G.R. No. 198221), pp. 142, 1104.

[346] Rollo (G.R. 198221), p. 1104.

[347] Id. at 1105.

[348] Id.

[349] Rollo (G.R. No. 203592), p. 3306.

[350] Id. at 3245.

[351] Id. at 3243. General Bank and Trust Co. v. Central Bank of the Philippines, 524 Phil. 232 (2006) [Per J. Garcia, Second Division]. See also Rollo (G.R. 198221), pp. 1107, 1111.

[352] Rollo (G.R. No. 203592), pp. 3240-3241, 3251, 3304, 3314. General Bank and Trust Co. v. Central Bank of the Philippines, 524 Phil. 232 (2006) [Per J. Garcia, Second Division]. See also Rollo (G.R. No. 198221), p. 142, June 9, 2011 Order.

[353] Rollo (G.R. No. 203592), pp. 3244, 3282; Rollo (G.R. No. 198221), pp. 1107, 1111.

[354] Id. at 1114.

[355] Id. at 1115.

[356] Rollo (G.R. No. 203592), pp. 3283, 3286-3287. See General Bank and Trust Co. v. Central Bank of the Philippines, 524 Phil. 232 (2006) [Per J. Garcia, Second Division].

[357] Rollo (G.R. No. 203592), p. 3284.

[358] Id. at 3285.

[359] Id. at 3243.

[360] Id.

[361] Id. at 3252.

[362] Id. at 3252, 3260.

[363] Id. at 3261.

[364] Id.

[365] Id. at 3262.

[366] Id. at 3301, 3304, 3308.

[367] Id. at 3302, 3308.

[368] Id. at 3308.

[369] Id. at 3307.

[370] Id. at 3312.

[371] Id.

[372] Id. at 3313.

[373] Id. at 3308.

[374] Id. at 3309.

[375] Rollo (G.R. No. 198221), p. 95.

[376] Id. at 77-78.

[377] Id. at 78.

[378] Id. These include the: (i) motion for leave to intervene filed by the Yujuicos; (ii) motion for substitution of fortun Tobacco by Philip Morris Fortune Tobacco Corp.; (iii) motion for voluntary inhibition; (iv) motion with memorandum of authorities for the recall of Joselito to the witness stand; and (v) motion for the admission of its Third Amended Complaint.

[379] Id. at 82.

[380] Id. at 84.

[381] Id.

[382] Id. at 86.

[383] Id. at 85.

[384] Id. at 86-87.

[385] Id. at 87-88.

[386] Id. at 89-90.

[387] Id. at 90.

[388] Id. at 97-99.

[389] Id. at 97-100.

[390] Id. at 97.

[391] Id. at 100.

[392] Id. at 91.

[393] Id. at 92.

[394] Rollo (G.R. No. 203592), p. 3246; Rollo (G.R. No. 198221) pp. 1099-1100.

[395] Rollo (G.R. No. 203592), p. 3246.

[396] Rollo (G.R. No. 203592), p. 3246; Rollo (G.R. No. 198221) pp. 1099-1100.

[397] Rollo (G.R. No. 203592), p. 3246.

[398] Id.

[399] Id. at 3247.

[400] Id. at 3248.

[401] Id.

[402] Id.

[403] Rollo (G.R. No. 198221), p. 1074.

[404] Id. at 1097.

[405] Id. at 1074.

[406] Id.

[407] Id. at 1098.

[408] Rollo (G.R. No. 203592), p. 3318.

[409] Id.

[410] Id. at 4159.

[411] Id. at 4159-4160, 4166. In p. 4168, it cites Philip Morris's Annual Report for 2010: "In February 2010, PMI announced that its affiliate, Philip Morris Philippines Manufacturing Inc. (PMPMI), and Fortune Tobacco Corporation (FTC), one of the five largest privately-owned cigarette companies in the world, had signed an agreement to unite their respective business activities by transferring selected assets and liabilities of PMPMI and FTC to a new company called PMFTC, with each party holding an equal economic interest[.]"

In pp. 4171-4174, the Republic also cites the Philip Morris International website and the United States Securities and Exchange Commission Form 10-K submitted on February 25, 2011, to show that Philip Morris Fortune Tobacco Corp. was formed and organized principally using the combined capital, funds, and resources of Fortune Tobacco and Philip Morris.

[412] Id. at 4180.

[413] Id. at 4174-4175. The Republic points that Fortune Tobacco's General Information Sheet for 2010 states it only has an authorized capital stock of PHP 700 million. But it contributed assets and properties that had a fair value of USD 1.17 billion. It further states that Philip Morris Fortune Tobacco, Corp. fraudulently misrepresented its own authorized capital of USD 1 billion since what had been contributed by Fortune Tobacco was outrageously greater.

[414] Id. at 4174.

[415] Id.

[416] Id. at 4175.

[417] Id.

- [418] Id. at 4180-4181.
- [419] Id. at 4160.
- [420] Id. at 4161.
- [421] Id. at 4159.
- [422] Id. at 4175.
- [423] Id.
- [424] Id.
- [425] Id.
- [426] Id.
- [427] Id.
- [428] Id. at 4161, 4178.
- [429] Id. at 4176.
- [430] Id.
- [431] Id. at 4181.
- [432] Republic v. Sandiganbayan (First Division), 310 Phil. 401 (1995) [Per C.J. Narvasa, En Banc].
- [433] Rollo (G.R. No. 203592), pp. 4185-4186.
- [434] Id. at 4186-4188.
- [435] Id. at 4188.
- [436] Id. at 4190.
- [437] Id. at 4190-4191.
- [438] Id. at 4191.
- [439] Id.
- [440] Id.
- [441] Id.
- [442] Id. at 4192.
- [443] Id.
- [444] Id.
- [445] Id. at 4193.
- [446] Rollo (G.R. No. 203592), p. 3320; Rollo (G.R. No. 198221), pp. 1117, 1119.
- [447] Rollo (G.R. No. 203592), p. 3321; Rollo (G.R. No. 198221), pp. 1118, 1125.
- [448] Rollo (G.R. No. 198221), p. 1117.

[449] Id. at 1119.

[450] Id. at 1122.

[451] Id.

[452] Id. at 1123.

[453] Id.

[454] Id. at 1122.

[455] Rollo (G.R. 203592), p. 3249.

[456] Rollo (G.R. 203592), p. 3249; Rollo (G.R. No. 198221), p. 1116.

[457] Rollo (G.R. 203592), p. 3249.

[458] Rollo (G.R. No. 198221), p. 1119. Rollo (G.R. 203592), p. 3240.

[459] Rollo (G.R. No. 198221), p. 1120. Rollo (G.R. 203592), p. 3240.

[460] Rollo (G.R. No. 198221), pp. 1118, 1125.

[461] Id. at 1067.

[462] Id. at 1072.

[463] Rollo (G.R. No. 203592), pp. 3891-3892.

[464] Id. at 3892, 3895-3896, 3899-3900.

[465] Id. at 3900.

[466] Id. at 3894, 3901.

[467] Executive Order No. 1 (1986), Republic Act No. 7080 (1991), Republic Act No. 1379 (1955). Republic Act No. 3019 (1960), Republic Act No. 9160 (2001).

[468] Rollo (G.R. No. 203592), p. 3914.

[469] Id. at 3900.

[470] Id. at 3901.

[471] Id. at 3902.

[472] Id.

[473] Id. at 3900-3902. The PCGG Rules and Regulations Implementing Executive Orders No. 1 and 2 (1986) states:

SECTION 1. Definition. — (A) "Ill-gotten wealth" is hereby defined as any asset, property, business enterprise or material possession of persons within the purview of Executive Orders Nos. 1 and 2, acquired by them directly, or indirectly thru dummies, nominees, agents, subordinates and/or business associates by any of the following means or similar schemes: (1) Through misappropriation, conversion, misuse or malversation of public funds or raids on the public treasury;

(2) Through the receipt, directly or indirectly, of any commission, gift, share, percentage, kickbacks or any other

form of pecuniary benefit from any person and/or entity in connection with any government contract or project or by reason of the office or position of the official concerned.

(3) By the illegal or fraudulent conveyance or disposition of assets belonging to the government or any of its subdivisions, agencies or instrumentalities or government owned or controlled corporations;

(4) By obtaining, receiving or accepting directly or indirectly any shares of stocks, equity, or any other form of interest or participation in any business enterprise or undertaking;

(5) Through the establishment of agricultural, industrial or commercial monopolies or other combination and/or by the issuance, promulgation and/or implementation of decrees and orders intended to benefit particular persons or special interest; and

(6) By taking undue advantage of official position, authority, relationship or influence for personal gain or benefit.

[474] Rollo (G.R. No. 203592), p. 3910; Republic v. Estate of Hans Menzi, 512 Phil. 425 (2005) [Per J. Tinga, En Banc].

[475] Rollo (G.R. No. 203592), p. 3905; Yuchengco v. Sandiganbayan, 515 Phil. 1 (2006) [Per J. Carpio Morales, En Banc].

[476] Republic v. Sandiganbayan (First Division), 525 Phil. 804 (2006) [Per J. Carpio Morales, En Banc].

[477] Rollo (G.R. No. 203592), p. 3916.

[478] Id. at 3923.

[479] Id. at 3976.

[480] Id. at 3915.

[481] Id.

[482] Id.

[483] Id. at 3942-3943.

[484] Id. at 3992.

[485] Id. at 3927, 3937.

[486] Id. at 3935.

[487] Id. at 3912, 3939.

[488] Id. at 3932.

[489] Id. at 3977.

[490] Id.

[491] Id.

[492] Id.

[493] Id.

[494] Id. at 3941-945, 3947-3951.

[495] Id. at 3950.

[496] Gapud allegedly admitted that he did not really own 400 shares of Prime Holdings and asserts that these shares were indorsed in blank and delivered to Marcos.

[497] Rollo (G.R. No. 203592), pp. 3949-3950; Republic v. Sandiganbayan, 461 Phil. 598 (2003) [Per J. Corona, En Banc].

[498] Rollo (G.R. No. 203592), pp. 3949-3950; Yuchengco v. Sandiganbayan, 515 Phil. 1 (2006) [Per J. Carpio Morales, En Banc].

[499] Rollo (G.R. No. 203592), p. 3955.

[500] Id. at 3940-3941, 3969.

[501] Id. at 3956-3957.

[502] Id. at 3957.

[503] Id. at 3958-3959.

[504] Id. at 3959.

[505] Id. at 3960.

[506] Id. at 3964.

[507] Id.

[508] Id. at 3964, 3973-3974.

[509] Id. at 3963.

[510] Id. at 4058.

[511] Id. at 3994-3995.

[512] Id. at 3995-3996, 4000-4001.

[513] Id. at 4000.

[514] Id. at 3996.

[515] Id. at 4000.

[516] Id. at 3996.

[517] Id. at 4000-4003. Citing Rule 130, Sections 29, 30, and 31 of the Rules of Court.

[518] Id. at 4007.

[519] Id. at 4010.

[510] Id. at 4011.

[521] Id. at 4012-4013.

[522] Id. at 4013.

[523] Id.

[524] Id. at 4017.

[525] Id. at 4018.

[526] Id. at 4019.

[527] Id. at 4020.

[528] Id. at 4019.

[529] Id.

[530] Id. at 4022.

[531] Id.

[532] 512 Phil. 425 (2005) [Per J. Tinga, En Banc].

[533] 515 Phil. 1 (2006) [Per J. Carpio Morales, En Banc].

[534] Rollo (G.R. No. 203592), p. 4025.

[535] Id. at 4010.

[536] Id. at 4011. The material points include the existence of: (1) dummy corporations; (2) deeds of assignments indorsed in blank; (3) Marcos, Sr.'s favorable indorsements; and (4) Tan's offer of compromise.

[537] Id. at 4010-4011.

[538] Id. at 4010.

[539] Id. at 4011.

[540] Id. at 3979.

[541] Id. at 3981.

[542] Id.

[543] Id. at 3982.

[544] Id. at 3983.

[545] Id.

[546] Id. at 3984.

[547] Id.

[548] Id. at 3818. Tan's April 5, 1983 letter to Marcos, Sr. requested for a "special rediscounting facility" while Marcos, Sr.'s April 8, 1983 handwritten note referred the letter to Central Bank Governor Jaime Laya "for favorable action."

[549] Id. Tan's December 9, 1983 letter to Marcos, Sr. requested for a 180-day dollar account arrangement to allow Fortune Tobacco to import raw materials, while Marcos, Sr.'s handwritten note referred the letter on

December 11, 1983 to Central Bank Governor Jaime Laya with a favorable recommendation.

[550] Id. Tan's December 10, 1983 letter request another special rediscounting facility, while Marcos, Sr.'s handwritten note referred the letter request to Central Bank Governor for action.

[551] Id. Juan Tuvera's December 29, 1983 Memorandum addressed to Central Bank Governor Jaime Laya informing the latter of Marcos, Sr.'s instruction to accommodate Fortune Tobacco's request.

[552] Id. at 3819. As shown by Fortune Tobacco President Florencio Santos's April 28, 1976 letters to Philippine National Bank President Panfilo Domingo and Philippine Veterans Bank President Esteban Cabanos.

[553] Id. at 3979.

[554] Id. at 3984-3985.

[555] Id. at 3985.

[556] Id.

[557] Id. at 3992-3993.

[558] Id. at 4064.

[559] Id. at 4027.

[560] Id.

[561] Id. at 4027, 4064.

[562] Id. at 4061-4063. (a) Ma. Lourdes Magno Oliveros is the records custodian of the Presidential Commission on Good Government, and among her principal duties are to supervise the library and records division, safekeep documents turned over to the library, and certify as authentic the documents needed in Court. She testified to prove that the Presidential Commission on Good Government has custody and possession of the documents she presented and identified in court.

(b) Atty. Edith C. Napalan is the securities counsel for the Securities and Exchange Commission tasked to process articles of incorporation, by-laws, and corporation reviews. She monitors compliance with reportorial requirements and appears in court with regard to the filing of cases. She submitted the Articles of Incorporation, By-laws, General Information Sheets, and other documents submitted by respondent corporations. She was presented to prove the existence of Sabales Corp.'s documents, the articles of incorporation of Allied Bank and Fortune Tobacco, and other documents previously marked as exhibits.

(c) Cresencio Cababat Orias, Jr. is a Bank Officer III in the Bangko Sentral ng Pilipinas and he supervises and controls the records handled in his department. He was presented to prove the existence of the documents in relation to Tan et al.'s acquisition of GenBank.

(d) Ma. Yvette Victoria S. Buban is the Presidential Staff Officer and Officer-in-Charge of the Malacañang Library, in charge of technical services in processing books and safekeeping of materials like presidential issuances in the Malacañang compound. The Malacañang Library has custody of the files and documents that were previously kept in the Presidential Library. She was presented to establish the documents which were kept in the Presidential Library. These documents showed the relationship between Tan and Marcos, Sr., and their participation in the case.

(e) Way Cabana Castillo is a Presidential Commission on Good Government records officer who receives

documents from the Office of the President librarian. He was presented to testify that he obtained from the Malacañang Presidential Library documents pertaining to the Marcoses and his friends and turned it over to the Presidential Commission on Good Government. He signed an acknowledgement receipt which states that he received the original of documents from Tan found in the Presidential Library.

(d) Ronnie Arenas Inacay is a record officer in the Court of Appeals. He was presented to identify certified true copies of Court of Appeals documents in relation to Special Proceedings No. 107812, docketed in the Court of Appeals as CA-G.R. No. CV-39939, titled Central Bank of the Philippines v. Banker's Worldwide Insurance and Surety Company, et al. He attested several exhibits as duplicate originals.

[563] Id. at 4065.

[564] Id. at 4066.

[565] Id. at 4065.

[566] Id. at 4034.

[567] Id.

[568] Id. at 4027.

[569] Id. at 4036.

[570] Id.

[571] Id. at 4061.

[572] Id. at 4066.

[573] Id. at 4067-4074.

[574] Id. at 4074.

[575] Id. at 4075. As concluded by National Bureau of Investigation Examiner Caroline Pitoy.

[576] Id. at 4074-4075.

[577] Id. at 3993.

[578] Id.

[579] Id.

[580] Id. at 3994.

[581] Id. at 4075.

[582] Id. at 4077.

[583] Id.

[584] Id. at 4079.

[585] Id. at 3384, 3401.

[586] Id. at 3360, 3462-3463, 3367.

[587] Id. at 3463.

- [588] Id.
- [589] Id.
- [590] Id. at 3464.
- [591] Id. at 3469. See also *Republic v. Sandiganbayan*, 663 Phil. 212 (2011) [Per J. Bersamin, En Banc].
- [592] Rollo (G.R. No. 203592), pp. 3360, 3486, 3518.
- [593] Id. at 3407, 3409.
- [594] Id. at 3486, 3518.
- [595] Id. at 3409.
- [596] Id. at 3360, 3409, 3518.
- [597] Id. at 3518.
- [598] Id. at 3369.
- [599] Id. at 3361.
- [600] Id.
- [601] Id.
- [602] Id. at 3462.
- [603] Id. at 3458.
- [604] Id. at 3487.
- [605] Id. at 3360.
- [606] Id. at 3377-3378.
- [607] Id. at 3474.
- [608] Id. at 3483.
- [609] Id. at 3488.
- [610] Id. at 3466; Under paragraphs 10, 11 of the Complaint.
- [611] Id. at 3467.
- [612] Id. at 3378-3380, 3467-3468.
- [613] Id. at 3406.
- [614] Id. at 3379.
- [615] Id. at 3512.
- [616] Id. at 3515.
- [617] Id. at 3486.
- [618] Id.

[619] Id. at 3487.

[620] Id. at 3445-3447.

[621] Id. at 3379.

[622] Id. at 3491.

[623] Id.

[624] Id.

[625] Id. at 3495.

[626] Id. at 3504.

[627] Id. at 3505.

[628] Id.

[629] Id. at 3388.

[630] Id. at 3515.

[631] Id. at 3517.

[632] Id. at 3518.

[633] Id. at 3389.

[634] Id. at 3390-3391, 3519-3520. In G.R. No. 155790, this Court dismissed Imelda's petition questioning the Sandiganbayan's denial of her motion to admit her Amended Answer and Cross-claim in its March 17, 2003 Resolution.

[635] Id. at 3519.

[636] Id.

[637] Id. at 3519, 3521.

[638] Id. at 3522.

[639] Id. at 3390.

[640] Id. at 3524.

[641] Id. at 3524-3526.

[642] Id. at 3527-3528.

[643] Id. at 3530.

[644] Id. at 3533.

[645] Id.

[646] Id. at 3540.

[647] Id.

- [648] Id.
- [649] Id. at 3541.
- [650] Id. at 3539.
- [651] Id. at 3534; Under Rule 129, Sections 1-3 of the Rules of Court.
- [652] Id.
- [653] Id. at 3441.
- [654] Id. at 3509.
- [655] Id. at 3510. See also Rule 132, Section 19 of the Rules of Court.
- [656] Rollo (G.R. No. 203592), pp. 3509-3510.
- [657] Id. at 3509.
- [658] Id. at 3443.
- [659] Id. at 3362.
- [660] Id.
- [661] Id. at 3442.
- [662] Id. at 3442-3443.
- [663] Id. at 3541.
- [664] Id. at 3442-3443.
- [665] Id. at 3442, 3444, citing Article 434 of the Civil Code.
- [666] Id. at 3505-3506.
- [667] Id. at 3507.
- [668] Id. at 3508.
- [669] Id.
- [670] Id.
- [671] Id. at 3508-3509.
- [672] Id. at 3509.
- [673] Id.
- [674] Id. at 3511.
- [675] Id.
- [676] Id. at 3382. See also Rule 7, Section 2(c) of the Rules of Court.
- [677] Id. at 3383.
- [678] Id. at 3384.

- [679] Id. at 3383.
- [680] Id. at 3451.
- [681] Id. at 3452.
- [682] Id. at 3456.
- [683] Id. at 3458.
- [684] Id. at 3457.
- [685] Id. at 3475.
- [686] Id. at 3476.
- [687] Id.
- [688] Id. at 3480-3481; Rule 6, Sections 2 and 3; Rule 8, Section 1 of the Rules of Court.
- [689] Id. at 3481.
- [690] Id.
- [691] Id. at 3485-3486.
- [692] Id. at 3483.
- [693] Id.
- [694] Id. at 3483.
- [695] Id. at 3249.
- [696] Id. at 3251.
- [697] Id. at 3256-3257.
- [698] Id. at 3260.
- [699] Id. at 3252.
- [700] Id. at 3264.
- [701] Id.
- [702] Id. at 3251.
- [703] Id. at 3252.
- [704] Id. at 3254.
- [705] Id. at 3255.
- [706] Id.
- [707] Id. at 3256.
- [708] Rollo (G.R. No. 203592), p. 4082.
- [709] Republic v. Sps. Gimenez, 776 Phil. 233, 264 (2016) [Per J. Leonen, Second Division].

[710] 776 Phil. 233 (2016) [Per J. Leonen, Second Division].

[711] Id. at 263-264.

[712] Rollo (G.R. No. 203592), p. 4092.

[713] Id. at 4093.

[714] Presidential Decree No. 1271 Committee v. De Guzman, 801 Phil. 731, 764-765 (2016) [Per J. Leonen, Second Division].

[715] Id. at 767.

[716] Id. at 765.

[717] Id. at 764-765.

[718] Id. at 763-764.

[719] Id. at 765.

[720] Id.

[721] Id.

[722] 801 Phil. 731 (2016) [Per J. Leonen, Second Division].

[723] Id. at 765-768.

[724] Republic v. Desierto, 516 Phil. 509, 511-512, 515-516 (2006) [Per J. Sandoval-Gutierrez, Second Division].

[725] Rollo (G.R. No. 203592), p. 4092.

[726] Id. at 4093. Ferry was appointed vice chair of Development Bank from August 13, 1981 until June 1, 1986.

[727] Id. Ferry held the position in 1984.

[728] Id. at 4092-4095.

[729] Id.

[730] Republic Act No. 3019 (1960), sec. 3 provides:

SECTION 3. Corrupt practices of public officers. — In addition to acts or omissions of public officers already penalized by existing law, the following shall constitute corrupt practices of any public officer and are hereby declared to be unlawful:

....

(e) Causing any undue injury to any party, including the Government, or giving any private party any unwarranted benefits, advantage or preference in the discharge of his official administrative or judicial functions through manifest partiality, evident bad faith or gross inexcusable negligence. This provision shall apply to officers and employees of offices or government corporations charged with the grant of licenses or permits or other concessions.

[731] 512 Phil. 425 (2005) [Per J. Tinga, En Banc].

[732] Id. at 456-457.

[733] Rollo (G.R. No. 195837), p. 21; ponencia, pp. 30-31.

[734] Id. at 100-101. Citations omitted.

[735] Ponencia, pp. 25-26.

[736] In re Laureta, 232 Phil. 353 (1987) [Per Curiam, En Banc].

[737] Id.

[738] Administrative Matter No. 02-6-07-SB, August 28, 2002.

[739] Republic v. Sps. Gimenez, 776 Phil. 233, 285 (2016) [Per J. Leonen, Second Division].

[740] Rollo (G.R. No. 195837), pp. 23-24.

[741] Id. at 24.

[742] Id.

[743] Ponencia, pp. 31-32.

[744] 787 Phil. 367 (2016) [Per J. Leonen, Second Division].

[745] Id. at 383-385.

[746] Ponencia, pp. 32, 34-37.

[747] Presidential Decree No. 1271 Committee v. De Guzman, 801 Phil. 731, 766 (2016) [Per J. Leonen, Second Division].

[748] Rollo (G.R. No. 195837), p. 1099.

[749] Id. at 1050-1053. Adopted on March 29, 1977.

[750] General Bank and Trust Co. v. Central Bank of the Philippines, 524 Phil. 237, 252-253 (2006) [Per J. Garcia, Second Division]. The summary of comments and recommendation are enumerated as follows: 1. As of Feb[ruary] 28, 1977, the Bank's liquid assets amounted to P33.5 million only. On the other hand, total deposit and deposit substitutes which had to be paid amounted to P269.563 million. Total advances from the CB amounted to P300.961 million, of which P252.365 million (unsecured overdrawing) is payable on demand. Considering the poor quality of the Bank's loan portfolio, the bank cannot expect to generate enough funds out of these loans to meet payment of said obligations. In view hereof, the bank is insolvent within the meaning of Sec. 29, R.A. 265, as amended.

2. As of February 28, 1977, the Bank's capital accounts after adjustment for provision for bad debts and interest on OD and CB and penalties for reserve deficiencies amounted to P14.1 million only which amount would be eaten up completely within a period of less than five (5) months considering the average monthly operating loss of P2.868 million. In view of this, the Bank's continuance in business would involve losses to its depositors and creditors.

....

In view of the foregoing, it is recommended that in accordance with the provisions of Sec. 29, R.A. 265, as amended, the General Bank and Trust Co. be forbidden to do business in the Philippines considering that it is insolvent and its continued operation would involve probable loss to its depositors and creditors and that a receiver be designated to take charge immediately of the Bank's assets and liabilities.

- [751] Id. at 259.
- [752] Id. at 259-260.
- [753] Rollo (G.R. No. 203592), pp. 4092-4095.
- [754] Ponencia, p. 36.
- [755] Republic v. Grijaldo, 122 Phil. 1060, 1065 (1965) [Per J. Zaldivar, En Banc].
- [756] Ponencia, p. 39.
- [757] A.M. No. 02-6-07-SB, August 28, 2002.
- [758] Barnes v. Reyes, 614 Phil. 299, 303 (2009) [Per J. Nachura, Third Division].
- [759] Id.
- [760] 614 Phil. 299 (2009) [Per J. Nachura, Third Division].
- [761] Id. at 303-304.
- [762] Id. at 304-305.
- [763] 643 Phil. 283 (2010) [Per J. Villarama, Jr., Third Division].
- [764] Republic v. Sandiganbayan (Second Division), 643 Phil. 283, 300-302 (2010) [Per J. Villarama, Jr., Third Division].
- [765] Ponencia, p. 40.
- [766] 778 Phil. 614 (2016) [Per J. Leonen, Second Division].
- [767] Florete, Jr. v. Florete, 778 Phil. 614, 653-654 (2016) [Per J. Leonen, Second Division].
- [768] 310 Phil. 402 (1995) [Per C.J. Narvasa, En Banc].
- [769] Republic v. Sandiganbayan First Division, 310 Phil. 402, 509-510 (1995) [Per C.J. Narvasa, En Banc].
- [770] Id. at 510-511.
- [771] Id. at 511-514.
- [772] Rollo (G.R. No. 203592), pp. 4159-4160, 4166, 4168, 4171-4174, 4186-4188.
- [773] Id. at 4185-4186.
- [774] Id. at 4161, 4178.
- [775] Executive Order No. 2 (1986), Funds, Moneys, Assets, and Properties Illegally Acquired or Misappropriated by Former President Ferdinand Marcos, Mrs. Imelda Romualdez Marcos, Their Close Relatives, Subordinates Business Associates, Dummies, Agents, or Nominees.
- [776] See also Philippine Coconut Producers Federation, Inc. v. Republic, 679 Phil. 508, 581 (2012) [Per J. Velasco, Jr., En Banc].
- [777] Id.
- [778] Creating the Presidential Commission on Good Government, February 28, 1986.

[779] Funds, etc. Illegally Acquired or Misappropriated by Former President Ferdinand Marcos, et al., March 12, 1986.

[780] NOW, THEREFORE, I, CORAZON C. AQUINO, President of the Philippines, hereby:

(1) Freeze all assets and properties in the Philippines in which former President Marcos and/or his wife, Mrs. Imelda Rornualdez Marcos, their close relatives, subordinates, business associates, dummies. agents, or nominees have any interest or participation.

(2) Prohibit any person from transferring, conveying, encumbering or otherwise depleting or concealing such assets and properties or from assisting or taking part in their transfer, encumbrance, concealment or dissipation under pain of such penalties as are prescribed by law.

(3) Require all persons in the Philippines holding such assets or properties, whether located in the Philippines or abroad, in their names as nominees, agents or trustees, to make full disclosure of the same to the Commission on Good Government within (30) days from publication of this Executive Order, or the substance thereof, in at least two (2) newspapers of general circulation in the Philippines.

(4) Prohibit former President Ferdinand Marcos and/or his wife, Imelda Romualdez Marcos, their close relatives, subordinates, business associates, dummies, agents, or nominees from transferring, conveying, encumbering, concealing or dissipating said assets or properties in the Philippines and abroad, pending the outcome of appropriate proceedings in the Philippines to determine whether any such assets or properties were acquired by them through or as a result of improper or illegal use of or the conversion of funds belonging to the Government of the Philippines or any of its branches, instrumentalities, enterprises, banks or financial institutions, or by taking undue advantage of their official position, authority, relationship, connection or influence to unjustly enrich themselves at the expense and to the grave damage and prejudice of the Filipino people and the Republic of the Philippines.

The Commission on Good Government is hereby authorized to request and appeal to foreign governments wherein any such assets or properties may be found to freeze them and otherwise prevent their transfer, conveyance, encumbrance, concealment or liquidation by former President Ferdinand E. Marcos and Mrs. Imelda Romualdez Marcos, their close relatives, subordinates, business associates, dummies, agents, or nominees, pending the outcome of appropriate proceedings in the Philippines to determine whether such assets or properties were acquired by such persons through improper or illegal use of funds belonging to the Government of the Philippines or any of its branches, instrumentalities, enterprises, banks, or financial institutions or by taking undue advantage of their office, authority, influence, connections or relationship.

[781] Presidential Commission on Good Government Rules and Regulations, April 11, 1986.

[782] 234 Phil. 180 (1987) [Per J. Narvasa, En Banc].

[783] Id. at 199-204.

[784] People v. Marlin, 148-A Phil. 294, 300 (1971) [Per J. Castro, En Banc].

[785] 512 Phil. 425 (2005) [Per J. Tinga, En Banc].

[786] Id. at 457-459.

[787] 515 Phil. 1 (2006) [Per J. Carpio-Morales, En Banc].

[788] Id. at 45-46.

- [789] 663 Phil. 212 (2011) [Per J. Bersamin, En Banc].
- [790] Id. at 297-300.
- [791] 360 Phil. 133 (1998) [Per J. Panganiban, First Division].
- [792] 564 Phil. 426 (2007) [Per J. Sandoval-Gutierrez, First Division].
- [793] J. Carpio-Morales, Dissenting Opinion in Republic v. Sandiganbayan, 663 Phil. 212, 386-388 (2011) [Per J. Bersamin, En Banc].
- [794] J. Brion, Dissenting Opinion in Republic v. Sandiganbayan, 663 Phil. 212, 463-465 (2011) [Per J. Bersamin, En Banc].
- [795] People v. Garcia, 85 Phil. 651, 663 (1950) [Per J. Tuason, En Banc].
- [796] Rollo (G.R. No. 203592), p. 3379.
- [797] Philippine Coconut Producers Federation, Inc. v. Republic, 679 Phil. 508 (2012) [Per J. Velasco, Jr., En Banc].
- [798] Id. at 581-582.
- [799] Human Rights Victims Reparation and Recognition Act of 2013, February 25, 2013.
- [800] 453 Phil. 1059 (2003) [Per J. Corona, En Banc].
- [801] Law of Forfeiture of Ill-Gotten Wealth, June 18, 1955.
- [802] Anti-Graft and Corrupt Practices Act, August 17, 1960.
- [803] Amending E.O. No. 14 (May 7, 1986) Re: Ill-Gotten Wealth of Former President Ferdinand Marcos Executive Order No. 14-A, August 18, 1986.
- [804] 512 Phil. 425 (2005) [Per J. Tinga, En Banc].
- [805] Id. at 456-457.
- [806] 234 Phil. 180 (1987) [Per J. Narvasa, En Banc].
- [807] Id. at 204-205.
- [808] Yuchengco v. Sandiganbayan, 515 Phil. 1, 24 (2006) [Per J. Carpio-Morales, En Banc].
- [809] Presidential Commission on Good Government Rules and Regulations Implementing Executive Orders Nos. 1 and 2, April 11, 1986.
- [810] Republic v. Sandiganbayan, 663 Phil. 212, 383 (2011) [Per J. Bersamin, En Banc].
- [811] 269 Phil. 225 (1990) [Per J. Bidin, Third Division].
- [812] Id. at 232.
- [813] J. Caguioa, Concurring and Dissenting Opinion, p. 2.
- [814] RULES OF COURT, Rule 128, sec. 3.
- [815] RULES OF COURT, Rule 128, sec. 4.

[816] See *People v. Galleno*, 353 Phil. 942, 955 (1998) [Per Curiam, En Banc].

[817] RULES OF COURT, Rule 130, sec. 1 provides:

SECTION 1. Object as evidence. – Objects as evidence are those addressed to the senses of the court. When an object is relevant to the fact in issue, it may be exhibited to, examined or viewed by the court.

[818] RULES OF COURT, Rule 130, sec. 2 provides:

SECTION 2. Documentary evidence. – Documents as evidence consist of writings, recording, photographs or any material containing letters, words, sounds, numbers, figures, symbols, or their equivalent, or other modes of written expressions offered as proof of their contents. Photographs include still pictures, drawings, stored images, x-ray films, motion pictures or videos.

[819] RULES OF COURT, Rule 130, sec. 3.

[820] See *Goopio v. Maglalang*, 837 Phil. 564 (2018) [Per J. Jardeleza, En Banc].

[821] See *Republic v. Mupas*, 769 Phil. 21, 173 (2015) [Per J. Brion, En Banc].

[822] RULES OF COURT, Rule 132, sec. 20.

[823] RULES OF COURT, Rule 130, sec. 37.

[824] RULES OF COURT, Rule 130, sec. 22.

[825] *Patula v. People*, 685 Phil. 376, 393-396 (2012) [Per J. Bersamin, First Division].

[826] RULES OF COURT, Rule 130, secs. 5-9.

[827] These exceptions are dying declaration, statement of decedent or person of unsound mind, declaration against interest, act or declaration about pedigree, family reputation or tradition regarding pedigree, common reputation, part of the *res gestae*, records of regularly conducted business activity, entries in official records, commercial lists and the like, learned treatises, testimony or deposition at a former proceeding, and residual exception.

[828] See *Tabuada v. Tabuada*, 840 Phil. 33, 43 (2018) [Per J. Bersamin, First Division].

[829] *Id.*

[830] *Rollo* (G.R. No. 203592), p. 3670.

[831] *Id.* at 3671.

[832] *Id.* at 3671, 3676.

[833] *Id.* at 3675-3676.

[834] *Id.* at 3677.

[835] *Id.*

[836] *Id.* at 3675-3676.

[837] *Id.* at 3678.

[838] *Id.* at 3681.

[839] Id. at 3681-3682.

[840] Id. at 25.

[841] Id. at 34.

[842] Id. at 1307.

[843] Id.

[844] Id. at 1307-1308.

[845] Id. at 1308-1309.

[846] Id. at 1309-1310.

[847] Id. at 3646.

[848] Id. at 3649-3650.

[849] Id. at 3649.

[850] Id. at 3650.

[851] Id. at 3651-3652.

[852] RULES OF COURT, Rule 129, sec. 4 provides:

SECTION 4. Judicial admissions. — An admission, oral or written, made by a 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 the imputed admission was not, in fact, made.

[853] RULES OF COURT, Rule 130, sec. 26 provides:

SECTION 26. Admission of a party. — The act, declaration or omission of a party as to a relevant fact may be given in evidence against him.

[854] 387 Phil. 28 (2000) [Per J. Buena, Second Division].

[855] Id. at 45.

[856] Rollo (G.R. No. 203592), p. 4000.

[857] RULES OF COURT (1997), Rule 130, sec. 38.

[858] 451 Phil. 214 (2003) [Per J. Ynares-Santiago, First Division].

[859] Id. at 224-225.

[860] RULES OF COURT (1997), Rule 130, sec. 29, provides:

SECTION 29. Admission by co-partner or agent. — The act or declaration of a partner or agent of the party within the scope of his authority and during the existence of the partnership or agency, may be given in evidence against such party after the partnership or agency is shown by evidence other than such act or declaration. The same rule applies to the act or declaration of a joint owner, joint debtor, or other person jointly interested with the party.

[861] RULES OF COURT (2017), Rule 130, sec. 30 provides:

SECTION 30. Admission by conspirator. — The act or declaration of a conspirator relating to the conspiracy and

during its existence, may be given in evidence against the co-conspirator after the conspiracy is shown by evidence other than such act or declaration.

[862] RULES OF COURT (2017), Rule 130, sec. 31 provides:

SECTION 31. Admission by privies. — Where one derives title to property from another, the act, declaration, or omission of the latter, while holding the title, in relation to the property, is evidence against the former.

[863] Before its amendment in 2019.

[864] J. Zalameda, Reflections in Republic v. Tan, G.R. No. 195873 et al. [Per J. Leonen, En Banc], pp. 13-14.

[865] Rollo (G.R. No. 203592), pp. 76, 88, 3940.

[866] Id. at 3940.

[867] Id.

[868] Id. at 73.

[869] Id. at 3939.

[870] Id. at 3491.

[871] Id.

[872] Id. at 3495.

[873] Id. at 839-848.

[874] Id. at 839-848.

[875] Rollo (G.R. No. 203592), pp. 3498-3499. See also See J. Caguioa, Concurring and Dissenting Opinion in Republic v. Tan, G.R. No. 195873 et al. [Per J. Zalameda, En Banc], p. 25.

[876] See J. Caguioa, Concurring and Dissenting Opinion in Republic v. Tan, G.R. No. 195873 et al. (Per J. Zalameda, En Banc), pp. 34-38.

[877] Rollo (G.R. No. 203592), pp. 73, 83-88.

[878] Id. at 4013-4017.

[879] Id. at 1682-1685, 1687-1688.

[880] Id. at 1658-1661.

[881] Id. at 1685-1686.

[882] Estrada v. Desierto, 408 Phil. 194, 227-228 (2001) [Per J. Puno, En Banc].

[883] Rollo (G.R. No. 203592), p. 4017.

[884] Id. at 1493, 4020.

[885] Id. at 1498, 4019.

[886] Id. at 1493, 4019.

[887] Id. at 1492-1494, 4020-4021.

[888] Id. at 4021-4022.

[889] WILLARD B. RIANO, EVIDENCE: THE BAR LECTURE SERIES 277 (2013).

[890] Id.

[891] Patula v. People, 685 Phil. 376, 397-398 (2012) [Per J. Bersamin, First Division].

[892] Republic v. Marcos-Manotoc, 681 Phil. 380, 404-405 (2012) [Per J. Sereno, Second Division]; People v. Quidato, Jr., 357 Phil. 674 (1998) [Per J. Romero, Third Division].

[893] 681 Phil. 380 (2012) [Per J. Sereno, Second Division].

[894] Id. at 404-405.

[895] 708 Phil. 575 (2013) [Per J. Mendoza, Third Division].

[896] Id. at 589.

[897] 548 Phil. 19 (2007) [Per J. Austria-Martinez, Third Division].

[898] Id. at 28.

[899] 410 Phil. 536 (2001) [Per J. Puno, First Division].

[900] Id. at 554-555.

[901] Rollo (G.R. No. 203592), pp. 1567-1571.

[902] Id. at 1566.

[903] Id. at 1570, 1602.

[904] Id. at 1591-1593, 4019.

[925] Id. at 1570.

[906] Id. at 1570-1571.

[907] Id. at 3537.

[908] Republic v. Marcos-Manotoc, 681 Phil. 380 (2012) [Per J. Sereno, Second Division].

[909] Rollo (G.R. No. 203592), pp. 14-169.

[910] Id. at 171-240.

[911] Id. at 775. Public record as found on the Official Gazette.

[912] Id. at 776.

[913] Id. at 777.

[914] Id. at 779.

[915] Id. at 780-785.

[916] Id. at 786.

[917] Id. at 787.

[918] Id. at 788-794.

[919] Id. at 795.

[920] Id. at 796-799. Pages for Items 6 to 11 are missing.

[921] Id. at 800.

[922] Id. at 801-804.

[923] Id. at 805, 813.

[924] Id. at 806-812, 814-820.

[925] Id. at 821.

[926] Id. at 822-823.

[927] Id. at 824-825.

[928] Id. at 826-827.

[929] Id. at 828.

[930] Id. at 829.

[931] Id. at 830.

[932] Id. at 831.

[933] Id. at 832.

[934] Id. at 833.

[935] Id. at 834.

[936] Id. at 835-838.

[937] Id. at 839-848. Certified true copy from the Library and Records Division of the Presidential Commission on Good Government.

[938] Id. at 850.

[939] Id. at 851.

[940] Id. at 852.

[941] Id. at 853.

[942] Id. at 854.

[943] Id. at 855.

[944] Id. at 856.

[945] Id. at 857. No official letterhead.

[946] Id. at 858, 860.

[947] Id. at 859, 861.

[948] Id. at 862.

[949] Id. at 863.

[950] Id. at 864.

[951] Id. at 865.

[952] Id. at 866-871. Certified true copy from the Library and Records Division of the Presidential Commission on Good Government.

[953] Id. at 872-876. Certified photocopy from the Library and Records Division of the Presidential Commission on Good Government.

[954] Id. at 877. Certified photocopy from the Library and Records Division of the Presidential Commission on Good Government.

[955] Id. at 878-880. Certified photocopy from the Library and Records Division of the Presidential Commission on Good Government.

[956] Id. at 881. Certified Photocopy from the Library and Records Division of the Presidential Commission on Good Government.

[957] Id. at 882-883.

[958] Id. at 884.

[959] Id. at 885.

[960] Id. at 886. Certified photocopy from the Library and Records Division of the Presidential Commission on Good Government.

[961] Id. at 887-888.

[962] Id. at 889, 891.

[963] Id. at 890, 892.

[964] Id. at 893.

[965] Id. at 894-895.

[966] Id. at 896-897.

[967] Id. at 898.

[968] Id. at 899.

[969] Id. at 900-903.

[970] Id. at 904.

[971] Id. at 905.

[972] Id. at 906-908.

[973] Id. at 909-910.

[974] Id. at 911-920.

[975] Id. at 921-951.

[976] Id. at 952-954.

[977] Id. at 955-1049.

[978] Id. at 1049.

[979] Id. at 1050-1053.

[980] Id. at 1054-1055. Copy from the Library and Records Division of the Presidential Commission on Good Government.

[981] Id. at 1056-1069.

[982] Id. at 1070-1072.

[983] Id. at 1073-1075.

[984] Id. at 1076-1077.

[985] Id. at 1078.

[986] Id. at 1079-1081.

[987] Id. at 1082.

[988] Id. at 1083-1086.

[989] Id. at 1087.

[990] Id. at 1088-1093.

[991] Id. at 1094-1095.

[992] Id. at 1096-1099.

[993] Id. at 1100-1101.

[934] Id. at 1102-1105.

[995] Id. at 1106-1107.

[996] Id. at 1108-1109.

[997] Id. at 1110-1112.

[998] Id. at 1113-1115.

[999] Id. at 1116-1119.

[1000] Id. at 1120-1121.

[1001] Id. at 1122. No official letterhead.

[1002] Id. at 1123.

[1003] Id. at 1124-1128.

[1004] Id. at 1129-1131.

[1005] Id. at 1132-1140.

[1006] Id. at 1141-1142.

[1007] Id. at 1143.

[1008] Id. at 1144.

[1009] Id. at 1145-1241.

[1010] Id. at 1242-1243. Certified copy from the Library and Records Division of the Presidential Commission on Good Government.

[1011] Id. at 1244.

[1012] Id. at 1245-1246. Certified copy from the Presidential Library.

[1013] Id. at 1247-1248.

[1014] Id. at 1249-1252.

[1015] Id. at 1253-1254.

[1016] Id. at 1255.

[1017] Id. at 1256.

[1018] Id. at 1257. Certified copy from the Presidential Library.

[1019] Id. at 1258. Certified copy from the Presidential Library.

[1020] Id. at 1259.

[1021] Id. at 1260-1261. Certified true copy from the Presidential Library.

[1022] Id. at 1262.

[1023] Id. at 1263-1264. Certified copy from the Presidential Library.

[1024] Id. at 1265.

[1025] Id. at 1266.

[1026] Id. at 1267.

[1027] Id. at 1268-1276.

[1028] Id. at 1277-1278.

[1029] Id. at 1279.

[1030] Id. at 1280-1284.

[1031] Id. at 1285-1288.

[1032] Id. at 1289-1312.

[1033] Id. at 1313-1317.

[1034] Id. at 1318-1319.

[1035] Id. at 1320-1323.

[1036] Id. at 1324.

[1037] Id. at 1325-1327.

[1038] Id. at 1328-1329. The copy of the document is missing two out of four pages.

[1039] Id. at 1330-1333.

[1040] Id. at 1334-1335.

[1041] Id. at 1336-1346.

[1042] Id. at 1347-1348.

[1043] Id. at 1349-1351.

[1044] Id. at 1364-1378.

[1045] Id. at 1379-1392.

[1046] Id. at 1393-1404.

[1047] Id. at 1405-1410.

[1048] Id. at 1411-1413.

[1049] Id. at 1414-1416.

[1050] Id. at 1417.

[1051] Id. at 1418-1419.

[1052] Id. at 1420.

[1053] Id. at 1421.

[1054] Id. at 1422.

[1055] Id. at 1423.

[1056] Id. at 1424.

[1057] Id. at 1425.

[1058] Id. at 1426.

[1059] Id. at 1427.

[1060] Id. at 1428.

[1061] Id. at 1429.

[1062] Id. at 1430.

[1063] Id. at 1431-1432.

[1064] Id. at 1433-1434.

- [1065] Id. at 1435-1489.
- [1066] Id. at 1490.
- [1067] Id. at 1491.
- [1068] Id. at 1492-1498.
- [1069] Id. at 1499-1619.
- [1070] Id. at 1620-1707.
- [1071] Id. at 1708.
- [1072] Id. at 1709.
- [1073] Id. at 1710.
- [1074] Id. at 1711-1712.
- [1075] Id. at 1713.
- [1076] Id. at 1714.
- [1077] Id. at 1715-1716.
- [1078] Id. at 1717.
- [1079] Id. at 1718.
- [1080] Id. at 1719-1720.
- [1081] Id. at 1721-1723.
- [1082] Id. at 1724-1727.
- [1083] Id. at 1728-1737.
- [1084] Id. at 1738. Certified photocopy from the Official Gazette.
- [1085] Id. at 1738-1741. Certified photocopy from the Official Gazette.
- [1086] Id. at 1742-1744.
- [1087] Id. at 1745. Certified true copy of the original from the Presidential Commission on Good Government.
- [1088] Id. at 1749-1792.
- [1089] Id. at 1793.
- [1090] Id. at 1794-1795.
- [1091] Id. at 2684-2697.
- [1092] Id. at 2698-2699.
- [1093] Id. at 3559-3617.
- [1094] Id. at 3618-3621.
- [1095] Id. at 3622-3645.

[1096] Id. at 3646-3650.

[1097] Id. at 3651-3652.

[1098] Id. at 3653-3696.

[1099] Id. at 3697-3710.

[1100] Id. at 3711-3726.

[1101] Id. at 3727-3743.

[1102] Id. at 3744-3766.

[1103] Id. at 3767-3773.

[1104] Id. at 3774-3801.

[1105] RULES OF COURT, Rule 130, sec. 3. See also *Republic v. Sps. Gimenez*, 776 Phil. 233 (2016) [Per J. Leonen, Second Division].

[1106] RULES OF COURT, Rule 130, secs. 5, 6, 7, 8 provides:

SECTION 5. When Original Document is Unavailable. — When the original document has been lost or destroyed, or cannot be produced in court, the offeror, upon proof of its execution or existence and the cause of its unavailability without bad faith on his or her part, may prove its contents by a copy, or by recital of its contents in some authentic document, or by the testimony of witnesses in the order stated.

SECTION 6. When Original Document is in Adverse Party's Custody or Control. — If the document is in the custody or under the control of the adverse party, he or she must have reasonable notice to produce it. If after such notice and after satisfactory proof of its existence, he or she fails to produce the document, secondary evidence may be presented as in the case of its loss.

SECTION 7. Summaries. — When the contents of documents, records, photographs, or numerous accounts are voluminous and cannot be examined in court without great loss of time, and the fact sought to be established is only the general result of the whole, the contents of such evidence may be presented in the form of a chart, summary, or calculation.

The originals shall be available for examination or copying, or both, by the adverse party at a reasonable time and place. The court may order that they be produced in court.

SECTION 8. Evidence Admissible When Original Document is a Public Record. — When the original of a document is in the custody of a public officer or is recorded in a public office, its contents may be proved by a certified copy issued by the public officer in custody thereof.

[1107] *Citibank v. Teodoro*, 458 Phil. 480 (2003) [Per J. Panganiban, Third Division].

[1108] Id. at 489.

[1109] RULES OF COURT, Rule 130, sec. 20.

[1110] *Ong Ching Po v. Court of Appeals*, 309 Phil. 313 (1994) [Per J. Quiason, First Division].

[1111] Id. at 320-321.

[1112] RULES OF COURT, Rule 130, sec. 23.

[1113] See RULES OF COURT, Rule 130, secs. 24, 25, 27, 30.

[1114] Republic v. Sps. Gimenez, 776 Phil. 233 (2016) [Per J. Leonen, Second Division].

[1115] Id. at 272-274.

[1116] Through its President Florencio T. Santos, or through its Chairman, Federico B. Moreno.

[1117] Rollo (G.R. No. 203592), pp. 853-865.

[1118] Id. at 882-884, 886-888, 893-910.

[1119] Id. at 858, 860, 862-864.

[1120] Id. at 1244-1247, 1249-1251, 1253-1265.

[1121] Id. at 1313 1333.

[1122] Id. at 1404-1406.

[1123] Id. at 1411-1413.

[1124] Id. at 1414-1416.

[1125] Id. at 1421-1434.

[1126] Id. at 1421-1425.

[1127] Id. at 1426-1430.

[1128] Id. at 1431-1434.

[1129] Id. at 3532. The only thing that varies in the Deeds of Assignment are the names and signatures of the persons executing it, and the corporation from which their shares are.

[1130] Id. at 856.

[1131] Id. at 857. No official letterhead.

[1132] Id. at 864.

[1133] Id. at 866-871.

[1134] Id. at 872-876.

[1135] Id. at 877.

[1136] Id. at 878-880.

[1137] Id. at 881.

[1138] Id. at 886.

[1139] Id. at 890, 892.

[1140] Id. at 909-910.

[1141] Id. at 1710.

[1142] Id. at 1711-1712.

[1143] Id. at. 1713.

[1144] Id. at 1715-1716.

[1145] Id. at 1717.

[1146] Id. at 1738.

[1147] Id. at 1738-1741.

[1148] Id. at 1745.

[1149] Id. at 1793.

[1150] Id. at 911-920.

[1151] Id. at 921-951.

[1152] Id. at 955-1049.

[1153] Id. at 1049.

[1154] Id. at 1056-1069.

[1155] Id. at 1076-1077.

[1156] Id. at 1145-1241.

[1157] Id. at 1242-1243.

[1158] Id. at 1246.

[1159] Id. at 1257.

[1160] Id. at 1258.

[1161] Id. at 1260-1261.

[1162] Id. at 1364-1378.

[1163] Id. at 1379-1392.

[1164] Id. at 1393-1404.

[1165] Id. at 1499-1519.

[1166] Id. at 1620-1707.

[1167] Id. at 1708.

[1168] Id. at 159-161, 330-336, 4074.

[1169] RULES OF COURT, Rule 130, sec. 8.

[1170] Republic v. Marcos-Manotoc, 681 Phil. 380, 404 (2012) [Per J. Sereno, Second Division].

[1171] Rollo (G.R. No. 205392), p. 4075. As concluded by Document Examiner of the National Bureau of Investigation Caroline Moldez-Pitoy.

[1172] Id. at 4074-4075.

[1173] Id. at 4034.

[1174] Id. at 4027.

[1175] Id. at 4036.

[1176] Id. at 4065-4066.

[1177] Ong Ching Po v. Court of Appeals, 309 Phil. 313, 320-321 (1994) [Per J. Quiason, First Division].

[1178] Rollo (G.R. No. 203592), pp. 921-951, 1056-1069.

CONCURRING AND DISSENTING OPINION

CAGUIOA, J.:

On July 17, 1987, the Republic of the Philippines (Republic) filed a civil action for reversion, reconveyance, restitution, accounting, and damages (Complaint) against the late President Ferdinand E. Marcos (President FM), Imelda R. Marcos (Imelda), Ferdinand "Bongbong" R. Marcos, Jr. (BBM), Lucio C. Tan (Tan), as well as the officers, directors, and individual stockholders^[1] (respondent-stockholders) of Tan's alleged dummy corporations.^[2]

The Republic subsequently filed a Second Amended Complaint to implead additional defendants, including the corporations (respondent--corporations)^[3] which were allegedly granted concessions by President FM and Imelda.

The consolidated petitions now pending before the Court stem from the proceedings that transpired before the Sandiganbayan in relation to the Second Amended Complaint. These are:

- The Sandiganbayan's Resolutions dated December 22, 2010 and February 25, 2011 which granted the separate motions to dismiss/demurrer to evidence filed by respondents Don Ferry (Ferry) and Cesar Zalamea (Zalamea), and resulted in the dismissal of the Second Amended Complaint as against them. These resolutions are the subject of the Petition for Review on Certiorari docketed as G.R. No. 195837;^[4]
- The Sandiganbayan's Order dated June 9, 2011 and Resolution dated August 2, 2011 excluding from the evidence the testimonies of Joselito Yujuico (Joselito) and Aderito Yujuico (Aderito),^[5] as well as the Sandiganbayan's Resolutions dated May 3, 2011 and July 4, 2011 dismissing the Republic's Motion for Voluntary Inhibition. These issuances are the subject of the Petition for Certiorari docketed as G.R. No. 198221;^[6]
- The Sandiganbayan's Resolutions dated July 13, 2011 and August 23, 2011 denying the Republic's Motion to Admit Third Amended Complaint for the purpose of impleading PMFTC, Inc. as a party. These resolutions are the subject of the Petition for Certiorari docketed as G.R. No. 198974;^[7] and
- The Sandiganbayan's Decision (Assailed Decision) dated June 11, 2012 and Resolution (Assailed Resolution) dated September 26, 2012 dismissing the Republic's Second Amended Complaint. These issuances are the subject of the Petition for Review on Certiorari docketed as G.R. No. 203592.^[8]

The ponencia resolves the consolidated petitions, as follows:

WHEREFORE, premises considered, this Court rules on the present consolidated petitions as follows:

(1)

In G.R. No. 195837, the Petition for Review on Certiorari filed by the Republic is DENIED, and the Sandiganbayan's Resolutions dated 22 December 2010 and 25 February 2011 are AFFIRMED. The Sandiganbayan's dismissal of the complaint against respondents [Ferry] and [Zalamea] is declared valid.

(2)

In G.R. No. 198221, the Petition for Certiorari filed by the Republic is DISMISSED, and the Sandiganbayan's Order dated 9 June 2011 and Resolution dated 2 August 2011 are AFFIRMED. The Court holds that the testimonies of [Joselito] and [Aderito] were correctly excluded from evidence by the Sandiganbayan.

The Sandiganbayan Resolutions dated 3 May 2011 and 4 July 2011 dismissing the Republic's Motion for Voluntary Inhibition are likewise AFFIRMED.

(3)

In G.R. No. 198974, the Petition for Certiorari filed by the Republic is DISMISSED, and the Sandiganbayan Resolutions dated 13 July 2011 and 23 August 2011, which denied the Republic's Motion to Admit Third Amended Complaint, are AFFIRMED.

(4)

In G.R. No. 203592, the Sandiganbayan Decision dated 11 June 2012 and Resolution dated 26 September 2012 dismissing the Republic's Second Amended Complaint for reversion, reconveyance, restitution, accounting and damages are AFFIRMED. Consequently, the Petition for Review on Certiorari of the Republic of the Philippines is DENIED for lack of merit.[9]

I concur with the disposition of the petitions docketed as G.R. Nos. 195837, 198221, 198974 in paragraphs (1), (2), and (3), respectively. However, I disagree with the disposition to affirm the Assailed Decision and Assailed Resolution in paragraph (4).

At the outset, I agree with the holding of the ponencia that it was a mistaken notion on the part of the Sandiganbayan that ill-gotten wealth must originate from the vast resources of the government in order to be deemed as such. As I will also explain below, assets and properties illegally acquired by President FM, Imelda, their close relatives, subordinates, business associates, dummies, agents, or nominees, even if private in nature, still fall within the concept of ill-gotten wealth as contemplated under prevailing law and jurisprudence.

Moreover, as opposed to the ponencia, I find the evidence, offered by the Republic thus far, sufficiently establish that Tan was able to secure a brewery license for his corporation, Asia Brewery, Inc. (Asia Brewery), because of his close business relationship with President FM. The chief evidence proffered by the Republic to prove this was Tan's own Written Disclosure which contained admissions. This was bolstered by the other pieces of evidence adduced by the Republic, specifically, Imelda's Amended Answer with Counterclaim and Compulsory Cross-Claim (Amended Answer), BBM's Testimony, and the Sworn Statement of President FM's financial executor, Rolando Gapud (Gapud).[10]

Under prevailing law and jurisprudence, the grant of the brewery license on account of President FM and Tan's close business relationship sufficiently gives rise to the Republic's right of recovery. It should be stressed, however, that since the brewery license is the only benefit shown to have been granted by President FM in favor of Tan, the Republic's right of recovery in this case is premised solely on the grant of said license. Accordingly, the amount that may be recovered by the Republic must be measured based on the ill-gotten wealth derived therefrom. It cannot include any income or wealth that pertains to Allied Banking Corporation (Allied Bank),

Fortune Tobacco Corporation (Fortune Tobacco), Foremost Farms, Inc. (Foremost Farms), Himmel Industries, Inc. (Himmel Industries), Silangan Holdings, Inc. (Silangan Holdings), Dominion Realty and Construction Corporation (Dominion Realty), or Grandspan Development Corporation (Grandspan).

Strikingly however, there is nothing in the records which would allow the reasonable quantification of such ill-gotten wealth. For this reason, I submit that the Second Amended Complaint should be remanded to the Sandiganbayan to: (i) allow the Republic to present additional evidence that will permit the proper assessment of such ill-gotten wealth with reasonable certainty; and (ii) afford Tan the opportunity to present controverting evidence, if any.

To this end, I submit this Opinion to explain the foregoing submissions in greater detail.

The concept of ill-gotten wealth

The resolution of G.R. No. 203592 centers on the concept of ill-gotten wealth under prevailing law and jurisprudence. Hence, as a starting point, it is apt to discuss its scope and nuances.

The Court has long acknowledged that one of the foremost and pressing concerns of the Aquino government in February 1986 was the recovery of the unexplained or ill-gotten wealth amassed by former President FM and Imelda, their relatives, friends, and business associates.[11] The Court, in *Republic v. Lobregat*,^[12] succinctly described this undertaking as an enterprise "of great pith and moment," and was attended by "great expectations." At the same time, the Court realized that the task of recovering ill-gotten wealth was "initiated not only out of considerations of simple justice but also out of sheer necessity — the national coffers were empty, or nearly so."^[13] For indeed, when President FM was ousted in 1986, the country's debt was over a staggering amount of \$26 billion, while his "illegally acquired wealth" alone, not counting that of his relatives and cronies, was then already estimated to be in the aggregate amount of five to ten billion U.S. dollars,^[14] an undoubtedly significant disproportion from his income as a public servant.

As the Court found in the much later case of *Republic v. Sandiganbayan*,^[15] while President FM made it appear that he had an extremely profitable legal practice before he became President and that, incredibly, he was still receiving payments almost 20 years after, his first income tax return in 1965 belied all of these claims because no such receivables from any client were indicated at all. As to how his and Imelda's joint income had ballooned over the years, therefore, the Court concurred with the Office of the Solicitor General's (OSG) conclusion in said case that President FM's and Imelda's joint income tax returns from 1965 to 1984 failed to conceal the skeletons of their kleptocracy.^[16]

It is likewise common knowledge that crony capitalism during the administration of President FM thrived. It was a system that allowed certain friends and relatives of his and Imelda's to acquire great wealth and economic power through special favors and privileges extended by the government.^[17] Reportedly, there were more than 100 companies owned by friends of the Marcos family that failed in the early 80's. Many of these firms were taken over by the State when they were unable to repay loans guaranteed by the government, but the favoritism continued to benefit some cronies through government bailouts even after their firms went belly up.^[18] This is why, evidently, the definition of ill-gotten wealth is not only limited to President FM and Imelda, but extends as well to their close relatives, subordinates, business associates, dummies, agents or nominees who also acquired ill-gotten wealth directly or indirectly, through or as a result of the improper or illegal use of funds or properties of the government or by taking undue advantage of their office, authority, influence, connections or relationship with President FM. Whether ill-gotten wealth was acquired by President FM, Imelda or their family on one hand, or their cronies on the other, the same results of unjust enrichment, and grave damage and prejudice to the Filipino people and the Republic of the Philippines were the common denominator.

Verily, just three days after her inauguration in 1986, former President Corazon C. Aquino (President Aquino) issued her very first executive order, Executive Order (EO) No. 1.[19]

EO No. 1 created the Presidential Commission on Good Government (PCGG), and charged it with the task of assisting President Aquino in the "recovery of all ill-gotten wealth accumulated by [President FM], his immediate family, relatives, subordinates and close associates, whether located in the Philippines or abroad, including the takeover or sequestration of all business enterprises and entities owned or controlled by them, during his administration, directly or through nominees, by taking undue advantage of their public office and/or using their powers, authority, influence, connections or relationship." [20]

Subsequently, President Aquino issued EO No. 2,[21] further authorizing the PCGG to freeze or otherwise prevent the transfer, conveyance, encumbrance, concealment, or dissipation of assets and properties pertaining to former President FM and/or his wife Imelda, their close relatives, subordinates, business associates, dummies, agents, or nominees.

As clearly reflected in their respective "whereas clauses," the aforesaid EOs were premised on the need to recover the assets and properties amassed by President FM, his immediate family, relatives, and close associates illegally acquired during the Marcos regime. To quote:

EO No. 1

WHEREAS, vast resources of the government have been amassed by former [President FM], his immediate family, relatives, and close associates both here and abroad;

WHEREAS, there is an urgent need to recover all ill-gotten wealth[.]

EO No. 2

WHEREAS, the Government of the Philippines is in possession of evidence showing that there are assets and properties purportedly pertaining to former [President FM], and/or his wife, [Imelda], their close relatives, subordinates, business associates, dummies, agents or nominees which had been or were acquired by them directly or indirectly, through or as a result of the improper or illegal use of funds or properties owned by the Government of the Philippines or any of its branches, instrumentalities, enterprises, banks or financial institutions, or by taking undue advantage of their office, authority, influence, connections or relationship, resulting in their unjust enrichment and causing grave damage and prejudice to the Filipino people and the Republic of the Philippines;

WHEREAS, said assets and properties are in the form of bank accounts, deposits, trust accounts, shares of stocks, buildings, shopping centers, condominiums, mansions, residences, estates, and other kinds of real and personal properties in the Philippines and in various countries of the world[.] (Emphasis supplied)

On April 11, 1986, the PCGG issued the Rules and Regulations (PCGG Rules) implementing EO Nos. 1 and 2. Drawing from the modes of acquisition of ill-gotten wealth detailed in EO Nos. 1 and 2, the PCGG Rules explicitly defined ill-gotten wealth, as follows:

SEC. 1. Definition. – (A) "Ill-gotten wealth" is hereby defined as any asset, property, business enterprise or material possession of persons within the purview of [EO Nos. 1 and 2], acquired by them directly, or indirectly thru dummies, nominees, agents, subordinates and/or business associates by any of the following means or similar schemes:

(1)

Through misappropriation, conversion, misuse or malversation of public funds or raids on the public treasury;

(2)

Through the receipt, directly or indirectly, of any commission, gift, share, percentage, kickbacks or any other form of pecuniary benefit from any person and/or entity in connection with any government contract or project or by reason of the office or position of the official concerned[;]

(3)

By the illegal or fraudulent conveyance or disposition of assets belonging to the government or any of its subdivisions, agencies or instrumentalities or government-owned or controlled corporations;

(4)

By obtaining, receiving or accepting directly or indirectly any shares of stocks, equity or any other form of interest or participation in any business enterprise or undertaking;

(5)

Through the establishment of agricultural, industrial or commercial monopolies or other combination and/or by the issuance, promulgation and/or implementation of decrees and orders intended to benefit particular persons or special interest; and

(6)

By taking undue advantage of official position, authority, relationship or influence for personal gain or benefit.

Thereafter, EO No. 14 was issued on May 7, 1986, empowering the PCGG to file and prosecute all cases investigated by it under EO Nos. 1 and 2 before the Sandiganbayan.[22]

In *Bataan Shipyard & Engineering Co., Inc. (Baseco) v. Presidential Commission on Good Government*,[23] the Court further clarified the scope of the concept of ill-gotten wealth by detailing the specific situations contemplated under the aforesaid EO Nos., hence:

The situations envisaged and sought to be governed are self-evident, these being:

1)

that "(i)ll-gotten properties (were) amassed by the leaders and supporters of the previous regime";

a)

more particularly, that (i)ll-gotten wealth (was) accumulated by former [President FM], his immediate family, relatives, subordinates and close associates, * * located in the Philippines or abroad, * * (and) business enterprises and entities (came to be) owned or controlled by them, during * * (the Marcos) administration, directly or through nominees, by taking undue advantage of their public office and/or using their powers, authority, influence, [c]onnections or relationship;"

b)

otherwise stated, that "there are assets and properties purportedly pertaining to former [President FM], and/or his wife [Imelda], their close relatives, subordinates, business associates, dummies, agents or nominees which had been or were acquired by them directly or indirectly, through or as a result of the improper or illegal use of funds or properties owned by the Government of the Philippines or any of its branches, instrumentalities, enterprises, banks or financial institutions, or by taking undue advantage of their office, authority, influence, connections or relationship, resulting in their unjust enrichment and causing grave damage and prejudice to the Filipino people and the Republic of the Philippines";

c)

that "said assets and properties are in the form of bank accounts, deposits, trust accounts, shares of stocks, buildings, shopping centers, condominiums, mansions, residences, estates, and other kinds of real and personal properties in the Philippines and in various countries of the world;" and

2)

that certain "business enterprises and properties (were) taken over by the government of the Marcos Administration or by entities or persons close to former [President FM]."[24] (Emphasis and underscoring supplied)

From the foregoing, two fundamental points become apparent.

Foremost, ill-gotten wealth does not only pertain to assets and properties illegally acquired by President FM himself. Ill-gotten wealth also pertains to assets and properties illegally acquired by other individuals, particularly, President FM's wife Imelda, their close relatives, subordinates, business associates, dummies, agents, or nominees.

As well, the Court affirmed in several cases[25] that ill-gotten wealth may be acquired through either of two means: first, "through or as a result of the improper or illegal use of funds or properties owned by the government of the Philippines or any of its branches, instrumentalities, enterprises, banks, or financial institutions" (first mode of acquisition), or second, "by taking undue advantage of their office, authority, influence, connections or relationship [for personal gain or benefit] resulting in their unjust enrichment and causing grave damage and prejudice to the Filipino people and the Republic of the Philippines" (second mode of acquisition).

As keenly observed by the ponencia, the second mode of acquisition does not require that the assets and properties in question be government-owned in order to be deemed ill-gotten.[26] Stated otherwise, assets and properties which are private in nature may still fall within the concept of ill-gotten wealth if they have been acquired by President FM, Imelda, their close relatives, subordinates, business associates, dummies, agents, or nominees by taking undue advantage of their office, "authority, influence, connections or relationship"[27] for personal gain or benefit[28] "resulting in their unjust enrichment and causing grave damage and prejudice to the Filipino people and the Republic of the Philippines." [29]

On this score, I agree that the Sandiganbayan unduly restricted the concept of ill-gotten wealth when it held that such "[does] not include all the properties of [President FM], his immediate family, relatives, and close associates[,] but only the part that originated from the ['vast resources of the government.']"[30] To restrict the definition of ill-gotten wealth in such manner, as did the Sandiganbayan, would be to ignore the plain construction of the definition found in the relevant laws, which, to repeat, contemplate two (2) things: (i) assets and properties originating from government funds and obtained through the first mode of acquiring ill-gotten wealth; or (ii) private assets and properties acquired through the second mode of acquiring ill-gotten wealth. The Sandiganbayan's narrow interpretation would set a dangerous precedent, as it would effectively remove private assets and properties which were unlawfully acquired by President FM, his immediate family, relatives, or close associates from the scope of EO Nos. 1, 2, and 14.

The broad construction of ill-gotten wealth is reinforced by jurisprudence.

In *Silverio v. Presidential Commission on Good Government*[31] (*Silverio*), the OSG filed with PCGG a complaint for graft and corrupt practices and other crimes related to public service. Therein petitioner Ricardo Silverio (Ricardo) was impleaded as one of several defendants. During the proceedings, PCGG issued several writs of sequestration against Ricardo's properties. Ricardo filed a motion to quash the complaint and lift the writs of sequestration, claiming that no probable cause had been shown to justify the sequestration of his properties.

However, PCGG did not act on the motion. Aggrieved, Ricardo filed a Rule 65 petition before the Court, imputing grave abuse of discretion on the part of PCGG.

The Court dismissed Ricardo's petition for lack of merit. In so ruling, the Court held that under EO Nos. 1, 2, and 14, the PCGG is empowered to issue writs of sequestration and similar orders in furtherance of its duty of recovering illegally-acquired wealth. The Court explained:

Under [EO Nos.] 1, 2 and 14, the respondent PCGG is empowered to issue writs of sequestration, and similar orders so as to accomplish its duty of recovering illegally-acquired wealth. The power to sequester property means to place or cause to be placed under its possession or control said property, or any building or office wherein any such property or any records pertaining thereto may be found, including business enterprises and entities — for the purpose of preventing the destruction, concealment or dissipation of, and otherwise conserving and preserving, the same — until it can be determined, through appropriate, judicial proceedings, whether the property was in truth "ill-gotten," i.e., acquired through or as a result of improper or illegal use of or the conversion of funds belonging to the Government or any of its branches, instrumentalities, enterprises, banks or financial institutions, or by taking undue advantage of official position, authority, relationship, connection or influence, resulting in unjust enrichment of the ostensible owner and grave damage and prejudice to the State.[32] (Emphasis and underscoring supplied)

While *Silverio* primarily involved a motion to lift the provisional sequestration orders of the PCGG, it is well to note that the properties involved therein were private in nature, and owned by therein petitioner Ricardo, a businessman who was charged before the PCGG due to his close relationship with President FM. Thus, in dismissing Ricardo's Petition for Certiorari, the Court held that "the record of the case shows prima facie that the various business interests of [Ricardo] have enjoyed considerable privileges obtained from former President [FM] during his tenure as Chief Executive in violation of existing laws; privileges which could not have been so obtained were it not for the close association of the petitioner with the former President." [33]

As well, in *Republic v. Tuvera* [34] (*Tuvera*), Juan Tuvera (Juan), as Presidential Executive Assistant of President FM, was charged with taking advantage of his relationship and connection with the latter by engaging in a scheme to unjustly enrich himself at the expense of the Republic and of the Filipino people. This was allegedly accomplished on his part by securing a Timber Licensing Agreement (TLA) on behalf of Twin Peaks, a private corporation owned by his son, Victor Tuvera (Victor), despite Twin Peaks' lack of qualification to be a grantee thereof. The Republic, through PCGG, sought the reconveyance of the revenues earned by Twin Peaks in an approximate amount of P45 million. [35]

The Court agreed with the Republic that Juan, Victor, and Twin Peaks had amassed ill-gotten wealth in the form of assets and properties derived through the latter's operations. [36] Similar to *Silverio*, the assets and properties found to be ill-gotten in *Tuvera* were also private in nature.

More recently, in the case of *Disini v. Republic* [37] (*Disini*), the Republic filed an action for recovery of ill-gotten wealth against Herminio Disini (Herminio), a close associate of President FM. The Republic claimed that contractor Westinghouse Electric Corporation (Westinghouse) and architectural firm Burns & Roe, Inc. (B&R) solicited the influence of Herminio for the purpose of ensuring their appointment as the main contractor and architect-engineer for the government's Bataan Nuclear Power Plant Project (BNPP). In exchange, Herminio received commissions equivalent to a percentage of the price of Westinghouse's and B&R's awarded contracts. The Republic further alleged that Herminio unduly took advantage of his close association with President FM to obtain favorable terms for Westinghouse by requesting the latter to issue orders and directives to the National Power Corporation (NPC) to accept Westinghouse's proposals.

For his part, Herminio argued, among others, that the Republic had no cause of action against him as it failed to present proof that the alleged commissions he received were part of the purchase price paid by the Republic to Westinghouse and B&R. In other words, the Republic failed to adduce proof that the alleged commissions had been derived from government funds. This argument was strongly rejected by the Court, thus:

[C]ontrary to the contention of Disini, ill-gotten wealth also encompasses those that are derived indirectly from government funds or properties through the use of power, influence, or relationship resulting in unjust enrichment and causing grave damage and prejudice to the Filipino people and the Republic. The alleged subject commissions may not have been sourced directly from the public funds but it is beyond cavil that Disini would not have amassed these commissions had he not exerted undue influence on [President FM].[38] (Emphasis and underscoring supplied)

The Court notably added that "the Republic may recover ill-gotten wealth not only from [President FM], Imelda and his immediate family, but also from his dummies, nominees, agents, subordinates and/or business associates whether or not [President FM] is also found liable together with them." [39]

To repeat, the concept of ill-gotten wealth, as properly understood in Silverio, Tuvera, and Disini, can be broken down as follows:

- Ill-gotten wealth does not only pertain to assets and properties illegally acquired by President FM himself, but also to assets and properties illegally acquired by other individuals, particularly, President FM's wife Imelda, their close relatives, subordinates, business associates, dummies, agents, or nominees. For this reason, the Republic may recover ill-gotten wealth not only from President FM, but also directly from said individuals, whether or not President FM is found liable together with any of them.
- Ill-gotten wealth may be acquired either "through or as a result of the improper or illegal use of funds or properties owned by the government of the Philippines or any of its branches, instrumentalities, enterprises, banks, or financial institutions" (first mode of acquisition), or "by taking undue advantage of their office, authority, influence, connections or relationship, resulting in their unjust enrichment and causing grave damage and prejudice to the Filipino people and the Republic of the Philippines" (second mode of acquisition). Under the second mode of acquiring ill-gotten wealth, the assets and properties in question need not emanate from the vast resources of the government in order to be deemed ill-gotten and recovered by the Republic.

Furthermore, Section 3 of EO No. 14, as amended, expressly provides that all civil suits for restitution, reparation of damages, or indemnification for consequential damages, forfeiture proceedings, or any other civil actions in connection with EO Nos. 1 and 2 may proceed independently of any criminal proceedings, and may be proved by preponderance of evidence. Thus:

SEC. 3. The civil suits to recover unlawfully acquired property under Republic Act No. 1379 or for restitution, reparation of damages, or indemnification for consequential and other damages or any other civil actions under the Civil Code or other existing laws filed with the Sandiganbayan against [President FM], [Imelda], members of their immediate family, close relatives, subordinates, close and/or business associates, dummies, agents and nominees, may proceed independently of any criminal proceedings and may be proved by a preponderance of evidence.

As often defined, preponderance of evidence is meant that the evidence adduced by one side is, as a whole, superior to that of the other side. Essentially, it refers to the comparative weight of the evidence presented by the opposing parties and is usually considered to be synonymous with the term greater weight of the evidence or greater weight of the credible evidence. Preponderance of evidence is proof that is more convincing to the court as worthy of belief than that which is offered in opposition thereto.[40]

In this case, the Republic's claim for reconveyance of 60% of the shares of Shareholdings, Inc. (SHI) is anchored

on the following premises: (i) President FM and Tan entered into a 60-40 sharing agreement concerning Tan's corporations; (ii) the umbrella corporation SHI, and the three primary holding corporations Basic Holdings Corp. (Basic), Falcon Holdings Corp. (Falcon), and Supreme Holdings Inc. (Supreme) were formed in order to implement said 60-40 arrangement; (iii) President FM had been given beneficial ownership of 60% of the shares of SHI; and (iv) such 60% beneficial interest is presently held by respondent-stockholders as mere dummies of President FM. On this basis, the Republic asserts that said 60% interest should be reconveyed in favor of the Republic as it constitutes ill-gotten wealth.

As I had stated at the outset, I find that the Republic failed to establish that President FM beneficially owned 60% of SHI and that respondent--stockholders merely stand as his dummies. Nevertheless, applying the definition of ill-gotten wealth under prevailing law and jurisprudence, I find that the Republic has preponderantly established that Tan had secured Asia Brewery's license through his close business relationship with President FM. Since this brewery license is the only undue benefit shown to have been granted by President FM in favor of Tan, the extent of the Republic's right of recovery in this case must be measured solely on the basis of the ill-gotten wealth derived by Tan from said brewery license. It cannot be measured on the basis of any wealth derived from the other operating companies whose shares of stocks are also held by SHI, to wit: Allied Bank, Fortune Tobacco, Foremost Farms, Himmel Industries, Silangan Holdings, Dominion Realty, or Grandspan. Accordingly, I submit that it is improper, if not unjust, to use 60% of the shares of SHI as a metric for recovery in this case.

I expound.

The pieces of evidence relied upon and formally offered by the Republic are admissible and should be duly considered

To recall, the Republic's Second Amended Complaint alleged, among others, that:

Tan was a business partner of [President FM]. [President FM] and [Tan] had agreed that the former would own 60% of [SHI] which, in turn, beneficially held and/or controlled substantial shares of Fortune Tobacco, [Asia Brewery], [Allied Bank], and Foremost Farms and other corporations here and abroad. Apart from [the] said 60% beneficial interest of [President FM], [Tan] yearly paid the former sums of money from 1980 to 1986, in exchange for privileges and concessions which [President FM] gave [Tan]...[41]

In support, the Republic presented as evidence, among others, Imelda's Amended Answer filed before the Sandiganbayan, BBM's Testimony before the Sandiganbayan, the Sworn Statement of Gapud, and Tan's Written Disclosure. However, the Sandiganbayan, in its Assailed Decision and Assailed Resolution, did not give credence to the first three (3) pieces of evidence based on inadmissibility.

The Sandiganbayan held that Imelda's Amended Answer was, in fact, disallowed,[42] and treated BBM's Testimony regarding President FM and Tan's discussions as mere hearsay as he was not privy to those discussions.[43] Similarly, the Sandiganbayan also found Gapud's Sworn Statement as hearsay because he did not take the witness stand and was not cross-examined by the defense.[44]

As regards Tan's Written Disclosure, the Sandiganbayan gave it short shrift, ruling that there was no proof that Tan's requests were implemented or that the corporations benefited from President FM. It further ruled that there is no showing that President FM's grant of favors and privileges to a corporation results in the government's ownership of its shares, assets, and properties that may be recovered as ill-gotten wealth.[45] The respondents, for their part, also have issues as to the inadmissibility of Tan's Written Disclosure. They averred that it was

presented by Senator Jovita Salonga (Senator Salonga), whose direct examination on the matter was not completed and who was also not cross-examined by the defense.[46]

The ponencia agrees with the findings of the Sandiganbayan that the above-cited pieces of evidence are either inadmissible in evidence or lacking in probative value and hence, are not proof that the assets and properties subject of this case were acquired by Tan by taking advantage of his connections with the Marcos family.[47] I hold otherwise. I submit that the above-cited pieces of evidence are admissible in evidence and should have been duly considered by the Sandiganbayan. I submit further that they preponderantly establish the Republic's right of recovery against Tan.

IMELDA'S AMENDED ANSWER

While it can be conceded that Imelda's Amended Answer was disallowed by the Sandiganbayan on the ground that her cross-claims did not involve the same transactions or acts as that of the principal cause of action in the Republic's case, said pleading, however, was formally offered as documentary evidence by the Republic. Thus, the statements contained therein may be considered as extrajudicial admissions pursuant to Section 26[48] (now Section 27), Rule 130 of the Rules of Court, which states that "[t]he act, declaration or omission of a party as to a relevant fact may be given in evidence against him or her." As held in *Bon v. People*,[49] this rule is based upon the truism that no man [or woman] would make any declaration against himself [or herself], unless it is true.[50]

By analogy, the disallowed pleading of Imelda is akin to an original pleading that was amended or superseded and hence, had disappeared from the record, lost its status as a pleading, and ceased to be a judicial admission which would have required no proof.[51] That said, such pleading may still be utilized against the pleader as an extrajudicial admission, subject to it being first formally offered in evidence.[52] Since Imelda's Amended Answer had been formally offered in this case, there should be no reason, therefore, to render it ineffective.

The ponencia points out however, that Imelda was not cross-examined on her statements in the Amended Answer.[53]

Certainly, Imelda's Amended Answer is in the nature of a private document. Lacking the official or sovereign character of a public document, or the solemnities prescribed by law, a private document requires authentication in the manner allowed by law or the Rules of Court before its acceptance as evidence in court. However, in four (4) instances, the requirement of authentication of a private document is excused, to wit: (a) when the document is an ancient one within the context of Section 21, Rule 132 of the Rules of Court; (b) when the genuineness and authenticity of an actionable document have not been specifically denied under oath by the adverse party; (c) when the genuineness and authenticity of the document have been admitted; or (d) when the document is not being offered as genuine.[54] I submit that Imelda's Amended Answer falls within the third exception.

It is beyond cavil that Imelda fought for the admission of her Amended Answer before the Sandiganbayan. After the graft court denied its admission, Imelda moved for reconsideration, but the same was denied by the Sandiganbayan via a minute resolution.[55] She then appealed said denial before the Court, which, however, affirmed the Sandiganbayan.[56] These acts, to my mind, are clear affirmations on her part that her Amended Answer is genuine and authentic. Consequently, it was not imperative anymore for the Republic to authenticate the Amended Answer through the testimony of Imelda.

Furthermore, given the genuineness and due execution of the Amended Answer, the statements contained therein should be considered as admissions against Imelda's interest. Admissions against [one's] interest are those made by a party to a litigation or by one in privity with or identified in legal interest with such party and are admissible whether or not the declarant is available as a witness.[57]

So, too, notwithstanding the application of the *res inter alios acta* rule, Imelda's Amended Answer is high quality evidence^[58] that cannot simply be brushed aside. In the first place, the Sandiganbayan should not have bound itself by the technical rules of procedure, taking its cue from the adopted liberal approach of the Court regarding technical rules of procedure in cases involving recovery of ill-gotten wealth.^[59] As previously elaborated by the Court in *Republic v. Gimenez*^[60] (Gimenez):

In all the alleged ill-gotten wealth cases filed by the PCGG, this Court has seen fit to set aside technicalities and formalities that merely serve to delay or impede judicious resolution. This Court prefers to have such cases resolved on the merits at the Sandiganbayan. But substantial justice to the Filipino people and to all parties concerned, not mere legalisms or perfection of form, should now be relentlessly and firmly pursued. Almost two decades have passed since the government initiated its search for and reversion of such ill-gotten wealth. The definitive resolution of such cases on the merits is thus long overdue. If there is proof of illegal acquisition, accumulation, misappropriation, fraud or illicit conduct, let it be brought out now. Let the ownership of these funds and other assets be finally determined and resolved with dispatch, free from all the delaying technicalities and annoying procedural sidetracks.^[61] (*Italics in the original*)

Thus, here, even if it is assumed that the rule on *res inter alios acta* were to apply, the treatment of the extrajudicial admission as hearsay is bound by the exception on independently relevant statements.^[62] Under the doctrine of independently relevant statements, regardless of their truth or falsity, the fact that such statements have been made is relevant. The hearsay rule does not apply, and the statements are admissible as evidence. Evidence as to the making of such statement is not secondary but primary, for the statement itself may constitute a fact in issue or be circumstantially relevant as to the existence of such a fact.^[63]

The statements in Imelda's Amended Answer, being extrajudicial admissions against her interest, are independently relevant to prove the arrangement between President FM and Tan. As the Republic emphasized, Imelda maintained in her Amended Answer that their family owns at least 60% of Tan's businesses by virtue of the said arrangement. According to the Republic, Imelda's claim validates its theory that, indeed, President FM unlawfully entered into a business arrangement with Tan and then used his position and power to grant numerous concessions and privileges to these corporations in violation of the Constitution and anti-graft laws.^[64]

The Republic quoted the following telling narration in Imelda's Amended Answer:

42. Way before and continuing through 1985, former [President FM] had beneficial ownership, together with [Tan], his family and associates, in the following operating companies, as well as the subsidiaries and companies which these operating companies have acquired, or in turn invested in, to wit:

1. [Himmel Industries]
2. [Fortune Tobacco]
3. [Foremost Farms]
4. [Asia Brewery]
5. [Grandspan]
6. [Silangan Holding(s)]
7. [Dominium Realty]

43. [President FM] had a sixty percent (60%) beneficial ownership in said companies, which beneficial interests were held in trust by [Tan] personally and through his family members and business associates who appeared as the recorded stockholders of said companies.

44. Sometime in late 1980, [President FM] and [Tan] agreed to consolidate their ownership interests in the various businesses, in one holding company organized under the name [SHI].

[44.1] To implement such consolidation, the record (or nominee) stockholders of the above-named seven (7)

operating companies transferred their stockholdings in said companies to defendant [SHI] through separate Deeds of Sale of Shares of Stock.

[44.2] In consideration, and in exchange, for such transfer of shares of the operating companies, [SHI] in turn, issued its shares of stock to the record (nominee) stockholders of the above-named operating companies.

[44.3] In fine, the transferring record (nominee) stockholders of the operating companies became likewise the record (nominee) stockholders of the holding company, [SHI].

45. Having achieved the consolidation of their beneficial ownership interests, through the organization of the holding company, [SHI], [President FM] and [Tan] then agreed to structure the segregation of their beneficial ownership interest[s] in the proportion of sixty percent (60%) for [President FM] and forty percent (40%) for [Tan].

45.1 For this purpose, three ultimate holding companies were organized in the middle of 1984: [Basic], [Supreme], and [Falcon], with the intention of having Basic as the record owner of the beneficial interests of [Tan] and his group (40%) and Supreme and Falcon, as the record owners of the aggregate beneficial interest[s] of [President FM] (60%).

45.2 In express acknowledgment of the fact that they merely held their recorded interest in [SHI] in trust for [President FM] and [Tan], in the ratio of 60%-40%, respectively, the record (nominee) stockholders of [SHI] then assigned their stockholdings in [SHI] to the newly organized ultimate holding companies as follows:

Stockholders

No. of Shares

% of Holdings

[Basic]

61,617,500

[49.0]%

[Supreme]

31,437,500

25.0%

[Falcon]

31,437,500

25.0%

[Tan]

628,750

0.5%

[Mariano Tan Eng Lian]

628,750

0.5%

TOTAL

125,750,000

100.0%

45.3 To make the shareholdings of Basic conform to the agreed 60%-40% ratio, Basic executed a Deed of Sale of Shares of Stock in favor of Supreme, transferring 9% of [SHI] shares held by the former in favor of the latter.

45.[4] After Basic transferred 9% of its 49% stock ownership in [SHI], the stock ownership in [SHI] became as follows:

Stockholders

No. of Shares

% of Holdings

[Basic]

50,300,000

40.0%

[Supreme]

42,755,000

34.0%

[Falcon]

31,437,500

25.0%

[Tan]

628,750

0.5%

[Tan Eng Lian]

628,750

0.5%

TOTAL

125,750,000

100.0%

46. In express recognition of the beneficial ownership of [President FM], the incorporators of both Falcon and Supreme executed and delivered to [President FM] blank Deeds of Assignment.

47. The assignment by the defendants record-stockholders of [SHI] of sixty percent (60%) of that company's then outstanding capital stock to Falcon and Supreme which are, in turn, beneficially owned entirely by [President FM], is an express acknowledgment by such defendants, including defendant [Tan], that they held such interests in trust for, and for the benefit of [President FM].

48. Defendant [Imelda] as surviving spouse and heir of [President FM] and the Estate of [President FM], the latter being the legal successor--in-interest of [President FM], repeatedly demanded from defendant [Tan] and the other defendant-record stockholders of [SHI] that they perform or enforce the trust by delivering and recording the ownership of sixty percent (60%) of [SHI]'s outstanding capital stock to [the] Estate of [President FM], thru Falcon and Supreme, in accordance with the Deeds of Assignment.

49. Despite and notwithstanding such repeated demands, defendants [Tan] and record (nominee) stockholders of [SHI] failed and refused to comply with said demands.[65] (Emphasis and italics supplied)

Apart from the foregoing admissions, it is well to note at this juncture that the Republic likewise touched on the alleged public declarations of Imelda about the Marcoses' wealth. One such "critical public declaration" was narrated by the late Senator Salonga:

Imelda: "We own practically everything in the Philippines..."

Many people did not realize how much had been accomplished by the PCGG through sequestration until [Imelda] came out with a series of "bombshell" revelations as published from day to day in the December issues of Philippine Daily Inquirer (December 5, 6, 7, 8 and 9)[.] Without realizing its far-reaching implication, [Imelda] declared:

We practically own everything in the Philippines, from electricity, telecommunication, airlines, banking, beer and tobacco, newspaper publishing, television stations, shipping, oil, mining, hotels, and health resorts, down to coconut mills, small fisheries, real estates and insurance.

[Imelda] said she would reclaim an estimated 500 billion pesos (around \$13 billion 1999), now in the hands of the Marcos cronies. The prominent Marcos cronies, whom she called "trustees" were, by her own account, merely holding many of the sequestered properties for her own account, merely holding many of the sequestered properties for and in the name of her husband, [President FM]. This was precisely what the PCGG had maintained since 1986 except that the Marcoses are not the real owners — it is the Filipino people. Among the trustees she named were [Tan], Eduardo "Danding" Cojuangco, the late Ramon Cojuangco and his son, Antonio "Tonyboy" Cojuangco, Imelda Cojuangco, Herminio D[i]sini, [Gapud], Jose Yao Campos, Roberto Benedicto and many others.[66] (Emphasis in the original)

The Republic highlighted another supposed public declaration made by Imelda through the testimony of Christine Herrera (Herrera), a former reporter from the Philippine Daily Inquirer to whom Imelda granted an interview on the alleged wealth of the Marcoses based on various deeds of sales of shares of stocks and blank deeds of assignments.[67] The pertinent portions of the testimony of Herrera were quoted by the Republic in its Memorandum as follows:

Atty. Generillo:

Q: Ms. Witness in Exhibit "VVVVVVVVVVVV" a statement attributed to [Imelda] appears, and I would like to read for the record, as follows:

"Among the biggest companies held by Tan for [President FM] according to the former First Lady were: [Fortune Tobacco], [Allied Bank], [Asia Brewery], [Foremost Farms] and the Flagship Company [SHI]. According to [Imelda] all the shares and stock up to 60% to 100% held by Tan were for [President FM]. Tan, whom she called '[ang magbobote]' (bottle peddler) gaining substantial concession in specific taxes, stamp duties for a cigarette Fortune Tobacco and here Asia Brewery Operations' she said, we gave Tan and [others...]"

INTERRUPTED —

(TSN dated July 2, 2008, pp. 24-25)

Atty. Generillo:

Another statement, Your Honor, was on page 1 is as follows:

"[Imelda] said she met Tan through her cousin Herminio [Disini]."

May we request, Your Honor, that this position be bracketed and marked as Exhibit "VVVVVVVVVVVV-3[?]"...

Atty. Generillo:

Another statement found on page 2, read[s] as follows:

"She explained that Tan was a small[-]time businessman before he became member of [President FM]'s inner circle, she said Tan was into bottling and filter manufacturing, but that, these were just small businesses[.]"

May we request that this portion be bracketed and marked as Exhibit "VVVVVVVVVVVV-4[?]"

(TSN dated July 2, 2008, pp. 26-27)

Atty. Generillo:

On page 18, Your Honor, of this issue marked as Exhibit ["]WWWWWWWWWW-1" there appears a

statement, which read, as follows:

"The next thing [President FM] did, [Imelda] said, was to assign trustees who belong to [President FM]'s inner circle to various companies[.]"

May we request, Your Honor, that this portion be bracketed and marked as Exhibit "WWWWWWWWWW-2[?]"

....

Atty. Generillo:

There is also a statement appearing on page 18, and it reads:

"Eduardo Danding Cojuangco was brought in by Ramon Cojuangco, to [Tan] was brought in by [Imelda]'s cousin-in-law Herminio [Disini], [Gapud], former Security Bank and Trust Company President was brought in by Jose Yao-Campos, owner of the United Laboratories, Roberto Benedicto, Manuel Nieto, and 25 others would be cronies were also top because they were there at the right place at the right time, [Imelda] said[.]"

May we request, Your Honor that this portion be bracketed and marked as Exhibit "WWWWWWWWWW-3[?]"

(TSN dated July 2, 2008, pp. 28-30)

Atty. Generillo:

Another statement appearing on page 18 reads as follow[s]:

"She said since her husband was President at that time, he could not sit as President and Chairman of all the companies he had acquired, so he instead chose his [dummies] who fully agreed to manage the company on his behalf[.]"

May we request, Your Honor, that this portion be bracketed and marked as Exhibit "WWWWWWWWWW-5[?]"

....

Atty. Generillo:

Another statement appearing on page 18 reads, as follow[s]:

"Ikaw ang assign dito, ikaw dito, hindi yung ako ang Presidente nito, ako ang Presidente noon kasi Presidente na ako ng bayan[.]" [T]ranslation in English, Your Honor[:] "[Y]ou are assigned here, you are assigned there, I won't to (sic) be President of any company because I am already the President of the Philippines[.]" she said. All of them willingly signed Deeds of Trust, this way, they became his close associates, [Imelda] said [.]

May we request, Your Honor, that this portion be bracketed and marked as Exhibit "WWWWWWWWWW-6[?]"

(TSN dated July 2, 2008, pp. 31-32)[68] (Emphasis and italics in the original)

The foregoing evidently shows that Imelda has been consistent with her claims about the arrangement between her husband, President FM, and Tan. These public declarations, taken together with her Amended Answer, should therefore be weighed and evaluated by the Sandiganbayan more carefully and closely.

BBM'S TESTIMONY

As to BBM's Testimony, the ponencia holds that it is hearsay because he was not privy to the alleged 60-40 arrangement of the share transfers between and among the various corporations.[69]

I strongly disagree.

Any evidence — whether oral or documentary — is hearsay if its probative value is not based on the personal knowledge of the witness, but on that of some other person who is not on the witness stand. Hence, information that is relayed to the former by the latter before it reaches the court is considered hearsay.[70] In other words, hearsay evidence is defined as "evidence not of what the witness knows himself [or herself] but of what he [or she] has heard from others;" and the hearsay rule bars the testimony of a witness who merely recites what someone else has told him or her, whether orally or in writing.[71] This is certainly not the case here. BBM testified on his own conversations with his father and on his own meetings with Tan and Gapud that both pertain to his own orientation and eventual involvement with the business interests of his family in Tan's companies. Ineluctably, these are facts which he knows of his own personal knowledge and specifically derived from his own perception and experience.[72]

The equally telling testimony of BBM was quoted by the Republic in this wise:

Q: "When was the first time that you saw [Tan]?"

WITNESS CONG. MARCOS, JR.

A: I could not give you the specific date but I know it was in the early '70s. As I said, the first time I saw him was in the area of the Palace that we call the "Study Room[,] " which is the area next to my father's office.

ATTY. GENERILLO

Q: Did you have opportunity to talk to [Tan]?

A: Yes, several times after we have been introduced. We would say "hello" to each other when we cross each other's paths. And on a couple of occasions, we actually had an opportunity to have substantive conversations aside from meetings.

Q: What do you mean "substantive meetings" or discussions?

A: Well, I remember that at one point, I was summoned by my father to his office and so I went. And he was there with [Tan] in the discussion.

And he at that point told me that he would like me to familiarize myself with the operations of some of the enterprises that we have interests in and that [Tan] was going to help me to be more familiar with the said operations.

Q: Why did your father summon you to his office to familiarize yourself with the business interests of the Marcoses?

A: It was part of a larger effort on the part of the family to really clarify and to conduct an inventory and legal audit of all those business interest that we have.

My sister Imee, who has legal training, was given the job of conducting the legal audit, and I was given the job to go to as many of these enterprises as I could and as I said, learn the operations and meet the people who were running them so that when the time comes that we would take over, we would know how to manage these different interests.

Q: And what was the condition of your father when he summoned you to his office?

A: At that time, he was still quite strong. But then, he was starting to feel the effect of his kidney disease. So perhaps, even that has a factor in his wanting us to know the family's interests.

Q: What happened after that meeting with your father and defendant [Tan]?

A: Well, at the end of the meeting, [Tan] and I talked and discussed the possibility of having a meeting, just the two of us.

And if I am not mistaken, he was leaving for abroad and so he said that he will contact me as to when we will have that meeting.

Q: Was there any occasion for your father to show proof of the family's interests in [Tan]?

A: Well, when we first began this whole effort, he had me and my sister, we met and we sat down and showed us some documents which are essentially Deeds of Assignment, Shares of Stock, Titles to properties, and all these kinds of things. And he tried to give us a sketch of exactly how the structures were.

And then his instructions to us were — we go out and make sure that first, all documentations were in place because maybe the documents or something were in some persons, the documents or something were in another person, to really reorganize them and collate everything. So, that was the gist of — We had several of those meetings, and that was then I saw these documents.

....

Q: Now, let us go back to the instance where you had substantial discussion with defendant [Tan].

Where did it take place?

A: Well, as I have mentioned, the first time that we actually sat down and talked of anything substantive was in my father's office.

Subsequently, I received a message from [Tan]'s office that he would ask me to meet him at his office in Allied Bank. That is about I think a week or fortnight after I was summoned by my father.

Q: And you meet him at his office?

A: Yes, at his office in Allied Bank.

Q: And what did you discuss with him in that meeting?

A: He laid out the ownership structure of the different corporations that we had an interest in.

Q: Did he tell you what those corporations are?

A: Yes, he actually drew out a diagram, a piece of paper, explaining that there was a company, [SHI], which was a holding corporation for several other corporations.

I will try to remember them all — Foremost Farms, Fortune Tobacco, Asia Brewery, Himmel Industries, Grandspan, Dominion — I might be missing some but basically, [SHI] was the holding corporation for all those other corporations.

Q: Aside from that meeting in Allied Bank, where else did you meet defendant [Tan]?

A: I think a couple of months after that, I flew to the bottling plant of Asia Brewery in Laguna, by helicopter.

I remember clearly the visit because there was a difficulty landing in the Asia Brewery Compound itself. We

nearly had an accident and so we had to land on the next compound, then took a car to Asia Brewery.

Q: What happened in that plant visit?

A: At the plant visit, [Tan] [t]ook me around and basically explained to me what they did in the bottling plant, how the bottles were made, the different sizes that they made, the different kinds of beer, how they fill out the bottles, how they package them, the general operations of the plant.

....

MR. SANCHEZ

Q: You mentioned [SHI].

What is the relationship of [SHI] with the other corporations that you mentioned earlier?

ATTY. MENDOZA

The best evidence are the corporate documents, Your Honors.

J. ESTRADA

Witness may answer!

WITNESS CONG. MARCOS

[SHI] was the holding company for the other companies that I mentioned. And the ownership of the [SHI] was divided at least initially, between three other companies.

This explanation (sic) that [Tan] gave me while we were at his office in Allied Bank.

ATTY. GENERILLO

Could you name the three other companies holding shares in the [SHI]?

A: Yes. The three companies that own [SHI] were Basic, Supreme and Falcon.

Initially, Basic own 50% of [SHI]; Falcon had 25%, and Supreme had 25%.

This changed I think in early 1985 when some shares of Basic were sold to Supreme, the net effect of which, Supreme owned 34% of [SHI].

....

ATTY. GENERILLO

Mr. Witness, do you have proof that [Supreme] and [Falcon] have interests in [SHI]?

WITNESS CONG. MARCOS

Well, there are documents that show Deeds of Sale of [SHI] to the three companies — Basic, Falcon and Supreme. There are also Deeds of Sale of certain percentage of Basic to Supreme.

This was relevant to us because we held the shares of stock in Falcon and in Supreme which were with us, endorsed in blank.[73] (Emphasis in the original)

Even assuming arguendo that the testimony of BBM may not be admitted as proof of the veracity or truth of the statements he attributed to President FM, Tan, and Gapud, the same may still be admitted for the purpose of placing on record the fact that those statements or the tenor of such statements were indeed made. In other words,

again, the doctrine of independently relevant statements finds application, such that regardless of the truth or falsity of a statement, when what is relevant is the fact that such statement has been made, the hearsay rule does not apply and the statement may be shown.[74] The ponencia concedes just as much — that BBM's Testimony is admissible as an independently relevant statement as to the fact that he had conversations with President FM, Tan, and Gapud.[75]

Thus, here, as the Republic correctly pointed out, BBM's direct and personal testimony elaborated on the complex formation of SHI, Falcon, Supreme, and Basic to hold the beneficial ownership of President FM and Tan, and the multifarious rigodon of shares and deeds of assignments endorsed in blank.[76] According to the Republic, BBM's Testimony corroborated the statement of his own mother Imelda, to the effect that the Marcoses were asserting a claim on certain shares of stocks in Tan's companies. The Republic stressed that while BBM testified that President FM did not perform any act reflective of his interests in these corporations, he nonetheless knew that Tan was depositing money in Security Bank, which represented the Marcoses' share in the income of the corporations.[77]

The Republic added that the testimony of BBM dovetailed with Gapud's Sworn Statement. BBM testified that he knew Gapud was his father's financial manager who regularly came to Malacañang Palace to discuss certain aspects of the cases that he was handling with President FM and later, with him, his mother Imelda, and his sister Imee.[78] Gapud's Sworn Statement recounts, in part, the purported 60-40 arrangement between President FM and Tan, to wit:

With particular reference, for example, to [Tan], I know that [President FM] and [Tan] had [an] understanding that [President FM] owns 60% of [SHI], (sic) which owns shares of Fortune Tobacco, Asia Brewery, Allied Bank, and Foremost Farms. I was asked sometime in 1985 to formalize this arrangement. I went to [Tan] for that purpose. He tried to bargain by reducing the equity of [President FM] to 50%. I told him that I was merely carrying out the instructions of [President FM] and that if he wanted to bargain, he should take up the matter directly with [President FM]. As a matter of fact, [Tan], apart from the 60% equity of [President FM] had been regularly paying, through Security Bank, Sixty Million Pesos [160 Million] to One Hundred Million Pesos [P100 million] to [President FM], in exchange for privileges and concessions [President FM] had been giving him in relation to the businesses managed by [Tan]. As I said on p. 7 of Annex "A", [Tan] gained substantial concessions in specific taxes and stamp duties for his cigarette (Fortune Tobacco) and beer (Asia Brewery) operations. He belongs to the group that could get presidential decrees and letters on (sic) instruction from [President FM] for their joint benefit. I understand that [Tan] asserted that he was the victim of extortion, and that he outwitted [President FM] by issuing to [him] his 60% equity in fake certificate of stock. This is not accurate. [President FM] and [Tan] were in partnership, and they derived great material benefits from the relationship. As far as I know, [Tan] was not in a position to outwit and outmaneuver [President FM]. I do not know that there is a crony or business associate of [President FM] who could have done that.[79] (Emphasis in the original)

GAPUD'S SWORN STATEMENT

Like BBM's Testimony, Gapud's Sworn Statement should not be hastily dismissed as mere hearsay. Though it was merely presented by Senator Salonga, whose testimony was not completed, it also offers independently relevant statements that corroborate the close business relationship described by BBM in his testimony, as well as by Imelda in her Amended Answer and by Tan in his Written Disclosure. To be specific, Gapud's Sworn Statement bolstered the described structured arrangement between Tan and President FM on the latter's purported shares of stocks in Fortune Tobacco, Asia Brewery, Allied Bank, and Foremost Farms. Furthermore, it narrated the regular bank deposits being made by Tan in the amounts of P60-P100 million in favor of President FM in exchange for the concessions and favors the former president granted him for his businesses.

It must be borne in mind that it was an undisputed fact that Gapud was the financial executor of President FM and Imelda and at times, acted as their financial advisor who carried out their instructions. Gapud's Sworn Statement, therefore, should be given consideration as the statements contained therein are, at the very least, circumstantially relevant to the issue at hand. Again, under the doctrine of independently relevant statements, only the fact that Gapud made said statements is relevant, and the truth or falsity thereof is immaterial. Evidence as to the making of such statements is primary, for the statements themselves may constitute a fact in issue or be circumstantially relevant as to the existence of such a fact.[80]

Moreover, it is my considered view that Gapud's Sworn Statement is a public document. Significantly, it was subscribed and sworn to (notarized) before Consul General Vicente G. Reyes in the Philippine Consulate General in Hong Kong. It also contained the seal of his office (authenticated). In this regard, *Teoco v. Metropolitan Bank and Trust Company*[81] quoting *Lopez v. Court of Appeals*[82] is instructive:

From the foregoing provision, when the special power of attorney is executed and acknowledged before a notary public or other competent official in a foreign country, it cannot be admitted in evidence unless it is certified as such in accordance with the foregoing provision of the rules by a secretary of embassy or legation, consul general, consul, vice consul, or consular agent or by any officer in the foreign service of the Philippines stationed in the foreign country in which the record is kept of said public document and authenticated by the seal of his office. A city judge-notary who notarized the document, as in this case, cannot issue such certification.[83]

Consequently, Gapud's Sworn Statement had been converted into a public document which renders it admissible as evidence of the fact which gave rise to their execution, even against a third person,[84] without need for further proof of its authenticity.

Even on the assumption that Gapud's Sworn Statement remains a private document, its due execution and authenticity were sufficiently established through the testimony of Senator Salonga who witnessed its execution, typed the statement, and signed it as witness. This is in accordance with Section 20, Rule 132 of the Rules of Court, which provides:

SEC. 20. Proof of private document. – Before any private document offered as authentic is received in evidence, its due execution and authenticity must be proved either:

(a) By anyone who saw the document executed or written; or

(b) By evidence of the genuineness of the signature or handwriting of the maker.

Any other private document need only be identified as that which it is claimed to be.

TAN'S WRITTEN DISCLOSURE

As well, the Republic banked on Tan's Written Disclosure which purportedly provided a detailed narration of his 60-40 arrangement with President FM, the specifics of which the Republic characterized as "impossible to fabricate with unparalleled consistency." [85] Thus:

255. Respondent [Tan] confirmed [President FM]'s beneficial interests in his various businesses which they cloaked under an umbrella company – [SHI]. To segregate their unlawful business partnership, three (3) holding companies, namely, Basic, Falcon and Supreme, were formed. Thus:

....

SHI was incorporated on November 11, 1979. The original intention for setting up this company was for it to purchase and hold at least 99% of the shares of stock from existing stockholders of the following companies:

1. [Fortune Tobacco]

2. [Asia Brewery]
3. [Foremost Farms]
4. [Himmel Industries]
5. [Grandspan]
6. [Dominium Realty]

This set up is necessary in order to systematize the stock ownership in the various corporations. Also, since the group of companies was getting quite big, [Tan] felt and wanted to [ensure] that the various companies would stay under one umbrella in the event that anything should happen to him — [Tan] wanted to ensure continuity of the companies which he had worked so hard to build up.

By the end of [1980], it became imperative for SHI to close the purchase of the aforementioned shares in order to avail of the minimal transfer tax of [one-fourth] of 1% which became unavailable starting 1981. On October 19, 1981, SHI also acquired all the shares of stock of [Dominium Realty], a realty firm which owns vast tracts of land in Cabuyao, Laguna upon which [Asia Brewery]'s plant stands.

....

On July 20, [1983], three holding companies were incorporated as follows:

1. [Basic]
2. [Falcon]
3. [Supreme]

On the same day, the incorporators of [Falcon] and [Supreme] after paying their subscription in full, sold and transferred 100% of their shares to a new group led by [Tan]. In the meantime, [President FM] thru [Gapud] persisted in his demand for 50, then 51%, then 60% share in SHI.

On July 16, 1984, the three holding companies purchased 99% of the shares of the stockholders of SHI, with the exception of [Tan] and [Tan Eng Lian] who retained 0.5% each. On the same day, the said three holdings companies borrowed from the stockholders--vendors of [SHI] amounts equivalents to the respective purchase prices of the aforementioned shares on [a] 30-day term. Unable to pay the loan at maturity, the three companies sold back (on August 22, 1984) the said shares to the original vendors-stockholders in the same proportion as when purchased.[86] (Emphasis in the original)

As with the Amended Answer of Imelda, however, the ponencia posits that as documentary evidence, the Written Disclosure should have been authenticated as genuine and duly executed either by a person who had witnessed its execution or by any other evidence showing its genuineness and due execution. Tan, however, was not presented on direct to authenticate his Written Disclosure and was not cross-examined on the statements he allegedly made.[87]

In the same vein, according to the ponencia, the testimony of Senator Salonga on direct examination about Tan's Written Disclosure cannot serve as authentication thereof based on the preceding reasons as well.[88]

Hence, the ponencia concludes, the Written Disclosure is hearsay, lacks probative weight, and cannot sustain the Republic's allegations.[89] Again, I disagree.

While indeed, Tan's Written Disclosure was offered in connection with the testimony of Senator Salonga which had not been completed, it is noteworthy that Tan and the other respondents did not deny that it was properly presented as documentary evidence.[90] They also failed to deny its execution. In fact, it must be emphasized that Tan relied on this Written Disclosure in his own Memorandum,[91] albeit on the premise that his arrangement with President FM was reached under duress and was ultimately thwarted. Still, as in the case of Imelda's

Amended Answer, this essentially affirms the genuineness and authenticity of the Written Disclosure and thereby excepts such from the requirement of authentication of a private document.[92]

Tan, in particular, should be estopped from discrediting his Written Disclosure or from excluding it as evidence, when, for all intents and purposes, his own treatment thereof is a deliberate indication that he is lending it full faith and credence. It is incongruous for a party to pray for the exclusion of an adversary's evidence which he or she has nonetheless openly relied upon.

In sum, I submit that the admissions against Imelda's interest in her Amended Answer, the Written Disclosure of Tan, and the Sworn Statement of Gapud are uncannily identical and corroborative of BBM's Testimony. All these pieces of evidence, to stress, were all made without collusion. Hence, they are akin to interlocking extrajudicial confessions which constitute an exception to the general rule that extrajudicial confessions/admissions are admissible in evidence only against the declarants thereof.[93]

I find it a grievous error, therefore, for the Sandiganbayan to have rejected and ignored the above-discussed pieces of evidence presented by the Republic. As I have expressed earlier, there should be some measure of forbearance with regard to the application of rules of evidence in the prosecution of ill-gotten wealth cases. Indeed, the difference between the admissibility of evidence and the determination of its probative weight is canonical.[94] Admissibility of evidence refers to the question of whether or not the circumstance or evidence is to be considered at all. On the other hand, the probative value of evidence refers to the question of whether or not it proves an issue.[95] But as the Court cautioned in *Gimenez*, it is better to admit and consider evidence for determination of its probative value than to outright reject it based on very rigid and technical grounds.[96] The Republic, in turn, cited *Atienza v. Board of Medicine, et al.*,[97] where the Court relevantly held:

Although trial courts are enjoined to observe strict enforcement of the rules of evidence, in connection with evidence which may appear to be of doubtful relevancy, incompetency, or admissibility, we have held that: [I]t is the safest policy to be liberal, not rejecting them on doubtful or technical grounds, but admitting them unless plainly irrelevant, immaterial or incompetent, for the reason that their rejection places them beyond the consideration of the court, if they are thereafter found relevant or competent; on the other hand, their admission, if they turn out later to be irrelevant or incompetent, can easily be remedied by completely discarding them or ignoring them.[98] (Emphasis and underscoring supplied)

The liberal and prudent approach in ill-gotten wealth cases is not hard to fathom. The Court has always been mindful of the difficulty in gathering voluminous documentary evidence in cases of forfeiture of ill-gotten wealth acquired throughout the years.[99] This undoubtedly holds true with regard to testimonial evidence, especially of those who fled the country — more so in the present political climate. To be sure, it is never easy to prosecute corruption and take back what rightfully belongs to the government and the people of the Republic,[100] most especially of such magnitude as was rampant in the administration of then President FM. The Court must also bear in mind that corruption or plunder is done stealthily and cleverly, so much so that direct evidence is sometimes nil. This is not a valid reason, however, for the Republic and the courts, as well, not to remain steadfast and soldier on.

President FM's alleged beneficial ownership over 60% of the shares of SHI has not been established

In its Memorandum filed before the Court, the Republic, drawing heavily from Imelda's Amended Answer, BBM's Testimony, Gapud's Sworn Statement, and Tan's Written Disclosure, detailed how the alleged sharing agreement had been implemented through the incorporation of SHI:

76. Respondent [Tan] later embarked on consolidating ownership interests in the various businesses in one umbrella company — [SHI].

77. On November 14, 1979, [SHI] was incorporated to purchase and hold 99% of the shares of stocks from the existing stockholders of: [Himmel Industries], [Fortune Tobacco], [Foremost Farms], [Asia Brewery], [Grandspan], [Silangan Holdings], [and Dominion Realty].

78. The incorporators were Estrella Uy, Juanita Tan Lee, Harry Tan, Jaime Qua and Manuel Khoo. [SHI] was incorporated with an authorized capital stock of Five Million Pesos (P5,000,000.00), One Million Pesos (P1,000,000.00) of which was subscribed and paid-up.

79. The consolidation gave ... [President FM] beneficial ownership, together with ... [Tan], his family and associates, in the following companies (as well as its subsidiaries and acquired companies or in turn invested in), to wit:

- a) [Himmel Industries]
- b) [Fortune Tobacco]
- c) [Foremost Farms]
- d) [Asia Brewery]
- e) [Grandspan]
- f) [Silangan Holdings]
- g) [Dominion Realty]

80. ... [President FM]'s 60% beneficial ownership in said companies was held in trust by [Tan], personally and through his family members and business associates, who appeared as stockholders-on-record of said companies.

81. To implement the Marcos-Tan consolidation, the record (or nominee) stockholders of the seven (7) companies ... transferred their stockholdings in said companies to [SHI], through separate Deeds of Sales of Shares of Stocks.

82. Thereafter, ... [President FM] and [Tan] structured the segregation of their beneficial ownership interests in the proportion of 60% for ... [President FM] and 40% for ... [Tan].

...

83. To segregate ... [President FM]'s and [Tan]'s beneficial ownership interests, three (3) primary holding companies were organized: [Basic], [Supreme], and [Falcon].

84. Basic was the owner on record of the beneficial interests of ... [Tan] (40%), while Supreme and Falcon were the owners on record of the aggregate beneficial interests of ... [President FM] (60%). These three (3) holding companies were incorporated on July 20, 1983.

....

85. Acknowledging that they were merely holding their interest in [SHI] in trust for ... [President FM] and [Tan], in the ratio of 60-40%, respectively, the stockholders of [SHI] executed deeds assigning their stockholdings/shares therein to the three (3) newly organized ultimate holding companies, Basic, Supreme, and Falcon.

86. On July 16, 1984, the three (3) holding companies purchased 99% of the shares of the stockholders of [SHI] with the exception of respondents [Tan] and [Tan Eng Lian] who retained 0.5% each.

87. To make Basic's shareholdings conform to the agreed [60-40] ratio, shareholders of Basic executed a Deed of Sale of Shares of Stock in favor of Supreme, transferring 9% of [SHI]'s shares held by the former in favor of the latter.

88. After Basic transferred 9% of stock ownership in [SHI], the stock ownership in [SHI] became as follows:

Stockholders

No. of shares

% of Holdings

[Basic]

50,300,000

40.0%

[Supreme]

42,755,000

34.0%

[Falcon]

31,437,500

25.0%

[Tan]

628,750

0.5%

[Tan Eng Lian]

628,750

0.5%

TOTAL

125,750,000

100.0%

89. In express recognition of the beneficial ownership of [President FM], the incorporators of both Falcon and Supreme executed and delivered to ... [President FM] blank [d]eeds of [a]ssignment, comprising of a total of 60% majority control of the mentioned corporations.[101]

From the foregoing, the Republic thus posited that 60% of the shares in SHI are held by respondent-stockholders for and on behalf of President FM as nominees, and that such 60% interest constitutes ill-gotten wealth precisely for this reason. Further, as proof of President FM's beneficial interest in the shares in question, the Republic relied on twelve deeds of assignment of shares (blank deeds), the particulars of which are summarized as follows:

Document

Assignors

Assignee/Subject

Consideration

Five undated and unnotarized deeds of assignment[102](Falcon deeds)

1. Soolim Co
(signed)
2. William C. Lee
(signed)
3. Andy Y. Li
(signed)
4. Jimmy C. Chua
(signed)
5. Antonio Choa
(illegible)

Unnamed assignee for an unspecified number of shares in [Falcon]

Unspecified

Five undated and unnotarized deeds of assignment[103] (Supreme deeds)

1. Florentina Tan
(signed)
2. Eduardo C. Chua
(signed)
3. William T. Wong
(illegible)
4. Nelson C. Tan
(signed)
5. Peter Soo
(signed)

Unnamed assignee for an unspecified number of shares in [Supreme]

Unspecified

Undated and unnotarized Deed of Sale of Shares of Stock[104] (Tan deed)

Tan
(signed)

Unnamed assignee for 628,750 shares of stock in SHI

P628,750.00

Undated and unnotarized Deed of Sale of Shares of Stock[105] (Tan Eng Lian deed)

Tan Eng Lian
(signed)

Unnamed assignee for 628,750 shares of stock in SHI

P628,750.00

I diverge from the above position of the Republic. My conclusion is that President FM's alleged beneficial ownership over 60% of the shares of SHI has not been established. I submit that a holistic appreciation of the

evidence merely shows that: (i) Tan might have been forced to agree to the 60-40 arrangement proposed by President FM; (ii) Tan made it appear that the 60-40 arrangement had been implemented through the formation of SHI and the three primary holding corporations Basic, Supreme, and Falcon; and (iii) Tan had taken steps to preclude the implementation of the 60-40 arrangement by transferring the 60% interest claimed by President FM to legitimate stockholders before the execution of the blank deeds in the latter's favor.

a.

The blank deeds of assignment are sham documents

Tan's Written Disclosure detailed the 60-40 arrangement and the context within which it had been forged, as follows:

....

For the duration of martial law which had effectively negated any opposition to [President FM], [Tan] and his enterprises were not spared by the various forms of intimidation and harassment that had plagued other successful businessmen. Details of the Marcos exercise are further described. Perhaps owing to sheer perseverance, ... [Tan's] enterprises have managed to [survive] the pressure and in the Marial Law era, two major [Tan] companies were organized namely: a) [Allied Bank] which was granted by the Central Bank (CB) a new commercial banking license in May 1977; and b) [Asia Brewery] which had succeeded in proving the misnomer in [the] [b]rewery [i]ndustry being classified as an overcrowded industry for the last two decades in spite of the monopoly's continued expansion projects.

....

ASIA BREWERY

By hindsight, we can now conclude that [President FM], from the very beginning wanted to acquire the San Miguel Corporation (SMC). However, it was impossible to acquire SMC because it was tightly controlled by the Soriano and Ayala families. The only way is to give SMC a competitor, to bring down the market price of SMC shares and to create conflicts within and among the SMC stockholders.

[President FM] then started to say publicly that SMC was a monopoly, that there should be free enterprise. Meanwhile, the GSIS and SSS were ordered to buy SMC shares to a point that Roman Cruz, Jr. became a director of SMC.

The ambition of John Gokongwei in becoming a director of SMC resulted in a proxy fight and court battle, which in turn resulted in a lot of revelations on the very high profitability of a brewery. Before that, every year, SMC would make it of record with the BOI that the market demand will always be met and that therefore, no new brewery should be approved for establishment. It was also on record that SMC had continually been increasing its brewery and bottling facilities.

Preparations went underway for the establishment of the second brewery. Discussions with the BOI were steadfastly maintained and supported SMC's stand on the industry being overcrowded [despite] its continued approval of SMC's expansion projects reached a stalemate.

The issue of [Asia Brewery]'s petition of being the second brewery was broached to [President FM] and nothing seemed to please him more than to provide SMC with competition to realize his obsession of gaining control of SMC. Upon his instruction, BOI approved the application of [Asia Brewery] to establish the second brewery and immediately, the market value of SMC's shares declined from P48 to P25 per share. At this point, Danding Cojuangco started to buy SMC shares. Eventually[,] he was able to buy Gokongwei's and Enrique

Zobel's block of shares which gave him a substantial holding. Finally, Andres Soriano sold out to Cojuangco. Thus[,] full control went to Cojuangco.

[President FM] however also took special interest in [Asia Brewery]. As a condition to the grant of a brewery license, [President FM] demanded that 25% of [Asia Brewery] be given to him.

...

In compliance with the said condition, [Silangan Holdings] was incorporated on October 9, 1979. Twenty five percent (25%) of [Asia Brewery]'s shares of stock or fifty million shares was then transferred to [Silangan Holdings]. Upon [President FM]'s insistence, a fake certificate of stocks (sic) purportedly representing 100% of the total shares of [Silangan Holdings] were delivered to him, endorsed in blank. In truth[,] however, the [genuine] book of certificates of stock of [Silangan Holdings] remained intact and remains so [to date]. Not a single certificate of stock of [Silangan Holdings] has as yet been issued as none of the subscriptions to the capital stock have been fully paid.

...

As insurance versus a possible claim by [President FM] or any assignee upon the shares of [Silangan Holdings] purportedly evidenced by the fake certificate of stocks (sic) issued and delivered to him in blank, all stockholders of [Silangan Holdings] sold 100% of their shares to [SHI] on December 19, 1980. Moreover, on December 22, 1980, [Silangan Holdings] sold 49.5 million shares of [Asia Brewery] to SHI (retaining only 500,000 shares).

....

SHI was incorporated on November 11, 1979. The original intention for setting up this company was for it to purchase and hold at least 99% of the shares of stock from existing stockholders of the following companies:

1. [Fortune Tobacco]
2. [Asia Brewery]
3. [Foremost Farms]
4. [Himmel Industries]
5. [Grandspan]
6. [Dominium Realty]

This set up is necessary in order to systematize the stock ownership in the various corporations. Also, since the group of companies was getting quite big, [Tan] felt and wanted to [ensure] that the various companies would stay under one umbrella in the event that anything should happen to him — [Tan] wanted to ensure continuity of the companies which he had worked so hard to build up.

....

After the collapse of the mega-business[es] of his closest cronies (DISINI, SILVERIO AND CUENCA), upon the rapid deterioration of his health, and perhaps also on account of the inability of [Asia Brewery] to generate satisfactory income, [President FM] began to press that he be given a share in SHI. [Tan] attempted to evade the unconscionable demand of [President FM] by spending most of his time outside of the Philippines. From 1983 to the start of 1986, [Tan] spent most of his time abroad. Despite [Tan]'s absence, [President FM] kept up the pressure threatening the issuance of various tax decrees designed at crippling [Fortune Tobacco]...

....

On July 20, 1983, three holding companies were incorporated as follows:

1. [Basic]

2. [Falcon]
3. [Supreme]

On the same day, the incorporators of [Falcon] and [Supreme] after paying their subscription in full, sold and transferred 100% of their shares to a new group led by [Tan]. In the meantime, [President FM] thru [Gapud] persisted in his demand for a share in SHI.

On July 16, 1984, the three holding companies purchased 99% of the shares of the stockholders of SHI, with the exception of [Tan] and [Tan Eng Lian] who retained 0.5% each. On the same day, the said three holding companies borrowed from the stockholders-vendors of SHI amounts equivalent to the respective purchase prices of the aforementioned shares on a 30-day term. Unable to pay the loan at maturity, the three companies sold back (on August 22, 1984) the said shares to the original vendors-stockholders in the same proportion as when purchased.

When the pressure became too heavy to bear and with [President FM] already displaying fangs of anger, deeds of assignment signed in blank (without issuing much less surrendering the corresponding stock certificates) by the original incorporators of [Falcon] and [Supreme] as well as by [Tan] and [Tan Eng Lian] for their respective shares which all together were supposed to have accounted for 51% of [SHI]'s shares were delivered to Gapud without revealing that:

- The original incorporators had already much earlier transferred and assigned their shares to the new group led by [Tan] who were then the genuine and registered owners of the shares with the sole and exclusive authority to transfer the same;
- [Falcon] and [Supreme] had already previously divested themselves of SHI's shares having resold the same to the original owners;
- There could be no valid transfer of [Tan] and [Tan Eng Lian's] shares in [SHI] as their respective subscriptions had not been fully paid and to date remains unpaid.

....

Thereafter, [President FM] demanded for an additional 9% to give himself supposedly a 60% control over [SHI]. To give the semblance of compliance with said demand, it was made to appear that on [February] 28, 1985, [Basic] transferred the equivalent of 9% of SHI's total shares to [Supreme] without revealing that:

- 1.

[Basic] had in fact already divested itself of all its SHI's shares (as of August 22, 1984) in favor of its original owners;

- 2.

At any rate, no transfer could legally be effected since the subscriptions thereon have to date not yet been fully paid; and

- 3.

Moreover, the transfer document itself was ineffective because:

a.

What was transferred were 11,317,500 shares of [Basic] (not SHI) when [Basic] only had a total of 1,000,000 paid up shares...;

b.

[T]he document was executed by some persons who are not stockholders of [Basic].[106] (Emphasis and underscoring supplied)

If Tan's statements were to be taken as fact, they would entail that Tan had been pressured into ceding 60% interest in the various businesses placed under the umbrella corporation, SHI. To secure his businesses, Tan made it appear that he had complied with President FM's demands by incorporating three holding companies to consolidate their respective 60% and 40% interests in SHI. Thereafter, Tan made it appear that Falcon and Supreme had been incorporated to hold President FM's 60% of the shares in SHI. Later still, Tan caused the execution of blank deeds purportedly transferring 100% of the shares of Falcon and Supreme in President FM's favor in compliance with the latter's demands.

However, unbeknownst to President FM, 100% of the shares of Falcon and Supreme had been previously transferred by the incorporators to respondent-stockholders. Thus, these incorporators, who stood as signatories of the blank Falcon and Supreme deeds, were no longer stockholders of Falcon and Supreme at the time the blank deeds were executed. Thus, based on Tan's Written Disclosure, which, to repeat, the Republic itself offered as evidence, the signatories of the blank Falcon and Supreme deeds no longer had any capacity to convey, transfer, or assign any interest in said holding companies at the time the blank deeds were executed.

Strikingly, the Republic did not dispute the veracity of Tan's narration. While it asserted, in general terms, that exculpatory statements ... [which are] entirely barren of factual support ... ought to be regarded as nothing but feigned defenses,[107] it nevertheless quoted these "defenses" to elaborate on President FM's modus operandi in its Memorandum:

255. Respondent [Tan] confirmed [President FM]'s beneficial interests in his various businesses which they cloaked under an umbrella company – [SHI]. To segregate their unlawful business partnership, three (3) holding companies namely, Basic, Falcon and Supreme, were formed. Thus:

....

On July 20, 1[9]83, three holding companies were incorporated as follows:

1. [Basic]
2. [Falcon]
3. [Supreme]

On the same day, the incorporators of [Falcon] and [Supreme] after paying their subscription in full, sold and transferred 100% of their shares to a new group led by [Tan]. In the meantime, [President FM] thru [Gapud] persisted in his demand for [a] ... share in [SHI].

On July 16, 1984, the three holding companies purchased 99% of the shares of the stockholders of [SHI] with the exception of [Tan] and [Tan Eng Lian] who retained 0.5% each. On the same day, the said three holding companies borrowed from the stockholders-vendors of [SHI] amounts [equivalent] to the respective purchase prices of the aforementioned shares on [a] 30-day term. Unable to pay the loan at maturity, the three companies

sold back (on August 22, 1984) the said shares to the original vendors-stockholders in the same proportion as when purchased.

256. Indeed, respondent [Tan] and former [President FM]'s unlawful business partnership is manifested from [Tan]'s act of organizing holding corporations, the structure of which he made known to [President FM] through Gapud; and [Tan]'s execution of deeds of assignments to conceal [President FM]'s proprietary and financial interests in these holding corporations.

257. [Tan] explains that [SHI] was intended to purchase and hold at least 99% of the shares of stocks from existing stockholders of respondent corporations ... Thereafter, three holding companies, namely, Basic, Falcon, and Supreme, were incorporated to structure the segregation of respondents [President FM] and [Tan]'s 60%-40% ownership interest.

258. The three holding companies purchased 99% of the shares of stocks in [SHI] with the exception of respondents [Tan] and [Tan Eng Lian] who retained 0.5% each. Falcon and Supreme, representing 60% of [SHI] belong to respondent [President FM], while Basic, which holds the remaining 40% interest, belongs to respondent [Tan].

259. The formed layers of holding corporations (Basic, Falcon, Supreme) under the umbrella [SHI], and [Tan's group of companies] execution of blank deeds of assignments (sic), clearly disclose that respondents [Tan, et al.] implemented former [President FM]'s modus operandi in hiding and concealing the Marcoses' proprietary interest in [Tan's group of companies].[108] (Emphasis supplied)

Having relied on the afore-quoted statements in Tan's Written Disclosure, the Republic cannot be permitted to cherry-pick the portions thereof that support its cause, and conveniently disregard those which do not. Taken in its entirety, Tan's Written Disclosure confirms that the blank deeds of assignment were nothing but sham deeds without any legal effect, drawn specifically to mislead President FM into believing that his extortionate demands had been complied with.

b.

The blank deeds are inadmissible as evidence

Assuming arguendo that the blank deeds could be accorded legal effect, they nevertheless remain inadmissible and bereft of any evidentiary value.

The copies of the blank deeds presented as evidence by the Republic and made part of the records of the case are plain photocopies, for while the originals had been turned over by the U.S. government to PCGG, they were later misplaced while in the latter's custody. As revealed during BBM's cross-examination, the Republic, through PCGG, acknowledged such fact and cited this as basis to present secondary evidence, thus:

....

Atty. Generillo [(PCGG)]:

Q:

Now Mr. Witness, where are the original copies of these documents?

A:

As far as I know[,] the originals are with the [U.S.] Customs.

Q:

Now in your previous testimony, you testified that your counsel in the United States was trying to secure these documents from the [U.S.] government?

A:

Yes, sir.

Q:

Was your counsel in the United States able to secure these documents?

A:

No, sir he was not. In fact, he went [to] us in preparation for my appearance today, he wrote me a letter explaining that Mr. [Gabriel,] who was appointed by the District Court in Hawaii to look for the record was unable to locate those documents, the originals of those documents.

....

Atty. Mendoza [counsel for BBM]:

Your Honors, please because of the non-production of these records has been the reason of the testimony of [BBM] was deferred (sic) for several months. I would like to read from the letter now presented by the witness the following statement. This is a letter as manifested addressed to [BBM] from lawyers Bartko, Sandel, Tarant Miller; and the second paragraph of the letter read[s] as follows: "As you know based on the information we received as well as the attached letter from Chief Counsel of the [U.S.] Customs Service Michael V. Smiths to PCGG Commissioner Parlade certified copies of various documents including those involving [Tan] were already given to the PCGG last 27 December 1990. I am curious as to why these have not been presented to the Philippine Courts[.]"...

CHAIRPERSON:

The PCGG according to the Letter should be in possession of the certified true copies of those documents.

Atty. Generillo:

....

We respectfully submit, Your Honor that these documents are very much relevant to the proof of the allegations in the Complaint, Your Honors, especially with respect to the status of condition of the documents that were seized by the [U.S.] government when the Marcoses landed in Hawaii. Another thing, Your Honor, in the past we have tried to subpoena former Commissioner Cesar Parlade, Your Honors. But the records will show that the attempt of the Honorable Court to subpoena Commissioner Parlade was unsuccessful, Your Honor. But we again issued a subpoena for the testimony of Cesar Parlade on this point... But we would like to point out Your Honor that this will lay the basis for the presentation of secondary evidence is (sic) that is necessary...[109]

However, even if the photocopies of the blank deeds are treated as secondary evidence on account of the unavailability of the original documents, they remain inadmissible. To be sure, all twelve blank deeds are unnotarized and are thus in the nature of private documents.[110] At the time these blank deeds were presented by the Republic as evidence, the prevailing rule on proof of private documents was found in Section 20, Rule 132 of the Revised Rules on Evidence which reads:

SEC. 20. Proof of private documents. – Before any private document offered as authentic is received in evidence, its due execution and authenticity must be proved by any of the following means:

(a)

By anyone who saw the document executed or written;

(b)

By evidence of the genuineness of the signature or handwriting of the maker; or

(c)

By other evidence showing its due execution and authenticity.

Any other private document need only be identified as that which it is claimed to be.

No witnesses were presented to attest to the execution and authenticity of the blank deeds. As well, no other evidence had been presented to establish the genuineness of the signatures appearing thereon. Verily, the Republic's failure to properly authenticate the blank deeds in question in accordance with Section 20, Rule 132 rendered them inadmissible in evidence, thus:

In the case of *Chua v. Court of Appeals*, it was held that before private documents can be received in evidence, proof of their due execution and authenticity must be presented. This may require the presentation and examination of witnesses to testify as to the due execution and authenticity of such private documents. When there is no proof as to the authenticity of the writer's signature appearing in a private document, such private document may be excluded.[111] (Emphasis supplied)

In stark contrast with the earlier discussion about Imelda's Amended Answer and Tan's Written Disclosure, none of the exceptions to the rule on authentication of private documents are present in the case of these blank deeds. Again, these exceptions are: (a) when the document is an ancient one within the context of Section 21, Rule 132 of the Rules of Court; (b) when the genuineness and authenticity of an actionable document have not been specifically denied under oath by the adverse party; (c) when the genuineness and authenticity of the document have been admitted; or (d) when the document is not being offered as genuine.[112] Verily, these blank deeds are palpably inadmissible in evidence.

c.

The other documentary evidence presented in support of the Republic's claim over 60% of SHI's are likewise inadmissible

Finally, it bears to mention that the Republic attempted to bolster its claim to 60% of the shares of SHI by presenting documents to show that the other corporations under the SHI umbrella, particularly, Fortune Tobacco and Allied Bank, had been granted undue concessions by President FM. As summarized by the ponencia:

Additionally, the Republic presented voluminous documentary evidence in support of its allegations...:

1. Documents relating to Fortune Tobacco. There are documents which show that numerous requests for import quotas were made to the Philippine Virginia Tobacco Administration or directly to [President FM], bearing the latter's signature with the words "approved." There are also those showing that respondent Tan, as chairperson of Fortune Tobacco, wrote requests to [President FM] which were favorably acted upon by the latter. Likewise, several documents issued by the Office of the President granting Fortune Tobacco's requests

for import quotas were submitted, which state that [President FM] approved the request for the import quota.

2. Documents relating to Allied Bank. The Republic presented documents which show that respondent Tan wrote direct requests to [President FM] on behalf of Allied Bank. These were likewise approved or granted by [President FM] as shown by notations or issuances by the Office of the President.[113]

....

I agree with the ponencia in upholding the Sandiganbayan's correct observation that the aforesaid documents pertaining to the alleged concessions granted in favor of Fortune Tobacco and Allied Bank are inadmissible and incompetent. The voluminous documentary evidence were mere photocopies, and the witnesses who testified on these documents had no direct participation in the preparation and execution thereof.[114]

In sum, without any evidence to prove President FM's beneficial interest in 60% of the shares in SHI, the Republic's claim over said interest crumbles. The Court is left with absolutely no basis to order the reconveyance of said interest in favor of the Republic. To my mind, such 60% interest as a metric for recovery in the absence of preponderant evidence to show that it constitutes ill-gotten wealth would be improper, iniquitous, and extremely unjust.

The grant of the brewery license due to President FM and Tan's close business relationship gives rise to the Republic's right of recovery

Notwithstanding the foregoing, I find that the Republic nevertheless established that Tan did, in fact, take advantage of his close business relationship with President FM to secure an undue benefit, specifically, the brewery license granted in favor of Asia Brewery.

This has been established through the Written Disclosure of Tan, which, to reiterate, he similarly relied upon and even quoted in full in his own Memorandum. To restate:

ASIA BREWERY

By hindsight, we can now conclude that [President FM], from the very beginning wanted to acquire the San Miguel Corporation (SMC). However, it was impossible to acquire SMC because it was tightly controlled by the Soriano and Ayala families. The only way is to give SMC a competitor, to bring down the market price of SMC shares and to create conflicts within and among the SMC stockholders.

[President FM] then started to say publicly that SMC was a monopoly, that there should be free enterprise. Meanwhile, the GSIS and SSS were ordered to buy SMC shares to a point that Roman Cruz, Jr. became a director of SMC.

....

Preparations went underway for the establishment of the second brewery. Discussions with the BOI were steadfastly maintained and supported SMC's stand on the industry being overcrowded [despite] of its continued approval of SMC's expansion projects reached a stalemate.

The issue of [Asia Brewery]'s petition of being the second brewery was broached to [President FM] and nothing seem[s] to please him more than to provide SMC with competition to realize his obsession of gaining control of SMC. Upon his instruction, BOI approved the application of [Asia Brewery] to establish the second brewery and immediately, the market value of SMC's shares declined from P48 to P25 per share. At this point, Danding Cojuangco started to buy SMC shares. Eventually, he was able to buy Gokongwei's and Enrique Zobel's block of shares which gave him a substantial holding. Finally, Andres Soriano sold out to Cojuangco.

Thus full control went to Cojuangco.[115] (Emphasis and underscoring supplied)

Through the foregoing statements, Tan significantly concedes that: (i) he was aware of President FM's specific interest to gain control of SMC; (ii) he capitalized on President FM's interest in SMC by broaching to President FM the establishment of Asia Brewery to give SMC a competitor and disrupt the latter's dominant position in the market; and (iii) Asia Brewery's license was thereafter granted by the Board of Investments (BOI) upon President FM's instruction. Clearly, the grant of Asia Brewery's license was a benefit granted by President FM in favor of Tan on account of their close business relationship, inasmuch as Tan likewise concedes that he would not have been able to secure the Asia Brewery's license had he not pitched the idea to President FM. In so doing, Tan can be said to have acquired ill-gotten wealth through Asia Brewery in accordance with the second mode of acquisition — by taking undue advantage of his close business relationship with President FM.

At this juncture, it bears stressing that in actions for recovery of ill-gotten wealth, evidentiary substantiation of the allegations as to how the wealth in question had illegally been acquired and by whom is necessary. Prevailing jurisprudence thus instructs that the mere holding of a government position during President FM's administration does not necessarily make a party a close associate within the context of EO No. 1.[116]

In *Republic v. Reyes-Bakunawa*,[117] the Court notably construed the term "subordinate" as used in EO Nos. 1 and 2 to refer to a person who enjoyed a close association with President FM and/or his wife, Imelda, "similar to that of an immediate family member, relative, and close associate, or to that of a close relative, business associate, dummy, agent, or nominee." [118] Indeed, a prima facie showing must be made to show that one unlawfully accumulated wealth by virtue of a close association or relation with President FM and/or his wife.[119]

Here, there can be no gainsaying that Tan enjoyed such close association as a business associate of President FM. Imelda's Amended Answer and BBM's Testimony consistently painted Tan as a close business associate of President FM. The relevant portions of said evidence bear repeating here:

Imelda's Amended Answer

42. Way before and continuing through 1985, former [President FM] had beneficial ownership, together with [Tan], his family and associates, in the following operating companies, as well as the subsidiaries and companies which these operating companies have acquired[,] or in turn invested in, to wit:

1. [Himmel Industries]
2. [Fortune Tobacco]
3. [Foremost Farms]
4. [Asia Brewery]
5. [Grandspan]
6. [Silangan Holdings]
7. [Dominium Realty]

43. [President FM] had a sixty percent (60%) beneficial ownership in said companies, which beneficial interests were held in trust by [Tan] personally and through his family members and business associates who appeared as the recorded stockholders of said companies.[120] (Emphasis and underscoring supplied)

BBM's Testimony:

Q: "When was the first time that you saw [Tan]?"

WITNESS CONG. MARCOS, JR.

A: I could not give you the specific date but I know it was in the early '70s. As I said, the first time I saw him was in the area of the Palace that we call the "Study Room", which is the area next to my father's office.

ATTY. GENERILLO

Q: Did you have opportunity to talk to [Tan]?

A: Yes, several times after we have been introduced. We would say "hello" to each other when we cross each other's paths. And on a couple of occasions, we actually had an opportunity to have substantive conversations aside from meetings.

Q: What do you mean "substantive meetings" or discussions?

A: Well, I remember that at one point, I was summoned by my father to his office and so I went. And he was there with [Tan] in the discussion.

And he at that point told me that he would like me to familiarize myself with the operations of some of the enterprises that we have interests in and that [Tan] was going to help me to be more familiar with the said operations.

Q: Why did your father summon you to his office to familiarize yourself with the business interests of the Marcoses?

A: It was part of a larger effort on the part of the family to really clarify and to conduct an inventory and legal audit of all those business interest that we have.

My sister Imee, who has legal training, was given the job of conducting the legal audit, and I was given the job to go to as many of these enterprises as I could and as I said, learn the operations and meet the people who were running them so that when the time comes that we would take over, we would know how to manage these different interests.

....

Q: Was there any occasion for your father to show proof of the family's interests in [Tan]?

A: Well, when we first began this whole effort, he had me and my sister, we met and we sat down and showed us some documents which are essentially Deeds of Assignment, Shares of Stock, Titles to properties, and all these kinds of things. And he tried to give us a sketch of exactly how the structures were.

And then his instructions to us were — we go out and make sure that first, all documentations were in place because maybe the documents or something were in some persons, the documents or something were in another person, to really reorganize them and collate everything. So, that was the gist of — We had several of those meetings, and that was then I saw these documents.[121] (Underscoring supplied; supplied; emphasis in the original)

Tan, on the other hand, was conspicuously evasive and guarded by the way he depicted his acquaintance with President FM. He presented himself as a victim of the former President's intimidation, yet, offered no explanation on how this was so or came about. As it stands, there were apparent gaping holes in his story and attempts to understate his relationship with President FM. But as aptly laid down by the Republic in its Memorandum, in so many words, there were far too many pieces of information relayed in Tan's Written Disclosure that only a business associate would be privy to.

In particular, citing the excerpt from Tan's Written Disclosure anent Asia Brewery, the Republic observed:

[I]t is clear that respondent [Tan] viewed the Marcos-[Tan] partnership as mutually beneficial. Respondent [Tan] utilized [President FM]'s stern intervention in organizing Asia Brewery which, in turn, paved the way for Marcos to penetrate SMC.

245. Further, the [Written Disclosure] reveals respondent [Tan]'s close personal relationship with [President FM] such that: (a) he knew of [President FM]'s interest in SMC; (b) he broached the idea of having a second brewery — respondent Asia Brewery — to former [President FM] to compete with SMC and this pleased the former President because it gave him the opportunity to gain control of SMC; and (c) he had unrestricted access to [President FM] so that when the [BOI] supported SMC's position that the industry was overcrowded, he automatically went directly to [President FM] and sought his help in the organization of a second brewery, the Asia Brewery.

246. Respondents [Tan] and [President FM]'s close personal relations is made more manifest by respondent [Tan]'s knowledge that former [President FM] ordered GSIS and SSS to buy SMC shares on the occasion of which Ramon Cruz, Jr. became a Director of SMC. Eventually, when the BOI approved [Asia Brewery]'s application, upon former [President FM]'s directives, the latter eventually obtained full control of SMC through Danding Cojuangco. Respondent [Tan] had knowledge also of the mega-businesses of former [President FM]'s closest cronies whom he named to be Disini, Silverio and Cuenca.[122] (Emphasis supplied)

Indeed, Tan's Written Disclosure, no matter how craftily drafted, gives away crucial details of his business relationship with President FM that dovetail with the narrations of Imelda and BBM in their Amended Answer and Testimony, respectively. Whether it was true that he was merely intimidated or coerced into forging a business partnership with President FM is, as regards this issue, beside the point — neither does it matter if he later succeeded in misleading him. The fact remains that under the language of the law, it can legitimately be said that Tan was able to unduly benefit from his close business relationship with President FM. Stated differently, the procurement of such undue benefit would appear to fall squarely within the scope of the second mode of acquiring ill-gotten wealth and gives basis to the Republic's right of recovery under EO Nos. 1 and 2.

The case must be remanded for determination of the amount to be recovered by the Republic

As the Republic's right of recovery in this particular case solely proceeds from the grant of Asia Brewery's license on account of President FM's close business relationship with Tan, the amount which the Republic may recover herein must be based on the amount of ill-gotten wealth derived therefrom.

Here, the records are bereft of any evidence which would allow the Court to determine the precise amount of said ill-gotten wealth so acquired.

Despite this, the Civil Code[123] permits the Republic to recover temperate and exemplary damages. Specifically, Article 2224 of the Civil Code provides that temperate damages may be recovered "when the court finds that some pecuniary loss has been suffered but its amount cannot, from the nature of the case, be provided with certainty." On the other hand, Article 2229 of the same statute permits the recovery of exemplary damages "by way of example or correction for the public good", when either moral, temperate, liquidated, or compensatory damages are awarded.

The award of temperate and exemplary damages in actions for recovery of ill-gotten wealth is not novel.

In *Tuvera*, the Court recognized that while the Republic therein failed to prove the exact amount to be recovered,

it was nevertheless entitled to temperate and exemplary damages. The Court held:

If only the Court's outrage were quantifiable in sums of money, respondents are due for significant pecuniary hurt. Instead, the Court is forced to explain in the next few paragraphs why respondents could not be forced to [compensate] the Filipino people in appropriate financial terms. The fault lies with those engaged by the government to litigate this case in behalf of the State.

It bears to the most primitive of reasons that an action for recovery of sum of money must prove the amount sought to be recovered. In the case at bar, the Republic rested its case without presenting any evidence, documentary or testimonial, to establish the amount that should be restituted to the State by reason of the illegal acts committed by the respondents. There is the bare allegation in the complaint that the State is entitled to [P48 million] by way of actual damages, but no single proof presented as to why the State is entitled to such amount.

Actual damages must be proven, not presumed. The Republic failed to prove damages. It is not enough for the Republic to have established, as it did, the legal travesty that led to the wrongful obtention by Twin Peaks of the TLA. It should have established the degree of injury sustained by the State by reason of such wrongful act.

....

[T]here is sufficient basis for an award of temperate damages, also sought by the Republic notwithstanding the fact that a claim for both actual and temperate damages is internally inconsistent. Temperate or moderate damages avail when "the court finds that some pecuniary loss has been suffered but its amount cannot from the nature of the case, be proved with certainty." The textual language might betray an intent that temperate damages do not avail when the case, by its nature, is susceptible to proof of pecuniary loss; and certainly the Republic could have proved pecuniary loss herein. Still, jurisprudence applying Article 2224 is clear that temperate damages may be awarded even in instances where pecuniary loss could theoretically have been proved with certainty.

In a host of criminal cases, the Court has awarded temperate damages to the heirs of the victim in cases where the amount of actual damages was not proven due to the inadequacy of the evidence presented by the prosecution. These cases include *People v. Oliano*, *People v. Suplito*, *People v. De la Tongga*, *People v. Briones*, and *People v. Plazo*. In *Viron Transportation Co., Inc. v. Delos Santos*, a civil action for damages involving a vehicular collision, temperate damages were awarded for the resulting damage sustained by a cargo truck, after the plaintiff had failed to submit competent proof of actual damages.

We cannot discount the heavy influence of common law, and its reliance on judicial precedents, in our law on tort and damages. Notwithstanding the language of Article 2224, a line of jurisprudence has emerged authorizing the award of temperate damages even in cases where the amount of pecuniary loss could have been proven with certainty, if no such adequate proof was presented. The allowance of temperate damages when actual damages were not adequately proven is ultimately a rule drawn from equity, the principle affording relief to those definitely injured who are unable to prove how definite the injury. There is no impediment to apply this doctrine to the case at bar, which involves one of the most daunting and noble undertakings of our young democracy — the recovery of ill-gotten wealth salted away during the Marcos years. If the doctrine can be justified to answer for the unlawful damage to a cargo truck, it is a compounded wrath if it cannot answer for the unlawful exploitation of our forests, to the injury of the Filipino people. The amount of [P1,000,000.00] as temperate damages is proper.

The allowance of temperate damages also paves the way for the award of exemplary damages. Under Article 2234 of the Civil Code, a showing that the plaintiff is entitled to temperate damages allows for the award of exemplary damages. Even as exemplary damages cannot be recovered as a matter of right, the courts are empowered to decide whether or not they should be adjudicated. Ill-gotten wealth cases are hornbook demonstrations where damages by way of example or correction for the public good should be awarded. Fewer

causes of action deserve the stigma left by exemplary damages, which "serve as a deterrent against or as a negative incentive to curb socially deleterious actions." The obtention of the [Timber License Agreement] by Twin Peaks through fraudulent and illegal means was highlighted by Juan Tuvera's abuse of his position as Presidential Executive Assistant. The consequent exploitation of 26 hectares of forest land benefiting all respondents is a grave case of unjust enrichment at the expense of the Filipino people and of the environment which should never be countenanced. Considering the expanse of forest land exploited by respondents, the volume of timber that was necessarily cut by virtue of their abuse and the estimated wealth acquired by respondents through grave abuse of trust and public office, it is only reasonable that petitioner be granted the amount of [P1,000,000.00] as exemplary damages.

The imposition of exemplary damages is a means by which the State, through its judicial arm, can send the clear and unequivocal signal best expressed in the pithy but immutable phrase, "never again." It is severely unfortunate that the Republic did not exert its best efforts in the full recovery of the actual damages caused by the illegal grant of the Twin Peaks TLA. To the best of our ability, through the appropriate vehicle of exemplary damages, the Court will try to fill in that deficiency. For if there is a lesson that should be learned from the national trauma of the rule of Marcos, it is that kleptocracy cannot pay. As those dark years fade into the backburner of the collective memory, and a new generation emerges without proximate knowledge of how bad it was then, it is useful that the Court serves a reminder here and now.[124] (Emphasis and underscoring supplied)

As well, in the more recent case of *Disini*, the Court resolved to award temperate and exemplary damages in favor of the Republic, notwithstanding its failure to prove the total amount of ill-gotten wealth acquired by respondent therein in the form of commissions arising from the BNPP, hence:

Despite the failure of the Republic to prove the total amount of commissions received by [Herminio], the Court fully recognizes its right to recover the ill-gotten wealth. [Herminio] is not at all entitled to these commissions as he illegally acquired them through the use of his influence and close relationship with [President FM] without rendering any service for the benefit of the Republic's BNPP project.

Evidently, [Herminio] unjustly enriched himself by receiving substantial commissions from Westinghouse and B&R and acting as the SSR in order to ensure the award of the [BNPP] project to the said companies by taking undue advantage of his close relationship with [President FM]. Article 22 of the Civil Code provides that "[e]very person who through an act or performance by another, or any other means, acquires or comes into possession of something at the expense of the latter without just or legal ground, shall return the same to him."

There is unjust enrichment when a person unjustly retains a benefit to the loss of another, or when a person retains money or property of another against the fundamental principles of justice, equity and good conscience. The principle of unjust enrichment essentially contemplates payment when there is no duty to pay, and the person who receives the payment has no right to receive it.

....

In fine, the Republic's failure to particularly prove the actual amount of commissions received by [Herminio] should not override its right to recover the illegally-acquired commissions considering the fact that it has satisfactorily established, by preponderance of evidence, [Herminio]'s receipt thereof. Necessarily, public funds were released for the construction of the BNPP project. [Herminio] indirectly amassed a portion of these public funds through commissions paid by Westinghouse and B&R. These commissions or "kickbacks" are not only illegal or fraudulent but detrimental to the Republic and highly unfair and prejudicial to ordinary Filipino taxpayers.

However, actual damages to be recoverable must be supported by evidence on record and cannot be left merely to the discretion of the court. While We affirm the Republic's entitlement to recover [Herminio]'s ill-gotten wealth, no other evidence was presented to show the definite amount thereof. The Republic failed to

substantiate its claim for actual pecuniary loss or damages sustained by reason of [Herminio]'s acquisition of ill-gotten wealth.

While it is true that the Republic failed to prove the amount of commissions received, this does not mean, however, that [Herminio] is free from any liability under this civil action for reconveyance, reversion, accounting, restitution and damages. Thus, under the principle of unjust enrichment, We uphold the Republic's right to recover these commissions in favor of the Filipino people. No one should unjustly enrich himself by receiving commissions in connection with a government project when clearly he has no right for it nor entitled to retain the same.

Nonetheless, since recovery thereof cannot be effected due to the absence of a definite amount, We deem it proper to award the Republic temperate damages for the pecuniary loss and the Filipino people suffered on account of [Herminio]'s illegal acquisitions of substantial commissions from Westinghouse and B&R, albeit the amount thereof not being proven with certainty. Under Article 2224 of the Civil Code, temperate or moderate damages, which are more than nominal but less than compensatory damages, may be recovered when the court finds that some pecuniary loss has been suffered but its amount cannot, from the nature of the case, be determined with certainty...

....

Here, the Republic is entitled to recover temperate damages as there is no doubt that [Herminio] trampled on the rights of the Filipino people to benefit from, and make good use of, these ill-gotten wealth, i.e., substantial commissions or kickbacks he acquired; and that the whole nation significantly suffered pecuniary loss due to [Herminio]'s illegal acquisition of these public funds.

....

Considering the relevant circumstances of this case, the amount of One Billion Pesos [(P1,000,000,000.00)] as temperate damages is reasonable and justified. It bears stressing that this is not just an ordinary civil action for recovery of property and damages. This is an action for recovery of ill-gotten wealth which is imbued with public interest and concerns not only the government but every Filipino citizen, then and now. As part of the healing process of this nation, the Freedom Constitution specifically mandates the President to prioritize the recovery of these ill-gotten wealth. Hence, the loss or injury suffered by every Filipino due to [Herminio]'s acquisition of ill-gotten wealth must be duly recognized and compensated.

Further, We note that the Filipino people have not at all benefited from the BNPP as it has remained inoperable as of this writing, a proverbial White Elephant. Obviously, a considerable amount of public funds had been invested and allocated for the construction of the BNPP, which funds came from the blood, sweat and tears of the Filipino taxpayers. The ill-gotten wealth should have been used and spent for and by the rightful owner thereof and not just by one person or a select group of people in power.

Also, the Republic was unduly deprived of its rights over these substantial commissions as part of public funds, and was compelled to litigate for their recovery for more than three decades. We cannot overemphasize that [Herminio] received these ill-gotten wealth starting in 1976 when the construction of the BNPP began. Consequently, he had profited immensely from these commissions for a significant portion of his lifetime at the expense of the Filipinos.

Taking into consideration the inflation rate and the Philippine Peso's purchasing power at that time, these substantial commissions, if recovered, would have been greatly valued now and could have been used for the betterment of the Philippines. In addition, the Republic would have been entitled to recover legal interest on the total amount of commissions received had it proved such.

Undeniably, the recovery of these illegally acquired public funds, properties and assets has great impact on every Filipino's life. Hence, the award of One Billion Pesos [(P1,000,000,000.00)] temperate damages is reasonable under the circumstances taking into consideration the rights of all Filipino citizens encroached upon by [Herminio]'s acquisition of ill-gotten wealth and the damage caused to the Republic for its failure to make good use of the same.

With the grant of temperate damages, this allows the imposition of exemplary damages by way of example or correction for the public good. Exemplary damages cannot be recovered as a matter of right and are only considered when moral, temperate, liquidated or compensatory damages are granted. "Exemplary damages are designed by our civil law to permit the courts to reshape behavior that is socially deleterious in its consequence by creating negative incentives or deterrents against such behavior." Its purpose is to serve as a deterrent to serious wrong doings and as a vindication of undue sufferings and wanton invasion of the rights of an injured or a punishment for those guilty of outrageous conduct.

There is no doubt that [Herminio]'s receipt of [these] substantial commissions from Westinghouse and B&R is illegal and despicable which is no less than abhorred by our Freedom Constitution as its mandate includes eradication of graft and corruption, punishment of those guilty thereof and recovery of ill-gotten wealth. Verily, [Herminio]'s conduct should be corrected and deterred as his use of influence or power for his own personal benefit to the detriment of the Republic caused substantial injury not only to public funds but to the morale, trust and confidence of Filipinos in the government and its projects. Hence, this Court finds it reasonable under the circumstances to award One Million Pesos [(P1,000,000.00)] as exemplary damages.[125] (Emphasis and underscoring supplied)

It bears noting, however, that in the foregoing cases, the Court's award for temperate and exemplary damages had been based on specific monetary values. In *Tuvera*, the P1,000,000.00 award for temperate and exemplary damages drew upon the assertion that the undue award of a TLA in favor of therein respondents Juan, Victor, and Twin Peaks resulted in revenues amounting to "approximately P45,000,000.00." On the other hand, in *Disini*, the Court based its award of temperate and exemplary damages on the price of the government contracts established to have been awarded in favor of contractors Westinghouse and B&R through Herminio's influence.

In this case, no similar metric exists.

To reiterate, the 60-40 arrangement cannot serve as the Court's basis to determine the damages which may be assessed in favor of the Republic as its right to recover in this case is anchored not on said arrangement, but on the undue influence exerted by Tan in order to secure Asia Brewery's license. Thus, the damages due the Republic must be assessed based on the portion of the latter's revenue which may be deemed ill-gotten.

In the absence of proof respecting these material facts, the Court is precluded from making a reasonable determination as to the monetary damage sustained by the Republic and its people on account of the undue benefit granted in favor of Tan. Thus, the Court cannot assess damages, whether temperate or exemplary, in favor of the Republic at this stage in the proceedings, considering that these damages have not been reasonably established in appropriate financial terms.[126] To do otherwise would inequitably and unfairly disregard the reality that the growth and success of Asia Brewery did not rest solely on the undue benefit granted by President FM in the form of its license.

The Court can surely take judicial notice of the fact that it has been 40 years since Asia Brewery was established following the grant of its BOI license, and that it has since continued to operate 37 years after President FM's ouster.

As Tan's Written Disclosure reveals, he managed to secure Asia Brewery's license by pitching it as a possible competitor for SMC. In turn, President FM's motive in allowing for the establishment of Asia Brewery was in order that a competitor would disrupt SMC's monopoly and drive down the prices of its shares to allow his then ally, Danding Cojuangco, to gain control.[127]

Notably, the records of the case are bereft of any evidence to show that President FM granted Asia Brewery any other benefit or concession apart from its initial brewery license. In fact, Tan's Written Disclosure indicates that President FM was not satisfied with Asia Brewery's profitability. It was precisely Asia Brewery's unsatisfactory performance which prompted President FM to demand a 60% share in all corporations[128] under the SHI umbrella, in addition to the 25% share in Asia Brewery which he initially asked for.[129] It would thus appear that instead of enjoying additional benefits or concessions to augment its profitability, Asia Brewery had been placed at a disadvantage due to President FM's subsequent takeover threats.

More, at the time Asia Brewery began its operations in 1982, the beer market was monopolized by industry giant SMC.[130] In turn, competing with SMC proved to be difficult for Asia Brewery, as SMC appeared to have exerted efforts to maintain its dominance in the local beer market. In 1988, SMC filed a complaint against Asia Brewery for infringement of trademark and unfair competition on account of the latter's Beer Pale Pilsen or Beer na Beer product which competed with SMC's San Miguel Pale Pilsen for a share in the local beer market. In a 1993 Decision rendered in *Asia Brewery, Inc. v. Court of Appeals*,[131] the Court found no basis to support SMC's assertions and held that Asia Brewery neither infringed SMC's trademark nor committed unfair competition with respect to the latter's San Miguel. Pale Pilsen product.[132]

As well, the Court can take judicial notice of the fact that Asia Brewery filed an action against SMC in 1997, claiming that the latter committed "unfair trade practices" by hoarding, smashing, and illegally removing Asia Brewery's empty beer bottles and plastic crates from circulation.[133] The CA later directed SMC to pay Asia Brewery P68,000,000.00 in damages to compensate the latter for its unfair trade practices.[134]

Despite such heavy political and market pressure, Asia Brewery thrived through the years and has managed to remain in business due in large part to the industry of its own officers and employees. It bears noting that beyond sustaining its business operations, Asia Brewery has since managed to raise its share in the Philippine beer market to 38% as of 2013.[135] Despite being known as a beer company, Asia Brewery now dominates the drinking water, soy milk, energy drink, and alco-mix categories.[136] The company has also been a reliable contributor to the net profit of the Lucio Tan Group, Inc. (LT Group), albeit in a comparatively smaller way than the other big companies in the LT Group. For the first half of 2023, Asia Brewery reportedly accounted for P340 million or 3% of the total net income of the LT Group. This is 16% higher than the P294 million last year, as revenues were 3% higher at P8.41 billion from P8.14 billion.[137]

As such, the peg from which the damages to be awarded here must not carelessly include income that has been honestly and legitimately earned by Asia Brewery. To borrow the words of Justice Jose P. Laurel, "the administration of justice is not a matter of guess work."[138]

On this basis, I submit, as I did at the outset, that the remand of the Petition docketed as G.R. No. 203592 is necessary so that the temperate and exemplary damages due the Republic may be assessed and determined with some measure of certainty.

Indeed, as what has been emphasized by the Court in the past, the factual premises of the EOs governing the recovery of ill-gotten wealth cannot simply be assumed. They will have to be duly established by , adequate proof in each case, in a proper judicial proceeding, so that the recovery of the ill-gotten wealth may be validly and properly adjudged and consummated.[139] The desire to be less than this methodical may be all too real,

considering that it is a matter of "extensive notoriety" that "an immense fortune" and "vast resources of the government have been amassed by former [President FM], his immediate family, relatives, and close associates both here and abroad" through "all sorts of clever schemes and manipulations to disguise and hide their illicit acquisitions," and hence, may already be well within the realm of judicial notice as to dispense with proof thereof.[140] Be this as it may, the requirement of evidentiary substantiation has been expressly acknowledged, and the procedure to be followed explicitly laid down, in EO No. 14.[141]

While my submission to remand here seems, at first blush, a backslide from *Tuvera* and *Disini*, this is but an imperative one to be taken in step with the rule of law. While the long-running remedial efforts of the Republic to recover ill-gotten wealth from the Marcoses and their cronies should never be brought to naught, especially in the face of an alarmingly proliferating historical denialism of late, these efforts must be done fairly and judiciously. Inasmuch as the injustice that the former regime of kleptocracy had inflicted on our nation should be fought relentlessly, it should not be through means that are as equally unjust.

In view of the foregoing, I vote that the Court:

- AFFIRM the Sandiganbayan's Resolutions dated December 22, 2010 and February 25, 2011 in G.R. No. 195837;
- AFFIRM the Sandiganbayan's Order dated June 9, 2011 and Resolution dated August 2, 2011 in G.R. No. 198221; as well as the Sandiganbayan's Resolutions dated May 3, 2011 and July 4, 2011 dismissing the Republic's Motion for Voluntary Inhibition;
- AFFIRM the Sandiganbayan's Resolutions dated July 8, 2011 and August 23, 2011 in G.R. No. 198974 which denied the Republic's Motion to Admit Third Amended Complaint; and
- REVERSE the Sandiganbayan's Decision dated June 11, 2012 and Resolution dated September 26, 2012 in G.R. No. 203592.

Further, I vote that the case be REMANDED to the Sandiganbayan to (i) allow the Republic to present additional evidence that will permit the proper assessment of such ill-gotten wealth with some measure of certainty; and (ii) afford Tan the opportunity to present controverting evidence, if any, as to the proper quantification of damages.

[1] Namely, Carmen Khao Tan, Florencio T. Santos, Natividad P. Santos, Domingo Chua, Tan Hui Nee, Mariano Tan Eng Lian, Estate of Benito Tan Kee Hiong represented by Tarciana C. Tan, Florencio N. Santos, Jr., Harry C. Tan, Tan Eng Chan, Chung Poe Kee, Mariano Khoo, Manuel Khoo, Miguel Khoo, Jamie Khoo, Elizabeth Khoo, Celso C. Ranola, William T. Wong, Ernesto B. Lim, Benjamin T. Albacita, Don Ferry, Willy Co, and Federico Moreno. See also rollo (G.R. No. 203592) (Vol. IV), p. 2631.

[2] *Id.* at 2631-2632.

[3] Namely, (a) Shareholdings, Inc.; (b) Asia Brewery, Inc.; (c) Allied Banking Corporation; (d) Fortune Tobacco; (e) Maranaw Hotels; (f) Virginia Tobacco; (g) Northern Tobacco; (h) Foremost Farms; (i) Sipalay Trading, (j) Himmel Industries; (k) Grandspan Development Corp.; (l) Basic Holdings Corp.; (m) Progressive Farms, Inc.; (n) Manufacturing Services and Trade Corp.; (o) Allied Leasing and Finance Corp.; (p) Jewel Holdings, Inc.; (q) Iris Holdings and Development Corp.; and (r) Virgo Holdings and Development Corp.

[4] See ponencia, p. 11.

[5] *Id.* at 61.

- [6] Id. at 11-13.
- [7] Id. at 14.
- [8] Id. at 16.
- [9] Id. at 61-62.
- [10] Id. at 21.
- [11] See *Republic v. Sandiganbayan*, G.R. No. 152154, July 15, 2003, 406 SCRA 190, 219.
- [12] G.R. No. 96073, January 23, 1995, 240 SCRA 376.
- [13] Id.
- [14] See id.
- [15] Supra note 11.
- [16] See *Republic v. Sandiganbayan*, id. at 223, citing the Office of the Solicitor General's findings.
- [17] See William, B. (1984, August 16). 'Crony Capitalism' Blamed for Economic Crisis. Last accessed on June 6, 2023, from
<<https://www.washingtonpost.com/archive/politics/1984/08/16/crony-capitalism-blamed-for-economic-crisis/d99e8760-087d-4d25-ad66-3d324150dc4d/>>.
- [18] Id.
- [19] Creating the Presidential Commission on Good Government, signed on February 28, 1986.
- [20] See id. Sec. 2(a), EO No. 1.
- [21] Regarding the Funds, Moneys, Assets, and Properties Illegally Acquired or Misappropriated by Former President Ferdinand Marcos, Mrs. Imelda Romualdez Marcos, their Close Relatives, Subordinates Business Associates, Dummies, Agents, or Nominees, signed on March 12, 1986.
- [22] Sec. 1, EO No. 14.
- [23] G.R. No. L-75885, May 27, 1987, 150 SCRA 181.
- [24] Id. at 205-206.
- [25] Ponencia, p. 42.
- [26] Id. at 41-43.
- [27] Whereas Clause, EO No. 2.
- [28] Sec. 1, PCGG Rules.
- [29] Supra note 27.
- [30] Rollo (G.R. No. 203592, Vol. I), p. 145.
- [31] G.R. No. L-77645, October 26, 1987, 155 SCRA 60.
- [32] Id. at 64-65. Citations omitted.

[33] Id. at 65-66.

[34] G.R. No. 148246, February 16, 2007, 516 SCRA 113.

[35] See id. at 120-121.

[36] See id.

[37] G.R. No. 205172, June 15, 2021, accessed at <https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/67468>.

[38] Id.

[39] Id.

[40] See Republic v. Reyes-Bakunawa, G.R. No. 180418, August 28, 2013, 704 SCRA 163, 177-178.

[41] Rollo (G.R. No. 203592) (Vol. IV), p. 2634.

[42] See ponencia, pp. 44-45.

[43] See id. at 16.

[44] See id.

[45] Rollo (G.R. No. 203592) (Vol. I), p. 151.

[46] See ponencia, p. 23.

[47] See id. at 43-45.

[48] Now, 2019 REVISED RULES ON EVIDENCE, Rule 130, approved on October 8, 2019.

[49] G.R. No. 152160, January 13, 2004, 419 SCRA 101.

[50] See id. at 111.

[51] See Ching v. Court of Appeals, G.R. No. 110844, April 27, 2000, 331 SCRA 16, 34.

[52] See id.

[53] Ponencia, p. 47.

[54] Patula v. People, G.R. No. 164457, April 11, 2012, 669 SCRA 135, 156.

[55] Rollo (G.R. No. 203592) (Vol. I), p. 154.

[56] Id.

[57] See Lazaro v. Agustin, G.R. No. 152364 April 15, 2010, 618 SCRA 298, 308.

[58] See People v. Buntag, G.R. No. 123070, April 14, 2004, 427 SCRA 180.

[59] Republic v. Gimenez, G.R. No. 174673, January 11, 2016, 778 SCRA 261.

[60] Id.

[61] Id. Citation omitted.

[62] See Buenaflor Car Services, Inc., v. David, Jr., G.R. No. 222730, November 7, 2016, 807 SCRA 191.

[63] Id.

[64] See rollo (G.R. No. 203592) (Vol. VII), p. 3995.

[65] Rollo (G.R. No. 203592) (Vol. VII), pp. 3997-4000.

[66] Id. at 4003-4004. Citation omitted.

[67] Id. at 3865.

[68] Id. at 4005-4007.

[69] Ponencia, p. 53.

[70] Bon v. People, supra note 49, at 109.

[71] Calicdan v. Cendaña, G.R. No. 155080, February 5, 2004, 422 SCRA 272, 278.

[72] See Sec. 22, 2019 REVISED RULES ON EVIDENCE, supra note 48.

[73] Rollo (G.R. No. 203592) (Vol. VII), pp. 4013-4017.

[74] See People v. Umapas, G.R. No. 215742, March 22, 2017, 821 SCRA 421.

[75] See ponencia, p. 54.

[76] See rollo (G.R. No. 203592) (Vol. VII), p. 4017.

[77] See id. at 4018.

[78] Id.

[79] Id. at 4020-4021.

[80] See People v. Umapas, G.R. No. 215742, March 22, 2017, 821 SCRA 421.

[81] G.R. No. 162333, December 23, 2008, 575 SCRA 82.

[82] G.R. No. 77008, December 29, 1987, 156 SCRA 838.

[83] Id. at 841-842.

[84] Sec. 23, Rule 132 provides:

Public Documents as Evidence. — Documents consisting of entries in public records made in the performance of a duty by a public officer are prima facie evidence of the facts therein stated. All other public documents are evidence, even against a third person, of the fact which gave rise to their execution and of the date of the latter.

[85] Rollo (G.R. No. 203592) (Vol. VII), p. 3946.

[86] Id. at 3947-3948.

[87] Ponencia, pp. 49-50.

[88] Id. at 50.

[89] Id. at 52.

[90] Rollo (G.R. No. 203592) (Vol. IV), p. 3495.

- [91] Id. at 3498-3499.
- [92] See *Patula v. People*, supra note 54.
- [93] See also *People v. Encipido*, G.R. No. L-70091, December 29, 1986, 146 SCRA 478, 492.
- [94] *Republic v. Gimenez*, supra note 59.
- [95] Id.
- [96] Id.
- [97] 657 Phil. 536 (2011).
- [98] Id. at 542. Citations omitted.
- [99] See *Republic v. Gimenez*, supra note 59, at 294.
- [100] Id. at 294-295.
- [101] Rollo (G.R. No. 203592) (Vol. VII), pp. 3846-3851.
- [102] Rollo (G.R. No. 203592) (Vol. II), pp. 1421-1425.
- [103] Id. at 1426-1430.
- [104] Id. at 1431-1432.
- [105] Id. at 1433-1434.
- [106] Rollo (G.R. No. 203592) (Vol. IV), pp. 3496-3502.
- [107] Rollo (G.R. No. 203592) (Vol. VII), p. 3940.
- [108] Rollo (G.R. No. 203592) (Vol. VII), pp. 3947-3949.
- [109] Rollo (G.R. No. 203592) (Vol. III), pp. 1669-1675.
- [110] See Sec. 19, Rule 132 of the REVISED RULES ON EVIDENCE, supra note 48.
- [111] *Young Builders Corporation v. Benson Industries, Inc.*, G.R. No. 198998, June 19, 2019, 904 SCRA 485, 502. Citations omitted.
- [112] *Patula v. People*, supra note 54, at 156-157.
- [113] Ponencia, pp. 57-58.
- [114] Rollo (G.R. No. 203592) (Vol. I), pp. 157-161.
- [115] Rollo (G.R. No. 203592) (Vol. IV), p. 3498.
- [116] See *Republic v. Reyes-Bakunawa*, supra note 40, at 187.
- [117] Id.
- [118] Id. citing *Republic v. Migriño*, G.R. No. 89483, August 30, 1990, 189 SCRA 289, 297-298.
- [119] Id.
- [120] Rollo (G.R. No. 203592) (Vol. VII), p. 3997.

[121] Id. at 4013-4015.

[122] Id. at 3942-3943.

[123] Republic Act No. 386 also known as "An Act to Ordain and Institute the Civil Code of the Philippines," approved on June 18, 1949.

[124] Republic v. Tuvera, supra note 34, at 149-153. Citations omitted.

[125] Disini v. Republic, supra note 37. Citations omitted.

[126] See Tuvera v. Republic, supra note 34.

[127] See rollo (G.R. No. 203592, Vol. IV), p. 3498.

[128] Fortune Tobacco, Foremost Farms, Himmel Industries, Grandspan Development, and Dominion Realty.

[129] See rollo (G.R. No. 203592) (Vol. IV), pp. 3496-3502.

[130] See About Us. (n.d.). Asia Brewery [website]. Last accessed October 14, 2023, from <<https://asiabrewery.com/pages/about-us>>.

[131] G.R. No. 103543, July 5, 1993, 224 SCRA 437.

[132] See id. at 456.

[133] ABS-CBN News. (2008, November 24). Asia Brewery Wins First Round in Unfair Trade Practices Case Vs San Miguel. Last accessed October 14, 2023, from <<https://news.abs-cbn.com/business/11/24/08/asia-brewery-wins-first-round-unfair-trade-practices-case-vs-san-miguel>>.

[134] Philippine Daily Inquirer. (2011, October 5). Asia Brewery Wins Bottle Case Vs San Miguel Corp. Last accessed October 14, 2023, from <<https://business.inquirer.net/23021/asia-brewery-wins-bottle-case-vs-san-miguel-corp>>. There is no publicly available data confirming that a subsequent appeal had been lodged.

[135] Philippine Daily inquirer. (2013, January 28). Asia Brewery to Expand Throughout Asia. Last accessed June 8, 2023, from <<https://business.inquirer.net/104639/asia-brewery-to-expand-throughout-asia>>.

[136] Id.

[137] Manila Bulletin. (2023, August 11). LT Group's Profits Decline to P13B. Last accessed October 14, 2023, from <<https://mb.com.ph/2023/8/11/lt-group-s-profits-decline-to-p13-b>>.

[138] Co Occo & Co. v. De La Costa, 63 Phil. 445, 449 (1936).

[139] See Republic v. Reyes-Bakunawa, supra note 40, citing Bataan Shipyard & Engineering Co., Inc. (Baseco) v. Presidential Commission on Good Government, supra note 23.

[140] See Republic v. Reyes-Bakunawa, id. at 187.

[141] Id.

SEPARATE CONCURRING OPINION

KHO, JR., J.:

This case is a consolidation of four related Petitions,[1] all of which originated from the Complaint filed on July 17, 1987 by the Republic of the Philippines (petitioner), through the Presidential Commission on Good Government, for the recovery and reconveyance of ill-gotten wealth against Lucio C. Tan (Tan), the Estate of former President Ferdinand E. Marcos (Marcos), Imelda R. Marcos (Imelda), several of their business associates, and the corporations constituted to allegedly conceal their illegal schemes.

In G.R. No.195837, the ponencia affirmed the Sandiganbayan's ruling as valid the dismissal of the Complaint against respondents Don M. Ferry (Ferry) and Cesar C. Zalamea (Zalamea).[2]

In G.R. No. 198221, the ponencia: (1) affirmed the Sandiganbayan's denial of the Motion for Voluntary Inhibition filed by petitioner; and (2) affirmed the Sandiganbayan ruling that the testimony of Joselito and Aderito Yujuico relative to the liquidation and acquisition of General Bank and Trust Company should be excluded from the evidence.[3]

In G.R. No. 198974, the ponencia affirmed the Sandiganbayan's denial of petitioner's Motion to Admit its Third Amended Complaint, which sought to implead PMFTC, Inc. and several other individuals as respondents to this case in relation to the merger between Fortune Tobacco Corporation and Northern Tobacco Redrying Co., Inc.[4]

In G.R. No. 203592, the ponencia affirmed the Sandiganbayan's dismissal of the Second Amended Complaint for reversion, reconveyance, restitution, accounting, and damages.[5]

I concur in the disposition of the issues in G.R. Nos. 198221, 198974, and 203592; while I concur only in the result arrived at in G.R. No. 195837 that the dismissal of the Complaint against Ferry and Zalamea was valid.

In G.R. No. 195837, the ponencia ruled that the dismissal of the aforementioned complaint was proper on the grounds of: (a) *res judicata* under the concept of conclusiveness of judgment;[6] and (b) insufficiency of evidence.[7] However, and as will be explained below, I respectfully digress from the finding that the first ground as above-described is applicable herein.

To recall, Ferry and Zalamea were officers of the Development Bank of the Philippines (DBP) at the time it sold its controlling interest in Century Park Sheraton Hotel (Century) to Tan's Sipalay Trading Corporation (Sipalay). Ferry was DBP's Vice-Chairman, while Zalamea was the Chairman of the DBP Board and Maranaw Hotel and Resorts Corporation which, at the time, was owner of Century. The two were impleaded because of their alleged participation in the anomalous sale, which purportedly caused losses of millions to DBP.

In 2010, Ferry and Zalamea separately filed their Motions to Dismiss on demurrer to evidence. Zalamea claimed that the evidence presented by petitioner did not sufficiently establish his participation in amassing ill-gotten wealth. Ferry, meanwhile, argued that his acts were done in his official capacity as Vice-Chairman of DBP, and that in *Republic of the Philippines v. Desierto*,[8] in which he was also a respondent, the Court has already ruled that the DBP officers acted in good faith and soundly exercised judgment in the sale of DBP's controlling shares in Century to Tan's Sipalay.[9]

In December 2010, the Sandiganbayan granted the Motions to Dismiss on demurrer to evidence, holding that no evidence was presented showing that they participated in the illegal acquisition of the assets and properties subject of the complaint.[10]

As mentioned, the ponencia affirmed this ruling of the Sandiganbayan. Significantly, the ponencia held, *inter alia*,

that "the complaint against respondents Ferry and Zalamea is already barred by res judicata by conclusiveness of judgment." [11] It found that "[n]otably, all the elements of res judicata by conclusiveness of judgment are present," [12] explaining that:

First, Desierto attained finality in 2006. Second, the decision was rendered by a tribunal of competent jurisdiction, the Ombudsman, as affirmed by this Court. Third, the disposition of Desierto was a judgment on the merits. Finally, there is identity of parties or their privies and issues between Desierto and the present case. The parties in the Desierto case and the present case are the same, the Republic representing the PCGG and the DBP officials, including respondent Ferry, who participated in the Sipalay Deal. While respondent Zalamea was not impleaded in Desierto, he is being indicted in the present case as a former officer of DBP and Maranaw Hotels. As to the identity of the issue, "bad faith" was discussed in Desierto because it is an element of the offense of Section 3(e) of RA No. 3019. The same issue of bad faith was again raised by the Republic in the present case. Therefore, the existence of bad faith in the Sipalay Deal is barred by res judicata by conclusiveness of judgment. [13] (*Italics in the original*)

Curiously, the ponencia did discuss the nature of the case in Desierto, which it said involved petitioner's criminal complaint for violation of Section 3(e) of Republic Act No. (RA) 3019 against several respondents, which included Ferry. [14] The Court went on to rule in Desierto as follows:

As a general rule, this Court will not interfere with the investigatory and prosecutorial powers of the Ombudsman without any compelling reason. However, this non-interference does not apply when there is grave abuse of discretion in the exercise of its discretion. By grave abuse of discretion is meant "such capricious and whimsical exercise of judgment which is equivalent to an excess or lack of jurisdiction. The abuse of discretion must be so patent and so gross as to amount to an evasion of a positive duty or a virtual refusal to perform a duty enjoined by law, or to act at all in contemplation of law as where power is exercised in an arbitrary and despotic manner by reason of passion or hostility."

In the case at bar, we hold that the Ombudsman committed no grave abuse of discretion in finding that there was no probable cause against the private respondents to hold them liable for violation of Section 3(e), R.A. No. 3019. Probable cause signifies a reasonable ground of suspicion supported by circumstances sufficiently strong in themselves to warrant a cautious man's belief that the person accused is guilty of the offense with which he is charged. The grounds for suspicion must be reasonable and supported by sufficiently strong circumstances. As previously discussed, the Ombudsman correctly found that some of the essential elements of the offense charged are not present. Verily, we cannot attribute any arbitrariness or despotism to him.

WHEREFORE, the petition is DISMISSED. The Resolution of the Ombudsman dated September 5, 1997 dismissing petitioner's complaint against private respondents in OMB Case No. 0-91-0382 is AFFIRMED. No costs.

SO ORDERED. [15] (*Emphases and underscoring supplied; citations omitted*)

From this summation, it is at once clear that Desierto was not a ruling on the merits as to whether respondents therein were guilty of Section 3 (e) of RA 3019. Rather, Desierto was but an affirmation of the dismissal of a criminal complaint filed with the Ombudsman.

In *Levi Strauss & Co. v. Sevilla*, [16] citing *Imingan v. Office of the Ombudsman*, [17] the Court, speaking through Senior Associate Justice Estela M. Perlas-Bernabe, reiterated the definite instruction that the results of preliminary investigations cannot rise to the level of final and executory judgments of regular courts and hence, are not proper subjects of res judicata. This is because an "[i]nvestigation for the purpose of determining whether an actual charge shall subsequently be filed against the person subject of the investigation is a purely administrative, rather than a judicial or quasi-judicial, function" and as such "is not an exercise in adjudication." [18] On this score, a dismissal of a case during preliminary investigation cannot be considered a

valid and final judgment for res judicata to apply. Pertinent portions of *Levi Strauss & Co.* read:

"Res judicata means 'a matter adjudged; a thing judicially acted upon or decided; a thing or matter settled by judgment.' It lays the rule that an existing final judgment or decree rendered on the merits, without fraud or collusion, by a court of competent jurisdiction, upon any matter within its jurisdiction, is conclusive of the rights of the parties or their privies, in all other actions or suits in the same or any other judicial tribunal of concurrent jurisdiction on the points and matters in issue in the first suit." Thus, for res judicata to apply — whether the same is in the concept of bar by prior judgment or by conclusiveness of judgment — it is imperative that, *inter alia*, the disposition of the case must be a judgment on the merits rendered by a court of competent jurisdiction.

At this juncture, it is important for the Court to point out that G.R. No. 162311 was not a criminal case that was decided on the merits by a court of competent jurisdiction. Rather, the case emanated from mere preliminary investigation proceedings which was elevated to the regular courts on the issue of whether or not the Department of Justice (DOJ) committed grave abuse of discretion when it found no probable cause to indict therein respondent for unfair competition. ...

Jurisprudence has long settled that preliminary investigation does not form part of trial. Investigation for the purpose of determining whether an actual charge shall subsequently be filed against the person subject of the investigation is a purely administrative, rather than a judicial or quasi-judicial, function. It is not an exercise in adjudication: no ruling is made on the rights and obligations of the parties, but merely evidentiary appraisal to determine if it is worth going into actual adjudication.

The dismissal of a complaint on preliminary investigation by a prosecutor "cannot be considered a valid and final judgment." As there is no former final judgment or order on the merits rendered by the court having jurisdiction over both the subject matter and the parties, there could not have been res judicata ...

Furthermore, in *Encinas v. Agustin, Jr.*, the Court further expounded that res judicata applies only to judicial or quasi-judicial proceedings. In this regard, while there is case law stating that a prosecutor conducting a preliminary investigation performs a quasi-judicial function, the Court, in *Bautista v. CA*, clarified that "this statement holds true only in the sense that, like quasi-judicial bodies, the prosecutor is an office in the executive department exercising powers akin to those of a court"; and the similarity ends there. It further expounded that unlike proceedings in quasi-judicial agencies whose awards determine the rights of the parties, and hence, their decisions have the same effect as judgments of a court, a preliminary investigation, which is merely inquisitorial, does not determine the guilt or innocence of the accused. It is not a trial on the merits and its purpose is only to determine whether a crime has been committed and whether there is probable cause to believe that the accused is guilty thereof. While it is the prosecutor that makes such determination, he cannot be said to be exercising a quasi-judicial function, as it is the courts that ultimately pass judgment on the accused.[19] (emphases, italics, and underscoring in the original; citations omitted)

Following *Levi Strauss & Co.* and several other antecedent cases,[20] it is therefore humbly opined that the dismissal of the complaints against Ferry and Zalamea should not be anchored on res judicata by conclusiveness of judgment. It is enough, as the ponencia itself affirmed, for the dismissal of their case to be based on petitioner's failure to substantiate its claim that Ferry and Zalamea participated in the acquisition of ill-gotten wealth.[21]

ACCORDINGLY, I VOTE to DENY the consolidated petitions docketed as G.R. Nos. 195837, 198221, 198974, and 203592.

[1] See footnote 2, Main Decision penned by Associate Justice Rodil V. Zalameda, p. 6.

[2] See *id.* at 59.

- [3] See *id.* at 11 and 59-60.
- [4] See *id.* at 60.
- [5] See *Id.*
- [6] *Id.* at 28-30.
- [7] *Id.* at 30-32.
- [8] 516 Phil. 509 (2006) [Per J. Sandoval-Gutierrez, Second Division].
- [9] See Main Decision, p. 10.
- [10] *Id.*
- [11] *Id.* at 28.
- [12] *Id.* at 30.
- [13] *Id.*
- [14] *Id.* at 29-30.
- [15] *Republic v. Desierto*, 516 Phil. 509, 516-517 (2006) [Per J. Sandoval-Gutierrez, Second Division].
- [16] See G.R. No. 219744, March 1, 2021 [Per J. Perlas-Bernabe, Second Division].
- [17] See G.R. No. 226420, March 4, 2020 [Per J. Inting, Second Division].
- [18] See *Levi Strauss & Co. v. Sevilla*, *supra*, citing *Imingan v. Office of the Ombudsman*, *id.*
- [19] See *Levi Strauss & Co v. Sevilla*, *id.*
- [20] See *Imingan v. Office of the Ombudsman*, *supra*; *Pavlow v. Mendenilla*, 809 Phil. 24 (2017) [Per J. Leonen, Second Division]; *Encinas v. Agustin, Jr.*, 709 Phil. 236 (2013) [Per C.J. Sereno, En Banc], *inter alia*.
- [21] See Main Decision, pp. 31-32.

SEPARATE OPINION

SINGH, J.:

I express full concurrence with the ponencia's disposition in G.R. Nos. 195837 and 198974. However, I respectfully express my disagreement with the disallowance of the testimonies of the Republic's witnesses in G.R. No. 198221 and some of the findings in G.R. No. 203592 relating to the inadmissibility of particular evidence.

G.R. No. 198221: Disallowance of the Yujuicos' testimonies

To recall, during the trial, the Republic presented Joselito and Aderito Yujuico (the Yujuicos) to testify on its allegations pertaining to the liquidation of General Bank and Trust Company (GenBank) and Lucio Tan's (Tan) acquisition of its assets through Allied Banking Corporation (Allied Bank) without sufficient collateral and consideration, (GenBank Liquidation). However, the Sandiganbayan disallowed the testimonies, reasoning that

the legality of the GenBank Liquidation had been decided by the Court in *General Bank & Trust Co. v. Central Bank of the Philippines (GenBank Case)*.^[1] The Republic also requested the recall of Joselito Yujuico for the presentation of its rebuttal evidence, to no avail.^[2]

The Republic argued that the Yujuicos' testimonies are not barred by *res judicata* because the GenBank Case did not involve proving the concessions Ferdinand E. Marcos (Marcos) granted to Tan and their unlawful collaboration with the Central Bank and the Philippine National Bank to acquire GenBank. On the other hand, Tan and his co-respondents maintained that the Republic cannot present the Yujuicos as their testimonies involve facts and issues already established and resolved in the GenBank Case.^[3]

The ponencia rules that the GenBank Case bars by *res judicata* the Yujuicos' testimonies on the allegations in the Second Amended Complaint pertaining to the validity of the GenBank Liquidation, particularly paragraph 14, subparagraphs (a)(1), (2), and (3).^[4]

I respectfully opine that the ponencia's ruling should be qualified such that the Yujuicos' testimonies in relation to issues which were not resolved in the GenBank Case – reflected in paragraph 14, subparagraphs (b) and (c) of the Second Amended Complaint – should be allowed.

In the GenBank Case, the Court ruled that the Central Bank did not violate any existing procedural or substantive law when it ordered the closure of GenBank,^[5] and eventually adopted Tan's group of companies' bid as its liquidation plan.^[6] The Court found that GenBank failed to discharge the burden of proving bad faith on the part of the Central Bank Monetary Board (MB) when it issued the assailed Resolutions which operationalized the liquidation and sale of GenBank to Tan's group.^[7]

Here, the Republic intended to present the Yujuicos as witnesses to testify on paragraph 14, subparagraphs (a)(1)(2)(3), (b) and (c) of the Second Amended Complaint,^[8] which read:

14. Defendant Lucio C. Tan, by himself and/or in unlawful concert with Defendants Ferdinand E. Marcos and Imelda R. Marcos, taking undue advantage of his relationship and influence with Defendant Spouses, and embarking upon devices, schemes and stratagems, including the use of Defendant Corporations, among others:

(a) without sufficient collateral and for nominal consideration, with the active collaboration, knowledge and willing participation of Defendant Willy Co, arbitrarily and fraudulently acquired control of [GenBank] which eventually became [Allied Bank], through the manipulation of then Central Bank Governor [Licaros], and of then President [Domingo] of the Philippine National Bank [PNB], as shown by, but not limited to, the following circumstances:

(1) In 1976, [GenBank] got into financial difficulties. The Central Bank then extended an emergency loan to [Gen Bank] reaching a total of P310 million. In extending this loan, the CB however, took control of [GenBank] when the latter executed an irrevocable proxy of 2/3 of [GenBank]'s outstanding shares in favor of the [Central Bank] and when 7 of the 11-member Board of Directors were [Central Bank] nominees. Subsequently, on March 25, 1977, the Monetary Board of [Central Bank] issued a Resolution declaring [GenBank] insolvent, forbidding it to do business and placing it under receivership.

(2) In the meantime, a public bidding for the sale of [GenBank] assets and liabilities was scheduled at 7:00 P.M. on Ma[r]ch 28, 1977. Among the conditions of the bidding were: (a) submission by the bidder of Letter of Credit issued by a bank acceptable to [Central Bank] to guaranty payment or as collateral of the [Central Bank] emergency loan; and (b) a 2-year period to repay the said CB emergency loan. On March 29, 1977, [Central Bank] thru a Monetary Board Resolution, approved the bid of the group of Lucio Tan and Willy Co. This bid, among other things, offered to pay only P500,000.00 for [GenBank] assets estimated at P688,201,301.45; Capital Accounts of P103,984,477.55; Cash of P25,698,473.00; and the takeover of the [GenBank] Head Office and branch offices. The required Letter of Credit was not also attached to the bid.

What was attached to the bid was a letter of Defendant [Domingo] as PNB President promising to open an irrevocable letter of credit to secure the advances of the Central Bank in the amount of P310 Million. Without this letter of commitment, the Lucio Tan bid would not have been approved. But such letter of commitment was a fraud because it was not meant to be fulfilled. Defendants [Marcos], [Licaros] and [Domingo] conspired together in giving the Lucio Tan group undue favors such as doing away with the required irrevocable letter of credit, the extension of the term of payment from two years to five years, the approval of [a] second mortgage as collateral for the Central Bank advances which was deficient by more than P90 Million, and many other concessions to the great prejudice of the government and of the [GenBank] stockholders.

(3) As already stated, [GenBank] eventually became [Allied Bank] in April, 1977. The defendants Lucio Tan, Willy S. Co and Florencio T. Santos are not only incorporators and directors but they are also the major shareholders of this new bank.

(b) delivered to Defendant spouses Ferdinand and Imelda Marcos, sometime in July, 1977 or thereafter, substantial beneficial interests in shares of stock worth millions of pesos in the [Asia Brewery] through dummies, nominees or agents, with the active collaboration, knowledge and willing participation of Defendants Florencio T. Santos, as then President [Tan Eng Lian], as then Treasurer, and Domingo Chua Mariano Khoo, as then Directors of [Asia Brewery] in consideration of substantial concessions which their varied business ventures were unduly privileged to enjoy, such as but not limited, the grant of dollar allocation amounting to about U.S. \$6,934,500.00.

(c) gave improper payments such as gifts, bribes and commissions, and/or guaranteed "dividends" to said Defendant spouses in various sums, such as P10M in 1980, P10M in 1981, P20M in 1982, P40M in 1983, P40M in 1984, P50M in 1985, P50M in 1986, in consideration of Defendant Spouses' continued support of Defendant Lucio Tan's diversified business ventures and/or Defendant Spouses' ownership or interest in said diversified business ventures, such as [Allied Bank], and its subsidiaries here and abroad, including [the respondent corporations and the foreign corporations]. Even earlier, Tan gave the amounts of P11 million in 1975, about P2 million in 1977, and P44 million in 1979, among other amounts.[9] (Emphasis and underscoring supplied)

Paragraph 14(a) of the Republic's Second Amended Complaint clearly pertains to issues which were resolved in the GenBank Case. Thus, the Republic's attempt to relitigate the GenBank Liquidation is barred by res judicata by conclusiveness of judgment.

The rule of conclusiveness of judgment dictates that any right, fact, or matter in issue directly adjudicated or necessarily involved in the determination of an action before a competent court in which a judgment or decree is rendered on the merits is conclusively settled by the judgment therein and cannot again be litigated between the parties and their privies whether or not the claim or demand, purpose, or subject matter of the two suits is the same.[10]

Clearly, the issues on the validity of the MB's declaration of insolvency of GenBank and its subsequent acquisition by Tan and company are barred by res judicata by conclusiveness of judgment, because these were conclusively settled in the GenBank Case despite its different cause of action. However, the same cannot be said for paragraph 14, subparagraphs (b) and (c) of the Second Amended Complaint.

The aforementioned paragraphs do not contest only the validity of the GenBank Liquidation, as the allegations clearly concern alleged undue favors and concessions which Marcos granted to Tan at the expense of the government. Thus, the Republic should have been given the opportunity to present its case through the presentation of the Yujuicos' testimonies in so far as they relate to paragraph 14, subparagraphs (b) and (c) of the Second Amended Complaint.

G.R. No. 203592: Dismissal of the Republic's Complaint

To recount, the Sandiganbayan found that the Republic failed to prove that the subject assets and properties^[11] were ill-gotten because there was no showing that the same originated from the vast resources of the government.^[12]

The ponencia holds that the Sandiganbayan unduly restricted the concept of ill-gotten wealth as such need not be solely derived from the government's resources,^[13] but affirms the Sandiganbayan and dismisses the Republic's Complaint for reversion, reconveyance, restitution, accounting, and damages against the respondents, due to the inadmissibility of key pieces of evidence it relied on to prove its claims.

I humbly express my concurrence, subject to reservations as will be discussed below.

As defined in the ponencia, "ill-gotten wealth" pertains to "assets acquired through or as a result of the improper or illegal use of funds or properties owned by the Government of the Philippines or any of its branches, instrumentalities, enterprises, banks or financial institutions, or by taking undue advantage of their office, authority, influence, connections or relationship, resulting in their unjust enrichment and causing grave damage and prejudice to the Filipino people and the Republic of the Philippines."^[14] Thus, there are two ways by which ill-gotten wealth is acquired. The second manner, which is of concern in this case, requires a showing of the following elements: (a) assets and properties were acquired; (b) these were acquired by Marcos, Imelda R. Marcos (Imelda), their close relatives, subordinates, business associates, dummies, agents, or nominees; (c) the manner of acquisition is by taking undue advantage of their office, authority, influence, connections, or relationship; and (d) the acquisition resulted in their unjust enrichment and caused grave damage and prejudice to the Filipino people and the Republic of the Philippines.

In relation thereto, Executive Order No. (EO) 14,^[15] as amended, provides that the degree of proof required for civil cases involving the Marcos wealth held by their family, business associates, dummies, agents, and nominees is preponderance of evidence. Jurisprudence involving the ill-gotten wealth of Marcos explains that this only requires the determination, based on the evidence presented, in light of common human experience, which of the theories proffered by the parties is more worthy of credence.^[16]

In this regard, admissibility of evidence refers to the question of whether or not the circumstance (or evidence) is to be considered at all. On the other hand, the probative value of evidence refers to the question of whether or not it proves an issue.^[17]

Evidence is admissible when it is relevant to the issue and is not excluded by the law or the rules,^[18] or is competent. The weight to be given to such evidence, once admitted, depends on judicial evaluation within the guidelines provided in Rule 133 and the jurisprudence laid down by the Court. Thus, while evidence may be admissible, it may be entitled to little or no weight at all. Conversely, evidence which may have evidentiary weight may be inadmissible because a special rule forbids its reception.^[19]

Jurisprudence further instructs that evidence of a statement made or a testimony is hearsay if offered against a party who has no opportunity to cross-examine the witness. Hearsay evidence is excluded precisely because the party against whom it is presented is deprived of or is bereft of opportunity to cross-examine the persons to whom the statements or writings are attributed.^[20]

The function of cross-examination is to test the truthfulness of the statements of a witness made on direct examination. The opportunity of cross-examination has been regarded as an essential safeguard of the accuracy

and completeness of a testimony and against falsehoods and frauds.[21]

In this case, the Republic anchors its claim, that Marcos' interests in Tan's businesses were consolidated into 60% of Shareholdings, Inc. shares, on four key pieces of evidence: (a) Imelda's Amended Answer with Counterclaim and Compulsory Cross-Claim, dated November 19, 2001 (Imelda's Amended Answer); (b) Ferdinand R. Marcos, Jr.'s (Marcos, Jr.) testimony; (c) Tan's written disclosure, dated May 10, 1986 (Tan's Written Disclosure); and (d) Rolando Gapud's (Gapud) sworn statement, dated January 14, 1987 (Gapud's Sworn Statement) to prove its claim that 60% of the shares in Shareholdings, Inc. is ill-gotten wealth.

(a) Imelda's Amended Answer

Imelda alleged that before and continuing through 1985, Marcos had beneficial ownership in Tan's companies which were consolidated in 60% of shares in Shareholdings, Inc. through Falcon Holdings Corp. (Falcon) and Supreme Holdings, Inc. (Supreme) in 1984. She further claimed that Tan, his family, and his close business associates held these shares in trust, which they recognized by their execution and delivery of blank deeds of assignment to Marcos.

42. Way before and continuing through 1985, former President Ferdinand Marcos (FM) had beneficial ownership, together with defendant Lucio C. Tan ("LT"), his family and associates, in the following operating companies, as well as the subsidiaries and companies which these operating companies have acquired or in turn invested in, to wit:

1. Himmel Industries, Inc.
2. Fortune Tobacco Corp.
3. Foremost Farms, Inc.
4. Asia Brewery, Inc.
5. Grandspan Development Corp.
6. Silangan Holdings, Inc.
7. Dominion Realty and Construction Corp.

43. FM had sixty percent (60%) beneficial ownership, in said companies, which beneficial interests were held in trust by LT personally and through his family members and business associates who appeared as the recorded stockholders of said companies.

44. Sometime in late 1980, FM and LT agreed to consolidate their ownership interests in the various businesses, in one holding company organized under the name Shareholdings, Inc.

44.1. To implement such consolidation, the record (or nominee), stockholders of the above-named seven (7) operating companies transferred their stockholdings in said companies to defendant Shareholdings, Inc. through separate Deeds of Sale of Shares of Stock.

44.2 In consideration, and in exchange, for such transfer of shares of the operating companies, Shareholdings, Inc. in turn, issued its shares of stock to the record (nominee) stockholders of the above-named operating companies.

44.3 In fine, the transferring record (nominee) stockholders of the operating companies became likewise the record (nominee) stockholders of the holding company, Shareholdings, Inc.

45. Having achieved the consolidation of their beneficial ownership interests, through the organization of the holding company, Shareholdings, Inc., FM and LT then agreed to structure the segregation of their beneficial ownership interests in the proportion of sixty percent (60%) for FM and forty percent (40%) for LT.

45.1 For this purpose, three ultimate holding companies were organized in the middle of 1984: Basic Holdings

Corp. ("Basic") Supreme Holdings, Inc. ("Supreme"), and Falcon Holdings Corp. ("Falcon"), with the intention of having Basic as the record owner of the beneficial interests of LT and his group (40%) and Supreme and Falcon, as the record owners of the aggregate beneficial interests of FM (60%).

45.2. In express acknowledgment of the fact that they merely held their recorded interest in Shareholdings, Inc. in trust for FM and LT, in the ratio of 60% - 40%, respectively, the record (nominee) stockholders of Shareholdings, Inc. then assigned their stockholdings in Shareholdings, Inc. to the newly organized ultimate holding companies as follows:

Stockholders

No. of Shares

% of Holdings

Basic Holdings Corp.

61,617,500

49.0%

Supreme Holdings, Inc.

31,437,500

25.0%

Falcon Holdings Corp.

31,437,500

25%

Lucio C. Tan

628,750

0.5%

Mariano Tanenglian

628,750

0.5%

TOTAL

125,750,000

100.0%

45.4 To make the shareholdings of Basic conform to the agreed 60%-40% ratio, Basic executed a Deed of Sale of Shares of Stock in favor of Supreme, transferring 9% of Shareholdings, Inc. shares held by the former in favor of the latter.

45.5 After Basic transferred 9% of its 49% stock ownership in Shareholdings, Inc., the stock ownership in Shareholdings, Inc. became as follows:

Stockholders

No. of Shares

% of Holdings

Basic Holdings Corp.

50,300,000

40.0%

Supreme Holdings, Inc.

42,755,000

34.0%

Falcon Holdings Corp.

31,437,500

25%

Lucio C. Tan

628,750

0.5%

Mariano Tanenglian

628,750

0.5%

TOTAL

125,750,000

100.0%

46. In express recognition of the beneficial ownership of FM, the incorporators of both Falcon and Supreme executed and delivered to FM blank Deeds of Assignment.

47. The assignment by the defendants-record stockholders of Shareholdings, Inc. of sixty percent (60%) of that company's then outstanding capital stock to Falcon and Supreme which are, in turn, beneficially owned entirely by FM, is an express acknowledgment by such defendants, including defendant LT, that they held such interests in trust for, and for the benefit of FM.

48. Defendant Imelda R. Marcos as surviving spouse and heir of FM and the Estate of Ferdinand E. Marcos, the latter being the legal successor--in-interest of FM repeatedly demanded from defendant LT and the other defendants-record stockholders of Shareholdings, Inc. that they perform or enforce the trust by delivering and recording the ownership of sixty percent (60%) of Shareholdings, Inc.'s outstanding capital stock to defendant Estate of Ferdinand E. Marcos, thru Falcon and Supreme, in accordance with the Deeds of Assignment.[22] (Emphasis supplied)

While Imelda's Amended Answer was disallowed by the Sandiganbayan on the ground that her cross-claims did

not involve the same transactions or acts as that of the principal cause of action in the Republic's case, the said pleading was nonetheless marked and formally offered as Exhibit M,[15] and was even admitted as evidence by the Sandiganbayan.

As borne out by the records, the Republic filed its Manifestation and Motion on January 3, 2012, praying, among others, that Imelda's Amended Answer, which was marked as Exhibit M,[15] be offered as evidence. The said Manifestation and Motion was granted by the Sandiganbayan in the Resolution, dated January 9, 2012. Hence, Imelda's Amended Answer was considered as part of the formally offered evidence of the Republic.[23] On January 12, 2012, the Sandiganbayan issued a Resolution admitting all the exhibits offered by the Republic.[24]

To my mind, having been duly admitted by the Sandiganbayan as evidence for the Republic, and considering further that it was in fact filed by Imelda, who is a party to this case, the statements contained therein should have been considered as admissions against Imelda's interest.

I further disagree with the ponencia's, position that Imelda should have been presented and cross-examined to authenticate the said pleading. Admissions against one's interest are those made by a party to a litigation or by one in privity with or identified in legal interest with such party, and are admissible whether or not the declarant is available as a witness.[25] Thus, since the statements in the Amended Answer are made by a party to a litigation, the rule excluding hearsay testimony, which rests mainly on the ground that there is no opportunity to cross-examine the person to whom statements or writings are attributed, does not apply.[26]

Moreover, there was no showing that any of the respondents opposed or objected to Imelda's Amended Answer when it was offered as evidence. The rule is that the failure to object to the offered evidence renders it admissible, and the court cannot, on its own, disregard such evidence. In other words, when a party failed to timely object, the evidence becomes part of the evidence in the case. Hence, all the parties are considered bound by any outcome arising from the offer of evidence properly presented.[27]

As well, the said pleading was never expunged from the records, nor was there any attempt on the part of the respondents to exclude the same. It must be emphasized that every court has the positive duty to consider and give due regard to everything on record that is relevant and competent to its resolution of the ultimate issue presented for its adjudication.[28]

Given the foregoing, it was therefore erroneous for the Sandiganbayan to have declared Imelda's Amended Answer as inadmissible in evidence.

(b) Marcos, Jr.'s testimony

Marcos, Jr. testified that Shareholdings, Inc. is a holding company for Marcos' interests in Tan's various businesses. He maintained that the shareholders on record of 60% of Shareholdings, Inc. are Falcon and Supreme, companies established before 1985 and which Marcos owned as evidenced by deeds of assignment of stocks indorsed in blank.

Q:

And what did you discuss with [Tan] in that meeting?

A:

He laid out the ownership structure of the different corporations that we had an interest in.

Q:

Did he tell you what those corporations are:

A:

Yes, he actually drew out of diagram, a piece of paper, explaining that there was a company Shareholdings, Inc., which was a holding corporation for all those corporations.

I will try to remember them all – Foremost Farms, Fortune Tobacco, Asia Brewery, Himmel Industries, Grandspan, Dominion – I might be missing some but basically, Shareholdings, Inc. was the holding corporation for all these corporations.

....

Q:

You mentioned Shareholdings, Inc. What is the relationship of Shareholdings, Inc. with the other corporations that you mentioned earlier?

A:

Shareholdings, Inc. was the holding company for the other companies that I mentioned. And the ownership of the Shareholdings, Inc. was divided at least initially, between three other companies.

This explanation that Mr. Tan gave me while we were at his office in Allied Bank.

Q:

Could you name the three other companies holding shares in the Shareholdings, Inc.

A:

Yes. The three companies that own Shareholdings, Inc. Basic, Supreme and Falcon.

Initially, Basic own 50% of Shareholdings, Inc.; Falcon had 25% and Supreme had 25%.

This changed I think in early 1985 when some shares of Basic were sold to Supreme, the net effect of which, Supreme owned 34% of Shareholdings, Inc.

Q:

Mr. Witness, do you have proof that Supreme Holdings, Inc. and Falcon Holdings, Inc. have interests in Shareholdings, Inc.?

A:

Well, there are documents that show Deeds of Sale of Shareholdings, Inc. to the three companies - Basic, Falcon and Supreme. There are also Deeds of Sale of certain percentage of Basic to Supreme.

This was relevant to us because we held the shares of stock in Falcon and in Supreme which were with us, endorsed in blank.

....

Q:

What is the connection of the Marcos family to Supreme Holdings?

A:

Supreme Holdings and Falcon Holdings belong to my father.

Q:

What document/s or proof do you have that the Falcon Holdings and Supreme Holdings belong to your father?

A:

He showed me the Deeds of Assignment in blank that were signed by the Share[h]olders of those corporation[s] Falcon and Supreme Holdings.

....

Q:

Now in connection with Lucio C. Tan, what did Rolando Ga[p]ud tell you?

A:

In case of Lucio Tan Corporations, I remember one thing that he told me that he was finalizing the 60/40 sharing between Lucio Tan and my father.

....

Q:

Apart from the statement of Mr. Rolando Ga[p]ud that he was finalizing the arrangement between your father and Lucio Tan on a 60/40 sharing arrangement. What else did Rolando Ga[p]ud tell you with respect to defendant Lucio Tan?

A:

Well, he was commenting on the discussions that were being made between Lucio Tan and my father; That Lucio Tan made the counter proposal that the sharing will be 50/50 rather than 60/40.

Q:

What did Rolando Ga[p]ud tell you with respect to this counter proposal of Lucio Tan to have a 50/50 arrangement?

A:

I remembered verbatim said that the Ilocano prevail.

Q:

What do you mean?

A:

My father's proposal for a 60/40 sharing was in the end what was followed.[29] (Emphasis supplied)

The above testimony narrated events which Marcos, Jr. personally observed. Accordingly, it is admissible, in so far as it pertains to the occurrence of Marcos, Jr.'s meetings with Tan and Gapud as independently relevant statements.[30]

The doctrine of independently relevant statements holds that conversations communicated to a witness by a third person may be admitted as proof that, regardless of their truth or falsity, they were actually made. Evidence as to the making of such statements is not secondary but primary, for in itself it constitutes a fact in issue or is

circumstantially relevant to the existence of such fact. Thus, the hearsay rule does not apply, and the statements are admissible as evidence.[31]

Thus, Marcos, Jr.'s testimony, covering these meetings and the information related to him, is admissible proof of the occurrence of such meetings and conversations, but not of the truth of the statements made therein.

(c) Tan's Written Disclosure

Tan confirmed the ownership structure of Shareholdings, Inc. He also admitted that in 1984 and 1985, the ownership of 60% of Shareholdings, Inc. shares were transferred to Falcon and Supreme which were incorporated in 1983. However, Tan disclaimed Marcos' ownership of 60% of its shares through Falcon and Supreme. He purportedly misled Marcos by delivering blank deeds of assignment, which were partly executed by the incorporators who were no longer the genuine and registered owners of the shares.

After the collapse of the mega business of his closest cronies (DISINI, SILVERIO AND CUENCA), upon the rapid deterioration of his health, and perhaps also on account of the inability of [Asia Brewery] to generate satisfactory income, Marcos began to press that he be given a share of [Shareholdings, Inc.]. [Tan] attempted to evade the unconscionable demand of Marcos by spending most of his time outside the Philippines. From 1983 to start of 1986, [Tan] spent most of his time abroad. Despite [Tan's] absence, Marcos kept up the pressure threatening the issuance of various tax decrees designed at crippling [Fortune Tobacco]. In fact, an ad valorem tax was slapped increasing the specific tax on cigarettes. The said tax immediately caused [Fortune Tobacco's] sales to drop by 35% while increasing the sales of La Suerte by 50%. [Tan] was compelled to choose from the following options:

- liquidate and/or siphon his assets and run abroad (like cronies who really did not build up their businesses with their own capital and hardwork), or,
- delay the takeover by trying to get around the persistent demands for issuance of certificates of stock in blank and hope for the best, but with a resolve to stay in the country in any eventuality.

[Tan] decided to stay in the country and took the second option.

On July 20, 1983, three holding companies were incorporated as follows: 1. Basic Holdings Corp. (BASIC)
2. Falcon Holdings Corp. (FALCON)
3. Supreme Holdings, Inc. (SUPREME)

On the same day, the incorporators of FALCON and SUPREME after paying their subscription in full sold and transferred 100% of their shares to a new group led by [Tan]. In the meantime, Marcos, through Rolando Gapud, persisted in his demand for a 50, then 51%, then 60% share in [Shareholdings Inc.]

On July 16, 1984, the three holding companies purchased 99% of the shares of the stockholders of [Shareholdings, Inc.], with the exception of [Tan] and Mariano Tanenglian (MT) who retained 0.5% each. On the same day the said three holding companies borrowed from the stockholders-vendors of [Shareholdings, Inc.] amounts equivalent to the respective purchase prices of the aforementioned shares on a 30-day term. Unable to pay the loan at maturity, the three companies sold back (on August 22, 1984) the said shares to the original vendors-stockholders in the same proportion as when purchased.

When the pressure became too heavy to bear and with Marcos already displaying fangs of anger, deeds of assignment signed in blank (without issuing much less surrendering the corresponding stock certificates) by the original incorporators of FALCON AND SUPREME as well as by [Tan] and [Mariano Tanenglian] for their respective shares which all together were supposed to have accounted for 51% of Shareholdings, Inc.'s shares were delivered to Gapud without revealing that:

- The original incorporators had already much earlier transferred and assigned their share to the new group led by [Tan] who were then the genuine and registered owners of the shares with the sole and exclusive authority to transfer the same;
- FALCON and SUPREME had already previously divested themselves of [Shareholdings, Inc.'s] shares having resold the same to the original owners;
- There could be no valid transfer of [Tan] and [Mariano Tanenglian] shares in [Shareholdings, Inc.] as their respective subscriptions had not been fully paid and to date remains unpaid.

Thereafter, Marcos demanded for an additional 9% to give himself supposedly a 60% control over Shareholdings, Inc. To give the semblance of compliance with said demand, it was made to appear that on Feb. 28, 1985, BASIC transferred the equivalent of 9% of [Shareholdings, Inc.'s] total shares to SUPREME without revealing that:

- BASIC had in fact already divested itself of all its [Shareholdings, Inc.'s] shares (as of August 22, 1984) in favor of its original owners;
- At any rate, no transfer could legally be effected since the subscriptions thereon have to date not yet been fully paid; and
- Moreover, the transfer document itself was ineffective because:
 - What was transferred were 11,317,500 shares of BASIC (not [Shareholdings, Inc.'s]) when BASIC only had a total of 1,000,000 paid up shares from a total authorized capital stock of 5,000,000 shares;
- The document was executed by some persons who are not stockholders of BASIC.[32] (Emphasis supplied)

Former Senator Jovita Salonga (Sen. Salonga) presented and identified Tan's Written Disclosure before the Sandiganbayan. However, his direct examination was not completed and neither was he cross-examined.[33] The Republic did not even present Tan to testify on or identify his own written disclosure, as his name is clearly absent from its list of witnesses. It relied solely on the testimony of Sen. Salonga to prove the contents thereof.[34] Hence, Tan's Written Disclosure is inadmissible for being hearsay.

(d) Gapud's Sworn Statement

Gapud detailed Marcos' acquisition of beneficial interest in Tan's businesses. He confirmed that in 1985, Tan ceded 60% of Shareholdings, Inc. to Marcos in exchange for several privileges and concessions which greatly benefitted the former's companies.

With particular reference, for example, to MR. LUCIO TAN, I know that Mr. Marcos and Mr. Lucio Tan had an understanding that Mr. Marcos owns 60% of Shareholdings, Inc. which owns shares of Fortune Tobacco, Asia Brewery, Allied Bank, and Foremost Farms. I was asked sometime in 1985 to formalize this arrangement. I went to Mr. Lucio Tan for that purpose. He tried to bargain by reducing the equity of Mr. Marcos to 50%. I told him that I was merely carrying out the instructions of Mr. Marcos and that if he wanted to bargain, he should take up the matter directly with Mr. Marcos. As a matter of fact, Mr. Lucio Tan, apart from the 60% equity of Mr. Marcos had been regularly paying, through Security Bank, Sixty Million Pesos (P60 million) to One Hundred Million Pesos (P100 million) to Mr. Marcos, in exchange for privileges and concessions Mr. Marcos had been giving him in relation to the businesses managed by Mr. Lucio Tan. xxx. Mr. Marcos and Mr. Tan were in partnership, and they derived great material benefits from that relationship.

....

... As far as I can remember, there was only one instance of what I can describe as a legitimate earning of Mr. Marcos, namely, the retirement benefits of Mr. Marcos coming from the Government Service Insurance

System (GSIS), but this was a very small insignificant amount – around One hundred thousand pesos (P100,000), or the equivalent today of about \$5,000 – which was given to him, through the Security Bank, when he reached the age of 65.[35] (Emphasis supplied)

Gapud executed several sworn statements and/or was deposed in relation to other Marcos ill-gotten wealth cases. However, none of these cases specifically and/or solely relied on the sworn statement subject of this case.[36]

The Republic's failure to put Gapud on the stand is fatal to its case as it rendered his sworn statement inadmissible for being hearsay.[37] Notably, in *Republic v. Marcos-Manotok*,[38] the Court applied the doctrine that affidavits whose affiants were not presented as witnesses are classified as hearsay because these are not generally prepared by the affiants and the adverse party is deprived of the opportunity to cross-examine them. Even Sen. Salonga's presentation and identification of Gapud's Sworn Statement was futile, because he was not cross-examined.

In summary, two of four of the Republic's principal pieces of evidence are inadmissible. While they may be relevant in proving the Republic's claims, they are excluded and inadmissible for being hearsay.

The details of the transfer of Tan's interest to Marcos are found in Marcos, Jr.'s Testimony and Gapud's Sworn Statement.

In his testimony, Marcos, Jr. explained the ownership structure of Shareholdings, Inc. and categorically declared that two of its parent companies (Supreme and Falcon), with 60% ownership, belonged to Marcos. When asked for proof, he said that Marcos showed him blank Deeds of Assignment executed by the shareholders of Supreme and Falcon.[39] Imelda's Amended Answer alleged the same, and this was corroborated in Gapud's Sworn Statement. Gapud disclosed that in addition to the P60 to P100 million which Tan regularly paid Marcos, the 60% equity in Shareholdings, Inc. was in exchange for several governmental privileges and concessions.

Considering that Tan's Written Disclosure and Gapud's Sworn Statement are inadmissible, although Marcos, Jr.'s testimony is admissible as independently relevant and Imelda's Amended Answer is an admission against her interest, it does not rise to the level of preponderance to establish the Republic's claims.

With the foregoing, I opine that the Republic failed to discharge its burden of proving, by a preponderance of evidence, that Marcos acquired 60% of Shareholdings, Inc. shares, sometime during his term as President between 1983 and 1985, by taking undue advantage of his office.

The Court has repeatedly acknowledged the Republic's tedious job in gathering evidence of ill-gotten wealth, which is mostly cleverly concealed and not easily apparent and accessible given the nature of its illegality. Nonetheless, the Court must uphold the rules of evidence in the prosecution of ill-gotten wealth cases as they are founded on the bedrock principle of due process of law.

[1] 524 Phil. 232 (2006).

[2] Ponencia, pp. 9 & 13-14.

[3] Id. at 18-37.

[4] Id. at 33-86.

[5] Central Bank Monetary Board Resolution No. 675 (1977).

[6] Central Bank Monetary Board Resolution No. 677 (1977).

[7] *General Bank & Trust Co. v. Central Bank of the Philippines*, supra.

- [8] Rollo (G.R. No. 203592), p. 4128.
- [9] Ponencia, pp. 33-34; rollo (G.R. No. 203592), pp. 4151-4155.
- [10] Vda. De Cruz v. Carriaga, Jr., 256 Phil. 72 (1989).
- [11] These consist of two aircrafts and shares of stocks in 19 companies, including Shareholdings, Inc. See ponencia, p. 9.
- [12] Ponencia, p. 15.
- [13] Id. at 41-43.
- [14] Id. at 42.
- [15] Entitled "DEFINING THE JURISDICTION OVER CASES INVOLVING THE ILL-GOTTEN WEALTH OF FORMER PRESIDENT FERDINAND E. MARCOS, MRS. IMELDA R. MARCOS, MEMBERS OF THEIR IMMEDIATE FAMILY, CLOSE RELATIVES, SUBORDINATES, CLOSE AND/OR BUSINESS ASSOCIATES, DUMMIES, AGENTS AND NOMINEES," approved on May 7, 1986.
- [16] Republic v. Tuvera, 545 Phil. 21 (2007).
- [17] PNOC Shipping and Transport Corp. v. Court of Appeals, 358 Phil. 38 (1998).
- [18] RULES OF COURT, Rule 128, sec. 3.
- [19] People v. Turco, Jr., 392 Phil. 498 (2000).
- [20] Phil. Free Press Inc. v. Court of Appeals, 510 Phil. 411 (2005).
- [21] Republic v. Sandiganbayan, 678 Phil. 358 (2011).
- [22] Rollo (G.R. No. 203592), pp. 1307-1310.
- [23] Id. at 140-141.
- [24] Id. at 141.
- [25] Unchuan v. Lozada, 603 Phil. 410, 424-425 (2009).
- [26] People v. Catacutan y Mortera, G.R. No. 260731, February 13, 2023.
- [27] Advance Paper Corp. v. Arma Traders Corp., 723 Phil. 401 (2013).
- [28] CIR v. Jerry Ocier, 843 Phil. 573 (2018).
- [29] Rollo (G.R. No. 203592), pp. 4013-4017; TSN, February 13, 2008, pp. 41 and 68-69.
- [30] See People v. Umapas, 807 Phil. 975 (2017) and Country Bankers Insurance Corp. v. Lianga Bay & Community Multi-Purpose Cooperative, Inc., 425 Phil. 511 (2002).
- [31] XXX v. People, G.R. No. 241390, January 13, 2021, citing Gubaton v. Amador, 835 Phil. 825, 833 (2018).
- [32] Rollo (G.R. No. 203592), pp. 839-848.
- [33] Ponencia, pp. 48-49.
- [34] Rollo (G.R. No. 203592), pp. 58-65.

[35] Id. at 1494.

[36] *Disini v. Republic*, G.R. No. 205172, June 15, 2021; *Estate of Marcos v. Republic (Resolution)*, 803 Phil. 524 (2017); *Republic v. Sandiganbayan*, 733 Phil. 196 (2014); *Republic v. Marcos-Manotok*, 681 Phil. 380 (2012); *Republic v. Sandiganbayan*, 678 Phil. 358 (2011); *Yuchengco v. Sandiganbayan*, 515 Phil. 1 (2006); *Republic v. Estate of Hans Menzi*, 512 Phil. 425 (2005).

[37] *People's Bank and Trust Co. v. Leonidas*, 283 Phil. 991 (1992).

[38] 681 Phil. 380 (2012).

[39] TSN, February 13, 2008, pp. 41 and 68-69.

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