

FRANCISCO S. TANTUICO, JR., PETITIONER, VS. REPUBLIC OF THE PHILIPPINES, PRESIDENTIAL COMMISSION ON GOOD GOVERNMENT, MATEO A. T. CAPARAS, AND THE SANDIGAN-BAYAN, RESPONDENTS.*G.R. No. 89114. December 02, 1991*

Ponente: PADILLA, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-89114/>**PADILLA, J.:**

In this petition for certiorari, mandamus and prohibition with a prayer for the issuance of a writ of preliminary injunction and/or restraining order, the petitioner seeks to annul and set aside the resolution of the Sandiganbayan, dated 21 April 1989, denying his motion for a bill of particulars as well as its resolution, dated 29 May 1989, which denied his motion for reconsideration; to compel the respondent PCGG to prepare and file a bill of particulars, or that said respondent be ordered to exclude petitioner as defendant in Civil Case No. 0035 should they fail to submit the said bill of particulars; and to enjoin the respondent Sandiganbayan from further proceeding against petitioner until the bill of particulars is submitted, claiming that the respondent Sandiganbayan acted with grave abuse of discretion amounting to lack of jurisdiction in promulgating the aforesaid resolutions and that there is no appeal, nor any plain, speedy and adequate remedy for him in the ordinary course of law other than the present petition.

As prayed for, this Court issued on 1 August 1989 a temporary restraining order "effective immediately and continuing until further orders from this Court, ordering the respondent Sandiganbayan to CEASE and DESIST from further proceeding in Civil Case No. 0035 (PCGG 35), entitled "Republic of the Philippines vs. Benjamin (Kokoy) Romualdez, et al." pending before it.[1]

The antecedents are as follows:

On 31 July 1987, the Republic of the Philippines, represented by the PCGG, and assisted by the Office of the Solicitor General, filed with the Sandiganbayan Civil Case No. 0035, entitled "Republic of the Philippines vs. Benjamin (Kokoy) Romualdez, et al." for reconveyance, reversion, accounting, restitution and damages.[2]

The principal defendants in the said Civil Case No. 0035 are Benjamin (Kokoy) Romualdez, Ferdinand E. Marcos and Imelda R. Marcos.

Petitioner Francisco S. Tantuico, Jr. was included as defendant in Civil Case No. 0035 on the theory that: (1) he acted in unlawful concert with the principal defendants in the misappropriation and theft of public funds, plunder of the nation's wealth, extortion, blackmail, bribery, embezzlement and other acts of corruption, betrayal of public trust and brazen abuse of power;[3] (2) he acted as dummy, nominee or agent, by allowing himself to be incorporator, director, board member and/or stockholder of corporations beneficially held and/or controlled by the principal defendants;[4] (3) he acted singly or collectively, and/or in unlawful concert with one another, in flagrant breach of public trust and of their fiduciary obligations as public officers, with gross and scandalous abuse of right and power and in brazen violation of the Constitution and laws of the Philippines, embarked upon a systematic plan to accumulate ill-gotten wealth;[5] (4) he (petitioner) taking undue advantage of his position as

Chairman of the Commission on Audit and with grave failure to perform his constitutional duties as such Chairman, acting in concert with defendants Ferdinand E. Marcos and Imelda R. Marcos, facilitated and made possible the with-drawals, disbursements and questionable use of government funds;[6] and (5) he acted as dummy, nominee and/or agent by allowing himself to be used as instrument in accumulating ill-gotten wealth through government concessions, orders and/or policies prejudicial to plaintiff, or to be incorporator, director, or member of corporations beneficially held and/or controlled by defendants Ferdinand E. Marcos, Imelda R. Marcos, Benjamin (Kokoy) Romualdez and Juliette Gomez Romualdez in order to conceal and prevent recovery of assets illegally obtained.[7]

On 11 April 1988, after his motion for production and inspection of documents[8] was denied by respondent court in its resolution[9] dated 9 March 1988, petitioner filed a Motion for a Bill of Particulars,[10] alleging inter alia that he is sued for acts allegedly committed by him as (a) a public officer-Chairman of the Commission on Audit, (b) as a private individual, and (c) in both capacities, in a complaint couched in too general terms and shorn of particulars that would inform him of the factual and legal basis thereof, and that to enable him to understand and know with certainty the particular acts allegedly committed by him and which he is now charged with culpability, it is necessary that plaintiff furnish him the particulars sought therein relative to the averments in paragraphs 2, 9(a), 15, 7 and 17 of the Second Amended Complaint so that he can intelligently prepare his responsive pleading and prepare for trial. The particulars sought for in the said motion are as follows:

"a. Relative to the averments in paragraphs 2, 9(a) and 15 of the Second Amended Complaint:

- i) What are the dates of the resolutions (if on appeal) or the acts (if otherwise) issued or performed by herein defendant which allowed the facilitation of, and made possible the, withdrawals, disbursements and questionable use of government funds;
- ii) What ministries or Departments, offices or agencies of the government were involved in these questionable use of government funds;
- iii) What are the names of the auditors who had the original audit jurisdiction over the said withdrawals, disbursements and questionable use of government funds;
- iv) How much government funds were involved in these questionable disbursements, individually and in totally?
- v) Were the disbursements brought to herein defendant for action on pre-audit, post-audit or otherwise or where they initiated and/or allowed release by herein defendant alone, without them undergoing usual governmental audit procedures, or in violation thereof?
- vi) What were herein defendant's other acts or omission or participation in the matter of allowing such disbursements and questionable use of government funds, if any?

b. Relative to paragraphs 7 and 17 of the Second Amended Complaint:

- i) In what particular contract, dealing, transaction and/or relationship of any nature of Ferdinand E. Marcos, Imelda R. Marcos, Juliette Gomez Romualdez or Benjamin T. Romualdez did herein defendant act as dummy, nominee or agent? Please specify the dealings, the dates, the corporations or entities involved, the government offices involved and the private and public documents, if any, showing herein defendant's complicity, since he is not aware of any such instance. More basically, please specify whether the defendant is a dummy or nominee or agent and of which corporation or transaction?
- ii) What particular government concession, order and/or policy obtained by Ferdinand E. Marcos, or Imelda R. Marcos, or Juliette Gomez Romualdez and/or Benjamin T. Romualdez allowed them either singly or jointly to

accumulate ill-gotten wealth by using herein defendant as instrument for their accomplishment. Likewise please identify the nature of the trans-actions, the dates and the document showing complicity, on the part of herein defendant; he is not aware of any such instance.

iii) Please specify the name or deno-minate the particular government concession, order and/or policy prejudicial to the interest of the government which was obtained by either of the above-named four defendants through the participation of herein defendant as a dummy, nominee or agent of herein defendant. Please likewise identify the government office involved, the dates and other particulars, like-wise defendant is not aware of any such instance.

iv) Please name and specify the corporation whether stock or non-stock, whether government or private, beneficially held and/or controlled by either of the four above defendants, where herein defendant is an incorporator, director or member and where his inclusion as such incorporator, director or member of the corporation was made in order to conceal and prevent recovery of assets illegally obtained by the aforementioned four defendants, how many shares are involved and what are their values, how and when have they been acquired."

The Solicitor General, for and in behalf of respondents (except the respondent Sandiganbayan), opposed the motion.[11] After the petitioner had filed his reply[12] thereto, the respondent Sandiganbayan promulgated on 21 April 1990 a resolution[13] denying the petitioner's motion for a bill of particulars on the ground that the particulars sought by petitioner are evidentiary in nature, the pertinent part of which resolution reads, as follows:

"We are of the considered opinion that the allegations in the Expanded Complaint are quite clear and sufficient enough for defendant-movant to know the nature and scope of the causes of action upon which plaintiff seeks relief. They provide the factual scenario which, coupled with other allegations set forth in the 'Common Averments' and further specified in the 'Specific Averments' of herein defendant-movant and his co-defendants' illegal acts which are within defendant-movant's peculiar and intimate knowledge as a government official and corporate executive, will enable him to make the proper admission, denials or qualifications, set out affirmative and/or special defenses and thereafter prepare for trial. Evidentiary facts or matters are not essential in the pleading of the cause of action, nor to details or probative value or particulars of evidence by which these material evidence are to be established (*Remitere vs. Yulu*, 6 SCRA 251). The matters which he seeks are evidentiary in nature and, being within his intimate or personal knowledge may be denied or admitted by him or if deemed necessary, be the subject of other forms of discovery." [14]

Petitioner moved for reconsideration[15] but this was denied by respondent Sandiganbayan in its resolution[16] dated 29 May 1990.

Hence, petitioner filed the present petition.

The principal issue to be resolved in the case at bar is whether or not the respondent Sandiganbayan acted with grave abuse of discretion in issuing the disputed resolutions.

Petitioner argues that the allegations of the Second Amended Complaint in Civil Case No. 0035 (PCGG 35) pertaining to him state only conclusions of fact and law, inferences of facts from facts not pleaded and mere presumptions, not ultimate facts as required by the Rules of Court.

On the other hand, the respondent Sandiganbayan, by and through the Solicitor General, contends that the essential elements of an action for recovery of ill-gotten wealth are: (1) an accumulation of assets, properties and other possessions; (2) of former President Ferdinand E. Marcos, Mrs. Imelda Romualdez Marcos, their close relatives, subordi-nates, business associates, dummies, agents, or nominees; and (3) whose value is out of proportion to their known lawful income, and that the ultimate facts establishing these three (3) essential elements

of an action for recovery of ill-gotten wealth are sufficiently alleged in the complaint. Hence, petitioner is not entitled to a bill of particulars.

A complaint is defined as a concise statement of the ultimate facts constituting the plaintiff's cause or causes of action.[17] Like all other pleadings allowed by the Rules of Court,[18] the complaint shall contain in a methodical and logical form a plain, concise and direct statement of the ultimate facts on which the plaintiff relies for his claim, omitting the statement of mere evidentiary facts.[19] Its office, purpose or function is to inform the defendant clearly and definitely of the claims made against him so that he may be prepared to meet the issues at the trial. The complaint should inform the defendant of all the material facts on which the plaintiff relies to support his demand; it should state the theory of a cause of action which forms the bases of the plaintiff's claim of liability.[20]

The rules on pleading speak of two (2) kinds of facts: the first, the "ultimate facts", and the second, the "evidentiary facts." In *Remitere vs. Vda. de Yulo*,[21] the term "ultimate facts" was defined and explained as follows:

"The term 'ultimate facts' as used in Sec. 3, Rule 3 of the Rules of Court, means the essential facts constituting the plaintiff's cause of action. A fact is essential if it cannot be stricken out without leaving the statement of the cause of action insufficient. x x x" (Moran, Rules of Court, Vol. 1, 1963 ed., p. 213).

"Ultimate facts are important and substantial facts which either directly form the basis of the primary right and duty, or which directly make up the wrongful acts or omissions of the defendant. The term does not refer to the details of probative matter or particulars of evidence by which these material elements are to be established. It refers to principal, determinate, constitutive facts, upon the existence of which, the entire cause of action rests."

while the term "evidentiary fact" has been defined in the following tenor:

"Those facts which are necessary for determination of the ultimate facts; they are the premises upon which conclusions of ultimate facts are based. *Womack v. Industrial Comm.*, 168 Colo. 364, 451 P.2d 761, 764. Facts which furnish evidence of existence of some other fact." [22]

Where the complaint states ultimate facts that constitute the three (3) essential elements of a cause of action, namely: (1) the legal right of the plaintiff, (2) the correlative obligation of the defendant, and (3) the act or omission of the defendant in violation of said legal right, the complaint states a cause of action, otherwise, the complaint must succumb to a motion to dismiss on that ground of failure to state a cause of action.[23] However, where the allegations of the complaint are vague, indefinite, or in the form of conclusions, the proper recourse would be, not a motion to dismiss, but a motion for a bill of particulars.[24] Thus, Section 1, Rule 12 of the Rules of Court provides:

"Before responding to a pleading or, if no responsive pleading is permitted by these rules, within ten (10) days after service of the pleading upon him, a party may move for a more definite statement or for a bill of particulars of any matter which is not averred with sufficient definiteness or particularity to enable him properly to prepare his responsive pleading or to prepare for trial. Such motion shall point out the defects complained of and the details desired."

In this connection, the following allegations have been held as mere conclusions of law, inferences from facts not alleged or opinion of the pleader: (a) the allegations that defendants-appellees were "actuated by ulterior motives, contrary to law and morals, with abuse of their advantageous position as employers, in gross and evident bad faith and without giving plaintiff his due, wilfully, maliciously, unlawfully, and in summary and arbitrary manner", are conclusions of law, inferences from facts not alleged and expressions of opinion unsupported by factual premises;[25] (b) an allegation of duty in terms unaccompanied by a statement of facts showing the existence of

the duty, is a mere conclusion of law, unless there is a relation set forth from which the law raises the duty;[26] (c) an averment that an act was "unlawful" or "wrongful" is a mere legal conclusion or opinion of the pleader;[27] (d) the allegation that there was a violation of trust was plainly a conclusion of law, for "a mere allegation that it was the duty of a party to do this or that, or that he was guilty of a breach of duty, is a statement of a conclusion, not of a fact";[28] (e) an allegation that a contract is valid or void, is a mere conclusion of law;[29] (f) the averment in the complaint that "defendant usurped the office of Senator of the Philippines" is a conclusion of law -- not a statement of fact --- inasmuch as the particular facts on which the alleged usurpation is predicated are not set forth therein;[30] and (g) the averment that "with intent of circumventing the constitutional prohibition that 'no officer or employee in the civil service shall be removed or suspended except for cause as provided by law', respondents maliciously and illegally for the purpose of political persecution and political vengeance, reverted the fund of the salary item x x x and furthermore eliminated or abolished the said position effective 1 July 1960" is a mere conclusion of law unsupported by factual premises.[31]

Bearing in mind the foregoing rules on pleading and case law, let us now examine the allegations of the Second Amended Complaint against the petitioner to determine whether or not they were averred with sufficient definiteness or particularity to enable him properly to prepare his responsive pleading or to prepare for trial. If the allegations of the said complaint are vague, indefinite or in the form of conclusions, then petitioner is entitled to a bill of particulars.

The allegations in the complaint pertaining to the alleged culpable and unlawful acts of herein petitioner are quoted hereunder as follows:

"GENERAL AVERMENTS

OF

DEFENDANTS' ILLEGAL ACTS

"9. (a) From the early years of his presidency, Defendant Ferdinand E. Marcos took undue advantage of his powers as President. All through-out the period from September 21, 1972 to February 25, 1986, he gravely abused his powers under martial law and ruled as Dictator under the 1973 Marcos-promulgated Constitution. Defendant Ferdinand E. Marcos, together with other Defendants, acting singly or collectively, and/or in unlawful concert with one another, in flagrant breach of public trust and of their fiduciary obligations as public officers, with gross and scandalous abuse of right and power and in brazen violation of the Constitution and laws of the Philippines, embarked upon a systematic plan to accumulate ill-gotten wealth;

(b) Upon his unfettered discretion, and sole authority, for the purpose of implementing the plan referred to above, Defendant Ferdinand E. Marcos ordered and caused, among others:

(b-i) the massive and unlawful withdrawal of funds, securities, reserves and other assets and property from the National Treasury, the Central Bank, the other financial institutions and depositories of Plaintiff;

(b-ii) the transfer of such funds, securities, reserves and other assets and property to payees or transferees of his choice and whether and in what manner such transactions should be recorded in the books and records of these institutions and other depositories of Plaintiff;

10. Among others, in furtherance of the plan and acting in the manner referred to above, in unlawful concerted with one another and with gross abuse of power and authority, Defendants Ferdinand E. Marcos and Imelda R. Marcos;

x x x x x x

- b. Converted government-owned and controlled corporations into private enterprises and appropriated them and/or their assets for their own benefit and enrichment;
- c. Awarded contracts with the Government to their relatives, business associates, dummies, nominees, agents or persons who were beholden to said Defendants, under terms and conditions grossly and manifestly disadvantageous to the Government;
- d. Misappropriated, embezzled and/or converted to their own use funds of Government financial institutions, particularly those allocated to the Office of the President and other ministries and agencies of the Government including, those conveniently denominated as intelligence or counter-insurgency funds, as well as funds provided to Plaintiff by foreign countries, multinationals, public and private financial institutions;
- e. Raided Government financial and banking institutions of billions of pesos in loans, guarantees and other types of financial accommodations to finance dubious and/or overpriced projects of favored corporations or individuals and misused and/or converted to their own use and benefit deposits found therein to the financial ruin of the Plaintiff and the Filipino people;

xxx xxx

- h. Sold, conveyed and/or transferred Government property, real and/or personal, to corporations beneficially held and/or controlled by them or through third persons, under such terms and conditions grossly and manifestly disadvantageous to the Government;
- i. Engaged in other illegal and improper acts and practices designed to defraud Plaintiff and the Filipino people, or otherwise misappropriated and converted to their own use, benefit and enrichment the lawful patrimony and revenues of Plaintiff and the Filipino people.

11. Among the assets acquired by Defendants in the manner above-described and discovered by the Commission in the exercise of its official responsibilities are funds and other property listed in Annex 'A' hereof and made an integral part of this Complaint.

12. Defendants, acting singly or collectively, and/or in unlawful concert with one another, for the purpose of preventing disclosure and avoiding discovery of their unmitigated plunder of the National Treasury and of their other illegal acts, and employing, the services of prominent lawyers, accountants, financial experts, business-men and other persons, deposited, kept and invested funds, securities and other assets estimated at billions of US dollars in various banks, financial institutions, trust or investment companies and with persons here and abroad.

V

SPECIFIC AVERMENTS OF DEFENDANTS' ILLEGAL ACTS

x x x x x

14. Defendants Benjamin (Kokoy) Romualdez and Juliette Gomez Romualdez, acting by themselves and/or in unlawful concert with Defendants Ferdinand E. Marcos and Imelda R. Marcos, and taking undue advantage of their relationship, influence and connection with the latter Defendant spouses, engaged in devices, schemes and stratagems to unjustly enrich themselves at the expense of Plaintiff and the Filipino people, among others:

(a) obtained, with the active collaboration of Defendants Senen J. Gabaldon, Mario D. Camacho, Mamerto Nepomuceno, Carlos J. Valdes, Delia Tantuico, Jovencio F. Cinco, Cesar C. Zalamea and Francisco Tantuico,

control of some of the biggest business enterprises in the Philippines, such as, the Manila Electric Company (MERALCO), Benguet Consolidated Mining Corporation (BENGUET) and the Pilipinas Shell Corporation, by employing devious financial schemes and techniques calculated to require the massive infusion and hemorrhage of government funds with minimum or negligible 'cash?out' from Defendant Benjamin Romualdez. The following are the general features of a classic take-over bid by Defendant Benjamin Romualdez:

X X X X X X

(ii) The shares were held in the name of corporations which were organized soldely (sic) for the purpose of holding title to them. These corporations did not have any operating history nor any financial track record. Projected cash flow consisted almost solely of future and contingent dividends on the shares held. In spite of these limitations, these companies enjoyed excellent credit lines from banks and other financial institutions, as evidenced by the millions of pesos in loan and guarantees outstanding in their books;

(iii) The 'seed money' used to wrest control came from government and taxpayers' money in the form of millions of pesos in loans, guarantees and standby L/C's from government financial institutions, notably the DBP and PNB, which were in turn rediscounted with the Central Bank;

(iv) Additional funding was provided from the related interests; and

(v) This intricate (sic) skein of inter-corporate dealings was controlled and administered by an exclusive and closely knit group of interlocking directorate and officership.

X X X X X X

(g) Secured, in a veiled attempt to justify MERALCO's anomalous acquisition of the electric cooperatives, with the active collaborations of Defendants Cesar E. A. Virata, Juanito R. Remulla, Isidro Rodriguez, Jose C. Hernandez, Pedro Dumol, Ricardo C. Galing, Francisco C. Gatmaitan, Mario D. Camacho and the rest of the Defendants, the approval by Defendant Ferdinand E. Marcos and his cabinet of the so-called 'Three-Year Program for the Extension of MERALCO's Services to Areas Within The 60-Kilometer Radius of Manila', which required government capital investment amounting to millions of pesos;

xxx xxx

(1) Caused the National Investment and Development Corporation (NIDC) to dispose of its interest in the oil plants located in Tanauan, Leyte, which were owned and operated by its subsi-diary, the NIDC Oil Mills, Inc., in favor of the SOLOIL, Inc., a corporation beneficially held and controlled by Defendant Benjamin Romualdez, with the active collaboration of Defendants Jose Sandejas, Francisco Tantuico and Dominador G. Ingco, under terms and conditions grossly dis-advantageous to NIDC, to the grave and irreparable damage of Plaintiff and the Filipino people.

15. Defendant Francisco Tantuico, taking undue advantage of his position as Chairman of the Commission on Audit and with grave failure to perform his constitutional duties as such Chair-man, acting in concert with Defendants Ferdinand E. Marcos and Imelda R. Marcos, facilitated and made possible the withdrawals, disbursements and questionable use of government funds as stated in the foregoing paragraphs to the grave and irreparable damage and injury of Plaintiff and the entire Filipino people.

X X X X X X

17. The following Defendants acted as dummies, nominees and/or agents by allowing themselves (i) to be used as instruments in accumulating ill-gotten wealth through government concessions, orders and/or policies prejudicial to Plaintiff, or (ii) to be incorporators, directors, or members of corporations held and/or controlled by Defendants Ferdinand E. Marcos, Imelda R. Marcos, Benjamin (Kokoy) Romualdez, and Juliette Gomez

Romualdez in order conceal (sic) and prevent recovery of assets illegally obtained: Francisco Tantuico x x x.

17. a. THE NAMES OF SOME OF THE CORPORATIONS BENEFICALLY HELD AND/OR CONTROLLED BY THE DEFENDANTS BENJAMIN (KOKOY) ROMUALDEZ, FERDINAND E. MARCOS AND IMELDA R. MARCOS WHERE THE POSITIONS/PARTICIPATIONS AND/OR INVOLVEMENTS OF SOME OF THE DEFENDANTS AS DUMMIES, NOMINEES AND/OR AGENTS ARE INDICATED ARE LISTED IN ANNEX 'B' HEREOF AND MADE AN INTEGRAL PART OF THIS COMPLAINT.

x x x x x

18. The acts of Defendants, singly or collectively, and/or in unlawful concert with one another, constitute gross abuse of official position and authority, flagrant breach of public trust and fiduciary obligations, acquisition of unexplained wealth, brazen abuse of official position and authority, flagrant breach of public trust and fiduciary obligations, acquisition of unexplained wealth, brazen abuse of right and power, unjust enrichment, violation of the Constitution and laws of the Republic of the Philippines, to the grave and irreparable damage of Plaintiff and the Filipino people. (Under-scoring supplied)

Let us now analyze and discuss the allegations of the complaint in relation to which the petitioner pleads for a bill of particulars.

As quoted above, paragraph 9(a) of the complaint alleges that "Defendant Ferdinand E. Marcos, together with other Defendants, acting singly or collectively, and/or in unlawful concert with one another, in flagrant breach of public trust and of their fiduciary obligations as public officers, with gross and scandalous abuse of right and power and in brazen violation of the Constitution and laws of the Philippines, embarked upon a systematic plan to accumulate ill-gotten wealth." In the light of the rules on pleading and case law cited above, the allegations that defendant Ferdinand E. Marcos, together with the other defendants "embarked upon a systematic plan to accumulate ill-gotten wealth" and that said defendants acted "in flagrant breach of public trust and of their fiduciary obligations as public officers, with gross and scandalous abuse of right and in brazen violation of the Constitution and laws of the Philippines", are conclusions of law unsupported by factual premises.

Nothing is said in the complaint about the petitioner's acts in execution of the alleged "systematic plan to accumulate ill-gotten wealth", or which are supposed to constitute "flagrant breach of public trust", "gross and scandalous abuse of right and power", and "violations of the Constitution and laws of the Philippines". The complaint does not even allege what duties the petitioner failed to perform, or the particular rights he abused.

Likewise, paragraph 15 avers that "defendant Francisco Tantuico, taking undue advantage of his position as Chairman of the Commission on Audit and with grave failure to perform his constitutional duties as such Chairman, acting in concert with Defendants Ferdinand E. Marcos and Imelda R. Marcos facilitated and made possible the withdrawals, disbursements and questionable use of government funds as stated in the foregoing paragraphs to the grave and irreparable damage and injury of Plaintiff and the entire Filipino people." In like manner, the allegation that petitioner "took undue advantage of his position as Chairman of the Commission on Audit," that he "failed to perform his constitutional duties as such Chairman," and acting in concert with Ferdinand E. Marcos and Imelda R. Marcos, "facilitated and made possible the withdrawals, disbursements, and questionable use of government funds as stated in the fore-going paragraphs, to the grave and irreparable damage and injury of plaintiff and the entire Filipino people", are mere conclusions of law. Nowhere in the complaint is there any allegation as to how such duty came about, or what petitioner's duties were, with respect to the alleged withdrawals and disbursements or how petitioner facilitated the alleged withdrawals, disbursements, or conversion of public funds and properties, nor an allegation from where the withdrawals and disbursements came from, except for a general allegation that they came from the national treasury. On top of that, the complaint does

not even contain any factual allegation which would show that whatever withdrawals, disbursements, or conversions were made, were indeed subject to audit by the COA.

In this connection, it may well be stated that the Commission on Audit (COA) is an independent, constitutional commission, which has no power or authority to withdraw, disburse, or use funds and property pertaining to other government offices or agencies. This is done by the agency or office itself, the chief or head of which is primarily and directly responsible for the funds and property pertaining to such office or agency.[32] The COA is merely authorized to audit, examine and settle accounts of the various government offices or agencies, and this task is performed not by the Chairman of the COA but by the COA auditors assigned to the government office or agency subject to COA audit.

Thus, in each agency of the government, there is an auditing unit headed by an auditor, whose duty is to audit and settle the accounts, funds, financial transactions, and resources of the agency under his audit jurisdiction.[33] The decision of the auditor is appealable to the Regional Director,[34] whose decision, in turn, is appealable to the COA Manager.[35] Any party dissatisfied with the decision of the COA Manager may bring the matter on appeal to the Commission proper, a collegiate body exercising quasi-judicial functions, composed of three (3) COA Commissioners, with the COA Chairman as presiding officer.[36] It is only at this stage that the COA Chairman would come to know of the matter and be called upon to act on the same, and only if an aggrieved party brings the matter on appeal.

In other words, the Chairman of the COA does not participate in or personally audit all disbursements and withdrawals of government funds, as well as transactions involving government property. The averments in the particular paragraph of the complaint merely assume that petitioner participated in or personally audited all disbursements and withdrawals of government funds, and all transactions involving government property. Hence, the alleged withdrawals, disbursements and questionable use of government funds could not have been, as held by respondent Sandiganbayan, "within the peculiar and intimate knowledge of petitioner as Chairman of the COA."

The complaint further avers in paragraph 17 that "(t)he following Defendants acted as dummies, nominees and/or agents by allowing themselves (i) to be instruments in accumulating ill-gotten wealth through government concessions, order and/or policies prejudicial to Plaintiff, or (ii) to be incorporators, directors, or members of corporations beneficially held and/or controlled by Defendant Ferdinand E. Marcos, Imelda R. Marcos, Benjamin (Kokoy) T. Romualdez and Juliette Gomez Romualdez in order to conceal and prevent recovery of assets illegally obtained: Francisco Tantuico x x x." [37] Again, the allegation that petitioner acted as dummy, nominee, or agent by allowing himself "to be used as instrument in accumulating ill-gotten wealth through government concessions, orders and/or policies prejudicial to Plaintiff" or "to be (an) incorporator, director, or member of corporations beneficially held and/or controlled" by the Marcoses and Romualdezes, is a conclusion of law without factual basis.

The complaint does not contain any allegation as to how petitioner became, or why he is perceived to be, a dummy, nominee or agent. Besides, there is no averment in the complaint how petitioner allowed himself to be used as instrument in the accumulation of ill-gotten wealth, what the concessions, orders and/or policies prejudicial to plaintiff are, why they are prejudicial, and what petitioner had to do with the granting, issuance, and or formulation of such concessions, orders, and/or policies. Moreover, Annex "A" of the complaint lists down sixty-one (61) corporations which are supposed to be beneficially owned or controlled by the Marcoses and Romualdezes. However, the complaint does not state which corporations petitioner is supposed to be a stockholder, director, member, dummy, nominee and/or agent. More significantly, the petitioner's name does not even appear in Annex "B" of the complaint, which is a listing of the alleged "Positions and Participations of Some Defendants".

The allegations in the complaint, above-referred to, pertaining to petitioner are, therefore, deficient in that they merely articulate conclusions of law and presumptions unsupported by factual premises. Hence, without the particulars prayed for in petitioner's motion for a bill of particulars, it can be said the petitioner can not intelligently prepare his responsive pleading and for trial.

Furthermore, the particulars prayed for, such as, names of persons, names of corporations, dates, amounts involved, a specification of property for identification purposes, the particular transactions involving withdrawals and disbursements, and a statement of other material facts as would support the conclusions and inferences in the complaint, are not evidentiary in nature. On the contrary, those particulars are material facts that should be clearly and definitely averred in the complaint in order that the defendant may, in fairness, be informed of the claims made against him to the end that he may be prepared to meet the issues at the trial.

Thus, it has been held that the purpose or object of a bill of particulars is --

"x x x to amplify or limit a pleading, specify more minutely and particularly a claim or defense set up and pleaded in general terms, give information, not contained in the pleading, to the opposite party and the court as to the precise nature, character, scope, and extent of the cause of action or defense relied on by the pleader, and apprise the opposite party of the case which he has to meet, to the end that the proof at the trial may be limited to the matters specified, and in order that surprise at, and needless preparation for, the trial may be avoided, and that the opposite party may be aided in framing his answering pleading and preparing for trial. It has also been stated that it is the function or purpose of a bill of particulars to define, clarify, particularize, and limit or circumscribe the issues in the case, to expedite the trial, and assist the court. A general function or purpose of a bill of particulars is to prevent injustice or do justice in the case when that cannot be accomplished without the aid of such a bill." [38]

Anent the contention of the Solicitor General that the petitioner is not entitled to a bill of particulars because the ultimate facts constituting the three (3) essential elements of a cause of action for recovery of ill-gotten wealth have been sufficiently alleged in the complaint, it would suffice to state that in a motion for a bill of particulars, the only question to be resolved is whether or not the allegations of the complaint are averred with sufficient definiteness or particularity to enable the movant properly to prepare his responsive pleading and to prepare for trial. As already discussed, the allegations of the complaint pertaining to the herein petitioner are deficient because the averments therein are mere conclusions of law or presumptions, unsupported by factual premises.

In the light of the foregoing, the respondent Sandigan-bayan acted with grave abuse of discretion amounting to lack or excess of jurisdiction in promulgating the questioned resolutions.

WHEREFORE, the petition is GRANTED and the resolutions dated 21 April 1989 and 29 May 1989 are hereby ANNULLED and SET ASIDE. The respondents are hereby ordered to PREPARE and FILE a Bill of Particulars containing the facts prayed for by petitioner within TWENTY (20) DAYS from notice, and should they fail to submit the said Bill of Particulars, respondent Sandiganbayan, is ordered TO EXCLUDE the herein petitioner as defendant in Civil Case No. 0035.

SO ORDERED.

Narvasa, Melencio-Herrera, Gutierrez, Jr., Cruz, Paras, Feliciano, Bidin, Grino-Aquino, Medialdea, Regalado, and Davide, Jr., JJ., concur.

Romero, J., no part.

Fernan, C.J., on leave.

- [1] Rollo, pp. 219-220
- [2] Ibid., p. 57
- [3] Second Amended Complaint, par. 2
- [4] Ibid., par. 7
- [5] Ibid., par. 9 (a)
- [6] Ibid., par. 15
- [7] Ibid., par. 17
- [8] Ibid., p. 116
- [9] Ibid., p. 144
- [10] Ibid., p. 162
- [11] Rollo, p. 180
- [12] Ibid., p. 191
- [13] Ibid., p. 198
- [14] Ibid., pp. 201-202
- [15] Ibid., p. 204
- [16] Ibid., p. 217
- [17] Rules of Court, Rule 6, Sec. 3
- [18] Id., Rule 6, Sec. 2
- [19] Id., Rule 8, Sec. 1
- [20] Martin, Notes & Comments, Rules of Court, Vol. 1, 1986 ed., p. 279, citing 71 c.d.s., Sec. 63(b), p. 19
- [21] G.R. No. L-19751, 28 February 1966, 16 SCRA 251
- [22] Black's Law Dictionary, 5th ed., p. 500
- [23] Mathay, et al. vs. The Consolidated Bank & Trust Co., et al., G.R. No. L-23136, 28 August 1974, 58 SCRA 559
- [24] Abe, et al. vs. Foster Wheeler Corporation and Caltex, 100 Phil. 198, 206
- [25] De Dios vs. Bristol Laboratories (Phils.) Inc., G.R. No. L-25530, 29 January 1974, 55 SCRA 349, 356
- [26] Mathay vs. Consolidated Bank & Trust Co., supra
- [27] Ibid.
- [28] Ibid.
- [29] Remitere vs. Vda. de Yulo, supra
- [30] Rodriguez vs. Tan, 91 Phil. 724

[31] Llanto vs. Ali Dimaporo, et al., G.R. No. L-21905, 31 March 1966, 16 SCRA 599, 605

[32] PD No. 1445, otherwise known as the "Government Auditing Code of the Philippines", Sections 2 and 201(1)

[33] Id., Sections 20 and 43

[34] Id., Section 19

[35] Id., Section 17

[36] Id., Sections 6 and 48

[37] Paragraph 7 of the Complaint also alleges that petitioner "acted as dummy, nominee or agent, by allowing himself to be incorporator, director, board member and or stockholder of corporations beneficially held and/or controlled by Defendants Benjamin (Kokoy) Romualdez, Ferdinand E. Marcos and Imelda R. Marcos."

[38] Tan, et al. vs. Sandiganbayan, et al., G.R. No. 84195, 11 December 1989, 180 SCRA 34, 42-43

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