



Republic of the Philippines  
Supreme Court  
Manila

SECOND DIVISION

REPUBLIC OF THE PHILIPPINES, G.R. No. 174673  
Petitioner,

Present:

-versus-

CARPIO, J., Chairperson,  
BERSAMIN,\*  
DEL CASTILLO,  
MENDOZA, and  
LEONEN, JJ.

FE ROA GIMENEZ AND IGNACIO  
B. GIMENEZ,  
Respondents.

Promulgated:  
11 JAN 2016

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DECISION

LEONEN, J.:

Rules of procedure are not ends in themselves. The object of these rules is to assist and facilitate a trial court's function to be able to receive all the evidence of the parties, and evaluate their admissibility and probative value in the context of the issues presented by the parties' pleadings in order to arrive at a conclusion as to the facts that transpired. Having been able to establish the facts, the trial court will then be able to apply the law and determine whether a complainant is deserving of the reliefs prayed for in the pleading.

Dismissal on the basis of a very strict interpretation of procedural rules without a clear demonstration of the injury to a substantive right of the defendant weighed against 19 years of litigation actively participated in by

\* Designated as additional member per Raffle dated August 19, 2009.

both parties should not be encouraged.

There is likewise serious reversible error, even grave abuse of discretion, when the Sandiganbayan dismisses a case on demurrer to evidence without a full statement of its evaluation of the evidence presented and offered and the interpretation of the relevant law. After all, dismissal on the basis of demurrer to evidence is similar to a judgment. It is a final order ruling on the merits of a case.

This is a Petition<sup>1</sup> for Review on Certiorari assailing the Sandiganbayan Resolutions dated May 25, 2006<sup>2</sup> and September 13, 2006.<sup>3</sup> The Sandiganbayan deemed petitioner Republic of the Philippines (Republic) to have waived the filing of its Formal Offer of Evidence<sup>4</sup> and granted the Motion to Dismiss of respondents Spouses Ignacio Gimenez and Fe Roa Gimenez (Gimenez Spouses) based on demurrer to evidence.<sup>5</sup>

The Republic, through the Presidential Commission on Good Government (PCGG), instituted a Complaint<sup>6</sup> for Reconveyance, Reversion, Accounting, Restitution and Damages against the Gimenez Spouses before the Sandiganbayan.<sup>7</sup> “The Complaint seeks to recover . . . ill-gotten wealth . . . acquired by [the Gimenez Spouses] as dummies, agents[,] or nominees of former President Ferdinand E. Marcos and Imelda Marcos[.]”<sup>8</sup>

During trial, the Republic presented documentary evidence attesting to the positions held, business interests, income, and pertinent transactions of the Gimenez Spouses.<sup>9</sup> The Republic presented the testimonies of Atty. Tereso Javier, Head of the Sequestered Assets Department of PCGG, and of Danilo R.V. Daniel, Director of the Research and Development Department of PCGG.<sup>10</sup> Witnesses testified on the bank accounts and businesses owned or controlled by the Gimenez Spouses.<sup>11</sup>

On February 27, 2006, the Sandiganbayan denied a motion to recall Danilo R.V. Daniel’s testimony.<sup>12</sup> The Republic then manifested that it was

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<sup>1</sup> *Rollo*, pp. 30–120.

<sup>2</sup> *Id.* at 122. The case was docketed as Civil Case No. 0007 and entitled *Republic v. Fe Roa Gimenez and Ignacio B. Gimenez*. The Resolution was approved by Associate Justices Gregory S. Ong (Chair), Jose R. Hernandez, and Rodolfo A. Ponferrada of the Fourth Division.

<sup>3</sup> *Id.* at 124–133. The Resolution was penned by Associate Justice Jose R. Hernandez and concurred in by Associate Justices Gregory S. Ong (Chair) and Rodolfo A. Ponferrada.

<sup>4</sup> *Id.* at 122, Resolution dated May 25, 2006.

<sup>5</sup> *Id.* at 133, Resolution dated September 13, 2006.

<sup>6</sup> *Id.* at 134–161.

<sup>7</sup> *Id.* at 1721, Republic’s Memorandum.

<sup>8</sup> *Id.* at 1722.

<sup>9</sup> *Id.* at 1725–1726.

<sup>10</sup> *Id.* at 1726.

<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

“no longer presenting further evidence.”<sup>13</sup> Accordingly, the Sandiganbayan gave the Republic 30 days or until March 29, 2006 “to file its formal offer of evidence.”<sup>14</sup>

On March 29, 2006, the Republic moved “for an extension of thirty (30) days or until April 28, 2006, within which to file [its] formal offer of evidence.”<sup>15</sup> This Motion was granted by the Sandiganbayan in a Resolution of the same date.<sup>16</sup>

On April 27, 2006, the Republic moved for an additional 15 days or until May 13, 2006 within which to file its Formal Offer of Evidence.<sup>17</sup> This Motion was granted by the Sandiganbayan in a Resolution dated May 8, 2006.<sup>18</sup> Following this, no additional Motion for extension was filed by the Republic.

In the **first assailed Resolution** dated May 25, 2006, the Sandiganbayan noted that the Republic failed to file its Formal Offer of Evidence notwithstanding repeated extensions and the lapse of 75 days from the date it terminated its presentation of evidence.<sup>19</sup> Thus, it declared that the Republic waived the filing of its Formal Offer of Evidence.<sup>20</sup>

The first assailed Resolution provides:

It appearing that the plaintiff has long terminated the presentation of its evidence on February 27, 2006, and it appearing further that it failed or otherwise neglected to file its written formal offer of evidence for an unreasonable period of time consisting of 75 days (i.e., 30 days original period plus two extension periods totaling 45 days), the filing of said written formal offer of evidence is hereby deemed WAIVED.

WHEREFORE, the reception of the defendants’ evidence shall proceed on June 22 and 23, 2006, both at 8:30 o’clock [sic] in the morning as previously scheduled.<sup>21</sup>

Ignacio Gimenez filed a Motion to Dismiss on Demurrer to Evidence dated May 30, 2006.<sup>22</sup> He argued that the Republic showed no right to relief as there was no evidence to support its cause of action.<sup>23</sup> Fe Roa Gimenez filed a Motion to Dismiss dated June 13, 2006 on the ground of failure to

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<sup>13</sup> Id.

<sup>14</sup> Id.

<sup>15</sup> Id.

<sup>16</sup> Id.

<sup>17</sup> Id. at 1727.

<sup>18</sup> Id.

<sup>19</sup> Id. at 122, Resolution dated May 25, 2006.

<sup>20</sup> Id.

<sup>21</sup> Id.

<sup>22</sup> Id. at 124, Resolution dated September 13, 2006.

<sup>23</sup> Id. at 126.

prosecute.<sup>24</sup> Through her own Motion to Dismiss, she joined Ignacio Gimenez's demurrer to evidence.<sup>25</sup>

Two days after Fe Roa Gimenez's filing of the Motion to Dismiss on June 15, 2006, the Republic filed a Motion for Reconsideration [of the first assailed Resolution] and to Admit Attached Formal Offer of Evidence.<sup>26</sup> The pertinent portions of the Republic's offer of documentary exhibits attached to the Motion are summarized as follows:

**Exhibits A to G** and series consist of the Income Tax Returns, Certificate of Income Tax Withheld On Compensation, Statement of Tax Withheld At Source, Schedule of Interest Income, Royalties and Withholding Tax, Statement of Assets, Liabilities & Net Worth of Ignacio B. Gimenez from 1980-1986 proving his legitimate income during said period. **Exhibits H -J** and series refer to the Deeds of Sale and Transfer Certificates of Title proving that spouses Gimenezes acquired several real properties.

**Exhibits K and series (K-1-K-4)** pertain to Checking Statements Summary issued by the Bankers Trust Company (BTC) proving that Fe Roa Gimenez maintained a current account under Account Number 34-714-415 with BTC. **Exhibits L and series (L1-L-114)** are several BTC checks, proving that from June 1982 to April 1984, Fe Roa Gimenez issued several checks against her BTC Current Account No. 34-714-415 payable to some individuals and entities such as Erlinda Oledan, Vilma Bautista, The Waldorf Towers, Cartier, Gliceria Tantoco, Bulgari, Hammer Galleries and Renato Balestra, involving substantial amount of money in US Dollars. **Exhibits M and series (M1-M-25)** are several The Chase Manhattan Bank (TCMB) checks drawn against the account of Fe Roa Gimenez under Account Number 021000021, proving that she issued several checks drawn against her TCMB account, payable to individuals and entities such as Gliceria Tantoco, Vilma Bautista and The Waldorf Towers, involving substantial sums in US Dollars. **Exhibit N** is the Philippine National Bank (PNB), New York Branch Office Charge Ticket No. FT 56880 dated December 9, 1982 in the amount of US\$30,000.00 for Fe Roa Gimenez proving that she received said enormous amount from the PNB, New York Branch Office, with clearance from the Central Bank, which amount was charged against PNB Manila. **Exhibit N-1** is the PNB New York Branch Advice to Payee No. FT 56535 dated November 12, 1982 in the amount of US\$10,990.00 for Fe Roa Gimenez proving her receipt of such amount as remitted from California Overseas Bank, Los Angeles. **Exhibits O and series (O1-O-8)** refer to several Advices made by Bankers Trust AG Zurich-Geneve Bank in Switzerland to respondent Fe Roa Gimenez proving that she maintained a current account with said bank under Account Number 107094.50 and that from July 30, 1984 to August 30, 1984, she placed a substantial amount on time deposit in several banks, namely, Hypobank, Luzemburg, Luxemburg, Societe Generale, Paris and Bank of Nova Scotia, London.

**Exhibit P** is the Certification dated March 19, 2002 issued by

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<sup>24</sup> Id. at 124-125.

<sup>25</sup> Id. at 1767, Republic's Memorandum.

<sup>26</sup> Id. at 188-191.

Director Florino O. Ibanez of the Office of the President proving that Fe Roa Gimenez, from January 1, 1966 to April 1, 1986, worked with the Office of the President under different positions, the last of which as Presidential Staff Director with a salary of P87,072.00 per annum.

**Exhibit Q and series (Q-1-Q-18)** is the Affirmation of Ralph Shapiro filed with the United States Court of Appeals in the case entitled, "The Republic of the Philippines vs. Ferdinand E. Marcos, et al." which discussed certain acts of Fe Roa Gimenez and Vilma Bautista, among others, in relation to the funds of the Marcoses.

**Exhibits R and S and series (R-1, R-9; S-1-S-10)** refer to the Certificate of Filing of Amended Articles of Incorporation of GEI Guaranteed Education, Inc., the Amended Articles of Incorporation of GEI Guaranteed Education, Inc., the Treasurer's Affidavit executed by Ignacio Gimenez and the Director's Certificate executed by Roberto B. Olanday, Ignacio Gimenez and Roberto Coyuto, Jr. proving Ignacio Gimenez and Roberto Olanday's interests in GEI Guaranteed Education, Inc.

**Exhibits T and series (T-1-T-8)** are the Advices made by the Bankers Trust AG Zurich-Geneve Bank in Switzerland to Ignacio Gimenez proving that he maintained a current account with said bank under Account Number 101045.50 and that from March to June, 1984, he placed a substantial amount on time deposit in several banks, namely, Credit Lyonnais, Brussels, Societe Generale, Paris, Credit Commercial De France, Paris and Bank of Nova Scotia, London.

**Exhibits U and V and series (U-1-U-5; V1-V-18)** consist of the Affidavit dated April 25, 1986 and the Declaration dated June 23, 1987 including the attachments, of Oscar Carino, Vice-President and Manager of the PNB New York Branch, narrating in detail how the funds of the PNB New York Branch were disbursed outside regular banking business upon the instructions of former President Ferdinand E. Marcos and Imelda Marcos using Fe Roa Gimenez and others as conduit.

**Exhibits W and series (W-1-W-4)** are the Debit memos from the PNB to Fe Roa Gimenez while **Exhibits X and X-1** are the Acknowledgments of said respondent, proving that she received substantial amounts of money which were coursed through the PNB to be used by the Marcos spouses for state visits and foreign trips.

**Exhibit Y and series (Y-1-Y-2)** is the Letter dated August 25, 1986 of Juan C. Gatmaitan, Assistant Chief Legal Counsel of PNB to Charles G. LaBella, Assistant United States Attorney regarding the on-going investigation of irregular transactions at the PNB, New York Branch proving that PNB cooperated with the United States government in connection with the investigation on the irregular transactions of Oscar Carino at PNB New York Branch.

**Exhibit Z** is the service record of Fe Roa Gimenez issued by Florino O. Ibanez of the Office of the President which proves that she worked with the Office of the President from 1966-1986 holding different positions, the last of which was Presidential Staff Director.

**Exhibits AA and series (AA-1 -AA-2)** are the several Traders Royal Bank checks drawn against Account No. 74-702836-9 under the

account name of Fe Roa Gimenez which prove that she issued said checks payable to individuals and entities involving substantial amount of money.

**Exhibits BB and CC and series (BB-1–BB-17; CC-1–CC-3)** are the several Transfer of Funds Advice from Traders Royal Bank Statements of Account of Fe Roa Gimenez, proving that she maintained a current account under Account No. 74-7028369 at Traders Royal Bank.

**Exhibits HH and series (HH-1–HH-3)** are the Certification dated October 3, 2002 of Lamberto R. Barbin, Officer-in-Charge, Malacanang Records Office, that the Statement of Assets and Liabilities of spouses Marcoses for the years 1965 up to 1986 are not among the records on file in said Office except 1965, 1967 and 1969; the Statement of Assets and Liabilities as of December 31, 1969 and December 31, 1967 of former President Ferdinand Marcos; and the Sworn Statement of Financial Condition, Assets, Income and Liabilities as of December 31, 1965 of former President Ferdinand Marcos. These documentary exhibits prove the assets and liabilities of former President Marcos for the years 1965, 1967 and 1969.

**Exhibit II and series** is [sic] the Statement of Assets and Liabilities as of December 31, 1969 submitted by Fe Roa Gimenez which prove that her assets on that period amounted only to P39,500.00.

**Exhibit KK** is the Table of Contents of Civil Case No. [0]007 before the Sandiganbayan entitled “Republic of the Philippines vs. Ignacio B. Gimenez and Fe Roa Gimenez, et. al.”, including its Annexes which prove the assets and liabilities of spouses Gimenezes.

**Exhibits KK-1 up to KK-12** are several transfer certificates of title and tax declarations in the names of spouses Gimenezes, proving their acquisition of several real properties.

**Exhibits KK-15, KK-18, KK-20 up to KK-27, KK-30, KK-32 up to KK-38 and KK-40** are the General Information Sheet, Certificate of Filing of Amended Articles of Incorporation, and Amended Articles of Incorporation of various corporations. These prove the corporations in which Ignacio B. Gimenez has substantial interests.

**Exhibits KK-41 up to KK-44** are the Writs and Letters of Sequestration issued by the PCGG which prove that the shares of stocks of Ignacio Gimenez in Ignacio B. Gimenez, Securities, Inc. and the real properties covered by Transfer Certificates of Title Nos. 137638, 132807, 126693 and 126694 located in San Fabian, Pangasinan, were sequestered by the PCGG.

**Exhibit KK-45** is the Memorandum dated August 1, 1988 of Atty. Ralph S. Lee and Alexander M. Berces, Team Supervisor and Investigator, [sic] respectively, of IRD, PCGG, proving that the PCGG conducted an investigation on New City Builders, Inc., Transnational Construction Corporation, and OTO Construction and Development Corporation in relation to Ignacio B. Gimenez and Roberto O. Olanday.

**Exhibits KK-48, KK-49 and KK-50** are certain Lis Pendens from the PCGG addressed to the concerned Register of Deeds informing that the real properties mentioned therein had been sequestered and are the

subject of Civil Case No. [0]007 before the Sandiganbayan.

**Exhibits KK-51, KK-51-A, KK-52 and KK-52-A** are the Letter and Writ of Sequestration issued by the PCGG on Allied Banking Corporation and Guaranteed Education Inc. pursuant to its mandate to go after ill-gotten wealth.

**Exhibits NN, OO, PP, QQ and QQ-1** refer to the Memorandum To All Commercial Banks dated March 14, 1986 issued by then Central Bank Governor Jose B. Fernandez and the Letter dated March 13, 1986 of Mary Concepcion Bautista, PCGG Commissioner addressed to then Central Bank Governor Fernandez requesting that names be added to the earlier request of PCGG Chairman Jovito Salonga to instruct all commercial banks not to allow any withdrawal or transfer of funds from the market placements under the names of said persons, to include spouses Gimenezes, without authority from PCGG.

**Exhibits KK and series, NN, OO, PP, QQ and QQ-1** which prove the various real properties, business interests and bank accounts owned by spouses Gimenezes were part of the testimony of Atty. Tereso Javier.

**Exhibit RR and series (RR-1-RR-23)** are the Affidavit dated July 24, 1987 of Dominador Pangilinan, Acting President and President of Trader's Royal Bank, and the attached Recapitulation, Status of Banker's Acceptances, Status of Funds and Savings Account Ledger wherein he mentioned that Malacanang maintained trust accounts at Trader's Royal Bank, the balance of which is approximately 150-175 million Pesos, and that he was informed by Mr. Rivera that the funds were given to him (Rivera) by Fe Roa Gimenez for deposit to said accounts.

**Exhibits SS and series (SS-1-SS-29)** are the Affidavit dated July 23, 1987 of Apolinario K. Medina, Executive Vice President of Traders Royal Bank and attachments, which include Recapitulation, Status of Funds, and Messages from Traders Royal Bank Manila to various foreign banks. In his Affidavit, Medina divulged certain numbered confidential trust accounts maintained by Malacanang with the Trader's Royal Bank. He further stated that the deposits were so substantial that he suspected that they had been made by President Marcos or his family.

**Exhibit TT and series (TT-1-TT-3)** is [sic] the Memorandum dated July 19, 2005 of Danilo R.V. Daniel, then Director of the Research and Development Department of PCGG regarding the investigation conducted on the ill-gotten wealth of spouses Gimenezes, the subject matter of Civil Case No. [0]007. He revealed that during the investigation on the ill-gotten wealth of spouses Gimenezes, it was found out that from 1977 to 1982, several withdrawals, in the total amount of P75,090,306.42 were made from Trust Account No. 128 (A/C 76-128) in favor of I.B. Gimenez, I.B. Gimenez Securities and Fe Roa Gimenez.

**Exhibits RR, SS, TT** and their series prove that spouses Gimenez maintained bank accounts of substantial amounts and gained control of various corporations. These are also being offered as part of the testimony of Danilo R.V. Daniel.<sup>27</sup> (Emphasis in the original, citations omitted)

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<sup>27</sup> Id. at 1789–1800, Republic's Memorandum.

In the **second assailed Resolution** dated September 13, 2006, the Sandiganbayan denied the Republic's Motion for Reconsideration and granted the Gimenez Spouses' Motion to Dismiss.<sup>28</sup> According to the Sandiganbayan:

While it is true that litigation is not a game of technicalities and that the higher ends of substantial justice militate against dismissal of cases purely on technical grounds, the circumstances of this case show that the ends of justice will not be served if this Court allows the wanton disregard of the Rules of Court and of the Court's orders. Rules of procedure are designed for the proper and prompt disposition of cases. . . .

The reasons invoked by the plaintiff to justify its failure to timely file the formal offer of evidence fail to persuade this Court. The missing exhibits mentioned by the plaintiff's counsel appear to be the same missing documents since 2004, or almost two (2) years ago. The plaintiff had more than ample time to locate them for its purpose. . . . Since they remain missing after lapse of the period indicated by the Court, there is no reason why the search for these documents should delay the filing of the formal offer of evidence.

[Petitioner's] counsel . . . admits that faced with other pressing matters, he lost track of the time. We cannot just turn a blind eye on the negligence of the parties and in their failure to observe the orders of this Court. The carelessness of [petitioner's] counsel in keeping track of the deadlines is an unacceptable reason for the Court to set aside its Order and relax the observance of the period set for filing the formal offer of evidence.<sup>29</sup> (Citation omitted)

The Sandiganbayan also found that the Republic failed to prosecute its case for an unreasonable length of time and to comply with the court's rules.<sup>30</sup> The court also noted that the documentary evidence presented by the Republic consisted mostly of certified true copies.<sup>31</sup> However, the persons who certified the documents as copies of the original were not presented.<sup>32</sup> Hence, the evidence lacked probative value.<sup>33</sup> The dispositive portion of the assailed Resolution reads:

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<sup>28</sup> Id. at 1767.

<sup>29</sup> Id. at 129–130, Resolution dated September 13, 2006.

<sup>30</sup> Id. at 131–132, *citing* RULES OF COURT, Rule 17, sec. 3, which provides:

SEC. 3. Dismissal due to fault of plaintiff.— If for no justifiable cause, the plaintiff fails to appear on the date of the presentation of his evidence in chief on the complaint, or to prosecute his action for an unreasonable length of time, or to comply with these Rules or any order of the court, the complaint may be dismissed upon motion of the defendant or upon the court's own motion, without prejudice to the right of the defendant to prosecute his counterclaim in the same or in a separate action. This dismissal shall have the effect of an adjudication upon the merits, unless otherwise declared by the court.

<sup>31</sup> Id. at 132.

<sup>32</sup> Id.

Id.

**ACCORDINGLY**, there being no valid and cogent justification shown by the plaintiff for the Court to Grant its Motion for Reconsideration and admit its Formal Offer of Evidence, the plaintiff's Motion for Reconsideration and to Admit Attached Formal Offer of Evidence is **DENIED**. The Motion to Dismiss on Demurrer to Evidence filed by the defendant Ignacio B. Gimenez and adopted by defendant Fe Roa Gimenez is **GRANTED**. The case is then **DISMISSED**.

SO ORDERED.<sup>34</sup> (Emphasis in the original)

The Republic filed its Petition for Review on Certiorari dated November 3, 2006 before this court.<sup>35</sup>

The Gimenez Spouses were required to comment on the Petition.<sup>36</sup> This court noted the separate Comments<sup>37</sup> filed by the Gimenez Spouses.<sup>38</sup> The Republic responded to the Comments through a Consolidated Reply<sup>39</sup> dated June 22, 2007.

In the Resolution<sup>40</sup> dated August 29, 2007, this court required the parties to submit their memoranda.<sup>41</sup>

On February 18, 2008, this court resolved to require the parties to “move in the premises[.]”<sup>42</sup>

On March 2, 2012, the Republic filed a Motion for Leave to Re-open Proceedings, to File and Admit Attached Supplement to the Petition for Certiorari.<sup>43</sup> In this Supplement, the Republic argued that the second assailed Resolution dated September 13, 2006 was void for failing to state the facts and the law on which it was based.<sup>44</sup> This Motion was granted, and the Gimenez Spouses were required to file their Comment on the Supplement to the Petition.<sup>45</sup> Thereafter, the Republic filed its Reply.<sup>46</sup>

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<sup>34</sup> Id. at 133.

<sup>35</sup> Id. at 834 and 919, Petition.

<sup>36</sup> Id. at 1634, Supreme Court Resolution dated December 11, 2006, 1636, Fe Roa Gimenez's Comment/Opposition to Petition for Review, and 1655, Supreme Court Resolution dated March 14, 2007.

<sup>37</sup> Id. at 1635–1641, Fe Roa Gimenez's Comment/Opposition to Petition for Review, and 1657–1662, Ignacio B. Gimenez's Comment.

<sup>38</sup> Id. at 1655, Supreme Court Resolution dated March 14, 2007, and 1671, Supreme Court Resolution dated June 18, 2007.

<sup>39</sup> Id. at 1676–1686.

<sup>40</sup> Id. at 1687a–1687b.

<sup>41</sup> Id. at 1687a.

<sup>42</sup> Id. at 1808, Supreme Court Resolution dated February 18, 2008.

<sup>43</sup> Id. at 1895–1898.

<sup>44</sup> Id. at 1902, Supplement to the Petition for Certiorari.

<sup>45</sup> Id. at 1912, Supreme Court Resolution dated June 20, 2012.

<sup>46</sup> Id. at 1974–1991.

Fe Roa Gimenez filed a Rejoinder<sup>47</sup> dated December 19, 2012 which was expunged by this court in a Resolution<sup>48</sup> dated January 23, 2013. Ignacio Gimenez's Motion for Leave to File and Admit Attached Rejoinder<sup>49</sup> was denied.<sup>50</sup>

The Republic raised the following issues:

Whether or not the Sandiganbayan gravely erred in dismissing the case in the light of the allegations in the Complaint which were substantiated by overwhelming evidence presented vis-a-vis the material admissions of spouses Gimenezes as their answer failed to specifically deny that they were dummies of former President Ferdinand E. Marcos and that they acquired illegal wealth grossly disproportionate to their lawful income in a manner prohibited under the Constitution and Anti-Graft Statutes.

Whether or not the Sandiganbayan gravely erred in denying petitioner's Motion to Admit Formal Offer of Evidence on the basis of mere technicalities, depriving petitioner of its right to due process.

Whether or not the Sandiganbayan gravely erred in making a sweeping pronouncement that petitioner's evidence do not bear any probative value.<sup>51</sup>

The issues for consideration of this court are:

First, whether a Petition for Review on Certiorari was the proper remedy to assail the Sandiganbayan Resolutions; and

Second, whether the Sandiganbayan erred in holding that petitioner Republic of the Philippines waived the filing of its Formal Offer of Evidence and in granting respondents Ignacio Gimenez and Fe Roa Gimenez's Motion to Dismiss on demurrer to evidence.

We grant the Petition.

## I

Respondent Ignacio Gimenez pictures petitioner as being confused as to the proper mode of review of the Sandiganbayan Resolutions. According to him, petitioner claims that the Sandiganbayan committed grave abuse of

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<sup>47</sup> Id. at 1994–2000.

<sup>48</sup> Id. at 2015–2016.

<sup>49</sup> Id. at 2004–2005.

<sup>50</sup> Id. at 2015, Supreme Court Resolution dated January 23, 2013.

<sup>51</sup> Id. at 1769, Republic's Memorandum.

discretion.<sup>52</sup> Hence, petitioner should have filed a petition for certiorari under Rule 65 and not a petition for review under Rule 45 of the Rules of Court.<sup>53</sup> Nevertheless, the Sandiganbayan did not commit any error, and petitioner has to show that the Sandiganbayan committed grave abuse of discretion amounting to lack of or in excess of jurisdiction.<sup>54</sup>

Observance of the proper procedure before courts, especially before the Sandiganbayan, cannot be stressed enough. Due process is enshrined in the Constitution, specifically the Bill of Rights.<sup>55</sup> “Due process [in criminal cases] guarantees the accused a presumption of innocence until the contrary is proved[.]”<sup>56</sup> “Mere suspicion of guilt should not sway judgment.”<sup>57</sup>

To determine whether a petition for review is the proper remedy to assail the Sandiganbayan Resolutions, we review the nature of actions for reconveyance, revision, accounting, restitution, and damages.

Actions for reconveyance, revision, accounting, restitution, and damages for ill-gotten wealth are also called civil forfeiture proceedings.

Republic Act No. 1379<sup>58</sup> provides for the procedure by which forfeiture proceedings may be instituted against public officers or employees who “[have] acquired during his [or her] incumbency an amount of property which is manifestly out of proportion to his [or her] salary as such public officer or employee and to his [or her] other lawful income and the income from legitimately acquired property, [which] property shall be presumed prima facie to have been unlawfully acquired.”<sup>59</sup>

This court has already settled the Sandiganbayan’s jurisdiction over civil forfeiture cases:

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<sup>52</sup> Id. at 1702, Ignacio B. Gimenez’s Memorandum.

<sup>53</sup> Id.

<sup>54</sup> Id. at 1702–1703.

<sup>55</sup> See CONST., art. III, secs. 1 and 14, which provide:

SECTION 1. No person shall be deprived of life, liberty, or property without due process of law, nor shall any person be denied the equal protection of the laws.

.....

SECTION 14. (1) No person shall be held to answer for a criminal offense without due process of law.

(2) In all criminal prosecutions, the accused shall be presumed innocent until the contrary is proved, and shall enjoy the right to be heard by himself and counsel, to be informed of the nature and cause of the accusation against him, to have a speedy, impartial, and public trial, to meet the witnesses face to face, and to have compulsory process to secure the attendance of witnesses and the production of evidence in his behalf. However, after arraignment, trial may proceed notwithstanding the absence of the accused provided that he has been duly notified and his failure to appear is unjustifiable.

<sup>56</sup> *Perez v. Estrada*, 412 Phil. 686, 705 (2001) [Per J. Vitug, En Banc]. See *Marcos v. Sandiganbayan (1st Division)*, 357 Phil. 762, 783 (1998) [Per J. Purisima, En Banc].

<sup>57</sup> *People v. Bagus*, 342 Phil. 836, 853 (1997) [Per J. Francisco, Third Division].

<sup>58</sup> Rep. Act No. 1379 (1955) is entitled An Act Declaring Forfeiture in Favor of the State any Property Found to have been Unlawfully Acquired by any Public Officer or Employee and Providing for the Proceedings therefor.

<sup>59</sup> Rep. Act No. 1379 (1955), sec. 2.

. . . violations of R.A. No. 1379 are placed under the jurisdiction of the Sandiganbayan, even though the proceeding is civil in nature, since the forfeiture of the illegally acquired property amounts to a penalty.<sup>60</sup>

In *Garcia v. Sandiganbayan, et al.*,<sup>61</sup> this court re-affirmed the doctrine that forfeiture proceedings under Republic Act No. 1379 are civil in nature.<sup>62</sup> Civil forfeiture proceedings were also differentiated from plunder cases:

. . . a forfeiture case under RA 1379 arises out of a cause of action separate and different from a plunder case. . . . In a prosecution for plunder, what is sought to be established is the commission of the criminal acts in furtherance of the acquisition of ill-gotten wealth. . . . On the other hand, all that the court needs to determine, by preponderance of evidence, under RA 1379 is the disproportion of respondent's properties to his legitimate income, it being unnecessary to prove how he acquired said properties. As correctly formulated by the Solicitor General, the forfeitable nature of the properties under the provisions of RA 1379 does not proceed from a determination of a specific overt act committed by the respondent public officer leading to the acquisition of the illegal wealth.<sup>63</sup> (Citation omitted)

To stress, the quantum of evidence required for forfeiture proceedings under Republic Act No. 1379 is the same with other civil cases — preponderance of evidence.<sup>64</sup>

When a criminal case based on demurrer to evidence is dismissed, the dismissal is equivalent to an acquittal.<sup>65</sup>

As a rule, once the court grants the demurrer, the grant amounts to an acquittal; any further prosecution of the accused would violate the constitutional proscription on double jeopardy.<sup>66</sup>

Hence, the Republic may only assail an acquittal through a petition for

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<sup>60</sup> *Maj. Gen. Garcia v. Sandiganbayan*, 499 Phil. 589, 614 (2005) [Per J. Tinga, En Banc]. See Pres. Decree No. 1486 (1978), sec. 4, which created the Sandiganbayan and vested jurisdiction of civil forfeiture cases under Rep. Act No. 1379. In *Republic v. Sandiganbayan*, G.R. No. 90529, August 16, 1991, 200 SCRA 667, 674–676 [Per J. Regalado, En Banc], this court traced the legislative history of the Sandiganbayan's jurisdiction over civil forfeiture proceedings.

<sup>61</sup> 618 Phil. 346 (2009) [Per J. Velasco, Jr., Third Division].

<sup>62</sup> *Id.* at 362–363.

<sup>63</sup> *Id.*

<sup>64</sup> See Exec. Order No. 14-A (1986), sec. 1, entitled Amending Executive Order No. 14.

<sup>65</sup> See *Singian, Jr. v. Sandiganbayan (3rd Division)*, G.R. Nos. 195011–19, September 30, 2013, 706 SCRA 451 [Per J. Del Castillo, Second Division] and *People v. Sandiganbayan, et al.*, 681 Phil. 90, 109 (2012) [Per J. Brion, En Banc].

<sup>66</sup> *People v. Sandiganbayan, et al.*, 681 Phil. 90, 109 (2012) [Per J. Brion, En Banc].

certiorari under Rule 65 of the Rules of Court:

Accordingly, a review of a dismissal order of the Sandiganbayan granting an accused's demurrer to evidence may be done via the special civil action of certiorari under Rule 65, based on the narrow ground of grave abuse of discretion amounting to lack or excess of jurisdiction.<sup>67</sup> (Citation omitted)

In this case, a civil forfeiture under Republic Act No. 1379, petitioner correctly filed a Petition for Review on Certiorari under Rule 45 of the Rules of Court. Section 1 of the Rule provides the mode of appeal from judgments, final orders, or resolutions of the Sandiganbayan:

SECTION 1. Filing of petition with Supreme Court.— A party desiring to appeal by certiorari from a judgment or final order or resolution of the Court of Appeals, the Sandiganbayan, the Regional Trial Court or other courts whenever authorized by law, may file with the Supreme Court a verified petition for review on certiorari. The petition shall raise only questions of law which must be distinctly set forth.

## II

Petitioner argues that substantial justice requires doing away with the procedural technicalities.<sup>68</sup> Loss of vital documentary proof warranted extensions to file the Formal Offer of Evidence.<sup>69</sup> Honest efforts to locate several missing documents resulted in petitioner's inability to file the pleading within the period granted by the Sandiganbayan.<sup>70</sup>

Respondent Ignacio Gimenez argues that petitioner cannot fault the Sandiganbayan for its incompetence during trial.<sup>71</sup> Even if the evidence were formally offered within the prescribed period, PCGG's evidence still had no probative value.<sup>72</sup> It is solely petitioner's fault "that the persons who certified to the photocopies of the originals were not presented to testify[.]"<sup>73</sup> It is also misleading to argue that the pieces of documentary evidence presented are public documents.<sup>74</sup> "The documents are not public in the sense that these are official issuances of the Philippine government."<sup>75</sup> "The bulk consists mainly of notarized, private documents that have simply been certified true and faithful."<sup>76</sup>

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<sup>67</sup> Id. at 110.

<sup>68</sup> *Rollo*, p. 1782, Republic's Memorandum.

<sup>69</sup> Id.

<sup>70</sup> Id.

<sup>71</sup> Id. at 1706, Ignacio B. Gimenez's Memorandum.

<sup>72</sup> Id.

<sup>73</sup> Id.

<sup>74</sup> Id. at 1702.

<sup>75</sup> Id.

<sup>76</sup> Id.

According to respondent Fe Roa Gimenez, petitioner tries to excuse its non-filing of the Formal Offer of Evidence within the prescribed period by raising its efforts to locate the 66 missing documents.<sup>77</sup> However, the issue of the missing documents was laid to rest during the hearing on November 16, 2004.<sup>78</sup> The Sandiganbayan gave petitioner until March 2005 to produce the documents; otherwise, these would be excluded.<sup>79</sup> The testimonies of the witnesses related to the missing documents would also be expunged from the case records.<sup>80</sup>

Moreover, respondent Fe Roa Gimenez claims that “[t]he Sandiganbayan did not err when it ruled that the great bulk of the documentary evidence offered by the PCGG have no probative value.”<sup>81</sup> Aside from the 66 missing documents it failed to present, almost all of petitioner’s pieces of documentary evidence were mere photocopies.<sup>82</sup> The few that were certified true copies were not testified on by the persons who certified these documents.<sup>83</sup>

Our Rules of Court lays down the procedure for the formal offer of evidence. Testimonial evidence is offered “at the time [a] witness is called to testify.”<sup>84</sup> Documentary and object evidence, on the other hand, are offered “after the presentation of a party’s testimonial evidence.”<sup>85</sup> Offer of documentary or object evidence is generally done orally unless permission is given by the trial court for a written offer of evidence.<sup>86</sup>

More importantly, the Rules specifically provides that evidence must be formally offered to be considered by the court. Evidence not offered is excluded in the determination of the case.<sup>87</sup> “Failure to make a formal offer within a considerable period of time shall be deemed a waiver to submit it.”<sup>88</sup>

<sup>77</sup> Id. at 1712, Fe Roa Gimenez’s Memorandum.

<sup>78</sup> Id. at 1714. The Order is not referenced to in the records.

<sup>79</sup> Id.

<sup>80</sup> Id.

<sup>81</sup> Id. at 1717.

<sup>82</sup> Id.

<sup>83</sup> Id.

<sup>84</sup> RULES OF COURT, Rule 132, sec. 35 provides:

SEC. 35. When to make offer.— As regards the testimony of a witness, the offer must be made at the time the witness is called to testify.

Documentary and object evidence shall be offered after the presentation of a party’s testimonial evidence. Such offer shall be done orally unless allowed by the court to be done in writing.

<sup>85</sup> RULES OF COURT, Rule 132, sec. 35.

<sup>86</sup> RULES OF COURT, Rule 132, sec. 35.

<sup>87</sup> See RULES OF COURT, Rule 128, sec. 3, which provides:

SEC. 3. Admissibility of evidence.— Evidence is admissible when it is relevant to the issue and is not excluded by the law or these rules.

<sup>88</sup> *Heirs of Pedro Pasag v. Spouses Parocha*, 550 Phil. 571, 575 (2007) [Per J. Velasco, Jr., Second Division]. See *Constantino v. Court of Appeals*, 332 Phil. 68, 75 (1996) [Per J. Bellosillo, First Division].

Rule 132, Section 34 provides:

SEC. 34. Offer of evidence.— The court shall consider no evidence which has not been formally offered. The purpose for which the evidence is offered must be specified.

The rule on formal offer of evidence is intertwined with the constitutional guarantee of due process. Parties must be given the opportunity to review the evidence submitted against them and take the necessary actions to secure their case.<sup>89</sup> Hence, any document or object that was marked for identification is not evidence unless it was “formally offered and the opposing counsel [was] given an opportunity to object to it or cross-examine the witness called upon to prove or identify it.”<sup>90</sup>

This court explained further the reason for the rule:

The Rules of Court provides that “the court shall consider no evidence which has not been formally offered.” A formal offer is necessary because judges are mandated to rest their findings of facts and their judgment only and strictly upon the evidence offered by the parties at the trial. Its function is to enable the trial judge to know the purpose or purposes for which the proponent is presenting the evidence. *On the other hand, this allows opposing parties to examine the evidence and object to its admissibility.* Moreover, it facilitates review as the appellate court will not be required to review documents not previously scrutinized by the trial court.<sup>91</sup> (Emphasis supplied, citations omitted)

To consider a party’s evidence which was not formally offered during trial would deprive the other party of due process. Evidence not formally offered has no probative value and must be excluded by the court.<sup>92</sup>

Petitioner’s failure to file its written Formal Offer of Evidence of the numerous documentary evidence presented within the prescribed period is a non-issue. In its first assailed Resolution dated May 25, 2006, the Sandiganbayan declared that petitioner waived the filing of its Formal Offer of Evidence when it failed to file the pleading on May 13, 2006, the deadline based on the extended period granted by the court. Petitioner was granted

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<sup>89</sup> See *Heirs of Emilio Santioque v. Heirs of Emilio Calma*, 536 Phil. 524, 543 (2006) [Per J. Callejo, Sr., First Division], citing *Pigao v. Rabanillo*, 522 Phil. 506, 517–518 (2006) [Per J. Corona, Second Division].

<sup>90</sup> *Villaluz v. Ligon*, 505 Phil. 572, 588 (2005) [Per J. Austria-Martinez, Second Division].

<sup>91</sup> *Heirs of Pedro Pasag v. Spouses Parocha*, 550 Phil. 571, 578–579 (2007) [Per J. Velasco, Jr., Second Division]. See *People v. Logmao*, 414 Phil. 378, 385 (2001) [Per J. Bellosillo, Jr., Second Division].

<sup>92</sup> See *Spouses Ong v. Court of Appeals*, 361 Phil. 338, 350–352 (1999) [Per J. Panganiban, Third Division]. See also *Westmont Investment Corporation v. Francia, Jr., et al.*, 678 Phil. 180, 194 (2011) [Per J. Mendoza, Third Division]. We recall, however, that admissibility of evidence is a different concept from probative value under evidentiary rules. See *Atienza v. Board of Medicine, et al.*, 657 Phil. 536, 543 (2011) [Per J. Nachura, Second Division], citing *PNO Shipping and Transport Corporation v. Court of Appeals*, 358 Phil. 38, 59 (1998) [Per J. Romero, Third Division].

several extensions of time by the Sandiganbayan totalling 75 days from the date petitioner terminated its presentation of evidence. Notably, this 75-day period included the original 30-day period. Subsequently, petitioner filed a Motion for Reconsideration and to Admit Attached Formal Offer of Evidence, and the Formal Offer of Evidence.

In resolving petitioner's Motion for Reconsideration and to Admit Attached Formal Offer of Evidence, the Sandiganbayan found the carelessness of petitioner's counsel unacceptable. According to the Sandiganbayan, it could not countenance the non-observance of the court's orders.

This court has long acknowledged the policy of the government to recover the assets and properties illegally acquired or misappropriated by former President Ferdinand E. Marcos, his wife Mrs. Imelda R. Marcos, their close relatives, subordinates, business associates, dummies, agents or nominees.<sup>93</sup> Hence, this court has adopted a liberal approach regarding technical rules of procedure in cases involving recovery of ill-gotten wealth:

*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.<sup>94</sup> (Emphasis supplied, citation omitted)*

To be clear, petitioner was able to file its Formal Offer of Evidence, albeit, belatedly. Petitioner hurdled 19 years of trial before the Sandiganbayan to present its evidence as shown in its extensive Formal Offer of Evidence. As petitioner argues:

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<sup>93</sup> *Marcos, Jr. v. Republic*, G.R. No. 189434, April 25, 2012, 671 SCRA 280, 308–309 [Per J. Sereno (now C.J.), Second Division]. *Republic v. Sandiganbayan*, 461 Phil. 598, 610 (2003) [Per J. Corona, En Banc]. See Exec. Order No. 1 (1986), entitled Creating the Presidential Commission on Good Government, Proclamation No. 3 (1986), entitled Declaring a National Policy to Implement Reforms Mandated by the People Protecting their Basic Rights, Adopting a Provisional Constitution, and Providing for an Orderly Transition to a Government under a New Constitution, art. II, sec. 1(d), Exec. Order No. 14 (1986), 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.

<sup>94</sup> *Republic v. Sandiganbayan*, 453 Phil. 1059, 1087–1088 (2003) [Per J. Corona, En Banc]. In this case, this court set aside the Sandiganbayan Resolution that denied petitioner's Motion for Summary Judgment. (Id. at 1077 and 1150).

Undeniable from the records of the case is that petitioner was vigorous in prosecuting the case. The most tedious and crucial stage of the litigation and presentation of evidence has been accomplished. Petitioner completed its presentation of evidence proving the ill-gotten nature and character of the funds and assets sought to be recovered in the present case. It presented vital testimonial and documentary evidence consisting of voluminous record proving the gross disparity of the subject funds to spouses Gimenezes' combined declared income which must be reconveyed to the Republic for being acquired in blatant violation of the Constitution and the Anti-Graft statutes.<sup>95</sup>

This court is not unmindful of the difficulty in gathering voluminous documentary evidence in cases of forfeiture of ill-gotten wealth acquired throughout the years. It is never easy to prosecute corruption and take back what rightfully belongs to the government and the people of the Republic.

This is not the first time that this court relaxed the rule on formal offer of evidence.

*Tan v. Lim*<sup>96</sup> arose from two civil Complaints: one for injunction and another for legal redemption, which were heard jointly before the trial court.<sup>97</sup> The defendant did not file a Formal Offer of Evidence in the injunction case<sup>98</sup> and merely adopted the evidence offered in the legal redemption case.<sup>99</sup> The trial court held that the defendant's failure to file his Formal Offer of Evidence in the injunction case rendered the plaintiff's evidence therein as uncontroverted.<sup>100</sup> The Court of Appeals reversed the Decision and was affirmed by this court.<sup>101</sup> This court ruled that while the trial court's reasoning in its Decision was technically sound, a liberal interpretation was more appropriate and in line with substantial justice:

*It may be true that Section 34, Rule 132 of the rules directs the court to consider no evidence which has not been formally offered and that under Section 35, documentary evidence is offered after presentation of testimonial evidence. However, a liberal interpretation of these Rules would have convinced the trial court that a separate formal offer of evidence in Civil Case No. 6518 was superfluous because not only was an offer of evidence made in Civil Case No. 6521 that was being jointly heard by the trial court, counsel for Jose Renato Lim had already declared he was adopting these evidences for Civil Case No. 6518. The trial court itself stated that it would freely utilize in one case evidence adduced in the other only to later abandon this posture. Jose Renato Lim testified in Civil Case No. 6518. The trial court should have at least considered his*

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<sup>95</sup> *Rollo*, p. 1781, Republic's Memorandum.

<sup>96</sup> 357 Phil. 452 (1998) [Per J. Martinez, Second Division].

<sup>97</sup> *Id.* at 456–457.

<sup>98</sup> *Id.* at 461.

<sup>99</sup> *Id.* at 477.

<sup>100</sup> *Id.* at 474.

<sup>101</sup> *Id.* at 474–475 and 481–482.

testimony since at the time it was made, the rules provided that testimonial evidence is deemed offered at the time the witness is called to testify. *Rules of procedure should not be applied in a very rigid, technical case as they are devised chiefly to secure and not defeat substantial justice.*

....

The logic of the Court of Appeals is highly persuasive. *Indeed, apparently, the trial court was being overly technical about the non-submission of Jose Renato Lim's formal offer of evidence. This posture not only goes against Section 6, Rule 1 of the Rules of Civil Procedure decreeing a liberal construction of the rules to promote a just, speedy and inexpensive litigation but ignores the consistent rulings of the Court against utilizing the rules to defeat the ends of substantial justice.* Despite the intervening years, the language of the Court in *Manila Railroad Co. vs. Attorney-General*, still remains relevant:

“x x x. The purpose of procedure is not to thwart justice. Its proper aim is to facilitate the application of justice to the rival claims of contending parties. It was created not to hinder and delay but to facilitate and promote the administration of justice. It does not constitute the thing itself which courts are always striving to secure to litigants. It is designed as the means best adapted to obtain that thing. In other words, it is a means to an end. It is the means by which the powers of the court are made effective in just judgments. When it loses the character of the one and takes on that of the other the administration of justice becomes incomplete and unsatisfactory and lays itself open to grave criticism.”<sup>102</sup> (Emphasis supplied, citations omitted)

Furthermore, “subsequent and substantial compliance . . . may call for the relaxation of the rules of procedure.”<sup>103</sup>

Weighing the amount of time spent in litigating the case against the number of delays petitioner incurred in submitting its Formal Offer of Evidence and the state's policy on recovering ill-gotten wealth, this court is of the belief that it is but only just that the Rules be relaxed and petitioner be allowed to submit its written Formal Offer of Evidence. The Sandiganbayan's Resolutions should be reversed.

### III

According to petitioner, the Sandiganbayan erred when it granted the demurrer to evidence filed by respondents and dismissed the case despite a “*prima facie* foundation [based on the pleadings and documents on record]

<sup>102</sup> Id. at 478–480. This court applied 1964 RULES OF COURT, Rule 132, sec. 35, which provides: SEC. 35. Offer of Evidence.— The court shall consider no evidence which has not been formally offered. The purpose for which the evidence is offered must be specified.

<sup>103</sup> *Security Bank Corporation v. Indiana Aerospace University*, 500 Phil. 51, 60 (2005) [Per J. Carpio, First Division].

that spouses Gimenezes amassed enormous wealth grossly disproportionate to their lawful income or declared lawful assets.”<sup>104</sup>

Similarly, the Complaint alleged specific acts committed by respondent Ignacio Gimenez:

[T]aking undue advantage of his relationship, influence, and connection, by himself and/or in unlawful concert and active collaboration with former President Ferdinand E. Marcos and Imelda R. Marcos for the purpose of mutually enriching themselves and preventing the disclosure and recovery of assets illegally obtained: (a) acted as the dummy, nominee or agent of former President Ferdinand E. Marcos and Imelda R. Marcos in several corporations such as, the Allied Banking Corporation, Acoje Mining Corporation, Baguio Gold Mining, Multi National Resources, Philippine Overseas, Inc. and Pioneer Natural Resources; (b) unlawfully obtained, through corporations organized by them such as the New City Builders, Inc. (NCBI), multi-million peso contracts with the government buildings, such as the University of Life Sports Complex and Dining Hall as well as projects of the National Manpower Corporation, Human Settlements, GSIS, and Maharlika Livelihood, to the gross and manifest disadvantage of the Government and the Filipino people; and (c) in furtherance of the above stated illegal purposes, organized several establishments engaged in food, mining and other businesses such as the Transnational Construction Corporation, Total Systems Technology, Inc., Pyro Control Technology Corporation, Asian Alliance, Inc., A & T Development Corporation, RBO Agro Forestry Farm Development Corporation, Bathala Coal Mining Corporation, Coal Basis Mining Corporation, Titan Coal Mining Corporation, GEI Guaranteed Education, Inc., and I.B. Gimenez Securities, Inc.<sup>105</sup>

Despite the specific allegations in the Complaint, petitioner contends that respondents merely gave general denials to the allegations in the Complaint.<sup>106</sup> “[N]o specific denial [was] made on the material allegations [in] the [C]omplaint.”<sup>107</sup>

Respondents, on the other hand, assert that the Sandiganbayan was correct in granting the Motion to Dismiss on demurrer to evidence.

Respondent Ignacio Gimenez claims that petitioner cannot be excused from filing its Formal Offer of Evidence considering the numerous extensions given by the Sandiganbayan. Petitioner had all the resources and time to gather, collate, and secure the necessary evidence to build its case.<sup>108</sup>

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<sup>104</sup> *Rollo*, p. 1772, Republic’s Memorandum.

<sup>105</sup> *Id.* at 1776–1777.

<sup>106</sup> *Id.* at 1778.

<sup>107</sup> *Id.*

<sup>108</sup> *Id.* at 1701, Ignacio B. Gimenez’s Memorandum.

Petitioner's presentation of evidence took 19 years to complete, and yet it failed to submit the necessary documents and pleading.<sup>109</sup>

Similarly, respondent Fe Roa Gimenez argues that petitioner was negligent in failing to comply with the Sandiganbayan's orders considering the inordinate amount of time given to petitioner to present evidence, which resulted in only five witnesses in 19 years.<sup>110</sup>

To determine the propriety of granting respondents' Motion to Dismiss based on Demurrer to Evidence, we review the nature of demurrer.

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.

In *Oropesa v. Oropesa*<sup>111</sup> where this court affirmed the dismissal of the case on demurrer to evidence due to petitioner's non-submission of the Formal Offer of Evidence,<sup>112</sup> demurrer to evidence was defined as:

. . . “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.” We have also held that a demurrer to evidence “authorizes a judgment on the merits of the case without the defendant having to submit evidence on his part, as he would ordinarily have to do, if plaintiff's evidence shows that he is not entitled to the relief sought.”<sup>113</sup> (Citations omitted)

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 plaintiff's 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

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<sup>109</sup> Id. at 1701–1702.

<sup>110</sup> Id. at 1711–1713, Fe Roa Gimenez's Memorandum.

<sup>111</sup> G.R. No. 184528, April 25, 2012, 671 SCRA 174 [Per J. Leonardo-De Castro, First Division].

<sup>112</sup> Id. at 185.

<sup>113</sup> Id.

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 plaintiff's evidence is prima facie insufficient for a recovery.<sup>114</sup>

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. . . .<sup>115</sup> (Emphasis supplied, citation omitted)

Petitioner, in its Supplement to the Petition, argued that the testimonial evidence it had presented and offered during trial warranted consideration and analysis.<sup>116</sup> The Sandiganbayan erroneously excluded these testimonies in determining whether to grant the motion to dismiss or not, hence:

. . . even assuming that the Sandiganbayan denied petitioner's formal offer of evidence, petitioner still had testimonial evidence in its favor which should [have] been considered. It behoved then upon the Sandiganbayan to discuss or include in its discussion, at the very least, an analysis of petitioner's testimonial evidence.<sup>117</sup>

With our ruling reversing the Sandiganbayan's Resolutions on petitioner's Formal Offer of Evidence, what should be determined now by the Sandiganbayan is whether petitioner's evidence is sufficient to entitle it to the relief it seeks after the Sandiganbayan rested its case. Petitioner is required to establish preponderance of evidence.

In the second assailed Resolution, the Sandiganbayan granted respondents' Motion to Dismiss based on the lack of Formal Offer of Evidence of petitioner. At the same time, it observed that the pieces of documentary evidence presented by petitioner were mostly certified true copies of the original. In passing upon the probative value of petitioner's

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<sup>114</sup> *Spouses Condes v. Court of Appeals*, 555 Phil. 311, 324 (2007) [Per J. Nachura, Third Division], *citing Heirs of Emilio Santioque v. Heirs of Emilio Calma*, 536 Phil. 524, 540–541 (2006) [Per J. Callejo, Sr., First Division].

<sup>115</sup> *Casent Realty Development Corporation v. Philbanking Corporation*, 559 Phil. 793, 801–802 (2007) [Per J. Velasco, Jr., Second Division].

<sup>116</sup> *Rollo*, p. 1906, Supplement to the Petition for Certiorari.

<sup>117</sup> *Id.*

evidence, the Sandiganbayan held:

On another note, the evidence presented by the plaintiff consisted mainly of certified true copies of the original. These certified copies of documentary evidence presented by the plaintiff were not testified on by the person who certified them to be photocopies of the original. Hence, these evidence do not appear to have significant substantial probative value.<sup>118</sup>

Petitioner faults the Sandiganbayan for making “a general and sweeping statement that the evidence presented by petitioner lacked probative value for the reason that they are mainly certified true copies which had not been testified on by the person who certified [them].”<sup>119</sup> Thus, its right to due process was violated when the Sandiganbayan rejected petitioner’s documentary evidence in the same Resolution which dismissed the case.<sup>120</sup>

Petitioner argues that: a) respondents unqualifiedly admitted the identity and authenticity of the documentary evidence presented by petitioner;<sup>121</sup> and b) the documents it presented were public documents, and there was no need for the identification and authentication of the original documentary exhibits.<sup>122</sup> Petitioner relies on the Sandiganbayan Order<sup>123</sup> dated August 6, 2002. The Order reads:

Considering the manifestation of Atty. Reno Gonzales, counsel for plaintiff/PCGG, that the *defendant Fe Roa Gimenez, through counsel, is willing to stipulate that the documents to be presented and identified by the witness are in her custody as Records Officer of the PCGG*, the parties agreed to dispense with the testimony of Ma. Lourdes Magno.

WHEREFORE, and as prayed for, the continuation of the presentation of plaintiff’s evidence is set on October 9 and 10, 2002, both at 8:30 o’clock [sic] in the morning.

SO ORDERED.<sup>124</sup> (Emphasis supplied)

Petitioner claims that the following exhibits were acquired in relation to the PCGG’s functions prescribed under Executive Order No. 1, Section 3(b),<sup>125</sup> and form part of the official records of the PCGG:<sup>126</sup> “Certifications

<sup>118</sup> Id. at 132, Resolution dated September 13, 2006.

<sup>119</sup> Id. at 1784, Republic’s Memorandum.

<sup>120</sup> Id. at 1785.

<sup>121</sup> Id. at 1786.

<sup>122</sup> Id. at 1788.

<sup>123</sup> Id. at 1632.

<sup>124</sup> Id.

<sup>125</sup> Exec. Order No. 1 (1986), sec. 3 provides:

Sec. 3. The Commission shall have the power and authority:

.....

(b) To sequester or place or cause to be placed under its control or possession any building or office

as to the various positions held in Government by Fe Roa-Gimenez, her salaries and compensation during her stint as a public officer, the BIR Income Tax Returns and Statement of Assets and Liabilities showing the declared income of spouses Gimenezes; the Articles of Incorporation of various corporations showing spouses Gimenezes' interests on various corporations; and several transactions involving huge amounts of money which prove that they acted as conduit in the disbursement of government funds."<sup>127</sup>

On the other hand, respondent Ignacio Gimenez argues that petitioner's documents are not "official issuances of the Philippine government."<sup>128</sup> They are mostly notarized private documents.<sup>129</sup> Petitioner's evidence has no probative value; hence, a dismissal on demurrer to evidence is only proper.<sup>130</sup> Respondent Fe Roa Gimenez claims that the Sandiganbayan did not err in holding that the majority of petitioner's documentary evidence has no probative value, considering that most of these documents are only photocopies.<sup>131</sup>

The evidence presented by petitioner before the Sandiganbayan deserves better treatment.

For instance, the nature and classification of the documents should have been ruled upon. Save for certain cases, the original document must be presented during trial when the subject of the inquiry is the contents of the document.<sup>132</sup> This is the Best Evidence Rule provided under Rule 130, Section 3 of the Rules of Court:

SEC. 3. Original document must be produced; exceptions.— When the subject of inquiry is the contents of a document, no evidence shall be admissible other than the original document itself, except in the following cases:

(a) When the original has been 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

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wherein any ill-gotten wealth or properties may be found, and any records pertaining thereto, in order to prevent their destruction, concealment or disappearance which would frustrate or hamper the investigation or otherwise prevent the Commission from accomplishing its task.

<sup>126</sup> *Rollo*, 1786–1787, Republic's Memorandum.

<sup>127</sup> *Id.* at 1725–1726.

<sup>128</sup> *Id.* at 1702, Ignacio B. Gimenez's Memorandum.

<sup>129</sup> *Id.*

<sup>130</sup> *Id.* at 1706.

<sup>131</sup> *Id.* at 1717, Fe Roa Gimenez's Memorandum.

<sup>132</sup> *See Republic v. Marcos-Manotoc, et al.*, 681 Phil. 380, 402–403 (2012) [Per J. Sereno (now C.J.), Second Division], *Heirs of Margarita Prodon v. Heirs of Maximo S. Alvarez and Valentina Clave*, G.R. No. 170604, September 2, 2013, 704 SCRA 465, 478 [Per J. Bersamin, First Division], and *Bognot v. RRI Lending Corporation*, G.R. No. 180144, September 24, 2014, 736 SCRA 357, 377 [Per J. Brion, Second Division].

party against whom the evidence is offered, and the latter fails to produce it after reasonable notice;

(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; and

(d) When the original is a public record in the custody of a public officer or is recorded in a public office.

In case of unavailability of the original document, secondary evidence may be presented<sup>133</sup> as provided for under Sections 5 to 7 of the same Rule:

*SEC. 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 part, may prove its contents by a copy, or by a recital of its contents in some authentic document, or by the testimony of witnesses in the order stated.*

*SEC. 6. When original document is in adverse party's custody or control. — If the document is in the custody or under the control of adverse party, he must have reasonable notice to produce it. If after such notice and after satisfactory proof of its existence, he fails to produce the document, secondary evidence may be presented as in the case of its loss.* (5a)

*SEC. 7. 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.* (Emphasis supplied)

In *Citibank, N.A. v. Sabeniano*,<sup>134</sup> citing *Estrada v. Hon. Desierto*,<sup>135</sup> this court clarified the applicability of the Best Evidence Rule:

As the afore-quoted provision states, the best evidence rule applies only when the subject of the inquiry is the contents of the document. The scope of the rule is more extensively explained thus

But even with respect to documentary evidence, the best evidence rule applies only when the content of such document is the subject of the inquiry. *Where the issue is only as to whether such document was actually executed, or exists, or on the circumstances relevant to or surrounding its execution, the best evidence rule does not apply and*

<sup>133</sup> See *Dantis v. Maghinang, Jr.*, G.R. No. 191696, April 10, 2013, 695 SCRA 599, 611 [Per J. Mendoza, Third Division].

<sup>134</sup> 535 Phil. 384 (2006) [Per J. Chico-Nazario, First Division].

<sup>135</sup> 408 Phil. 194, 230 (2001) [Per J. Puno, En Banc].

*testimonial evidence is admissible (5 Moran, op. cit., pp. 76-66; 4 Martin, op. cit., p. 78). Any other substitutionary evidence is likewise admissible without need for accounting for the original.*

*Thus, when a document is presented to prove its existence or condition it is offered not as documentary, but as real, evidence. Parol evidence of the fact of execution of the documents is allowed (Hernaez, et al. vs. McGrath, etc., et al., 91 Phil[.] 565). x x x*

In *Estrada v. Desierto*, this Court had occasion to rule that —

It is true that the Court relied not upon the original but only [a] copy of the Angara Diary as published in the Philippine Daily Inquirer on February 4-6, 2001. In doing so, the Court, did not, however, violate the best evidence rule. Wigmore, in his book on evidence, states that:

“Production of the original may be dispensed with, in the trial court’s discretion, whenever in the case in hand the opponent does not bona fide dispute the contents of the document and no other useful purpose will be served by requiring production.

“x x x

x x x

x x x

“In several Canadian provinces, the principle of unavailability has been abandoned, for certain documents in which ordinarily no real dispute arised [sic]. This measure is a sensible and progressive one and deserves universal adoption (post, sec. 1233). Its essential feature is that a copy may be used unconditionally, if the opponent has been given an opportunity to inspect it.”

*This Court did not violate the best evidence rule when it considered and weighed in evidence the photocopies and microfilm copies of the PNs, MCs, and letters submitted by the petitioners to establish the existence of respondent’s loans. The terms or contents of these documents were never the point of contention in the Petition at bar. It was respondent’s position that the PNs in the first set (with the exception of PN No. 34534) never existed, while the PNs in the second set (again, excluding PN No. 34534) were merely executed to cover simulated loan transactions. As for the MCs representing the proceeds of the loans, the respondent either denied receipt of certain MCs or admitted receipt of the other MCs but for another purpose. Respondent further admitted the letters she wrote personally or through her representatives to Mr. Tan of petitioner Citibank acknowledging the loans, except that she claimed that these letters were just meant to keep up the ruse of the simulated loans. Thus, respondent questioned the documents as to their existence or execution, or when the former is admitted, as to the purpose for which the documents were executed, matters which are, undoubtedly, external to the documents, and which had nothing to do with the contents thereof.*

Alternatively, even if it is granted that the best evidence rule should apply to the evidence presented by petitioners regarding the

existence of respondent's loans, it should be borne in mind that the rule admits of the following exceptions under Rule 130, Section 5 of the revised Rules of Court[.]<sup>136</sup> (Emphasis supplied, citation omitted)

Furthermore, for purposes of presenting these as evidence before courts, documents are classified as either public or private. Rule 132, Section 19 of the Rules of Court provides:

SEC. 19. Classes of Documents.— For the purpose of their presentation in evidence, documents are either public or private.

Public documents are:

(a) The written official acts, or records of the official acts of the sovereign authority, official bodies and tribunals, and public officers, whether of the Philippines, or of a foreign country;

(b) Documents acknowledge before a notary public except last wills and testaments; and

(c) Public records, kept in the Philippines, of private documents required by law to be entered therein.

All other writings are private.

The same Rule provides for the effect of public documents as evidence and the manner of proof for public documents:

SEC. 23. 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.

SEC. 24. Proof of official record.— The record of public documents referred to in paragraph (a) of Section 19, when admissible for any purpose, may be evidenced by an official publication thereof or by a copy attested by the officer having the legal custody of the record, or by his deputy, and accompanied, if the record is not kept in the Philippines, with a certificate that such officer has the custody. If the office in which the record is kept is in a foreign country, the certificate may be made by a secretary of the 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, and authenticated by the seal of his office.

SEC. 25. What attestation of copy must state.— Whenever a copy of a document or record is attested for the purpose of evidence, the attestation must state, in substance, that the copy is a correct copy of the original, or a specific part thereof, as the case may be. The attestation must

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<sup>136</sup> 535 Phil. 384, 457–459 (2006) [Per J. Chico-Nazario, First Division].

be under the official seal of the attesting officer, if there be any, or if he be the clerk of a court having a seal, under the seal of such court.

....

*SEC. 27. Public record of a private document.— An authorized public record of a private document may be proved by the original record, or by a copy thereof, attested by the legal custodian of the record, with an appropriate certificate that such officer has the custody.*

....

*SEC. 30. Proof of notarial documents.— Every instrument duly acknowledged or proved and certified as provided by law, may be presented in evidence without further proof, the certificate of acknowledgment being prima facie evidence of the execution of the instrument or document involved. (Emphasis supplied)*

Emphasizing the importance of the correct classification of documents, this court pronounced:

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.<sup>137</sup> (Emphasis supplied)

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.*,<sup>138</sup> 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

<sup>137</sup> *Patula v. People*, G.R. No. 164457, April 11, 2012, 669 SCRA 135, 156 [Per J. Bersamin, First Division].

<sup>138</sup> 650 Phil. 54 (2010) [Per J. Leonardo-De Castro, First Division].

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 attending 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.<sup>139</sup> (Emphasis supplied, citations omitted)

In *Salas v. Sta. Mesa Market Corporation*,<sup>140</sup> 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:

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<sup>139</sup> Id. at 68–70.

<sup>140</sup> 554 Phil. 343 (2007) [Per J. Corona, First Division].

....

*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.<sup>141</sup> (Emphasis supplied, citations omitted)

Indeed, in *Republic v. Marcos-Manotoc*,<sup>142</sup> this court held that mere collection of documents by the PCGG does not make such documents public documents per se under Rule 132 of the Rules of Court:

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.

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

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<sup>141</sup> Id. at 348–350.

<sup>142</sup> *Republic v. Marcos-Manotoc, et al.*, 681 Phil. 380 (2012) [Per J. Sereno (now C.J.), Second Division].

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.<sup>143</sup> (Citations omitted)

Notably, the Sandiganbayan's evaluation of the evidence presented by petitioner was cursory. Its main reason for granting the Motion to Dismiss on Demurrer to Evidence was that there was no evidence to consider due to petitioner's failure to file its Formal Offer of Evidence. It brushed off the totality of evidence on which petitioner built its case.

Even assuming that no documentary evidence was properly offered, this court finds it clear from the second assailed Resolution that the Sandiganbayan did not even consider other evidence presented by petitioner during the 19 years of trial. The Sandiganbayan erred in ignoring petitioner's testimonial evidence without any basis or justification. Numerous exhibits were offered as part of the testimonies of petitioner's witnesses.

Petitioner presented both testimonial and documentary evidence that tended to establish a presumption that respondents acquired ill-gotten wealth during respondent Fe Roa Gimenez's incumbency as public officer and which total amount or value was manifestly out of proportion to her and her husband's salaries and to their other lawful income or properties.

Petitioner presented five (5) witnesses, two (2) of which were Atty. Tereso Javier and Director Danilo R.V. Daniel, both from the PCGG:

Petitioner presented as witnesses Atty. Tereso Javier, then Head of the Sequestered Assets Department of PCGG, and Danilo R.V. Daniel, then Director of the Research and Development Department of PCGG, who testified on the bank accounts and businesses owned and/ or under the control of spouses Gimenezes.<sup>144</sup>

Several exhibits excluded by the Sandiganbayan were offered as part of petitioner's testimonial evidence:

1) Exhibit "KK"<sup>145</sup> was offered "for the purpose of proving the assets

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<sup>143</sup> Id. at 404-405.

<sup>144</sup> *Rollo*, p. 1726, Republic's Memorandum.

<sup>145</sup> Id. at 1757. Exhibit "KK" refers to the "Table of Contents of SB CC No. [0]007 entitled RP vs. Ignacio/Fe Roa Dimnez [sic], et al., including its Annexes[.]" (Id.)

or properties of the spouses Ignacio B. Gimenez and Fe Roa Gimenez, and as part of the testimony of Tereso Javier.”<sup>146</sup>

2) Exhibits “KK-1” to “KK-12”<sup>147</sup> inclusive of sub-markings, were offered “for the purpose of proving the real properties acquired by the spouses Ignacio B. Gimenez and Fe Roa Gimenez, and as part of the testimony of Tereso Javier.”<sup>148</sup>

3) Exhibits “KK-15,” “KK-18,” “KK-20,” “KK-27,” “KK-30,” “KK-32” to “KK-38” and “KK-40”<sup>149</sup> were offered “for the purpose of

<sup>146</sup> Id. at 1757.

<sup>147</sup> Id. at 1023–1024, Formal Offer of Evidence. Exhibit “KK-1” refers to the “Certified true copy of Transfer Certificate of Title No. 137638 of the Registry of Deeds for the Province of Pangasinan registered under the name of Ignacio B. Gimenez, married to Fe Roa Gimenez, covering a parcel of land with an area of 1,106 square meters, [located in] Barrio Nibaleo, San Fabian, Pangasinan.” Exhibit “KK-2” refers to a “Certified true copy of Tax Declaration No. 0634 under the name of Ignacio B. Gimenez married to Fe Roa Gimenez of the property covered by Transfer Certificate of Title No. 137638.” Exhibit “KK-3” refers to the “Certified true copy of Transfer Certificate of Title No. 520192 of the Registry of Deeds for the Province of Rizal registered under the name of Ignacio B. Gimenez . . . married to Fe Roa Gimenez, covering a parcel of land with an area of 888 square meters [located in] Barrio Dolores, Taytay, Rizal.” Exhibit “KK-4” refers to the “Certified true copy of Transfer Certificate of Title No. 138076 of the Registry of Deeds for the Province of Pangasinan registered under the name of Ignacio B. Gimenez . . . married to Fe Roa Gimenez, covering a parcel of land with an area of 1,106 square meters [located in] Barrio Nibaleo, San Fabian, Pangasinan.” Exhibit “KK-5” refers to the “Certified true copy of Transfer Certificate of Title No. T-12869 of the Registry of Deeds for the Province of Quezon registered under the name of Spouses Ignacio B. Gimenez and Fe Roa Gimenez, covering a parcel of land with an area of 194,426 square meters [located in] Barrio Real (New Kiloloron), Real (formerly Infanta), Quezon.” Exhibit “KK-5-A” refers to the “Bracketed portion at the dorsal page of Exhibit ‘KK-5’ which is the certification of the Deputy Register of Deeds stating that Exhibit ‘KK-5’ is a true copy of TCT No. T-12869, Book No. T-60, Page No. 169, registered in the name of Sps. Ignacio B. Gimenez and Fe Roa Gimenez[.]” Exhibit “KK-6” refers to the “Certified true copy of Tax Declaration No. 30-003-0131-A under the name of Ignacio B. Gimenez and Fe Roa Gimenez of the property covered by Transfer Certificate of Title No. T-12869.” Exhibit “KK-7” refers to the “Certified true copy of Transfer Certificate of Title No. T-12142 of the Registry of Deeds for the Province of Quezon registered under the name of Ignacio Bautista Gimenez, married to Fe Roa Gimenez, covering a parcel of land with an area of 18.6738 hectares [located in] Barrio Capalong, Infanta, Quezon.” Exhibit “KK-7-A” refers to the “Bracketed portion at the dorsal page of Exhibit ‘KK-7’, which is the certification of the Deputy Register of Deeds, stating that said Exhibit ‘KK-7’ is a true copy of TCT No. T-12142, Book No. T-57, Page No. 42[.]” Exhibit “KK-8” refers to the “Certified true copy of Tax Declaration No. 30-003-0301-A under the name of Ignacio Bautista Gimenez[.]” Exhibit “KK-9” refers to the “Certified true copy of Transfer Certificate of Title No. T-12870 of the Registry of Deeds for the Province of Quezon registered under the name of Spouses Ignacio B. Gimenez and Fe Roa Gimenez, covering a parcel of land with an area of 152,682 square meters, [located in] Barrio Kiloloron, Real (formerly Infanta), Quezon.” Exhibit “KK-9-A” refers to the “Bracketed portion at the dorsal page of Exhibit ‘KK-9’ which is the certification of the Deputy Register of Deeds stating [that] said Exhibit ‘KK-9’ is a true copy of TCT No. T-12870, Book No. T-60, Page No. 170[.]” Exhibit “KK-10” refers to the “Certified true copy of Tax Declaration No. 30-005-0348-A under the name of Sps. Ignacio Jimenez and Fe Roa Jimenez of the property covered by Transfer Certificate of Title No. T-12870.” Exhibit “KK-11” refers to the “Certified true copy of Transfer Certificate of Title No. T-13178 of the Registry of Deeds for the Province of Quezon registered under the name of Ignacio Bautista Gimenez married to Fe Roa Gimenez, covering a parcel of land with an area of 16.1641 hectares, situated in the Sitio of Capalong, Infanta, Quezon.” Exhibit “KK-11-A” refers to the “Bracketed portion at the dorsal page of Exhibit ‘KK-11’ which is the certification of the Deputy Register of Deeds stating that Exhibit ‘KK-11’ is a true copy of TCT No. T-13178, Book No. T-62, Page No. 78[.]” Exhibit “KK-12” refers to the “Certified true copy of Tax Declaration No. 30-003-0302-A under the name of Ignacio Bautista Gimenez of the property located at Barrio Capalong, Real, Quezon with an area of 16.1541 hectares.”

<sup>148</sup> Id. at 1758–1759, Republic’s Memorandum.

<sup>149</sup> Id. at 1025–1026, Formal Offer of Evidence. Exhibit “KK-15” refers to the “Certified true copy of the General Information Sheet of Allied Banking Corporation for the year 2002 consisting of seven (7) pages.” Exhibit “KK-18” refers to the “Certified true copy of the General Information Sheet of Allied

proving the corporations in which Ignacio B. Gimenez has interest, and as part of the testimony of Tereso Javier.”<sup>150</sup>

4) Exhibit “KK-45”<sup>151</sup> was offered “for the purpose of proving that the PCGG conducted an investigation of New City Builders, Inc., Transnational Construction Corporation, and OTO Construction and Development Corporation in relation to Ignacio B. Gimenez and Roberto O. Olanday, and as part of the testimony of Tereso Javier.”<sup>152</sup>

5) Exhibits “KK-48” to “KK-50”<sup>153</sup> were offered “for the purpose of proving that the PCGG formally filed notices of lis pendens with the Registers of Deeds of Taytay, Rizal, Lucena City, Quezon and San

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Leasing and Finance Corporation for year 2002 consisting of seven (7) pages.” Exhibit “KK-27” refers to the “Certified true copy of the Certificate of Filing of Amended Articles of Incorporation of I.B. Gimenez Securities, Inc. (Formerly Ignacio B. Jimenez Securities, Inc., amending Article VII thereof) issued by the Securities and Exchange Commission on November 26, 1997, with the attached Amended Articles of Incorporation, consisting of nine (9) pages.” Exhibit “KK-30” refers to the “Certified true copy of the General Information Sheet of Lepanto Consolidated Mining Company for the year 2001 consisting of seven (7) pages.” Exhibit “KK-32” refers to the “Certified true copy of the Certificate of Filing of Amended Articles of Incorporation of Manila Stock Exchange (amending Article IV by shortening the term of its existence, thereby dissolving the corporation) issued by the Securities and Exchange Commission on December 9, 1999, with the attached Amended Articles of Incorporation consisting of eleven (11) pages.” Exhibit “KK-33” refers to the “Certified true copy of the General Information Sheet of Marinduque Mining and Industrial Corporation for the year 1982 consisting of five (5) pages.” Exhibit “KK-34” refers to the “Certified true copy of the Certificate of filing of Amended Articles of Incorporation of Marinduque Mining and Industrial Corporation[.]” Exhibit “KK-35” refers to the “Certified true copy of the General Information Sheet of Oriental Petroleum and Minerals Corporation for the year 2002 consisting of eight (8) pages.” Exhibit “KK-36” refers to the “Certified true copy of the Certificate of Filing of Amended Articles of Incorporation of Oriental Petroleum and Minerals Corporation[.]” Exhibit “KK-37” refers to the “Certified true copy of the General Information Sheet of Philippine Overseas Telecommunications Corporation for the year 2003[.]” Exhibit “KK-38” refers to the “Certified true copy of the Certificate of Filing of Amended Articles of Incorporation of Philippine Overseas Telecommunications Corporation (amending Article II, Paragraph 5 of the Secondary Purposes of the Amended Articles of Incorporation thereof) issued by the Securities and Exchange Commission on June 9, 1972, with the attached Amended Articles of Incorporation, consisting of ten (10) pages.” Exhibit “KK-40” refers to the “Certified true copy of the Cover Sheet of Certificate of Filing of Amended Articles of Incorporation of Prudential Guarantee and Assurance Incorporated consisting of twelve (12) pages, including the attached Certificate of Filing of Amended Articles of Incorporation dated October 24, 2000 and the Amended Articles of Incorporation.

<sup>150</sup> Id. at 1760, Republic’s Memorandum.

<sup>151</sup> Id. at 1027, Formal Offer of Evidence. Exhibit “KK-45” refers to the “Certified true copy of the Memorandum dated August 1, 1988 of Atty. Ralph S. Lee, Team Supervisor, IRD, and Alexander M. Berces, Investigator, for Atty. Roberto S. Federis, Director, IRD, thru Atty. Romeo A. Damosos, Acting Asst. Director, IRD, all of the Presidential Commission on Good Government, consisting of seven (7) pages, regarding the investigation of New City Builders, Inc., Transnational Construction Corporation, and OTO Construction and Development Corporation in relation to Ignacio B. Gimenez and Roberto O. Olanday.”

<sup>152</sup> Id. at 1761, Republic’s Memorandum.

<sup>153</sup> Id. at 1028, Formal Offer of Evidence. Exhibit “KK-48” refers to the “Photocopy of Notice of Lis Pendens dated March 22, 1989 from the Presidential Commission on Good Government . . . informing the [Register of Deeds of Taytay, Rizal] that the property covered by TCT No. 520192 . . . is deemed sequestered[.]” Exhibit “KK-49” refers to the “Photocopy of Notice of Lis Pendens dated March 22, 1989 from the Presidential Commission on Good Government . . . informing the [Register of Deeds of Lucena City, Quezon] that the following properties [have been] sequestered[.] TCT No. 128969[,] TCT No. 12142[,] TCT No. 12870[,] and TCT No. 13178[.]” Exhibit “KK-50” refers to the “Photocopy of Notice of Lis Pendens dated March 22, 1989 from the Presidential Commission on Good Government . . . informing the [Register of Deeds of San Fabian, Pangasinan] that the following properties are deemed sequestered and the subject of Civil Case No. [0]007 . . . : TCT No. 138076 (property located at Nibalew, San Fabian, Pangasinan), Beach House located in San Fabian, Pangasinan, and House with Property Index No. 013-31-018 located at Nibalew West, San Fabian, Pangasinan.”

Fabian, Pangasinan over the properties mentioned in said notices in connection with Civil Case No. [0]007 pending with the Sandiganbayan, and as part of the testimony of Tereso Javier.”<sup>154</sup>

6) Exhibits “KK-51” to “KK-52”<sup>155</sup> and their sub-markings were offered “for the purpose of proving that the PCGG sequestered the shares of stock in Allied Banking Corporation and Guaranteed Education, Inc. as stated in the said writ/letter of sequestration, and as part of the testimony of Tereso Javier.”<sup>156</sup>

7) Exhibits “NN” to “QQ”<sup>157</sup> and their sub-markings were offered “for the purpose of proving that the PCGG formally requested the Central Bank to freeze the bank accounts of the spouses Igancio [sic] B. Gimenez and Fe Roa Gimenez and that the Central Bank, acting on said request, issued a memorandum to all commercial banks relative thereto. They are also being offered as part of the testimony of Tereso Javier.”<sup>158</sup>

8) Exhibits “RR” to “RR-23”<sup>159</sup> were offered “for the purpose of

<sup>154</sup> Id. at 1762, Republic’s Memorandum.

<sup>155</sup> Id. at 1028–1029, Formal Offer of Evidence. Exhibit “KK-51” refers to the “Certified true copy of a letter of sequestration dated June 19, 1986 of the Presidential Commission on Good Government . . . addressed to Mr. Lucio C. Tan, Chairman of Allied Banking Corporation regarding [the] sequestration of shares of stock in the . . . bank in the names of Lucio C. Tan, Iris Holdings & Dev. Corp., Mariano Tanenglian, Virgo Holdings & Dev. Corp., Ignacio B. Gimenez, and Jewel Holdings, Inc., consisting of two (2) pages.” Exhibit “KK-51-A” refers to the “Bracketed portion of Exhibit ‘51’ with the name of Ignacio B. Gimenez with 44,089 common shares . . . listed.” Exhibit “KK-52” refers to the “Certified true copy of Writ of Sequestration . . . regarding the sequestration of the shares of stock of Roberto O. Olanday, Ignacio B. Gimenez, Aracely Olanday, Oscar Agcaoili and Grid Investments, Inc.” Exhibit “KK-52-A” refers to the “Bracketed portion on Exhibit “52” of the name of Ignacio B. Gimenez.”

<sup>156</sup> Id. at 1763, Republic’s Memorandum.

<sup>157</sup> Id. at 1029, Formal Offer of Evidence. Exhibit “NN” refers to the “Certified xerox copy of a Memorandum To All Commercial Banks dated March 14, 1986 issued by [the] Governor of the Central Bank of the Philippines, regarding the letter dated March 13, 1986 of Mary Concepcion Bautista, Commissioner of [PCGG].” Exhibit “OO” refers to the “Certified xerox copy of a letter dated March 13, 1986 of Mary Concepcion Bautista, [PCGG Commissioner], regarding [the] names to be added to the [list of persons not allowed to make] any withdrawal or transfer of funds from the deposit accounts, trust accounts, and/or money market placements under the names of said persons without written authority from the PCGG[.]” Exhibit “PP” refers to the same exhibit as ‘OO’; Exhibit “PP-1” refers to the “Bracketed portion on Exhibit ‘PP’ of the names of Ignacio Gimenez and Fe Jimenez [sic] appearing as No. 14 in the list of names.” Exhibit “QQ” is the “Same as Exhibit ‘NN’.” Exhibit “QQ-1” refers to the “Bracketed portion on Exhibit ‘QQ’ of the names of Ignacio Jimenez [sic] and Fe Jimenez [sic] appearing as No. 14 in the list of names.”

<sup>158</sup> Id. at 1763, Republic’s Memorandum.

<sup>159</sup> Id. at 1029–1030, Formal Offer of Evidence. Exhibit “RR” refers to the “Photocopy of Affidavit dated July 24, 1987 of Dominador Pangilinan, Former Acting President and President of Traders Royal Bank, consisting of twenty-two (22) pages[.]” Exhibits “RR-1” to “RR-3” refer to pages 2–4 of Pangilinan’s Affidavit. Exhibit “RR-4” refers to Annex A of Pangilinan’s Affidavit. Exhibits “RR-5” to “RR-7” refer to the “Status of Bankers Acceptances dated July 30, 1978 [regarding] A/C # 20, consisting of three (3) pages, attached to [Pangilinan’s affidavit.]” Exhibit “RR-8” refers to the “Recapitulation as of February 28, 1982 attached to [Pangilinan’s affidavit.]” Exhibits “RR-9” to “RR-20” refer to the “Status of Funds of A/C # 128 as of June 4, 1979, consisting of twelve (12) pages, attached to [Pangilinan’s affidavit.]” Exhibit “RR-21” refers to “Annex ‘B’ of [Pangilinan’s affidavit], which is the Savings Account Ledger of Account No. 50100060-6 at Traders Royal Bank.” Exhibit “RR-22” refers to paragraph 1 of Pangilinan’s affidavit. Exhibit “RR-23” refers to the “First sentences of paragraph 4 of [Pangilinan’s affidavit], which reads: ‘In about 1977 or 1978, Mr. Rivera told me that

proving that Dominador Pangilinan, former Acting President and President of Traders Royal Bank, executed an affidavit on July 24, 1987 wherein he mentioned Malacanang trust accounts maintained with the Traders Royal Bank the balance of which was very high, approximately 150-175 million pesos, as indicated in the monthly statements attached to his affidavit. They are also being offered as part of the testimony of Danilo R.V. Daniel.”<sup>160</sup>

9) Exhibits “SS” to “SS-29”<sup>161</sup> were offered “for the purpose of proving that Apolinario K. Medina, Executive Vice President of Traders Royal Bank, executed an Affidavit on July 23, 1987 wherein he mentioned about certain numbered (confidential) trust accounts maintained with the Traders Royal Bank, the deposits to which ‘were so substantial in amount that (he) suspected that they had been made by President Marcos or his family. They are also being offered as part of the testimony of Danilo R.V. Daniel.”<sup>162</sup>

10) Exhibits “TT” to “TT-3”<sup>163</sup> were offered “for the purpose of proving that Director Danilo R.V. Daniel of the Research and Development Department of the PCGG conducted an investigation on the ill-gotten wealth of the spouses Ignacio and Fe Roa Gimenez and found that from 1977 to 1982, the total sum of P75,090,306.42 was withdrawn from the account No. 128 (A/C 76-128) in favor of I.B Gimenez, I.B. Gimenez Securities and Fe Roa Gimenez. They are

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funds were being given to him by Ms. Fe Gimenez for deposit into trust accounts maintained with TRB.”

<sup>160</sup> Id. at 1764, Republic’s Memorandum.

<sup>161</sup> Id. at 1030–1032, Formal Offer of Evidence. Exhibit “SS” refers to the “Photocopy of the Affidavit dated July 23, 1987 of Apolinario K. Medina, Executive Vice-President of Traders Royal Bank, consisting of twenty-nine (29) pages including the annexes.” Exhibits “SS-1” to “SS-3” refer to pages 2–4 of Medina’s affidavit. Exhibit “SS-4” refers to Annex “A” of Medina’s affidavit. Exhibits “SS-6” to “SS-8” refer to the “Status of Bankers Acceptances dated July 30, 1978 re A/C # 20[.]” Exhibit “SS-9” refers to the “Recapitulation as of February 28, 1982 attached to [Medina’s affidavit.]” Exhibits “SS-10” to “SS-21” refer to the “Status of Funds re A/C # 128 as of June 4, 1979[.]” Exhibit “SS-22” refers to Annex “B” of Medina’s Affidavit which pertains to the message of Traders Royal Bank to California Overseas Bank, Los Angeles dated September 28, 1981. Exhibit “SS-23” refers to Annex “C” of Medina’s affidavit which pertains to the message of Traders Royal Bank Manila to Chemical Bank, New York dated September 28, 1981. Exhibit “SS-24” refers to Annex “D” of Medina’s affidavit which pertains to the message of Traders Royal Bank Manila to Bankers Trust Co., New York dated September 28, 1981. Exhibit “SS-25” refers to Annex “E” of Medina’s affidavit which pertains to the message of Traders Royal Bank Manila to Irving Trust Company New York dated September 28, 1981. Exhibit “SS-26” refers to Annex “F” of Medina’s affidavit which pertains to the message of Traders Royal Bank Manila to California Overseas Bank, Los Angeles dated September 28, 1981. Exhibit “SS-27” refers to Annex “G” of Medina’s affidavit which pertains to the message of Traders Royal Bank Manila to California Overseas Bank Los Angeles dated September 28, 1981. Exhibit “SS-28” refers to Annex “H” of Medina’s affidavit which pertains to the message of Traders Royal Bank to Irving Trust Company, New York dated February 16, 1982. Exhibit “SS-29” refers to the attachment to Medina’s affidavit which pertains to the message of Traders Royal Bank Manila to Irving Trust Company, New York dated January 12, 1982.

<sup>162</sup> Id. at 1766, Republic’s Memorandum.

<sup>163</sup> Id. at 1032, Formal Offer of Evidence. Exhibit “TT” refers to the “Memorandum dated July 19, 2005 for Atty. Plutarco B. Bawagan, Jr. from Director Danilo R.V. Daniel, Research & Development Department of the [PCGG] regarding the investigation conducted on the ill-gotten wealth of spouses Ignacio and Fe Roa Gimenez[.]” Exhibits “TT-1” to “TT-3” refer to pages 2–4 of Mr. Daniel’s Memorandum.

also being offered as part of the testimony of Director Danilo R.V. Daniel.”<sup>164</sup>

The court cannot arbitrarily disregard evidence especially when resolving a demurrer to evidence which tests the sufficiency of the plaintiff’s evidence.

The difference between the admissibility of evidence and the determination of its probative weight is canonical.<sup>165</sup>

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. Thus, a letter may be offered in evidence and admitted as such but its evidentiary weight depends upon the observance of the rules on evidence. Accordingly, the author of the letter should be presented as witness to provide the other party to the litigation the opportunity to question him on the contents of the letter. Being mere hearsay evidence, failure to present the author of the letter renders its contents suspect. As earlier stated, hearsay evidence, whether objected to or not, has no probative value.<sup>166</sup> (Citations omitted)

The Sandiganbayan should have considered *Atienza v. Board of Medicine, et al.*<sup>167</sup> where this court held that 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.<sup>168</sup>

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.*<sup>169</sup> (Emphasis supplied, citations omitted)

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<sup>164</sup> Id. at 1766, Republic’s Memorandum.

<sup>165</sup> *PNOC Shipping and Transport Corporation v. Court of Appeals*, 358 Phil. 38, 59 (1998) [Per J. Romero, Third Division]. See *Heirs of Lourdes Sabanpan v. Comorposa*, 456 Phil. 161, 172 (2003) [Per J. Panganiban, Third Division]; RULES OF COURT, Rule 128, sec. 3 provides: SEC. 3. Admissibility of evidence.— Evidence is admissible when it is relevant to the issue and is not excluded by the law or these rules.

<sup>166</sup> *PNOC Shipping and Transport Corporation v. Court of Appeals*, 358 Phil. 38, 59–60 (1998) [Per J. Romero, Third Division].

<sup>167</sup> 657 Phil. 536 (2011) [Per J. Nachura, Second Division].

<sup>168</sup> Id. at 542.

<sup>169</sup> Id.

A liberal application of the Rules is in line with the state's policy to recover ill-gotten wealth. 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.<sup>170</sup> This is because while a demurrer "is an aid or instrument for the expeditious termination of an action,"<sup>171</sup> it specifically "pertains to the merits of the case."<sup>172</sup>

In *Cabreza, Jr., et al. v. Cabreza*,<sup>173</sup> 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."<sup>174</sup> (Citations omitted)

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."<sup>175</sup> 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.<sup>176</sup> (Citation omitted)

To erroneously grant a dismissal simply based on the delay to formally offer documentary evidence essentially deprives one party of due process.

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<sup>170</sup> See *Nepomuceno, et al. v. Commission on Elections, et al.*, 211 Phil. 623, 628 (1983) [Per J. Escolin, En Banc], *Oropesa v. Oropesa*, G.R. No. 184528, April 25, 2012, 671 SCRA 174, 185 [Per J. Leonardo-De Castro, First Division], and *Casent Realty Development Corporation v. Philbanking Corporation*, 559 Phil. 793, 801–802 (2007) [Per J. Velasco, Jr., Second Division].

<sup>171</sup> *Nepomuceno, et al. v. Commission on Elections, et al.*, 211 Phil. 623, 628 (1983) [Per J. Escolin, En Banc].

<sup>172</sup> *Philippine Amusement and Gaming Corporation v. Court of Appeals*, 341 Phil. 432, 440 (1997) [Per J. Francisco, Third Division].

<sup>173</sup> 679 Phil. 30 (2012) [Per J. Sereno (now C.J.), Second Division].

<sup>174</sup> Id. at 41–42. In *Lu Ym v. Nabua*, 492 Phil. 397, 404 (2005) [Per J. Tinga, Second Division], "an interlocutory order . . . neither terminates nor finally disposes of a case[:]; it [still] leaves something to be done [on the part of] the court before the case is finally decided on the merits."

<sup>175</sup> *Uy v. Chua*, 616 Phil. 768, 783–784 (2009) [Per J. Chico-Nazario, Third Division].

<sup>176</sup> *Nicos Industrial Corporation v. Court of Appeals*, G.R. No. 88709, February 11, 1992, 206 SCRA 127, 133 [Per J. Cruz, First Division].

## IV

Respondents did not fail to specifically deny material averments in the Complaint.

Under Rule 8, Section 10 of the Rules of Court, the “defendant must specify each material allegation of fact the truth of which he does not admit and, whenever practicable, shall set forth the substance of the matters upon which he relies to support his denial.”<sup>177</sup> There are three modes of specific denial provided for under the Rules:

1) by specifying each material allegation of the fact in the complaint, the truth of which the defendant does not admit, and whenever practicable, setting forth the substance of the matters which he will rely upon to support his denial; (2) by specifying so much of an averment in the complaint as is true and material and denying only the remainder; (3) by stating that the defendant is without knowledge or information sufficient to form a belief as to the truth of a material averment in the complaint, which has the effect of a denial.<sup>178</sup>

In paragraph 14 of the Complaint, the PCGG, through the Office of the Solicitor General, averred that:

14. Defendant Fe Roa Gimenez, by herself and/or in unlawful concert with Defendants Ferdinand E. Marcos and Imelda R. Marcos, taking undue advantage of her position, influence and connection and with grave abuse of power and authority, in order to prevent disclosure and recovery of assets illegally obtained:

- (a) actively participated in the unlawful transfer of millions of dollars of government funds into several accounts in her name in foreign countries;
- (b) disbursed such funds from her various personal accounts for Defendants’ own use[,] benefit and enrichment;
- (c) acted as conduit of the Defendants Ferdinand E. Marcos and Imelda R. Marcos in purchasing the New York properties, particularly, the Crown Building, Herald Center, 40 Wall Street, 200 Wall Street, Lindenmere Estate and

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<sup>177</sup> RULES OF COURT, Rule 8, sec. 10 provides:

SEC. 10. Specific denial.— A defendant must specify each material allegation of fact the truth of which he does not admit and, whenever practicable, shall set forth the substance of the matters upon which he relies to support his denial. Where a defendant desires to deny only a part of an averment, he shall specify so much of it as is true and material and shall deny only the remainder. Where a defendant is without knowledge or information sufficient to form a belief as to the truth of a material averment made to the complaint, he shall so state, and this shall have the effect of a denial.

<sup>178</sup> *Philippine Bank of Communications v. Spouses Go*, 658 Phil. 43, 57 (2011) [Per J. Mendoza, Second Division].

expensive works of arts;<sup>179</sup>

In their Answer, respondents claimed that;

9. Defendants Spouses Gimenez and Fe Roa specifically deny the allegations contained in paragraphs 14(a), 14(b) and 14(c), the truth being that defendant Fe Roa never took advantage of her position or alleged connection and influence to allegedly prevent disclosure and recovery of allegedly illegally obtained assets, in the manner alleged in said paragraphs.<sup>180</sup>

Similarly, the PCGG made material allegations in paragraph 16 of the Complaint:

16. Defendant Ignacio B. Gimenez, taking undue advantage of his relationship, influence, and connection, by himself and/or in unlawful concert and active collaboration with Defendants Ferdinand E. Marcos and Imelda R. Marcos, for the purpose of mutually enriching themselves and preventing the disclosure and recovery of assets illegally obtained, among others:

- (a) acted as the dummy, nominee or agent of Defendants Ferdinand E. Marcos and Imelda R. Marcos, in several corporations such as, the Allied Banking Corporation, Acoje Mining Corporation, Baguio Gold Mining, Multi National Resources, Philippine Overseas, Inc. and Pioneer Natural Resources;
- (b) unlawfully obtained, through corporations organized by them such as the the [sic] New City Builders, Inc. (NCBI), multimillion peso contracts with the government for the construction of government buildings, such as the University of Life Sports Complex and Dining Hall as well as projects of the National Manpower Corporation, Human Settlements, GSIS, and Maharlika Livelihood, to the gross and manifest disadvantage to Plaintiff and the Filipino people.
- (c) in furtherance of the above stated illegal purposes, organized several establishments engaged in food, mining and other businesses such as the Transnational Construction Corporation, Total Systems Technology, Inc., Pyro Control Technology Corporation, Asian Alliance, Inc., A & T Development Corporation, RBO Agro Forestry Farm Development Corporation, Bathala Coal Mining Corporation, Coal Basis Mining Corporation, Titan Coal Mining Corporation, GEI

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<sup>179</sup> *Rollo*, p. 147, Complaint.

<sup>180</sup> *Id.* at 168, Answer.

Guaranteed Education, Inc., and I.B. Gimenez  
Securities, Inc.<sup>181</sup>

To which respondents specifically denied through the following paragraph:

11. Defendants Spouses Gimenez and Fe Roa specifically deny the allegations contained in paragraphs 16, 16(a), 16(b) and 16(c) that defendant Gimenez allegedly took advantage of his alleged relationship, influence and connection, and that by himself or in alleged unlawful concert with defendants Marcos and Imelda, for the alleged purpose of enriching themselves and preventing the discovery of alleged illegally obtained assets: (1) allegedly acted as dummy, nominee or agent of defendants Marcos and Imelda; (2) allegedly obtained multi-million peso projects unlawfully; and (3) allegedly organized several establishments, the truth being: (1) that defendant Gimenez never acted as dummy, nominee or agent of defendants Marcos and Imelda; (2) that defendant Gimenez never once obtained any contract unlawfully; and (3) that defendant Gimenez is a legitimate businessman and organized business establishments legally and as he saw fit, all in accordance with his own plans and for his own purposes.<sup>182</sup>

In *Aqintey v. Spouses Tibong*,<sup>183</sup> this court held that using “specifically” in a general denial does not automatically convert that general denial to a specific one.<sup>184</sup> The denial in the answer must be so definite as to what is admitted and what is denied:

A denial is not made specific simply because it is so qualified by the defendant. A general denial does not become specific by the use of the word “specifically.” When matters of whether the defendant alleges having no knowledge or information sufficient to form a belief are plainly and necessarily within the defendant’s knowledge, an alleged “ignorance or lack of information” will not be considered as a specific denial. Section 11, Rule 8 of the Rules also provides that material averments in the complaint other than those as to the amount of unliquidated damages shall be deemed admitted when not specifically denied. *Thus, the answer should be so definite and certain in its allegations that the pleader’s adversary should not be left in doubt as to what is admitted, what is denied, and what is covered by denials of knowledge as sufficient to form a belief.*<sup>185</sup> (Emphasis supplied, citations omitted)

However, the allegations in the pleadings “must be contextualized and interpreted in relation to the rest of the statements in the pleading.”<sup>186</sup> The denials in respondents’ Answer comply with the modes provided for under

<sup>181</sup> Id. at 149–151, Complaint.

<sup>182</sup> Id. at 168–169, Answer.

<sup>183</sup> 540 Phil. 422 (2006) [Per J. Callejo, Sr., First Division].

<sup>184</sup> Id. at 441.

<sup>185</sup> Id.

<sup>186</sup> *Philippine Bank of Communications v. Spouses Go*, 658 Phil. 43, 58 (2011) [Per J. Mendoza, Second Division].

the Rules. We have held that the purpose of requiring specific denials from the defendant is to make the defendant disclose the “matters alleged in the complaint which he [or she] succinctly intends to disprove at the trial, together with the matter which he [or she] relied upon to support the denial.”<sup>187</sup> The denials proffered by respondents sufficiently disclosed the matters they wished to disprove and those they would rely upon in making their denials.

To summarize, the Sandiganbayan erred in granting the Motion to Dismiss on demurrer to evidence. It erred in making a sweeping declaration on the probative value of the documentary evidence offered by petitioner and in excluding other evidence offered during trial without full evaluation based on reasons grounded in law and/or jurisprudence.

## V

The third part of Rule 33, Section 1 of the Rules of Court provides that “[i]f the motion [to dismiss] is granted but on appeal the order of dismissal is reversed [the movant] shall be deemed to have waived the right to present evidence.” As this court held:

[I]f a demurrer to evidence is granted but on appeal the order of dismissal is reversed, the movant shall be deemed to have waived the right to present evidence. The movant who presents a demurrer to the plaintiff’s evidence retains the right to present their own evidence, if the trial court disagrees with them; if the trial court agrees with them, but on appeal, the appellate court disagrees with both of them and reverses the dismissal order, the defendants lose the right to present their own evidence. The appellate court shall, in addition, resolve the case and render judgment on the merits, inasmuch as a demurrer aims to discourage prolonged litigations.<sup>188</sup> (Citations omitted)

This procedure, however, does not apply.

In this case, we principally nullify the assailed Resolutions that denied the admission of the Formal Offer of Evidence. It only follows that the Order granting demurrer should be denied. This is not the situation contemplated in Rule 33, Section 1.<sup>189</sup> Respondents were not able to even

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<sup>187</sup> *Philippine National Bank v. Court of Appeals*, 464 Phil. 331, 339 (2004) [Per J. Callejo, Sr., Second Division].

<sup>188</sup> *Permanent Savings and Loan Bank v. Velarde*, 482 Phil. 193, 206–207 (2004) [Per J. Austria-Martinez, Second Division]. See *Quebral v. Court of Appeals*, 322 Phil. 387, 405–406 (1996) [Per J. Panganiban, Third Division].

<sup>189</sup> RULES OF COURT, Rule 33, sec. 1 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

comment on the Formal Offer of Evidence. Due process now requires that we remand the case to the Sandiganbayan. Respondents may, at their option and through proper motion, submit their Comment. The Sandiganbayan should then rule on the admissibility of the documentary and object evidence covered by the Formal Offer submitted by petitioner. Respondents then may avail themselves of any remedy thereafter allowed by the Rules.

**WHEREFORE**, the Petition is **GRANTED**. The assailed Resolutions dated May 25, 2006 and September 13, 2006 of the Sandiganbayan Fourth Division in Civil Case No. 0007 are **REVERSED** and **SET ASIDE**. The case is remanded to the Sandiganbayan for further proceedings with due and deliberate dispatch in accordance with this Decision.

**SO ORDERED.**

  
**MARVIC M. V. LEONEN**  
Associate Justice

WE CONCUR:

  
**ANTONIO T. CARPIO**  
Associate Justice  
Chairperson

  
**LUCAS P. BERSAMIN**  
Associate Justice

  
**MARIANO C. DEL CASTILLO**  
Associate Justice

  
**JOSE CATRAL MENDOZA**  
Associate Justice

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motion is granted but on appeal the order of dismissal is reversed he shall be deemed to have waived the right to present evidence.

**ATTESTATION**

I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



**ANTONIO T. CARPIO**  
Associate Justice  
Chairperson, Second Division

**CERTIFICATION**

Pursuant to Section 13, Article VIII of the Constitution and the Division Chairperson's Attestation, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



**MARIA LOURDES P. A. SERENO**  
Chief Justice